

2024 01G 0937
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

BETWEEN:

NEIL BOSE, THE PRESIDENT AND VICE-CHANCELLOR
PRO TEMPORE OF MEMORIAL UNIVERSITY OF
NEWFOUNDLAND APPLICANT

AND:

MICHAEL HARVEY, IN HIS CAPACITY AS THE
INFORMATION AND PRIVACY COMMISSIONER OF
NEWFOUNDLAND AND LABRADOR FIRST INTERVENOR

AND:

MATTHEW BARTER, THE ACCESS TO INFORMATION
REQUESTER AND COMPLAINANT BEFORE THE
COMMISSIONER SECOND INTERVENOR

AND:

GENESIS GROUP INC. THIRD INTERVENOR

AND:

C-CORE FOURTH INTERVENOR

**AFFIDAVIT OF KARLA CONNOLLY,
INTERIM PRESIDENT & CHIEF EXECUTIVE OFFICER OF
GENESIS GROUP INC.**

SUMMARY OF CURRENT DOCUMENT	
Court File Number(s):	2024 01G 0937
Date of Filing Document:	August <u>30th</u> , 2024
Name of Party Filing or Person:	Genesis Group Inc., Third Intervenor
Application to which Document being filed relates:	Originating Application pursuant to section 50(2)(a) of the <i>Access to Information and Protection of Privacy Act, 2015</i> , SNL 2015, c. A-1.2 seeking a declaration that the Applicant is not required to comply with recommendations of the Information and Privacy Commissioner of Newfoundland and Labrador
Statement of Purpose in filing:	To provide evidence relevant to the Originating Application

I, **Karla Connolly**, of the Portugal Cove-St. Philip's, in the Province of Newfoundland and Labrador, make oath and say:

1. I am Interim President and Chief Executive Officer ("**Genesis' CEO**") of Genesis Group Inc. ("**Genesis**"), the Third Intervenor, having held the said positions since May 27, 2024, and as such, I have personal knowledge of the matters herein deposed to unless otherwise stated.

Genesis as a Private Corporation Entity

2. Genesis was incorporated on October 3, 1980, under *The Companies Act*, R.S.N. 1970, c. 54 as a corporation with share capital. The corporation's original name was Seabright Corporation Limited. The corporation's name was changed to Genesis Group Inc. on September 19, 2000. A true copy of Genesis' Articles of Incorporation are appended hereto as **Exhibit "A"**.
3. Genesis is a technology incubator that operates as a not-for-profit support network dedicated to fostering entrepreneurship and developing sustainable businesses. Its primary mission, as stated in its By-Law No. 1, is to assist and encourage academics, those associated with Memorial University of Newfoundland ("**Memorial**" or "**the University**"), and the local community in commercializing technological ideas, concepts, and intellectual property ("**Genesis' Business**"). Genesis provides resources, mentorship, and support to early-stage startup companies, guiding them from idea validation to scaling their businesses. Through its programs, Genesis helps startups develop minimum viable products, find market fit, and achieve significant milestones, such as reaching a million dollars in annual recurring revenue. The incubator also facilitates connections with industry mentors, investors, and ecosystem partners to ensure startups have the necessary tools and networks to thrive, with a primary emphasis on benefiting the Province of Newfoundland and Labrador. A true copy of Genesis' By-Law No. 1 is appended hereto as **Exhibit "B"**.
4. Since its inception, Genesis has grown into a globally-recognized innovation hub with national and international partners who have committed to supporting Genesis' Business. Genesis secures more than 50% of its annual operating revenues from private sources. Companies assisted by Genesis have collectively secured almost a billion dollars in

private capital, have created more than 2,500 jobs and generated more than \$700 million annually in recurring revenues. Genesis' success, and the resulting injection of capital and jobs into the Province, are facilitated in part by its status as a private corporation.

5. Memorial is the sole shareholder of Genesis. Pursuant to paragraph 45 of Genesis' By-Law No. 1, ownership of voting shares of Genesis is restricted to the University.
6. Genesis is governed by a Board of Directors, which presently comprises 12 directors, 11 of whom are voting directors. The directors, as empowered by paragraph 8 of Genesis' By-Law No. 1, manage Genesis' affairs conducted in support of Genesis' Business. The directors are elected by the University's Board of Regents, after receiving recommendations from Genesis' Board of Directors and the University's President. Directors are primarily elected from the private sector. Directors are elected to serve for two to three year terms. A quorum of a majority of the elected voting directors is required for the transaction of business at any meeting of directors. Where there is such quorum, every question is decided by a majority of the votes cast by the directors.

Information at Issue in this Proceeding

7. This proceeding concerns four access to information requests made by Matthew Barter (the "**Requester**"), the Second Intervenor, to the University, two of which concerned information about employees of Genesis. In access to information request 0020-062-23-125, the Requester sought access to information about "*all bonuses and special payments paid to Genesis executives and all incentives paid to Genesis management employees from January 1, 2019 to October 23, 2023*". In access to information request 0020-062-23-126, the Requester sought access to information about "*all vehicle allowances paid to Genesis executive and management staff from January 1, 2019 to present*".
8. Genesis is a small operation, presently consisting of 15 full-time employees and one part-time employee, for a total of 16 employees. The amount of remuneration and benefits paid to Genesis' employees, and other such conditions of employment, are decided exclusively by Genesis' CEO and approved by the Board of Directors, with the sole exception of those regarding Genesis' CEO, which are decided by Genesis' Board of Directors. Information regarding such employee remuneration, benefits and conditions of employment (the "**Employee Information**") is personal information of Genesis' employees and is treated

by Genesis as confidential information. The Employee Information relates solely to Genesis' employees and Genesis' Business.

