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To serve the people of Nova Scotia and the House of Assembly by making a significant contribution to enhanced public sector accountability and performance.

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Honourable Alfie MacLeod
Speaker
House of Assembly
Province of Nova Scotia

Dear Sir:

I have the honour to submit herewith my Special Report to the House of Assembly on the Office of Immigration Economic Stream of the Nova Scotia Nominee Program Phase Two, to be laid before the House in accordance with Section 15 of the Auditor General Act.

Respectfully submitted

A handwritten signature in black ink, appearing to read 'J.R. Lapointe', with a long horizontal flourish extending to the right.

JACQUES R. LAPOINTE, BA, CA • CIA
Auditor General

Halifax, Nova Scotia
September 25, 2008



Office of Immigration Economic Stream of the Nova Scotia Nominee Program Phase Two

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Economic Stream of the Nova Scotia Nominee Program Phase Two

Summary

The first phase of our audit of the Nova Scotia Nominee Program (NSNP) economic stream examined the program's implementation and subsequent administration with an emphasis on its achievement of program objectives, the adequacy of its management contract and its compliance with the federal agreement.

This second phase focused on nominee experiences and the role of mentors, agents and brokers, with some additional work on the activity of the trust account and the new residency refund option. The audit found that, while some improvements have been made to the program, there were significant deficiencies, inappropriate activities and concerns in most of these areas.

During the course of our audit we became aware of a number of matters that appeared irregular and that we felt required further attention. We pursued these matters as far as reasonable within the scope of the audit. However, we felt that further work in these areas would go beyond the scope of our audit. Without making any judgment on the issues so identified, we referred the matters to the RCMP for their review, as is our professional responsibility.

17 of 51 nominee application approvals we tested did not meet program criteria and on this basis should not have been approved. While some criteria may have been somewhat difficult to apply, such as net worth caps and proof of source of funds, other deficiencies such as language ability were more critical for success.

It is important to note we are not commenting on these nominees' suitability for immigration to Canada; only on whether they met the criteria established under the NSNP economic stream.

Although not required by the program, most nominees used the services of an immigration agent to assist them in preparing their application. \$20,000 of the nominees' economic contribution under the NSNP was intended to pay agents' commissions. However most nominees interviewed were not aware of this. Most agents we spoke with indicated they also charged nominees additional fees for their services.

We concluded that a number of payments to agents were inappropriate. We found that some nominees did not know the agent on record as their paid



representative; some nominees were told an agent was a requirement, even if the nominee prepared his own application; some applicants were required to sign blank agent forms; some agents were paid for work they did not do; and some payments were made to individuals not listed as the agent of record.

We found that the mentor selection process was ineffective. 24 of 41 mentor applications we tested did not meet the program's approval criteria and, on this basis, were not qualified to provide mentorships, and should not have been approved as mentors or received program funds. We also identified four non bona-fide mentorships, in which the nominee never worked for the mentor and the mentor company received at least some of the mentorship funds. Some payments to mentors were inappropriate. These results support our Phase One conclusion that the program objective to provide a mentorship to nominees was not met.

In other work, we tested residency refund applications and noted OOI had followed their established policies. We agreed with their decision on all sample items.

We reconciled the trust fund balance to records of transactions over the life of the NSNP economic stream and were able to reconcile the fund with an outstanding difference of less than 0.06%, which we considered to be insignificant.

Economic Stream of the Nova Scotia Nominee Program Phase Two

History and Background of the Nova Scotia Nominee Program

1. On June 11, 2008, the Auditor General issued Phase One of his report on the audit of the economic stream of the Nova Scotia Nominee Program. This audit was undertaken as a result of the Office's audit planning process as well as an October 31, 2007 request from the Public Accounts Committee. The results from Phase One of this audit are summarized in the appendix on page 39 of this report. The complete Phase One Report on the Economic Stream of the Nova Scotia Nominee Program is available from the Office of the Auditor General or by selecting publications on our web site at www.oag-ns.ca.
2. Provincial nominee programs give provinces an opportunity to establish criteria to target potential immigrants. A province recommends nominees, and Citizenship and Immigration Canada, a federal government department, decides whether the nominees are admissible to Canada by reviewing their health, security and criminal background.
3. The Canada Nova Scotia Agreement on Provincial Nominees was signed on August 27, 2002. It outlined responsibilities of Nova Scotia and Canada in operating the Nova Scotia Nominee Program (NSNP). At that time, the Office of Economic Development was responsible for business immigration in Nova Scotia. Subsequently, in 2005, the Office of Immigration (OOI) was created and took over responsibility for the NSNP.
4. On December 9, 2002, the Province signed an agreement with Cornwallis Financial Corporation (Cornwallis), a private company, to assist with the design of all aspects of the NSNP. Cornwallis was responsible for recruitment of potential nominees and mentors and assistance with file preparation.
5. On June 30, 2006, the contractual relationship between the Province and Cornwallis came to an end and OOI took over all aspects of the NSNP.
6. The Nova Scotia Nominee Program originally had three streams: skilled workers, community identified and economic. Later, two new streams for family business workers and international graduates were added.
7. The economic stream was suspended in July 2006, although existing applicants continued in the program. In February 2008, OOI announced

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an entrepreneurial stream would replace the economic stream. At the time this Report was written, the entrepreneurial stream had not yet been developed and started accepting applications.

Economic Stream Background

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8. Nominees' original fees under the economic stream of the NSNP were \$130,500, allocated as follows:
 - \$500 to the Province (this portion of the fee was eliminated effective May 9, 2006);
 - \$100,000 to the business mentor company, of which at least \$20,000 was to be paid in salary to the nominee;
 - \$20,000 to the international immigration consultant (early in the program, only \$18,000 was paid to the consultant); and
 - \$10,000 to Cornwallis for their role as file preparer.
9. Prior to July 2006, Cornwallis was responsible for ensuring the nominee's application was complete and for the initial assessment of whether the nominee qualified for the economic stream. Once Cornwallis was satisfied with the application, an interview with provincial staff was arranged.
10. If Economic Development, and later, the Office of Immigration, were satisfied with the nominee's application and interview, a nomination certificate was issued. This certificate represented the Province's request for Citizenship and Immigration Canada (CIC) to approve the immigrant for entrance into Canada. At this point, the nominee had 90 days to submit the completed application to the appropriate visa post. CIC had final approval for all applications.
11. The local Canadian visa post in the nominee's home country conducted an assessment of the applicant to ensure there were no security, health or criminal issues. If issued a permanent resident visa by CIC, the nominee had one year from the date on his or her medical evaluation to enter Canada.
12. Once the nominees landed in Nova Scotia, they were originally required to participate in a six month mentorship with a Nova Scotia business. At that time there was no deadline by which the mentorship had to start. After August 15, 2006, nominees had one year from landing to sign a contract with a business mentor or forfeit \$100,000 of their application fee.
13. Under Cornwallis' contract with the Province, Cornwallis was responsible for recruitment of potential nominees and mentors. The business mentorship component of the NSNP is described in greater detail in the Business Mentors section later in this Report.

14. On October 12, 2007, the Office of Immigration announced the residency refund as an option instead of mentorship. A landed nominee, living in Nova Scotia, who had not accepted a mentorship position could apply for a refund of his or her \$100,000. Subsequently, after the Auditor General released Phase One of his audit of the Nova Scotia Nominee Program on June 11, 2008, the Province announced its decision to expand the residency refund. At the time this Report was written, OOI had not released details of the expanded residency refund or guidelines to determine which nominees might qualify.
15. As of July 31, 2008, OOI statistics indicated 618 economic nominees had landed in Canada. Total economic contributions for landed nominees totaled approximately \$80.6 million. When this Report was written, 212 nominees had been matched with business mentors and 70 residency refunds had been processed. We have not audited these numbers for accuracy.

