

**REPORT OF THE
AUDITOR GENERAL
OF
PRINCE EDWARD ISLAND**

*Special Assignment:
Government Involvement with the E-gaming
Initiative and Financial Services Platform*

2016



Prince Edward Island Île-du-Prince-Édouard

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President of Executive Council

Members of the Legislative Assembly
of Prince Edward Island

I have the honour of presenting my report entitled "Special Assignment:
Government Involvement with the E-gaming Initiative and Financial Services
Platform".

This report was prepared in response to the request that I received from Executive
Council on March 10, 2015, under section 14(d) of the *Audit Act*.

On March 10, 2015, I received a similar request from the Public Accounts
Committee.

B. Jane MacAdam, CPA, CA
Auditor General

Charlottetown, Prince Edward Island
October 4, 2016

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SUMMARY AND CONCLUSIONS

SUMMARY COMMENTS

1.1 In March 2015, our Office was asked by Executive Council to undertake a special assignment. The assignment involved an examination of “government support to the Mi’kmaq Confederacy of Prince Edward Island in relation to E-gaming, along with steps taken by government, throughout its relationship with MCPEI, to protect the interests of taxpayers.” We were further asked to “consider government’s dealings with Simplex, Capital Markets Technologies (CMT) and related companies in relation to E-gaming and financial services, including the conduct of current and former elected officials and staff.”

1.2 The Standing Committee on Public Accounts also raised concerns about government’s involvement in the E-gaming file and the financial services file.

1.3 This assignment was not just an examination of government’s involvement in E-gaming; it was much more. It extended into government’s efforts to initiate a loyalty card program, a memorandum of understanding to establish a financial services platform, as well as dealings with numerous external parties. Our scope period for this assignment extended over five years. Our work brought us in contact with many entities including seven departments and Crown agencies and several external parties. Our observations relate to information obtained and action taken by government during that period.

1.4 Throughout this report, there are numerous examples of non-compliance with legislation, policies, and controls. Although the dollars involved were not always significant, these legislative and policy requirements are designed to minimize risks to government and protect the interests of taxpayers. A number of decisions and actions demonstrated a lack of due regard for transparency and accountability.

**SUMMARY OF
FINDINGS AND
CONCLUSIONS**

1.5 In some instances, government has already taken steps to address the problems noted in this report. However, more needs to be done to deal with outstanding issues and prevent similar situations in the future. For the most part, government does not need to establish more controls; instead the ones that exist need to be followed. This report includes 15 recommendations which are listed in **Appendix B**.

1.6 I would like to acknowledge the cooperation of current and former elected officials as well as current and former senior officials and staff throughout this assignment.

E-gaming Initiative - Financial Support to Mi'kmaq Confederacy of PEI (MCPEI)

1.7 Due diligence was not applied by various senior officials and staff in approving, disbursing, monitoring, and reporting on loans and grants provided to MCPEI:

- Only one grant was supported with an application; two others were approved to pay for costs that had already been incurred.
- A loan of \$950,000 was approved for MCPEI after over \$750,000 of costs had already been incurred for the E-gaming initiative.
- The loan was secured by a guarantee letter from the former Minister of Finance, without Executive Council approval required in Treasury Board policy and the *Financial Administration Act*.
- The funding provided to MCPEI resulted in various government financial reporting issues.
- At a minimum, government incurred costs of approximately \$1.5 million on the E-gaming initiative.

Financial Services Platform - Memorandum of Understanding (MOU) with Trinity Bay Technologies

1.8 Adequate due diligence was not exercised by senior government officials in the approval and extension of the MOU for the financial services platform. An MOU was outside the normal business practice for Innovation PEI.

Conduct of Elected Officials and Staff

1.9 We noted issues regarding compliance with conflict of interest policies for deputy heads. We also noted a lack of due regard for contracting policies in awarding post employment contracts.

- We found compliance with the annual disclosure requirements of the *Conflict of Interest Act* by Members of the Legislative Assembly.
- There were numerous instances where disclosures for deputy heads and staff were not completed as required by the Conflict of Interest Policy.
- We noted situations of apparent conflict of interest with two senior executives involved in these files, a former Chief of Staff and a former Deputy Minister.
- Another former Deputy Minister, through a consulting company, secured various contracts within weeks of leaving her position with government.

Relationships with Consultants and Third Parties

1.10 Taxpayers' interests were not adequately protected in arrangements with consultants and third parties, including non-compliance with Treasury Board policies on contracting.

- In pursuing the E-gaming initiative, the Government of PEI entered into a relationship with MCPEI and a local law firm without documenting the terms of the arrangement or outlining clauses on conflict of interest, confidentiality, and government access to information.
- Government was the primary player in the E-gaming initiative. However, the initiative operated outside government's regular control framework and information was not accessible for review.
- There was a disregard for Treasury Board policies on contracting for services to initiate a loyalty card program.

Records Management

1.11 Not all government records are being managed and safeguarded as required by legislation and policy. Therefore, we are not confident that we

ACCESS TO INFORMATION

have received all relevant government records related to E-gaming, the loyalty card program, and the MOU for a financial services platform.

1.12 In the early stages of our work, we encountered resistance from the Office of the Superintendent of Securities which operates under a division in the Department of Justice and Public Safety. The Superintendent's office had important records that were relevant to our assignment. We were initially refused access to those records which delayed our work. The issue of access was eventually resolved and we received all relevant information pursuant to the *Audit Act*.

1.13 On September 22, 2015, we requested extensive documentation from government to be accompanied by statutory declarations. We received over 10,000 documents from this request. This does not include the thousands of other documents examined, such as information from the PEI Superintendent of Securities, the external accounting firm of CMT, loan and grant files of the Crown agencies and over 50 interviews with various internal and external parties.

1.14 Some statutory declarations requested by our Office were still outstanding in June 2016, nine months after our initial request. Government faced challenges in providing all the requested information on a timely basis which highlights the need for improved management of government records.

1.15 A local law firm provided legal and other services for the E-gaming initiative. Despite several attempts by our Office, this law firm would not agree to meet and provide us with any relevant information regarding government's involvement in the E-gaming initiative.

1.16 Under the *Audit Act*, the Auditor General may exercise all the powers of a Commissioner under the *Public Inquiries Act*. One of these powers is the authority to issue a subpoena requiring a person to appear and testify to matters and bring any relevant documents.

1.17 We gave careful consideration to exercising these powers and decided it was not in the best interests of taxpayers and Members of the Legislative Assembly to pursue this option. This process would have a high probability of resulting in lengthy court proceedings and could also be a costly undertaking. We believe it's in the best interest of taxpayers to

report the results of our work at this time and explain and highlight the scope limitations in our report.

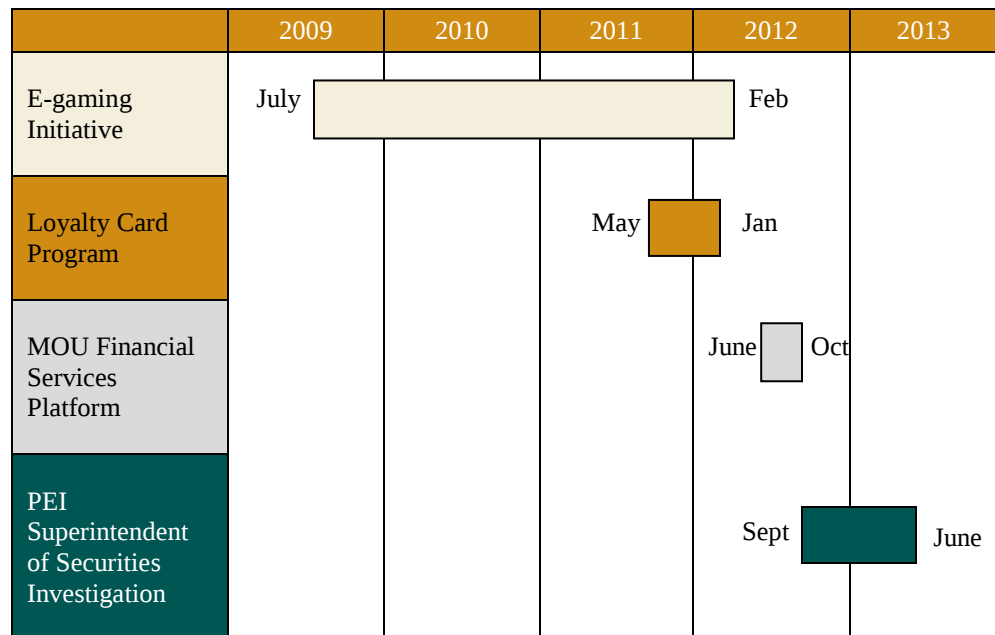
INTRODUCTION

2.1 Throughout our work on this assignment, we established that government had numerous dealings with the Mi'kmaq Confederacy of PEI, Capital Markets Technologies, Simplex and related companies. As depicted in the timeline presented in **Exhibit 2.1**, there were four main events that were connected to our assignment and these spanned a period of approximately four years.

2.2 The four main events were:

- E-gaming Initiative;
- Loyalty Card Program;
- Memorandum of Understanding for a Financial Services Platform; and
- PEI Superintendent of Securities Investigation.

EXHIBIT 2.1
TIMELINE OF EVENTS



Source: Prepared by the Office of the Auditor General

2.3 As depicted in **Exhibit 2.1**, some of the four events overlap each other in terms of timelines. Another commonality of most of the events was the involvement of the following external private companies: Capital Markets Technologies Inc. (and its subsidiary) and Simplex GTP Limited (Simplex). Information on these companies, including their relationship to each other, is presented in **Exhibit 2.2**.

EXHIBIT 2.2 COMPANY INFORMATION

Capital Markets Technologies Inc. (CMT)	7645686 Canada Inc.	Simplex GTP Limited	Revolution Technologies Inc.
Parent of 7645686 Canada Inc.	Subsidiary of CMT	CMT had a letter of intent dated 2007 to purchase Simplex	Target company identified for reverse takeover by CMT
- Incorporated in Florida in 1995 - Dissolved September 2009 and reinstated July 2012	Incorporated in Canada in 2010	Incorporated in the United Kingdom in 1997	Incorporated in British Columbia in 1979
Operated under multiple names since 1995	Also referred to as Financial Markets Technologies Inc. (FMT) and Trinity Bay Technologies Inc. (TBT)	Also operated as Simplex UK Limited and Simplex Consulting Limited	Operated under multiple names

Source: Prepared by the Office of the Auditor General

2.4 Capital Markets Technologies Inc. (CMT) presented itself as a financial technology company providing solutions to global financial institutions and corporations. Simplex GTP Limited (Simplex) presented itself as a market leading software integrator and service provider. During their business relationship with government, these companies were working together on a number of initiatives including the development of a technological platform on which E-gaming could operate.

