1996/1997: Report 10

OFFICE OF THE
Auditor General of British Columbia

Privacy – Collection of Personal Information by the Ministry of Health

Ethics Codes in the Public Sector

Status of Public Accounts Committee Recommendations Relating to Prior Years' Audits

Compliance Audits

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table of contents

Auditor General's Comments 1

Privacy – Collection of Personal Information by the Ministry of Health 7

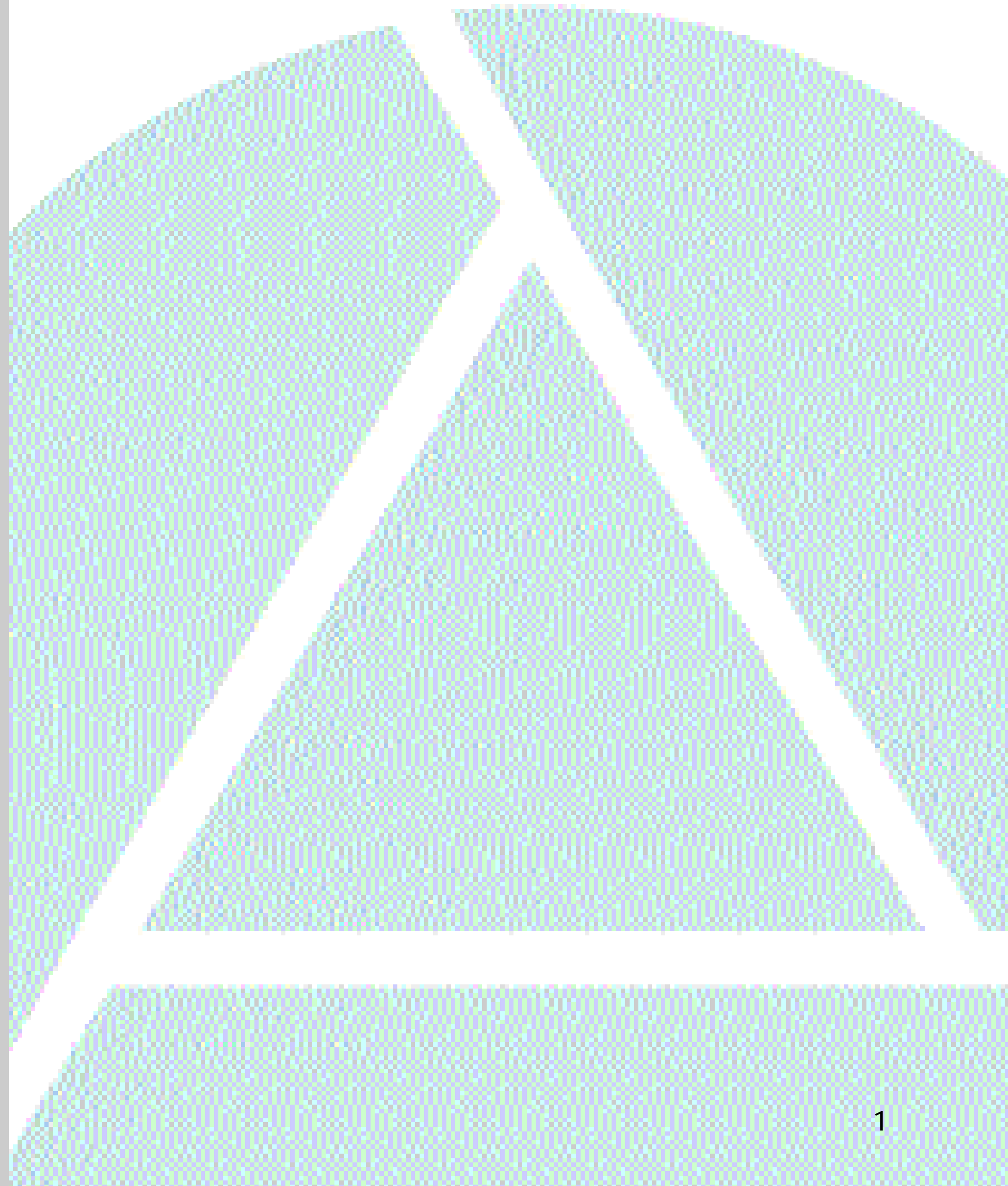
Ethics Codes in the Public Sector 65

Status of Public Accounts Committee Recommendations Relating to Prior Years' Audits 109

Appendices

- A Compliance-with-Authorities Audits Completed 1991 to Date 155
- B Compliance Audit Objectives and Methodology 157
- C Responding to Enquiries and Comments from the Public 162
- D 1996/97 Public Reports Issued by the Office to Date 164

auditor general's comments



auditor general's comments

This report presents the results of the Compliance-with-Authorities work undertaken by my Office during the past year. It has three parts:

- the results of an audit on privacy—the collection of personal information by the Ministry of Health;
- the results of a study of ethics codes in the public sector; and
- the status of government implementation of prior years' recommendations.

The audit in the Ministry of Health on privacy concerned compliance with the *Freedom of Information and Protection of Privacy Act,* and related policies. The Ministry of Health, in the course of providing health services, is one of the few government ministries that collects personal information about virtually everyone in the Province. Issues relating to access to this information have been addressed by the Information and Privacy Commissioner in many of his orders, but the initial collection of this information was something that had not been addressed. This audit, therefore, focused on the collection of that personal information. We wanted to ensure that only permitted personal information was collected, that correct procedures were followed when personal information was collected from third parties, and that the appropriate notice was provided to those from whom the personal information was collected.

We found that the Ministry was complying with the Act in terms of what information was being collected, in all significant respects. We also found that it was complying with the Act when it came to collecting personal information about individuals from other ministries and public bodies. However, we found that the Ministry has collected personal information from other third parties, usually individuals, with neither consent, nor the legal authority to do so. In addition, we found that the required notice—advising people why information was being collected, under what

authority, and whom they could contact with questions—was frequently not provided.

During the audit, we identified some situations where personal information that was necessary for the proper provision of health services was being collected in circumstances, such as emergencies, that are not specifically addressed by legislation. As well, the way that personal information was collected under these circumstances was not in compliance with the Act. However, this difficulty can be corrected by making application to the appropriate authority to allow collection of information in these circumstances.

This audit was undertaken as a result of a request from the Information and Privacy Commissioner, and I am pleased that the Commissioner has provided a foreword for inclusion in the report.

The study on ethics codes was initiated to assess what guidance exists to assist the proper conduct of today's public servants, since my Office's role includes assessments of the key factors associated with the proper conduct of government. Ethics are important in the public sector in the maintenance of public trust and confidence in government, and we wanted to see if there are indeed ethics codes in place, and if anyone has been given the specific responsibility for administering them and ensuring adherence to them. We also wanted to see how awareness of the codes is promoted and encouraged, how compliance is monitored, and what public reporting might exist.

We looked at the 16 government ministries and 20 of the most prominent Crown corporations and agencies. We found that there is an overall code of conduct that applies to all BC government employees, and that six of the ministries have specific ethics codes. In addition, all 20 of the Crown corporations and agencies have codes that apply to all, or most, of their employees, and 10 had codes applicable to their directors.

We found that responsibility for these codes had been assigned, but that monitoring for compliance with them is mostly informal and reliant upon self-assessment. In addition, these codes are generally communicated to employees and directors when they first join the organization, but there is little ongoing training to remind

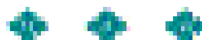
people of their responsibilities. We also found that there is little public reporting by these organizations on this topic.

The final part of this report follows up on the recommendations we have made in prior years' compliance-with-authorities reports, and which have been endorsed by the Select Standing Committee on Public Accounts. This is important to do, for two reasons. It provides a public record that the Committee can use to see how their recommendations are being dealt with. It also provides a measure of performance of our work—the extent to which our recommendations have been accepted and implemented. I am pleased that, during the year since my last compliance-with-authorities report, the Committee chose to review with Ministry representatives the status of implementation of their recommendations from four prior years' audits.

I wish to acknowledge the outstanding work undertaken by my staff which has resulted in these reports, and to thank them for their professional dedication and application. I also appreciate greatly the cooperation shown to my staff by the officials and staff in the ministries and other government organizations where we conducted our audits and reviews.

George L. Morfitt, FCA
Auditor General

Victoria, British Columbia
June 1997



privacy – collection of personal information by the ministry of health

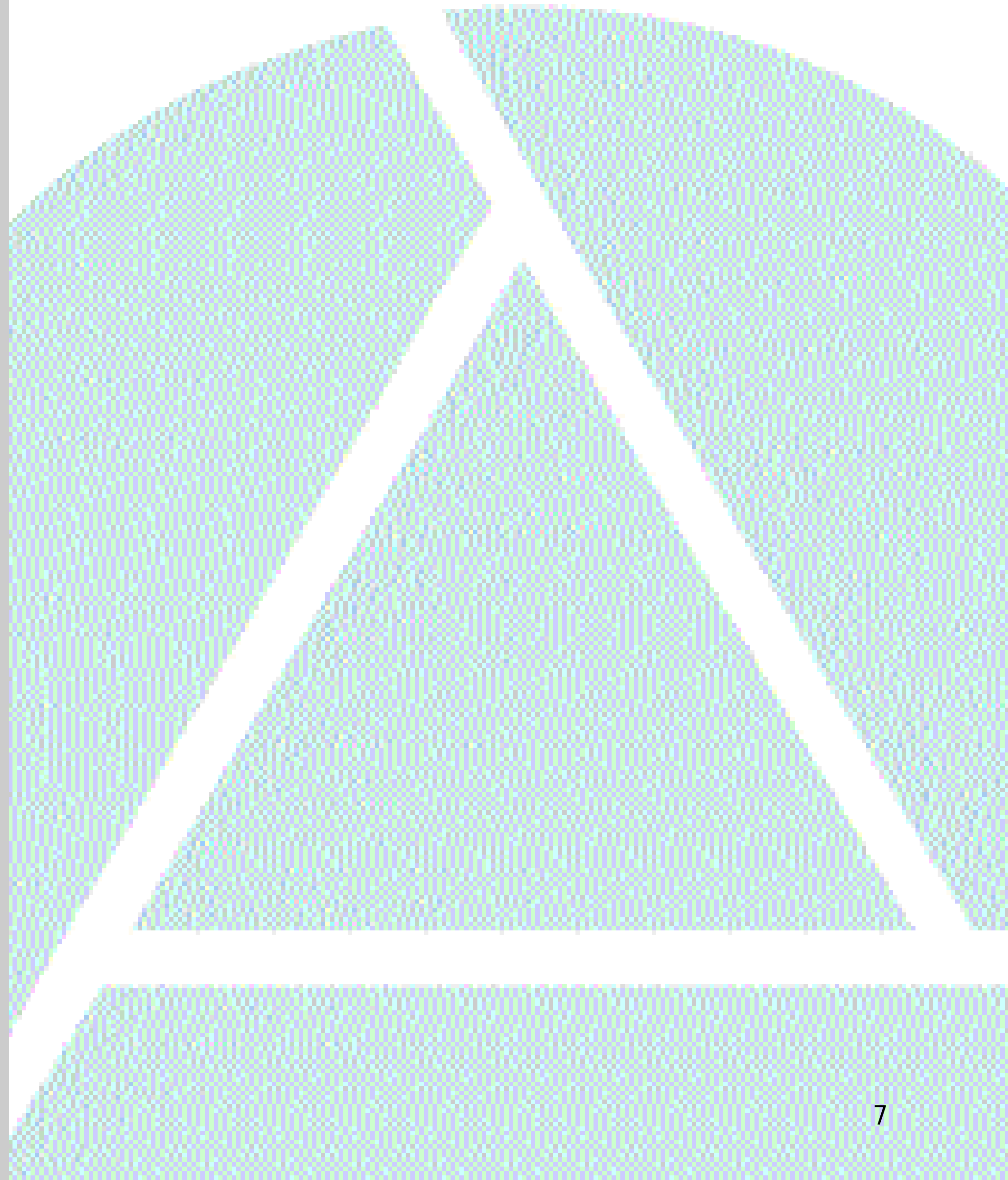


table of contents

Audit Report 11

Statement from the Information and Privacy Commissioner 13

Overall Observations 15

Introduction 17

- History of Privacy Legislation 17
- The Information and Privacy Commissioner 18
- Privacy vs. Freedom of Information 18
- Privacy and Confidentiality 20

Audit Scope: Information Collected by the Ministry of Health 22

- Collection – Getting It Right to Start With 22
- The Ministry of Health 23
- Scope Limitations 23
- Transitional Issue – Regionalization 24
- Audit Work 25

Audit Findings 27

- Ministry Policies 27
- Knowledge of Collection Provisions 27
- Section 26 – Collection Permissible 28
  - Necessary Information 29
  - The Social Insurance Number 30
  - Interview and Other Notes 30
- Section 27(1) – Collection of Information from Third Parties 32
  - Collections from Other Public Bodies: Consistent Purpose 33
  - Collections from Other Persons 35
  - Consent 36
  - Extenuating Circumstances 37
  - Unsolicited Collections 39
- Section 27(2) – Notice 40
  - A Matter of Privacy Rights 41
  - General Findings 42
  - Purpose for Collection 43
  - Complete Written Notice Not Provided 44
  - How Notice Can Be Delivered 45
  - Ongoing Collections 46
  - Extenuating Circumstances 47

table of contents continued

Shortcomings in the Notice Requirement 48
Other Information Included in Notices 49
Notice and Third Parties 49
Transition Issues 50
Other Matters 52
Health Information Privacy 52
Information Collected from Medical and Health Care Practitioners 54
Minors 55
Closing Comments 56
Summary of Recommendations 57
General Recommendation 57
Recommendations Regarding Section 26 of FIPPA 57
Recommendations Regarding Section 27(1) of FIPPA .57
Recommendations Regarding Section 27(2) of FIPPA .58
Other Recommendations 59
Supplement – Excerpt from the *Freedom of Information and Protection of Privacy Act* 60
Response of the Ministry of Health 61
Response of the Information, Science and Technology Agency 63

privacy – collection of personal information by the ministry of health

An audit to assess whether programs of the Ministry of Health were operating in compliance with the personal information collection provisions of the Freedom of Information and Protection of Privacy Act *and related policies*

Audit Report

Audit Scope

We have conducted an audit to determine whether the Ministry of Health was operating in compliance, in all significant respects, with the personal information collection provisions of the *Freedom of Information and Protection of Privacy Act* (FIPPA) and related policies, during the months of August to November 1996. Specifically, we examined compliance with those authorities relating to:

- the collection of only permitted information (section 26);
- the collection of personal information from third parties [section 27(1)]; and
- the provision of appropriate notices to persons from whom personal information is collected [section 27(2)].

Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests and other procedures as we considered necessary in the circumstances.

Audit Opinion

We found that, in accordance with the requirements of section 26 of the *Freedom of Information and Protection of Privacy Act* and related policies, the Ministry of Health was collecting only personal information that was authorized under an Act or was necessary for its operating programs.

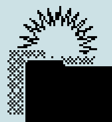
The ministry was collecting only authorized personal information from other public bodies, in accordance with section 27(1) of the Act. Because we did not attempt to access the patient files of physicians and other health practitioners, we were unable to conclude if the ministry was in compliance with this section when collecting information from practitioners; but we did find that the ministry has collected personal information from other third parties, with neither consent nor legal authority to do so.

We found that, in most circumstances, the ministry was not giving notice of the purpose for collecting information, the legal authority, and contact information as required by section 27(2) of the Act and its related policies, to individuals providing personal information. While there were some attempts to provide the required notice, these frequently did not fulfill the statutory and related requirements.

In our opinion, the Ministry of Health was satisfactorily complying, in all significant respects, with the requirements of section 26 of the *Freedom of Information and Protection of Privacy Act* and related policies during the months of August to November 1996; but, as described above, it was only partially complying with section 27(1) of the Act, and was not satisfactorily complying, in all significant respects, with the requirements of section 27(2) of the Act during this period.

We acknowledge that patient care is the paramount consideration for ministry programs and activities, and that privacy legislation and policies may not always address the particular circumstances encountered in the provision of health services.

statement from the information and privacy commissioner



One of my first acts after being appointed Information and Privacy Commissioner in 1993, was to meet with my colleague, George Morfitt, the Auditor General, and invite him to guide me in fulfilling my auditing responsibilities under the *Freedom of Information and Protection of Privacy Act*. I did so because my experience in monitoring data protection activities in various countries had taught me the importance of auditing with respect to successful and meaningful compliance with the goals of data protection. I am also delighted to have the cooperation of a fellow Officer of the Legislature. I hope to work with the Office of the Auditor General to conduct further specialized audits similar to the important one contained in the attached report.

Readers will be especially interested in the insights that fresh pairs of eyes of the staff of the Auditor General have brought to compliance with our Act. In particular, this report should raise the consciousness of those working in health-related fields about the importance of complying with fair information practices, such as those incorporated in Part 3 of the Act. I especially admire the fact that the Auditor General's staff managed to visit such a range of geographical locales in connection with this report, since I am very concerned to try to ensure that privacy rights for British Columbians are meaningful in all parts of this Province.

This report covers the collection of information, which is only one component of the fair information practices mandated by the Act. All fair information practices in the health care field require careful analysis. The report of Dr. Shaun Peck, Deputy Provincial Health Officer (July, 1995) covers the storage and disposal of health care information. The critical issues of the use and disclosure of information in health care remain. In addition, I am aware that there are many public bodies in this Province handling sensitive health care information.

I hope that one major audience for this report will be the auditors who work within the Ministry of Health, hospitals, and health-related public bodies. I would like to see aspects of compliance with the *Freedom of Information and Protection of Privacy Act* made a regular component of auditing activities in such public bodies, and I trust that the Auditor General's staff will be willing to work with my Office in promoting such compliance goals.

In terms of understanding what follows, I wish to remind those working in the health professions that I am interested in a pragmatic, cost-effective, and common-sense approach to the implementation of the Act. Personal information about patients should, for example, be shared on a need-to-know basis with a built-in chain of accountability, preferably in the form of an automated audit trail, that will ensure that the information persons entrust to such public bodies will be used for legitimate purposes of health care delivery. Citizens expect that these basic fair information principles apply to the entire health care system, whether or not the health care professional is covered by the Act.

Several recommendations in this report suggest the Ministry of Health should apply to me under section 42(1)(i) of the Act for authorization regarding the indirect collection of information about an individual. While I recognize the dilemmas identified in this report, as Privacy Commissioner I must seek a careful balance between health care requirements and the privacy rights of citizens of this Province. I would expect the Ministry to request such authorization in specific, narrow categories of situations. Over the past three years, I have only been asked to exercise this authority in one situation.

Although the conclusions to this report are in fact recommendations, I wish to emphasize that my Office intends to follow up on compliance over the course of the next year. Since I agree so strongly with the detailed recommendations of the Auditor General, I want to emphasize that I am prepared to work closely with the Office of the Auditor General to ensure compliance with these recommendations if suitable progress is not made in implementation during a reasonable time period.

David H. Flaherty
Commissioner

overall observations

Overall, we found that:

- Ministry of Health staff knowledge of the personal information collection provisions of FIPPA and related policies was weak.

The Act requires that personal information be collected only where necessary for an operating program, authorized by another statute, or in other prescribed circumstances. We found that:

- the personal information collected by the Ministry of Health was required by legislation and/or was necessary for its operating programs, with few exceptions;
- in two programs, the ministry was unnecessarily collecting the Social Insurance Number (SIN).

The Act requires that personal information may only be collected from sources other than the person who is the subject of the information where such indirect collection is authorized by the individual, by other legislation, or as specified in FIPPA. We found that:

- the minister responsible for the Act, the Minister of Employment and Investment, has not published a list of consistent purposes for which it is permissible to collect personal information from other public bodies, even though FIPPA requires the annual publication of such a list;
- even though guidance as to consistent purposes was lacking, where personal information was being collected from other public bodies, we found it to be appropriate in the circumstances;
- where personal information was being collected from physicians and other health practitioners, we were unable to conclude whether the Act had been complied with because we did not attempt to access practitioners' patient files to see if the personal information was, in all cases, released with patient consent;
- written permission to collect personal information from other third parties was not being obtained;
- there is no provision in FIPPA allowing for the collection of personal information from third parties in emergencies or in situations where it is unsolicited.

The Act requires that notice be provided to persons providing personal information, including the purpose, the

legal authority for the collection, and an officer or employee who may be contacted to answer questions about the collection. We found that:

- not all of the notice information required to be given to persons providing personal information was being supplied, although incomplete notice information was frequently given;
- government policy that notice be provided in writing was not well known, and notice was not always provided;
- information was being collected, on an ongoing basis, from persons who had never received the notice required by the Act;
- there is no provision in the Act exempting service providers from providing notice in emergencies and other extenuating circumstances when it is not practicable or appropriate to do so.

introduction

History of Privacy Legislation

The *Freedom of Information and Protection of Privacy Act* (FIPPA), which came into effect in October 1993, establishes standards in British Columbia for how the public may access information held by governments and related institutions, and for how the privacy of personal information is to be maintained. The purpose of the Act is to make public bodies more accountable to the public and, at the same time, to protect personal privacy.

The requirements of FIPPA apply to the government of the Province of British Columbia, municipalities, hospitals, schools, post-secondary institutions, and many other public bodies and self-governing professions as specified in the legislation. The Act does not regulate the information practices of private sector businesses or private citizens such as physicians and other health practitioners.

While FIPPA is relatively new legislation in British Columbia, privacy legislation has had a longer history in some other parts of Canada (the *Canadian Human Rights Act,* 1977; the federal *Privacy Act,* 1982; Ontario's *Freedom of Information and Protection of Privacy Act,* 1987), and even longer in other countries (Swedish *Data Act,* 1973). With the growth of global electronic communications, privacy protection has increasingly become a matter of international concern. In 1980, the Organization for Economic Co-operation and Development (OECD) developed a set of practices to ensure the fair treatment and handling of personal information by organizations in member countries. Included in these were the *Guidelines for the Protection of Privacy and Transborder Flows of Personal Data,* which were signed by Canada in 1984. These guidelines incorporate privacy standards or "fair information practices," which form the ethical basis and spirit of our legislation in British Columbia.

Because of FIPPA's broad application, its requirements are, by design, quite general. Consequently, the Act requires significant interpretation in order for its requirements to be applied to specific situations. The government's FIPPA Policy and Procedures Manual elaborates on individual legislative sections. However, the manual is also quite general, since it was designed to be used by all government ministries. The Ministry of Health does not have its own FIPPA policy manual, although it has created some privacy-related guidelines.

The Information and Privacy Commissioner

FIPPA established the Information and Privacy Commissioner as an Officer of the Legislature, and provides him with the mandate to conduct audits and investigations to ensure compliance with any provision of the Act. To this end, the Commissioner has conducted site visits to various public bodies around the Province, which have served to increase the general awareness of privacy principles. To date, however, the Commissioner has not undertaken a systematic review of compliance with FIPPA. Rather, his office has been concentrating on requests for review of decisions relating to the release of information, and responding to specific complaints.

In 1993, the Commissioner asked the Auditor General to assist him in fulfilling his mandate by undertaking an audit of the Act, once public bodies had time to implement its provisions. In responding to this request, our intention was not to duplicate the efforts of the Commissioner, but rather to undertake an examination in an area of the legislation that had not received much public attention. We believed there would be significant value in assessing the degree of compliance with the privacy sections of the Act, since the freedom of information aspects of the legislation had been well addressed by the Commissioner's office.

FIPPA empowers the Information and Privacy Commissioner to make binding orders. It should be noted that the Auditor General's mandate differs from that of the Information and Privacy Commissioner, since it does not include such a provision. Consequently, as with all other reports from this office, this report contains only recommendations, rather than specific requirements to improve compliance and other practices.

Privacy vs. Freedom of Information

The terms "freedom of information" and "privacy" are considered by some to be opposites. In fact, the terms are used in FIPPA to address quite different concepts.

Freedom of information relates to access to the public records of government. In a democratic society, the public expects government to remain accountable to the electorate. Part of achieving this goal is to ensure that the non-personal records underlying government decisions and actions are reasonably accessible to all interested parties. FIPPA enshrines this right of access, and establishes administrative mechanisms for its fulfillment.

FIPPA's protection of privacy applies to a unique set of these records; namely, those containing information about individual persons. Personal information is defined in the Act as information about individuals, rather than about corporations or the workings of government (Exhibit 1.1). FIPPA establishes standards about how public bodies collect, use and disclose personal information.

Exhibit 1.1

Personal Information and Why the Ministry of Health Collects It

What is personal information?

Only personal information is regulated by the privacy provisions of FIPPA. But what is personal, as opposed to other, information? Personal information is defined in FIPPA as "recorded information about an identifiable individual." This means that if data cannot be traced back to you, such as statistical data, it is not personal information.

Items considered to be personal information include:

- your name, address and telephone number;
- your race, national or ethnic origin, colour, and religious and political beliefs and associations;
- your age, sex, sexual orientation, marital status and family status;
- any number, symbol or other particular assigned to you;
- your fingerprints, blood type and inheritable characteristics;
- information about your health care history, including any physical or mental disability;
- your educational, financial, criminal, and employment history;
- anyone else's opinions about you; and
- your personal views and opinions, except if they are about someone else.

Items not considered to be personal information include:

- information recorded as part of a service you rendered to, or while in the employ of, a public body;
- information that cannot be identified with any particular person, such as statistical information; and
- information held by a public body that may affect you but is not about you, such as general government policy decisions or other government records.

Why does the Ministry of Health collect personal information?

The Ministry of Health, through the various programs it manages, collects personal information about the people to whom it provides services. This includes your name, age, address, telephone number and personal health number, all of which identify you and allows the ministry to contact you. The ministry also collects information about your length of residency in British Columbia and some of your financial information, in order to determine your eligibility for particular programs or subsidies. Because some programs are designed to complement existing support of the daily requirements of living and health care provided by your family, friends or other associates, the ministry collects information about these supports too. Finally, as part of providing care to you and your family, the ministry collects current and historical medical information, including your use of programs and treatments received.

Personal information underlies the dealings of government with private citizens. In this way personal information is different from other government records, and should therefore remain private between government and the individual. There is extensive guidance in the Act about what disclosures of personal information constitute unreasonable invasions of personal privacy.

Privacy entails a right to informational self-determination; the individual's right to exercise control over information about him or herself. The starting point in exercising privacy rights is an individual's ability to exercise control over when, where and to whom she or he provides personal information. The Privacy Commissioner of Canada has stated that "personal information is the property of the individual to whom it relates." Indeed, Canadian privacy legislation ascribes this element of control as well as other attributes of personal property to personal information. This is an important concept, as it helps form the ethical basis for why an individual's privacy rights must be respected. As with any other personal or property right, it should be compromised only where allowed by legislation, or in extenuating circumstances, such as in emergencies or other circumstances where a person's well-being is at risk.

FIPPA places limits on the collection of personal information by public bodies, as well as providing standards for its use, retention, access, accuracy and disclosure.

Privacy and Confidentiality

There are no hard and fast definitions to differentiate between privacy and confidentiality, and the terms are commonly considered synonymous. While both terms are discussed in the FIPPA Policy Manual, neither is defined in the Act, the purpose of which is to protect personal privacy, not personal confidentiality. It is perhaps best to consider confidentiality to be a subset of privacy. Privacy encompasses broad fair information practices that include personal rights and systematic controls over collection, use, and access to personal information. Confidentiality implies that sensitive information will not be made widely available.

Typically, when people provide information about themselves, they receive some form of assurance that the information will be handled confidentially. Presumably, this means that information will be protected from unauthorized access, since the means of ensuring confidentiality are seldom disclosed, and can have very different meanings for different

persons. The restrictions that the Act places on the disclosure of personal information do serve to keep it confidential as far as the general public is concerned.

Beyond limiting the public's access to personal information, confidentiality implies that only those employees with a need to know will have access to information. Simply because an employee has the ability to access information does not automatically imply that he or she should undertake that access. This is frequently referred to as the "Need to Know" principle, and should be the cornerstone of information security within organizations governed by FIPPA. Information should only be accessed when there is a clear requirement to do so, stemming directly from an individual's professional responsibilities.

Exhibit 1.2

Practical Privacy in Computerized Systems

Our commonly held beliefs of privacy are more broad than what FIPPA covers in the way of privacy. While the legislation establishes several requirements concerning the protection of privacy, there are several other issues that are not addressed in the legislation, but are very real and very necessary for privacy to be protected. Most of these stem from the general information protection provisions contained in the Act (section 30), but which are not specifically identified. They include both preventative and detective controls for unauthorized access to information. Much of it originates from an understanding of the need to protect the confidentiality of information. Where information is widely available on computer networks, confidentiality takes on added importance.

During our audit we encountered a good example of how access-to-information restrictions are being applied in the computerized patient information system at the Kelowna General Hospital. In this pilot project, all patient records, ranging from admission information to health care charting and lab tests, are recorded in a computerized system. Although terminals to access the system are widely available throughout the hospital and at the Kelowna health unit, a number of controls to protect patient privacy have been instituted. These include limiting type of access by job function, and the creation of audit trails that record all computer accesses. Regular reviews of these computer accesses are performed to check that patients are on care givers' rosters. These controls ensure the accountability of staff for the records they access and identify instances of potential inappropriate information retrieval.