Audit Objectives and Scope

16. Phase Two of our audit of the economic stream of the Nova Scotia Nominee Program considered nominee and mentor experiences; examined the involvement of immigration agents and brokers; reconciled the NSNP trust account; and examined the residency refund option. Our objectives for Phase Two were:
 - to assess whether approved nominees met program criteria;
 - to assess whether OOI maintained adequate contact information for nominees;
 - to determine whether:
 - payments were made to the agent of record per the nominee's file;
 - agents completed work on the nominee's file to warrant the payment;
 - agents received fees in addition to commissions through the NSNP;
 - all amounts due to agents were paid;
 - to assess whether mentor companies:
 - met established program criteria;
 - were bona-fide companies;
 - offered sufficient and appropriate middle management positions to nominees;
 - to determine why and how brokers came to be involved in the program;
 - to determine the amount of broker's fees and whether these were paid by the nominee or mentor;



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- to assess whether OOI processed refund applications in accordance with the established residency refund policies; and
 - to assess the reasonability of the overall balance in the trust fund.
17. As in Phase One, the phrase “*trust account*” is used throughout this Report. The contract between the Province and Cornwallis uses this term and we have continued its use for consistency. In doing so, we are referring to the account set up by Cornwallis Financial Corporation in which nominees’ funds were deposited, payments made and interest accrued. We have used the term “*trust fund*” to refer to the account set up by the Province.

Matters Referred to RCMP

18. During the course of our audit we became aware of a number of matters that appeared irregular and that we felt required further attention. We pursued these matters as far as reasonable within the scope of the audit. However, we felt that further work in these areas would go beyond the scope of our audit. Without making any judgements on the issues so identified, we referred the matters to the RCMP for their review, as is our professional responsibility.
19. Matters so referred are noted where appropriate in the Report.

Subpoenas

20. As part of our detailed work, we wished to interview certain individuals working at Cornwallis Financial Corporation as well as a local lawyer who was identified as the representative for several nominees. Originally Cornwallis staff spoke with staff from our Office and provided certain information on transactions related to the NSNP. In early May 2008, Cornwallis informed us they were not prepared to respond to further enquiries. Later in Phase Two, we identified areas of concern and wished to speak with Cornwallis staff. Cornwallis legal counsel informed us “*Cornwallis will not voluntarily submit to the interviews which you propose.*”
21. Around the same time, we also wanted to speak with a Halifax-area lawyer who represented several nominees to discuss unusual transactions which had come to our attention.
22. Section 14 of the Auditor General Act gives the Auditor General the power to subpoena individuals and require them to appear at an interview and respond to questions. On July 18, 2008, the Auditor General issued subpoenas to five Cornwallis employees, the Halifax lawyer and his assistant. We believed these individuals could shed light on unusual and irregular transactions identified during our audit work. Legal counsel for

Cornwallis informed us they were challenging this Office's right to subpoena and filed an application to have the subpoenas quashed. Rather than filing a separate application, the law firm for the lawyer and assistant we wanted to interview contacted us and requested we withdraw those subpoenas pending the outcome of Cornwallis' court application. We agreed to this approach and the firm verified they would abide by the outcome of the court hearing.

23. During the audit we decided to refer certain matters to the RCMP for their review. We determined it would not be appropriate to continue to do additional work in these areas. Accordingly, we decided to withdraw the subpoenas.

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Identification of Sample Items

24. *Selection of nominees and mentors* – Our audit included review of nominee and mentor application files as well as interviews with some of the nominees, agents and mentors. Office of Immigration management informed us that 618 economic nominees had landed as of July 31, 2008 and 267 companies had been approved as business mentors. We have not audited these numbers for accuracy.
25. During Phases One and Two, we examined 54 nominee and 46 mentor application files. We interviewed 36 of the 54 nominees, 21 of their related mentor companies, and six immigration agents. We selected sample items using a combination of random and judgemental sampling. 14 nominees, 15 mentor companies and one agent were selected because OOI management informed us they had concerns.
26. When selecting individuals or companies to interview, we ensured they were accessible and practical. For example, we did not attempt to interview anyone living outside of Canada.
27. In selecting nine immigration agents to interview, we included some with multiple (more than 10) nominees. Those nine agents were responsible for 28% of all economic nominees nominated in Nova Scotia and 22 of the nominees we interviewed. We wanted to ensure we got a full picture of the economic stream of the NSNP from agents who had been involved in assisting with more than one or two files. Ultimately, we were only able to interview the six agents who were willing to speak with us.
28. After identifying nominees and mentors with whom we had specific concerns, we selected the remaining nominees whom we were able to locate from a number of countries of origin to get a variety of experiences with the program. In some instances, we selected an agent, a sample of nominees this agent represented and any mentor companies the nominees worked

for. Again, we wanted to get a full picture of all aspects of the NSNP experience for at least some of the nominees. As well the nominees and related mentor companies had to be willing to speak with us.

Significant Audit Observations

Economic Stream Nominees

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29. *Conclusions and summary of observations* – Our objectives were to assess whether approved nominees met program criteria of the economic stream of the NSNP and whether OOI maintained adequate contact information for nominees. Based on the criteria established early in the program, we concluded 17 of 51 approvals tested did not meet program criteria and, on the basis of these criteria, should not have been approved. An additional 33 nominees met all criteria except support for source of net worth funds due to inadequate documentation. On this basis, these applicants should either have been rejected or greater efforts made to obtain additional support. We concluded that the selection process was inadequately implemented and required a more rigorous approach. It is important to note we are not commenting on whether these nominees were good candidates for immigration to Canada; only that they did not meet the criteria established under the economic stream of the NSNP. Finally, we were unable to locate 21 of 57 nominees we attempted to contact as the information on file at OOI was either not current or missing.
30. *Nominee sample testing criteria* – At the start of the economic stream of the NSNP, criteria which prospective nominees were required to meet were documented on the nominee application form and in application guides. We reviewed the form and related guides and discussed the criteria with the sole provincial employee responsible for application review and interviewing nominees in the early stages of the program. Later, after OOI took over administration of the program in 2006, requirements were also noted in file checklists. After July 2006, OOI did not accept any new nominee applicants to the economic stream; however it continued to process nominees who had already applied.
31. It is important to remember that Nova Scotia only issues a nomination certificate recommending the nominee be approved for entry to Canada. The Federal government, through Citizenship and Immigration Canada, makes the final decision on admissibility of the nominee.
32. In order to assess whether there was adequate documentation on file to support decisions, we tested nominee application files against the following most significant criteria.

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- Nominee applicant between 25 and 60 years of age
 - Net worth between \$300,000 and \$800,000 (\$800,000 cap was removed February 14, 2006)
 - Support for the source of funds in the nominee's net worth
 - At least two years of management experience within the past five years
 - At least 13 years of education, roughly equivalent to a Nova Scotia high school education
33. Another significant criterion for the NSNP was the applicant's ability to speak basic English. Although the nominees were required to self assess their English ability on their application, this criterion was primarily assessed when the nominees were interviewed by provincial staff. We could not assess adequacy of the nominee's English through file testing. However, we made observations related to this criterion when we interviewed nominees. These are listed below.
34. *Concerns with lack of definition and enforceability of criteria* – Certain of the criteria were difficult to apply. For example, initially, an applicant's net worth had to fall within \$300,000 and \$800,000. It is not possible to ensure completeness when considering an applicant's net worth as the individual could have assets anywhere in the world. The only practical means of ensuring an applicant's net worth did not exceed the cap was to ask the nominee.
35. Other criteria were poorly defined. For example, although nominee applicants required management experience, the criteria did not provide staff with guidance on what was considered acceptable experience.
36. *Nominee file testing results* – We examined 54 nominee application files – 51 acceptances and 3 rejections or withdrawals. We assessed these files against program criteria established at the outset of the economic stream. 17 of the 51 approvals did not meet established program criteria, and therefore, based on these criteria, should not have been approved.
- 10 did not meet the basic English requirement (note this result comes from our interviews)
 - Four did not have support for the required management experience (one of whom also did not meet the English criterion)
 - Three did not meet the minimum net worth amount (one of whom also did not meet the English criterion)
 - Three exceeded the net worth cap (prior to cap being removed, one of whom also did not meet the English criterion)



