



BILL NO. 90

Government Bill

*2nd Session, 61st General Assembly
Nova Scotia
59 Elizabeth II, 2010*

An Act Respecting the Office of the Auditor General

CHAPTER 33
ACTS OF 2010

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
DECEMBER 10, 2010**

The Honourable Graham Steele
Minister of Finance

*Halifax, Nova Scotia
Printed by Authority of the Speaker of the House of Assembly*

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An Act Respecting the Office of the Auditor General

Be it enacted by the Governor and Assembly as follows:

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

2 In this Act,

(a) “audit” means any examination of records, reports, activities or operations conducted in accordance with generally accepted auditing standards and with other professional standards as may apply;

(b) “auditable entity” means

(i) any office of, and the administration of, the House of Assembly,

(ii) any government agency,

(iii) any government trust,

(iv) notwithstanding subclause (ii), any corporation or other organization

(A) of which the majority of outstanding voting shares are vested in Her Majesty in right of the Province,

(B) of which the majority of the members of the board of directors or other governing body

(I) are appointed by order of the Governor in Council, or

(II) are or may be appointed, under legislation or otherwise, by the Government or any government agency,

(C) whose board reports to Her Majesty in right of the Province or is accountable, directly or indirectly, to Her Majesty in right of the Province in the discharge of its duties,

(D) whose accounts or operations are or may be audited by the Auditor General under this Act or any other enactment or whose accounts or operations the Auditor General is appointed by the Governor in Council to audit, or

(E) that is a not-for-profit organization that delivers programs or services on behalf of the Government under legislation or pursuant to an order in council, contract or agreement and receives substantially all its revenues from Government funding or from funding and service fees to the Government or program clients that is allowed under the legislation, order in council, contract or agreement, or

(v) any entity designated as an auditable entity under the regulations;

(c) “funding recipient” means a corporation or non-government organization that receives Government funding;

(d) “generally accepted auditing standards” means the Canadian generally accepted auditing standards issued from time to time by the Canadian Institute of Chartered Accountants;

(e) “Government” means the Government of the Province;

(f) “government agency” means any Government department, crown corporation, board or other entity forming the Government Reporting Entity under the *Finance Act* for the purpose of the preparation of the consolidated financial statements of the Province;

(g) “government funding” refers to any form of payment or financial assistance, whether recurring or one-time, made directly or indirectly by government or any government agency, to any person or entity, under the terms of any agreement, contract, policy or legislation, in any form including transfer payments, grants, subsidies, loans, guarantees and payments in lieu of taxes;

(h) “government trust” means any trust under administration reported in the public accounts of the Government and any other fund held in trust by or on behalf of the Government or any government agency but, for greater certainty, does not include trust funds under a joint trustee relationship;

(i) “investigation” means any examination that results in observations but does not lead to an opinion;

(j) “Office” means the Office of the Auditor General and includes the Auditor General, the Deputy Auditor General and such other employees as the Auditor General may appoint pursuant to this Act;

(k) “privileged records” are records that are subject to solicitor-client privilege, litigation privilege, settlement privilege or public interest immunity;

(l) “Public Accounts Committee” means the Public Accounts Committee of the House of Assembly;

(m) “public contractor” means a non-government not-for-profit organization that delivers programs or services on behalf of the Government under legislation or pursuant to an order in council, contract or agreement and receives Government funding to do so or is empowered by the Government to collect fees for its services from the Government or program clients;

(n) “records” means information or data that are recorded and stored by graphic photographic, electronic, mechanical or other means and includes books, accounts, financial records, operational data, reports, minutes, files, correspondence, drawings, photographs and electronic mail;

(o) “Supreme Court” means the Supreme Court of Nova Scotia.

3 (1) Subject to the approval of the House of Assembly by majority vote, the Governor in Council shall appoint a person to be the Auditor General.

(2) The Auditor General, by virtue of the Auditor General’s position, is an officer of the House of Assembly.