We found similar controls in the ministry's Medical Services Plan (MSP) and Pharmacare databases. In addition to the controls to protect patient records found at Kelowna, MSP employees are required to sign a confidentiality agreement, in which they agree to abide by appropriate access policies or be subject to disciplinary action should they breach the terms of the agreement.

audit scope: information collected by the ministry of health

Collection – Getting It Right to Start With

We concentrated our efforts at the starting point of privacy, the collection of personal information. As stated by the Assistant Commissioner (Privacy) of the Ontario Information and Privacy Commission, "once your personal information is collected, it may be too late to guarantee its protection by trying to keep it confidential." If the collection of information is done properly at the outset, the potential for problems later is greatly reduced. For instance, if only information that is needed for an operating program is collected, then there is less information to be handled and a corresponding reduced risk of inappropriate disclosure. Furthermore, if individuals are informed of their privacy rights when information is collected from them, there should be no misunderstanding about why it is being collected, what other sources of information are being used, and what access rights others have to that information after it has been collected.

Our audit evaluated the ministry's compliance with those requirements of FIPPA that restrict the type of personal information that may be collected, and how it may be collected. Specifically, section 26 sets out the conditions under which it is acceptable for public bodies to collect personal information. Section 27(1) requires that personal information be collected directly from persons who are the subject of the information, and outlines exceptions to this requirement. Section 27(2) describes what a public body must tell persons who provide personal information, frequently referred to as notice. Section 27(3) provides limited exceptions for the requirement to provide notice. The audit assessed ministry compliance with these sections of FIPPA during the months of August to November 1996.

An additional objective of the audit was to assess the level of knowledge of Ministry of Health staff about the legislation. Each of our auditors met with numerous program staff throughout the ministry to discuss what we were auditing and what we would need to examine, and to provide assurances about our maintaining the confidentiality of the personal records under their control.

The Ministry of Health

The Ministry of Health was chosen to be the focus of our audit because it collects a large quantity of personal information in its many programs. The ministry collects information on virtually all persons living in the Province, since they participate in programs such as the Medical Services Plan and Pharmacare. Additionally, information relating to personal medical matters is some of the most sensitive held by government about its citizens.

As part of the audit process we needed to view a number of ministry files containing personal information, which is expressly allowed under the provisions of FIPPA. Consistent with the fact that we were conducting a privacy audit, we endeavoured to respect the privacy of individuals. Consequently, we only examined personal information that was necessary to perform the audit, and we retained only the minimum information to substantiate our findings. In addition, staff of the Auditor General are required to adhere to strict confidentiality guidelines in all audit work.

Scope Limitations

We did not attempt to audit the security of personal information. While we recognize that adequate security over records is an important aspect of protecting privacy, neither FIPPA nor its related authorities provide guidance, other than to require “reasonable” security. Similarly, retaining only required records and destroying those records containing personal information that are no longer required is a good privacy protection measure. However, FIPPA only requires that personal information be retained for one year when it is used to make a decision. Since document retention and disposal are addressed in other provincial legislation, they were not addressed in this audit.

We have scoped out personnel information about ministry employees and similar information concerning health practitioners due to the different nature of the information being collected. Some of the ministry’s work is performed by contracted service providers. However, the requirements of FIPPA apply to contracted service providers where specified in individual contracts. Because of inconsistencies between various ministry contracts, we did not set out to audit service providers’ compliance with this Act. In addition, the ministry indicated to us that it has only recently begun complying with the FIPPA policy manual requirement that all contractual

agreements "stipulate that the protection, retention, and disclosure of personal information will be governed by the Act."

We also did not include hospitals in the scope of our audit, each of which is considered a separate public body as defined in FIPPA. Had we done so, we would have had to provide up to 120 separate audit opinions, one for each hospital. The amount of work that such an undertaking would have required was well beyond the resources we had available.

We did not assess the necessity for collection of specific items of medical information, other than in very general terms. The need for medical information is a matter of professional practice, and as such is regulated by governing bodies such as the College of Physicians and Surgeons of British Columbia, the Registered Nurses' Association of British Columbia and the College of Psychologists. Such an examination was, therefore, considered outside the scope of an audit for compliance with the requirements of FIPPA. We did, however, obtain from the College of Physicians and Surgeons of British Columbia the Code of Ethics of the Canadian Medical Association and the College's guidance to members on the collection of patient information.

For personal information collected for law enforcement purposes, FIPPA permits collection from third parties and provides an exemption from the requirement to provide notice [sections 27(1)(c)(iv) and 27(3)(a)]. "Law enforcement" is given a broad definition that includes not only policing activities, but also investigations or proceedings that lead or could lead to the imposition of a penalty or sanction. Consequently, we did not audit files that were concerned with law enforcement records including fraud investigations, disciplinary proceedings, or similar matters. We also scoped out information collected by Vital Statistics. While this division is currently part of the Ministry of Health, it does not deal with health information.

Transitional Issue – Regionalization

The Ministry of Health has announced an intention to regionalize the delivery of health care throughout the Province. We recognized this eventuality when we planned the audit. Whatever the organizational structure, the Ministry of Health will retain a measure of responsibility for respecting individual privacy rights in programs for which it is responsible. We have therefore addressed our recommendations in this report directly to the ministry.

Audit Work

Our audit was conducted in three parts. The first part involved a review of programs and files at Ministry of Health headquarters in Victoria. We examined information in computerized and manual records for those programs, such as the Medical Services Plan and Pharmacare, that are managed centrally.

The second part involved examining information collected by those programs that are delivered and administered away from ministry headquarters. Some programs, for instance the Centre for Disease Control, are administered in Vancouver. Other programs, such as mental health services, public health nursing, and continuing care programs, are delivered by regional offices.

Audit staff visited a wide range of locations throughout the Province: Cranbrook, Courtenay, Delta, Invermere, Kelowna, Kimberley, Langley, Nanaimo, New Westminster, North Vancouver, Penticton, Prince George, Quesnel, Vancouver, Vernon, Victoria, and Williams Lake. This coverage ensured that most regions in the Province were included in our work. In the first two parts of our audit, we examined a total of 807 files and 62 automated databases located in Victoria, Vancouver, and throughout the Province.

The third phase of our work was a review of forms used by the Ministry of Health to collect personal information. We examined the notice provided on forms to see if it complied with the requirements of section 27(2) of FIPPA. If the notice indicated a legal authority to collect the information, we verified this in the legislation. Where no legal authority was cited, we examined the type of information being collected to see if it was reasonable that the information was necessary for an operating program or activity of the ministry. Where it was not readily apparent why particular information was being collected, we contacted the person named in the notice. The policy manual requires that the contact named in a notice "must be able to explain why the personal information is being collected and how it will be used, retained and disclosed to other organizations" and "be familiar with the program area." Our lines of enquiry also provided an excellent opportunity to test for compliance with these requirements.

There are approximately 2,500 forms produced centrally by the ministry for collecting, processing and transferring both personal and other types of information. Most forms that are used by the ministry to collect personal information are produced centrally in Victoria. We examined 263 such forms,

which we determined to be most of the centrally-produced ministry forms for collecting personal information. As well, many regional offices produce their own forms. During our field visits, we obtained copies of such forms and included them in our examination. The ministry is uncertain how many of these locally generated forms are in current use, since they are not catalogued. We collected locally generated forms during our field visits, examining a total of 356. We were not concerned about where forms used to collect personal information were being produced, so long as they were in compliance with the requirements of FIPPA.

audit findings

Ministry Policies

The Ministry of Health Information and Privacy Branch has issued policies, procedures and guidelines for the application of FIPPA to health records. The policies contain guidance on information sharing in the health sector, describing a variety of situations in which a public body can release information to other public bodies or to health service providers not covered by the Act.

However, the ministry guidelines that refer to the collection of personal information do not provide any more detailed guidance than the requirements specified in the Act and general government policies.

Knowledge of Collection Provisions

During the course of our audit, we interviewed 124 ministry staff in various programs. We found that staff had considerable familiarity with freedom of information issues, but their level of knowledge about FIPPA's personal information collection provisions was rather low. In this regard, the audit proved to be a consciousness-raising exercise, and we feel that much of its benefit was to increase the level of Ministry of Health staff members' knowledge about the legislation. This was especially true at offices outside Victoria.

In particular, we found a lack of understanding about the requirement to obtain consent to collect personal information from third parties, something that was often viewed as a courtesy rather than a requirement. Also not well understood was the information required to be included in notices to information providers, and that such notices must be in writing. We were advised that while ministry staff have received training in the information disclosure aspects of FIPPA, they may not have been adequately introduced to the other aspects of the legislation, such as personal information collection.

We believe that these short-comings in knowledge can be remedied through a combination of the issuance to all pertinent staff of policies specific to the collection of health information, and the provision of training in the privacy requirements of the Act.

We recommend that all Ministry of Health staff collecting personal information from the public receive adequate training and guidance concerning the privacy requirements of the **Freedom of Information and Protection of Privacy Act** ***and the*** **FIPPA Policy and Procedures Manual.**

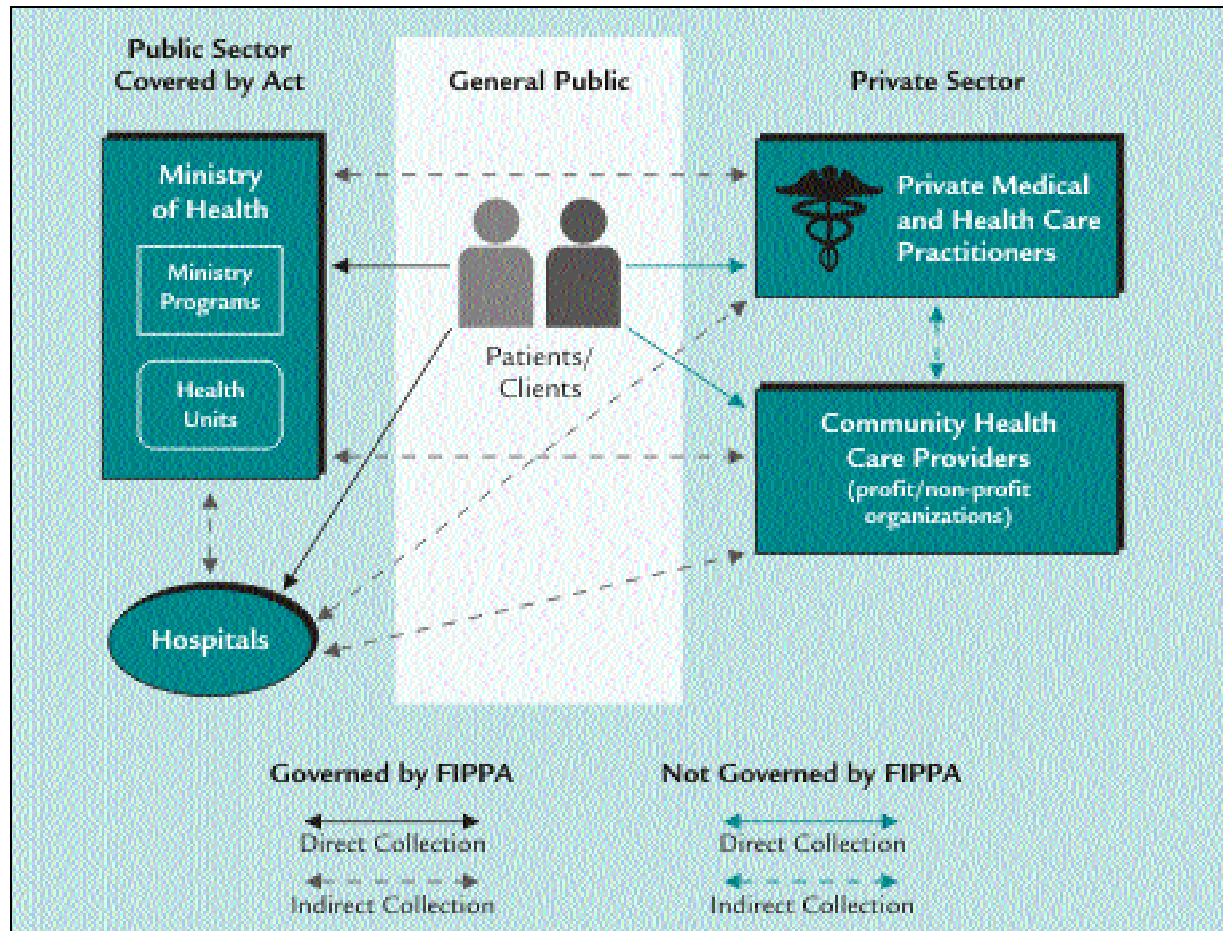
Section 26 – Collection Permissible

Section 26 of FIPPA establishes that public bodies may collect personal information only if it is expressly authorized under an Act, is required for the purposes of law enforcement, or is necessary for an operating program. It is under the last of these provisions that the Ministry of Health collects most of its personal information.

Information is collected to provide health care to individuals or to assess health care on a broader level, and it may be collected to assess eligibility for programs and subsidies.

Exhibit 1.3

Health Information Flows



Information may be collected directly from the individual, or from third parties such as physicians, laboratories, other public bodies covered by the Act, or non-public bodies outside the scope of the Act.

Overall, we found that the ministry was appropriately collecting only such information as was authorized under an Act or that was necessary for operating programs. We found that the majority of personal information being collected by the Ministry of Health was necessary for an operating program or activity of the ministry. Only in a small number of instances did we find that the ministry collected information that was neither required by legislation nor, in our view, necessary for operating programs. Consequently, we concluded that section 26 of FIPPA was being complied with, in all significant respects.

Necessary Information

Since the term "necessary" is not defined in FIPPA or in its related policies, we looked to the Oxford Dictionary for direction. It defines necessary as "indispensable, requisite, needful; that cannot be done without." In the absence of further guidance, we exercised judgment in assessing the necessity of personal information. We made no attempt to evaluate the necessity of collecting specific medical information, but rather examined general categories of information to assess their reasonableness. Ministry programs also collect large amounts of non-medical, personal information.

There are systemic disincentives to collecting more personal information than is required, such as the time it takes to write down extensive comments, and individual accountability for what personal information is recorded. There is a conscious effort in the ministry to limit collections of personal information to only that which is relevant and necessary to operating ministry programs and activities.

During our examination, we found few examples of information being systematically collected where it clearly was not necessary for a program, or where there was no legal authority for it to be collected. Also, we found only a small number of isolated instances of inappropriate collections. We attribute this to the efforts of the ministry and, in part, to the fact that patients' rights of access to their records have made public body employees more aware of their accountability for what they record.

The ministry's information management steering committee has recently required that all new information

systems meet the privacy standards it has established in a two-part Privacy Impact Statement. Privacy Impact Statements are approved by the each program's director, and are monitored by the ministry's Information and Privacy Branch before the implementation of any new system commences. The Privacy Impact Statement includes the requirement to assess the necessity of the information being collected.

The Social Insurance Number

There are certain circumstances where the collection of the SIN is appropriate. It is required when dealing with some federal government departments which are authorized to use the number, such as Revenue Canada. However, these departments have to obtain federal Treasury Board approval for uses not authorized by statute or regulation. Reducing the SIN's use has been urged by the Privacy Commissioners of both British Columbia and Canada. So strong have been the objections to widespread use of the SIN, that the federal government has considered amending the Criminal Code to prohibit requests for it that are not authorized by law.

We found that some ministry programs did need the SIN for dealing with the federal government; however, this was not the case for two programs. In our opinion, forms used by two ministry programs still inappropriately ask for the SIN. When we asked why the SIN was being collected, both programs informed us that it was not really required, but was collected only as a convenience. Staff of one of the programs told us that the SIN was being collected because the program did not want to create its own unique identifier, even though the ministry has already generated unique identifiers through the Personal Health Number. In both programs, we were informed that the space on the form calling for the SIN could, in fact, be left blank.

We believe that in these two programs, collection of the SIN is unnecessary, not in compliance with section 26, and should be discontinued.

We recommend that the Ministry of Health discontinue collecting Social Insurance Numbers, except in programs where it is necessary for dealing with a federal government department authorized to use this personal identifier.

Interview and Other Notes

We found that the highest risk of inappropriate collection of information occurs where lengthy interview notes are recorded in manual files. It is from these interviews that the widest range of comments may be written down. In determining

what health care a person may need, for instance, ministry staff conduct interviews to obtain information about a person's family and other supports. Information about a person's religious, cultural, or other associations may also be collected to help health care workers assess how best to provide care. In the small number of instances of non-

Exhibit 1.4

Social Insurance Number Privacy Fact Sheet

Why should I worry about the SIN, as it's just a number?

True, it's just a number and individual file numbers are not necessarily a privacy problem. But the SIN is very powerful because it is unique, accurate and widely used. Computer technology now makes it possible to use the SIN to find and match your information from one database to another. Theoretically, technology makes it possible to assemble a detailed profile about you—what you buy, read, eat, where and when you travel, your medical history, your financial situation. This amounts to "data surveillance," or monitoring you through your daily transactions. This can pose a serious threat to your autonomy.

Who can ask me for my SIN?

Anyone can ask you for your SIN—there is no law to stop them. Canadians find themselves asked for their SIN by landlords, stores, libraries and even hockey teams. However, you do not have to give it to them.

Well, who must I give it to?

There are federal laws which require you to give your SIN for specific purposes. Some of these are:

- for Old Age security, Unemployment Insurance and Canada Pension Plan contributions or claims (the original purposes for the SIN);
- for Income Tax identification;
- for your employer to send your contributions to UI, CPP and Income Tax;
- to banks, trust companies, credit unions and stock brokers when they sell you financial products (GIC's or Canada Savings Bonds) or services (bank accounts) that generate interest. They declare your interest to Revenue Canada for income tax purposes.

Why do other organizations ask for my SIN?

Many stores, financial institutions and even landlords use the SIN to check your credit rating. Credit bureaus use SINs as credit file numbers. Other organizations simply use it as a client number to save them setting up their own numbering systems. And finally, it has simply become a bad habit—it's on the form, but no-one knows why.

What can happen if I refuse to give my SIN?

If you refuse, the organization may deny you the service. This is not illegal, even though successive federal privacy commissioners—and a parliamentary committee—have said it should be.

Can a provincial government use the SIN?

The law does not prevent provinces (or local governments) from using SINs, and provincial governments use the SIN for administering federal funds (like welfare). However, British Columbia has laws to protect personal information—including SINs—in government files.

Source: The Privacy Commissioner of Canada's "Social Insurance Number Privacy Fact Sheet"

compliance we noted in recorded case notes, almost all involved a subjective determination of the appropriate level of detail to record.

This is very much a gray area, since the interpretation of "necessary" is highly subjective. There are no policies or guidelines for how to interpret the meaning of necessity as it is used in the Act. A restrictive interpretation would be impractical, given the wide range of circumstances that are encountered by ministry field staff. Senior field staff drew to our attention the difficulties they face in determining the appropriate level of detail at the time they are recording interview notes. They noted that it is easier to determine what is necessary after the information has been recorded and there is an opportunity to assess its significance. For some programs, such as those carried out by mental health services, the significance of specific information may not be immediately apparent. In other programs, for instance those provided by continuing care services, a wide range of information is required to enable health care workers to assess the various circumstances relating to patient care environments. Furthermore, the appropriateness of the information recorded often varies from case to case.

Using a broad definition of the term, we found only a few isolated instances in which the information collected exceeded, in our opinion, the bounds of reasonable necessity. We discussed these instances with the local program managers or directors, and in most cases they agreed with our conclusions.

Section 27(1) – Collection of Information from Third Parties

Collection of information, other than from the subject of the personal information, is frequently referred to as indirect collection. The Ministry of Health collects a considerable amount of personal information from third parties or other public bodies. In many cases, programs collect medical or clinical information from an individual's doctor, treatment information from hospitals, observations from health care providers in outside organizations, and relevant information from other ministries. Comments and observations may also be collected from other people, such as an individual's family members, neighbours, and friends. In some circumstances financial information, or information about family members, is collected too.

Section 27(1) of FIPPA requires that personal information be collected directly from the person about whom the information pertains, unless there is authorization to do

otherwise by the individual or other legislation, or the information is collected for law enforcement or under other specified circumstances. Personal information may be collected from another public body where it is appropriate for the other public body to disclose the information (sections 33 to 36). Personal information is commonly collected indirectly by one public body from another, for the same purpose for which it was originally obtained by that other public body, or for a use consistent with that purpose [section 33(c)].

The Act also allows for the release of information where a public body has been authorized to do so by the individual concerned [section 33 (b)]. Such permission is parallel to the requirement for authorization to collect information from third parties [section 27(1)(a)(i)]. A public body need only obtain permission to collect, or ensure that permission for release has been obtained by another public body. Obtaining both is not necessary.

With respect to collecting personal information from other public bodies, we found that the ministry was operating in compliance with section 27(1). However, regarding the collection of information from physicians and other health practitioners, the largest source of personal information recorded from third-parties, because we did not attempt to access practitioners' patient files we were unable to conclude if the ministry was in compliance. As to other collections from third parties, the ministry frequently collects personal information with neither consent nor legal authority to do so. In emergencies or similar circumstances, we understand these collections to be necessary.

Collections from Other Public Bodies: Consistent Purpose

Subsection 33(c) allows for the release of information

"for the purpose for which is was obtained or compiled or for a use consistent with that purpose."

The term "consistent purpose" is defined in section 34 as that which

"a) has a reasonable and direct connection to that purpose, and

b) is necessary for performing the statutory duties of, or for operating a legally authorized program of, the public body that uses or discloses the information."

In order to guide public bodies as to what constitutes a consistent purpose, section 34(2) establishes that

"the minister responsible for this Act must publish annually a list of the consistent purposes for which personal information is used or disclosed."

To date, no such list has been published. The absence of an authoritative list leaves the definition of consistent purpose open to varying interpretation. We believe that to meet the legislative requirement and to provide greater certainty, public visibility, and accountability, such a list should be published.

We recommend that, in compliance with the **Freedom of Information and Protection of Privacy Act,** ***section 34(2), the minister responsible, being the Minister of Employment and Investment, publish annually a list of the consistent purposes for which personal information is to be used or disclosed.***

The FIPPA policy manual discusses consistent purposes as having a logical and plausible link to the original purpose that must flow or be derived directly from the original use. However, it acknowledges that there is no strict rule on what constitutes a consistent use. In the absence of a published list of consistent purposes as described above, we examined how the term was being interpreted in practice. The ministry has used the interpretation that where information has been collected for the provision of "health services," any subsequent use for this broad purpose is considered to be consistent. Where we encountered instances of information being collected by the ministry from other public bodies, we asked ourselves if there was a reasonable and direct connection to the purpose for which the information was originally collected.

In the larger sense of providing health care, collections from public bodies were, in all cases, for purposes that we believed were consistent with the purpose for which the information was originally collected. For instance, in order for the ministry to determine the best plan of care for patients, we found that intake information collected by a mental health program was obtained from the Ministry of Health's continuing care program, the Ministry of Social Services, and another non-profit service provider. This reflected a team approach to administering new cases, in which an open flow of information provided better management of patient care. We learned that, as part of the postnatal care program, detailed infant and mother birth information is routinely provided by hospitals to health units. Hospital discharge information is also provided regarding certain patients to assist continuing care programs.

Collections from Other Persons

We found that only occasionally does the ministry obtain patient consent to collect personal information from other persons. Even where programs had informal policies to obtain consent for third-party collection, we found that, in practice, consent was not consistently obtained. However, it should be noted that we found no instances where the collection of information was for anything other than the furtherance of patient care.

The majority of information collected by the ministry from third parties was from physicians. Much of this information was in the form of claim codes submitted by physicians as billing information to the Medical Services Plan. Patients consent to the release of this billing code information when registered in the Plan. As stated earlier in this report, where people have authorized the release of their information, there is no need for a public body to also obtain permission to collect that information.

The Code of Ethics of the Canadian Medical Association, and the policies of the College of Physicians and Surgeons of British Columbia, require that physicians obtain permission from their patients before releasing any information from their files (except where required by other legislation). For non-billing information collected from physicians, we did not find authorizations to collect in ministry files. Since we did not attempt to gain access to physicians' patient files, we were unable to independently verify that patients had, in all cases, given their physicians permission to release information. We were therefore unable to conclude whether the ministry had complied with FIPPA in this regard.

We recognize that this issue is complicated by the nature of the doctor-patient relationship and the notion of continuity of care (the unique nature of health information privacy is discussed in "Other Matters"), and do not wish to make any recommendation that would compromise the level of care provided to patients.

We also encountered several instances where information about patients had been collected from other persons, such as family members, neighbours, or friends. At no time did we find evidence of written authorization for these collections. We believe that every effort should be made to respect the privacy rights of persons, and to obtain their consent to collect personal information about them from third parties.

We recommend that Ministry of Health programs responsible for collecting personal information should, except where exempted by legislation or the Information and Privacy Commissioner, seek the written permission of the person about whom the information pertains before initiating the collection of personal information from third parties.

Consent

We found that ministry staff sometimes obtained consent to collect personal information from third parties, though this practice varied considerably by the type and location of service being delivered. Where consent was sought, it was rarely in writing. Where verbal consent was obtained, it was rarely documented. Consequently we had no objective means of verifying what consent had been obtained, or when. The FIPPA policy manual requires not only that verbal authorization be documented, but also that it be followed up by a letter verifying the consent. At no time did we see this policy being followed in practice.

We recommend that where ministry staff obtain verbal consent to collect personal information from other sources, the consent should be documented and followed up by a letter verifying the consent, in compliance with the FIPPA policy manual.

In cases where written consent was obtained, we found a few instances of consent forms authorizing an “exchange” of information. Such exchanges recognize the ministry’s need in many programs both to collect information from third parties and to provide feedback to them, and is particularly applicable to information flows between ministry programs and patients’ physicians. We also found some instances in which copies of the authority for third parties to release information were kept on file, in lieu of authority to collect. We consider both of these practices to be in compliance with FIPPA section 27(1). Underlying each is the intent to give people control over the flow of information about themselves, which is consistent with the spirit of the legislation.

In addition to being in writing, consent must be specific to be meaningful. The source of the information, the nature of the information, the purpose of the collection, the reason information is collected from third parties, and the consequences of refusing to authorize such a collection are requirements reflected in the FIPPA policy manual. These are consistent with the parallel requirements for consent to disclose, contained in section 6 of FIPPA Regulation 323/93. Some consent forms we

examined stated the duration of the period where collection from third parties was authorized. While not a requirement, we believed this was also useful information.

During the course of our audit, we found one program in one location where blank consent forms had been provided to patients to sign in advance, and were stored on file for use when needed. Consent about personal information obtained in this manner could hardly be considered informed, and is very much an unsatisfactory exercise. We strongly discourage such "blank cheque" practices which could give the appearance of compliance with FIPPA, but are very inappropriate.

Extenuating Circumstances

Clearly, there will be circumstances in which it is not possible or not advisable to obtain consent to collect personal information from third parties. These include medical emergencies, where patients suffer from diminished mental capacity, or other situations where obtaining consent would be detrimental to the individual's program of care. Such circumstances should only comprise a small amount of the information that is collected by the ministry as a whole.

We found that mental health centres were generally concerned with respecting individual rights as provided in FIPPA. One mental health centre we visited addressed the issue by including a consent form for the collection of personal information in each patient's file. Where, in the professional opinion of the therapist involved, it was not advisable to seek this consent, the consent form was to be stroked out, signifying the inappropriateness of the step but also indicating that it had been considered. Other mental health facilities told us they first made an assessment of a patient's condition before discussing freedom of information and privacy issues with them. While not always considered appropriate at the beginning of treatment, such discussions were considered an important part of patients' recoveries and the assertion of control in their lives. While we recognize that these procedures may not strictly adhere to the requirements of FIPPA, we support the concerns about patient care and patient rights that underlie them.

Other programs also encounter persons of diminished mental capacity. For instance, continuing care programs characteristically deal with the elderly, some of whom suffer from reduced memory and/or mental capacity. In these cases, care givers often have to collect personal information from patients' family members, neighbours, and friends.

In some circumstances, collection from third parties is either more appropriate or the only appropriate manner to obtain timely and accurate information. Authority for such collections may, or may not, be implicit under other legislation. For example, persons involuntarily admitted to provincial mental health facilities are deemed, under section 25.2 of the *Mental Health Act,* to have consented to treatment. Deemed consent for treatment could be interpreted to imply the authority to collect whatever information is necessary to administer psychiatric treatment.

There are no legislative provisions in force providing for the collection of information from third parties in emergency situations. However, health care providers may be ethically bound to provide treatment in such situations. It seems to be an obvious necessity to collect information from third parties in order to provide emergency treatment. It can be argued that the common law doctrine of necessity allows the provision of treatment if it is done in good faith and in the best interest of patients.

However there may be less extreme situations in which third-party collections are necessary. For example, people on medication may not understand their dosage or when to take it, or people suffering from certain illnesses may not understand their condition sufficiently well to explain it to new care givers. In situations where time may be of the essence, and where technical, clinical information is being collected, reference to an expert third party, such as a physician, is essential. The administrative requirements for prior consent to collect or release information become secondary to the immediate need for care.

In all cases we reviewed, collections from third parties were done only to further patient care. Thus, although some practices were not in compliance with FIPPA, we believe that the circumstances involved in the cases we reviewed mitigated the severity of this non-compliance. There is no substitute for the exercise of good professional judgment in determining when it is appropriate to collect personal medical information from third parties, and such factors as active supervision, professional codes of practice, and standards of conduct for physicians, nurses and therapists greatly reduce the risk of inappropriate collections of information.

Where it is necessary to collect information from third parties, and there is no legal authority to do so, FIPPA provides that public bodies can apply to the Information and Privacy Commissioner for relief from the requirement to collect directly

from persons. We believe that circumstances do exist for such authority to be granted to some programs.