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37. An additional 33 nominees met all criteria except support for source of net worth funds due to inadequate documentation. On this basis, these applicants should either have been rejected or greater efforts made to obtain additional support. We concluded that the selection process was inadequately implemented and required a more rigorous approach. It is important to note we are not commenting on whether these nominees were good candidates for immigration; only that they did not meet the economic stream program criteria. The concerns we noted are detailed in the following paragraphs.
38. *Net worth and source of funds* – We examined application files for support documenting the applicant’s net worth and source of net worth funds. This could have included several supporting documents such as bank confirmations, bank account statements, business valuations, property appraisals, etc. The NSNP also required adequate support for the source of funds to ensure funds were legitimate. We were concerned by the nature of the supporting documentation for net worth in many cases. For example, in a number of files, the nominees’ bank account indicated they met the net worth threshold but there was no support for the source of their net worth in that account. If the supporting documentation doesn’t illustrate support for source of funds, the applications should have been rejected or greater efforts made to obtain additional support.
39. One nominee’s net worth included a fixed deposit of \$335,000 made 20 days prior to his NSNP application with no indication of the source of funds for the deposit. There is no evidence this deposit was followed up to determine source of funds in accordance with program criteria. There is a risk that significant deposits such as this could have originated from illicit sources. If provincial staff were unable to determine the source of this deposit, they could have rejected the applicant or passed the information along to Federal officials to try and determine the source of the funds. However there is no indication this deposit was questioned, and the immigrant was nominated and subsequently approved by Citizenship and Immigration Canada.
40. There was no requirement to confirm all of a nominee’s bank accounts on the same, or close to the same date. We noted 16 nominees with bank confirmations on different dates, including one with confirmations more than five months apart for different bank accounts. There is no evidence that provincial staff reviewing the applications flagged these confirmations. Unless all bank accounts are confirmed as of approximately the same date, there is a risk the nominees could transfer money between accounts to make it appear their overall net worth met the program’s thresholds.
41. Additional areas where we felt net worth support was lacking included: nominee application files with property title deeds and appraisals not translated to English or translated by the applicant; personal estimates for

value of property; property appraisals, but no title deed to show ownership; business valuations based on financial statements or other original cost valuations, with no current market value assessment provided.

42. *Management experience* – The NSNP economic stream criteria required that applicants have at least two years of management experience within the past five years, or have owned their own business. External support such as letters from employees, employment contracts, and letters of promotion, including details of the new position, were also required.
43. We found that 50 of the 51 approved applications we reviewed indicated that the applicant had the necessary management experience, but three of those self declarations were not adequately supported. The remaining application did not indicate management experience. The NSNP criteria required external support for management experience and, on that basis, in the three situations where that was not provided, the applicants should have been rejected.
44. *Education* – Nominees were required to provide supporting documentation showing 13 years of education, or roughly the equivalent to a Nova Scotia high school diploma. We found adequate support for nominees' education in all files.
45. *Basic English* – All nominees were required to speak basic English – a working or conversational level. OOI management informed us this criterion was necessary because the NSNP required nominees to accept a six month mentorship at a middle management level in a Nova Scotia business. Applicants were required to declare their English abilities on their application and provincial staff assessed those abilities during the nominee's interview.
46. The nominee's English ability was likely a key component of a successful mentorship and, we believe, a significant criterion for acceptance into the NSNP. There was no formal documentation of the assessment of a nominee's English capability, and in many cases, there were no detailed notes to support the interviewer's decision.
47. We noted the interviewer often indicated that improvement of English skills was necessary prior to nomination. Although applicants had to provide proof of attendance at classes, there was no requirement for a subsequent interview to reassess the nominee.
48. Three nominees were unable to respond to our interview questions due to a language barrier. Additionally, it appeared seven nominees we interviewed could not speak English. These individuals brought translators to their interviews and, as a result, we were able to have meaningful discussions

with them. At the time of our interviews, these nominees had been living in Canada for ten months to three years, yet it would appear they were assessed and approved as having basic English skills when interviewed prior to their nomination.

49. OOI management informed us they believe basic English was insufficient for a middle management position, and that the original language criterion was set too low.

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50. It is important to note that we are not attempting to fault the nominees in these instances. The ability to speak basic English was a requirement of the Nova Scotia Nominee Program. A nominee's ability to function in a middle management position in a Nova Scotia company would likely be significantly impacted if the individual required language training. In fact, seven business mentors we interviewed indicated English was a significant challenge for nominees and prevented them from completing middle management responsibilities. A further nine mentors noted this issue when they submitted their final report to OOI. Certain immigration agents we spoke with also indicated there were problems with this criterion. By establishing such a requirement and not adhering to it in approving nominees, there was a risk of negative impacts on the nominee's ability to adapt to a new country which in turn could have impacted retention rates.

51. *Other matters* – In reviewing various nominee applications and related application guides, we noted nominees were required to sign a blank employment contract as part of their application package. The blank contract was similar to what a nominee would have signed with a mentor, but without the company name filled in. OOI management informed us that when the nominee was matched, either the company name was filled in and the contract signed by the mentor, or a new contract was signed by both parties.

52. This was an inappropriate requirement and we questioned its purpose. We were informed this was intended to have the nominees demonstrate their willingness to participate in a mentorship. OOI management informed us it required all mentor employment contracts be signed in its presence after taking over the program from Cornwallis in July 2006.

53. *Nominee contact information not current* – We experienced difficulties locating some of the economic stream nominees as the contact information on file at the Office of Immigration was not current. We attempted to contact 57 nominees and were only able to locate 36 of those individuals. For the remaining 21, the contact information on file at OOI was either missing or not accurate and we were not able to locate the nominee. We attempted to use other sources such as the internet and Canada 411 with limited success. This result was not unexpected as we knew from our discussions with the

Office of Immigration that some nominees may have landed in Canada but never arrived in Nova Scotia. We also knew that OOI did not necessarily have current contact information for all nominees.

54. 14 of the 36 nominees we spoke with indicated the program did not meet their expectations. They expressed disappointment with the NSNP as a whole, and particularly the mentorship component and residency refund.

Agents

55. *Conclusions and summary of observations* – Our audit objectives were to determine whether payments were made to the nominees’ agent of record indicated in the file and whether the agents completed sufficient work on the nominee’s file to warrant the payment. Agents, as we use the term in this Report, could be either lawyers or consultants. We also wanted to determine whether agents received fees in addition to commissions through the NSNP and assess whether all amounts were paid to the appropriate agents. We concluded that payments were sometimes made to agents who were not the agent of record. In many cases, the nominee did not deal with the agent of record. We also identified several instances related to one agent in which the nominees indicated he did not assist them with their files, yet he received payments as their agent. As well, most agents we spoke to received additional fees from the nominees. We also noted that many nominees did not understand that \$20,000 of their economic contribution through the NSNP was intended to pay their agent. Neither Cornwallis nor OOI have paid all outstanding agent fees. If these amounts are liabilities, then they should be paid. If they are not, then ownership should be established and an appropriate disposition made of the funds.

56. *Background*–The Canadian Society of Immigration Consultants (CSIC) was established in 2004 under an amendment to the Federal Immigration and Refugee Protection Regulations. CSIC is an independent, self regulating, not-for-profit organization whose mandate is to “*protect the consumers of immigration consulting services and ensure the competent and professional conduct of its members.*” After April 2004, paid representatives for immigration applications must be members in good standing of a provincial law society or a member of CSIC.

57. The CSIC Code of Conduct requires immigration consultants or agents provide the immigrant with a written agreement that fully discloses the fees charged. The Canadian Bar Association Code of Conduct has similar requirements to ensure clients are aware of all fees their lawyer will receive and prohibiting the lawyer from accepting fees from anyone other than the client unless they disclose this information.