(3) The Auditor General must be an individual qualified to be a licensed public accountant in a province of Canada.

(4) Subject to subsection (5), the Auditor General holds office for a term not exceeding ten years and may not be re-appointed.

(5) The Governor in Council may only remove the Auditor General for cause or incapacity on the passing by the House of Assembly of a resolution carried by a vote of two thirds of the members voting thereon.

(6) Upon written advice of the President of the Executive Council and the Leader of the Opposition, the Governor in Council may, at any time the Legislature is not sitting, suspend the Auditor General for cause or incapacity, but the suspension does not continue in force beyond the end of the next ensuing sitting of the Legislature.

4 (1) Subject to subsection (2), the Auditor General shall be paid remuneration within, but at or above the mid-point of, the annual salary rates for deputy ministers set out in the pay plan for deputy ministers together with any other remuneration payable to deputy ministers, which remuneration must be adjusted yearly by a percentage equal to the average increase for the remuneration of the deputy ministers.

(2) Notwithstanding subsection (1), the salary of the Auditor General must not be reduced except on the passing by the House of Assembly of a resolution carried by a vote of two thirds of the members voting thereon.

(3) The Auditor General is entitled to all rights, privileges and benefits, including pension benefits, to which deputy ministers are entitled.

(4) The Auditor General is an employee within the meaning of the *Public Service Superannuation Act*.

5 (1) The Auditor General shall supervise and be responsible for all matters relating to the work, conduct and administration of the Office and of those employed in the Office.

(2) The Auditor General shall direct and supervise the activities of the Deputy Auditor General.

(3) The Auditor General may delegate to any employee of the Office any duty or power conferred upon the Auditor General by this or any other enactment or by the Governor in Council, other than reporting to the House of Assembly.

6 (1) On the advice of the Auditor General, the Governor in Council may appoint a Deputy Auditor General who holds office during pleasure.

(2) The Deputy Auditor General must be an individual qualified to be a licensed public accountant in a jurisdiction in Canada.

(3) The Deputy Auditor General shall be paid a salary determined by the Auditor General in accordance with the annual salary rates for associate deputy ministers set out in the pay plan for associate deputy ministers together with any other remuneration payable to associate deputy ministers.

(4) The Deputy Auditor General is entitled to all the benefits and privileges provided to employees of the civil service under the *Civil Service Act* and the *Public Service Superannuation Act*.

(5) The Deputy Auditor General shall, during any vacancy in the position of the Auditor General, or during the illness or absence of the Auditor General, have and exercise all the powers and duties of the Auditor General.

(6) In the absence of a Deputy Auditor General, the Auditor General may temporarily appoint an Acting Deputy Auditor General or may temporarily delegate the powers and duties of the Deputy Auditor General to an assistant auditor general.

7 In the absence or incapacity of the Auditor General, upon written advice of the President of the Executive Council and the Leader of the Opposition, the Governor in Council may temporarily appoint an Acting Auditor General who has all the powers and performs all the duties of the Auditor General.

8 All employees of the Office, other than the Deputy Auditor General, are civil service employees in accordance with the *Civil Service Act* and the *Public Service Superannuation Act* and are entitled to all the benefits and privileges provided for in those Acts.

9 Notwithstanding the *Civil Service Act* or the *General Civil Service Regulations*, the Auditor General shall

(a) appoint such persons as employees in the Office as the Auditor General considers necessary to perform the Auditor General's duties; and

(b) place them in such positions as the Auditor General considers appropriate under such classification ratings and at such rates of remuneration within those classification ratings established by the Public Service Commission as the Auditor General considers appropriate.

10 (1) Notwithstanding any Government procurement rules or policies, the Auditor General may engage the services of such counsel, accountants or other professionals or experts to advise or assist the Auditor General in respect of matters as the Auditor General considers necessary to carry out the Auditor General's duties under this Act.

(2) Payments made to experts under this Section may be determined by the Auditor General and must be within the limits of the appropriations, including any additional appropriations, for the Office.