We recommend that the Ministry of Health apply to the Information and Privacy Commissioner under section 42(1)(i) of the* Freedom of Information and Protection of Privacy Act *for authorization to collect from third parties in specific situations where there is no other legislative provision to allow for such collections, and circumstances are encountered which preclude obtaining an individual's permission, or where to do so would compromise the care provided to the patient.

The authorization by the Commissioner recommended above would, in the interim, allow for ministry practices to come into compliance with FIPPA. However, in the longer term, an amendment to FIPPA or program legislation might be a better way to allow for third party collections of information in circumstances where it is impossible to obtain consent, or where doing so would compromise the care provided to patients.

Unsolicited Collections

Frequently, ministry programs receive unsolicited information from third parties. This information can be in the form of referrals from other health care providers and agencies, or in the form of telephone calls from family members or neighbors who are concerned about the well-being of an individual. Although the ministry has a moral, if not a legal, responsibility to receive this information and to take appropriate action, it does not have the legal authority to collect and use such information from third parties.

During our audit, we occasionally encountered situations in which concerned persons contacted the continuing care programs of health units, seeking assistance for elderly family members, friends and neighbours. While FIPPA does not provide for the collection of unsolicited information, we noted that such referrals play an important role in assisting the program to fulfill its mandate.

The permission of individuals who are the subject of unsolicited information collections has already been forgone, so the question becomes whether or not it is necessary to obtain this permission after the fact. However, even if an individual objects to the information collection, the ministry must retain it for a minimum of one year, if it has been used to make a decision concerning the individual. Clearly, obtaining "consent" in such situations would be difficult and meaningless because the information has already been collected.

Under section 27(1)(a)(ii) of the Act, the Information and Privacy Commissioner can authorize other methods of collection. For situations where unsolicited collections occur with some regularity, a practical solution might be to obtain permission for such collections by applying to the Commissioner for authority to collect unsolicited information in certain, specified circumstances.

We recommend that the Ministry of Health apply to the Information and Privacy Commissioner under section 42(1)(i) of the* Freedom of Information and Protection of Privacy Act *for authorization to receive unsolicited collections of personal information, in certain specified circumstances, that are not provided for under another Act.

The authorization above would, in the interim, allow for ministry practices to come into compliance with FIPPA. However, in the longer term, an amendment to the Act might be a better way to allow for the collection from third parties of unsolicited personal information in certain, specified circumstances.

A person can only exercise his or her informational privacy rights, such as seeking access to or correction of records, if they are aware that such records exist in the first place. While we feel it is important that persons be made aware of the existence of personal information about them, FIPPA does not require persons to be notified that unsolicited information has been received about them.

Section 27(2) – Notice

The notice required in section 27(2) of FIPPA embodies a person's right to be informed of why information is being collected from them. It imposes an obligation on public bodies to tell individuals supplying personal information, as a minimum, the following:

- the purpose for collecting the information;
- the legal authority to collect; and
- the title, business address, and telephone number of a person at the public body who can answer questions about the information collection.

Overall, we found that the information required for notice in section 27(2) was not being communicated to people providing personal information. While important information is sometimes communicated to persons, we found that rarely did it contain all the elements of notice required in section 27(2).

A Matter of Privacy Rights

The principle of informed consent is reflected in this section. Informed consent implies that before people can meaningfully consent to their personal information, or information they provide about others, being used by a public body, they must first be advised that personal information is being collected, to what use the information will be put, and to whom they can go to ask questions about the collection. For this notice to be meaningful, it must be given before persons provide information so that they may decide whether or not to do so.

At first glance, the notice provision appears to be quite a simple matter. The legislation is clear as to what information is to be provided, and the FIPPA policy manual further requires that notice be provided before information is collected, that it be in writing, that it appear on all forms used to collect personal information, and that it apply equally to all persons providing information. The requirements apply to all information

Exhibit 1.5

Notice to Providers of Personal Information

FIPPA imposes an obligation on public bodies to notify individuals of three things:

1. the purpose for which they are collecting personal information;	The purpose of the collection concerns the reason for which the information is needed and the use(s) that a public body will make of the personal information.
2. the authority for the collection; and	This provision promotes people's awareness of the reasons for which public bodies collect personal information by requiring that they be informed of the legal authority for requesting information.
3. the title, business address and business telephone number of a public body employee who can answer questions about the collection.	The officer or employee should be familiar with the program area which uses the information. This officer or employee must be able to explain why the personal information is being collected and how it will be used, retained and disclosed to other organizations.

The requirement to notify recognizes the person's right to know and understand the purpose of the collection and how the information will be used. It also allows the person to make an informed decision as to whether or not to give the information in cases where a response is not mandatory.

Source: FIPPA Policy and Procedures Manual

providers whether they are the subject themselves, or if the information is about another person. In practice, however, the provision is one of the more complex aspects of privacy legislation because of the broad range of circumstances under which information is collected. For instance, some information is collected over long periods of time, some is collected in emergencies, and some is collected through third parties such as physicians, laboratories, or non-government care providers.

We found a significant number of cases in which notice was not being given. This concerns us because of the importance of notice. We believe that many people may consider themselves to be in a position of unequal bargaining power if they are not made aware of their informational privacy rights.

People, particularly when they are initially applying for medical assistance under a ministry program, may believe they must provide all the information requested in order to receive a service. Some may also be under the impression that questioning the information being collected could adversely affect their receipt of a service. However, people should be informed that it is their right to ask questions about the information they are being asked to provide. They should know whether the information being asked for is required to determine their eligibility for a program, to provide them with a health care service, or simply to satisfy a requirement of legislation. People are entitled to an explanation of the purposes for which personal information will be used, and to receive assurances that it will be used only for those specified purposes or as allowed under the legislation.

General Findings

We found that the first requirement, to advise persons of the purpose for which personal information was being collected, was provided in writing in about one-fifth of the cases we examined. Often this purpose might be considered self-evident, based on the title on a form and the circumstances in which it was completed (for example an application). Explicit statements of notice are all the more important where information is collected for more than one purpose. For instance, information may be collected on an application to assess eligibility for one program, but the information also may be used to assess eligibility for other programs. Where information was used for purposes other than those that may have been obvious, persons might not have been aware of this and hence would not have received adequate notice.

The second requirement, to advise about the legal authority for collecting information, was rarely stated. This may be caused by some degree of confusion relating to personal information being collected because of necessity for ministry programs, rather than due to being specifically called for in legislation. Where there is no specific legal requirement, FIPPA establishes the legal authority to collect information that relates directly to, and is necessary for, an operating program or activity [section 26(c)]. Where other legislation does establish the authority to collect, there was often reference only to the name of an Act. While this is in compliance with the authorities, considering that some Acts can consist of hundreds of sections and sub-sections, we believe that a specific section reference would be more useful in informing patients about legal authority for collecting personal information.

The third requirement for notice—that of identifying who in the ministry could be contacted for further information about the collection—we also found, in large measure, was not met. However, it should be noted that where notices did specify a contact person, we found these persons were able to answer our questions regarding the collection of personal information. We were informed that, for some services, clients usually have one main contact person to whom they would direct questions. While this may be true in some cases, it is only adequate if the employee has a sufficient understanding of not only the program being delivered, but also the requirements of the privacy legislation. Given the general deficiency we found in ministry staff knowledge about the personal information collection provisions of the legislation, we question the ability of primary contacts to answer questions adequately.

Given the above-noted problems we found in the three required areas of notice, we concluded that the Ministry of Health has not been satisfactorily operating in compliance with the requirements of section 27(2) of FIPPA.

Purpose for Collection

Persons should be informed as to the specific purpose or purposes for collecting their information. This is reflected in the policy manual elaboration on FIPPA section 27(2)(a), where the purpose for collecting is defined as "the reason for which the information is needed and the use(s) that a public body will make of the personal information."

For notice to be meaningful, it must be specific. While the mandate of the ministry as a whole is very broad, the purposes for which information is collected are usually very particular.

FIPPA allows information to be used by different programs within the same public body, so long as the uses are consistent. However, if the statement of intended use is too broad, it will effectively remove any limits on how a public body subsequently uses a person's information. A balance must be achieved between the operational advantages of a broad definition (such as "for health care purposes") and the importance of giving individuals control over the uses to which their information will be put.

Our examination revealed that where notice had been provided, often neither the reason for the collection nor the intended uses for the information had been stated specifically. For instance, notice on an application that information will be "used to assess eligibility for ministry programs" is not sufficient. While we acknowledge that all potential uses cannot be foreseen, we believe that individuals should be notified as to what programs they are applying for, and about likely major uses to which their information will be put.

We recommend that the ministry comply with the requirements of FIPPA section 27(2)(a) and the policy manual by notifying persons of the reason for which their personal information is needed and the likely major uses that will be made of it.

Complete Written Notice Not Provided

While section 27(2) of FIPPA specifies the content of the notice, the FIPPA policy manual requires that the notice be in writing. We asked program staff at various levels, both in the field and at head office, how notice was given to persons providing personal information. In most cases, field staff were unaware of what information was to be communicated or that it should be in writing. Many considered notice requirements to relate to the confidentiality of information. While statements about confidentiality are important, they are not the same as the notice required by the legislation and the government's FIPPA policy manual.

Overall, we found written notice was not being given unless it was provided on forms or in pamphlets describing the program. Our examination of both ministry-issued and locally-generated forms used to collect personal information revealed that, with very few exceptions, the notices they contained did not fully comply with the requirements of section 27(2).

Notice also serves to inform people that information about them is being collected. This is not always self-evident, since

much information is not written down in the presence of patients, but is recorded by ministry staff after contact or off-site. Consequently, some clients may never see their files unless they ask for them. The ability to exercise information rights is meaningless unless individuals are aware that information about them has been collected and recorded in the first place.

Regardless of the means of collecting information—on forms, through interviews, over the counter, over the telephone, or via fax or e-mail—individuals must be provided with the notice required in section 27(2). The FIPPA policy manual stipulates that this notice should be provided before information is obtained, and should be provided in writing either at time of collection or afterwards. Thus, while it is acceptable to give notice verbally at the time of collection, which we occasionally did find, this should be supplemented by notice in writing.

How Notice Can Be Delivered

Given the different circumstances under which personal information is collected, even within individual programs, we discussed with ministry field staff how notice could effectively be given without creating undue administrative burdens. The following recommendations are based on these discussions.

One consideration was that notice be printed on large plaques and posted on the walls of public health offices. The notice would thus be in writing as required. However, some program staff questioned the value of posting another message on the wall that might not be read.

Another suggestion was to provide an information pamphlet or brochure to persons accessing ministry programs. Such a pamphlet could explain the services available, how they are delivered, and what information is required of persons accessing the program. It could also provide the notice required under section 27(2). The advantage for individuals would be that they could keep it for future reference and review the information at their leisure. Similar information cards and fact sheets are already in use by some ministry programs. For instance, continuing care programs in Kelowna provide all patients with an information card that includes a summary of their care program and 24 hour contact information. The card is provided to patients in their homes, and is most often tacked to the refrigerator for ease of access. Another example is the "Freedom of Information" flyer issued by the public health nursing program. It contains, among other information, much of that relating to the section 27(2) notice.

While we think information brochures are a good way to ensure notice is effectively delivered, they are only so if they are actually given out, and if the notice is sufficiently prominent that it does not become lost in the fine print. We encountered some instances where information flyers, while available, were not routinely used by staff or were placed in locations that were not readily accessible.

Where forms are completed by, or filled out in the presence of, the person providing personal information, the easiest way to provide written notice is for it to be on those forms that are used to collect the information. However, this will only be effective where persons actually see or fill out the form. Although not a requirement of the Act, we found that some forms include a request for people to sign off that they have read and understood the notice included in the form. We think this is a positive step.

We concluded that, because of the great diversity of situations in which the ministry collects personal information, there is no one correct manner in which to deliver written notice. Rather, different styles or combinations of styles of notice will best fit different programs and ensure that notice is appropriately and adequately given.

We recommend that, in compliance with the FIPPA policy manual, the notice described in FIPPA section 27(2) be provided, in writing, to all persons supplying personal information. In the absence of other means of written notice, all Ministry of Health forms used to collect personal information should contain this notice.

Ongoing Collections

Many Ministry of Health programs collect information on an ongoing basis. It is not unusual for a program to collect information when service is first provided to an individual, and then with every subsequent contact with the person. For example, under the Medical Services Plan (MSP), subscribers consent to having medical and other health practitioners send treatment information to the ministry for billing purposes. This notice of collection, and authorization for collection from third parties, is asked for when a person enrolls in the plan, but is never repeated or confirmed. MSP views this as being an ongoing endorsement to collect information. Interestingly, it is physicians that are supposed to be provided with notice before submitting personal information about patients to the ministry, even for routine billing purposes.

Several other ministry programs, such as Continuing Care, Pharmacare, Public Health Nursing, and Mental Health, also collect information on a long-term, ongoing basis. FIPPA is silent about how to deal with this sort of ongoing collection of information. Neither the legislation nor the policy manual addresses whether notice is required with every interaction (each collection being a separate encounter requiring notice), only on initial contact (subsequent collections being part of a continuous stream of collection), or on a periodic basis.

Where personal information is collected on an ongoing basis, we do not see significant benefits to providing notice each time information is collected, or even on a periodic basis. Such a requirement seems impractical, and would impose a significant bureaucratic burden and significant costs. We believe that, for ongoing collections, effective notice can be provided at the first encounter by explicitly stating that information may be periodically collected on an ongoing basis.

We recommend that where Ministry of Health programs routinely collect personal information on an ongoing basis, this fact be explicitly stated in the notice provided in accordance with section 27(2), when information is first collected, and that the notice should state the purpose, legal authority, and the title, business address, and telephone number of a person who can answer questions about these future collections, if any of these should differ from the initial collection.

Extenuating Circumstances

As with seeking permission to collect information from third parties, it may not always be possible or advisable to provide notice to persons providing personal information. Two such instances are medical emergencies, in which information is collected by ambulance attendants, and circumstances in which the capacity of a person is sufficiently diminished so as to bring into question the comprehension of any notice provided. We were informed that in some cases it may also not be advisable to provide persons suffering from certain mental conditions with notice, as it might only serve to exacerbate the condition from which they are suffering and complicate future treatment.

These are circumstances requiring professional judgment on the part of the ministry staff involved. We do not wish to make any recommendations that would compromise the delivery of health care. However, while we understand the rationale for not providing notice in some circumstances, we

also know that FIPPA provides exemptions from notice under two circumstances: (a) for law enforcement purposes, and (b) where excused by the minister responsible for the Act (section 27(3)). Thus an exemption might be granted for information collected under certain circumstances by mental health programs, where providing notice would defeat the purpose or prejudice the use for which the information is collected.

There will be a small number of individual cases where judgments are made that persons' rights to notice should be deferred to avoid the significant likelihood of a substantial adverse effect on the provision of health care. In such a circumstance, the specific reasons for this decision should be documented in the patient file and approved by the senior on-site program manager or director. This would constitute a postponement, until circumstances were more appropriate for notice to be given.

We recommend that the Ministry of Health apply to the minister responsible for the **Freedom of Information and Protection of Privacy Act, *the Minister of Employment and Investment, under section 27(3)(b):***

- ***to be excused from the requirement to provide notice for mental health services, where providing notice would create a significant likelihood of a substantial adverse effect on the provision of health care in individual cases. If this exemption is allowed, the reason for its application in individual cases should be fully documented in the patient's file and approved by the senior on-site program manager or director; and***
- ***to be excused from the requirement to provide notice for ambulance service and other specified programs, in emergency situations.***

The recommendations provided above would, in the interim, allow for ministry practices to come into compliance with FIPPA. However, in the longer term, amendments to the Act might be a better way to provide exemptions from the requirement to provide notice in certain specified circumstances.

Shortcomings in the Notice Requirement

It is important to note that FIPPA requires notice to be provided only to persons providing information, even if they are not the subject of the information. This provides an insight as to what the notice requirement of FIPPA does not do. First, where information is collected from other sources, notice only has to go to the people providing the information. Persons who are the subject of the information may not be aware that

personal information about them has being collected from other people. The need for permission to collect from third parties, as described in section 27(1), is reinforced because there is no requirement to inform people that information about them has been collected.

Second, when one person (“A”) provides information about another person (“B”), even if the information is A’s own opinion about B, once collected it becomes the personal information of B. Person A may no longer have a right to future access, even though he or she provided the information in the first place. And person B has a right of access to the opinion because it becomes their own personal information. However, there is no requirement in FIPPA to tell this to persons providing information about others. Persons providing information therefore may be under the false assumption that their opinions about others are their own personal information and will not be released to the other person. For this reason it is important that persons providing information about others be made aware of their right to ask questions, so that they can determine their informational privacy rights.

Other Information Included in Notices

In some cases, we found other information being provided instead of, or in addition to, the notice requirements of section 27(2). Such information included caveats that the information collected would be kept strictly confidential, never be seen by anyone else, and never be used for any other purpose. In fact, section 33 of FIPPA provides for a variety of circumstances under which personal information may be disclosed. These include information supplied for consistent purposes (which may not be identical to the original purpose), to other employees of the ministry, or to comply with another enactment. Representations of absolute confidentiality should, therefore, not be made to clients.

There were also references provided as to persons’ rights of access to their information under the freedom of information provisions of the Act. While not mandatory, we considered the provision of such information to be useful.

Notice and Third Parties

Personal information provided to the ministry is frequently that which has been collected by third parties for their own use. Some of these third parties, such as private physicians, are outside the scope of the legislation. The

Ministry of Health is not in a position to dictate privacy policy to these parties.

We believe that it does not matter to patients who is collecting personal health information from them. Patients should be able to assume they are entitled to the same privacy rights regardless of who is collecting the information. We believe that the ministry should give some consideration, through contracts, memoranda of understanding, and even legislation, to ensuring that privacy standards are consistent for all health care service providers.

Transition Issues

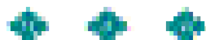
FIPPA has only been in effect for about three years, yet most of the ministry's programs precede the legislation. The majority of active files were created before there were requirements to provide notice, and before informational privacy rights were recognized in law. This begs the question of whether notice must now be provided to all persons from whom personal information was collected before enactment of the legislation. It is also important to consider whether notice should be given to persons who have been providing personal information on an ongoing basis, commencing prior to the legislation coming into effect. Even though such individuals continue to provide personal information, they have never been provided with the notice required by section 27(2). There is no specific legislative or policy guidance about either of these issues.

A general principle of law is that, in the absence of specific stipulations to the contrary, a new law does not apply retroactively. We therefore concur with the ministry's assessment that there was no requirement to give notice to persons who provided information to the Ministry of Health prior to FIPPA coming into effect.

Since FIPPA came into force, significant collections in various programs have been ongoing where no notice has ever been provided. We believe these collections represent non-compliance with the Act. This is very important, because almost every resident of British Columbia is covered, in one way or another, under the Medical Services Plan (MSP). Since notice has been given only to new registrants, anyone who was a member the plan before the Act came into force in 1993 has not received notice in accordance with their privacy rights. From our examination, we concluded that information collected on an ongoing basis in various programs, without the provision of notice, accounts for the majority of information that has been collected by the ministry over the last three years.

We believe that the ministry has an obligation to respect each person's right to know and understand the purpose for collecting information from them, and how it will be used. This right applies to any individual providing personal information, and is recognized in section 27(2). Consequently, we believe that notice should be given to all people who continue to provide personal information on an ongoing basis, but who never have been given notice. However, we recognize the prohibitive expense that would be involved in sending separate written notices to millions of people, as well as the impossibility of determining who has and who has not received notice. Consequently, when the occasion arises where the ministry is communicating with large numbers of people, such as with their MSP subscribers, then we believe this would provide an ideal opportunity to communicate section 27(2) notice, with little additional cost. Alternatively, if such an opportunity does not come along within the next few years, then notification through the mass media would be an appropriate interim measure.

We recommend that the Ministry of Health provide notice, in accordance with section 27(2), to all persons who are providing personal information to the ministry on an ongoing basis. This notice could be given at a time when the ministry plans to send other information to individuals.



other matters

Health Information Privacy

Necessity, notice and permission are not issues challenging the ministry's need to collect information. Health information, often extensive in quantity and comprehensive in scope, is needed for operating programs to function properly. Instead, these are issues of providing people with some ability to control information about themselves. FIPPA establishes these rights of informational self-determination; rights that apply to health as well as other personal information.

The issues discussed in this report highlight the unique nature of health information and the difficulty in applying general legislation to a wide variety of specific circumstances. Not contemplated in the authorities is the unique relationship between patient and physician. Many of the ministry's services are provided based on referrals from physicians, and individual physicians fall outside the scope of FIPPA. While they are not public bodies, we have not presumed that their status is comparable to that of contractors collecting information on behalf of the ministry.

The fundamental issue is continuity of care. An integrated health system approaches the treatment of the patient as a whole person rather than as a compilation of separate parts that may suffer injury or illness from time to time. A detailed medical profile, compiled over time, provides the basis for medical assessments and treatment. Consequently, service providers have the reasonable expectation of a free flow of relevant information, and physicians referring patients to Ministry of Health services have the reasonable expectation of receiving reports on the outcome of these contacts.

Although the ministry can release information to physicians or other health providers for consistent purposes, there is no provision in FIPPA that allows the ministry to collect information from non-public bodies not covered by the Act without the explicit consent of the patient. The College of Physicians and Surgeons of British Columbia requires doctors to obtain consent before releasing health information, and they consider consent to be implicit where a patient accepts a referral. While this may be a reasonable assumption, implicit consent is not contemplated in the legislation.

The Ministry of Health has applied only the terms of FIPPA section 26 (information is necessary or required by

another Act) to the collection of health information from service providers not covered by the Act. While this is a requirement, collections from third parties are also governed by section 27(1), (permission of the individual or allowed by another Act). Consequently, there is an absence of legislative provisions allowing for the collection of some of the medical information currently collected from third parties.

However, one must question the rationale of inconsistent information practices regulating the exchange of information between public bodies and physicians who are providing care to the same patient. Certainly this distinction is not significant to patients. We believe that patients should expect their care providers to freely communicate information relevant to their health situation.

A balance must be struck between respecting the privacy rights of individual citizens and obtaining complete information so as to efficiently administer a comprehensive health mandate, prevent abuses of the system, and ensure that only valid payments are made. These sometimes opposing agendas pit the desire to limit the amount of personal information that is collected against the need to gather any and all information possible.

Where a private physician and a public body are providing care to the same patient, we consider it reasonable to apply the consistent purpose standard established for the exchange of information between public bodies and the disclosure of information by public bodies, to the collection of information by public bodies. Since this standard has not been established in the legislation, we believe the Ministry of Health should apply to the Information and Privacy Commissioner for permission to collect information in the circumstances described above.

We recommend that the Ministry of Health apply to the Information and Privacy Commissioner, under section 42(1)(i) of the **Freedom of Information and Protection of Privacy Act,** ***for permission to collect patient information from private physicians where both the physician and a program of the ministry are providing care to the same patient.***

The authorization above would, in the interim, allow for ministry practices to come into compliance with FIPPA. However, in the longer term, an amendment to the Act would be preferable way to allow for the collection from third parties not covered by the Act.

Information Collected from Medical and Health Care Practitioners

Schedule 3 of the *Freedom of Information and Protection of Privacy Act* indicates that there are at least ten governing bodies of medical and health care practitioners covered by the Act. This includes privately practicing physicians, nurses, psychologists, chiropractors, physiotherapists and many others These medical and health care practitioners record or collect a substantial amount of information about individuals, some of which is in turn collected from them by the Ministry of Health. For example, the information would include medical histories, current diagnoses, and courses of treatment.

Although these bodies are governed by the Act, the individual practitioners are not. The practitioners are, however, governed by codes of ethics, standards of conduct, and policies issued by their professional regulatory bodies.

We do not have access to the records of private medical and health practitioners, and it was not within the scope of our work to look at information collected by them. However, we were interested in finding out the type of consent sought and notice given by practitioners when they collect information, and the circumstances in which they would release information to public bodies compared to the requirements in the Act.

For this purpose, we chose to request the College of Physicians and Surgeons of British Columbia to provide us with the guidance they give to their members regarding the collection of information from patients which would parallel the requirements of the Act. They provided us with excerpts from their policy manual and code of ethics.

Generally, we found that the requirements in the policies and code protect the patient's rights in situations in which physicians are releasing information. They instruct physicians that information about a patient can only be released with the patient's consent or where legislation overrides the patient's right to confidentiality. We believe that the requirements relating to the release of information by physicians are quite good.

The Code of Ethics adopted by the Canadian Medical Association in August 1996, and applicable to physicians in British Columbia, states that the patient's right to confidentiality must be respected except when this right conflicts with the physician's responsibility under the law, or when the maintenance of confidentiality would result in a significant risk of substantial harm to others or to the patient, or if the patient is incompetent. Where confidentiality is breached, the

physician is to take all reasonable steps to inform the patient about the breach. The requirements of these policies and codes should lead to consent being obtained from the patient, even in cases where the Act, if it applied, would not require it.

Minors

Section 16 of the *Infants Act* allows for persons under the age of 19 (termed, interchangeably, as minors or infants) to obtain health care services for themselves without the consent of their parent or guardian. The consent of a minor is valid only if the health care provider:

"(a) has explained to the infant and has been satisfied that the infant understands the nature and consequences and the reasonably foreseeable benefits and risks of the health care, and

(b) has made reasonable efforts to determine and has concluded that the health care is in the infant's best interests."

FIPPA Regulation #3 allows the parent or guardian of a minor to act for the minor in requesting access to, or the correction of, personal information. Ministry of Health Administrative Circular 94:014 states that, "in the case of a mature minor, the same right of confidentiality as a consenting adult under the *Freedom of Information and Protection of Privacy Act* applies." A "mature minor" is defined in this same circular as "an individual deemed to be capable of providing her/his own consent for treatment," using criteria consistent with section 16 of the *Infants Act.* The circular also instructs health care providers to, "when providing services to a minor without the parent/legal guardian's involvement, note on the appropriate record that the above informed consent process was followed."

A number of programs, for instance those involving family planning or mental health, provide services to large numbers of minors. During our audit, we found that the ministry was complying with the spirit of the above policies, and was treating mature minors the same as adults. However, at no time during our examination of files did we encounter evidence of the ministry documenting its determination of mature minor status. Interviews with ministry staff indicated that health care providers, through discussions with minors, do make the determinations required by the *Infants Act* and ministry policies, but these determinations are rarely documented.

We recommend that, in instances where the Ministry of Health intends to deliver services to mature minors without the consent of parents or guardians, the requirements of the* Infants Act *section 16(3) to determine the appropriateness of such action be documented in writing, in accordance with ministry policy.

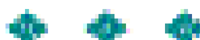
Closing Comments

This audit dealt with one aspect of privacy—the collection of personal information by the Ministry of Health, one of the 16 ministries of government. Extrapolation of our findings to other ministries would not likely be warranted, given the mixed compliance results we encountered.

In addition to ministries, there are numerous other public bodies in the Province (e.g. hospitals) which may, or may not, be operating their privacy protection programs in a manner similar to that which we found in the Ministry of Health.

We believe that there could be considerable benefits derived from further audits of compliance with the numerous privacy provisions established in FIPPA and its related policies, in both the ministries of government and the other public bodies specified in the Act.

As described in the introductory sections of this report, this audit was conducted by the Office of the Auditor General at the request of the Information and Privacy Commissioner. We do not, however, have plans to conduct further audits in this area in the foreseeable future.



summary of recommendations

Recommendations made in the Office of the Auditor General of British Columbia report titled "Privacy – Collection of Personal Information by the Ministry of Health" are listed below for ease of reference. These recommendations should be regarded in the context of the full report.

General Recommendation

We recommend that all Ministry of Health staff collecting personal information from the public receive adequate training and guidance concerning the privacy requirements of the* Freedom of Information and Protection of Privacy Act *and the FIPPA Policy and Procedures Manual.

Recommendations Regarding Section 26 of FIPPA

In order to improve compliance with section 26 of the* Freedom of Information and Protection of Privacy Act *and related policies, we recommend that the Ministry of Health discontinue collecting Social Insurance Numbers, except in programs where it is necessary for dealing with a federal government department authorized to use this personal identifier.

