



Fraud Management Policy
Version 1.0, September 2017

Updated: July 3, 2018

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1.0 Fraud Management Policy

1.1 Objective

1.1.1 The objective of this Policy is to promote a culture which helps safeguard the Government of Newfoundland and Labrador's assets, funds and information from fraudulent activity. Safeguarding these assets includes implementing policies and procedures to:

- Increase awareness of fraud
- Prevent occurrence of fraud
- Detect fraud
- Report fraud
- Outline repercussions

1.2 Definitions

- a) **“Audit Committee”** Refers to the Government-wide audit committee of the Government of Newfoundland and Labrador.
- b) **“Contractor”** Refers to a person or company that undertakes a contract with Government to provide materials or labour to perform a service or do a job. This person or company would be considered an independent or third party.
- c) **“Department(s)”** A department is as defined in the *Financial Administration Act*.
- d) **“Deputy Minister”** Is the Head over a Department. Deputy Minister also included Equivalents such as Chief Executive Officers.
- e) **“Discipline”** An action imposed as a means to alter an employee's inappropriate conduct or poor performance and/or clarify expected conduct or performance.
- f) **“Employee”** An individual employed by a Government department with permanent, temporary, seasonal, casual, full-time, part-time, or contractual employment status.
- g) **“Fraud”** is any act or omission designed to deceive others, resulting in a victim suffering a loss and/or the perpetrator achieving a gain for themselves or a third party.

Intention is the key element that distinguishes fraud from irregularity. Fraud does not just have a potential financial impact, but it can cause damage to the reputation of an organization responsible for managing funds effectively and efficiently. Fraud includes acts committed internally within Government as well as externally against Government.

Specific instances or indicators of fraud may include:

- falsification or alteration of financial records, payroll records or employment records including, without limitation, records relating to overtime and leave;
- unauthorized use of a Government credit card;

- unauthorized use of Government owned or leased vehicles and equipment;
- intentional corruption of Government files or data;
- reimbursement of non-legitimate expenses or unworked hours;
- accepting bribes or kickbacks;
- bid rigging or other forms of collusion with vendors;
- an employee or officer or contractor who has reasonable grounds to believe that he/she has a conflict of interest and intentionally fails to declare;
- theft, misappropriation or other fraudulent use of public funds or property;
- conversion of public funds or property to personal use;
- intentional overbilling or short shipment by vendors;
- offence under the *Financial Administration Act*;
- intention to deceive by the suppression of truth or the suggestion of what is false; and
- weaknesses in Government-wide policies or controls.

(This list is intended to be illustrative and is not an exhaustive list)

- h) **"Government"** The Executive Branch of the Government of Newfoundland and Labrador.
- i) **"Officer"** Refers to executive or other senior officials who may not necessarily fall within the definition of "employee."

1.3 Application and Scope

- 1.3.1** This Policy applies to all Government employees, officers and contractors in the workplace with respect to any suspected or confirmed instances of fraudulent acts against the Government involving employees/officers and/or external parties.
- 1.3.2** The Policy applies to Government Agencies, Boards, Commissions and Crown Corporations, except for those that currently have their own respective fraud management policy in place that is substantially along the lines of this *Fraud Management Policy* and those that are not within Cabinet's authority to direct. Government Agencies, Boards, Commissions and Crown Corporations that are not required to comply with the Policy are encouraged to use the Policy to the extent there is no conflict with their existing legislation, regulations or existing contracts and further use this policy as a guideline in the development of their own fraud management policies.
- 1.3.3** This Policy also does not apply to unintentional acts of negligence or poor performance by employees or officers or contractors, which should be addressed through normal human resource management processes.

1.4 Authority

- 1.4.1** This Policy is intended to supplement other Government legislation and policies including:
 - *Access to Information and Protection of Privacy Act, 2015*
 - *Conflict of Interest Act, 1995*
 - *Public Interest Disclosure And Whistleblower Protection Act*
 - *Financial Administration Act*
 - *Criminal Code of Canada*

1.5 Policy Statement

1.5.1 This Policy is intended to raise awareness of fraud risks within Government and provide a consistent framework for the identification, investigation and reporting of fraud. Departments are responsible for designing and monitoring internal controls and processes to prevent and detect fraud within their respective programs and operations. Consideration should be given to the guidance within this Policy as well as other applicable policies, procedures, financial management circulars and legislations (particularly the *Financial Administration Act*).

