



OFFICE OF THE  
AUDITOR GENERAL  
MANITOBA

*Department of Innovation, Energy & Mines*  
*Department of Infrastructure and Transportation*  
*Department of Entrepreneurship, Training and Trade*  
*Department of Local Government*

Web Version

## Citizen Concerns

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## Table of contents

<b>Our approach .....</b>	<b>47</b>
<b>Findings and recommendations .....</b>	<b>48</b>
1. Business Transformation and Technology (BTT) - Department of Innovation, Energy and Mines.....	48
2. Disaster Financial Assistance - Department of Infrastructure and Transportation (MIT) .....	49
3. Employment and Income Assistance Program (EIA) - Department of Entrepreneurship, Training and Trade .....	49
4. North Portage Development Corporation (NPDC) - Department of Local Government.....	50
4.1 No limit on number of terms directors can serve.....	51
4.2 Consolidated financial statements audited and publicly available but no required disclosure of details.....	51
4.3. Executive salaries approved and disclosed .....	51
4.4 Provincial accountability to shareholders in place.....	52
4.5 Expenses tested were properly recorded, approved and business-related but no written procedures for purchases .....	53
4.6 Summary of recommendations and response of officials .....	54



## Our approach

Issues are brought to our attention throughout the year by concerned members of the public, the Legislature or government employees. Our Act does not include a complaint mechanism, and we are not obliged to follow-up these issues, however we choose to do so.

We conduct preliminary examinations of all such issues, decide which ones are within our mandate and which ones are better investigated by another organization, such as the Office of the Ombudsman or appeal boards. When an issue is better investigated by another organization, we monitor the work performed to ensure it is appropriately resolved. Sometimes the issues are information requests or requests for contact details, in which case we answer those requests. Sometimes we are unable to examine the issue because we are not provided with enough information. Where possible, we request further information. When the issue falls within our mandate and there is enough information to proceed, we initiate limited scope audits.

Occasionally, we receive correspondence or calls which are not easily understood, include inappropriate language or have been sent to us anonymously. We do not dismiss these concerns, in case they are valid. However, where possible, we recommend a more positive approach, help identify the organizations and processes in place to resolve concerns raised. When appropriate, we conduct limited scope audit procedures.

Prior to April 2011, we did not formally track the results of our limited scope audit procedures. Since then, we have done so. When our limited scope audit procedures are complete, we report our findings to the Minister responsible and the Minister of Finance. The following is a summary of our completed audit work.

## Findings and recommendations

### 1. Business Transformation and Technology (BTT) - Department of Innovation, Energy and Mines

#### Conflict of Interest and Tendering Practices

We were provided with information suggesting favouritism and inappropriate tendering practices within BTT.

We selected and reviewed a sample of 10 human resource files of BTT employees to audit the hiring and promotion practices in place. We found that the files contained appropriate documentation to support the hiring and promotions of the respective employees. We did, however, note an unusual circumstance during our review of one of the files. The individual in question was hired and promoted 2 times in less than a one-year period. The hiring and promotions all occurred through the direct appointment process with no competition being held. The file did contain appropriate documentation and approvals; however such a rapid progression by an individual through the organization could reasonably cause a perception of favouritism by others in the organization. Because the position is included in the MGEU, individuals choosing to dispute this decision have a defined process available to them. We did not perform an audit of the overall direct appointment process.

We also selected the files of 4 vendors that were awarded contracts by BTT between 2008 and 2011. There were 3 contracts which were appropriately tendered and 15 contracts that were untendered. Treasury Board approval was appropriately obtained for all of these contracts. We found that only 8 were recorded on the public registry of untendered contracts. We also found one contract on the registry that was not provided to us when we asked for all of the contracts. The registry is an important mechanism that supports public transparency in the vendor selection process. It is a requirement for all government departments to record all untendered contracts in excess of \$1,000 on the registry.

## 2. Disaster Financial Assistance - Department of Infrastructure and Transportation (MIT)

### Conflict of Interest

We were provided with information about an employee of MIT in the Disaster Financial Assistance claim area. The allegation was that the employee was in a conflict of interest position as he was also offering consulting services and was assisting rural municipalities with their claim submissions. We contacted the Emergency Measures Organization (EMO) which had already been advised of the situation and had taken action. EMO had dismissed the employee and the employee is currently appealing the decision. We are satisfied that the Department took prompt and appropriate action.