(3) The Office may engage in such activities within and outside the Province as the Auditor General considers appropriate to support the audit and accounting professions and to support effective audit or accountability in government.

11 (1) The Auditor General has all the powers, authorities, rights, privileges and immunities vested in the Auditor General by this Act, any other enactment, or the Governor in Council.

(2) The Auditor General has all the powers, authorities, rights, privileges and immunities exercisable by deputy ministers under the *Civil Service Act*, the *Public Service Act* or any other enactment, except for any specific powers, authorities or rights related to the management of particular departments or programs.

(3) In conducting an audit or performing any other duty or function under this Act or any other enactment or authority, the Auditor General has the same power to enforce the attendance of persons as witnesses and to compel them to give evidence and produce documents, and the same privileges and immunities as a judge of the Supreme Court.

(4) Except as otherwise provided in this Act, the Office shall follow Government policies but any approvals required by those policies are to be read as requiring the approval of the Auditor General.

12 (1) In the performance of duties under this Act or any other enactment or authority, the Auditor General may require any person to provide evidence, testimony or information under oath or provide documents respecting the matter under question and may issue a notice requiring such attendance or evidence.

(2) Where a person fails or refuses to comply with a notice under subsection (1), the Supreme Court, on the application of the Auditor General, may issue a warrant requiring the person to attend before the Auditor General in compliance with the notice.

(3) Where a witness refuses to give evidence as required, to answer questions by the Auditor General or to produce documents as required, the Supreme Court, on the application of the Auditor General, may commit the witness for contempt.

(4) A person who is given a notice under this Section shall not be excused from giving evidence or from producing records on the grounds that the evidence might tend to incriminate the person.

13 (1) Notwithstanding any other legislation, neither the Auditor General or previous Auditors General, nor persons who are or were part of the Office or employees of the Office or persons under contract to the Office may be compelled to give testimony relating to any information obtained or derived in the performance of their duties under this Act or any other enactment or authority or to produce any documents containing such information, except as required in the administration of this Act or any proceedings under this Act or under the *Criminal Code* (Canada).

(2) All information contained in the files, audit records and other records of the Office is exempt from the *Freedom of Information and Protection of Privacy Act* and disclosure under any other legislation.

(3) Neither the Auditor General or previous Auditors General nor any persons who are or were employees of the Office or persons under contract to the Office may be sued or be found liable by reason of any action they have done or failed to do, or anything said, in good faith in the performance of their duties.

(4) No civil action may be instituted by reason of the publication of a report of the Auditor General under this Act or any other enactment or authority or of the publication in good faith of an extract or summary of such a report or comments made in connection with such a report.

(5) In the case of any legal action against or involving them, related to the performance of their duties in good faith, the Auditor General or previous Auditors General and current or past employees of the Office shall be indemnified and provided with legal counsel by the Office.

(6) Audit working papers of the Office must not be tabled in the House of Assembly or be produced to any committee of the House of Assembly.

14 (1) Notwithstanding the *Freedom of Information and Protection of Privacy Act* or any other legislation, and notwithstanding any other rights of privacy, confidentiality or privilege, including solicitor-client privilege, litigation privilege, settlement privilege and public interest immunity, the Auditor General has the right of unrestricted access, at all times, to all records of any auditable entity, including the right to copy such records and to any things or property belonging to or used by any auditable entity, and every officer, employee and agent of any auditable entity shall forthwith provide the Auditor General any such information or explanations, or information concerning its duties, activities, organization and methods of operation, that the Auditor General believes to be necessary to perform the Auditor General's duties under this Act.

(2) For the purpose of performing the Auditor General's duties under this Act or any other enactment or authority, the Auditor General may station one or more members of the Office in any auditable entity and the auditable entity shall provide reasonable accommodation.

(3) The Auditor General has unrestricted access to the records of any funding recipient or public contractor directly related to the Government funding of any program of the Government or an agency of government.