1.5.2 Government has zero tolerance for fraud in any form, which means that departments are to ensure that all suspected incidents of fraud or similar potentially illegal acts are investigated and take appropriate disciplinary action, in all confirmed cases following consultation with the Employment and Labour Relations Division of the Human Resource Secretariat and internal legal counsel. All departments shall establish appropriate financial and administrative practices and procedures resulting in proper custody, accounting and control of all assets, resources and information.

2.0 Fraud Awareness, Prevention and Detection

2.1 Why People Commit Fraud (Elements of fraud)

2.1.1 The risk of fraudulent activity increases if the following elements are present:

- pressure or incentive: There is a need or want to commit fraud. For example financial pressures may motivate an individual to commit fraud.
- opportunity: A weakness in or override of internal controls that an employee or officer or contractor can exploit to commit fraud. For example if an individual is aware that management oversight of a process is lacking, they may be able to exploit this to their advantage.
- rationalization: There are people who are convinced that fraudulent behavior is acceptable and worth the risk to commit fraud. Some individuals may see justification in acts of fraud as they feel that they are entitled to something. For example an individual may abuse overtime or hours of work if they feel they are not adequately compensated.

2.2 Understanding Fraud Risk

2.2.1 Fraud risk is the vulnerability of an organization towards fraud. It combines the probability of fraud occurring and the potential impacts of the fraud occurring. Fraud risks are managed using a combination of preventative (up-front) controls and detective (after-the-fact) controls.

2.2.2 There are often circumstances, control weaknesses or indicators that contribute to fraud which are found after the fraud has been detected. Departments must ensure that an adequate system of controls is in place to monitor these instances and help reduce the risk of them from reoccurring. Examples of such possible circumstances or weakness would include:

- lack of documented policies and procedures;
- policies and procedures not being followed or there are regular exceptions to policies;
- lack of proper segregation of duties within processes;
- key documents not available to support transactions or inadequate documentation (e.g. missing contracts or other authorizations, invoices with inadequate details);

- lack of adequate audit trails;
- numerous adjustments required to transactions;
- unexplained or excessive variations from contract terms;
- absence of proper background/clearance checks as part of the hiring process for certain positions;
- ineffective management oversight processes;
- inability to provide reliable, timely management information upon request; and
- individuals who are not willing to share details of their work or refuse to take vacation time.

2.3 Fraud Prevention and Detection

2.3.1 Departments have primary responsibility for preventing fraud and similar illegal acts and can reduce the likelihood of fraud and similar illegal acts by developing and maintaining:

- a culture of ethics and a positive work environment;
- a sound system of internal controls; and
- management oversight.

2.3.1.1 A culture of ethics and a positive work environment

All levels of management set the “tone at the top” by modelling the attitude and conduct which they expect all employees, officers and contractors to display. They are responsible for fostering an ethical climate and positive workplace, which emphasizes honesty, integrity, respect, service excellence and accountability.

It is critical that departments take reasonable steps, through training and other communication methods, to ensure that all employees, officers and contractors are aware of departmental policies and Government-wide policies that affect them. Particular emphasis should be placed on fraud awareness training, the Government’s zero-tolerance for fraud and the options available to all employees, officers and contractors to report suspicions of fraud or similar illegal acts.

2.3.1.2 A sound system of internal controls

Departments are to design their system of internal controls to fit their programs and operations. The system should consider the principal risks, the costs to implement controls and existing Government policies and directives, particularly the *Financial Administration Act*. Departments should refer to Financial Management Circular 1.030 “Internal Controls” for general guidance on the importance of maintaining strong internal controls within their environment, including examples. All Financial Management Circulars are available at “Office of the Comptroller General” section of the Public Service Network.
<http://www.intranet.gov.nl.ca/comptroller/circulars.asp>

2.3.1.3 Management oversight

It is not sufficient to just develop and document adequate anti-fraud controls and processes. Departments must ensure they are in place and operating as intended. Controls should be monitored through such means as, review of variance and exception reports by management, effective budget monitoring processes, oversight by senior officials and review of reports from internal audit and the Auditor General. Controls should be reviewed regularly for weaknesses; deficiencies detected should be fixed and controls and processes modified as required.