Recommendations Regarding Section 27(1) of FIPPA

In order to improve compliance with section 27(1) of the* Freedom of Information and Protection of Privacy Act *and related policies, we recommend that Ministry of Health:

- ***programs responsible for collecting personal information should, except where exempted by legislation or the Information and Privacy Commissioner, seek the written permission of the person about whom the information pertains before initiating the collection of personal information from third parties; and***
- ***staff who obtain verbal consent to collect personal information from other sources, document the consent and follow it up by a letter verifying the consent.***

We recommend that the Ministry of Health apply to the Information and Privacy Commissioner under section 42(1)(i) of the* Freedom of Information and Protection of Privacy Act *for:

- ***authorization to collect from third parties in specific situations where there is no other legislative provision to allow for such collection, and circumstances are encountered which preclude obtaining an individual's permission, or where to do so would compromise care provided to the patient; and***

- ***authorization to receive unsolicited collections of personal information, in certain specified circumstances, that are not allowed under another Act.***

We recommend that, in compliance with the **Freedom of Information and Protection of Privacy Act*****, section 34(2), the minister responsible, being the Minister of Employment and Investment, publish annually a list of the consistent purposes for which personal information is to be used or disclosed.***

Recommendations Regarding Section 27(2) of FIPPA

In order to improve compliance with section 27(2) of the **Freedom of Information and Protection of Privacy Act** ***and related policies, we recommend that Ministry of Health:***

- ***programs notify persons of the reason for which their personal information is needed and the likely major uses that will be made of it;***
- ***programs provide the notice described in FIPPA section 27(2), in writing, to all persons supplying personal information. In the absence of other means of written notice, all Ministry of Health forms used to collect personal information should contain this notice.***
- ***programs that routinely collect personal information on an ongoing basis explicitly state this fact in the notice provided when information is first collected, and state the purpose, legal authority, and the title, business address, and telephone number of a person who can answer questions about these future collections, if any of these should differ from the initial collection;***
- ***provide notice to all persons who are providing personal information to the ministry on an ongoing basis. This notice could be given at a time when the ministry plans to send other information to individuals.***

We recommend that the Ministry of Health apply to the minister responsible for the **Freedom of Information and Protection of Privacy Act*****, the Minister of Employment and Investment, under section 27(3)(b):***

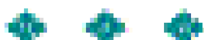
- ***to be excused from the requirement to provide notice for mental health services, where providing notice would create a significant likelihood of a substantial adverse effect on the provision of health care in individual cases. If this exemption is allowed, the reason for its application in individual cases should be fully documented in the patient's file and approved by the senior on-site program manager or director; and***

- *to be excused from the requirement to provide notice for ambulance service and other specified programs, in emergency situations.*

Other Recommendations

We recommend that the Ministry of Health apply to the Information and Privacy Commissioner, under section 42(1)(i) of the Freedom of Information and Protection of Privacy Act, *for permission to collect patient information from private physicians where both the physician and a program of the ministry are providing care to the same patient.*

We recommend that in instances where the Ministry of Health intends to deliver services to mature minors without the consent of parents or guardians, the requirements of the Infants Act *section 16(3) to determine the appropriateness of such action, be documented in writing, in accordance with ministry policy.*



Supplement

Excerpt from the *Freedom of Information and Protection of Privacy Act*

Purpose for which personal information may be collected

26. No personal information may be collected by or for a public body unless

(a) the collection of that information is expressly authorized by or under an Act,

(b) that information is collected for the purposes of law enforcement, or

(c) that information relates directly to and is necessary for an operating program or activity of the public body.

How personal information is to be collected

27. (1) A public body must collect personal information directly from the individual the information is about unless

(a) another method of collection is authorized by

(i) that individual,

(ii) the commissioner under section 42 (1) (i), or

(iii) another enactment,

(b) the information may be disclosed to the public body under sections 33 to 36, or

(c) the information is collected for the purpose of

(i) determining suitability for an honour or award, including an honorary degree, scholarship, prize or bursary,

(ii) a proceeding before a court or a judicial or quasi judicial tribunal,

(iii) collecting a debt or fine or making a payment, or

(iv) law enforcement.

(2) A public body must tell an individual from whom it collects personal information

(a) the purpose for collecting it,

(b) the legal authority for collecting it, and

(c) the title, business address and business telephone number of an officer or employee of the public body who can answer the individual's questions about the collection.

(3) Subsection (2) does not apply if

(a) the information is about law enforcement or anything referred to in section 15 (1) or (2), or

(b) the minister responsible for this Act excuses a public body from complying with it because doing so would

(i) result in the collection of inaccurate information, or

(ii) defeat the purpose or prejudice the use for which the information is collected.

response of the ministry of health

In today's society individuals are very aware of and concerned with the collection of their personal information. For this reason, the Auditor General's report on the collection of personal information by the Ministry of Health and Ministry Responsible for Seniors is important and relevant to every person in British Columbia.

Since the Auditor General completed this audit of the collection of personal information by the Ministry of Health, there has been considerable progress in the regionalization of health care services. On April 1, 1997, Regional Health Boards and Community Health Services Societies assumed responsibility for the delivery of health services within their communities. Over the next few months Community Health Councils will also be assuming these responsibilities.

With the transference of responsibility, many of the recommendations in the report are applicable to health authorities as well as to the Ministry of Health. The Ministry of Health will take a leadership role in informing health authorities of the findings of the report and working together to improve procedures to comply with the Act.

While recognizing the Ministry's need to collect personal information for the delivery of health care services, the report examined what personal information the Ministry collects and our methods of collecting this information. Regarding what personal information the Ministry collects, the report concludes that the Ministry is in compliance with Act by collecting only essential personal information. The Auditor General found there

> *…is a conscious effort in the ministry to limit collections of personal information to only that which is relevant and necessary to operating ministry programs and activities.*

It is important for individuals in British Columbia to know that the Ministry of Health only collects information required for the delivery of health care services. This confirmation by the Auditor General provides assurance to the citizens of British Columbia that personal information which is not pertinent to their health care is not being collected.

There are, however, areas where our methods of collection of personal information can be improved. The Ministry collects a considerable amount of personal information from third parties or other public bodies. The Auditor General found the Ministry collects information from other public bodies or persons only for the "furtherance of patient care." However, before collecting personal information from third parties or other public bodies, the Act states individuals must provide their consent. This consent if often not sought or there is no documentation to indicate consent has been provided.

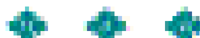
There are exceptional circumstances when the Ministry is clearly unable to comply with this aspect of the Act. Consent may be difficult to obtain in emergency situations, or when an individual is incapable of providing informed consent due to lack of competence or incapacity. Both the Auditor General and the Commissioner of Information and Privacy have acknowledged the difficulties these situations pose for the Ministry. The report states that

> *In all cases…reviewed, collections from their parties were done only to further patient care. Thus, although some practices were not in compliance with [the Act], we believe that the circumstances involved in the cases we reviewed mitigated the severity of this non-compliance.*

The long-term solution to this quandary is to amend the Act. We are hopeful the legislative committee reviewing the Act will give this serious consideration. As an interim solution, the Commissioner of Information and Privacy has expressed a willingness to discuss his authorizing indirect collection in specific situations. The Auditor General has also recommended we seek permission from the Commissioner for the indirect collection of personal information in exceptional circumstances. I intend to pursue discussions with the Commissioner in the hope of resolving this anomaly where the requirements of the Act could compromise patient care.

The Ministry is currently addressing some of the concerns raised by the Auditor General. For example, the Ministry of Health will no longer routinely collect Social Insurance Numbers as identifiers for individuals; information and privacy materials for health authorities will include a component on the collection of personal information to improve the knowledge base of staff working in the health care sector; and as health forms are revised they will be reviewed for compliance with Section 27 of the Act.

I wish to thank the Office of the Auditor General for their thorough review of the practices within the Ministry of Health related to the collection of personal information. Protection of personal information plays a crucial role in maintaining the dignity, autonomy and freedom of the individuals that we serve through the health care system. Reviewing the strengths and weaknesses of what personal information we collect and how we collect that information ensures we continue to respect the privacy of personal information and continually improve upon our practices to maintain that respect.



response of the information, science and technology agency

As the central agency charged with administering the Freedom of Information and Protection of Privacy Ac*t (the Act), we appreciate this audit and the opportunity to respond to your recommendations and observations that relate to the minister responsible for the Act.*

1. *You recommended that, "in compliance with the* Freedom of Information and Protection of Privacy Act *section 34(2), the minister responsible, being the Minister of Employment and Investment, publish annually a list of the consistent purposes for which personal information is to be used or disclosed.*

We acknowledge that this is a statutory obligation under the Act. The Act provides the authority for public bodies to use personal information for purposes consistent with the original reason for collection, independent of the existence of a consistent purposes list.

The list was intended neither to authorize consistent purposes, nor to provide guidance to public bodies as to the meaning of consistent purpose. It was intended to compile information of the decisions of public bodies as to what uses were deemed consistent in particular circumstances.

2. *Your report observed that there is no provision in the Act allowing for the collection of personal information from third parties in emergencies or in situations where it is unsolicited. Your report also supported the need for such provisions, which we agree would fall within the spirit and intent of the Act.*

This issue will be raised for consideration in the context of the comprehensive review of the Act.

ethics codes in the public sector

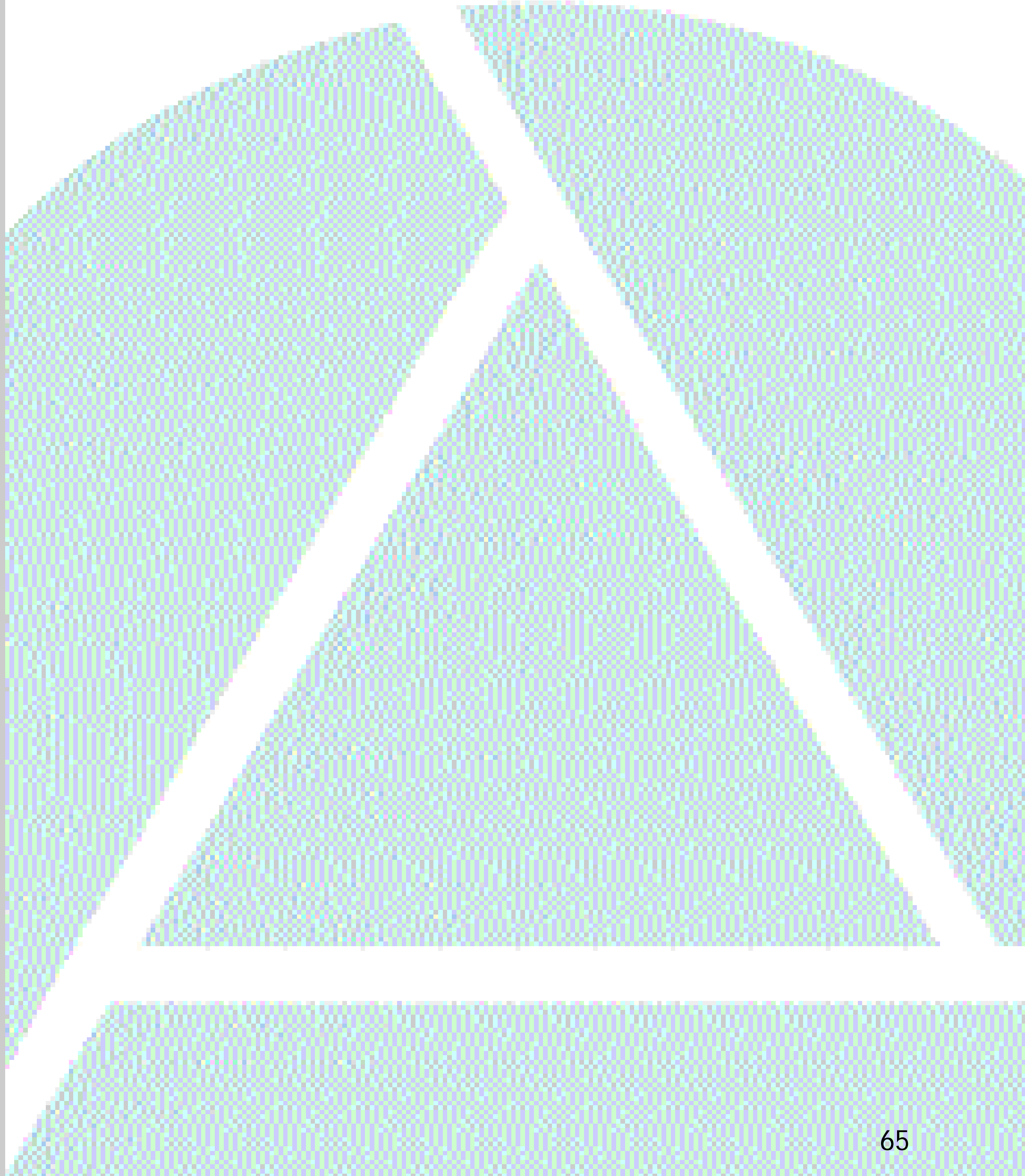


table of contents

Introduction 69

- Background 69
- The Value of Ethics Codes 70

Scope 73

- Objectives 73
- Scope of the Study 73

Conclusions 74

Findings 76

- What Codes Exist 76
  - BC Government 76
  - Individual Government Ministries 76
  - Crown Corporations and Agencies 79
    - Employee Codes 80
    - Director Codes 81
    - Content of the Codes 81
  - Responsibility for Administering Ethics 83
  - Awareness and Training 83
- Monitoring Compliance 86
  - Reporting and Investigating Concerns 86
  - Monitoring Compliance with Ethical Codes 88
- Public Reporting 89
- Possible Improvements 90
  - Performance, Leadership and Action 90
  - Other Jurisdiction References 91

Recommendations 96

Supplements

- A The Province's Government Ministries and 20 of the Government's Most Prominent Crown Corporations and Agencies 98
- B Standards of Conduct for Public Service Employees 99
- C Terms Used in This Report 103
- D Relevant Legislative and Related Authorities 104

Response of the Public Service Employee Relations Commission 106

Response of the Crown Corporations Secretariat 108

ethics codes in the public sector

A study of ethics codes available for guidance to employees and directors of BC government public sector organizations

Introduction

Background

Codes of ethical conduct, in one form or another, have been serving society for 3,000 years or more. The Greek physician Hippocrates developed his famous “Oath” about 400 BC, to serve the interests of a Pythagorean medical sect, and the Hippocratic Oath continues to be followed by many medical schools as embodying the ethical ideals to which physicians should aspire.

In even earlier times, the Hebrew prophet Moses, about 1250 BC, delivered to the Israelites at Mt. Sinai the 10 commandments about how to conduct oneself in a good and proper manner. These are still followed by many millions of Christians and Jews throughout the world.

These are but two examples of the innumerable codes, doctrines and policies that have been established over the millennia to guide the conduct of different groups around the world.

In the contemporary public sector, “public service is a public trust” is an often-quoted reference when reviewing ethics. “Proper conduct is a prerequisite to good governance” is another common reference in both the private and public sector contexts. It is also generally recognized that the taxpaying public expects higher standards of ethical performance from the public sector than from the private sector. Some practices, such as those involving conflicts of interest, are especially disapproved in the public sector.

In British Columbia, public servants swear an oath of allegiance at the time of their employment by the provincial government, in keeping with a requirement of the *Public Service Act* dating back to 1919. A code of ethical conduct, called the “Standards of Conduct,” is also issued under the Act. Its terms apply to all public servants and Order-in-Council appointees, and the staff and the board Chairs of a number of the Province’s Crown corporations and agencies. The Province’s major Crown corporations have also developed their own codes of ethical conduct of one sort or another, to provide guidance to their staff and board members.

The Value of Ethics Codes

Part of our Office's role is to assess the key factors associated with the proper conduct of government business. We therefore initiated this study to assess what guidance is in place to assist the proper conduct of today's public servants in our Province.

Perception is very important in the public sector. Just as justice must be seen to be done, a high standard of ethical behavior must be seen to be maintained, and steps must be taken to avoid apparent or potentially inappropriate behavior. Ethics are important in the public sector to maintain public trust and confidence in government.

In our modern world, much of the public's well being depends on government and government organizations. Because of the size and scope of government activities and its influences on everyday life, the professionalism of public servants is much more important to all citizens than it may have been in the past. At the same time, public servants operate in a much changed and changing environment now. They are subject to greater public scrutiny than ever before, and increased demands from citizens; but they are also facing stricter limits on available resources with which to provide their public services. The qualities of conduct by individual public servants are therefore very important to uphold, for these individuals must be trusted to exercise judgments wisely, provide assistance and advice appropriately in crucial situations, and deliver essential services in circumstances where resources may be scarce and yet needs are great.

The public service of the Province has the statutory requirement to provide services and respond to needs of the public, often through government ministry-based public programs. The Province's Crown corporations and agencies too are entities established or acquired by the government for public purposes, and have a significant impact on the citizenry and the economy. Some of these entities are expected to serve public interests while at the same time operating in a commercial manner in the pursuit of profit. Consequently, most of these organizations encounter a number of ethical dilemmas related to questions of fairness, equity, privacy, confidentiality, conflicts of interest, use of public assets, and compliance with both internal and external standards of conduct. Often there is no right or wrong answer, but rather a range of possible solutions. Therefore, a clear ethical framework is increasingly important to help public sector employees and directors cope in this environment.

What has brought an increasing focus on public sector ethics around the world over recent decades have been a number of revelations and allegations of unethical behavior in governmental organizations, and broad societal concerns about ethical behavior in business and professional organizations. In addition, there is much greater transparency in government operations today, through public access to information, increased media attention to government activities, and the actions of many well-organized interest groups. All of these factors have worked to place many public servants in a virtual 'fishbowl' where their actions and decisions are more visible and subject to public scrutiny. Increased devolution of authority and responsibility to branches and independent agencies has meant that many more public servants at all levels may be required to make judgments within their new areas of responsibility on ethical issues which they hadn't dealt with in the past. As a consequence, there is a need for guidance about ethical standards and expectations in the public sector.

Research has shown that three important means of preserving and promoting ethical behavior among public servants are having:

- codes of ethical conduct
- pre-service and in-service training about ethics
- role model leaders demonstrating good conduct

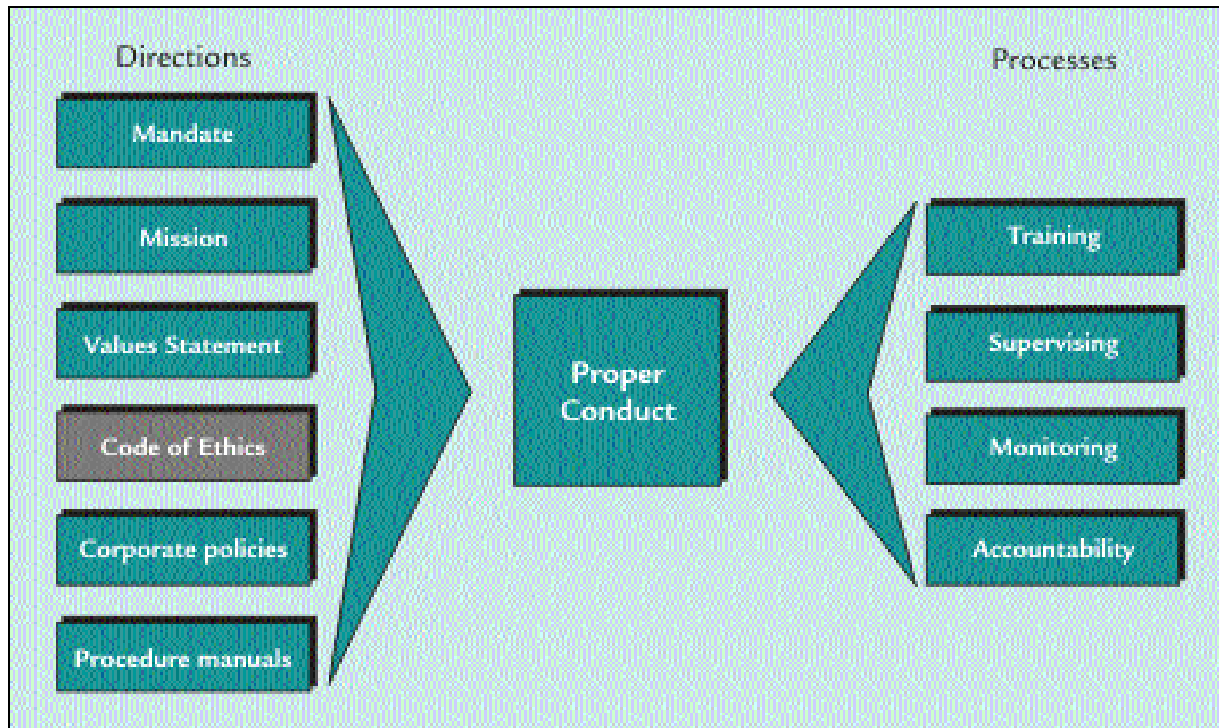
Ethical behavior is concerned not only with distinguishing right from wrong and good from bad, but also with the 'commitment' to do what is right or what is good. This is where a code of ethics plays an important role. (Exhibit 2.1)

Further evidence of the importance of ethics are media reports that often refer to the importance of "moral integrity" in the public sector, and the need for high moral standards, while disallowing even minor moral mis-steps. A senior member of the RCMP has stated that "ethics" and "compliance with the law" go hand in hand. And a recent two-year study by the American Association of School Administrators, called "Preparing Students for the 21st Century", found that the subject of 'ethics' will be the key to excelling (e.g. adding "responsibility" to the traditional three Rs of education).

There is even the prospect of a reduction in costs when an organization has put in place some proper ethics policies and programs. The American Institute of Management Accountants has recently found through a corporate survey that more than half of the respondents believe that a strong and comprehensive ethics policy reduces the overall costs of internal controls.

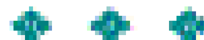
Exhibit 2.1

Code of Ethics in the Organizational Hierarchy



And for professional associations, the hallmark of any good professional organization is the code of ethical standards by which it measures its members' conduct.

In summary, non-elected public servants exercise significant discretionary power in their everyday work: in the stewardship of public resources, as they relate to citizens, and in the context of policy interpretation. Ethical standards are an essential check against inappropriate use of these publicly-entrusted powers, and as such are a key factor in the quality of governance.



scope

Objectives

The objectives of this study were to determine:

1. what general codes of ethics or conduct currently apply to employees and appointees in the ministries and major Crown corporations and agencies of the provincial government;
2. who is responsible for administering and ensuring adherence to the codes;
3. how awareness of the codes is promoted and encouraged;
4. how compliance with the codes is monitored;
5. if there is public reporting about the existence of codes and compliance with them; and
6. if there are any improvements to the codes, or to their systems of administration, training, monitoring or reporting that we might recommend for consideration.

Scope of the Study

We chose to include within the scope of our study the Province's 16 government ministries and 20 of the government's most prominent Crown corporations and agencies. (Supplement A)

We corresponded with all of these entities requesting that information pertinent to the ethics codes in their organizations be provided to us for review. We then interviewed senior officials at eight of the government ministries and 16 of the Crown corporations and agencies, to review their responses to a detailed questionnaire we had sent them about the nature and administration of the codes for their organizations. The ministries we visited included five of the six that reported having their own ministry-specific codes or policies for dealing with ethical issues. The four corporations we did not visit were ones that did not have their own corporate code of ethics, had relatively few employees, and whose employees were subject to the government's Public Service Act standards of conduct.

We also met with officials from the government's Public Service Employee Relations Commission (PSERC) and the Crown Corporations Secretariat (CCS), and collected information from them, as well as from others in the Finance and Corporate Relations ministry and at the Centre for Applied Ethics at the University of British Columbia.

As well, we communicated with our associates at legislative audit offices across the country about codes of ethics or conduct in their jurisdictions, and obtained additional information about codes from many jurisdictions around the world, including the United Kingdom, Ireland, the United States, Australia, New Zealand, and the Organization for Economic Co-operation and Development (OECD).

We did not review codes of ethics or conduct applicable at the political level in British Columbia (that is, to the Members of the Legislative Assembly governed by the *Members' Conflict of Interest Act* in the area of responsibility of the Members' Conflict of Interest Commissioner).

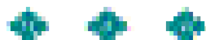
This study was principally conducted during the months of October 1996 to April 1997. Interviews with officials and staff of the government organizations involved took place in Victoria and Vancouver, including a video-conference interview between Victoria and Kamloops.

Conclusions

1. The BC government overall and the 20 Crown corporations and agencies included in our study have codes of ethics applicable to all, or most, of their employees. Ten of the Crown corporations and agencies have ethics codes for their directors. And six government ministries have adopted supplementary codes for certain of their staff. These codes provide, with varying degrees of comprehensiveness, principles and guidelines on ethics issues, particularly conflicts of interest, gifts, and confidentiality, and are subject to periodic reviews and updates.
2. Coordination of ethical issues generally rests with the Directors of Human Resources in ministries, and with Corporate Secretaries in Crown corporations and agencies. However, line management is considered to be responsible for day-to-day administration of ethical matters in most of the entities. Concerns about ethical issues may be reported to a range of individuals or groups in ministries, Crown corporations and agencies, from line supervisors to Deputy Ministers, or presidents and/or board chairs, depending on the nature or severity of the ethical dilemma involved.
3. Communication about ethics is generally provided at the time of inducting employees and/or directors into the organization, when orientation sessions are held and copies of the ethical standards are distributed. Ongoing training or

refresher courses on the subject of ethics are only infrequently held, if at all, and mainly occur when specific issues arise.

4. Monitoring for compliance with ethical standards is mostly informal and is mainly reliant upon self-assessment by employees or directors. We did find, however, that 20% of the Crown corporations and agencies employ annual or periodic disclosure statements from directors and/or senior officers as a form of monitoring.
5. One Crown corporation refers to its "code of business conduct" in its public annual report, and two others refer to their organizations' "core values." Otherwise, we found no public accountability reporting about codes of ethics.
6. During the course of our study, we noted a number of possible improvements for the ethics codes in the public sector of our Province, some arising directly from the materials we gathered from public sector organizations in British Columbia, and some from other government jurisdictions across Canada and around the world.



findings

What Codes Exist

BC Government

The *Public Service Act* provides for a Commissioner of the Public Service Employee Relations Commission (PSERC), whose role is to provide direction, advice or assistance to ministries in the conduct of personnel policies, standards, regulations and procedures. Formalized documents available to assist in this regard are an Oath of Employment (Exhibit 2.2), a Public Service Act Directive on Standards of Conduct (the government's 'code of conduct'), and a Personnel Management Policies and Procedures manual.

The Oath and Standards of Conduct are applicable to all employees within the government's ministries and offices, including Order-in-Council appointees. The Oath requires individuals to 'swear' before a commissioner for taking oaths that they will truly and faithfully, according to their skill, ability and knowledge, execute the duties, powers and trusts placed in them as servants of the Crown. It originates from 1919. The Standards of Conduct were last updated in 1987. However, PSERC has had this document under extensive review during the past two years, indicating that its provisions may be updated in the near future.

An examination of the existing Standards of Conduct helps to identify the types of behavior and issues the government considers of particular ethical importance. Exhibit 2.3 provides a topical summary.

Within the Confidentiality section above, there is the expressed expectation that employees will bring to the attention of the Deputy Minister alleged contraventions of the law, waste of public funds or assets, or dangers to public health or safety. The government's personnel management manual further expresses this disclosure expectation, and provides protection from discipline if such issues are brought forward in good faith and in the proper manner (known as 'whistleblower protection').

Individual Government Ministries

We learned that a number of ministries have also found it useful to establish their own, supplementary ministry-specific or program-specific codes of conduct. These codes we found in the ministries of Agriculture, Attorney General, Employment

Exhibit 2.2

Oath of Employment

Province of British Columbia

OATH OF EMPLOYMENT

Employees are to swear or affirm and sign one of the following forms of the oath.

1. I, ..., do swear/affirm that
   1. I am/am not a Canadian citizen and all facts and representations made by me for the purpose of becoming a public servant are true to the best of my knowledge and belief.
   2. I will truly and faithfully, according to my skill, ability and knowledge, execute the duties, powers and trusts placed in me as a servant of the Crown.

Sworn/Affirmed by me, at ...., this .... day of ...., 19.......

....

Person administering Oath *Deponent*

OR

2. I, ..., do swear/affirm that
   1. All facts and representations made by me for the purpose of becoming a public servant are true to the best of my knowledge and belief.
   2. I will truly and faithfully, according to my skill, ability and knowledge, execute the duties, powers and trusts placed in me as a servant of the Crown.
   3. I am a Canadian citizen and I will be faithful and bear true allegiance to Her Majesty and Her Successors.

Sworn/Affirmed by me, at ...., this .... day of ...., 19.......

Exhibit 2.3

Topics Covered in the Government's Standards of Conduct

- **General Standards of Conduct**
- **Conflicts of Interest**
- **Compromising Situations**
- **Relationship of Job Responsibilities to the Employee's Private Affairs**
- **Gifts and Other Complimentary Items**
- **Confidentiality**
- **Affidavits & Legal Opinions**
- **Public Comments**
- **Outside Remuneration**
- **Working Relationships**
- **Workplace Behavior**

Source: Standards of Conduct for Public Service Employees, summary pamphlet (Supplement B)

and Investment, Finance and Corporate Relations, Health, and Transportation and Highways.

The Agriculture ministry has a Policy Statement relating to the Standards of Conduct, with an added requirement that new staff sign an acknowledgment about having received and read the policy. The Attorney General ministry has a Deputy Sheriff's Code of Conduct that deals with matters such as deportment, use of government vehicles, and relationships with jury members. This ministry also has Correctional Centre Rules and Regulations relating to uniforms, searches of inmates, monitoring communications, etc. The Employment and Investment ministry has a Standards of Conduct Policy, which restricts interests in properties covered by the *Energy, Mines and Petroleum Resources Act,* and the *Petroleum and Natural Gas Act.* The Finance and Corporate Relations ministry, Provincial Treasury Branch, has Conflict of Interest Rules regarding prohibited investments, etc. for designated employees. The Health ministry has Medical Services Plan Protection of Personal Information Guidelines, covering the confidentiality of health histories, blood types, etc.; and the ministry also has Ethics for Alcohol and Drug Service Providers, regarding professionalism and relations with clients. The Transportation and Highways ministry has Conflict of Interest Guidelines, including a ministry Conflict

of Interest Committee, and the filing by certain ministry officers of an Employee Disclosure Statement. In addition, the ministry has had the Motor Vehicle Branch Inspectors' Code of Conduct, relating to deportment, behavior as a Peace Officer, Court attendance, etc.

These government codes are reasonably comprehensive in scope and compare favorably with those of other Canadian jurisdictions. There are, however, significant issues, worthy of consideration, that are not included in the existing codes. Three of these are: the confidential disclosure of personal financial interests and holdings by officials in key and/or senior positions; guidelines about post employment business activities or dealings with former senior government officials; and establishment of an ethics officer or official for the provision of advice, counseling and guidance on compliance with the ethical standards.