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58. Throughout this Report, a reference to an agent could refer to either a lawyer or a consultant, acting as a nominee's paid representative for purposes of the Nova Scotia Nominee Program.
 59. Up to June 30, 2006, Cornwallis paid all agent commissions. After the Province's contract with Cornwallis ended, OOI paid agent commissions for immigrants nominated after June 30, 2006.
 60. *Disclosure of fees* – The breakdown of the nominees' \$130,500 economic contribution was not effectively communicated to nominees. 31 of the 36 nominees we interviewed indicated they were not aware their agents would receive a commission from the nominee's application funds. Two agents we interviewed indicated they clearly disclosed the commissions paid under the NSNP to clients. However for one agent, this disclosure was included in a contract signed by the nominee. The contract was written in English and not translated. In this situation, there is a risk some nominees might not understand something as complex as a contract. Two agents we interviewed were lawyers who had arrangements with foreign immigration consultants. In both instances the lawyers indicated they felt these consultants were responsible for disclosure. See paragraphs 84 to 91 for more on these arrangements.
 61. *Additional fees* – Cornwallis suggested the \$20,000 agent commission be included in the nominee's economic contribution; and indicated this left less room for abuse. OOI management informed us that Cornwallis acknowledged to the Province, during a meeting in 2006, that Cornwallis was always aware that agents charged additional fees directly to their clients, and that this practice was normal in the immigration industry. OOI management also indicated they were concerned with this practice.
 62. Of the 36 nominees interviewed, 26 indicated they paid agent fees ranging from roughly \$1,400 to \$30,000. Average additional fees paid by these nominees were approximately \$9,000. At the time of the additional payments, 23 of the 26 nominees were not aware that \$20,000 (\$18,000 in the early stages of the program) of their NSNP economic contribution was intended to pay their agent. The six immigration agents we interviewed confirmed they either received additional fees, or were aware that additional money was being paid by nominees to their international agent.
 63. Of the 36 nominees interviewed, 13 were not familiar with the agent listed on their 5476 form (a federal form to indicate the details of the nominee's paid representative). This means the nominees were not aware of whom they were authorizing to access their file, or whom to file any complaints against in the event there were problems.

Concerns with Lawyer Representing Certain Nominees

64. *Conclusions and summary of observations* – During the audit OOI informed us they had information suggesting that a certain lawyer may have been improperly listed as the agent representative for several nominees. We reviewed the files for eight nominees represented by this lawyer and interviewed seven of these nominees to obtain further information. Two nominees were not aware this lawyer's name was noted on their 5476 form as their authorized representative. The remaining five nominees we interviewed were aware his name was on their form, but believed this was merely a technical requirement. In all cases, the nominees indicated this lawyer did not perform services on their behalf and they were not aware he had received an agent commission of \$18,000 to \$20,000 per nominee. On two occasions in 2008, this lawyer's firm returned some of those agent commissions saying it was their position they were not entitled to the funds. We subpoenaed the lawyer and his assistant. See paragraphs 20 to 23 for further details. The payment of agent fees in these cases appears to be inappropriate and the return of some of the fees is irregular.
65. *Background* – Nominees who used the services of a paid representative identified this individual as their agent on a federal IMM 5476 form. Although many nominees used an agent, Citizenship and Immigration Canada (CIC) did not require immigrants to have an agent. Despite this Cornwallis told nominees and others that an agent was required.
66. In some instances, nominees indicated they prepared their files and submitted their application without the use of a paid representative. Many nominees we spoke with indicated they did not understand that \$18,000 to \$20,000 of their economic contribution under the NSNP was intended to pay their agent representative. These nominees may have assumed they were saving money by not obtaining an agent's services.
67. During our audit we had concerns with a Halifax-area lawyer who was listed as the paid representative for several nominees. We reviewed the files for eight nominees represented by this lawyer and interviewed seven of these nominees to obtain further information.
68. Although this lawyer was listed on the federal IMM 5476 as their paid representative, all seven nominees we interviewed stated they completed their own files without any assistance from him. These nominees fall into three groups:
- Those who were aware of the lawyer's name and verified they signed the IMM 5476 with his name as their representative, although he was not involved in preparing their application.



- One nominee signed a blank IMM 5476 form and had not heard of this lawyer until more recently, after he landed in Canada.
 - One nominee was not familiar with the lawyer and the IMM 5476 form in his file was not signed.
69. There were other lawyers involved in the NSNP as paid representatives. However, we did not identify any instances where those lawyers did not complete any work on the nominees' files.

Nominees aware of lawyer's name on federal form

70. Five of the nominees were aware there was an IMM 5476 form on file with their application naming the Halifax lawyer as their representative. In each case, this lawyer was recommended to the nominee by Cornwallis and paid by Cornwallis from the nominee's economic contributions. Some of the nominees never met the lawyer or only met him for a few minutes and noted he was not involved in preparing their immigration application files. He accepted payments ranging from \$18,000 to \$20,000 related to these nominees. In light of the nominee's comments, it is not clear what services these payments were intended to cover. In one instance, there was documentation on file noting a nominee had prepared his own application.
71. Four nominees told us they were informed by Cornwallis they must have an agent in order for their application to be accepted by Citizenship and Immigration Canada. For example, in an e-mail to one nominee a Cornwallis employee stated *"As you may already know, all applicants must have a representative, and that representative must have certain qualifications (Canadian lawyer or CSIC Member). Those applicants who apply without a representative must have a Halifax based Canadian lawyer appointed to them. This is a free service and we will add his name to the IMM 5476."* Similarly, an e-mail from the same Cornwallis employee to another nominee stated *"I encourage you to submit your file with the IMM 5476 signed by [lawyer's name]. I understand that he did not assist you in your application. I just do not want your application to be delayed due to one missing form. Since the service is provided free of charge, I think it is in your best interest to submit your application with the form."* This quote has been edited to remove certain identifying names.
72. In both these examples, the Cornwallis employee clearly states this is a free service and does not point out that the nominee has already paid for such a service as part of his economic contribution under the NSNP. The Halifax-area lawyer received the \$18,000 agent payment for one of these nominees, although he later returned this amount to the trust fund (see below for further discussion of this matter). He did not claim the agent payment

for the second nominee. This nominee landed in Canada in July 2008. By 2007, provincial staff had begun to question the lawyer regarding some of the payments he received.

Nominees initially unaware of lawyer's name on federal form

73. Two nominees completed their own immigration applications and informed us they were not aware this lawyer's name was included on an IMM 5476 form in their file. One of these nominees does not recall signing a 5476 form while the remaining nominee signed a blank form. As discussed in paragraphs 51 and 52, nominees were required to sign a blank employment contract as part of their application to the NSNP. This practice likely meant the request for certain nominees to sign an additional blank form was not seen as unusual.
74. In both instances, these nominees only became aware of the lawyer's name much later, after landing in Canada, and, in some cases, only after the Office of Immigration contacted them to ask if the lawyer had assisted with their application. The nominees stated they did not put the lawyer's name on an IMM 5476 form. However, his name was included when Cornwallis sent the form to OOI. It is not clear who added the lawyer's name as the nominees' paid representative on the 5476.
75. One nominee had an unsigned IMM 5476 with the lawyer's name as the paid representative on file at the Office of Immigration. This particular nominee informed us he never met the lawyer and did not know how a form with the lawyer's name came to be in his file.

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Lawyer subsequently returns some of nominee funds

76. During 2007 and 2008, the lawyer's firm returned some of the payments he received under the NSNP to Cornwallis, and Cornwallis subsequently returned those amounts to the Province for deposit in the NSNP trust fund.
77. A number of significant events surrounding the refund for one nominee are as follows:
- January 17, 2007 – Wire transfer of \$20,000 from Cornwallis to law firm for a nominee
 - October 17, 2007 – Office of Immigration legal counsel wrote the lawyer and asked whether he received an agent payment for this nominee. This letter also noted the nominee was requesting a refund of his \$20,000 as he did not use an agent.
 - November 20, 2007 – Law firm returns \$20,000 agent payment for this nominee to Cornwallis.