2.5 During the period July 2010 to December 2012, CMT was raising capital to support the reverse takeover of Revolution Technologies Inc. to re-establish itself on a stock exchange. At the completion of our work, this transaction had not transpired.

2.6 There were various government departments and Crown corporations involved. **Exhibit 2.3** illustrates the key government entities involved in each event.

EXHIBIT 2.3
GOVERNMENT'S INVOLVEMENT

Event \ Entity	Premier's Office	Executive Council Office	Dept. of Finance	Dept. of Tourism and Culture	Dept. of Innovation and Advanced Learning	Island Investment Development Inc.	Innovation PEI	Dept. of Justice	PEI Lotteries Commission
E-gaming Initiative									
Loyalty Card Program									
MOU Financial Services Platform									
PEI Superintendent of Securities Investigation									

Source: Prepared by the Office of the Auditor General

E-GAMING INITIATIVE

2.7 For purposes of this report, the E-gaming initiative refers to efforts to develop a regulated framework for licensing internet gaming sites and distributing tax revenues to the province of residence of the participating Canadian gamers.

2.8 In July 2009, the Mi'kmaq Confederacy of Prince Edward Island (MCPEI) and the Province of Prince Edward Island began working together on an E-gaming initiative. The initiative was funded by the province which provided \$1.4 million in grant and loan funding to MCPEI. An E-gaming working group was formed including representatives from government, MCPEI and a local law firm. The working group met regularly and worked together in an attempt to develop a regulated E-gaming model.

2.9 In addition to spin offs from job creation, this initiative was expected to raise over \$20 million in tax and licensing revenues annually for the province with a portion of these revenues to be provided to MCPEI. Initially, the Department of Finance attempted to reach agreements with other provinces and, based on legal advice obtained by MCPEI, this would be compliant with the law. When agreements with

other provinces could not be reached and government sought legal advice from an aboriginal law expert, it was determined that the initiative could not move forward without being offside of the *Criminal Code of Canada*. In February 2012, government made the decision to end the E-gaming initiative.

LOYALTY CARD PROGRAM

2.10 For purposes of this report, the loyalty card program refers to a tourism tool for tracking customer behavior, recruiting new visitors, and creating loyalty to establish repeat visitations.

2.11 In May 2011, the Department of Tourism and Culture began discussing with Capital Markets Technologies (CMT) and Simplex the development of a loyalty card program for the province. The project ended in early 2012 shortly after the former Deputy Minister was moved to the Department of Innovation and Advanced Learning.

MEMORANDUM OF UNDERSTANDING FOR A FINANCIAL SERVICES PLATFORM

2.12 For purposes of this report, a financial services platform refers to an IT infrastructure that would allow processing of a large volume of financial transactions in various currencies and with financial institutions across the globe.

2.13 In July 2012, investors in CMT approached the Department of Innovation and Advanced Learning and Innovation PEI to enter into a Memorandum of Understanding (MOU) with its subsidiary company 7645686 Canada Inc. also referred to as Trinity Bay Technologies (TBT). The purpose of the MOU was to allow TBT to negotiate exclusively with Innovation PEI for 60 days on a financial services platform for the province. Limited progress was made on the negotiations during the first 60 days. The former Deputy Minister of Innovation and Advanced Learning agreed to extend the MOU for an additional 30 days. The MOU expired and no contract for a financial services platform was ever signed between the province and TBT.

PEI SUPERINTENDENT OF SECURITIES INVESTIGATION

2.14 On September 6, 2012, the PEI Superintendent of Securities received a complaint regarding a potentially illegal securities distribution activity involving CMT, the parent of the company named in the MOU, and the Vice President of Business Development of CMT. The PEI Superintendent of Securities opened a formal investigation into the conduct of the Vice President of Business Development for CMT on September 17, 2012. It was later expanded to include CMT. The

investigation ended in May 2013 and the Superintendent of Securities established that CMT had raised over \$700,000 from 36 Islanders. In June 2013, a settlement agreement was signed resulting in fines and sanctions against CMT for illegal distribution of securities. In April 2014, a local investment advisor signed a settlement agreement with the Investment Industry Regulatory Organization of Canada (IIROC) resulting in fines and sanctions for promoting the sale of securities on behalf of CMT.

CLAIM AGAINST THE PEI GOVERNMENT

2.15 In December 2014, CMT informed government that it intended to bring a claim against government and a number of senior officials as well as two non-government parties. A formal claim was filed with the Supreme Court of Prince Edward Island on April 9, 2015 seeking \$25 million in damages for breach of contract against the Government of PEI as well as several other claims. The claim related to the MOU signed between Innovation PEI and 7645686 Canada Inc. referred to as Trinity Bay Technologies.

2.16 On February 3, 2016, the statement of claim was struck out in its entirety by the Supreme Court of Prince Edward Island. CMT was ordered to pay more than \$1 million in security costs if the company files a new claim against the same defendants. CMT has communicated publicly its intention to file another statement of claim. As of July 31, 2016, no further legal action had been taken. The actual costs incurred by government for defending the lawsuit as of March 31, 2016, totaled over \$200,000 of which \$35,000 was ordered by the Supreme Court to be reimbursed by CMT.

E-GAMING INITIATIVE

SUMMARY OF FINDINGS

3.1 Our findings on the E-gaming initiative focus on the arrangements with third parties, funding and costs, and financial reporting:

- The Government of PEI entered into a relationship with both MCPEI and a local law firm without documenting the terms of the relationship or outlining clauses on conflict of interest, confidentiality, and access to information.
- Due diligence was not applied by various senior officials and staff in approving, disbursing and monitoring grants and loans provided to MCPEI.

- Costs related to the project were not all recorded as a direct expenditure of E-gaming, but at a minimum these costs total approximately \$1.5 million.
- Government ended the E-gaming initiative in February 2012 and a loss should have been reflected in the province's 2011-12 consolidated financial statements. The loss was reflected in 2012-13.
- The loan to MCPEI was not reported on IIDI's quarterly reports to Treasury Board as required.

BACKGROUND

3.2 In 2008, the Mi'kmaq Confederacy of Prince Edward Island (MCPEI), representing both the Lennox Island First Nation Band and the Abegweit First Nation Band, approached government with the idea of working together on a gaming project. By 2009, this discussion had turned to establishing a regulatory and compliance framework for internet gaming (E-gaming). The objective of the E-gaming initiative was to provide a regulated platform for the growing unregulated internet gaming market in Canada while at the same time tapping into potentially millions of dollars in licensing and tax revenues, primarily for the province.

3.3 To proceed with the E-gaming initiative, the province would have to enact legislation to establish a regulatory framework for internet gaming. The on-line gaming market in Canada was estimated at \$1 billion in 2009. Canadians were wagering on both regulated and unregulated internet gaming sites. The province expected to generate tax and licensing revenues in the millions of dollars through this initiative, and we were advised first mover advantage was a factor. This was particularly enticing because revenues generated from traditional gaming products for the province, through the Atlantic Lottery Corporation, were predicted to decline. Traditional gaming products such as lottery tickets, harness racing, and video lottery terminals were losing market share to interactive gaming sites. A further objective of the initiative was to promote and monitor fair play.

3.4 The required legislation would establish a separate Crown agency of government managed by a maximum five member board including a representative of the Prince Edward Island First Nations. Many jobs were anticipated to be created to manage the two separate sections of the new Crown agency: the Business Policy Section and the Data Center Section. In the business plan, it was further anticipated that the proposed data

center could be housed on First Nations Reserve Lands creating economic development opportunities for the First Nations.

3.5 The required legislation would also establish a separate gaming regulatory body, or commission, with authority over the interactive gaming business. This commission would include a representative of the PEI First Nations. The commission would set and enforce technical standards for the interactive gaming systems, adopt appropriate regulations to ensure the public is protected including prevention/detection of underage and compulsive gamblers. The commission would also ensure that gaming companies not only become licensed, but meet the qualifications to retain their license including controls over the integrity of the games and financial transactions.

3.6 In September 2009, government in conjunction with MCPEI, began working on the creation of a draft legislative and regulatory framework, a legal analysis of federal gaming law in Canada, and a study of the economics of the online gambling industry. The preferred and primary approach (Plan A) was for the province to obtain signed agreements with the other provinces to allow PEI to regulate internet gaming activities on behalf of these other provincial jurisdictions. Only wagering from persons residing in a province with an agreement would be accepted and in return the respective provinces would receive tax revenue on games being played by their constituents in a regulated system. Based on external legal advice obtained by MCPEI, this approach was considered consistent with the *Criminal Code of Canada*.

3.7 Another approach (Plan B) to the E-gaming initiative would have the Prince Edward Island First Nations attempt to assert a constitutional right to conduct gaming. Plan B was considered an option if the negotiations with the other provinces either failed or became too lengthy. Under this approach either MCPEI, or a corporate entity created by the First Nations, would move the initiative forward. However, reaching agreements with the majority of the other provinces was the ultimate goal of the project and the primary premise on which the government funding was provided.

3.8 In February 2010, an E-gaming working group was established with representatives from government, MCPEI and a local law firm.

In April 2010, the Department of Finance presented a submission to Executive Council outlining the key aspects of the initiative. We were advised that Executive Council was aware that the former Minister of Finance was investigating the merits and feasibility of the initiative and would return to Executive Council for approval when decisions were required.

3.9 By December 2011, the Department of Finance determined that Plan A could not proceed as agreements could not be reached with other provinces. The focus then shifted to Plan B, culminating in a presentation to senior government officials in mid-February 2012. The purpose of the presentation was to seek approval to proceed with Plan B. After obtaining a legal opinion from an aboriginal law expert, government decided to stop pursuing the E-gaming initiative.