2.3.2 Role of Employees

2.3.2.1 Employees are responsible to understand and comply with Government and departmental policies and procedures so they may conduct their duties in an effective manner. Employees are also required to follow internal control practices and established ethics standards. When established procedures and processes are not followed, there is an increased risk that fraud can occur and go undetected. This includes environments where management override of controls occurs and is not questioned. Employees should be able to recognize and understand the impacts of changes in or deviations from established processes and their potential fraud risks.

3.0 Fraud Reporting

3.1 Employee, Officer and Contractor's Options to Report Alleged Instances of Fraud

3.1.1 Any employee or officer or contractor who has knowledge of a suspicious incident within a department of Government, which may involve a fraud or similar illegal act, is encouraged to report it immediately. This includes incidents which involve an employee, officer, client, supplier, contractor or other third party. Failure to report such suspicious incidents can result in disciplinary action, up to and including dismissal.

3.1.2 Employees and officers making a disclosure of known or suspected fraud may do so through the Office of the Citizens' Representative; or alternatively, verbally or in writing to their immediate Supervisor/Manager or Director. If the employee chooses to notify the Office of the Citizens' Representative; reporting and investigation process will be dealt with in accordance with the *Public Interest Disclosure and Whistleblower Protection Act*.

3.1.3 Notwithstanding 3.1.1 and 3.1.2, the *Financial Administration Act* (section. 81(e)) does makes provision for certain circumstances in which an employee shall be dismissed if they fail to report the fraud in writing.

3.1.4 If employees, officers or contractors make a disclosure of known or suspected fraud to their immediate Supervisor/Manager or Director, the Supervisor/Manager or Director will then contact the Deputy Minister for the department with this information. Where there is reason to believe a reporting employee, officer or contractor's Supervisor/Manager or Director may be involved, the reporting employee or officer or contractor should contact either the Deputy Minister directly, Human Resource Secretariat, or the next level of management. The recipient of this report must communicate back to the employee, officer or contractor who brought the concern to them that the information has been appropriately escalated or communicated to the appropriate parties. Any additional information, including future actions or decisions resulting from the information, is not to be disclosed to the employee, officer or contractor.

3.1.5 A reporting employee, officer or contractor is to provide as much relevant, factual information as possible but is not to conduct their own independent investigation.

3.1.6 An employee, officer or contractor involved in a reported situation is responsible for respecting the reputation of individuals. Any malicious unfounded reports will be reviewed and considered for appropriate discipline of the reporting employee, officer or contractor.

3.1.7 An employee, officer or contractor reporting suspicious incidents under this Policy must treat the matter as confidential and not discuss it with anyone other than the person to whom they have reported the incident or the designated investigation team.

3.1.8 Reasonable measures shall be taken to maintain confidentiality and to protect, to the extent possible, the identity of employees, officers or contractors reporting suspected incidence of fraud under this Policy.

Departments should consult with Employment and Labour Relations Division of the Human Resource Secretariat and/ or their legal advisors where disclosure is necessary to conduct an effective investigation, for disciplinary or legal proceedings, or where there are questions related to privacy or access to information requests.