(4) No person shall obstruct the Auditor General or any member of the Office or any person under contract with the Office in the conduct of any audit under this Act or any other enactment or authority or conceal or destroy any records that the Auditor General has requested in an audit.

(5) A disclosure to the Auditor General under this Section does not constitute a waiver of privilege or immunity including solicitor-client privilege, litigation privilege, settlement privilege or public interest immunity.

(6) Where the Auditor General and the auditable entity are unable to agree as to what records are privileged records, either party may make an application to the Supreme Court to determine the matter.

(7) Where an application has been made in accordance with subsection (6), the Auditor General shall not disclose the record in question until a determination has been made by the Supreme Court authorizing such disclosure.

15 (1) The Auditor General shall require every person employed in or engaged for a limited time by the Office, who is to examine the records of any auditable entity under this Act, to comply with any security requirements applicable to persons employed by that auditable entity.

(2) Subject to subsection (3), the Auditor General, the Deputy Auditor General and each other person employed in or engaged for a limited time by the Office shall preserve secrecy with respect to all matters not considered to be of general public knowledge, that come to their knowledge in the course of their duties under this Act, and shall not communicate such matters to any person, except as required in the administration of this Act, the conduct of any joint audits under this Act, or any proceedings under this Act or under the *Criminal Code* or as required for professional responsibilities and licensing.

(3) Notwithstanding any other provisions of this Act, the Auditor General, the Deputy Auditor General and each other person employed in or engaged for a limited time by the Office shall not disclose any information disclosed to the Office, that is subject to solicitor-client privilege, litigation privilege, settlement privilege or public interest immunity, without the consent of the holder of the privilege or immunity.

(4) The Auditor General, Deputy Auditor General and each other person employed in the Office, before commencing their duties, shall take the following oath:

I,, solemnly and sincerely swear that I will faithfully fulfil the duties of my position in the Office of the Auditor General and that I will comply with all confidentiality and other requirements of the Office of the Auditor General as stipulated in the *Auditor General Act*.

(5) The Office shall not retain personal information obtained under the application of this Act unless the personal information is reasonably necessary for the proper administration of this Act or any proceeding under it.

(6) Subject to subsection (3), nothing in this Section limits the authority of the Auditor General to report in accordance with any other provision of this Act or to comment on such reports or to participate in professional reviews required in order to maintain standing as a professional audit office or to meet national standards with respect to quality assurance of audit and other engagements.

16 The Auditor General shall present annually to a committee of the House of Assembly, designated for that purpose by the House, estimates of the sums of money that will be required by the Auditor General to conduct the activities required under this Act and any other enactment or authority, together with any estimated recoveries, and

(a) the Committee shall review and may alter as it considers proper the estimates presented by the Auditor General;

(b) notice of meetings by the Committee to review or alter the estimates presented by the Auditor General must be given to the Chair of the Public Accounts Committee and the Chair may attend those meetings; and

(c) the Chair of the Committee shall recommend the estimates as altered by the Committee to the Treasury Board for inclusion in the Government's estimates.

17 (1) The Office is an office of the House of Assembly.

(2) At the request of the Public Accounts Committee, the Auditor General and any employee of the Office designated by the Auditor General shall attend meetings of the Committee or its subcommittees in order to

- (a) assist the Committee in planning its agenda for review of the reports of the Auditor General;
- (b) assist the Committee in its review of the reports of the Auditor General;
- (c) advise the Committee with respect to any Committee activities; and
- (d) discuss the plans and performance of the Office.

(3) The Auditor General shall consider any resolutions by the Public Accounts Committee requesting the Auditor General to examine and report on any matter.

(4) The Auditor General shall provide the Public Accounts Committee with annual business plans and performance reports of the Office and they are public documents.

(5) Notwithstanding any other enactment, the Auditor General is not required to report on plans, activities or performance of the Office to any auditable entity.