3.10 The timeline of the E-gaming initiative is presented in **Exhibit 3.1**.

EXHIBIT 3.1 E-GAMING INITIATIVE TIMELINE

DATE	EVENT
October 2008	MCPEI approaches government regarding gaming initiatives
July 2009	MCPEI and government begin discussions on the establishment an interactive gaming regulatory model. MCPEI applies for financial assistance to draft a regulatory framework for an E-gaming regime with government.
September 2009	MCPEI receives approval for \$245,000 in financial assistance (Grant #1) and begins working with the Department of Finance to create a draft legislative and regulatory framework for E-gaming.
February 2010	A local law firm begins working on the E-gaming initiative with MCPEI and the Department of Finance. The E-gaming working group begins to meet.
April 2010	Former Minister of Finance provides Executive Council with a summary of the initiative.
Spring 2010	The former Minister of Finance begins presenting to other provincial governments the approach for the E-gaming initiative and obtains non-disclosure agreements with each province while talks continue.
December 2010	Second grant provided to MCPEI for \$100,000.
January 2011	ICE Conference, London, England attended by members of the E-gaming working group including former Minister of Finance.
February 2011	Update provided to the former Premier on the E-gaming initiative by former Minister of Finance and other members of the E-gaming working group.
Early 2011	Legislative Counsel Office raises concerns to the former Minister of Finance regarding government's relationship with MCPEI and the local law firm.
May 2011	E-gaming working group introduced to CMT/FMT, and Simplex by the former Chief of Staff. Simplex is engaged by the local law firm to complete a report on a financial transaction platform.
August 2011	Completion and delivery of a Global Transaction report by Simplex to the E-gaming working group.
September 2011	Costs of initiative estimated to be \$1.195 million.
September 30, 2011	Costs incurred by the local law firm on E-gaming initiative totaled approximately \$600,000.
October 6, 2011	Business Plan on E-gaming prepared by the local law firm submitted to IIDI for loan funding of \$950,000 to MCPEI.
October 27, 2011	Loan request by MCPEI for E-gaming deferred by IIDI Board since no security is provided by MCPEI.
November 14, 2011	IIDI Board approves loan to MCPEI based on a guarantee letter from the former Minister of Finance.
Nov. 29, 2011	First disbursement of loan - \$50,000.
December 2011	Province concludes it does not have support from other provinces. Plan A ends.
December 14, 2011	Letter of offer signed for loan and second disbursement of \$700,000 approved.
December 21, 2011	\$700,000 loan disbursement released to IIDI lawyer's trust account.
December 22, 2011	IIDI lawyer releases \$700,000 disbursement to the local law firm in trust.
February 10, 2012	Approval to pursue Plan B denied after legal advice provided to the province that Plan B is not on-side with the <i>Criminal Code of Canada</i> .
February 2012	Undertaking satisfied to release funds from the local law firm in trust.
February 24, 2012	Meeting held with government officials, MCPEI, and the local law firm. Government informs of its decision to stop E-gaming initiative. Loan no longer repayable.
March - June 2012	The local law firm and MCPEI continue to meet and work on E-gaming.
October 2012	The local law firm e-mails government requesting balance of \$390,000 in outstanding E-gaming bills.
December 2012	Third disbursement of \$100,000 on the loan.
January 2013 Grant #3 and other disbursements	To settle final bills of the local law firm, government disbursed: - Final \$100,000 from loan; - Third grant for \$100,000 issued by Innovation PEI; and - \$60,000 paid by Atlantic Lottery Corporation and charged to PEI Lotteries Commission.

CMT Promotes Security Sales in PEI July 2010 - December 2012

PEI Superintendent of Securities investigation begins Sept 17/12 concludes with an agreement with CMT on June 4/13

GOVERNMENT ENTITIES INVOLVED

3.11 The Department of Finance took the lead in pursuing the E-gaming opportunity for government. There was no specific government budget established for this initiative. As costs were incurred, a method of funding the mounting bills had to be identified. Funding was obtained through government entities involved in providing resources for economic development within the province, namely Innovation PEI and Island Investment Development Inc. (IIDI). The Department of Justice, specifically the Legislative Counsel Office, was involved in examining draft legislative changes required for the initiative as work progressed.

3.12 The PEI Lotteries Commission (PEILC), had limited involvement despite its mandate being to develop, organize, undertake, conduct and manage lottery schemes on behalf of the government. Some expenditures were flowed through the Lotteries Commission; however, there was no reference to the E-gaming initiative in the board minutes of PEILC even though the former Minister of Finance was the Chair of the PEILC.

RELATIONSHIP BETWEEN GOVERNMENT AND EXTERNAL PARTIES

3.13 The core working group for this E-gaming initiative included the former Minister of Finance, the Executive Director of MCPEI (formerly the Director of Intergovernmental Affairs and Legal Counsel for MCPEI), and three representatives of a local law firm providing legal and other services: two lawyers and an accountant. Additional people were invited to attend meetings on occasion including public servants, consultants and others. The working group met on a regular basis.

3.14 The local law firm began working on the E-gaming file in early 2010 and had a major role with this project until June 2012. As depicted in **Exhibit 3.2**, approximately \$1 million was paid to the local law firm for legal and other services work on E-gaming. Both the former Minister of Finance and the Executive Director of MCPEI have acknowledged publicly that E-gaming was a joint initiative. We therefore expected the relationship between government, MCPEI and the local law firm would be documented.

3.15 Government did not provide us with a contract or any type of agreement which would set out the terms of the arrangement with MCPEI and the local law firm. This is important, not only to provide a clear understanding of the relationships, but also to protect the confidentiality of government information. We noted, for example, a report produced through a government contract was shared with the working group. Also,

updates were routinely provided by the former Minister of Finance to the working group on the status of government negotiations with other provinces.

3.16 The former Minister of Finance and the Executive Director of MCPEI informed our office that the local law firm was retained by MCPEI. The former Minister of Finance informed our office that the local law firm provided project management services on the E-gaming initiative. Other former elected and senior officials advised that the local law firm was assisting government. As well, during our work we obtained documentary evidence where the local law firm requested payment on final invoices and stated they were assisting both government and MCPEI by acting as project manager on the E-gaming file. We concluded that the law firm was providing project management services not only to MCPEI but also to government.

3.17 Our requests for project information on the E-gaming initiative were denied including the arrangements made with third party contractors engaged by the local law firm to work on the initiative. At the end of our work, the local law firm sent correspondence to our office indicating they disagree with our position and were not acting for government on the E-gaming initiative. The local law firm would not discuss this file with our office citing solicitor/client privilege with their client, MCPEI. However, project management services are not protected by solicitor/client privilege.

3.18 Because of the nature of this arrangement and the funding of the initiative through MCPEI, this significant government project operated outside the regular control framework of government. Government did not have an agreement outlining its access to project information. We could not examine important documentation, including project management information, and information on contracts with external third parties on this initiative. For example, we noted from invoices submitted on claims for the loan that some due diligence was carried out by the local law firm on CMT and Simplex, but we could not determine the extent or the results obtained. We could not confirm with the local law firm whether minutes of the working group were prepared and if so, we could not examine those minutes. All of these factors limited the audit trail for our assignment and resulted in a lack of transparency on this file.

3.19 Government was the primary player in this initiative. All of the risks and the majority of the benefits of the project were with government and the project could not go ahead without the support of government. For example, we were advised MCPEI could not finance investigating the concept of E-gaming without government providing grants and a loan. Further, repayment of the loan was conditional on the success of the project. If successful, documentary evidence obtained from government indicated almost all of the revenues of the project for PEI would belong to government. Government support would be required for legislative changes to proceed along with agreements between the Government of PEI and the governments of each of the other participating provinces. Further, it was ultimately government's decision to end the investigation into the project in February 2012. MCPEI could not advance the project without government.

3.20 We examined the local law firm's invoices submitted by MCPEI to IIDI as support for the drawdown on the loan. These invoices highlighted a project management relationship between government, in particular the former Minister of Finance, and the local law firm. The invoices showed instances of meetings with government representatives. In total, the former Minister attended over 100 meetings, and had over 140 direct contacts with the local law firm on this file. In addition, these invoices included costs for the former Minister's travel as a member of the E-gaming working group.

3.21 The invoices also showed many instances of government related work, such as:

- drafting and consulting on legislative changes;
- drafting cabinet memorandums;
- preparing Legislative Assembly question and answer sheets for the former Minister of Finance;
- reviewing advice from other consultants for the former Minister of Finance; and
- corresponding with the former Minister of Finance and other government officials on a regular and frequent basis.

3.22 Further, documentation from the Legislative Counsel Office indicated that a partner of the law firm, who was on the working group, was providing legal representation to the former Minister of Finance on

this file. In addition, we noted instances on the invoices where the local law firm was billing MCPEI for providing legal and investment advice to the former Minister of Finance on an investment decision for the PEI Lotteries Commission, a provincial Crown corporation.

3.23 There were potentially competing interests between MCPEI, the local law firm, and government. The Legislative Counsel Office raised a number of concerns to the former Minister of Finance and senior officials in the Department of Justice in early 2011. There were concerns regarding the need for an agreement outlining roles and responsibilities and provisions to address confidentiality and conflict of interest.

Recommendation

3.24 When engaging in joint initiatives with external parties, government should ensure taxpayers' interests are protected through written agreements. These agreements should address, at a minimum, roles and responsibilities, conflict of interest, confidentiality and government access to files and information.

FUNDING AND COSTS

3.25 The majority of the funds spent on the E-gaming initiative were accessed by MCPEI, most of which were paid to the local law firm for costs incurred as depicted in **Exhibit 3.2**.

EXHIBIT 3.2 SOURCES AND USES OF DIRECT FUNDING 2009-2013

Sources	Amount	Uses	Amount
Grants	\$432,000	Local Law Firm: - Professional Fees	\$997,000
Loan	950,000	- Travel	72,700
PEILC Funding	<u>60,000</u>	- Meals	4,000
		- Administrative	3,500
		- Consultants	<u>132,800</u>
			1,210,000
		MCPEI:	
		- Consultants	<u>232,000</u>
Total	<u>\$1,442,000</u>	Total	<u>\$1,442,000</u>

Source: Prepared by the Office of the Auditor General

3.26 Between September 2009 and January 2013, three grants totaling approximately \$432,000 and one loan for \$950,000 were provided to MCPEI. Further details are presented in **Exhibit 3.3**.