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- January 2, 2008 – Cornwallis legal counsel inform OOI’s legal counsel that Cornwallis recently received \$20,000 from the lawyer, representing the agent fee for this nominee. The letter stated “*We understand that [lawyer] takes the view that [Firm Name] is not entitled to retain the commission and has therefore returned it to Cornwallis.*” This quote has been edited to remove certain identifying names. Cornwallis also informed OOI they would include this amount in their lawsuit against the province wherein Cornwallis is seeking to keep unpaid agent amounts.
 - January 7, 2008 – Cornwallis returns \$20,000 related to this nominee to OOI.
78. On April 10, 2008, Cornwallis’ legal counsel again wrote to OOI’s legal counsel indicating the lawyer had returned additional agent payments related to 4 nominees. This letter stated “*We understand that [lawyer name] takes the view that [Firm Name] does not claim the full amount of the commissions paid and has, therefore, returned them to Cornwallis with accrued interest.*” This quote has been edited to remove certain identifying names.
79. Of \$116,000 in payments made to this lawyer over a period from May 2, 2003 to March 20, 2008, \$79,935 was returned in January 2008 and April 2008. For one nominee, the full agent payment was returned; for others, a portion of the payment was returned. The lawyer held these payments for one to 59 months before returning them. Since we were not able to speak with the lawyer (see below), we were not able to determine why he applied for and received these fees, or why only some were returned.
80. We interviewed one nominee who informed us he requested a meeting with this lawyer after landing in Canada and demanded the lawyer return the agent payment as the nominee prepared his own application. At that time, the lawyer had not received the \$20,000 agent payment from the NSNP. The nominee informed us the lawyer requested payment of the \$20,000 agent fee from the NSNP. OOI confirmed with the nominee that the lawyer was the agent of record and authorized the payment. Subsequently, the lawyer returned \$15,000 to the trust, keeping the remaining \$5,000 as his fee.
81. We wanted to interview the lawyer regarding his involvement with the NSNP. He refused to speak to us voluntarily. On July 18, 2008, the Auditor General issued a subpoena requiring this lawyer to present himself for an interview at our Office. See page 8 for further discussion of this matter.
82. We are concerned by the results of our audit in this area. Nominees claimed this lawyer did not do any work on their behalf. The receipt of fees by the agent in these cases appears to be inappropriate and the return of some of the fees is irregular.

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83. We have referred this matter to the RCMP for their review.

Phantom Agents

84. *Conclusions and summary of observations* – In some instances, the agent who completed most of the work on a nominee’s file was not a CSIC member or a lawyer. These are described as phantom agents. Some Canadian immigration lawyers informed us they had contractual relationships with these agents, in which the lawyer’s name was listed as the nominee’s paid representative, the agent completed the bulk of the work on the nominee’s file, and the lawyer reviewed the file. In these instances, the agent received the payment from the NSNP and paid the lawyer a flat fee for his involvement.
85. *5476 agent form* – Nominees identified their authorized representative on a federal immigration form – IMM 5476. As noted in paragraph 56, after April 2004 when the Canadian Society of Immigration Consultants (CSIC) was created, if authorized representatives charged a fee for their services, they were required by Citizenship and Immigration Canada to be either CSIC members or members in good standing with a provincial law society. Others could act as representatives but they could not charge a fee for this service.
86. In immigration, phantom agents is a term used to describe immigration agents who complete work on behalf of an immigrant but are not named on the immigrant’s 5476 form, generally because they are not lawyers or CSIC members.
87. Some of the immigration agents we interviewed indicated that Canadian CSIC members or lawyers often enter into contractual arrangements with international immigration agents who perform recruitment and file processing overseas. The international agents often charge fees for the work they perform. The authorized representative listed on the 5476 is the CSIC member or Canadian lawyer, therefore meeting federal requirements. These individuals work for the international agent and are paid a retainer or fixed amount for their work on an applicant’s file.
88. The lawyers we spoke with had contractual arrangements with phantom agents whereby the lawyer would receive a flat fee for each nominee and the international agent would receive the NSNP commission. Most of the phantom agents were international immigration firms, but one agent was a Canadian citizen with his own immigration company that is not a recognized CSIC agent.
89. OOI management informed us they had concerns with this practice when they took over the NSNP. OOI attempted to deal with this issue by only



making payments to the agent listed on the 5476 form. In one instance, OOI chose to return the \$20,000 to the nominee as the agent listed on the 5476 form did not meet CSIC requirements. When Cornwallis administered the NSNP, there were instances in which the authorized representative requested Cornwallis pay a third party. In all instances we are aware of, Cornwallis complied with these requests and paid the non-CSIC member.

90. We are not certain whether all lawyers and phantom agents have contractual arrangements which involve a review of the nominee's immigration application by the lawyer. This practice does not seem to be within the spirit of the Federal immigration regulations. We are not certain whether there are additional concerns with these arrangements.
91. We have referred this matter to the RCMP for their review.

Unpaid Agent Fees

92. In April 2008, we reviewed Cornwallis records supporting deposits and withdrawals from the NSNP trust account as well as support for payments made from Cornwallis' corporate account related to the nominee program. Although we examined the support, we did not attempt to determine whether payments were appropriate. For example, we did not assess whether payments were made to the appropriate immigration agent or mentor company.
93. During our review of the financial information provided, we noted Cornwallis did not pay the full amount of agent commissions to the recognized agent on 63 occasions. In an additional 13 cases, Cornwallis did not pay any of the fees owing to the agents. When we reviewed Cornwallis financial records in April 2008, those records indicated Cornwallis had approximately \$740,000 in their corporate account which is apparently owed to immigration agents for nominees landed in Canada. We are not certain why these amounts had not been paid and it is not clear what would happen if Cornwallis did not eventually pay these agents.
94. At the time this Report was written, the Province had also retained approximately \$580,000 in unpaid agent commissions. OOI management informed us agents must request payment to allow OOI to verify how funds should be paid.
95. We believe these situations are not appropriate. If these amounts are a liability, then they should be paid. If OOI needs information from agents to process payments, then they should take a more proactive approach. If the amounts are not a liability, then the ownership of these funds should be determined, and a proper disposition of the funds should be made.

Business Mentors

96. *Conclusions and summary of observations* – Our objectives were to assess whether mentor companies met established program criteria, were bona-fide companies, and offered sufficient and appropriate middle management positions to nominees. We concluded that 24 of 41 approved mentor companies tested did not meet the established criteria. These companies were not qualified, according to the criteria, to provide mentorships. According to the criteria, they should not have been approved, or have received payments under the NSNP. Almost half of the mentorship applications referred to a non-middle management position, while 75% of the final reports we reviewed from mentor companies showed that the work completed by the nominee was not at a middle management level. We did not identify any non bona-fide companies in those we tested although we did identify instances of non bona-fide mentorships; situations where the nominee never worked but the mentor received at least some of the funds.
97. *Background* – The Nova Scotia Nominee Program included matching nominees with a Nova Scotia business to provide a mentorship to the nominee. The business mentorship was intended to help the nominee adjust to the Canadian and Nova Scotia business environment and culture, and to provide the nominee with an employment contract, in a middle management position, for a minimum period of six months, with a minimum salary of \$20,000.
98. *Financial aspects of mentorship* – Originally, mentor companies were required to pay a \$2,500 fee directly to Cornwallis with their application. In August 2005, an option was introduced allowing mentors to pay a fee of \$3,500 when they were matched with a nominee. When OOI took over the NSNP, fees for existing applicants were reduced to \$2,500 at the time of the match and waived for companies applying after July 1, 2006.
99. \$100,000 of the nominee's \$130,500 economic contribution to the NSNP was intended for the business mentor company. Once a mentor was matched with a nominee, the company received the first of two \$50,000 installments. The second installment was paid at the end of the mentorship. On August 15, 2006, OOI introduced a policy requiring that all nominees be matched within 12 months of landing or forfeit their economic contribution and business mentorship opportunity.
100. *Approval of mentor companies* – Cornwallis, and later the Office of Immigration, were responsible for recruiting qualified companies to participate in the NSNP. Companies submitted their application to the business review committee for approval. The committee was initially comprised of two Nova Scotia government employees working in the economic development area, and the Vice-President of Cornwallis. After

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the contract with Cornwallis ended in June 2006, various Office of Immigration staff members attended committee meetings along with the two original government employees.