(6) A person, not employed by Her Majesty in right of the Province or the House of Assembly, licensed under the *Public Accountants Act* and appointed by the Speaker of the House of Assembly, shall audit the financial statements of the Office and shall report annually thereon to the Speaker of the House of Assembly and to the Public Accounts Committee.

18 (1) The Auditor General may at any time conduct any audit or investigation that the Auditor General considers appropriate under the terms of this Act with respect to

- (a) any auditable entity;
- (b) activities of a public contractor relating to its provision of programs or services on behalf of the Government; or
- (c) activities of a funding recipient relating to the receipt and expenditure of Government funding,

and may report on the audit to the House of Assembly.

(2) The Auditor General shall report at least annually to the House of Assembly on the audit work of the Office under this Act.

(3) The reports referred to in subsection (2) must be submitted to the Speaker of the House or, if the House is not sitting, to the Clerk of the House.

(4) The Speaker shall lay the reports referred to in subsection (3) before the House immediately or, if the House is not sitting, within ten days of its next sitting.

(5) The Auditor General may, in the reports under this Section, provide information, findings, conclusions and recommendations with respect to or resulting from audits or investigations conducted under this Act.

(6) Notwithstanding any other Section of this Act, the Auditor General is not required to report to the House of Assembly on any matter that the Auditor General considers immaterial or insignificant.

(7) Nothing in this Act is to be interpreted as entitling the Auditor General to question the merits of policy objectives of the Government.

19 (1) The Auditor General shall audit the annual consolidated financial statements of the Government that are included in the public accounts required under the *Finance Act*.

(2) The Auditor General shall submit a report to the House of Assembly, which must be included in the public accounts and which must provide an opinion, prepared in accordance with generally accepted auditing standards, as to the fair presentation of the consolidated financial statements.

20 (1) The Auditor General shall conduct a review, in accordance with the assurance standards for review engagements of the Canadian Institute of Chartered Accountants, of the estimates of revenue used in the preparation of each budget address of the Minister of Finance to the House of Assembly.

(2) The Auditor General shall submit a report to the House of Assembly, which must be tabled with the budget address and which must provide an opinion as to whether the revenue estimates are reasonable and presented fairly.

21 (1) The Auditor General may audit the performance of an auditable entity or any activity, program, process or function of an auditable entity.

- (2) A performance audit may include, but is not limited to, examination of
- (a) the governance, economy, efficiency and effectiveness of the auditable entity or any activity, program, process or function of the auditable entity;
 - (b) performance monitoring and reporting;
 - (c) internal control and systems;
 - (d) compliance with policy, legislation or appropriations;
 - (e) stewardship over and appropriate use of public funds and other resources and property; and
 - (f) maintenance of essential financial and other records.

(3) The Auditor General shall report to the House of Assembly at least annually on the results of performance audits carried out under this Section.

22 The Auditor General, at the request of the Public Accounts Committee, may, and where directed by the Executive Council shall, conduct an audit or investigation of any auditable entity, funding recipient or public contractor if

- (a) the Auditor General has been provided with the funding the Auditor General considers necessary and sufficient to undertake the audit or investigation;

(b) in the opinion of the Auditor General, the audit or investigation will not unduly interfere with the other duties of the Office pursuant to this Act; and

(c) the audit or investigation is permitted by this Act,

and the Auditor General shall report the results of the audit or investigation to the House of Assembly.

23 (1) Notwithstanding any other enactment, where the financial statements and accounts of a government agency or government trust are not audited by an auditor appointed by the government agency or government trust or the Governor in Council, or where other legislation has provided the Auditor General the authority to conduct the audit, the Auditor General may, or where appointed by legislation or the Governor in Council, the Auditor General shall, perform the audit or appoint an auditor to perform the audit, either

(a) reporting directly to the management or the board of the government agency or government trust; or

(b) under the direction of and reporting directly to the Auditor General.

(2) Where the Auditor General elects to audit a government agency or government trust under subsection (1), the decision takes effect upon the Auditor General giving written notice of the audit to the board of directors or head of the government agency or government trust and after expiry of any existing contract with another auditor.