EXHIBIT 3.3
GOVERNMENT GRANTS, LOANS AND OTHER PAYMENT
2009 - 2013

Funding	Date Approved	Source	Amount Approved	Amount Provided
Grant 1	September 2009	Innovation PEI	\$ 245,000	\$ 232,000
Grant 2	December 2010	Innovation PEI	100,000	100,000
Loan	November 2011	Island Investment Development Inc.	950,000	950,000
Grant 3	January 2013	Innovation PEI	100,000	100,000
Payment	March 2013	PEI Lotteries Commission	<u>60,000</u>	<u>60,000</u>
Total			<u>\$1,455,000</u>	<u>\$1,442,000</u>

Source: Prepared by the Office of the Auditor General

Grants

3.27 Only the first grant was supported with an application; the other two were approved to pay for costs that had already been incurred. A loan of \$950,000 was approved for MCPEI after over \$750,000 of costs had already been incurred for the E-gaming initiative. This funding was essentially a grant. The loan was approved by the Board of Directors of IIDI and was secured by a guarantee letter from the former Minister of Finance. This guarantee letter was provided without Executive Council approval required in Treasury Board policy and the *Financial Administration Act* and impacted the transparency on the file.

3.28 All three grants were provided by Innovation PEI through the Enterprise Development Fund. For the grants, we expected that

- approvals were provided at the appropriate authorization level;
- formal letters of offer or funding agreements were prepared for the approved grant applications and signed off by all parties prior to the disbursement of funds; and
- documented monitoring efforts were carried out consistent with the terms and conditions in the letter of offer.

Grant 1

3.29 In July 2009, MCPEI applied for financial assistance of \$265,000 to explore a regulatory framework for a gaming regime in PEI. Innovation PEI agreed to fund the work and approved a grant of \$245,000.

3.30 There were no major issues noted with this grant with the exception of inadequate monitoring. The funding was used to produce various key documents that provided a roadmap for the E-gaming initiative. A clause in this grant required MCPEI to submit all final copies of the reports prepared by the consultants to Innovation PEI. We noted that not all final reports funded by the grant were obtained by Innovation PEI. Further, this same clause granted Innovation PEI permission to use the findings of studies and the associated intellectual property developed with the grant funding provided.

Grant 2

3.31 In late 2010, as the E-gaming project was progressing, MCPEI contacted Innovation PEI requesting an additional grant to cover the mounting bills from the local law firm for their work on the file. Staff took the informal request to the CEO of Innovation PEI, at the time, who approved a further grant of \$100,000 to MCPEI in December 2010.

3.32 We noted the following issues with this grant:

- no formal application;
- eligible expenditures were not clearly defined in the letter of offer; and
- no documented monitoring efforts consistent with the terms and conditions of the grant.

A clause in the grant agreement required Innovation PEI to pay 80 percent of the costs and MCPEI to pay the remaining 20 percent. Innovation PEI did not confirm that MCPEI paid its 20 percent of the costs related to this grant. When further requests for funding were received, it was not clear whether some of the 20 percent of costs intended to be covered by MCPEI were actually covered by subsequent funding from government.

Grant 3

3.33 Government made the decision to stop working on the initiative in February 2012, as previously discussed. However, work continued on this file by the local law firm and MCPEI. Some of the invoices from this time period were ultimately paid by government through a third grant from Innovation PEI authorized by the CEO.

3.34 The application for this grant was a short e-mail dated January 28, 2013, that requested “one time funding to address an economic growth opportunity...that would allow MCPEI to explore further opportunities in economic development.” The approval sheet and grant agreement prepared by Innovation PEI, indicate what the funds will be used for, and was indicative of events yet to occur. This was misleading. This grant was disbursed January 31, 2013, and was used to pay bills already incurred in the prior year from March 2012 to June 2012. In addition, the funds were advanced before the letter of offer was signed.

Loan

3.35 In early fall 2011, as costs on the file began to escalate, a draft Treasury Board submission was prepared requesting a non-repayable contribution from government to fund the costs for this initiative. The expected costs, and therefore the initial draft request prepared was for a \$1.2 million grant. Innovation PEI did not have sufficient funds in its budget to issue a grant, and could only do so if a special warrant was approved. This would require an order-in-council which is a public document. The grant request was never submitted. Subsequently, the local law firm prepared documentation to request a loan through IIDI rather than a grant.

3.36 The loan request, and supporting budget documentation, was reduced to \$950,000 even though the scope of the project did not change. The approval threshold for the IIDI Board of Directors was \$1 million. Any amounts over \$1 million require Treasury Board approval. In October 2011, a business plan was submitted to IIDI by MCPEI for funding of \$950,000. In November 2011, a loan was approved by the IIDI Board.

3.37 Assistance provided was in the form of a loan, but the funding was in substance a grant as there was clearly little expectation of receiving repayment from MCPEI funds. This assessment is based on the following:

- MCPEI did not have security to pledge in support of the loan;
- The repayment terms only required the loan to be repaid if the project was successful; and
- If the project was successful, repayment was to be out of general revenues of the project. Information indicated that government anticipated general revenues would be split 95/5 between government and MCPEI. Therefore, government would be repaying 95 percent of its own loan.

3.38 Given that the funding was provided as a loan, we assessed whether due diligence was applied by IIDI in its approval of the loan. We expected that

- the loan application was supported with a documented assessment of security, management, risk and key assertions;
- the loan was approved at the appropriate authorization level;
- a formal letter of offer was prepared and signed by all parties;
- the drawdown of funds did not occur until the letter of offer was accepted and all security was in place; and
- the loan was monitored and any monitoring was documented.

Loan Application

3.39 Considerable costs of \$600,000 were already incurred prior to the loan application and were not highlighted in the documented loan assessment provided to the Board. It is unusual that such significant costs are incurred prior to the approval of funding, especially where there is high risk, no tangible assets, and only intellectual property as security.

Letter of Offer

3.40 A letter of offer was prepared and signed by both parties; however, it was not consistent with IIDI's standard letter of offer for loans. Significant changes were made by MCPEI, and agreed to by IIDI, which either excluded or replaced standard letter of offer clauses with clauses

that were relaxed in favor of MCPEI and shifted the risks of the loan to government.

Loan Security

3.41 The security provided by MCPEI was limited to materials, contracts, agreements and/or intellectual property developed by the project and the revenue derived from the project. Essentially, there was no security provided by MCPEI since any reports developed would have limited value because they were specific to this project.

3.42 The loan agreement stated that the security would be supported by a priority agreement so that the province would rank first and as such have first claim to the assets and revenue of the project, if successful. This priority agreement was waived at the direction of the former Executive Director of IIDI, despite recommendations by IIDI staff to have the priority agreement signed. Management's explanation for waiving the priority agreement was to prevent disclosure of the project to MCPEI's external lender.

3.43 The approving authority, being the Board of Directors of IIDI, indicated the security provided by MCPEI was not adequate to support the loan and would not approve the loan without obtaining additional security.

3.44 The Department of Finance provided a guarantee for IIDI's loan to MCPEI. A guarantee letter was signed by the former Minister of Finance. This letter stated that "in the event of default by MCPEI, the Department of Finance accepts responsibility for the ultimate repayment of this loan to IIDI. The Department of Finance will meet its obligation with respect to this debt by providing an increase to the Innovation PEI budget in the year of default by an amount equal to the outstanding loan balance (including unpaid accrued interest) which will enable Innovation PEI to repay the IIDI loan on behalf of the Department".

3.45 This guarantee by the Department of Finance was a major factor in the decision of the IIDI Board to approve this loan. There were a number of issues with this guarantee letter:

- It references pre-approval of Innovation PEI's budget, which is outside normal practices established by the *Financial Administration Act* and Treasury Board policy on Budgeting and Financial Management.
- The *Financial Administration Act* (FAA) and Treasury Board policy for loans and guarantees, requires Treasury Board and Executive Council approval. Neither Treasury Board, nor Executive Council approval was obtained for this guarantee.

3.46 Obtaining Executive Council approval would result in an order-in-council, which is a public document. It is reasonable to expect that the former Minister of Finance, IIDI Board, and the Executive Director of IIDI should be familiar with the authorization requirements for guarantees outlined in Treasury Board policy on Loans and Guarantees and the *Financial Administration Act*. Instead, the loan was approved based on a guarantee that did not have the appropriate authorization.

Loan Disbursements and Monitoring

3.47 It is standard procedure of IIDI that loan funds not be advanced until after the letter of offer is signed and security is in place. The first advance for this loan was \$50,000 on November 29, 2011. This was before the letter of offer was signed on December 14, 2011, and before the registration of the security was completed on February 28, 2012.

3.48 The letter of offer contained a proposed project budget which listed thirteen deliverables, each with a corresponding timeline and estimated cost. There was no document summarizing the extent of completion of each deliverable in the budget. Government's support for the project ended in February 2012. At the time the loan was fully disbursed, there were significant cost overruns and a number of deliverables in the budget had not been started.

3.49 The letter of offer required MCPEI to submit completed claims with paid invoices to support requested disbursements. IIDI did not obtain 'completed claims' with 'paid invoices' from MCPEI. Instead, unpaid invoices were provided to IIDI staff and IIDI completed the claims to support drawdown of loan funds.

3.50 IIDI did not reconcile the disbursements on the loan to the actual payments made by the local law firm. Therefore, we could not determine

whether the loan funds were used to pay the invoices as indicated on the claim. In fact, we noted three instances where there were discrepancies between the claims prepared by IIDI and the payment details in other correspondence from the local law firm. Although the total dollar value of these discrepancies was not significant, it highlights that adequate monitoring procedures were not conducted.

3.51 In the fall of 2012, the law firm contacted government to request payment for all the remaining bills of the E-gaming project indicating that they were assured that all bills for this project would be paid by government. The outstanding bills at that time totaled over \$390,000. Approximately 25 percent of this total related to costs incurred after February 2012 when government decided it was no longer supporting the project. The Deputy Minister of Finance met with the local law firm at that time and reached an agreement whereby government would pay all outstanding bills, except for approximately \$30,000. The local law firm agreed to write off this amount. The plan for payment included:

- IIDI would release the balance of the loan funds committed to the project, (\$200,000);
- Innovation PEI would provide a grant to MCPEI for \$100,000 (Grant #3); and
- Atlantic Lottery Corporation (ALC) would buy from MCPEI a legal analysis relating to internet gaming for \$60,000 and MCPEI would, in turn, pay the local law firm.