101. *Matching process* – Once a mentor company was approved by the committee, it had to wait until a nominee selected the company. Approved mentors did not have access to nominee information and did not know which nominees were available, or what skills they had to offer a potential mentor company. Nominees were supposed to receive a list of approved and available business mentor companies from Cornwallis or OOI. Nominees could request additional information on possible mentor companies such as an executive summary of the company, proposed mentoring plan and job description, all of which were included in the mentor company's application to the program. Nominees were supposed to meet with potential mentors to determine which company they felt best suited their needs. Once the nominee and mentor were matched, a contract was signed, usually based on a template provided by the program.
102. *Results of interviews* – Three nominees informed our office that Cornwallis stated it had a list of mentor companies the nominees would receive once they arrived in Nova Scotia; however they were never provided with this list. Of the 16 nominees we interviewed who were matched by OOI, only one indicated he received a list of businesses from OOI. Five others indicated they were only presented with one company at a time to select from, resulting in a slow process if they did not choose to accept one of the first companies offered. The remaining ten nominees did not comment on receiving or requesting the list, although overall, 14 nominees indicated they had concerns with the matching process through OOI. These concerns included time required to arrange business mentor matches and being told to actively attempt to locate their own business mentor company.
103. Immigration agents we interviewed also noted problems with the mentor side of the NSNP, including a lack of adequate marketing of the program to Nova Scotia businesses. Agents felt there was not sufficient awareness of the NSNP within Nova Scotia businesses.
104. *Mentor file testing* – We tested mentor applications during Phase One of our audit and continued testing in Phase Two.
105. *Criteria* – Although assessment criteria were poorly documented, staff involved with the program indicated prospective mentor companies were assessed against the following criteria.
 - Private companies only, no publicly traded companies (removed as of September 1, 2006)

- No not-for-profit or government entities
- Maximum of one nominee per business
- Minimum of one year between nominees for a business
- Minimum of five employees
- Offer a middle management position for at least 6 months

106. In September 2006, when OOI was managing the economic stream of the NSNP, the mentor criteria were expanded to include further evidence of financial viability and further details of the mentoring component proposed by the company. The restriction on public companies was also removed.

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107. *Mentor file testing results* – During Phases One and Two we tested 46 mentor company applications: 41 approvals and 5 rejections (note that some of these results were also reported in Phase One). As discussed in paragraphs 24 to 28, these files were selected based on the nominees we interviewed. When we arranged an interview with a nominee who had been matched with a mentor, we attempted to interview the mentor company, and tested the mentor application. Following are the combined results from Phase One and Phase Two mentor company application testing. Of 46 mentor company applications tested, five mentors were rejected and we agreed with the decision in all cases. Of 41 approvals, we disagreed with the decision on 24 applications.

- 20 applications did not provide sufficient evidence to show they had at least five full-time employees
- 20 applications did not identify a middle management position for the nominee

108. In these instances, we found the companies were not qualified, according to the criteria, to provide mentorships. According to the criteria, they should not have been approved or have received payments from the NSNP.

109. *Final reports* – Beginning in September 2007, OOI required the nominee and mentor to submit formal written reports following the mentorship. These reports were used to ensure an appropriate mentorship had occurred prior to making the second payment to the mentor company.

110. 14 of the 26 mentorships we tested in Phase Two should have had a final report submitted based on the timing of the match. All 14 reports were submitted as required. We did not assess these reports, or attempt to establish whether these mentors fulfilled the requirements of the program to determine whether the final payments should have been made to the



mentor company. We did note that 11 of the reports outlined a positive mentoring experience for the nominee.

111. *Management experience* – Based on the 14 final reports submitted, it appears 10 mentorships we tested were not completed at a middle management level. Additionally, nine mentorships did not offer employment consistent with the application submitted by the mentor. OOI management informed us they expect there may be differences between the mentor position described in the application and the nominee’s eventual job because there was often a significant period between approval and the start of a mentorship, or the mentorship may have been tailored to fit the nominee’s situation.
112. *Mentor interviews* – We interviewed 21 mentor companies and asked about their experiences with the Nova Scotia Nominee Program. Details of the more significant of their comments follow.
113. Ten mentors stated the program was a positive experience; while four business mentors indicated they did not have a positive experience. The remaining mentors did not comment on this matter.
114. Ten mentors noted problems with the business mentor-nominee match. Concerns included the nominee’s job skills, insufficient English skills, and nominees not interested in working for their mentor. One mentor company waited two years to be matched. This mentor noted he was informed by Cornwallis that there were many nominees with the background and skills his company required. However he did not meet with any nominees until after OOI took over the program. The mentor informed us that by the time his company was matched with a nominee, his business situation had changed. He also noted the nominee did not meet his company’s needs. OOI management indicated that after July 2006, when they took over the program, they ensured the nominee and mentor company met prior to signing a contract to ensure they were both satisfied with the match.
115. Eleven mentors informed us the nominees their company was matched with worked less than six months. Reasons included family illnesses in their country of origin or elsewhere in Canada, nominees who did not want to work at the mentor company they had been matched with, or nominees required to take English classes to ensure the nominee could communicate. Seven business mentors indicated that the nominees they were matched with took English classes during the mentorship term. Eight mentors indicated that the nominee’s English prevented the nominee from filling a middle management position while another four mentors indicated that the nominee’s English was sufficient.
116. Thirteen mentors indicated the nominee did not work at a middle management level position. Within that group three mentors indicated

their nominees never worked. Five mentors stated the position was middle management.

Non Bona-fide Mentorship

117. In early 2006, Cornwallis negotiated with a company to allow a nominee to use the economic contribution to purchase a franchise in the company. This arrangement was not a bona-fide mentorship. We noted correspondence in the business mentor application file that shows Cornwallis and the business review committee were aware of this situation. Cornwallis negotiated on behalf of the nominee to obtain the franchise. Although this arrangement may have been beneficial to the nominee, it was not consistent with the intent of the NSNP and should not have been permitted by either Cornwallis or the business review committee. Additionally, there may have been other nominees who would have preferred to purchase a business with their economic contribution. When there are departures from program rules, there is a risk that all participants are not treated fairly.

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Concerns with Two Mentor Companies

118. During our audit, Office of Immigration management informed us they had concerns two mentor companies were owned by the same individual. We reviewed the application files for both companies and interviewed an individual who confirmed he was the owner of both mentor companies. Although the husband owned both companies, the second application to the NSNP listed his wife as the business owner and included a different address than the address on the cheques the company used to pay the mentor application fee. The address on the cheques was the same as the first mentor company. The business owner did not offer an explanation for these anomalies when we interviewed him. In both instances, the nominee did not work for the mentor company. In one instance, OOI were aware of the situation and refused to process the mentor's second \$50,000 payment. The business owner informed us Cornwallis staff were aware neither nominee was available to work. These mentor payments appear to be inappropriate.
119. We have referred this matter to the RCMP for their review.

Concerns with a Mentorship

120. *Conclusions and summary of observations* – One nominee we interviewed informed us he had not worked for his mentor company and that the company operated out of New Brunswick. This was not a bona-fide mentorship. We examined the company's application file and concluded it did not meet the requirements to participate as a mentor. We also noted this business received its first mentor payment prior to paying the application fee to participate in the program. We interviewed the business owner and learned



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that Cornwallis signed a contract with this company whereby Cornwallis received a master franchise in the company in exchange for the \$100,000 payment under the NSNP. This represents an inappropriate use of the nominee program funds. Cornwallis should not have benefited from their contract with the Province outside of the regular payments contemplated under the contract.