It should be noted at this juncture that many public sector employees and directors, working in either central government or a Crown corporation or agency, are members of professional bodies (e.g. accountants, engineers, foresters, lawyers, medical doctors) and, through their license to practice, are additionally subject to the applicable professional codes of ethics or conduct of their professional associations.

Crown Corporations and Agencies

The 20 Crown corporations and agencies included in our study provide a wide variety of commercial, economic development and social government services in the Province. Some of these entities have the dual role of operating as commercial corporations, while at the same time providing tools for delivering public policy initiatives. Therefore they differ from private sector companies, whose purpose is mostly related to profit maximization. Since Crown corporations and agencies are owned by the government, they are ultimately accountable to the people of the Province—the taxpayers. Consequently, higher standards of ethics may be expected from these public sector organizations. And the more common ethical provisions of company legislation (covering directors' and officers' duties of care, diligence and skill, and to act honestly, in good faith and without conflict of interest) may not be entirely adequate to provide for some of the ethical dilemmas that these entities encounter.

Although most of the Crown corporations and agencies are created by specific, incorporating legislation, little in the way of ethical guidelines is provided in any of these legislated

mandates. In spite of this, we found that all of these public sector organizations had adopted codes of ethical conduct of one sort or another. However, because of no prevailing legislative guidance or administrative direction from government sources in Victoria, we found a diverse range of forms and contents to these documents, along with differing terminologies, although the codes we encountered were all generally called one of: "codes of ethics," "standards of conduct," or "conflict of interest guidelines."

We also noted that a variety of ethical subjects were often covered in separate policy documents or guidelines concerning specific issues (e.g. employment equity, harassment, disclosures), rather than being covered in the form of a general ethical principles document. One organization has a statement of core values, in addition to a formal code of conduct, and various specific-issue policies documented in policy statements. However, all of these policies or guidelines can be grouped by: policies for directors; policies for employees; and policies that apply to both directors and employees. We refer to all of these within the context of codes of ethics/conduct for purposes of this study.

Employee Codes

It is interesting to note that of the 20 Crown corporations and agencies in our study, all have a code of ethical conduct, conflict of interest policy or some other form of ethics policy applicable to their employees (Exhibit 2.4). For 5 of these organizations, employees and officers are subject to coverage by the provisions of the government's standards of conduct.

Exhibit 2.4

Codes of Ethics/Conduct for the Crown Corporations and Agencies

Code of ethics/conduct:	for employees	for directors
applies to both employees & directors	4	4
applies to employees only	11	
applies to directors only		6
no codes		8
no board of directors		1
Government standards of conduct apply	5	1

It is clear that the establishment of corporate ethical standards is well in place in BC's major Crown corporations and agencies. How actively these documents are referenced may be considered by the indications given to us about how often the codes are reviewed and updated. An impressive 70% of the organizations informed us that they had reviewed and updated their codes within the last two years, and some stated that their codes are updated annually.

Director Codes

Half of the 20 Crown corporations and agencies included in our study had established a code of ethics for members of their boards of directors; the other half have not. However, many directors of these organizations might be otherwise subject to conflict of interest guidelines as part of their corporate by-laws. It should also be noted that board members who are Members of the Legislative Assembly are subject to the requirements of the *Members' Conflict of Interest Act.* In addition, senior public servants appointed to corporate boards are covered by the *Public Service Act* standards of conduct, as are the Chairs of the boards of 12 of the Crown corporations and agencies included in our study.

Content of the Codes

Examining codes developed by the Crown corporations and agencies helps to identify the types of behavior and the issues which are regarded as being of particular ethical significance. Our survey with the organizations provided an instructive list of specific ethical topics, and the responses indicate the frequency that they appear in the ethical codes of the various corporate entities (Exhibit 2.5).

It is interesting to note the range of behavioral issues that are evident as priorities. The general concentration is on good conduct and law-abiding actions, on activities internal to the organization, and on relations with customers and suppliers such as conflict of interest, confidentiality, gifts and bribes, and safeguarding of assets. It is also noteworthy that matters such as political activities and post employment activities are covered by a relatively small proportion of the codes of conduct. The above numbers cannot, however, be taken as the absolute level of expectations by the Crown corporations and agencies, because some commented to us that if it was an accepted social value that employees or directors would follow certain 'norms', then the organization's code needn't express those norms. This form of understanding would be applicable, for example, to such aspects as "obeying laws and

Exhibit 2.5

Content of Codes of Ethical Conduct

Issues covered:	% for employees	% for directors
conflict of interest	100	100
gifts, bribes	100	100
procedures for reporting breaches	94	100
confidentiality	94	90
general good conduct	88	60
safeguarding property/assets	76	50
obeying laws and regulations	59	40
service to the public	65	30
discrimination	65	30
public comment	53	40
privacy protection	59	30
political activities	41	30
environmental protection	35	0
post employment activities	18	10
whistleblowing & protections	41	–

regulations." It is also important to note that there are a variety of corporate 'cultures' in the Crown corporations and agencies that significantly affect their areas of behavioral emphasis. For example, some are very competitive with private sector corporations, while others may be more conservative because they are in a non-competitive business. Different values and ethics can naturally result from these different environments.

Certain emerging issues of ethical concern came to our attention during our study that were not specifically covered in the corporate information obtained by us. These issues included the increasing extent of international activities of some organizations and the resultant different cultures and business values encountered in these places. Another issue is the question of what ethical standards should be followed when public/private partnerships are used to deliver programs or services in our society. Issues such as these will undoubtedly continue to emerge and challenge those responsible for ethics administration to try to keep updated about such developments and respond with appropriate guidance to meet the circumstances.

Exhibit 2.6

Responsible for Administering Ethics Codes

Official responsible:	Crown corporations & agencies		Ministries
	Employee codes	Director codes	
Chairman		2	
Chief Executive	2	2	
Board of Directors		3	
Executive/board committee	1	1	
Director, Human Resources	2		
Line management	7		8
Corporate Secretary	4	2	
No codes, or not applicable		6	

Responsibility for Administering Ethics

We generally found that coordination of ethics issues rests with the human resource officials in government ministries, with overall government leadership provided by the PSERC organization. Within the given ministries the deputy ministers are ultimately responsible for all staffing matters, but the day-to-day administering is generally handled by line management. In the Crown corporations and agencies, we found a wider range of positions indicated as being responsible for ethical issues, as shown in Exhibit 2.6.

It is noted that line management is usually the initial place of contact for most employee/employer matters, including ethics considerations.

Awareness and Training

Ethics codes, whether in the form of legal or administrative documents, mainly play a guiding role in the administration of ethical activities. One must also recognize the existence of points of view that do not accept the effectiveness of codes of ethics or conduct. These range from perspectives that codes may be too specific, or too general, unworkable, not understandable, or confusing as to intent and meaning, unused, unavailable, or out-of-date. Some even say that use of statements of standards are not the ideal medium for answering complicated ethical questions in the public sector.

In this regard, some foreign countries, like New Zealand and The Netherlands, have moved to what are referred to as

more integrity-based forms of ethics management systems, whereby instead of formalized ethics codes, they provide overall, aspirational values to be followed, they concentrate their focus on what is being achieved, and place emphasis on encouragement of good behavior. These forms of system allow for more risk taking by public servants, and accept a greater level of errors and mistakes. In our North American societies (Canada, the United States, and Mexico), we are cognizant that no legislative or administrative guidelines are guarantees of societal behavior. However, our codes and guidelines continue to be useful for such purposes as pointing the way to expected (proper) behavior and conduct, setting out realistic expectations in relationships with others, and removing as much doubt as possible about what to do (or not do) when ethical dilemmas arise. This is why ethical communications and training need to be emphasized.

Codes of ethical conduct will not be meaningful nor followed unless they are communicated to staff effectively to inform them of the standards and related expectations. All organizations within our study reported communicating their applicable codes to 100% of their employees and directors. A number of different means are used to accomplish this, including: issuing a copy of the code at induction sessions, executive directives, pamphlets of highlights of the codes, topical circulars or case studies, courses or seminars, and counseling sessions by supervisors.

For the eight ministries that we visited in our study, the practice is to provide every employee with copy of the code of conduct, then to use multiple means to provide reminders to the employees. Some ministries are drawing the code to the attention of new employees at the earliest possible time, including by attaching a copy of it to the offering letters issued to starting employees and stating in the letters that the job offer is conditional on their acceptance of the standards of conduct. 38% of the ministries we visited also indicated that their employees are required to acknowledge, in writing, their receipt and understanding of the code.

In the 16 Crown corporations and agencies we visited, a variety of techniques are followed to get the message around their organizations about their codes of conduct, including providing copies to individuals, putting the information in reference handbooks and manuals, and utilizing their e-mail systems. Many of these organizations also require written acknowledgments confirming receipt and understanding of the codes. Orientation sessions for new members of an organization were clearly the main vehicles for getting the message out

about codes of ethics—sessions when these documents were often reviewed with the new individuals, given to them, and where certain aspects of concern were highlighted (e.g. employment equity, harassment, conflicts of interest).

Induction training is especially important as part of the ‘revolving door’ for many individuals who move between the private and public sectors. A systematic overview of the differences between the two sectors is indispensable, especially for private sector individuals who move into management positions in the public sector and will have to act as role models. They need to be inducted into the role of the public service, relevant legislation, regulations and codes, accountability mechanisms, and the role of values—both organizational and personal—in exercising judgment when making decisions. This initial training can have particularly evident effects, in that what is learned at entry often conditions a whole career. Codes of ethics can serve a very complementary purpose in this training by articulating the expectations of appropriate behavior and providing a framework for discussion of somewhat sensitive issues. Ensuring that public servants at all levels are ‘sensitized’ to the values, standards and expectations of the organization cannot be overstated.

To assist with its orientation efforts, the government has a guide titled “One-on-One Leader’s Guide: Working for B.C.,” and it has a section on the standards of conduct. The section highlights issues about the standards, stresses a government employee’s responsibilities, and provides a number of ethical conduct scenarios for discussion. We were advised, though, that this guide is not uniformly used by various ministries as an orientation tool, as is intended.

With regard to ongoing training about ethical conduct, only a very limited amount of this was being undertaken by any of the organizations covered in our study. Informal, supervisory reminders of the existing ethical standards, and inclusion of a reference to the standards in other training sessions, were the most common types of ongoing training or updates that seem to be occurring. Resource constraints was given as a reason for only limited training, and generally concerning specific policy subjects, such as equity and harassment.

A special focal point for training on ethical conduct in the public service has been middle management. For the past five years, in response to a Deputy Ministers’ Council suggestion, a course titled “ Doing the right thing: ethics in the public sector” has been offered through the government’s Employee Development Centre. This course is targeted at supervisory

and middle managers who have, most commonly, to handle situations involving ethical dilemmas while performing their assigned duties. This course is currently being offered twice a year, with enrollment normally 20 to 25 people. As a result, the total number of government managers who have taken this course has approximated 250 to 300 over the last five years. By comparison, there are approximately 35,000 persons employed in government ministries.

Ongoing ethics education should be targeted to individuals with experience in the public service, so as to develop sensitivity to the evolving dimensions of their work, as well as to enhance their decision making abilities by encouraging reflection and rounded judgment based on ethics analysis. Continuing education brings the benefits of becoming a forum for evaluating systems and practices, and even for considering whether values are changing, and for reassessing the effectiveness of the standards of conduct. In the United States, each federal agency is required to maintain a program of ethics training to ensure that all new employees are provided with at least one hour of ethics training, and that designated employees receive an hour of ethics training annually.

Monitoring Compliance

Reporting and Investigating Concerns

To be effective, it is important to have clear lines of communication, and this applies to reporting about ethical behavior just as it does for other types of activities. For the organizations we visited in our study, the lines of reporting were often set out in the codes or policies distributed, and included reporting to a range of officials (Exhibit 2.7).

It was also noted the reporting of ethics concerns would often depend on the nature, circumstances and gravity of the particular issue, and an assessment of these would indicate what level of authority would need to be involved. In addition, human resource departments were generally involved either directly or indirectly in resolving ethical situations or providing advice to management officials who were dealing with the issues.

Receiving reports about ethical concerns, and investigating them, are quite different activities. The nature or the gravity of the concern usually determines who might conduct the necessary investigation. The information in Exhibit 2.8 shows the variety of ways the investigation of ethical concerns has been conducted by the Crown corporations, agencies and ministries we visited.

Exhibit 2.7

Ethics concerns reported to:	Crown corporations & agencies		Ministries
	Employees	Directors	Employees
Chair of board		5	
Chief executive officer		2	
Executive committee	4	1	
Compliance officer	1	1	
Corporate secretary	1	1	
Line management	5		8
Human resources director	2		
Depending on nature/gravity, a combination of above	3		

Exhibit 2.8

Ethics concerns investigated by:	Crown corporations & agencies		Ministries
	Employees	Directors	Employees
Chair of board		4	
Chief executive officer (CEO)	2	1	
Executive committee	1	1	
Compliance officer	1	1	
Corporate secretary		1	
Line management	2		1
Internal audit	1		
Human resources director			1
Depending on nature/gravity, a combination of above	9	2	6

Some corporate officials commented that the CEO would usually be informed of the instances, even though the investigating may be delegated, and usually the Human Resources department will be involved to provide assistance.

We inquired about how often, in the last two years, actions had to be taken to deal with concerns identified as a result of a breach of the organizations' codes of conduct. The information supplied was as follows.

Actions taken in the last two years, regarding ethical conduct concerns:	
none	12% of the organizations
1 - 5	63%
6 or more	25%

Monitoring Compliance with Ethical Codes

Within government ministries, deputy ministers are responsible for ensuring that a system is in place whereby every employee in their ministry is made aware of the standards of conduct and the possible consequence of their breach. Employees are expected to disclose and resolve personal situations that may constitute, or in the public's perception constitute, a breach of the standards of conduct.

The 1995/96 report of the Commissioner of Conflict of Interest raised the issue of imposing more formal conflict of interest disclosure standards on senior government officials. The report said: "I raise the matter of Senior Officials because it is my experience that there are those in government who, because of the responsible and sensitive position they hold are more often confronted with ethical dilemmas and potential conflict of interest situations than are backbenchers in the Legislature, whether they be on the government or opposition side. Existing conflict of interest legislation is applicable to the latter and not to the former." "The holders of these positions often have access to extremely confidential information and some of them are in a position to exert considerable influence through input into policy decisions and legislative initiatives. Consideration of whether those in these positions ought to meet the standards imposed on members of the Legislature by virtue of the requirements of the *Members' Conflict of Interest Act* is, I believe, worthy of consideration of the decision makers in government."

In our review of ethics policies from other Canadian jurisdictions, we noted that some have implemented disclosure requirements for senior officials comparable to that for elected Members. For example, the federal government has included in its Conflict of Interest and Post Employment Code, disclosure requirements for a list of public office holders, including:

- members of ministerial staff, except public servants;
- full time Governor in Council appointees, other than a number of specific exceptions;

- full time ministerial appointees designated by the appropriate Minister of the Crown as public office holders.

In the Crown corporations and agencies we studied: four have formal, periodic, disclosure of interest requirements; two require disclosures by both directors and officers; one requires disclosures by its directors; and one requires disclosures by its officers.

Requiring disclosures by directors and/or key officers or other employees was the only form of monitoring of compliance with ethical standards that we noted in our study of government organizations, and even at that, as noted above, the extent of this form of monitoring is not very widespread in practice. Ethics monitoring thus continues to be conducted in a largely self-assessed environment.

Public Reporting

Our Office is very interested in assisting in the development of improved public accountability by public sector organizations. In this study we reviewed the extent of public accountability reporting by the Crown corporations, ministries and agencies regarding the existence of and compliance with their codes of ethics.

A professional accounting guideline, issued by the Canadian Institute of Chartered Accountants, encourages management to consider including comment, in its public "management report" (usually a standard feature in a corporate annual report), on its responsibility for establishing an appropriate code of business conduct. A number of major Canadian corporations (14% based on the latest survey) now include just such a reference to their code of conduct in management reports included in their public annual reports.

We observed that 15% of the Crown corporations and agencies included in our study make reference to integrity and ethical conduct, either in their management reports or corporate values statements included in their public annual reports, comparing favorably with the practice of the major private sector corporations in the country.

There is no similar form of public reporting about ethics or standards of conduct by the government, but some of its individual ministries do include values statements in their annual reports.

Possible Improvements

Performance, Leadership and Action

As far as ethical behavior is concerned, codes of conduct and other guidelines are only as good as their level of observance. We inquired with the officials we met about how satisfied their organizations were with the effectiveness of their current codes in maintaining ethical standards for their organizations. All of the responses were clear expressions about how satisfactory they considered their codes to be in effectively maintaining ethical standards for their organizations.

The conclusion which may be drawn from these responses is that a significant proportion of the public sector organizations covered in our study are satisfied with the effectiveness of their codes, and this conclusion can be supported by the relatively small number of ethics-related instances that have been reported during the past two years.

When we asked the Crown corporations, ministries and agencies in our study to comment on the three most important factors that they consider as critical in encouraging ethical behavior, Exhibit 2.9 shows the result.

This points out the obvious importance of role model leaders demonstrating good conduct, if good conduct is to be expected from others in the organization.

There is evidence that the government is committed to promoting ethical behavior in the public sector. In the report "Enhancing Accountability for Performance in the British Columbia Public Sector," jointly issued by the Auditor General and the Deputy Ministers' Council in 1995, certain key elements of government performance were identified, which included:

"legal compliance and fairness, equity and probity performance: government is responsible for complying with

Exhibit 2.9

Factors Critical in Encouraging Ethical Behaviour

	%
1. leadership example set by senior officials and/or members of the board	100
2. formal training program	67
3. promotion of ethical behavior as part of the staff development process	50

legislation and related authorities, and meeting standards of behavior in the conduct of its business. While achievement of results is important, the manner in which results are obtained is also important. The public expects the government to be fair and ethical in the delivery of its program."

The government has, during the past two years, been conducting a comprehensive review of standards of conduct for public servants and public agencies with the aim of updating and standardizing the approach for employees and directors in the public sector. The PSERC, in conjunction with ministry and employee representatives, has almost completed drafting a revised version of the *Public Service Act's* standards of conduct. In addition, the Attorney General's ministry has drafted "Guidelines for Conduct of Members of British Columbia Agencies, Boards and Commissions," which would be applicable to the board members of all BC public body boards, including agencies, boards, commissions, and Crown corporations. And the Crown Corporations Secretariat (CCS), the main government agency responsible for overseeing the government's major Crown corporations, has proposed an accountability framework which would provide guidance for the Crowns to follow when developing their mission, vision, and strategic planning, evaluating decisions, and reporting performance. These are very encouraging developments.

Other Jurisdiction References

Across Canada, there is a mixture of information available in the way of ethical guidance for ministry or departmental staffs, OIC appointees, and Crown corporations and agencies. About half of them have pertinent legislation, regulations or directives. The most noteworthy document which could beneficially be referred to in updating our Province's information is Ottawa's "Conflict of Interest and Post-Employment" guidelines. Contained within this document are Ottawa's rules regarding post-employment activities by certain categories of staff, with a one year time frame. Nova Scotia has similar guidelines, for a six month duration. BC has no similar limits on post employment activities by public servants.

In November 1995, the Canadian Institute of Chartered Accountants (CICA) issued a pronouncement, titled Guidance on Control. One of the key elements mentioned in this document was: "Shared ethical values, including integrity, should be established, communicated and practiced

throughout the organization." The following month, the CICA issued Guidance for Directors—Governance Processes for Control. This document stated that "the values of an organization affect everything it does; and these encompass ethical values." A key recommendation in this document, in addressing the responsibilities and structure of a board of directors, was that the board could strengthen itself through the creation of a committee with an appropriate mandate to carry out functions which by law may be delegated by the board and relate to the monitoring of the operation of a code of conduct and to reviewing related party transactions (i.e. a conduct committee).

In the United States, their federal government has a Code of Ethics for Government Service which articulates broad ethical guidelines for all government employees and office holders.

The United Kingdom has had a national study underway since 1994, called the Committee on Standards in Public Life, chaired by a Lord Nolan (and therefore referred to as the 'Nolan Committee'). Its purpose is to examine concerns about standards of conduct of all holders of public office. Its first report, in May 1995, provided 55 recommendations. A few of the more general ones, which are potentially pertinent in our jurisdiction are:

- the general principles of conduct which underpin public life need to be restated;
- all public bodies should draw up codes of conduct incorporating the principles;
- internal systems for maintaining standards should be supported by independent scrutiny; and
- more needs to be done to promote and reinforce standards of conduct in public bodies, in particular through guidance and training.

Ireland passed new legislation in 1995, titled the *Ethics in Public Office Act.* It provides for the disclosure of interests by public office holders, elected representatives, senior civil servants, special advisors and directors and senior managers in state companies. It also established an independent Public Offices Commission, which has a number of responsibilities, including the issuance of guidelines to those covered by the Act, receiving the statements of interests, and investigating complaints about possible breaches of the Act.

We also reviewed ethics-related information from Australia, New Zealand, and the OECD.

The OECD in particular has defined and promulgated what it refers to as an “ethics infrastructure.” That infrastructure is an interactive assembly of directions and processes to regulate against undesirable behavior and to provide incentives for good behavior (Exhibit 2.10). The eight key elements of OECD’s ethics infrastructure are:

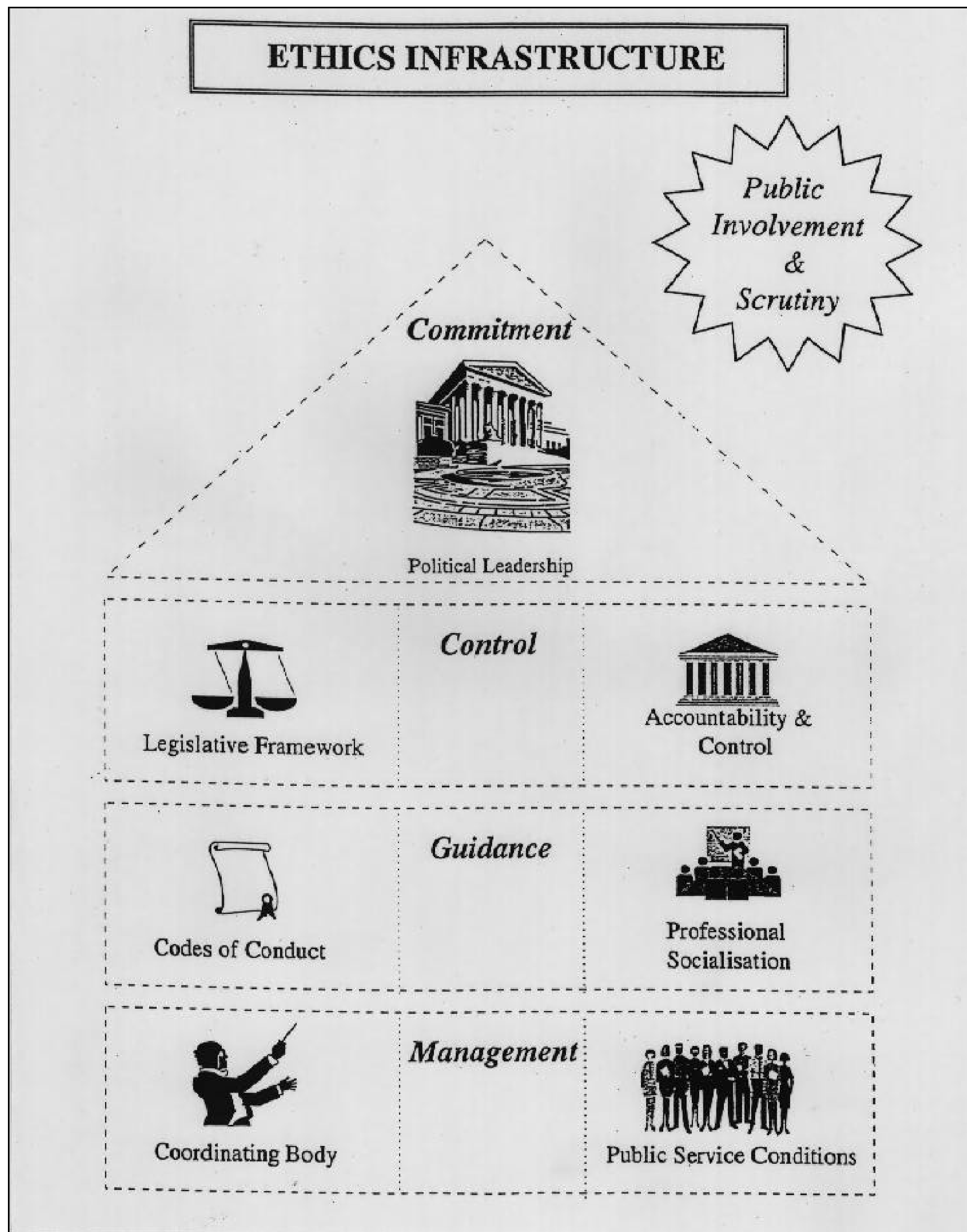
- political commitment (whereby politicians state that ethics are important, set an example, and support good conduct with adequate resources);
- effective legal framework (laws and regulations which set standards of behavior and provide for enforcing them);
- efficient accountability and control mechanisms (administrative procedures, audits, agency performance evaluations, consultation and oversight);
- workable codes of conduct (including a statement of values, roles, responsibilities, obligations, restrictions);
- professional socialization mechanisms (education and training)
- supportive public service conditions (fair and equitable treatment, appropriate pay and security);
- an ethics coordinating body; and
- an active civic society (including a probing media) to act as watchdog over government activities.

A final note, before we sum up with our study’s recommendations: there is a rapidly increasing amount of interest in the subject of ethics in our country and elsewhere. The number of studies available are vast in numbers, and the contact sources on the internet are in the thousands. Growing numbers of professionals are making themselves available to assist organizations with their ethical interests, including firms that have designated individuals who specialize in this field. Educators are providing ethics courses at universities, in business schools, as well as in the philosophy and religion departments. And independent organizations, involved in collecting, researching and disseminating ethics information, are expanding their presence.

A recent (1997) Business Ethics Survey, published by the firm KPMG Canada, found that managing for ethical practice is a matter of high interest for senior executives from 250 of Canada’s top public and private companies. 66% of the respondents reported having a code of ethics or conduct, and two-thirds of those with codes require a compliance sign-off. 40% of the respondents indicated that they had a senior level

Exhibit 2.10

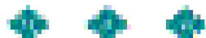
Ethics Infrastructure



Source: OECD, Ethics in the Public Service—Current Issues and Practice, 1996

manager whose role specifically includes implementation, monitoring or assurance of the ethics program (an ethics officer). Training in ethical decision-making and the application of codes of ethics were the areas with least support of the ethics issues addressed in the survey (which sounds similar to what we found in the BC public sector).

The Globe and Mail newspaper recently had an article entitled: Why the ethics business is booming! Obviously there is a need in society that is now being addressed.



recommendations

Based on our study of the government's* Public Service Act *standards of conduct, the guidelines related to standards of conduct in individual ministries, and the codes of ethics or conduct, or conflict of interest guidelines, in the 20 prominent Crown corporations and agencies in the Province, we consider that these are comparable to the ethical conduct codes in other governmental jurisdictions across Canada and elsewhere in the world. However, we are aware of certain ethical documentation that is in the process of being drafted or redrafted, both within the government and at certain of the Crown corporations and agencies, and during our study we made note of some aspects of the ethics codes that could be improved. Accordingly, we offer below some recommendations for consideration by the government and its related organizations concerning potential improvements to the ethical codes in the BC public sector.

1. ***The provincial government should take the lead in providing (through its central agencies such as PSERC and the CCS) at least the three following new aspects to improve the overall ethical environment for the BC public sector:***

   (a) a public service-wide statement of ethical values, which could be used as a guide by the individual organizations in the public sector, in combination with their own corporate values, for developing codes of ethics;

   (b) an ethics framework, or an infrastructure, as developed by the OECD, to make clear the context for maintaining and administering a code of ethics; and

   (c) training and updating programs for the public sector about the government's overall expectations regarding standards of conduct in the BC public sector, and the guidance and processes it expects organizations to have in place for this purpose.

2. ***The recently drafted ethical documents, Standards of Conduct update, and the Guidelines for Conduct of Members of British Columbia Agencies, Boards and Commissions, should be completed soon and published for use. Emerging issues, such as they relate to international business activities and public/private partnership arrangements, should be given attention in either these codes or guidelines, or in related policies.***

3. ***Each public sector organization should have a values statement and a code of ethics (may be called a code of***

conduct, conflict of interest guidelines, etc.) applicable to all employees and board members. Government ministries could continue to adopt the government's standards of conduct, or supplement those with their own codes, as some do now.