3.52 The plan for ALC to purchase the legal analysis from MCPEI was problematic. This document was acquired by MCPEI from an external consultant with the use of Grant #1. As previously discussed, the grant agreement gave government, through Innovation PEI, the right to use the findings of all intellectual property so government already had access to this information. We have been informed by senior management of ALC that they did not request the report. ALC purchased the report on the direction of the former Minister of Finance, who was also Chair of the PEI Lotteries Commission (PEILC). Because ALC was directed by the Chair of PEILC, the \$60,000 paid to MCPEI was withheld by ALC from the profit distribution due to PEILC. In essence, government paid for the legal analysis twice: through Grant #1 to MCPEI, and again through PEILC's profit distribution.

Other Costs

3.53 Early in our work, we sent out a request to government departments and agencies known to be involved in the E-gaming and/or financial services platform files requesting all expenditures related to these files including travel, legal fees and consultant services. We were not provided with information on any additional relevant expenditures from this request beyond the grants and loans provided to MCPEI.

3.54 Throughout the assignment, however, we identified some additional expenditures:

- In the fall of 2009, the former Minister of Finance travelled with the former Chief of Staff to the Isle of Mann regarding the E-gaming initiative. The travel costs incurred by the former Minister, and paid through the Department of Finance, totaled approximately \$4,200. However, we were unable to obtain the costs incurred by the former Chief of Staff.
- In 2010, a contractor, engaged by the Department of Finance, conducted research on the technology requirements for E-gaming. Financial records indicate over \$23,000 was paid to this contractor. We noted there was no signed contract for this work.
- Between March 2009 and August 2010, legal and consulting fees of \$14,000 were paid through PEILC for services related to E-gaming.
- There were other miscellaneous costs identified related to E-gaming, for example other travel and legal fees totaling approximately \$20,000.

3.55 We expect there were other costs associated with E-gaming that we were unable to obtain. Not all costs related to the E-gaming initiative were recorded as a direct expenditure. However, based on our work, government expenditures on E-gaming amounted to a minimum of \$1.5 million.

Recommendations

3.56 Innovation PEI should ensure grant approval documents and agreements accurately reflect the project being funded.

3.57 Innovation PEI should monitor grant funding in accordance with the terms and conditions in the letter of offer.

3.58 IIDI should not disburse loan proceeds prior to signing loan agreements and obtaining security.

3.59 In accordance with the *Financial Administration Act* and Treasury Board policy, government loan guarantees should be authorized by the Lieutenant Governor in Council.

FINANCIAL REPORTING

Information not presented on financial statements

3.60 In February 2012, government made a decision to end its involvement with the E-gaming initiative. Based on the terms and conditions in the loan agreement, the loan to MCPEI was no longer repayable to IIDI at that date. The loss on the loan should have been reflected on the 2011-12 consolidated financial statements of the province, but it was not reflected until 2012-13. Although this transaction was not material to the 2011-12 consolidated financial statements, it should have been recorded.

3.61 As the auditors of the province's consolidated financial statements, we conduct standard procedures to obtain all relevant information. This includes reviewing all orders-in-council for guarantees, examining financial statements of Crown agencies, and obtaining management representations. The guarantee was not disclosed to us during our audit.

3.62 At March 31, 2012, IIDI reported a loan receivable from MCPEI. We were advised there was no provision for loss recorded because the Department of Finance provided a guarantee letter to IIDI. The guarantee by the Department of Finance was a related party transaction of IIDI but was not disclosed in the notes to the IIDI consolidated financial statements as required.

3.63 For the year ended March 31, 2013, IIDI recorded a \$950,000 loss on the loan. This was contrary to the decision of the Board when the loan was approved. When the Board of IIDI approved the loan, it was based on having security to ensure that IIDI would not take a loss on this loan. As of March 31, 2016, the loan remains on IIDI's books with a full loan loss provision. Based on accounting standards, this loan should be written off. This loan has not been written off.

Information not reported to Treasury Board

3.64 On January 9, 2013, Treasury Board directed the Department of Innovation and Advanced Learning to develop a standard quarterly report to be effective for the March 31, 2013 year end. This quarterly report was to include all loans that met certain conditions. One of these conditions required that loan accounts with a specific provision for loss be included in the quarterly reports.

3.65 By March 31, 2013, the MCPEI loan had a specific provision for loss. We reviewed the quarterly reports to Treasury Board up to March 31, 2015 and this loan was not included as required.

Recommendations

3.66 The Department of Finance should strengthen its financial reporting practices to ensure all loss provisions are reflected in the consolidated financial statements of the province.

3.67 IIDI should strengthen its financial reporting practices and ensure all significant information is disclosed.

3.68 In accordance with the *Financial Administration Act*, IIDI should recommend to Executive Council the write off of the loan to MCPEI.

3.69 IIDI should provide the required information on its loan portfolio in its quarterly reporting to Treasury Board.

LOYALTY CARD PROGRAM

SUMMARY OF FINDINGS

4.1 The major issue noted with the loyalty card program was a general disregard for Treasury Board policy on contracting. Competitive processes were not used and services were not documented in contracts. In our 2012 Annual Report, we reported the results of a value-for-money audit on Contract Management of Professional Services in Tourism PEI for the period April 1, 2011 to July 1, 2012. That audit identified and reported on similar deficiencies as noted above, including the lack of competitive processes and undocumented contractual arrangements. We also noted there was a lack of due diligence conducted prior to awarding work for the loyalty card program.

BACKGROUND

4.2 The loyalty card program was a concept where tourists would use a specialized customer card at participating Island businesses and would accumulate rewards. This loyalty card program was to serve as a tourism tool for various purposes including tracking consumer behavior, recruiting new visitors, and creating loyalty to establish repeat visitations.

CONTRACTING

4.3 In May 2011, the former Deputy Minister of Tourism and Culture contacted the Vice President of Business Development for CMT regarding the establishment of a loyalty card program for PEI. The work on the loyalty card program overlapped the E-gaming initiative and involved both Capital Markets Technologies and Simplex. We expected that prior to any work conducted by CMT and Simplex:

- due diligence was performed; and
- Treasury Board policy was followed for contracting.

4.4 In late September 2011, the former Deputy Minister of Tourism and Culture had discussions with Simplex and CMT about the loyalty card program. In October 2011, CMT hired a local consultant to work on the project with Department staff. A survey was created and they began prospecting local businesses for the program. In the fall of 2011, a 16-week timeline was established for the project with phase I of the work expected to end March 31, 2012. Simplex would act as lead contractor and would subcontract with another London, U.K., based company to complete this work.

4.5 Phase 1 of the work was initially valued at \$50,000 and was awarded without a competitive process although one is required by Treasury Board policy on contracting. In addition

- no due diligence was performed on these companies;
- work began on the loyalty card program without any documented contract between the Department of Tourism and Culture and either CMT or Simplex; and
- the Department of Tourism and Culture instructed Simplex to bill for its services through a third party service provider which had an existing IT contract with the Department. This is a serious deviation from appropriate internal controls.

4.6 These two companies worked together to assist government in the development of the loyalty card program. Based on our work, which included examination of the audited financial statements of CMT, we could not substantiate that there was an ownership interest between CMT and Simplex before the end of December 2012.

4.7 The concept of the loyalty card program ended soon after a change in deputy ministers at the end of 2011. Simplex, through its subcontractor, did provide some work on the program and settled on billing for approximately \$6,000 in the spring of 2012. Government could not provide evidence to show it paid the company for the work completed.

MEMORANDUM OF UNDERSTANDING FOR A FINANCIAL SERVICES PLATFORM

SUMMARY OF FINDINGS

5.1 Adequate due diligence was not exercised by senior government officials in the approval of a Memorandum of Understanding (MOU) for a financial services platform. An MOU was outside the normal business practice of Innovation PEI for client files.

BACKGROUND

5.2 The purpose of this MOU was to allow a period of time for exclusive negotiations between Innovation PEI and 7645686 Canada Inc. also referred to as Trinity Bay Technologies (TBT) regarding the establishment of a financial services platform. This platform would allow processing of multiple types of financial transactions, connecting to global payment networks, and allowing for the management of a large volume of data.

5.3 In January 2012, the CEO of Simplex contacted the former Deputy Minister of Innovation and Advanced Learning, copying the Vice President of Business Development of CMT, to provide an outline of how to move forward to establish a financial services platform in PEI with or without E-gaming. The timeline of events regarding the MOU and a financial services platform is presented in **Exhibit 5.1**.

EXHIBIT 5.1
MEMORANDUM OF UNDERSTANDING
FINANCIAL SERVICES
TIMELINE

DATE	EVENT	CMT Promotes Security Sales in PEI July 2010 to December 2012
January 27, 2012	Former Deputy Minister of the Department of Innovation and Advanced Learning (DIAL) receives an e-mail from Simplex regarding a plan for a financial services platform with or without E-gaming.	
February 2012	Government informs of its decision to end E-gaming. Some discussions begin between the former Deputy Minister of DIAL and Innovation PEI regarding financial transactions platform but no action taken.	
June 21, 2012	A CMT investor contacts the lawyer for Innovation PEI, who is also an investor of CMT, to promote the need for TBT and Simplex to have an MOU with Innovation PEI for the financial services platform.	
June 22, 2012	Lawyer for TBT sends a copy of the proposed MOU to the lawyer for Innovation PEI .	
July 4, 2012	Lawyer for Innovation PEI sends the MOU to the former Deputy Minister of DIAL, who gives approval to proceed with Innovation PEI as signatory.	
July 6, 2012	Innovation PEI enters into a 60 day MOU agreement with TBT signed July 9th. This imposed an “exclusivity” period regarding discussions on a financial services platform.	
September 4, 2012	Initial MOU expires. Former Deputy Minister of DIAL receives request for extension from TBT’s consultant.	PEI Superintendent of Securities Investigation begins Sept 17/12 and concludes with an agreement with CMT on June 4/13.
September 10, 2012	MOU extended for 30 days by former Deputy Minister of DIAL via e-mail with TBT consultant.	
October 10, 2012	Extended MOU expires.	
November 1, 2012	Legal counsel for TBT e-mails CEO of Innovation PEI requesting they resume negotiations. CEO requests detailed business plan and no further information is received from TBT or Simplex.	

**APPROVAL
PROCESS**

5.4 In early July 2012, there were discussions between Innovation PEI’s legal counsel (who was also a CMT investor), and the former Deputy Minister of Innovation and Advanced Learning regarding an MOU with CMT’s subsidiary, TBT.