## 3. Employment and Income Assistance Program (EIA) - Department of Entrepreneurship, Training and Trade

### Potential Undeclared Common-Law Relationship

We were provided with information that suggested that an EIA recipient was living in an undeclared common-law relationship. We discussed this situation with EIA Investigations and reviewed their file. The recipient was living with another adult but no common-law relationship could be proven. EIA Investigations has assured us that they will continue to monitor the situation. We are satisfied that EIA took appropriate action.

### Payment of Property Taxes

We were told by a third party that EIA was not paying property taxes in accordance with EIA guidelines, resulting in an EIA recipient's home being put up for tax sale on more than one occasion. We reviewed the files at EIA and are satisfied that recipient was paid the correct amounts for property taxes under EIA guidelines. The back taxes owed on the property predate the recipient's EIA eligibility and also included legal fees and administration costs related to the tax sales.

#### 4. North Portage Development Corporation (NPDC) - Department of Local Government

The North Portage Development Corporation (NPDC) and its subsidiaries, own and operate The Forks Market, as well as The IMAX Theatre in Portage Place. NPDC financial statements describes its mission as:

The mission of the organization is to act as a catalyst, encouraging activities for people in downtown through public and private partnerships and revitalization strategies; and to work to ensure financial self-sufficiency.

North Portage shall be a centre of commerce, culture and living, integrated to form a diverse downtown community through a mixture of public uses including: residential, education and entertainment facilities.

The Forks shall be developed as a “Meeting Place”, a special and distinct, all season gathering and recreational place at the junction of the Red and Assiniboine Rivers, through a mixed use approach including recreational, historical and cultural, residential and institutional and supportive commercial uses.

NPDC operates the parking lot in Portage Place as well as several others in the downtown area. Several residential and commercial developments sit on land owned by NPDC but are operated by others. NPDC collects lease revenue for these properties. The most prominent lessees are:

- Johnston Terminal
- Inn at the Forks
- Portage Place
- City TV

The following are the subsidiaries of NPDC:

- **The Forks Renewal Corporation** which owns land known as The Forks and operates The Forks Market.
- **North Portage Theatre Corporation** owns the IMAX Theatre at Portage Place.
- **3898211 Manitoba Ltd.** operates the IMAX Theatre at Portage Place.
- **FNP Parking Inc.** operates various parking locations in downtown Winnipeg, including the Portage Place Parkade and The Forks.

Three shareholders each own one share of the Corporation: the Government of Canada, the Province of Manitoba, and the City of Winnipeg. Each shareholder contributed \$22 million of capital under the original funding agreement. The board of directors has 10 members: each shareholder appoints 3 members and the members elect a Chairperson.

Because of a concern we received, we decided to conduct limited audit procedures to look at some of the issues that were raised.



#### 4.1 No limit on number of terms directors can serve

The Corporation's bylaws set a 3-year term for directors but do not limit the number of terms directors can serve.

Effective governance suggests that the terms of service for Board members must be long enough for members to gain experience and cultivate sufficient knowledge to understand the organization, but also that there be sufficient renewal of Board members to bring new perspectives and experience to the organization. Also, that there be staggered terms for Board members, with set term limits for renewal. Such practices help to balance the Board's need for continuity and experience, with the need to refresh the Board and bring on new skills and expertise to appropriately reflect the challenges faced by the organization.

The average term of current NPDC Board members is 6.6 years. The longest serving members have been on the Board for 11 years.

**Recommendation 1:** We recommend the Corporation amend its bylaws to limit the number of terms that directors can serve.

#### 4.2 Consolidated financial statements audited and publicly available but no required disclosure of details

Financial statements for each entity the Corporation owns are audited but not readily available for public viewing. But the Corporation prepares a consolidated annual report with audited financial statements for the combined entity. This consolidated report is on the Corporation website. The Corporation's CFO said that it would only provide financial statements of each entity if someone asks for them.

Because NPDC is owned by all three levels of government it is not required to follow any existing provincial legislation regarding information disclosure.

**Recommendation 2:** We recommend the Provincial government enter into a discussion with the City and the Federal government to find a mechanism for the public to access detailed information.

#### 4.3. Executive salaries approved and disclosed

The salaries and bonuses of the Corporation vice-presidents are approved by the President and CEO. The salary and bonus of the President and CEO are approved by the Board of Directors. The total salaries and bonuses paid to Corporation employees match the amounts disclosed in the Statement.

The Corporation's audited statement of public compensation disclosure lists the salaries of all employees earning more than \$50,000 per year. This report is voluntary because the Public Sector Compensation Disclosure Act does not apply to the Corporation.