4. ***There should be a designated ethics officer in each organization, which may be the Deputy Minister, the Director of Human Resources, the Corporate Secretary, or some other individual, who is responsible for ethics administration in the organization, and who may be supported by an ethics committee of board members or some other group.***
5. ***Consideration should be given to having periodic confidential disclosures of interests and holdings by key public servants and officers at Crown corporations and agencies. One method of facilitating this would be to designate individuals as "public employees," pursuant to section 3 of the*** **Financial Disclosure Act.**
6. ***Consideration should be given to implementing post-employment limits on activities by certain key public servants of ministries and officers or directors at Crown corporations and agencies, by referencing the guidelines in place in Ottawa and Nova Scotia.***
7. ***Training in ethical subjects should be increased in all public sector organizations to sensitize individuals and heighten their awareness about the requirements of the ethics codes and about recent developments and dilemmas that have occurred in regard to them.***
8. ***Public accountability reporting about the existence of ethics codes and their usefulness to the organization should be considered by most public sector organizations to better inform the public about their existence and value.***
9. ***Consideration should be given to making the legislative requirements relating to the private sector, such as those applicable to the fiduciary duties of directors in the*** **Company Act,** ***applicable, as a minimum, to the directors of BC's Crown corporations and agencies.***
10. ***Consideration should be given to follow-ups about compliance with codes of ethics, possibly by way of periodic sign-offs as to adherence to the standards and expectations expressed within the codes.***

Supplement A

The Province's Government Ministries and 20 of the Government's Most Prominent Crown Corporations and Agencies

The Province's government ministries:

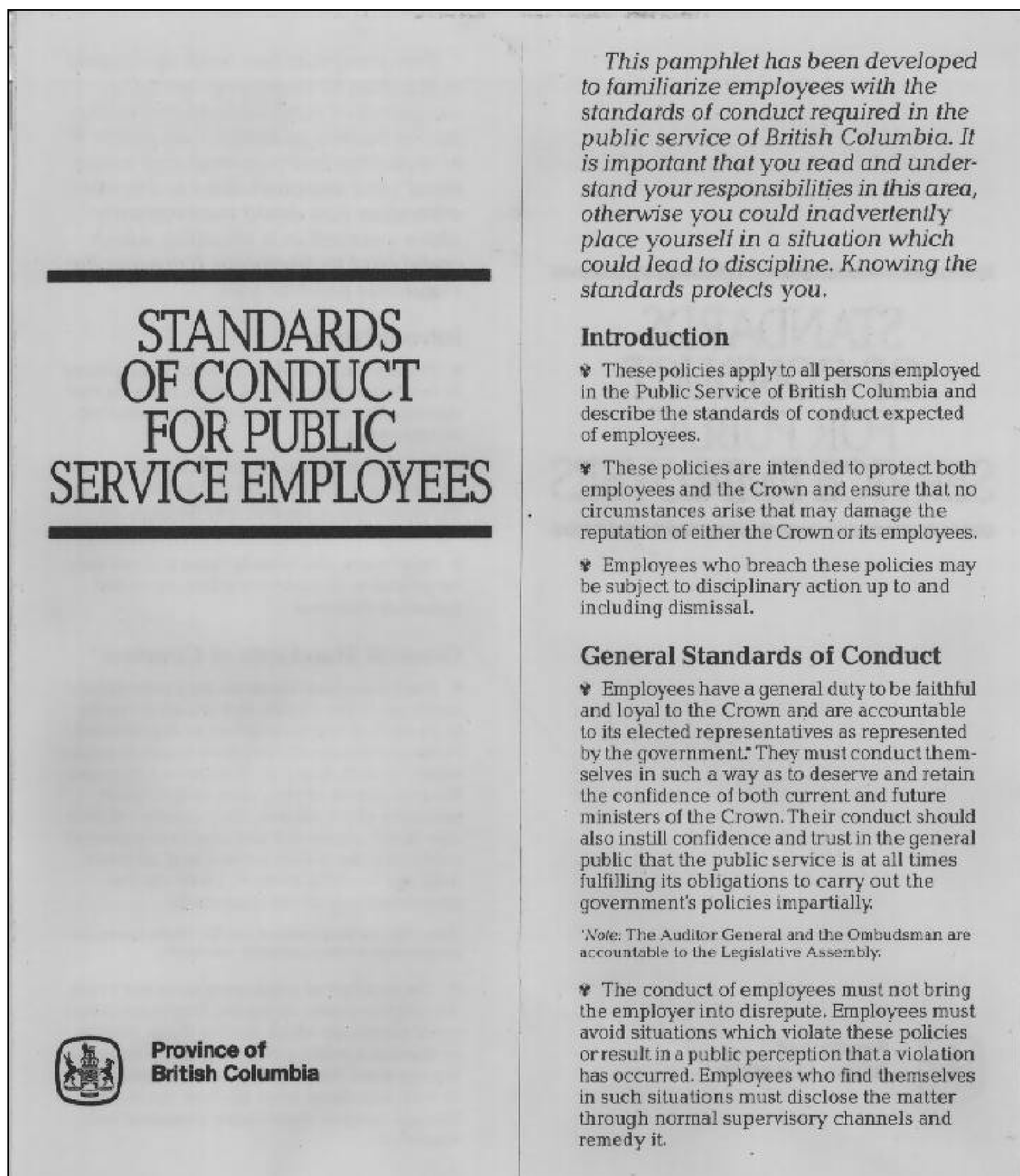
- Ministry of Aboriginal Affairs
- Ministry of Agriculture, Fisheries and Food
- Ministry of Attorney General and Ministry Responsible for Multiculturalism, Human Rights and Immigration
- Ministry for Children and Families
- Ministry of Education, Skills and Training
- Ministry of Employment and Investment
- Ministry of Environment, Lands and Parks
- Ministry of Finance and Corporate Relations and Ministry Responsible for Intergovernmental Relations
- Ministry of Forests
- Ministry of Health and Ministry Responsible for Seniors
- Ministry of Human Resources
- Ministry of Labour
- Ministry of Municipal Affairs and Housing
- Ministry of Small Business, Tourism and Culture
- Ministry of Transportation and Highways
- Ministry of Women's Equality

20 of the government's most prominent Crown corporations and agencies:

- B.C. Pavilion Corporation
- B.C. Transportation Financing Authority
- British Columbia Assessment Authority
- British Columbia Buildings Corporation
- British Columbia Ferry Corporation
- British Columbia Housing Management Commission
- British Columbia Hydro and Power Authority
- British Columbia Liquor Distribution Branch
- British Columbia Lottery Corporation
- British Columbia Railway Company
- British Columbia Rapid Transit Company Ltd.
- British Columbia Transit
- Columbia Power Corporation
- Duke Point Development Limited
- Forest Renewal B.C.
- Insurance Corporation of British Columbia
- Pacific National Exhibition
- Victoria Line Ltd.
- Science Council of B. C.
- Workers' Compensation Board of British Columbia

Supplement B

Standards of Conduct for Public Service Employees



STANDARDS OF CONDUCT FOR PUBLIC SERVICE EMPLOYEES

Province of British Columbia

This pamphlet has been developed to familiarize employees with the standards of conduct required in the public service of British Columbia. It is important that you read and understand your responsibilities in this area, otherwise you could inadvertently place yourself in a situation which could lead to discipline. Knowing the standards protects you.

Introduction

- These policies apply to all persons employed in the Public Service of British Columbia and describe the standards of conduct expected of employees.
- These policies are intended to protect both employees and the Crown and ensure that no circumstances arise that may damage the reputation of either the Crown or its employees.
- Employees who breach these policies may be subject to disciplinary action up to and including dismissal.

General Standards of Conduct

- Employees have a general duty to be faithful and loyal to the Crown and are accountable to its elected representatives as represented by the government.* They must conduct themselves in such a way as to deserve and retain the confidence of both current and future ministers of the Crown. Their conduct should also instill confidence and trust in the general public that the public service is at all times fulfilling its obligations to carry out the government's policies impartially.

*Note: The Auditor General and the Ombudsman are accountable to the Legislative Assembly.

- The conduct of employees must not bring the employer into disrepute. Employees must avoid situations which violate these policies or result in a public perception that a violation has occurred. Employees who find themselves in such situations must disclose the matter through normal supervisory channels and remedy it.

Conflicts of Interest

- The government recognizes the right of public service employees to be involved in activities as citizens of the community. However, employees must keep their role as private citizens separate and distinct from their responsibilities as public service employees and avoid conflict of interest situations.
- Conflicts of interest include situations:
  - where employees' private affairs or financial interests are in conflict with their duties, responsibilities and obligations or result in a public perception that a conflict exists;
  - which could impair or appear to impair the employees' abilities to act in the public interest; or,
  - where employees' actions would compromise or undermine the trust which the public places in the public service.

Compromising Situations

- Employees should not place themselves in situations where they are obligated to any person who might benefit from or seek to gain special consideration or favour. The honesty and impartiality of employees must be above suspicion.
- Employees have a responsibility to conduct themselves in a way that does not compromise the ability of the government to accomplish its mandate or undermine the public's confidence in the employees' ability to discharge their responsibilities properly.

Relationship of Job Responsibilities to the Employee's Private Affairs

- No conflict or public perception of conflict should exist between the private interests of employees and the discharge of their public service duties. Employees shall arrange their private affairs in a manner that will prevent any conflicts or perceived conflicts of interest from arising.
- Public service employees, when performing their official duties, shall not give preferential treatment to relatives or friends or to any organization in which they or their relatives have an interest, financial or otherwise.
- Employees shall exercise care in the management of their private affairs so as not to benefit, or be perceived by the public to benefit, from:
  - the use of information acquired solely by reason of their employment; or,
  - any government transactions which involve decisions over which they have influence, such as investments, borrowing, purchases, sales, contracts, grants, regulatory or discretionary approvals and appointments.
- Employees shall not use their position, office, government affiliation, or government information or property to pursue personal interests.

Gifts and Other Complimentary Items

- An employee shall not, either directly or indirectly, demand or accept a gift, favour or service from any individual, organization or corporation other than:
  - the normal exchange of hospitality between persons doing business together;
  - tokens exchanged as part of protocol;
  - the normal presentation of gifts to persons participating in public functions; or,
  - the normal exchange of gifts between friends.
- Employees are not to accept complimentary benefits, such as hospitality or gifts, from persons having dealings with the government when such a practice could compromise their objectivity or result in a public perception that their objectivity is compromised.
- Employees are not to solicit gifts or free services for employee-related leisure activities.

Confidentiality

- Employees are not to give out information received through their position or office which is not available to the general public unless prior authorization is given for its release.
- Where employees have reason to believe that there exists an alleged contravention of

the law, a waste of public funds or assets, or a danger to public health or safety, they shall bring the matter to the attention of the deputy minister, either directly or through normal ministry channels. Where this does not resolve the matter:

- ◇ allegations of illegal activities should be referred to the police;
- ◇ waste of public funds should be referred to the Auditor General;
- ◇ danger to public health and safety should be brought to the attention of health and public safety authorities (e.g. public health inspectors or fire departments);
- ◇ any job site safety concerns should be dealt with by established procedures, such as safety committee meetings.

Affidavits & Legal Opinions

❃ Employees should not sign affidavits relating to facts that have come to their knowledge in the course of their duties for use in court proceedings unless the affidavit has been prepared by a lawyer acting for the government in that proceeding or has been approved by a ministry solicitor in the Legal Services Branch.

❃ If the above policy impedes the resolution of a dispute between the employer and an employee, the matter should be referred to the Government Personnel Services Division.

❃ A written opinion prepared on behalf of government by legal counsel is not to be released to persons outside the public service without prior approval in writing from the Legal Services Branch.

Public Comments

❃ Employees are to avoid entering into public political debate or advocacy regarding their ministry's policies. This does not apply to those public service employees who are involved, as a proper part of their duties, in the presentation of government policies and decisions.

❃ In all other cases, particular caution is required when an employee makes any public comment under circumstances where his/her position could be seen to lend weight to the opinion expressed.

❃ Partisan politics at local, provincial or federal levels are not to be introduced into the workplace. This does not apply to informal private discussions among co-workers.

Outside Remuneration

❃ Employees may engage in employment with another employer, carry on a business, or receive public funds for personal activities outside their positions provided that:

- ◇ it does not interfere with the performance of their duties as public service employees;
- ◇ it does not bring the government into disrepute;
- ◇ it does not represent a conflict of interest as stated in these policies;
- ◇ they do not have an advantage derived from their employment as public service employees;
- ◇ it is not performed in such a way as to appear to be an official act or to represent government opinion or policy;
- ◇ it does not involve the use of government premises, services, equipment, information or supplies to which they have access by virtue of their public service employment.

❃ Employees appointed as directors or officers of Crown corporations shall not receive any additional remuneration for these duties except as approved by the Lieutenant Governor in Council.

Working Relationships

❃ Employees who are direct relatives or who share the same household shall not be employed in situations where:

- ◇ a reporting relationship exists where the superior has influence, input, or decision-making power over an employee's performance evaluation, salary, premiums, special permissions, potential for promotion, conditions of work, and similiar matters; or,
- ◇ the relationship affords an opportunity for collusion between the two employees which could have a detrimental effect on the employer.

❃ For purposes of these policies, a direct relative includes a spouse (including common-

law spouse), parent, grandparent, grandchild, brother, sister, son or daughter. A person married to one of the above (including a common-law spouse) is considered a direct relative only if that person is living in the same household.

- The policy on direct relatives may be waived where the deputy minister:
  - ◇ upon review, finds it essential to do so in order to meet operational needs; and,
  - ◇ is satisfied that sufficient safeguards are in place to ensure that the employer's interests are not compromised.
- Employees are not to participate in personnel decisions when their objectivity would be compromised for any reason. For example, public service employees shall not participate in staffing actions involving direct relatives, persons married to direct relatives, or persons living in the same household.

Workplace Behaviour

- The conduct and language of public service employees in the workplace are to meet acceptable social standards.
- Employees, in dealing with other persons in the workplace, are to treat them with respect and dignity and to refrain from exploiting a work relationship for private advantage or benefit.
- Employees are not to engage in sexual harassment or other forms of personal harassment. The Canadian Human Rights Commission considers harassment to include:
  - ◇ verbal abuse or threats;
  - ◇ unwelcome remarks, jokes, innuendo or taunting about a person's body, attire, age, marital status, ethnic or religious origins;
  - ◇ displaying offensive or derogatory pictures;
  - ◇ practical jokes which cause awkwardness or embarrassment;
  - ◇ unwelcome invitations or requests;
  - ◇ leering or other gestures;
  - ◇ condescension or paternalism which undermine self-respect;
  - ◇ unnecessary physical contact.
- Sexual harassment is any unwelcome comment or conduct of a sexual nature that may detrimentally affect the work environment or lead to adverse job-related consequences for the victim of the harassment. Sexual harassment includes, but is not limited to:
  - ◇ unwanted physical contact;
  - ◇ sexual advances;
  - ◇ requests for sexual favours;
  - ◇ suggestive or offensive comments or gestures emphasizing sexuality, sexual identity, or sexual orientation.

To Sum Up

- Employees in the public service are accountable for:
  - ◇ disclosing and resolving all personal situations that may constitute, or in the public's perception constitute, a breach of these standards of conduct policies;
  - ◇ obtaining authorization from an appropriate source prior to releasing information which may be confidential;
  - ◇ checking with their supervisors when the appropriateness of receiving outside remuneration is unclear;
  - ◇ trying to resolve issues or concerns through normal ministry channels prior to referring the matter to outside agencies as detailed in these policies.

If you have any questions or concerns regarding your particular situation, you are encouraged to contact your supervisor or personnel office for advice and assistance.

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Supplement C

Terms Used In This Report

In this study we often use the terms "ethics codes" and "codes of ethics." Use of these general terms is intended to also relate to the 'codes of conduct,' 'conflict of interest guidelines,' and other, similarly-named documents in place in BC government public sector organizations.

Code of ethics (or conduct) – a statement of policy or guidelines established to help resolve legal and ethical dilemmas. The code outlines and publicizes the boundaries of behavior for employees or directors who act on behalf of the organization, and informs service recipients, suppliers and stakeholders of the standards of conduct the organization holds itself to. The code will often include a statement of the organization's values and principles of conduct, along with explanations or illustrations of how the principles are intended to be applied in practice. It is important that the code be comprehensive in scope, yet practical in application.

Conflict of interest – a situation where a person in a position to give effect to an official decision of an organization has a personal or pecuniary interest in the outcome of the decision.

Directors – members appointed to the board of a Crown corporation or agency, including its Chair.

Employees – all employees and appointees of a government ministry, including the Deputy Minister; all employees of a Crown corporation or agency, including its President and other officers; and individuals under contract to provide services to a ministry, Crown corporation or agency.

Ethics – moral standards in the public sector, or the application of values to behavior and action. "Values" are the ideals, beliefs and attitudes held by an individual or organization, which underlie all personal, societal, political, environmental and other relationships. Ethics encompass what persons ought or ought not to do in given circumstances.

Ethics committee – a group of employees or directors with responsibility to evaluate and promote an organization's ethical standards and resolve ethical issues.

Ethics officer – a senior level individual who has training and experience in assessing ethical questions, and who devotes a substantial amount of time to addressing ethics issues, including implementation, monitoring and assurance about the ethics program of the organization. The officer serves as an advisor and a mediator for individuals facing ethical dilemmas.

Illegal acts – actions, including fraud and theft, which contravene the law concerning criminal offenses (the Criminal Code). Public sector organizations are established under law, and have as one of their chief roles the administration and upholding of the laws of the Province and Canada.

When studying ethical conduct, it is useful to note the distinction between behaviors: illegal, is against the law which covers criminal offenses; unethical, is against ethical values, principles or guidelines; and inappropriate, is against normal convention or practice.

Supplement D

Relevant Legislative and Related Authorities

Public Service Act: Section 5 of this statute provides for the establishment of a Public Service Employee Relations Commission (PSERC), and the appointment of a Commissioner, whose responsibilities include: advising the minister (of Finance and Corporate Relations) respecting personnel policies, standards, regulations and procedures; and providing direction, advice or assistance to ministries in the conduct of these matters.

- Section 21 requires persons appointed to the public service pursuant to the requirements of the Act to swear or affirm an oath in a prescribed form.
- Section 25 makes provision for a number of types of regulations to be made, including those with respect to standards of employee conduct.

Public Service Act Directive, "Standards of Conduct": This ministerial directive, issued in March 1987, sets out the policies that apply to all persons employed in the BC public service, and describes the standards of conduct expected of those employees. It is located in the Government's Personnel Management Policies and Procedures manual, section 1.3.

Company Act: Section 142 requires directors of a company, to which this BC statute applies, to act honestly, in good faith, and in the best interests of the company, and to exercise the care, diligence, and skill of a reasonably prudent person.

- Section 144 requires every director who has interests in a proposed contract or transaction with the company to disclose the nature and extent of the interest at a meeting of the directors.
- Section 147 requires every director of a company to disclose, at a meeting of the directors of the company, the nature and extent of any other office or property holding that might directly or indirectly create a conflict of interest with the duty or interest as a director of the company.
- Section 161 requires every officer of a company to disclose, in writing, to the president of the company, the nature and extent of any other duties or interests that might directly or indirectly create a conflict with the officer's duties or interests at the company.

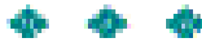
Financial Disclosure Act: Section 3 of this Act provides for written disclosures to be made by public employees of their shareholdings, earnings, debts, and landholdings in BC. However, this section applies only to those "public employees" of the government, boards, agencies or commissions who may have been designated by the Lieutenant Governor in Council; and to date, no such designations have ever been made since this Act was proclaimed in 1974.

Financial Administration Act: Sections 38 and 60 deal with the custody, control and loss of public money and property; and section 10.10 of the Financial Administration Operating Policy manual provides policies and procedures related to loss of public assets.

Crown corporation legislation: *The Hydro and Power Authority Act*, in its section 7, states that no director shall hold, acquire or have any interest in securities, assets, or contracts relating to the supply of power or constructing of a power plant.

Members' Conflict of Interest Act: This legislation relates only to Members of the BC Legislative Assembly or the Executive Council (the Cabinet). The Act provides for confidential, annual disclosure statements by every Member, a Commissioner to review the disclosures and other information, a public disclosure statement containing relevant information provided by the Members, and an annual report of the activities of the Commissioner's office.

***Criminal Code* (of Canada):** Part IV of the Code, which deals with offenses against the administration of law and justice, makes clear reference to government officials and employees, in its sections 118 to 125. Sections 121 and 122 in particular deal with instances of receiving or demanding benefits, fraud and breach of trust, and the related penalties for such indictable offenses.



response of the public service employee relations commission

The Public Service Employee Relations Commission welcomes the review by the Auditor General of the standards of conduct and ethical guidelines for the public service in British Columbia. The Commission concurs that a multi-faceted approach is required to strengthen the ethical framework and accountability for responsible behaviour in government.

Your report confirms that the Commission's efforts to establish an ethical framework for public service employees in British Columbia compare favourably with other jurisdictions. As the complexity of government increases, government employees are called upon to exercise greater discretionary power in the decision making process of government. Public service employees must adhere to the highest standards of conduct in the performance of their duties in order to maintain public confidence and trust in our system of government.

The standards of conduct directive has recently been revised to expand and clarify the responsibilities of employees to reflect the changing nature of the public administration environment and ensure that public expectations of ethical standards are met.

These changes include:

- *placing a stronger onus on employees to understand and comply with the policy which contains a clearer definition of conflict of interest, a requirement to disclose conflict and the consequences of conflict;*
- *emphasizing the requirement for impartiality in public comments and political activities to clearly separate them from activities related to employment;*
- *requiring that non-disclosure of confidential information inside and outside of government continues to apply after the employment relationship ceases; and*
- *enhancing criteria in the new discrimination and harassment policy for appropriate workplace behaviour.*

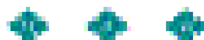
In conjunction with the revised standards of conduct, the Commission is reviewing its policy related to communicating these revisions to public service employees by:

- *revising procedures for administering the Oath of Employment to ensure new employees entering the public service understand the link between the oath and the overriding principles of loyalty, conduct and allegiance upon which the standards of conduct are based;*

- *requiring periodic reaffirmation by each public service employee on their understanding and commitment to the standards of conduct;*
- *clarifying the process for employees who seek guidance and assistance through designated ministry contact and a contact person within the Commission for employees who have questions about its interpretation;*
- *incorporating ethics training and orientation of public service employees into the core curriculum of our Employee Learning Services Program; and*
- *supporting ministries and agencies whose employees are covered by the Public Service Act to build upon these standards of conduct to reflect specific ethical issues which affect them in their operations.*

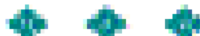
The public has a right to expect high standards of ethical conduct from public service employees. Decisions and actions by those who have been entrusted with public administration must be impartial, objective and beyond reproach.

The Commission will continue to maintain and promote a sound ethical framework upon which public service employees can build and maintain the highest standard of service to the public in British Columbia.



response of the crown corporations secretariat

No response received.



status of public accounts committee recommendations relating to prior years' audits

table of contents

Introduction 113
Special Warrants 115
Government Employee Numbers 116
Home Support Services 118
Environmental Tire Levy 121
Safeguarding Moveable Physical Assets: Public Sector Survey 122
Consumer Protection Act–Income Tax Refund Discounts 125
Financial Administration Act Part 4: Follow-up 126
Elevating Devices Safety Act 127
Travel Agents Act 130
Financial Administration Act: Guarantees and Indemnities .132
Land Tax Deferment Act 135
Statutory Tabling Requirements 137
Safeguarding Moveable Physical Assets 141
Treatment of Unclaimed Money 145
Compliance with the *Financial Disclosure Act* 148
Order-in-Council Appointments 150
Compliance with *Financial Information Act*, Regulation, and Directive 151
Summary of Audit Reports and Related Recommendations .152

status of public accounts committee recommendations relating to prior years' audits

Introduction

In each of our audit reports we provide comments and recommendations, most of which are subsequently endorsed by the Select Standing Committee on Public Accounts and adopted as recommendations for its reports to the Legislative Assembly. It is useful for the Committee and the public to be advised periodically of the status of implementation of these recommendations.

This section provides the text of each of the Committee's recommendations, relating to prior years' compliance-with-authorities audits, that have not been implemented. In March 1997 we obtained from ministries, for publication, updated responses as to the status of implementation of the Committee's recommendations. We rely on Deputy Minister representations, amendments to authorities, and detailed information from government officials when we comment on whether or not recommendations have been implemented.

The following section therefore includes the Committee's outstanding recommendations, the ministries' latest responses, and our comments thereon, for audits since 1991:

- Special Warrants
- Government Employee Numbers
- Home Support Services
- Environmental Tire Levy
- Safeguarding Moveable Physical Assets: Public Sector Survey
- *Consumer Protection Act*–Income Tax Refund Discounts
- *Financial Administration Act,* Part 4: Follow-up
- *Elevating Devices Safety Act*
- *Travel Agents Act*
- *Financial Administration Act: Guarantees and Indemnities*
- *Land Tax Deferment Act*
- Statutory Tabling Requirements
- Safeguarding Moveable Physical Assets

- Treatment of Unclaimed Money
- *Compliance with the Financial Disclosure Act*
- Order–in–Council Appointments
- *Compliance with the Financial Information Act,* Regulation, and Directive

For a complete listing of the compliance-with-authorities audits, reviews and studies reported on since 1991, see the table at the end of this section. It provides an indication of whether the recommendations from each report were endorsed by the Public Accounts Committee and the extent to which the recommendations have been implemented.

special warrants
(auditor general 1995/96 report 5, june 1996)

Recommendations of the Select Standing Committee on Public Accounts, May 1997 Report

In July 1993, the Committee had recommended that the Minister of Finance and Corporate Relations conduct a review of the interpretation and application of section 21 (i.e. special warrants) of the* Financial Administration Act *and present amendments to the Legislative Assembly that will address the concerns expressed by the Auditor General in his June 1992 Annual Report.

The Committee, at its December 2, 1996 meeting, again discussed this issue and decided that the Chair and Deputy Chair should develop a recommendation to bring forward to the Committee. In its May 1997 report, the Committee stated that no consensus was arrived at to deal with this subject.

The Auditor General's Recommendations

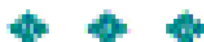
The Auditor General has recommended that reform of the special warrants authority take place. Amendment of the statutory authority for special warrants should give full recognition to the rights of Members of the Legislative Assembly in granting government the authority to spend public money.

Response of the Ministry of Finance and Corporate Relations

A current response as to the status of Public Accounts Committee recommendations was not requested from the Ministry because the Committee has not yet developed a current recommendation on this subject.

Comment by the Office of the Auditor General on the Response of the Ministry

None applicable at this time.



government employee numbers
(auditor general 1995/96 report 5, june 1996)

Recommendations of the Select Standing Committee on Public Accounts, May 1997 Report

At its November 21, 1996 meeting, the Committee endorsed the recommendations contained in the report "Government Employee Numbers," that:

- ***The government report the actual FTEs used as soon as possible after the year end, and also in the Public Accounts for each year;***
- ***The reporting of actual FTEs used be at the same level of detail as the reporting of FTEs authorized;***
- ***The FTEs reported in the Estimates correspond to the employees whose salaries are reported in the Estimates; and***
- ***The government account for and publish authorized and utilized FTE numbers for the whole of government, not just for central government.***

In its May 1997 report to the Legislative Assembly, the Committee chose not to include these recommendations, but rather recommended that:

It is the Committee's opinion that the amount of money provided to each program is a more important and relevant benchmark than stating how many employees are on the payroll but that the FTE count should not be eliminated until a full accounting regime is implemented.

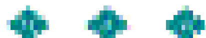
Response of the Ministry of Finance and Corporate Relations

FTEs have been used by government as a control mechanism in the budgeting and allocation of resources as well as using the resulting total count as a proxy measure for government's size.

The Auditor General's recommendations have been given full consideration as government reviews its use of FTEs for both of these purposes. Changes are anticipated in the 1997/98 fiscal year.

Comment by the Office of the Auditor General on the Response of the Ministry

We are pleased that government has considered our recommendations in its review of the use of FTEs, and look forward to seeing what the anticipated changes in the 1997/98 fiscal year will be.



home support services
(auditor general 1995/96 report 3, february 1996)

Recommendations of the Select Standing Committee on Public Accounts, August 1996 Report

Resolved, that the Committee endorse the recommendations of the Auditor General in respect of the section of Report 3 entitled, "Home Support Services."

The Auditor General's Recommendations

Recommendations for the Ministry of Health

We recommend that the Ministry of Health:

- ***Remind Case Managers of the need to determine and record whether home support service applicants meet the provincial residency requirement.***
- ***Develop and implement policy to verify this and the other eligibility criteria; which might be as simple as recording the provincial care card number, and verifying that it is valid and determining when it was issued.***
- ***Either complete development of new criteria concerning the annual reassessment review of clients, or else ensure compliance with existing policy requiring annual reassessment reviews.***
- ***Develop and implement policy concerning the verification of the reason for being exempt from income assessment. This might be done most easily by sharing information with other government departments, after ensuring that appropriate safeguards and approvals have been obtained.***
- ***Ensure compliance with existing policy requirements to update income assessments on an annual basis. The ministry should also have clerical staff periodically check the calculation of the fees to be charged to clients.***
- ***Scrutinize the instances where the hours billed exceed the authorization. We recommend that the ministry consider stopping payment on those billings where the hours have exceeded the authorization by up to 25% more than four times in the year, until a new authorization is received.***
- ***Consider verifying the delivery of service, by inspecting time sheets or checking with clients, on a random or test basis.***

- ***Consider the bonding of home support agencies, and criminal record checks of home support workers providing services to vulnerable adults.***

Recommendations for the Ministry for Children and Families

We recommend that the Ministry for Children and Families:

- ***(Implemented) Consider revising its policy of monthly reassessment of need to coincide with the length of time for which an authorization can be given.***
- ***(Implemented) Develop guidance, perhaps by way of examples, of when home support is the appropriate response to a client's need.***
- ***(Implemented) Remind line workers that documentation needs to be inspected to verify income, as is routinely done in most other programs of the ministry.***
- ***(Implemented) Remind staff of the policy requirement to obtain approval for service extensions over three months for Income Assistance and Family and Child Service clients.***
- ***Consider verifying the delivery of service, by inspecting time sheets or checking with clients, on a random or test basis. This might usefully be coordinated with the Ministry of Health.***
- ***Develop and implement policy concerning the assessment of the home support agencies from which it purchases services.***
- ***Consider the bonding of home support agencies, and criminal record checks of home support workers providing services to vulnerable adults.***

Response of the Ministry of Health

The Ministry's 1995/96 response indicated that steps were either in process or being contemplated to address the concerns identified by the Auditor General.