5.5 On July 6, 2012, Innovation PEI entered into an MOU with TBT. The objective of the agreement was to set out the parameters for the parties to commence formal negotiations to establish a financial services

platform in the province. The initial term of the agreement was for 60 days and included an exclusivity clause which stipulated that:

“PEI nor any of its employees, officers, contractors, agents, representatives and/or professional advisors, agrees not to discuss with any entity its interest and/or capabilities in hosting or creating a financial services center in the province.”

60-day MOU

5.6 We expected that prior to entering into the MOU agreement, adequate due diligence would be conducted on TBT, its owners and affiliates. In addition, we expected an assessment of the terms and conditions in the agreement, the legal obligations of entering into such an agreement and the potential repercussions of breaking the terms of the agreement. We also expected that the MOU and its subsequent extension were approved by the appropriate authority. These basic control measures are important in order to minimize the risks to government.

5.7 We noted, through interviews conducted and review of e-mail documentation, that the concept of the MOU agreement was initiated by Innovation PEI’s external legal counsel based on his discussions with a local CMT investor. Innovation PEI’s external legal counsel advised that the MOU was fairly benign and outlined 4 clauses that were binding:

- agree to meet and make reasonable efforts to conclude an agreement;
- agree to a 60-day window to deal exclusively with TBT on the concept of a financial services center for PEI and likewise they agreed to do the same;
- agree that each party bears their own expenses; and
- agree to keep the matter confidential and any information received as confidential.

5.8 This MOU was unusual for two main reasons:

- Innovation PEI typically signed non-disclosure agreements, not MOUs, with its clients; and
- the request for the business arrangement came from Innovation PEI’s external legal counsel rather than from a client.

5.9 The former Deputy Minister of Innovation and Advanced Learning supported signing the MOU and gave its external legal counsel direction to proceed. The MOU was then executed by the CEO of Innovation PEI, based on the advice of the former Deputy Minister of Innovation and Advanced Learning and its external legal counsel.

5.10 Basic due diligence was not conducted on Trinity Bay Technologies, its owners or affiliates prior to entering into the MOU. Basic due diligence on a company would include gaining an understanding of the ownership structure, obtaining financial statements, and reviewing the corporate history. Senior officials indicated they were aware of government's previous involvement with these companies. However, they could not provide documentary evidence that due diligence had been conducted by any government entities.

5.11 Further, clarification on the terms and conditions in the agreement was not obtained. This was particularly important for Innovation PEI because the wording of the exclusivity section was very broad. Financial services was a key sector identified by Innovation PEI for economic development in the province. Innovation PEI senior officials advised that they were concerned about the exclusivity clause and how it would impact their work.

5.12 Essentially this MOU gave TBT 60 days to negotiate exclusively with Innovation PEI in establishing a financial services center in PEI and one of the binding clauses of the MOU was to "make reasonable efforts to conclude an agreement". Although the MOU did not bind Innovation PEI to sign an agreement and no money was exchanged, the intention was to reach an agreement with TBT for support to establish a financial services platform.

30-day Extension MOU

5.13 The initial 60-day MOU was subsequently extended for an additional 30 days by the former Deputy Minister of Innovation and Advanced Learning via an e-mail. Although the Deputy Minister had the authority to extend this agreement on behalf of Innovation PEI, the extension should have been formalized in a written document outlining terms and conditions and signed by both parties. There were documented

concerns raised by the CEO of Innovation PEI, and there was no evidence that these were resolved prior to approval of the extension.

Potential Contracting Conflict

5.14 We noted another issue when reviewing this file. A consultant, whose consulting company was under two contracts with the Department of Innovation and Advanced Learning, was also retained by TBT to provide government relations services, advice, and support. The consultant also represented TBT in negotiating the 30-day extension of the MOU. Although all contracts between this consultant and government had various general clauses, there were overlapping clauses that put the consultant in a potential conflict. The consultant was under contract with TBT to provide government relations services with a department and at the same time was working on a contract with the same government department to perform business prospecting services.

5.15 We were advised that the former Deputy Minister of Innovation and Advanced Learning and the consultant were aware of the potential conflicts and managed the situation. However, potential conflicts between government and contractors pose a risk to government. It's important that departments and agencies have a well-defined process to identify, document and manage conflict of interest situations with contractors.

5.16 The current Treasury Board policy on professional services contracts does not address potential conflicts with contractors. We have previously raised this issue in our 2014 Annual Report in the chapter on IT Contracting. We recommended that government revise its contracting policies to address conflict of interest situations with contractors. As of July 31, 2016, action has not been taken to implement this recommendation.

Recommendations

5.17 Innovation PEI should perform adequate due diligence prior to entering into commitments or agreements with external parties.

5.18 Treasury Board policy on contracting should be expanded to address conflict of interest situations with contractors.

CONFLICT OF INTEREST

SUMMARY OF FINDINGS

6.1 We found compliance with the annual disclosure requirements of the *Conflict of Interest Act* by Members of the Legislative Assembly. However, there were instances where disclosures for deputy heads and staff were not obtained as required by the Conflict of Interest policy.

6.2 Conflict of interest policies exist for government employees to maintain public confidence in the objectivity of the public service. Any conflict of interest situation, either actual or apparent, can reflect poorly on the entire public service. Where senior executives are involved, it is particularly concerning. We noted apparent conflict of interest situations with two senior executives involved in these files: a former Chief of Staff and a former Deputy Minister. Further, another former Deputy Minister obtained various contracts for her consulting company within weeks of leaving her position with government.

BACKGROUND

6.3 Conflict of interest is an important element of a code of conduct that is fundamental to the public's trust and confidence in elected officials, and senior executives and staff in government. The disclosure and declaration process included in both the legislation and policy is designed to allow oversight and monitoring of potential conflict situations. PEI's *Conflict of Interest Act* outlines conflict situations and required disclosures for the Members of the Legislative Assembly. For Deputy Heads and other government staff, conflict of interest requirements are outlined in Treasury Board policy.

DECLARATIONS AND DISCLOSURES

Members of the Legislative Assembly

6.4 Section 25 of the *Conflict of Interest Act* requires Members to file a disclosure statement with the Conflict of Interest Commissioner within 60 days of being elected and subsequently, once in every following calendar year on or by the date established by the Commissioner.

6.5 The disclosure statement identifies the following for the Member and his/her spouse and dependent children:

- All income, assets, and liabilities;
- Any benefits received from government contracts;

- Information about any private company or partnership named in the disclosure;
- All corporations and other organizations where the Member or Member's family is an officer or director; and
- Any other information that the Commissioner requires.

6.6 We reviewed the public disclosure statements for Members who held office during our scope period. The purpose was to determine whether any Member held an interest in any of the companies involved in E-gaming, the loyalty card program or the financial services platform files and whether the disclosure statements were filed 60 days after being elected and annually thereafter. Any investments are only disclosed on the public disclosure statements if greater than \$5,000. We therefore requested confirmation from the Conflict of Interest Commissioner that the private disclosures of the same Members did not indicate an interest in any of the companies involved in E-gaming or the financial services platform.

6.7 We did not find any evidence that any Member held an interest in any of the companies involved in either the E-gaming, loyalty card, or financial services platform files. As well, all disclosure statements were filed annually.

Deputy Heads and Employees

6.8 The Conflict of Interest Policy in place during our scope period required employees, including Deputy Heads, to file either a declaration or disclosure statement (the statements) upon initial hire, upon a change in circumstance, and when requested. A declaration statement provides a certification from the employee that they are not aware of any potential conflict and also have no assets, interests, or external employment required to be reported under the policy. A disclosure statement would be required if the employee or the employee's spouse or dependent children had any real or personal property, outside employment and/or community activities, that may cause a potential conflict.

6.9 We expected one of these statements to be filed for each employee in accordance with the policy. For purposes of our review, we considered a change in circumstance to be, at a minimum, when an employee changes positions or the responsibilities assigned to his/her position change

significantly. This would include a reassignment of Deputy Heads or a government reorganization.

6.10 We requested the statements of the 17 executive level employees and 4 non-executive level employees who were closely connected to E-gaming, the loyalty card program, and/or the financial services platform files. Of the 17 executive level employees, 14 did not have all the required statements completed. Of the 4 non-executive level employees, 1 did not complete all the required statements.

6.11 For the limited number of disclosures that were on file, we reviewed the statements to determine if any of these employees including their spouse or dependent children, disclosed an interest in any of the companies involved in these files. The statements that were available did not indicate that any employees, their spouse, or dependent children, held an interest in any of the companies involved in E-gaming, the loyalty card program, or the financial services platform.

6.12 Government recognized there were issues with the conflict of interest policy and its application to Deputy Heads. In 2016, a new policy was approved for executive level staff. This policy requires annual disclosure statements to be filed and expands the disclosure requirements. We verified that the required disclosure forms were completed and provided to the Ethics and Integrity Commissioner as of March 31, 2016.

6.13 An apparent conflict of interest exists where it can be reasonably perceived, or appears, that a public official's private interests could improperly influence the performance of his/her duties - whether or not this in fact is the case.

**NON-
COMPLIANCE
WITH CONFLICT
OF INTEREST
POLICY**

Apparent Conflict of Interest Situation

6.14 In early 2011, a local business owner introduced the former Chief of Staff to CMT's Vice President of Business Development, and the CEO of Simplex. These companies were pursuing the development of a financial services platform in PEI and began working with the former Chief of Staff to market PEI to prospective companies.

6.15 In May 2011, the former Chief of Staff and these individuals presented the opportunity of marrying the two projects (E-gaming and the

financial services platform) to the E-gaming working group. Simplex, CMT's technology partner, was then engaged by the local law firm to prepare a report on how the platform would work for E-gaming and the technical requirements it would need to operate.

6.16 During this same period, CMT's convertible debentures were being sold in the province to raise funds to acquire Revolution Technologies Inc. (Rev Tech) through a reverse takeover to re-establish CMT on a stock exchange. Sale of the debentures began in July 2010 and continued until December 2012. The sales of CMT debentures raised over \$700,000 in capital from 36 Islanders as well as approximately \$300,000 from investors in other provinces.

6.17 Some convertible debentures were sold directly by the target company, Rev Tech. We were unable to substantiate Rev Tech's investor list, but we did confirm that in the spring of 2011, the former Chief of Staff's spouse purchased \$1,500 of convertible debentures in Rev Tech. Rev Tech was a shell company that was traded on an Over-the-Counter exchange and would not be known by the average investor.

6.18 The involvement of the former Chief of Staff in government relations with CMT and his spouse's investment in Rev Tech creates the perception of a conflict. The reverse takeover did not transpire and we were advised that the debentures expired later that year and he did not receive a financial benefit from this investment.