- 3.1.9** No employee, officer or contractor who has acted in good faith shall be subject to any reprisal for reporting, or proposing to report, a suspected fraud or similar illegal act under this Policy. Prompt action, including appropriate disciplinary action, will be taken in response to any harassment, discrimination or other retaliation. Any employee, officer or contractor who reasonably believes that he/she is being subjected to retaliation by another employee, officer or contractor, including their supervisor, as a result of reporting or proposing to report a suspected incidence of fraud under this Policy, should contact their union representative, if applicable, the Office of the Citizens' Representative or their Deputy Minister, who must consult with the Employment and Labour Relations Division of the Human Resource Secretariat where the suspected incidence of fraud involves an employee or officer.
- 3.1.10** There does not have to be an actual loss of money or property before a suspected incidence of fraud is reportable. Similarly, suspected incidences of fraud are still reportable, even if the loss is recovered in full.
- 3.1.11** Employee, officer or contractor questions regarding this Policy should be directed to their immediate supervisor/manager or to the Director or delegate for the department.

3.2 Review and Investigation Procedures

- 3.2.1** The Deputy Minister must ensure that information received from the individual who reported the incident is appropriately documented.
- 3.2.2** The Deputy Minister for the department shall, in consultation with Employment and Labour Relations Division of the Human Resource Secretariat, determine the next step for every reported allegation of wrongdoing.
- 3.2.3** Departments are responsible for investigating, reporting and taking follow-up action on all allegations of fraud or similar illegal acts in a timely manner, to determine if a fraud or similar illegal act has occurred.
- 3.2.4** Departments should exercise discretion, based on the nature and relative size of the incident, to determine the extent of the investigation to be undertaken. Departments should first conduct a preliminary review to determine if there are reasonable grounds to conduct a detailed investigation. Prior to beginning any such review, departments should consult with the Employment and Labour Relations Division of the Human Resource Secretariat when allegations are made involving bargaining unit, non-bargaining/non-management and management personnel.
- 3.2.5** The Deputy Minister, in consultation with the Employment and Labour Relations Division must ensure responsibility for reviews or investigations is clear by assigning this obligation to an individual or group. Reviews or investigations must always be objective. The review or investigation team should, where considered necessary, consult with the following groups:
 - a. Legal representation from the Department of Justice and Public Safety; and
 - b. Professional Services and Internal Audit Division of the Office of the Comptroller General.
- 3.2.6** Where the preliminary review fails to substantiate that a fraud has occurred, the results of the review must be documented and communicated to the parties involved in the review. The results of such review must also be communicated to the Audit Committee, through the Office of the Comptroller General.
- 3.2.7** Where the preliminary review determines that there are reasonable grounds for an allegation, the affected department is required to conduct a detailed investigation. The Department must notify the Audit

Committee, through the Office of the Comptroller General, regarding next steps intended to be taken to carry out such a detailed review. Where the alleged fraud involves an employee or officer, the Deputy Minister after consultation with the Employment and Labour Relations Division of the Human Resource Secretariat may, subject to the terms of any applicable Collective Agreement, remove the employee or officer or contractor from the workplace on special leave, with or without pay, or otherwise reassign the employee or officer to another area. Where the alleged fraud involves a contractor, the Deputy Minister may consult with Department of Justice and Public Safety regarding the termination of the contract.

- 3.2.8** Where the preliminary review determines that there are reasonable grounds to believe that an offence has occurred, the Deputy Minister should also notify the police and the Attorney General.
- 3.2.9** A record of the review or investigation must be maintained including interview notes and other relevant documents.
- 3.2.10** All participants in the reviews or investigations are to keep the details confidential to the extent possible. Correspondence, reports and other documents related to suspected or actual cases of fraud are to be treated as confidential and kept in secure confidential files. Any issues related to confidentiality or disclosure should be discussed with the Department of Justice and Public Safety.
- 3.2.11** Deputy Ministers should adhere to provisions outlined in respective collective agreements, where applicable, particularly with respect to required time limits for serving notice of investigation as well as completion of investigations in addition to any relevant discipline articles.