At the present time, the Ministry is planning the introduction of a new system of setting user fees, effective May 1, 1997. This system will automatically obtain information on client income from Revenue Canada, and will recalculate fees every twelve months based on the latest information. New automated processes are also in place to verify reasons for exemption from user fees, including receipt of Guaranteed Income Supplement. This system and related regulation, policy, and procedures address all concerns regarding the appropriateness and accuracy of client user fees.

The Ministry also reminded staff of the need to record the data of residency for all clients, and plans to make this field mandatory for completion when a revised form and data entry process are completed. A revised policy identifying priorities for review and reassessment is also in draft form.

Response of the Ministry for Children and Families

The report contained seven recommendations, which can be considered in two main categories. The first four recommendations in the report dealt with required revisions to ministry policy and steps to improve compliance with it. Much of this work was completed prior to the establishment of the Ministry for Children and Families. I can confirm that the recommendations for the revision of policy have now all been completed.

The Ministry for Children and Families agrees with the three remaining recommendations in your report. Policies and procedures for the inspection of time sheets and verification with clients that they have received the appropriate services will be issued before the end of the fiscal year.

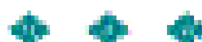
The ministry has initiated a consultation process to work with the Executive Directors of the three associations, the BC Association of Continuing Care, BC Pri-Care, and BC Health Association, to develop and implement a policy for the assessment of home support agencies and the services which are purchased from them.

The Ministry for Children and Families agrees that all staff of home support agencies should have criminal record checks completed before they provide services to either children or vulnerable adults. The ministry will be issuing policy before the end of the fiscal year requiring that all care givers have completed criminal record checks and are bonded.

Comment by the Office of the Auditor General on the Responses of the Ministries

We are pleased to see the progress the Ministry of Health is making, and we will continue to monitor the implementation of these recommendations.

We are pleased that the Ministry for Children and Families has accepted our recommendations, that the first four recommendations have been implemented, and that implementation of the remaining three is in process.



environmental tire levy

(auditor general 1995/96 report 3, february 1996)

Recommendations of the Select Standing Committee on Public Accounts, May 1997 Report

The Committee endorses the two recommendations of the Auditor General contained in the report "Environmental Tire Levy" and recommends that they be adopted and implemented.

The Auditor General's Recommendations

We recommend that:

- ***(Implemented) An additional $250,000 of tire levies be transferred from the Social Service Tax account to the Sustainable Environment Fund account to correct the administrative error made in the 1994/95 fiscal year.***
- ***(Implemented) The Ministry of Environment, Lands and Parks consolidate its tire program information and clarify the intended purpose for the tire levy collections, in its public information packages.***

Response of the Ministry of Environment, Lands and Parks

The ministry is pleased that the Minister of Finance and Corporate Relations transferred an additional $250,000 from the Social Service Tax account to the Sustainable Environment Fund (SEF) in the 1995/96 fiscal year.

The ministry consolidated its tire information in the form of a "SEF Fact Sheet" that has been available to the public since the spring of 1996.

Comment by the Office of the Auditor General on the Response of the Ministry

We are pleased that the Ministry has implemented both recommendations.

safeguarding moveable physical assets: public sector survey

(auditor general 1995/96 report 3, february 1996)

Recommendations of the Select Standing Committee on Public Accounts, May 1997 Report

Resolved, that the Committee endorses the four recommendations of the Auditor General contained in the report "Safeguarding Moveable Physical Assets: Public Sector Survey" and recommends that they be adopted and implemented.

The Auditor General's Recommendations

Crown Corporations

(Implemented) We recommend that the Comptroller General issue guidelines for moveable physical asset safeguarding systems for all Crown corporations whose financial information is published in the Public Accounts of the province. Essential to the guidelines would be the establishment of minimum and uniform standards for information and procedures to be included in the systems, and in particular, the requirement to periodically count moveable physical assets and reconcile the counts to the Crown corporation asset records.

Hospitals

We recommend that the Ministry of Health remind hospitals of the requirement to maintain fixed asset subledgers for all assets costing in excess of $1,000; and we further recommend that the ministry conduct follow-up procedures to ensure that hospitals maintain such records, and use them to help safeguard their moveable physical assets. This would be achieved by the establishment of minimum and uniform standards for information and procedures to be included in the systems, and in particular, the requirement to periodically count moveable physical assets and reconcile the counts to the hospital asset records.

School Districts

(Implemented) We recommend that the Ministry of Education require school districts to establish moveable

physical asset safeguarding systems. The requirement should establish minimum and uniform standards for information and procedures to be included in the systems, and in particular, require periodic counts of moveable physical assets and their reconciliation to the school district asset records.

Colleges, Universities, and Institutes

(Implemented) We recommend that the Ministry of Skills, Training and Labour require colleges, universities, and institutes to establish moveable physical asset safeguarding systems. The requirement should establish minimum and uniform standards for information and procedures to be included in the systems, and in particular, require periodic counts of moveable physical assets and their reconciliation to the college, university or institute asset records.

Comptroller General Letter

The Comptroller General issued a letter dated January 16, 1996 to all Senior Financial Officers of the government's ministries advising them to provide specific guidance to all public sector entities for which they are responsible, to ensure compliance with the government's policies on safeguarding moveable physical assets. The letter also requested the Senior Financial Officers to confirm, by March 31, 1996, that all entities have been advised of government policy, and are complying with it.

Response of the Ministry of Finance and Corporate Relations

The ministries which have responsibility for the organizations that form part of the government's reporting entity have responded to the Comptroller General's letter. The responses confirm that each organization has been given clear guidelines for managing moveable physical assets.

Response of the Ministry of Education, Skills and Training

The Ministry has written to the secretary treasurer of each school district, and the bursar of each post secondary institution, outlining the requirement that minimum and uniform standards for information and procedures for the safeguarding of physical assets be established, and that periodic counts of such assets be taken and reconciled to the asset records. The Ministry provided a copy of the summary written by the Office of the Comptroller General on Minimum Uniform Standards for Safeguarding Moveable Physical Assets. The Ministry also suggested that this information be shared with the external auditors of these

institutions for their consideration in planning audits of the institution.

Response of the Ministry of Health

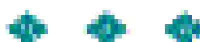
The Ministry's initial response to the Office of the Auditor General's recommendation noted that, as part of the Ministry's regionalization process, most hospitals would be amalgamating with Regional Health Boards or Community Health Councils. Once the Province's policy on capital assets had been finalized, the Ministry would be working with the Regional Boards and Councils on implementing the recommendations.

Subsequent to the response, the Minister of Health delayed regionalization until a Province-wide study of the process could be completed. During this period, most work on regionalization-related issues was deferred. As well, the Province has only recently established capitalization thresholds for their own financial statements.

The Ministry has now restarted the regionalization process and will work to incorporate the above issues as the process proceeds.

Comment by the Office of the Auditor General on the Responses of the Ministries

We are pleased to see the progress made in providing guidelines to funded organizations for managing, including safeguarding, their moveable physical assets, and consider three of the four recommendations to have been implemented.



consumer protection act –income tax refund discounts

(auditor general 1995/96 report 3, february 1996)

Recommendations of the Select Standing Committee on Public Accounts, May 1997 Report

Your Committee endorses the recommendations contained in the report "*Consumer Protection Act *– Income Tax Refund Discounts" that the Ministry of Housing, Recreation and Consumer Services:

- ***periodically obtain assurance from the federal department responsible for the* Tax Rebate Discounting Act *as to the extent of their monitoring of tax discounters operating in British Columbia and the degree to which they are complying with that legislation.***
- ***have legislative counsel consider and recommend the most appropriate action that might be taken with regard to Section 37 of the* Consumer Protection Act *and its related regulation, given that this legislation is not being followed by the industry nor enforced by the ministry.***

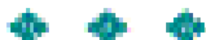
Response of the Ministry of Attorney General

The responsibility for the *Federal Act* has now been transferred from Industry Canada to Revenue Canada. A letter is being sent to the responsible official identifying our need for this information.

Legislative Counsel has recommended the repeal of section 37 of the *Consumer Protection Act.* Due to more urgent priorities it is unlikely that this will be included in the 1997/98 legislative calendar.

Comment by the Office of the Auditor General on the Response of the Ministry

We are pleased that some progress has been made towards implementing the recommendations.



financial administration act part 4: follow-up
(auditor general 1995/96 report 3, february 1996)

Recommendations of the Select Standing Committee on Public Accounts, May 1997 Report

That the government initiate a comprehensive review to update the* Financial Administration Act *as soon as possible, contained in the report* "Financial Administration Act *Part 4: Follow-up" be adopted and implemented.

(Discussion of the Auditor General's other recommendation, relating to special warrants, was deferred for consideration until the Committee discussed the Auditor General's 1995/96: Report 5, which dealt more extensively with the subject of Special Warrants. No Committee recommendations came out of that discussion.)

Response of the Ministry of Finance and Corporate Relations

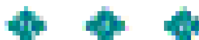
We agree that a comprehensive review and rewrite of the *Financial Administration Act* is needed. This is a significant undertaking that will require the dedication of some resources which are not readily available.

The task entails a considerable amount of consultation not only with government ministries, but also public sector organizations which may be affected by any changes.

In addition, government is developing a new accountability framework which may have some effect on the wording used in a revised act. This work is still in its early stages.

Comment by the Office of the Auditor General on the Response of the Ministry

We are pleased that the Ministry agrees with the recommendation and look forward to resources being made available to perform the review of the Act.



elevating devices safety act
(auditor general 1994/95 report 5, may 1996)

Recommendations of the Select Standing Committee on Public Accounts, July 1995 Report

Your Committee recommends that the recommendations contained in the report* "Elevating Devices Safety Act" *be adopted and implemented.

The Auditor General's Recommendations

To improve compliance with the* Elevating Devices Safety Act *and regulation, the Office of the Auditor General recommends, that:

- ***The Boiler and Elevator Safety Branch develop procedures for following up with owners who have not notified it, as required by the legislation, to ensure that directions have been carried out.***
- ***The Branch follow up with owners on a timely basis to enforce their legal responsibility to have tests of safety gear performed, and to report the results to the Branch.***
- ***(Implemented) The Branch document more thoroughly the assessments carried out in appraising an applicant for a contractor's licence.***
- ***Contractors be required to certify on their licence renewal applications that they still meet the necessary qualifications to be licenced.***
- ***(Implemented) The Branch reinforce with owners of amusement rides the legal requirement for reporting accidents within specified time periods.***

To improve operational effectiveness of the Boiler and Elevator Safety Branch, the Office of the Auditor General recommends, that:

- ***The Ministry of Municipal Affairs discuss with municipalities the possibility of having them either require a copy of the acceptance inspection certificate before issuing a certificate of occupancy, or inform the Branch when a permit is issued for a building that contains an elevating device.***

- ***(Implemented) As part of the acceptance inspection, the Branch require some form of written assurance from the contractor that the device has been constructed in accordance with the Act, regulation and safety codes.***
- ***(Implemented) The Branch require an affidavit that the safety tests required by the regulation are up-to-date before it renews the annual certificate to operate.***
- ***(Implemented) The Branch update its records to reflect the correct operational status of amusement rides and construction hoists.***
- ***(Implemented) The Branch draw up a checklist to document the minimum important procedures that must be performed during an inspection.***
- ***The Branch develop procedures to ensure that the information in the risk assessment program database, used by the inspectors to priorize their work, is up–to–date and accurate.***

To provide useful, new legislative authorities relating to elevating devices, the Office of the Auditor General recommends, that:

- ***The maximum permissible interval between inspections of elevating devices be specified in the regulation or policies.***
- ***(Implemented) The Act and regulation be amended to require mandatory maintenance for elevating devices, and that confirmation of completed maintenance be reported to the Branch.***

Subsequent Committee Discussion

The Committee questioned ministry representatives, on October 23, 1996, about the status of implementation of these recommendations.

Response of the Ministry of Municipal Affairs and Housing

The 3rd, 5th, 7th, 8th, 9th, 10th and 13th recommendations have been completed as per minutes of Public Accounts Committee Meeting October 23, 1996

Recommendation – Overdue Directives

Shows steady progress through regular meetings with major elevator contractors. The Branch will continue to work diligently on this issue.

Recommendation – Overdue Safety Gear Tests

They have been reduced by 74% since August 1994 and, again, the Branch is working monthly with the remaining contractors to eliminate overdues completely by October 1997.

Recommendation – Contractor's License Renewal

Audits are now ongoing at renewal date based upon risk assessment criteria. This will be an ongoing process.

Recommendation – Copy of Acceptance Inspection Certificate to Municipalities

This has been delayed due to lack of resources but will be fully implemented in fiscal year 1997/98 with the introduction of updated computer software.

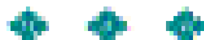
Recommendation – Risk Assessment Score Accuracy; and Periodic Inspection Interval in Act and Regulations

This will be addressed with consulting assistance as funding is made available in new 1997/98 fiscal year.

The Branch 1997/98 Business Plan incorporates performance measurements which will enable management to better monitor the performance of the Branch. Rest assured that British Columbia enjoys one of the safest environments in North America in the area of elevating devices transportation and the Ministry will continue this focus on quality assurance in the interests of public safety.

Comment by the Office of the Auditor General on the Response of the Ministry

We are pleased to see that seven of the recommendations have been implemented and that implementation of the remaining six is in process.



travel agents act
(auditor general 1994/95 report 5, may 1996)

Recommendations of the Select Standing Committee on Public Accounts, July 1995 Report

Your Committee recommends that the recommendations contained in the report* "Travel Agents Act" *be adopted and implemented.

The Auditor General's Recommendations

The Office of the Auditor General recommends, that:

- ***(Implemented) The Branch either use the form of application prescribed by regulation, or obtain legislative approval for the form in current use.***
- ***(Implemented) In cases where a travel agent has not provided an undertaking to meet the net worth and working capital requirements, registration be withheld.***
- ***(Implemented) The Branch remind travel agents of the legislative requirement to display their registration certificate, and to return the certificate when the registration is canceled.***
- ***(Implemented) The Branch periodically monitor advertisements, business directories, and the like, and conduct any other appropriate procedures to ensure that all travel businesses are registered if they are not a type exempted by the Act.***
- ***(Implemented) The Branch consider establishing formal arrangements to exchange information with other government and industry agents such as municipal business licencing departments.***
- ***(Implemented) The Branch take steps to ensure compliance with the following requirements; specifically, that travel agents:***
  - ***file financial statements within 90 days;***
  - ***have financial statements certified by the owners or directors;***
  - ***maintain the net worth and working capital required by the Branch; and***
  - ***pay the annual licence fee on time.***

- ***(Implemented) The Branch consider what steps it might take to determine whether travel agents are operating their trust accounts as required and, if necessary, what steps it might take to ensure compliance.***
- ***(Implemented) The inspection program be expanded to include the Greater Victoria and Greater Vancouver areas, and that it include a review of the operations of the trust accounts.***
- ***(Implemented) The Travel Agents Act be amended to provide the Branch the legal authority to levy fines or administration charges or, alternatively, that the Branch obtain the necessary authority, as required by the* Financial Administration Act*, to levy these fines and charges.***
- ***(Implemented) Interest be charged on amounts owing to the Province in accordance with the rate prescribed under the* Financial Administration Act*.***
- ***(Implemented) The Branch comply with the* Financial Administration Act *when waiving amounts owing to the Province.***
- ***(Implemented) The Travel Assurance Board bring its overdue filing of annual reports up to date, in accordance with the requirements of the Act.***

Subsequent Committee Discussion

The Committee questioned ministry representatives, on October 23, 1996, about the status of implementation of these recommendations.

Response of the Ministry of Attorney General

The Branch monitors compliance with sections 7 and 21 of the *Travel Agents Act* through the registration process and through the review of all annual financial statements. In addition, the Branch conducts compliance inspection for a proportion of all existing registered travel agents. Five hundred inspections were carried out in 1995/96 and full compliance was confirmed in all cases.

Comment by the Office of the Auditor General on the Response of the Ministry

We consider the final outstanding recommendation from this audit to be implemented.

financial administration act: guarantees and indemnities
(auditor general 1994/95 report 5, may 1995)

Recommendations of the Select Standing Committee on Public Accounts

July 1995 Report

***Your Committee notes progress and recommends the Ministry of Finance continue its work in implementing the recommendations contained in the report* "Financial Administration Act: *Guarantees and Indemnities.*"**

May 1997 Report

Your Committee considers the recommendations related to the guarantee and indemnity provisions of the* Financial Administration Act *to be significant and recommends that the Ministry of Finance and Corporate Relations give the recommendations as high a priority as they can.

The Auditor General's Recommendations

Guarantees

The Office of the Auditor General recommends, that:

- ***The Ministry of Finance and Corporate Relations reinforce the Treasury Board requirement that ministries giving guarantees have documented procedures for the review, control and approval of ad hoc guarantees. An alternative would be to expand the Treasury Board policies to include detailed guidance as to the review, control and approval of guarantees within ministries.***
- ***The Ministry of Finance and Corporate Relations reinforce the requirements of Treasury Board policies regarding the content of loan guarantee submissions. Ministries that have guarantee programs should ensure that their approval checklist includes all the components required by Treasury Board policy. When the risk assessments for all individual guarantees approved under a program are the same and the ministry wishes to avoid repeating the same risk assessment in each individual submission, the ministry should get Treasury Board approval for the general assessment and***

the right not to provide risk assessments in each individual submission.

- ***Ministries document the source of standard agreements used in guarantee programs, and consult with legal counsel when they intend to expand the use of standard agreements developed for earlier programs.***
- ***The Ministry of Agriculture, Fisheries and Food obtain appropriate approval for all of its guarantees under the Feeder Association Loan Guarantee Program.***
- ***The Loans Administration Branch establish consistent procedures for summarizing the results of its investigations prior to paying out any guarantee claims.***
- ***The Ministry of Finance and Corporate Relations maintain the required list of all outstanding guarantees given by ministries and government corporations.***
- ***Consideration be given to amending the* Financial Administration Act *to require that all guarantees given by the Province be included in the annual report.***
- ***The government consider including the additional information recommended by professional pronouncements in its Statement of Guaranteed Debt, contained in the Consolidated Revenue Fund financial statements.***

Indemnities

The Office of the Auditor General recommends, that:

- ***The Ministry of Finance and Corporate Relations issue new guidance to all ministries and government corporations explaining the nature of indemnities and reinforcing the Treasury Board requirement for establishing and documenting procedures for the review, control and approval of indemnities.***
- ***Government corporations be reminded of the requirement that they must obtain the approval of the Minister of Finance and Corporate Relations to have the authority to approve their own indemnities.***
- ***Government corporations be required to maintain a list of all indemnities issued, which could be reconciled to the Risk Management Branch list.***
- ***The Guarantees and Indemnities Regulation and the Treasury Board policies be reviewed and amended as necessary so that they are consistent with each other.***

- ***Ministries keep track of the indemnities they have issued, and their expiry dates, so that they can provide an accurate list of indemnities in place.***
- ***The* Financial Administration Act *and regulation be reviewed and amended as necessary, to ensure that the reporting requirements for indemnities are consistent with the approval requirements.***
- ***Consideration be given to amending the* Financial Administration Act *to require that all indemnities approved and issued by the Province be included in the annual report.***
- ***While we recognize that it is impossible to put a dollar value on indemnities for disclosure in the government's financial statements, a description of some of the major categories of indemnities be included in the note to the financial statements that discloses indemnities.***

Subsequent Committee Discussion

The Committee questioned ministry representatives, on October 23, 1996, about the status of implementation of these recommendations.

Response of the Ministry of Finance and Corporate Relations

The recommendations of the Auditor General with respect to the indemnities management and reporting process are being addressed. Risk Management Branch will be issuing notifications to ministries and government corporations as recommended.

Risk Management Branch is also working with the Office of the Comptroller General to identify and recommend the necessary changes to the *Financial Administration Act* to allow for full reporting in the appropriate manner.

Comment by the Office of the Auditor General on the Response of the Ministry

We were pleased to hear during the October 23, 1996 committee discussion that some progress had been made in implementing two of the recommendations. In addition, we have subsequently received an internal memo setting out proposed courses of action on the remaining recommendations. We look forward to these proposals being implemented.

land tax deferment act

(auditor general 1994/95 report 5, may 1996)

Recommendations of the Select Standing Committee on Public Accounts, July 1995 Report

Your Committee recommends that the recommendations contained in the report* "Land Tax Deferment Act" *be adopted and implemented.

The Auditor General's Recommendations

The Office of the Auditor General recommends, that:

- ***The ministry either obtain approval for an amendment to the Act to delete the requirement that the applicant be the principal supporter of the family, or take steps to ensure compliance with section 5(5)(b) of the Act.***
- ***The current interest rate requirement of not more than the government banker's prime rate, less 2%, be reconsidered and possibly raised to equal that which the government otherwise obtains on its short-term investment funds.***
- ***To keep the interest rate on land tax deferment more current, consideration be given to amending the legislation so that the rate is set at the end of every three months, based on the rate at the end of the previous month.***
- ***Consideration be given to reviewing and updating the* Land Tax Deferment Act *for matters identified by the ministry and this audit.***

Response of the Ministry of Finance and Corporate Relations

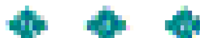
In support of the audit recommendations, the ministry requested that the government amend the *Land Tax Deferment Act* to remove the requirement that the deferment applicant be the "principal supporter" of the family; however, competing legislative priorities have resulted in the recommendation being deferred.

In response to a formal request from the ministry, funding has been received for a re-engineering of the Tax Deferment Program computer system. The completion of this project will allow the ministry to revisit the previous audit recommendation to review the deferment interest rate subsidy and the frequency of rate adjustment.

Legislative Counsel has completed its review of the *Land Tax Deferment Act* to delete spent provisions from the statue.

Comment by the Office of the Auditor General on the Response of the Ministry

We are pleased that the Ministry is acting on our recommendations, and look forward to their implementation.



statutory tabling requirements
(auditor general 1993/94 report 4, may 1994)

Recommendations of the Select Standing Committee on Public Accounts, July 1994 Report

Your Committee recommends that the recommendations contained in the Auditor General's Report 4 respecting statutory tabling requirements be implemented by the government. However, consideration should be given to varying the standard content or timing requirements for particular organizations where circumstances may warrant.

The Auditor General's Recommendations

General

We recommend that consideration be given to having all tabling requirements consolidated into one Act which, along with supporting regulations or policies:

- ***identifies the organizations required to table reports;***
- ***specifies the content requirements of the reports;***
- ***clarifies the meaning of terms used in tabling requirements;***
- ***specifies the timing requirements for tabling reports;***
- ***includes a requirement for monitoring whether reports are tabled on time and for reporting these facts, along with explanations, to the Legislative Assembly; and***
- ***provides for an alternative method of releasing reports when the House is not in session.***

Clarity of Requirements

We recommend that the terms used to describe the time requirements for tabling reports be defined clearly. This could be achieved either by defining the terms in each Act that has tabling requirements, or by defining them in one central Act, such as the **Interpretation Act*****, or in a new Act containing tabling requirements for all organizations required to table reports.***

Consistency of Requirements

We recommend that all ministries and organizations included in the government's summary reporting entity be required to table their annual reports. Exceptions could be

made for organizations that are inactive. However, the inactive organizations should still be required to table financial statements each year, along with an accompanying explanation.

We recommend that the length of time within which annual reports must be tabled be consistent for all organizations, including government ministries. One way this could be achieved would be to have one Act that specifies the tabling requirements for all government and related entities.

We recommend that the legislation requiring a report to be tabled include more specific guidance about the content of the report, or that it be supplemented by policies specifying content requirements.

Monitoring

We recommend that a member of Cabinet, possibly the Minister of Finance and Corporate Relations, as Chair of Treasury Board, be given the responsibility for producing a report for the House listing all reports which should have been tabled in the previous session. The report should include the dates that reports have been tabled, compared to the dates that they were required to be tabled, the name of the Ministry responsible, and any explanation for reports not tabled on time. Such a report should itself be timely. To do this, it could be submitted to the Clerk of the House and made public within 30 days of the session being adjourned; then tabled when the Legislature next sits.

If our previous recommendation to have all tabling requirements included in one Act is followed, then the Minister responsible for that Act should produce this report.

Timeliness of Making the Information Available to the Public

We recommend that all organizations be required to table their annual reports within three months of their year-end if the House is in session.

We recommend that the statutory provisions for the tabling of documents be revised to include a provision for filing the reports with the Clerk of the House and releasing them to the public when the House is not in session. The copy given to the Clerk would become the "official copy" and would be tabled as soon as the House next sits.

Inactive, Wound Up, or Reorganized Entities

We recommend that, where a government organization has merged with another organization, its enabling statute be amended to delete the reporting requirement. Where an organization has been dissolved, the enabling legislation should be repealed.

We recommend that, when ministries are disestablished or reorganized, the orders in council authorizing and describing the transfer of responsibilities also clarify the reporting requirements of the new or remaining ministries. In addition, consideration should be given to repealing the enabling statutes for the disestablished ministries.

Commissions of Inquiry

(Implemented) We recommend that the Ministry of Attorney General, which is responsible for the **Inquiry Act*****, ensure that the requirement for the tabling of the commissioners' reports in the Legislative Assembly is communicated to the Minister who is responsible for the commission at the time of each commissioner's appointment.***

Regulations

We recommend that the Acts requiring the tabling of regulations in the Legislative Assembly be amended to remove these requirements.

Response of the Ministry of Finance and Corporate Relations

The government will consider incorporating the recommendations in either a revision of the *Financial Administration Act* or some stand-alone legislation that deals with accountability.

Resource availability, however, precludes this issue being given a high priority.

Comment by the Office of the Auditor General on the Response of the Ministry

This past year, an Annual Report Working Group was tasked with developing guidelines for ministries in preparing and issuing reports, at least once a year, on their performance. This working group was created in response to commitments in the 1996 report of the Auditor General and Deputy Ministers' Council, entitled *Enhancing Accountability for Performance: A Framework and An Implementation Plan*.

To assist the group in developing reporting guidelines, this Office presented the findings and recommendations contained in the report, Statutory Tabling Requirements. The working group has since submitted its report, entitled Guidelines for Ministry Annual Reporting, to the Performance Management and Accountability Advisory Group. (The Advisory Group provides staff support to a committee of the Deputy Ministers' Council.) We understand no formal action has been taken with respect to the recommendations contained in Guidelines for Ministry Annual Reporting or in the report, Statutory Tabling Requirements.

We therefore consider all these recommendations to still be under consideration.

safeguarding moveable physical assets
(auditor general 1993/94 report 4, may 1994)

Recommendations of the Select Standing Committee on Public Accounts, July 1994 Report

Your Committee recommends that the recommendations contained in the Auditor General's Report 4, relating to safeguarding moveable physical assets, be implemented to the extent that it is cost effective and efficient to do so.

The Auditor General's Recommendations

Non-Compliance with Government Policies for Safeguarding Moveable Physical Assets

We recommend that the Office of the Comptroller General and the ministries should be monitoring how well they are complying with the policies for safeguarding moveable physical assets. Where they find that the level of compliance is inadequate, we recommend that they take appropriate steps to ensure that policies are followed. Where they find that policies are absent or incomplete, we recommend that they write or revise the required policies.

Clarity in Defining and Recording Assets

We recommend that the criteria used for all asset records be consistent, using a specific dollar amount which is updated periodically as required (for example, at the beginning of each fiscal year).

We recommend that ministry determinations of cost/benefit of control be evaluated and assessed by the Office of the Comptroller General before being accepted as a basis on which to dispense with the maintenance of physical asset records.

We recommend that, for physical assets which are common across government (such as computers, computer software, and furniture), the government policy manual give clear guidance on what to include as attractive assets and what to exclude, by listing specific examples. For physical assets that vary from ministry to ministry (such as equipment), each ministry should be required to provide specific guidance in their own manuals on what assets to record and control as attractive, including a list of those that are unique to the ministry.

We recommend that the government policy manual be clarified to indicate that an asset may be both fixed and attractive. The manual should clearly state that, where a fixed asset also meets the criteria for attractive assets, the additional and more stringent requirements for safeguarding attractive assets must be complied with, not just the requirements for recording and controlling fixed assets.

Content of Asset Record Systems

We recommend that the following information requirements for asset records be considered for addition to the policy manuals:

- ***name of the custodian (for all assets, not just attractive assets);***
- ***purchase information (including invoice and supplier number);***
- ***description information (model number, manufacturer, and colour);***
- ***the ministry-assigned, unique identifying number (the bar code or tag number);***
- ***cost;***
- ***estimated useful life; and***
- ***warranty references.***

Form of Asset Record Systems

We recommend that consistent and compatible physical asset recording systems be used throughout government, and especially within ministries.

Centralization of Asset Record Systems

We recommend that the government policy manuals establish criteria for physical asset record systems. This will ensure that sufficient commonality exists between systems to allow the exchange of data, whether the physical asset systems are centralized within ministries or within government.

Periodic Physical Counts

We recommend that bar code readers be made readily available to organizations to facilitate the counting of physical assets tagged with bar codes.

Items Incorrectly Recorded as Physical Assets

We recommend that policies be established to determine when it is appropriate to record professional fees as asset purchases, and when it is not.

Findings Related to Computer Equipment and Software

We recommend that the asset records show what components have been added to a computer, with the relevant serial number recorded to identify it.