Apparent Conflict of Interest Situation

6.19 Section 9 of the Conflict of Interest Policy in place at the time, which applied to Deputy Heads, outlines the concept of preferential treatment. Specifically, it states that "employees must not accord preferential treatment in relation to any official matter to family members, friends, other persons or organizations in which the employee, family members or friends have a financial or other interest". There is an appearance that the former Deputy Minister of Tourism and Culture, who was also the former Deputy Minister of Innovation and Advanced Learning, provided preferential treatment to CMT and Simplex which involved both the loyalty card program and the Memorandum of Understanding signed with TBT, a subsidiary of CMT.

6.20 A local investment advisor promoted the sale of securities for CMT from July 2010 to June 2011. For a portion of this time, the local investment advisor was the spouse of the former Deputy Minister. The former Deputy Minister knew the Vice President of Business Development for CMT and she knew there was a relationship between this individual and her former spouse. She interacted socially with CMT's Vice President of Business Development and his family.

6.21 In May 2011, the former Deputy Minister of Tourism and Culture approached CMT regarding the establishment of a loyalty card program and awarded work without a competitive process. In 2012, this same individual authorized an MOU between Trinity Bay Technologies, a subsidiary of CMT and Innovation PEI, with exclusivity clauses which placed limitations on the work of Innovation PEI, and was outside its normal course of business. As a prudent administrator, she should not have put herself in this situation where it could be reasonably perceived that there was a conflict of interest with her involvement on these files.

6.22 She should have stepped away from both of these files citing the apparent conflicts to her Minister and/or the Clerk of Executive Council. We were advised that when the PEI Superintendent of Securities investigation began she was asked by a senior government official to remove herself from the file. She advised that when she became aware of the PEI Superintendent of Securities investigation she voluntarily stepped away from the file.

6.23 The new policy on conflict of interest has been strengthened and requires that the Ethics and Integrity Commissioner meet at least annually with each Deputy Head to provide clarity and advice on the employee's obligations with respect to conflict of interest. Although one can never be certain of full compliance, this process is important and should help to prevent similar conflict issues in the future.

POST EMPLOYMENT

6.24 During our work, we noted that a former Deputy Minister became a partner of a consulting company after departing from government. Within six months of departure, this former Deputy Minister secured three separate contracts for the consulting company with a total value of approximately \$100,000.

- The first 12-month contract was signed with the Department of Innovation and Advanced Learning just weeks after leaving government and it had a value of up to \$40,000. The contract was for business development and prospecting services.
- The second 12-month contract was signed with the Department of Intergovernmental Affairs a week after the first contract, also for a value of up to \$40,000. The contractor was to act as an agent for government regarding intergovernmental affairs.
- The third contract was signed in April 2012 with the Department of Innovation and Advanced Learning and had a value of up to \$28,000. The contract was to provide matchmaking services to identify export opportunities.

All three contracts were quite broadly worded in terms of scope of work. A competitive process was not used to award the contracts which was in contravention of Treasury Board policy on contracting.

6.25 Although there was no cooling off period in the conflict of interest policies for Deputy Ministers at that time, all of these are post employment activities that are normally restricted through a cooling off period. We noted that in the new policy for Deputy Heads, post employment restrictions are included and the conduct noted above would be in contravention of the new policy.

RECORDS MANAGEMENT

SUMMARY OF FINDINGS

7.1 We found that not all government records were being managed and safeguarded as required by legislation and policy. Requirements of the *Archives and Records Act*, related to records retention and disposition schedules were not complied with. Therefore, we are not confident that we received all relevant government records related to E-gaming, the loyalty card program, and the establishment of a financial services platform.

BACKGROUND

7.2 Government records are valuable government property. A record is any documentary material regardless of physical form. In other words, a record may exist in any format such as paper, audio recording, videotape and electronic data, including e-mails and text messages. Appropriate records management is essential for government to demonstrate accountability and transparency. Legislation and policy clearly outline the

importance of protecting government records, the responsibilities and authority of the various parties, and address records management in government.

7.3 The *Archives and Records Act* outlines the responsibilities for the preservation of government records and requirements to ensure government records are not destroyed unless authorized under the Act. The Minister of Education is responsible for the administration of the Act and the Act requires that the Minister appoint a Provincial Archivist who shall, at the direction of the Minister, ensure that the intent and purposes of the Act are carried out.

7.4 Every Minister or head of a public body is responsible for protecting and maintaining records under its custody or control. A public body is defined under the Act and includes government departments, Crown corporations, agencies, and offices.

7.5 The *Archives and Records Act* notes that every public body having custody or control over government records shall prepare a schedule for the retention and disposition of those records. These schedules are to be implemented and approved by the Public Records Committee established under the Act. Treasury Board policy on Recorded Information Management assigns responsibility for monitoring the compliance with records management policies and procedures to the Public Archives and Records Office (PARO). PARO is responsible to report to the Minister of Education on compliance with this policy.

7.6 At the outset of this assignment, we did not intend to examine records management in government. Due to difficulties encountered in obtaining government records, we reviewed selected practices and policies related to the management of government records. We interviewed records management liaison officers, employees from the PARO, the Provincial Archivist, and senior management of Information Technology Shared Services. We also examined selected records retention and disposition schedules.

7.7 We checked for the existence of a retention and disposition schedule for the public bodies related to this assignment and noted that there were no approved retention and disposition schedules for the following during our scope period:

RECORDS RETENTION SCHEDULES

- Department of Innovation and Advanced Learning;
- Innovation PEI; and
- Department of Tourism and Culture (Tourism section schedule approved in May 2011).

7.8 A Recorded Information Management (RIM) assessment is a comprehensive review to determine which public bodies have a RIM plan, which have up-to-date retention schedules, and whether records are retained in accordance with the Act. These assessments are to form the basis of PARO's reporting to the Minister of Education. The last RIM assessment completed by PARO was in 2009. PARO has not been preparing compliance reports to the Minister. PARO indicated that it attempted to complete another assessment and report the results, but various departments did not respond to requests for information. There is a risk that government records are not being adequately safeguarded and cooperation of public bodies is needed to monitor compliance with the Act.

E-MAILS AND OTHER RECORDS

7.9 We requested from government all documentation relating to E-gaming, the loyalty card program, and the financial services platform. Through this request, it became evident that some of the public bodies involved in these files were not adhering to the requirements of the Act. We experienced delays in obtaining some of the required information.

7.10 A significant volume of records were provided to us from employees' e-mail accounts. Certain e-mail messages can be considered government records. These must be printed and/or stored accordingly by the government employee to help ensure government records are properly managed and to prevent the records from being deleted when an employee leaves government. When an employee leaves government, normal practice is to have the e-mail account removed. We were advised by ITSS that after a period of one year, an account that has been removed cannot be recovered. Consequently, if the employee does not manage his/her e-mail records in accordance with policy, government records can easily be destroyed.

7.11 We noted instances where the e-mail accounts of senior government officials, who were key participants in the E-gaming initiative and/or the establishment of a financial services platform, were removed after leaving government. We requested information and were not

provided with any e-mail or other records for these individuals. We concluded that government records existed at one time in these e-mail accounts because we received relevant government records from other public bodies and sources external to government that should have been retained in accordance with legislation and policy.

7.12 Although we obtained signed statutory declarations by current government officials who took responsibility for these former employee's records, the statutory declarations only cover records known to exist and obtainable by the signator. Further, our work showed that some of the public bodies related to this assignment did not comply with the *Archives and Records Act*. Therefore, we cannot be certain all relevant records were provided to us.

7.13 Management of government records has not been a priority of government. Government records are important government property and there is legislation and policy to protect and maintain these records. Public bodies need to support the Provincial Archivist and PARO to help ensure that the purpose of the *Archives and Records Act* is achieved and important government records are adequately managed and protected.

Recommendations

7.14 The Public Archives and Records Office, in cooperation with public bodies, should monitor compliance with records management policies and procedures and submit compliance reports to the Minister of Education.

7.15 The Minister of Education, as the Minister responsible for the *Archives and Records Act*, should take necessary action to enforce compliance with the Act.

PROTECTING THE PUBLIC INTEREST

8.1 Throughout this report, there is a common theme: inadequate protection of taxpayers' interests. The report highlights instances where legislation, policies and controls were ignored and projects were advanced that were not supported with adequate due diligence. A number of decisions and actions demonstrated a lack of due regard for transparency

and accountability. **Appendix D** lists the legislation and Treasury Board policies where non-compliance issues were noted.

8.2 There was a lack of due regard for taxpayers' interests in relation to the loyalty card program and the memorandum of understanding for the financial services platform. Due diligence was not exercised by senior officials prior to entering into arrangements with third parties. Treasury Board policies on contracting were not followed in acquiring services for the loyalty card program. In fact, throughout our work, we noted a widespread disregard for Treasury Board policies related to contracting.

8.3 In the E-gaming file, there was a sense of enthusiasm and commitment by an elected official because of the opportunity to significantly increase tax revenues for the province. The project operated outside the regular control framework of government and taxpayers' interests were not adequately protected in arrangements with third parties.

8.4 On March 1, 2011, more than eight months before a loan to MCPEI was approved by IIDI, the Legislative Counsel Office raised several concerns about the E-gaming initiative to senior officials in the Department of Justice. These included:

- the propriety of sharing government documents and legal advice with non-government parties (in this case MCPEI and the local law firm);
- the lack of "useful instructions" regarding the E-gaming file and confusion on who is "in charge of the file";
- the confusion as to the role of the local law firm and whether the local law firm was acting for the former Minister of Finance, MCPEI or both;
- the lack of a retainer or dual retainer, a conflict letter or clarity regarding the local law firm's role in this file; and
- the absence of a non-disclosure or any other type of agreement between government and MCPEI.

8.5 Other concerns were raised by senior officials and staff of IIDI and Innovation PEI throughout these projects. For example there were concerns about:

- the need to obtain Treasury Board or Executive Council approval for the loan guarantee;
- the need to maintain first priority on the loan security; and
- the need to prepare formal documents and not rely on e-mail authorization.

WHISTLEBLOWER PROTECTION

8.6 We will never know whether these concerns would have been raised with the Ethics and Integrity Commissioner had the position existed at the time. The position was created on April 1, 2015. It is in the best interests of taxpayers to have a system that allows reporting of wrongdoing with respect to government operations. It enhances public confidence in government and the public service.