121. *Background* – During our audit, the Office of Immigration identified a concern with a mentorship in which the nominee had never worked for his mentor company. We interviewed this nominee. He informed us he had received payments from a mentor company, but never worked for the company. In fact, on arriving in Canada, he was unable to find work in his field and returned to his home country to work for a time. During this period, he received payments under the business mentorship totaling \$20,000. Based on this initial information from the nominee, we investigated further and found a number of concerns with this particular business mentor match.
122. The business mentor the nominee was matched with sold franchises in a company that provided business broker services, or assisted in the purchase and sale of small businesses. We reviewed the company’s application to participate as a business mentor in the program and concluded the company should not have been approved.
123. Among the problems we noted with the company’s application:
 - The application clearly stated the company had a virtual office in Halifax, Nova Scotia and a home office in Moncton, New Brunswick. The virtual office location consisted primarily of a mailbox and answering service. It is difficult to understand what middle management position might have been available at a virtual office location.
 - The company’s Moncton office was described as “...equipped with full resources, including two computers...” This leads to questions regarding the size of the company and the availability of a middle management position.
 - The proforma financial statement included with the application showed approximately \$10,000 in assets and \$63,000 in intellectual property; although it is not clear what this represented.
124. We believe the company’s application should have led to questions regarding whether a middle management position was truly available, whether the company had the required five employees, and whether it was financially viable.

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125. The business review committee's approval was initially contingent on the company opening a Nova Scotia bank account and providing proof of the same to the committee. Under the NSNP, a mentor company should have only been matched with a nominee, and received payments as a mentor, after receiving full approval.
126. In this instance however, the company opened a Nova Scotia bank account as required on March 24, 2005. The first deposit into the account was a \$50,000 cheque from the Nova Scotia Nominee Program. This represented the first payment in their match with a nominee. The first cheque written on that account was dated April 5, 2005 to the NSNP for \$2,875 - the fee required with the application to participate as a business mentor in the program. Cornwallis processed the company's first payment as a business mentor before receiving the company's application fee.
127. On May 5, 2005, one month after Cornwallis made the first payment to this mentor company, the Vice President of Cornwallis wrote to a government employee who also sat on the business review committee and asked whether the company had met the conditions for final approval. In the course of regular transactions under the nominee program, application fees should have been received and final approval granted before any funds were paid to a mentor company.
128. As noted above, in this instance, the nominee informed us he returned to his home country to work and lived there during the time he was paid by the mentor company. The nominee indicated Cornwallis staff were aware of this.
129. At the conclusion of what was supposed to be a six month mentorship period, the final \$50,000 installment was paid to the mentor company. At the start of the mentorship, the NSNP trust account was under the sole signing authority of Cornwallis. Office of Immigration management co-signed the final installment. OOI management informed us they were not aware of any unusual circumstances surrounding this mentorship at the time of the payment.
130. As part of our audit, we spoke with the owner of the mentor company. He provided us with a copy of a contract between his company and Cornwallis Financial Corporation which states "*Master Franchise Fee – \$100,000 to be forwarded to [mentor company] via the Nova Scotia Nominee Program. \$50,000 at the start of the agreement, and \$50,000 6 months after the agreement has been signed. Terms and Conditions – Cornwallis receives the Master Franchise for [company name] covering Atlantic Canada. This allows Cornwallis, in cooperation with [company name] to sell [company name] franchise office locations throughout Atlantic Canada.*" This quote has been edited to remove certain identifying names. The contract was signed by



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Cornwallis' Vice President. The company owner indicated that Cornwallis staff informed him they were interested in franchises in his business as many nominees wish to buy a business. The company owner also provided a copy of an invoice selling the master franchise to Cornwallis for \$1. A master franchise allows the company to sell franchises in the business within a certain territory.

131. We also noted that the business mentor application form changed shortly after this contract was signed to include a question on whether the business mentor wished to buy or sell a business.
132. We wished to discuss a number of the matters noted above with Cornwallis staff. We were advised Cornwallis employees would not speak with us willingly and the Auditor General subpoenaed a number of Cornwallis employees. See page 8 for further discussion of this matter.
133. This represents an inappropriate use of the nominee program funds. It is highly irregular for a company responsible for disbursement of trust funds to enter into an arrangement wherein they receive an additional benefit for making a payment from the trust. As the contractor hired by the Province to assist in the design and operation of the NSNP, Cornwallis should not have benefited from their arrangement outside of the regular payments contemplated under the contract.
134. We have referred this matter to the RCMP for their review.

Brokers

135. *Conclusions and summary of observations* – Our objectives were to determine how brokers came to be involved in the program, the amount of any fees and whether those fees were paid by nominees or mentors. We concluded that the mentor company generally paid the fees. Mentor companies we interviewed noted fees ranged from \$3,000 to \$20,000.
136. *History of brokers* – Business brokers began appearing during the time the economic category operated. OOI management informed us various types of brokers are common in immigration. We interviewed four brokers, two of whom were former NSNP nominees. They indicated they obtained nominee information from various sources including overseas contacts, relationships with immigration agents, and word of mouth in the immigrant communities. They also located Nova Scotia companies and attempted to find a nominee to match with the company. Only one broker we interviewed indicated he charged a \$3,000 fee to nominees. One other broker informed us he charged mentor companies a \$10,000 fee. The remaining brokers informed us they charged the mentor company but were unwilling to provide details of those fees.

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137. Seven of 21 mentor companies we interviewed were approached by business brokers and six used brokers to match their company with a nominee. These companies informed us they paid the brokers a fee for their service, ranging from \$3,000 to \$20,000. Reasons cited for using business brokers included: the brokers approached their company, were able to provide nominees and aided in completing application forms. Some business mentors also informed us they believed brokers were part of the NSNP.
 138. In August 2006, OOI informed all approved business mentors it would not deal with brokers; rather, it dealt with the nominees and mentor companies directly.

Other Matters

Residency Refund Option

139. *Conclusions and summary of observations* – Our objective was to assess whether the Office of Immigration processed refund applications in accordance with their established policies. We concluded that OOI followed their policies in assessing residency refund applications.
140. *Background* – On October 12, 2007, the Office of Immigration announced the residency refund as an option instead of mentorship. OOI management informed us this option was intended to address deficiencies in the economic stream. Under this option, a landed nominee who had not accepted a mentorship position, had landed in the previous 18 months, and had lived in Nova Scotia for the previous 12 months, could apply for a refund of his or her \$100,000, or choose to participate in a mentorship.
141. *Testing* – We selected 15 residency refund applications for testing – 10 approvals, one rejection and four deferrals. We found all 15 files contained adequate support for the decision made. The deferrals had not yet met the 12 month residency requirement to qualify for their refund.
142. OOI management informed us the residency refund policy allows discretion regarding decisions on refunds. Nominees who leave Canada for part of their 12 month residency period, whether for personal reasons such as to care for a sick relative, or to run a business in their country of origin, are not automatically disqualified.
143. Eight nominees we interviewed expressed concern or disappointment over the residency refund policy. They were concerned that nominees who made an effort to participate in the program by signing business mentor contracts are excluded from the residency refund while other nominees who made no effort to participate in the mentorship component may be eligible for a refund.



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144. We identified a note to file for one nominee, dated August 2007, which stated OOI staff informed the nominee that he should wait before signing a mentorship contract as there were possible changes coming to the program. Three nominees signed mentor contracts subsequent to that date, but before the residency refund was announced publicly. We interviewed one of those nominees and he indicated he was not informed of potential program changes. While we understand departments often contemplate a number of alternatives, and may not be in a position to release information until a final decision is made, it is important that all program participants receive the same information and get the same opportunities. This ensures all participants are treated fairly. We discussed this issue with the OOI employee involved and were informed the employee does not recall this specific discussion with the nominee.