The compensation received by the CEO is high in comparison to deputy ministers and in relation to senior executives of large crown corporations. The Department of Local Government said it is aware of the salaries and bonuses paid to the Corporation's executives. Salaries of the Corporation's employees are set and approved by the Board, and the Provincial government does not intervene.

**Recommendation 3:** We recommend the Provincial government assess the reasonability of the salary levels at NPDC.

### 4.4 Provincial accountability to shareholders in place

Paragraph 6.01 of the March 31, 1996 unanimous shareholders' agreement between the Corporation and Forks Renewal Corporation (FRC) outlines accountability to shareholders. The agreement is limited to the following administrative matters:

Paragraph 6.01 - NPDC and FRC shall:	What we found
h. provide written quarterly reports relating to their activities over the previous quarter to each Shareholder within 60 days of the end of each fiscal quarter of NPDC and FRC;	The Corporation gives each shareholder 3 or 4 (not quarterly) reports each year. The report has an overview of the operations since the last report.
i. provide annual audited financial statements to each shareholder in compliance with the Act;	The Corporation has audited consolidated statements prepared annually. They are in the annual report given to all 3 shareholders and available publicly on the Corporation website and at its office.
j. at the request of any Shareholder, present their respective annual reports to the designated committee of Parliament, Legislature or City Council;	The Corporation prepares and issues an annual report, highlighting its activities during the year, including the audited consolidated financial statements.

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<p>k. hold a joint annual public meeting, at such time in each year and at such place in Winnipeg, Manitoba as their Directors may from time to time determine, for the purpose of presenting annual audited financial statements to the public and advising the public of their activities. Notice of the time and place of annual public meetings shall be posted at least once in a daily newspaper of general circulation in Winnipeg, Manitoba.</p>	<p>The annual meeting was held on October 31, 2012. Representatives of all 3 shareholders and over 100 members of the public attended. The meeting was advertised, as the agreement requires, in the Winnipeg Free Press.</p>
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The Provincial government is actively involved in the Corporation’s operating decisions. It has 3 representatives on the Board. And the Deputy Minister, Local Government, attends a majority of Board meetings as a non-voting member.

#### 4.5 Expenses tested were properly recorded, approved and business-related but no written procedures for purchases

Corporation staff told us what procedures apply to purchases There are no written procedures.

We reviewed spending for each of the following organizations:

- North Portage Development Corporation
- The Forks Renewal Corporation
- FNP Parking
- IMAX Theatre

For each entity, we randomly selected at least 20 expenditures for goods and services. There were no written policies or procedures in place, but we verified that each expenditure had been properly recorded and approved. All expenses that we reviewed were normal, business related expenses.

The Corporation also lacks a written policy for expense reports. All expense reports are approved by the President and CEO, and the President and CEO’s expenses are approved by the Board.

We reviewed the expense reports for all executives for the fiscal year ended March 31, 2011. All expense items we reviewed were properly approved and appeared to be business related.

**Recommendation 4:** We recommend the Corporation prepare formal written procedures for purchases and employee expenses.

## 4.6 Summary of recommendations and response of officials

1. **We recommend the Corporation amend its bylaws to limit the number of terms that directors can serve.**

**Response - Corporation:** Under current NPDC by-laws, there is a 3 year term for directors but no limit to the number of 3 year terms that can be served. NPDC will work with our Board to add an amendment limiting the number of terms that can be served. The Board must pass the amendment and the shareholders will then need to ratify the amendment. The unanimous shareholder agreement states that no change shall be made to the by-law of NPDC or FRC without the written consent of each shareholder.

NPDC will work to ensure that this recommendation is followed.

2. **We recommend the Provincial government enter into a discussion with the City and the Federal government to find a mechanism for the public to access detailed information.**

**Response - Department of Local Government:** This issue is currently being addressed by the corporation with its auditor.

3. **We recommend the Provincial government assess the reasonability of the salary levels at NPDC.**

**Response - Department of Local Government:** The authority for salaries has been delegated to the Board. On its own, the Province has no authority to regulate remuneration to employees.

4. **We recommend the Corporation prepare formal written procedures for purchases and employee expenses.**

**Response - Corporation:** Important parts of NPDC's procedures are documented with respect to signing authorities and employee expenses. NPDC's procedures are monitored annually by its external auditors.

NPDC will consolidate its existing procedures into one file and formally document remaining procedures into the same file, as required.