8.7 The “Public Interest Disclosure and Whistleblower Protection Policy” came into effect on November 23, 2015. The Ethics and Integrity Commissioner is tasked with the administration of the policy. The establishment of the policy was an important first step in providing a mechanism for reporting wrongdoing.

8.8 In our view, the policy falls short in providing the kind of environment that would ensure that employees of government could disclose wrongdoing without fear or reprisal, as the policy intends to do. A policy document is not a law. Policies describe the objectives of a government and how it proposes to achieve these objectives using various methods and principles. Policy does not provide the same level of protection to employees. Statutory protection is better protection. Most other provincial jurisdictions have whistleblower legislation.

Recommendations

8.9 Treasury Board should take action to enforce compliance with its policies on contracting.

8.10 Government should consider adopting whistleblower legislation.

**SCOPE, OBJECTIVES, APPROACH AND
SCOPE LIMITATIONS**

SCOPE

This special assignment was requested through Order-in-Council EC2015-126 pursuant to the *Audit Act*. Section 14(d) of the *Audit Act* states that “the Auditor General shall undertake special assignments or investigations at the request of Executive Council.”

The Standing Committee on Public Accounts also raised concern about government’s involvement in the E-gaming file and the financial services file. In March 2015, the Committee requested that our Office investigate this matter.

In accordance with the request from Executive Council, we examined government support to the Mi’kmaq Confederacy of Prince Edward Island (MCPEI) in relation to E-gaming, along with steps taken by government throughout its relationship with MCPEI to protect the interests of taxpayers. In addition, we considered government’s dealings with Simplex, Capital Markets Technologies and related companies in relation to E-gaming and financial services, including the conduct of current and former elected officials and staff.

Our scope period for this assignment was from July 1, 2009 to March 31, 2015. This is the time frame from the outset of the E-gaming initiative through to the MOU for the financial services platform, to the PEI Superintendent of Securities investigation, to the issuance of the order-in-council requesting our special assignment in March 2015.

Our examination was performed in accordance with the standards for assurance engagements established by the Chartered Professional Accountants of Canada and accordingly included such tests and other procedures as we considered necessary in the circumstances.

OBJECTIVES

We developed four key objectives for this assignment.

Financial Support to Mi’kmaq Confederacy of PEI: E-gaming Initiative

- 1) To assess whether due diligence was applied in approving, disbursing, and monitoring the loan and grants provided to MCPEI.

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Financial Services Platform: MOU with Trinity Bay Technologies

- 2) To assess whether appropriate due diligence was applied prior to entering into and extending the Memorandum of Understanding signed with Trinity Bay Technologies.

Conduct: E-gaming/Financial Services Platform Initiatives

- 3) To determine whether elected officials (both current and former) and selected government employees (both current and former) respected the applicable conflict of interest legislation and/or policies and basic principles of good governance (as included in **Appendix C**), including, but not limited to integrity, stewardship and transparency.

Consultants and Third Parties

- 4) To determine whether government complied with selected aspects of Treasury Board policy on contracting for consultants and other third parties engaged to conduct work in relation to the E-gaming initiative, the loyalty card program, and/or the financial services platform MOU.

APPROACH

On September 22, 2015, the Auditor General sent correspondence to the Clerk of Executive Council requesting all government documentation related to the E-gaming initiative and the memorandum of understanding for the financial services platform. For greater clarity, the documentation requested included any record in print or electronic form including but not limited to correspondence, opinions, memoranda, briefing notes, notes, e-mails and texts including instant messages and PINS.

This would include documentation related to:

- a current or former employee, elected official, or political staff member of the province;
- private sector individuals and consultants dealing with government in relation to these projects;
- various companies connected with these projects that had dealings with government; and
- all working papers, analyses, and assessments prepared by government or its contractors.

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We requested the information be accompanied by appropriate statutory declarations indicating that all records were searched and relevant records provided. Further, we requested that statutory declarations indicate whether the information requested no longer exists. We expected, at a minimum, a statutory declaration from the Deputy Head of each department and Crown corporation involved in the E-gaming initiative and/or the financial services platform MOU. In addition, we obtained statutory declarations from the Secretary to Treasury Board and the Clerk of Executive Council.

We conducted interviews with over 50 individuals including current and former elected officials, current and former senior government officials and staff, external parties with an involvement in these projects, government consultants, and government legal representatives.

We reviewed a substantial amount of documentation including:

- project files, invoices, government e-mails and meeting notes;
- legal documentation from government's external legal representatives engaged to defend government's interests in the legal action filed by CMT (solicitor/client privilege was waived by government for the Auditor General in respect to legal representation on these projects);
- information provided by external parties related to these projects;
- information obtained by the Office of the PEI Superintendent of Securities in conducting its investigation;
- relevant legislation, policies, and financial information; and
- various other documents.

Work on this assignment was substantially complete as of July 31, 2016.

Our observations and conclusions relate only to the management practices and actions of various current and former elected and senior officials and staff of the Government of PEI. Consequently, our comments and conclusions do not pertain to the practices or performance of any external party referred to in this report.

Our examination did not include an audit of the PEI Superintendent of Securities investigation into CMT. However, we did examine information obtained through this investigation in conducting our work.

**SCOPE
LIMITATIONS**

We did not conduct any audit work on MCPEI or any private companies connected with the E-gaming initiative, the loyalty card program or the establishment of the financial services platform.

E-gaming was essentially a government project. Government allowed this project to operate outside the normal control framework of government. A local law firm provided legal and other services in relation to the E-gaming initiative. Government did not have a documented agreement that would address government's right to access the records created through the course of their extensive work on the project. The firm would not consent to meeting with our Office and did not provide the information we requested. Therefore, we do not have important project management information in relation to the E-gaming initiative.

E-mail accounts of some former senior government officials who were key participants in the E-gaming initiative, the loyalty card program, and/or the financial services platform were closed, deleted, and could not be recovered. We were not provided any e-mails or other government records for these individuals. We have received some records from other public bodies and sources external to government that should have been retained from these e-mail accounts.

We requested from government all relevant texts including instant messages and PINS. There were none provided by government even though we were advised, and have evidence that some government business relevant to these files was conducted through these forms of communication. Further, we were advised there were instances where interface issues were encountered with the archives of government's e-mail system which led to electronic data being lost. Therefore, we could not determine if the information we received included all relevant government records.

APPENDIX B

Recommendations at a Glance
Note: Recommendation numbers below refer to the recommendation number in the body of the report and therefore may not be sequential.
Recommendation 3.24 When engaging in joint initiatives with external parties, government should ensure taxpayers' interests are protected through written agreements. These agreements should address, at a minimum, roles and responsibilities, conflict of interest, confidentiality and government access to files and information.
Recommendation 3.56 Innovation PEI should ensure grant approval documents and agreements accurately reflect the project being funded.
Recommendation 3.57 Innovation PEI should monitor grant funding in accordance with the terms and conditions in the letter of offer.
Recommendation 3.58 IIDI should not disburse loan proceeds prior to signing loan agreements and obtaining security.
Recommendation 3.59 In accordance with the <i>Financial Administration Act</i> and Treasury Board policy, government loan guarantees should be authorized by the Lieutenant Governor in Council.
Recommendation 3.66 The Department of Finance should strengthen its financial reporting practices to ensure all loss provisions are reflected in the consolidated financial statements of the province.
Recommendation 3.67 IIDI should strengthen its financial reporting practices and ensure all significant information is disclosed.
Recommendation 3.68 In accordance with the <i>Financial Administration Act</i> , IIDI should recommend to Executive Council the write off of the loan to MCPEI.
Recommendation 3.69 IIDI should provide the required information on its loan portfolio in its quarterly reporting to Treasury Board.
Recommendation 5.17 Innovation PEI should perform adequate due diligence prior to entering into commitments or agreements with external parties.
Recommendation 5.18 Treasury Board policy on contracting should be expanded to address conflict of interest situations with contractors.
Recommendation 7.14 The Public Archives and Records Office, in cooperation with public bodies, should monitor compliance with records management policies and procedures and submit compliance reports to the Minister of Education.
Recommendation 7.15 The Minister of Education, as the Minister responsible for the <i>Archives and Records Act</i> , should take necessary action to enforce compliance with the Act.
Recommendation 8.9 Treasury Board should take action to enforce compliance with its policies on contracting.
Recommendation 8.10 Government should consider adopting whistleblower legislation.

APPENDIX C

Principles of Good Governance
Accountability is the obligation of an individual, a group, or an organization to answer for a responsibility that has been conferred.
Leadership is setting the “tone at the top”, which plays a crucial role in encouraging an organization’s personnel to embrace good governance practices.
Integrity is acting in a way that is impartial, ethical, and in the public interest. Integrity is reflected in part through compliance with legislation, regulations, and policies, as well as through the instilling of high standards of professionalism at all levels of an organization.
Stewardship is the act of looking after resources on behalf of the public and is demonstrated by maintaining or improving an organization’s capacity to serve the public interest over time.
Transparency is achieved when decisions and actions are open, meaning that stakeholders, including the public and employees, have access to full, accurate, and clear information on public matters.

Source: Modified from Public Sector Governance: A Guide to the Principles of Good Practice.
Office of the Auditor General of British Columbia.

APPENDIX D

Legislation and Policies: Non-Compliance
Legislation • <i>Financial Administration Act</i> • <i>Archives and Records Act</i>
Treasury Board policies • Loans and Guarantees • Conflict of Interest • Contract Services, Conditional Grants and Funding Agreements • Recorded Information Management

Glossary of Technical Terms
Convertible Debenture - is a form of hybrid security where both the issuer and the purchaser expect the debenture to be converted into common shares at some future point.
Over the Counter (OTC) Stock Exchange - securities traded in some context other than on a formal stock exchange such as the New York Stock Exchange or the Toronto Stock Exchange.
Provision for Loss - an estimation of potential losses that will arise from accounts or loans receivable that have been issued but not yet collected.
Related Party Transaction - is a transaction between two businesses that have a personal or other relationship.
Reverse Takeover (RTO) - is the acquisition of a public company by a private company so that the private company can bypass the lengthy and complex process of going public.
Shell Company - is a company which serves as a vehicle for business transactions without itself having any significant assets or operations.
Undertaking - is a written intention that outlines the terms and conditions between two parties entering into an agreement.
Write-Off - is where an amount owed is removed from the accounting records, but the borrower remains legally obligated to pay the debt.