Trust Fund Balance

145. *Conclusions and summary of observations* – Our objective was to assess the reasonability of the overall balance of the trust account/fund. We concluded the balance in the trust account/fund was supported by the records kept by OOI and Cornwallis. We did not attempt to determine whether all of the transactions processed through the trust/fund were appropriate or legitimate.
146. *Reconciliation* – We calculated the expected balance of the account/fund based on the number of nominees and mentors and reconciled against this balance. We were able to reconcile the account/fund balance with a difference of only 0.06%, which we considered insignificant. We used OOI and Cornwallis records of nominees who applied, were nominated, landed, matched with a mentor, or received a residency refund. We did not audit the accuracy of these statistics.
147. We tested a sample of the reconciling items such as deposits to, or withdrawals from, the trust. Although we traced these items to supporting documentation, we did not attempt to determine whether the transactions were legitimate. For example, we traced a mentor payment to support but did not attempt to determine whether the company receiving the payment qualified under the program and provided a legitimate mentorship experience to the nominee. In another instance, we traced an immigration agent payment to the supporting wire transfer but did not assess whether the agent actually did work on behalf of the nominee.

Interest on Trust Account

148. While Cornwallis was responsible for the NSNP they operated a trust account collecting and disbursing all fees related to the NSNP. As noted in our Phase One Report on the NSNP, on at least two occasions, Cornwallis

removed interest from the trust fund totaling approximately \$190,000. During this time the trust account was under the sole signing authority of Cornwallis. Economic Development and Office of Immigration management informed us that neither department gave Cornwallis permission to remove interest. Additionally, Cornwallis did not notify the Province that it intended to remove interest from the account.

149. After OOI became aware interest had been removed and demanded the funds be returned to the trust account, Cornwallis returned the interest to the trust account “*under protest*” as they believed they were entitled to it.
150. These transactions appear inappropriate given Cornwallis’ role as program coordinator and steward of the NSNP trust account.
151. We have referred this matter to the RCMP for their review.

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Update on Scope Limitation Reported in Phase One

152. During Phase One of our audit of the Nova Scotia Nominee Program we reported a scope limitation in completing our work on the adequacy of the Province’s contract with Cornwallis. We requested details of contract changes Department of Justice legal counsel suggested. We were refused this information. We also reported significant restrictions in obtaining the information we required to complete our audit work. We were denied a large number of documents based on claims they were either confidential Cabinet documents or subject to solicitor-client privilege.
153. In June 2008, the Public Accounts Committee issued subpoenas to the Premier and several Cabinet Ministers requiring them to produce all documents which had previously been denied to our Office during Phase One of our NSNP work. Shortly afterwards, Treasury and Policy Board approached our Office to discuss a possible solution that would allow us to complete our work on the nominee program and remove the scope limitation. We agreed to view documents which had previously been denied on the basis of a claim of solicitor-client privilege or cabinet confidentiality. We also agreed to maintain any privileges claimed over the documents. We viewed these documents at Department of Justice offices but did not retain any copies for our files. It is important to note that while this agreement addressed the issue for the NSNP audit, our Office still disagrees with Executive Council and Treasury and Policy Board regarding our access to information.
154. We reviewed documents related to the inception of the Province’s contract with Cornwallis. We noted there were limited written communications, including advice, between Economic Development and Justice discussing contract terms. We also interviewed Provincial staff, including Department



of Justice legal counsel. There are two perspectives on the extent of legal advice provided. Ultimately, we were still unable to conclude on this matter. However as we were able to obtain the required documents, we no longer have a scope limitation; this related to government's refusal to produce the documents during Phase One. After reviewing documents and interviewing staff, we were still unable to determine the extent of changes Justice legal counsel may have requested to the draft contract and whether Economic Development implemented advice from legal counsel.

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Concluding Remarks

155. We wish to acknowledge the professionalism, courtesy and cooperation we have received from staff at the Office of Immigration and the Department of Economic Development over the course of this audit.
156. It is clear from our Phase One and Two results that the economic stream of the Nova Scotia Nominee Program had significant deficiencies. We have noted however, that the Office of Immigration made efforts to better manage the program. After the Office of Immigration took over the program from Cornwallis in July 2006, it stopped accepting new nominee applicants. The Office of Immigration continued to process nominees who had already applied for the program. Their efforts were hampered by program criteria which were poorly defined. This led to serious problems with implementation, including the approval of nominees and mentor companies who did not meet established criteria.

Recommendation

All deficiencies identified through our Phase One and Two audits of the economic stream of the Nova Scotia Nominee Program should be considered as to their potential applicability to, and lessons to be learned for, other current or planned Provincial immigration programs. The deficiencies should be addressed to ensure these problems are not reflected in other areas of Provincial immigration.

Provincial Response

We thank the Auditor General and his staff for their work on this audit. As noted in this report, the Office of Immigration and the Department of Economic Development have cooperated fully and completely with the Auditor General's Office in their investigations.

We are pleased with the Auditor General's positive findings on the trust fund and the Residency Refund Option – important areas as we move forward in addressing the province's ultimate goals of attracting and retaining new immigrants.

The province is very concerned about some of the Auditor General's findings, particularly those warranting his office's decision to send files to the RCMP. The issues identified by the Auditor General's report confirm the concerns that the Office of Immigration identified after it was established in 2005 and which ultimately led the province to take the decision not to renew the contract with Cornwallis Financial Corporation in June 2006. On July 1, 2006, the province stopped accepting applications for the stream.

It is noteworthy that there is no indication in the Auditor General's report that any provincial government staff person or official was involved in the matters referred to the RCMP.

It is also important to note that the Office of Immigration took significant steps to secure more control over the program, including establishing co-signing authority on the trust fund and conducting a fee review. More than 25 measures were also introduced to improve the Economic Stream's Business Mentorship component, ranging from improving financial monitoring mechanisms and controls to introducing policies aimed at clarifying business mentorship eligibility and increasing accountability. Some of these measures have been noted by the Auditor General. In October 2007, in response to the province's concerns that the pilot program was not meeting the needs of the nominees, the Office of Immigration introduced the Residency Refund Option. The improvements to the overall nominee program are a direct result of the lessons learned by the province in administering the Economic Stream.

Despite the many difficulties that have arisen in the Economic Stream, it has resulted in the successful settlement of hundreds of new Nova Scotians.

We agree with the Auditor General that the pilot Economic Stream did not fully meet program objectives and the province accepts the Auditor General's recommendation.

PROVINCIAL
RESPONSE

Appendix



Summary of Phase One

The first phase of our audit of the economic stream of the Nova Scotia Nominee Program found significant deficiencies in the program. In its early stages, program objectives were poorly defined. Although certain objectives were eventually documented, these either were not met or could not be evaluated. We were unable to conclude whether nominees were attracted to and retained in Nova Scotia because the Office of Immigration has no practical mechanisms in place to track nominees once they enter Canada.

APPENDIX I

We concluded the objective to provide nominees with a mentorship position was not met. Only 210 of 532 economic nominees landed in Canada participated in mentorships. We reviewed a sample of business mentor application files and disagreed with the decision to approve 14 of 16 business mentors. We found support for approval of these businesses was inadequate.

We concluded the process to award the contract for the Nova Scotia Nominee Program to Cornwallis Financial Corporation was not in compliance with the spirit and intent of the procurement policy. While the Deputy Minister approved the alternative procurement, the decision to do so was based on incomplete information. We also noted the procurement ignored a Cabinet directive to tender the contract.

We concluded the contract between the Province and Cornwallis was inadequate. It did not adequately address key areas such as dispute resolution, termination clauses and trust account provisions. We also found contract administration and monitoring were inadequate over much of the contract term.

We found the Province was not in compliance with key provisions of the Canada Nova Scotia Agreement on Provincial Nominees, notably in three areas. No formal program evaluation was completed. Nominees were not adequately tracked after their arrival in Canada which means that Nova Scotia cannot assess whether the economic stream was successful in attracting and retaining immigrants in this Province. Additionally the requirement to provide adequate information and cooperation to auditors of the program was not met.

Throughout the audit, we encountered restrictions in obtaining the information required to complete our work. We were denied a significant number of documents based on claims they were either confidential Cabinet documents or subject to solicitor-client privilege. Further, certain program files were held back until they could be reviewed and purged of documents the Office of Immigration believed were confidential. Restricting the Auditor General's access to information constitutes poor public accountability. It is not in the public interest to do so and, further, it is in contravention of the right to information contained in the Auditor General Act.