We recommend that government policies be developed to address the purchase or use of government computer equipment for work at home.

Findings Related to Technical and Office Equipment

We recommend that, as a matter of policy, ministries be required to obtain a receipt from the lessor for the return of a leased item when a lease expires and is not renewed.

Findings Related to Furniture

We recommend that when furniture is purchased it be tagged with a unique number and, as a minimum, be recorded in a list of furniture for the particular branch office. Physical verification should be done where there have been changes to the location or a large number of disposals.

Findings Related to Vehicles

We recommend that government policy be amended so that a local manager can approve overnight home parking when it is appropriate for travel purposes.

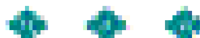
Response of the Ministry of Finance and Corporate Relations

Government is in the process of accounting for and reporting its physical assets. The discipline inherent in this new accounting policy will address many of the Auditor General's observations.

In addition, it is anticipated that the developing corporate accounting system will provide an additional means by which government can improve its control over assets.

Comment by the Office of the Auditor General on the Response of the Ministry

We consider all the recommendations to still be under consideration and look forward to the completion of these initiatives.



treatment of unclaimed money
(auditor general 1993/94 report 4, may 1994)

Recommendations of the Select Standing Committee on Public Accounts, July 1994 Report

Your Committee recommends that the recommendations contained in the report "Treatment of Unclaimed Money" be adopted and implemented.

The Auditor General's Recommendations

Money Deposited in the Treasury of the Province

We recommend that a limit such as $100 be set so that deposits below this benchmark can be transferred to revenue by the government after a much shorter period of time than 10 years (such as five years). This would not extinguish the right of a valid claim on these amounts, but would remove them earlier from the active accounting records to the statement of unclaimed money. Alternatively, consideration could be given to transferring smaller amounts early, and extinguishing rights to claiming them at the time they are transferred, to avoid the costs of maintaining the records.

Money Received by Companies or Persons

We recommend that a comprehensive study be initiated to review all types of unclaimed money and other types of unclaimed assets held by companies or persons within the Province, other than those to which the **Bank Act (Canada)** ***applies. The study should determine an appropriate up-to-date manner for handling and accounting for such money and assets, addressing provisions for monitoring, enforcement, and full public disclosure. This may require amendment of existing legislation or implementation of new legislation.***

Other Provincial Statutes Directly Related to the *Unclaimed Money Act*

We recommend that the sections of these provincial statutes be included in the scope of any study of unclaimed money and other assets held in the Province as we recommended above, which should consider among other issues the appropriate monitoring, enforcement, and disclosure requirements.

Information to the Public

We recommend that the government provide a public advertisement in newspapers stating when and where information about unclaimed money is available. This should be done periodically, as well as at the time at which the information becomes available each year. It should be an important consideration in any future amendment to the* Unclaimed Money Act *and related legislation.

Payment of Claims

We recommend that the government consider reinstituting periodic search procedures for persons or companies who may be rightfully entitled to unclaimed money deposits that have been transferred to the government's Consolidated Revenue Fund.

We recommend that the legislation be amended to require the inclusion of the successful claims that were paid out in the statement of unclaimed money so that it becomes a complete record of outstanding unclaimed money.

Responsibility for the *Unclaimed Money Act*

We recommend that the Ministry of Finance and Corporate Relations identify which Ministry branch is responsible for administering the* Unclaimed Money Act *in its annual report.

Subsequent Committee Discussion

The Committee questioned ministry representatives, on October 23, 1996, about the status of implementation of these recommendations.

Public Discussion Paper

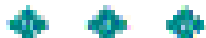
In January 1997 the Ministry of Finance and Corporate Relations issued a Legislation Discussion Paper entitled "New Approaches to....Unclaimed Intangible Property Administration in British Columbia." The discussion paper proposals, if implemented, would substantially address the recommendations of the Select Standing Committee on Public Accounts about the treatment of unclaimed money.

Response of the Ministry of Finance and Corporate Relations

Government is awaiting responses from the stakeholders to whom the discussion paper was sent. After written responses have been received there will be some consultation with the affected parties before any possible new legislation.

Comment by the Office of the Auditor General on the Response of the Ministry

We were pleased to see the discussion paper being issued and the extensive work done in including all the recommendations in the topics studied. We look forward to seeing the results of this public consultation process.



compliance with the *financial disclosure act*
(auditor general 1993 annual report, march 1993)

Recommendations of the Select Standing Committee on Public Accounts, July 1993 Report

Your Committee recommends:

a) that the* Financial Disclosure Act *be amended as follows:

i) (implemented) to clarify who is responsible for enforcing the Act;

ii) to bring the Islands Trust, and related local trust committees, within the purview of the Act;

iii) (implemented) to require a different frequency of filing of disclosure, such as annually; when there is a material change to report; or some combination of these or other alternatives;

b) that the* Financial Disclosure Act Forms Regulation *be amended:

i) (implemented) to specify the length of time disclosure forms should be retained,

ii) (implemented) to allow for flexibility in the style of disclosure forms, so long as the required content and approval aspects are consistently retained,

iii) (implemented) so that the forms clearly specify the information that should be included,

iv) (implemented) to provide greater certainty to someone inspecting the forms that a "nil" return is indeed correct.

Response of the Ministry of Attorney General

Action on the recommendation to include Islands Trust and related local trust committees is being sponsored by the Ministry of Municipal Affairs and Housing and has been supported by Legislative Counsel. They were unable to include it on the 1997/98 legislative calendar.

We have referred the matter of specifying the length of time disclosure forms should be retained to Legal Services Branch and have received a legal opinion on this. The *Freedom of Information and Protection of Privacy Act* (FIPPA) requires that municipal governments and school boards keep all financial disclosure documents for a period of one year from the date they are obtained. The Ministry of Education Skills and Training

provides appropriate guidelines to the school boards. The Union of B.C. Municipalities have been informed of the legal opinion and Ministry of Municipal Affairs closely follows FIPPA regulations. Elections B.C. are also aware of retention requirements.

The Ministry has produced and distributed to appropriate provincial and local government bodies a revised disclosure form which covers all the other points mentioned in your recommendations.

Comment by the Office of the Auditor General on the Response of the Ministry

We consider it unfortunate that inclusion of the Islands Trust and related local trust committees within the purview of the Act has not yet proceeded.

We consider three of the four recommendations related to the amendment of the *Financial Disclosure Act* forms regulation to have been implemented and the remaining issue related to the regulation to be resolved.

order-in-council appointments
(auditor general 1993 annual report, march 1993)

Recommendations of the Select Standing Committee on Public Accounts, July 1993 Report

Your Committee recommends:

a) (Implemented) that requirements for the authorization of remuneration, particularly the application of the **Interpretation Act** ***where more specific legislation is silent, should be communicated to all parties involved in the appointment process;***

b) (Implemented) the appointing Order-in-Council clearly refer to remuneration, if any has been authorized (this may be done either by specifying the remuneration in the Order-in-Council, or by stating where the remuneration is authorized);

c) that…(implemented – the **College and Institute Act*****) and the*** **Insurance Corporation Act** ***be amended so that the authorization of remuneration for their appointees is consistent with the requirements for appointees to other government organizations;***

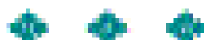
d) (Implemented) that the term "Crown Corporation," which is used in Treasury Board guidelines relating to levels of remuneration for Order-In-Council appointees, be clearly defined.

Response of the Ministry of Finance and Corporate Relations

Responsibility for ICBC was transferred to the Minister of Finance and Corporate Relations effective June 17, 1996. At this time, we can advise you that a legislative amendment relating to removal of the power of the ICBC Board to establish board remuneration exists as part of a larger package concerning the corporation. Assuming the amendment is processed, it will bring the remuneration for their appointees in line with other government organizations.

Comment by the Office of the Auditor General on the Response of the Ministry

The one remaining recommendation is still outstanding, awaiting the necessary legislative amendment.



compliance with the *financial information act*, regulation, and directive

(auditor general 1991 annual report, march 1991)

Recommendation of the Select Standing Committee on Public Accounts, June 1992 Report

Your Committee recommends that an amendment be made to the* Financial Information Act *respecting the definition of "Corporation" as follows:

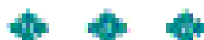
"Corporation also means an organization or enterprise that is included in the reporting entity for purposes of the Government's summary financial statements."

Response of the Ministry of Finance and Corporate Relations

The Office of the Comptroller General has developed a legislative amendment to address the concern of the Auditor General and the Public Accounts Committee. The proposal has not yet been approved for introduction into the Legislature.

Comment by the Office of the Auditor General on the Response of the Ministry

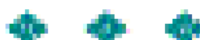
We are pleased that the recommendation has been accepted, and we hope that the legislative amendment will be introduced soon.



Summary of Audit Reports and Related Recommendations

Compliance-with-Authorities and Special Audits Status (June 1997) of Recommendations (1991-96)		Compliance Assurance Opinions Issued	Recommendations in Public Reports	Treatment by Public Accounts Committee			Status of Implementation of Recommendations Per Government Officials		
Proj. #	Audits reported			Endorsed	Not Endorsed	Not Discussed	Implemented	In Process	No Action
	1995/96 Report 5								
24	Special Warrants[1]	No	1	–	1	–	–	–	1
23	Government Employee Numbers	No	4	4	–	–	2	–	2
22	Public communications	No	2	–	2	–	–	–	2
	1995/96 Report 3								
21	Home Support Services	Yes	15	15	–	–	4	11	–
20	Environmental Tire Levy	No	2	2	–	–	2	–	–
19	Safeguarding Moveable Physical Assets: Public Sector Survey	No	4	4	–	–	3	1	–
18	*Consumer Protection Act:* Income Tax Refund Discounts	No	2	2	–	–	–	2	–
17	FAA Part 4: Follow-up[2]	No	2	1	–	1	–	1	1
	1994/95 Report 5								
16	*Elevating Devices Safety Act*	Yes	13	13	–	–	7	6	–
15	*Travel Agents Act*	Yes	12	12	–	–	12	–	–
14	FAA: Guarantees & Indemnities	Yes	16	16	–	–	4	12	–
13	*Land Tax Deferment Act*	Yes	4	4	–	–	–	4	–
	1993/94 Report 4								
12	Statutory Tabling Requirements	Yes	12	12	–	–	1	11	–
11	Safeguarding Moveable Physical Assets	Yes	15	15	–	–	–	15	–
10	Treatment of Unclaimed Money	Yes	7	7	–	–	–	7	–
	1993 Annual Report								
9	Compliance with the *Financial Disclosure Act*[3]	Yes	11	7	–	4	6	1	4
8	Order-In-Council Appointments	Yes	4	4	–	–	3	1	–
7	Compliance with the *Financial Administration Act* Part 3	Yes	2	2	–	–	2	–	–
6	Compliance with the *Tobacco Tax Act*	No	0	–	–	–	–	–	–
5	*Financial Information Act:* Follow-up	Yes	7	7	–	–	7	–	–
4	Small Acts	No	0	–	–	–	–	–	–
	1992 Annual Report								
3	Compliance with *Financial Administration Act* Part 4[4]	Yes	1	1	–	–	–	–	1
	1991 Annual Report								
2	Compliance with *Financial Information Act*	Yes	1	1	–	–	–	1	–
1	Compliance with *Financial Administration Act* Part 4	Yes	0	–	–	–	–	–	–
Total recommendations from 24 audits/reviews/studies			137	129	3	5	53	73	11
Total compliance assurance opinions issued		15							

Note 1: The Public Accounts Committee still has this under consideration.
Note 2: The second recommendation from report #17 has not been discussed by PAC as it is addressed in more detail in report #24.
Note 3: The 4 recommendations not discussed by PAC were more detailed recommendations for the ministry.
Note 4: This recommendation was repeated in report #17.



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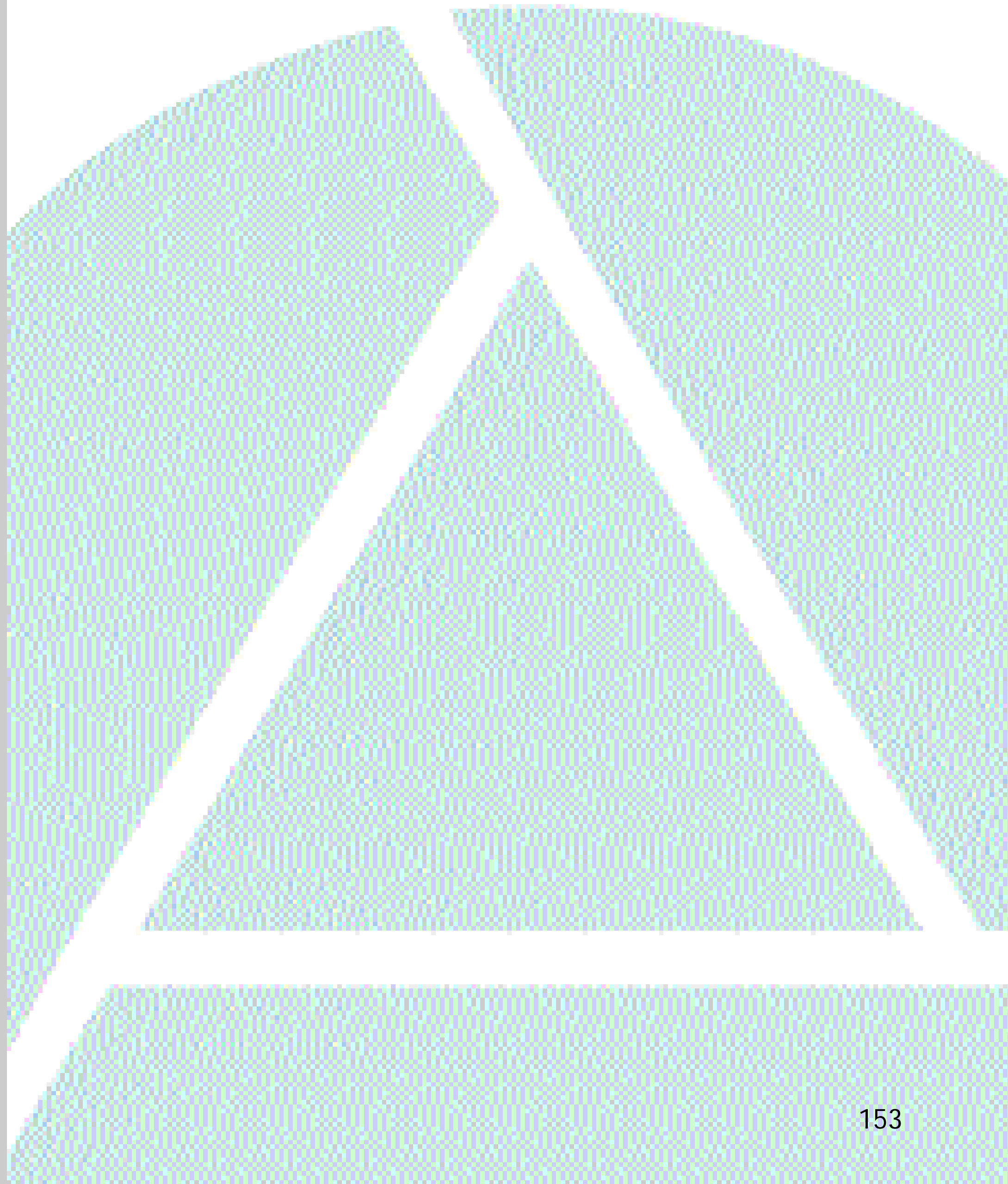


appendix a

Compliance-with-Authorities Audits Completed 1991 to Date

1996/97: Report 10

Privacy: Collection of Personal Information by the Ministry of Health

Ethics Codes in the Public Sector

1995/96: Report 5: Issues of Public Interest

Special Warrants

Government Employee Numbers

Public Communications: Distinguishing Between Government Program and Partisan Political Communications

1995/96: Report 3

Home Support Services

Environmental Tire Levy

Safeguarding Moveable Physical Assets: Public Sector Survey

Consumer Protection Act—Income Tax Refund Discounts

Financial Administration Act, Part 4: Follow-up

1994/95: Report 5

Elevating Devices Safety Act

Travel Agents Act

Financial Administration Act: Guarantees and Indemnities

Land Tax Deferment Act

1993/94: Report 4

Statutory Tabling Requirements

Safeguarding Moveable Physical Assets

Treatment of Unclaimed Money

1993 Annual Report

Compliance with the *Financial Disclosure Act*

Order-in-Council Appointments

Compliance with Part 3 of the *Financial Administration Act*

Compliance with the *Tobacco Tax Act*

Financial Information Act: Follow-up

Small Acts

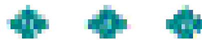
1992 Annual Report

Compliance with Part IV of the *Financial Administration Act* and its Related Regulations

1991 Annual Report

Compliance with the *Financial Information Act,* Regulation, and Directive

Compliance with Part IV of the *Financial Administration Act* and its Related Regulations



appendix b

Compliance Audit Objectives and Methodology

Audit work performed by the Office of the Auditor General falls into three categories:

- Financial auditing;
- Performance auditing; and
- Compliance-with-authorities auditing.

Each of these categories has certain purposes and objectives that are expected to be achieved, and each employs a particular form of audit practice to meet those objectives. The following is a brief outline of the objectives and methodology applied by the Office for compliance-with-authorities auditing.

Authorities

Under our Canadian system of government, laws approved by parliament and provincial legislative assemblies are of paramount importance to our society.

Acts passed by the Legislative Assembly of British Columbia, including the *Supply Acts,* the *Financial Administration Act,* the *Financial Information Act,* and many others, provide the government and government organizations with direction on managing resources entrusted to them by the public, and on being accountable to the Legislative Assembly for the execution of these responsibilities. These Acts, or statutes, provide the legal basis for funding, delivering and administering the Province's social, economic, environmental and other programs.

Accordingly, it is important that the government ensures compliance with these statutes and related authorities. It is also important that this compliance be independently reviewed to ascertain whether public sector activities are carried out *intra vires* (within the scope of their authority). This is where compliance-with-authorities auditing plays an important role.

Compliance-with-Authorities Auditing

Purpose of Compliance-with-Authorities Audits

The purpose of compliance-with-authorities audits is to provide an independent assessment as to whether or not legislative and related authorities are being complied with, in all significant respects.

In addition to separate compliance-with-authorities audits, the Office of the Auditor General also performs financial audits and performance audits. While auditing for compliance with legislative and related authorities is the primary objective of compliance-with-authorities audits, auditing for compliance with authorities may also be included as part of financial audits or performance audits where there are authorities that are relevant to the objectives of those audits.

Nature of Legislative and Related Authorities

Legislative and related authorities include legislation, regulations, orders in council, ministerial orders, directives, by-laws, policies, guidelines, rules and other instruments, including codes of ethics or conduct. Through these authorities, powers are established and delegated.

Legislation may delegate broad powers to governments, ministers and officials who, in turn, may establish other related authorities, such as policies, to provide more detailed requirements that must be complied with by the organizations concerned. Such authorities are subordinate to enabling legislation and must not contradict or go beyond the directions and limitations set out in that legislation.

These authorities represent a basis for legislative control over the source and use of public resources, the operation and administration of programs, and the manner in which organizations are held accountable for choices made in the exercise of their functions. The structure thus has pervasive effect on the activities of governments and other publicly accountable organizations. Authorities also form the basis for communication between elected officials and the bureaucracy.

Audit Standards

Auditors are expected to comply with established professional standards, referred to as generally accepted auditing standards. Our compliance-with- authorities audits are conducted in accordance with generally accepted auditing standards established by the Canadian Institute of Chartered Accountants (CICA). These consist of the general and examination standards in the CICA Handbook, and the reporting standards issued by the Public Sector Accounting and Auditing Board of the CICA.

Audit Selection

We generally select specific sections in an Act, or in several Acts, having common objectives. In most instances, we do not audit all aspects of an Act in the course of one audit.

The primary legislative instrument which provides for administration of the financial affairs of the Province is the *Financial Administration Act.* Therefore, compliance with this Act is of regular and ongoing significance to our Office. Other legislation and related authorities are considered for audit purposes on a more cyclical basis, depending on such factors as: the extent of impact on government, non-profit or private organizations and the public; the significance of financial accountability reporting requirements; the degree of interest by legislators and the public; and the likelihood and impact of non-compliance with legislated requirements.

Audit Process

The audit process adheres to the professional standards mentioned above. Of particular note is that compliance-with-authorities audits differ from other audits in their degree of dependence on the identification of relevant authorities and the interpretation of the meaning of the specific authorities being audited.

In order to identify the relevant authorities, the auditor must obtain an in-depth understanding as to how the authorities are themselves approved and how relevant authorities can be identified. The audit process includes determining that related authorities are within the limits prescribed by legislation, and that there are no obvious inconsistencies, contradictions or omissions in the authorities.

In addition, whether or not an authority is being complied with will often depend on its clarity, and the consistency in which its meaning is interpreted. Because of the importance of such interpretations, we seek professional legal advice where necessary.

In an examination designed to report on compliance with authorities, we seek reasonable assurance that the authorities specified in the audit report have been complied with, in all significant respects. Absolute assurance in auditing is not attainable because of such factors as the need for judgment, the use of testing, and the inherent limitations caused by differing interpretations in the meaning of authorities.

Reporting the Results of Audits

Our public report on each audit is in two parts: a formal audit report, showing the scope of the audit and our overall opinion on compliance, and a more detailed, explanatory report.

The formal report includes the auditor's professional opinion on whether or not the authorities that are the subject of the audit have been complied with, in all significant respects.

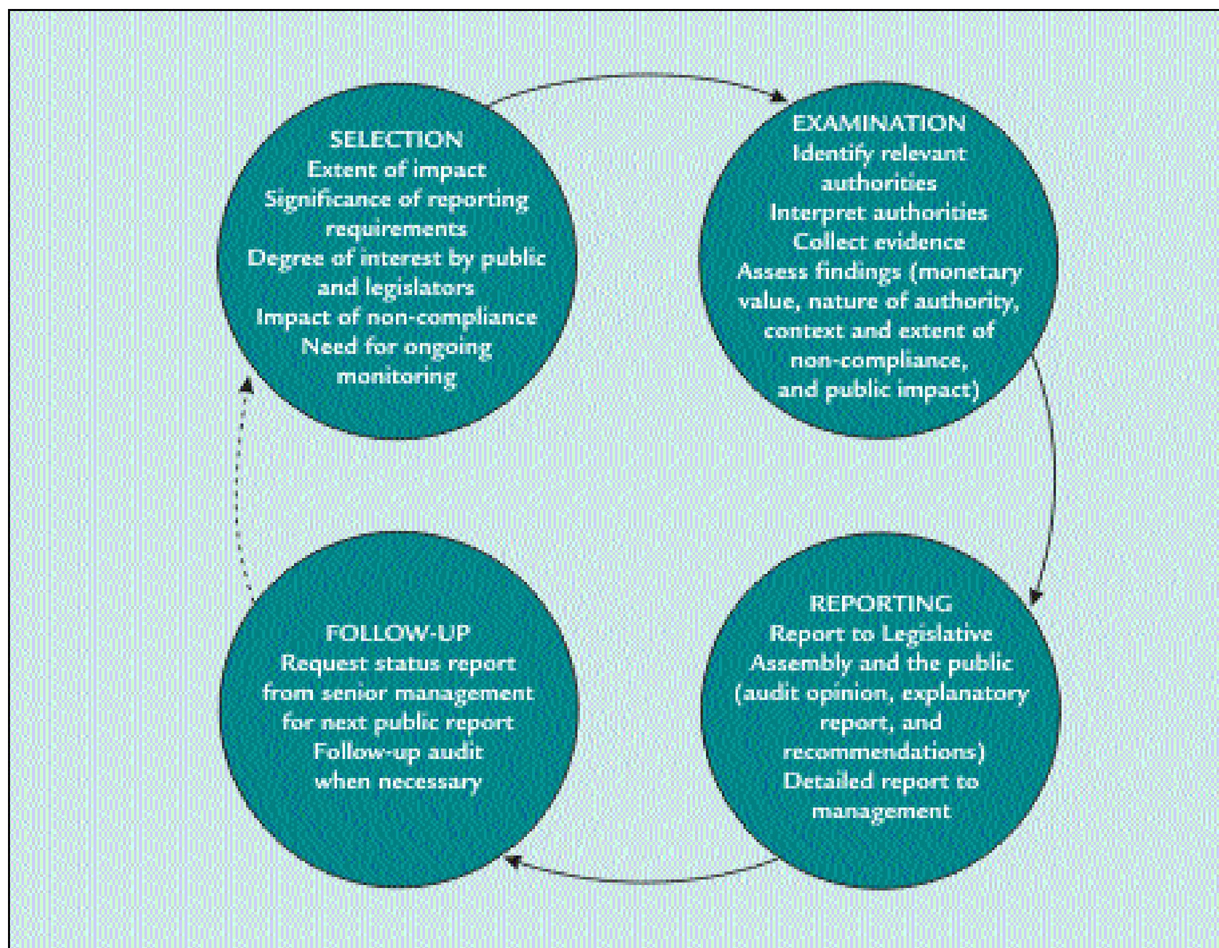
Our main considerations in assessing significance of non-compliance include monetary value, the nature of the authority or finding, the context within which compliance is to occur, and public interest.

In addition to the formal audit report, we provide a more detailed report that includes an explanation of what is required by the legislative and related authorities, the scope of our audit work, our overall observations, our detailed audit findings, and any other related observations.

Exhibit 4.1

Compliance-with-Authorities Audit Stages

An outline of the activities performed at each stage



When considered appropriate, we also make recommendations. The recommendations fall generally into three categories: to improve compliance with the legislative and related authorities; to improve operational effectiveness of the entity responsible for ensuring compliance; and, on occasion, to provide useful suggestions for improvements to existing authorities where they may have become administratively impractical or out of date.

There may be minor instances of non-compliance that either may not be detected by the audit or may not be worthy of inclusion in the report. We exercise professional judgement when assessing the significance of any non-compliance. For example, the needs of users of the report, the nature of the relevant authorities, and the extent of non-compliance must, among other things, be considered. As well, the significance of any non- compliance often cannot be measured in monetary terms alone.

We sometimes also issue a detailed management report of our findings to the ministry responsible for the legislation or the organizations affected by it. The relevant ministries or organizations are thus given an opportunity to respond to our findings, and we take this into account in the preparation of our public report.

When our public report on compliance-with-authorities audits completed in the past year is published, it is reviewed by the Select Standing Committee on Public Accounts of the Legislative Assembly of British Columbia. Recommendations made by the Committee in relation to our reports are followed up annually by our Office with the ministries responsible to obtain from them a status report on their progress in implementing the Committee's recommendations. These status reports are included in our next public report on compliance-with-authorities audits.

appendix c

Responding to Enquiries and Comments from the Public

During the year, a number of telephone calls, facsimiles and letters were received from the public and referred to the Compliance Auditing Unit for consideration. While all such communications are considered, we are not able to act on each one. Some matters are outside the scope of our Office, and for others, it is a question as to whether the information provided is specific enough, or important enough, to warrant diverting staff resources from our regular audit work. Sometimes, it is possible to include such matters as part of a larger audit, perhaps at a later date.

In some cases, although it may be a matter that we consider important, we decide that a ministry or other government organization is better suited to investigate. We do, however, request a report on the investigation, which we review to determine whether any further action by our Office is required.

The Office is responsible to, and reports to, the Legislative Assembly. The Office cannot undertake to report the results of any specific investigation back to the person who first raised the issue. However, because the information may be incorporated into our ongoing regular audit activity, the lack of any public report referring to an investigation does not mean that action is not being taken. If the Office investigates and considers the matter appropriate for reporting, it will be done in a public report.

During 1996/97, issues raised in 43 letters, facsimiles and telephone calls were considered. In addition, 5 issues raised in prior years were also considered. Except where the caller or writer was anonymous, we responded to each item received. The 48 issues and their disposition are as follows:

- We determined that nine issues were outside the jurisdiction of the Office. We made suggestions to the complainant about where they might turn.
- We referred four issues to the appropriate ministry for investigation. These investigations are now complete, and we consider that appropriate action has been taken where necessary.

- We investigated three issues ourselves. The information reported to us was correct, but the situation was not fraudulent or in contravention of policy, as the callers had believed.
- Twenty three issues were either not specific enough for us to act on, or were dropped after initial enquiries had been made. Of these, five were referred to audit teams who had already scheduled audits of the organizations concerned, in case the issue came up during the audit. As well, four have been brought forward for possible inclusion in a larger audit at a later date.
- We resolved seven issues by simply providing information to the callers.
- We are still considering two issues.

appendix d

1996/97 Public Reports Issued by the Office to Date

Report 1

Performance Audit

Management of Child Care Grants

Report 2

Crown Corporations Governance Study

Report 3

Performance Audit

Vancouver Island Highway Project: Planning and Design

Report 4

Performance Audit

Trucking Safety

Report 5

A Review of Government Revenue and Expenditure Programs Relating to Alcohol, Tobacco, and Gaming

Report 6

Financial Audit

Report on the 1995/96 Public Accounts

Report 7

Performance Audit

Management of Travel

Report 8

Performance Review

Executive Severance Practices: Government Ministries and Crown Corporations

Report 9

Performance Audits

BC Transit: Managing Operator Productivity
BC Transit: Its Success As A Market-focused Organization

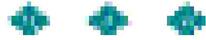
Report 10

Compliance Audits

Privacy: Collection of Personal Information
by the Ministry of Health

Ethics Codes in the Public Sector

Status of Public Accounts Committee Recommendations
Relating to Prior Years' Audits



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