3.3 Reporting Requirements

- 3.3.1** Upon completion of the investigation, the investigation team will produce a fact-based written report for the Deputy Minister. The report will include the following:
 - A description of the incident and nature of the loss;
 - Evidence, including a summary of findings regarding the allegations of fraud;
 - The place where the loss is known or suspected to have occurred;
 - The department/section that has suffered the loss;
 - The nature and extent of the fraud including the amount of the loss or a reasonable estimate;
 - The circumstances or internal control weaknesses which may have contributed to the fraud, with recommendations to improve those systems of controls;
 - The measures recommended to be taken to recover the loss;
 - The statements of the suspected individual(s) in respect of whom the allegations were made, if available;
 - The names of individuals involved (including those staff and/or management whose failure to exercise appropriate supervision or control may have facilitated the fraud); and
 - Any other matter of significance relevant to making a decision on any disciplinary action to be taken. Such information should be prepared in consultation with the Employment and Labour Relations Division
- 3.3.2** The Deputy Minister shall, in consultation with the Employment and Labour Relations Division of the Human Resource Secretariat, determine distribution of the final report. In any event, where in the judgment of the Deputy Minister there is sufficient evidence to confirm an instance of fraud, the report shall be copied to the Comptroller General for tabling to the Audit Committee.

3.3.3 All substantiated allegations of fraud must be reported to the Auditor General. This information should be communicated in the department's annual response to the Auditor General on issues related to fraud and fraud risk. A description of the fraud event; dates of occurrence; and the value of losses (if applicable) should be included. It may also be desirable to report suspected instances of fraud to the Auditor General.

3.3.4 These disclosures to the Auditor General shall also be copied to the Comptroller General to assist in fulfilling responsibilities pursuant to the *Financial Administration Act* related to proper control of public funds.

4.0 Repercussions of a Substantiated Claim

4.1 Following a review of the report and consultation with the investigation team, the Deputy Minister will determine:

- whether any reasonable and immediate steps/action is necessary to prevent or detect further fraud elsewhere in the department. These steps include, but are not limited to, improvement of controls, reinforcement of existing policies and procedures, employee or officer training, and enhanced supervision/monitoring;
- whether the department should proceed with legal action, including recovery of losses if applicable. Legal action should be taken only after consultation with the Department Justice and Public Safety and the Employment and Labour Relations Division of the Human Resource Secretariat ; and/or
- what disciplinary action should be taken. The department must take disciplinary action against any employee or officer where allegations of fraud are substantiated by an investigation. Prior to taking any disciplinary action, departments must consult with Employment and Labour Relations Division of the Human Resource Secretariat. When a matter involves a Management employee, the Department of Justice and Public Safety must also be consulted as per the Discipline Policy and the Termination of Employment Policy.

4.2 **When disciplinary action is taken**, proceedings should be initiated promptly and in accordance with any applicable Collective Agreement, as any undue delay may adversely affect the right to impose discipline. It is not necessary to wait for the results of any criminal investigation or proceedings before starting disciplinary action. The two are independent of each other and may proceed concurrently. Nonetheless, in some cases there may be justifiable grounds for delaying the finalization of an investigation. This decision must be made in consultation with the Employment and Labour Relations Division of the Human Resource Secretariat.

4.3 If incidents of fraud or similar illegal acts occur, managers/ supervisors/equivalent, as the case may be will be subject to appropriate discipline if they failed to provide adequate supervision or direction, failed to take appropriate action or condoned improper conduct.

4.3.1 The Department of Justice and Public Safety, Human Resource Secretariat and the employee's Director will be informed of any decisions arising from the investigation.

4.4 Departments must also make every effort to recover any losses incurred by the Government in a cost effective manner. It is recommended that departments contact the Department of Justice and Public Safety and Office of the Comptroller General for advice on recoveries.

4.5 Departments should take into consideration Civil Liability and Penalties under Part VI of the *Financial Administration Act* and Offences and Penalties under Part VII of the *Financial Administration Act*.

5.0 Follow-up Actions

5.1.1 The Audit Committee may require follow up on the actions of a department regarding an incident of fraud. The Audit Committee may ask the responsible Deputy Minister for information such as:

- What corrective action has been taken to prevent future instances of fraud (e.g. improvements to internal controls and processes)?
- Whether the results of the detailed investigation have been reported to the Auditor General?
- What disciplinary action was taken against the employee or officer or contractor?
- Whether legal action has been taken?
- What actions have been taken to recover any losses?
- How much of the loss has been recovered and written off?
- Any other matter of significance.