(3) Where an auditor of a government agency or government trust is appointed by the Auditor General under clause (1)(a), that auditor shall charge reasonable fees directly to, and the fees must be paid by, the government agency or government trust.

(4) Where the Auditor General performs the audit of a government agency or government trust directly under subsection (1), or appoints an auditor under the direction of the Auditor General under clause (1)(b), the Auditor General may charge fees directly to the government agency or government trust for the cost of the audit or cause the auditor to charge fees approved by the Auditor General directly to the government agency or government trust and the fees must be paid by the government agency or government trust.

(5) Where the Auditor General charges fees under subsection (4), those fees must be attributed to the Office as a recovery.

(6) Where the financial statements and accounts of any government agency or government trust referred to in subsection (1) are audited by an auditor other than the Auditor General, the auditor performing the audit shall

(a) deliver to the Auditor General immediately upon completion of the audit a copy of the audit report and audited financial statements of the government agency or government trust and a copy of the report to management or the board of findings and recommendations;

(b) make available to the Auditor General, upon request and upon reasonable notice, all records including any working papers, schedules, reports and other documentation relating to the audit; and

(c) provide a full explanation to the Auditor General, when so requested, of work performed, tests and examinations made and the results obtained, and any information within the knowledge of such auditor.

(7) Where an audit is conducted by an external auditor under this Section, the Auditor General may conduct or cause to be conducted any other audit or investigation of the records and operations of the government agency or government trust that the Auditor General considers necessary.

24 (1) The Auditor General may undertake a joint audit, with other auditors general, of any auditable entity or other entity or program that is administered or funded by the Government and any other government.

(2) A report of a joint audit carried out pursuant to subsection (1) must be submitted to the Speaker of the House of Assembly in the manner provided for in Section 18.

25 (1) The Auditor General shall report to appropriate officials of auditable entities

(a) any instances of fraud or possible fraud or other illegal activity identified in the course of any audit;

(b) any significant instances of inappropriate behaviour by any public official, including conflicts of interest or misuse of public property;

(c) any instances in which any audit was obstructed or information otherwise withheld; and

(d) any instances in which a significant amount of public funds was used inappropriately or for purposes other than those intended,

and the Auditor General may report such instances to the House of Assembly.

(2) Where any instances referred to in subsection (1) relate to a member of the House, the Auditor General shall report the instances to the Speaker of the House, the Attorney General and the leader of the political party, if any, with which the member is associated.

26 (1) The Governor in Council may make regulations

(a) designating an entity as an auditable entity for the purpose of this Act;

(b) defining any word or expression used but not defined in this Act;

(c) the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*.

27 Chapter 28 of the Revised Statutes, 1989, the *Auditor General Act*, is repealed.

28 Section 19 of Chapter 4 of the Acts of 1995, the *Highway 104 Western Alignment Act*, is amended by striking out “an agency of government” in the first and second lines and substituting “a government agency”.

29 Subclause 2(1)(f)(iii) of Chapter 34 of the Acts of 2001, the *Lobbyists' Registration Act*, is amended by striking out “an agency of government” in the second line and substituting “a government agency”.

30 Clause 3(1)(k) of Chapter 34 is amended by striking out “agencies of government” in the second line and substituting “government agencies”.

31 Clause 5(4)(l) of Chapter 34 is amended by striking out “an agency of government” in the second and third lines and substituting “a government agency”.

32 Clause 6(4)(m) of Chapter 34 is amended by striking out “an agency of government” in the second and third lines and substituting “a government agency”.

33 Clause 7(4)(l) of Chapter 34 is amended by striking out “an agency of government” in the second and third lines and substituting “a government agency”.

34 Section 23 of Chapter 282 of the Revised Statutes, 1989, the *Members' Retiring Allowances Act*, as enacted by Chapter 29 of the Acts of 1993, is amended by striking out “an agency of government” in the fifth line and substituting “a government agency”.