9. Genesis' employees, including Genesis' CEO, are retained by signing employment contracts with Genesis (not Memorial). Genesis employees' employment contracts assume that Genesis is a private corporation; accordingly, the contracts do not notify employees of potential disclosure of the Employee Information pursuant to the *Access to Information and Protection of Privacy Act, 2015*, SNL 2015, c. A-1.2 (the "**ATIPPA**") or other public-sector legislation.
10. Genesis uses physical, organization and electronic security measures to protect the confidential Employee Information in its custody and control against loss, theft, unauthorized access, disclosure, use or modification. Such measures include premises security, restricted file access, technological safeguards including security software and firewalls to prevent unauthorized computer access, and password and security policies.

Genesis as a Separately Incorporated Entity in relation to Memorial

11. Genesis is termed a Separately Incorporated Entity ("**SIE**") in relation to Memorial. The nature of Genesis' relation to Memorial as an SIE is evinced by the particulars described throughout this Affidavit. As further particularized herein, as a private corporation, Genesis governs itself as a commercial enterprise uninhibited by the statutory obligations imposed on public bodies. This includes Genesis negotiating freely and entering into contracts with innovation enterprises in a manner that promotes economic growth for the Province, while simultaneously protecting such enterprises' proprietary and commercially sensitive information from publication. Imposing public body statutory obligations on Genesis would significantly impede Genesis' Business.
12. Genesis does not receive monetary funding from Memorial, nor does Memorial direct Genesis on how to spend the funding Genesis receives from other sources.
13. In carrying out its business, Genesis uses assets and facilities owned by Memorial. Genesis' use of the University's property is governed by a Management Agreement, pursuant to which Genesis is appointed as the University's managing agent of the property

it uses. A true copy of the current Management Agreement of Genesis and Memorial is appended hereto as **Exhibit "C"**.

14. In connection with Genesis' use of University property, Genesis is authorized by paragraph 69 of its By-Law No. 1 to acquire shares or other securities as the University's agent for purposes deemed appropriate by Genesis' officers or directors, including for the recovery of costs incurred by Genesis in providing services to such bodies corporate, or in lieu of a licence fee from such bodies corporate for the use of property owned by the University and managed by Genesis. Any revenue on the disposition of such shares or other securities, including dividends received in respect of such shares, are used solely, with the University's prior approval, to further Genesis' Business, or are held by Genesis as agent of the University.
15. Further in connection with Genesis' use of University property, Genesis is authorized by paragraph 72 of its By-Law No. 1 to enter into royalty or licence agreements as agent of the University, for purposes deemed appropriate by Genesis' officers or directors, including the recovery of costs incurred by Genesis in supporting the development of inventions, discoveries or creations, and patenting processes. Any royalties or other revenues generated from royalty or licence arrangements are used solely to further Genesis' Business, or held by Genesis as agent of the University.
16. Pursuant to the Management Agreement, Memorial also serves as payroll agent to Genesis. In this capacity, Memorial provides administrative services to Genesis in the form of (i) delivering Genesis' employees their wages, (ii) preparing payroll reports and returns required of Genesis, and (iii) remitting to the proper authorities all deductions and payments for income tax, unemployment insurance, group coverages, union dues, Canada Pension Plan, Workers' Compensation and any other deductions or payments which may from time to time be applicable to Genesis' employees, or Genesis, or both. To enable Memorial's provision of payroll service, Genesis provides the necessary instructions and details about the remuneration to be paid to each Genesis employee to Memorial's Human Resources Department, as well as deposits funds to Memorial to account for the payroll payments. As a consequence of its acting as payroll agent, Memorial has bare possession of the Employee Information at issue in this proceeding, but does not have authority over the content or use of the Employee Information. The

University's use of the Employee Information is strictly for the purpose of administering the payroll service to Genesis.

Genesis' Accountability to its Shareholder

17. Genesis is accountable to the University in its capacity as Genesis' sole shareholder. Pursuant to paragraph 53 of Genesis' By-Law No. 1, Genesis is required to hold an annual meeting with its shareholder (the "**AGM requirement**"). The AGM requirement includes: (i) the University hearing and receiving Genesis' financial reports and statements, and any other documentation as required to be read and laid before it as shareholder; (ii) the University electing Genesis' directors; (iii) the University appointing Genesis' auditor, and fixing or authorizing Genesis' Board of Directors to fix the auditor's remuneration; and (iv) the transaction of such other business as may properly be brought before the meeting. Genesis' disclosure of its special purpose annual financial statements, auditor's report, and further information respecting the financial position of the corporation and results of its operations to Memorial, as its sole shareholder, is done in compliance with the AGM requirement and with section 262 of the *Corporations Act*, RSNL 1990, c. C-36.
18. The subject Employee Information is not specified in the special purpose annual financial statements, or any other reports, disclosed by Genesis to Memorial at the AGM. Accordingly, the Employee Information does not appear as a line item in Genesis' special purpose annual financial statements.
19. Information contained in Genesis' special purpose annual financial statements regarding its assets, liabilities, revenues and expenses are generally reflected in Memorial's consolidated financial statements. Just as the subject Employee Information does not appear as a line item in the special purpose annual financial statements of Genesis consolidated in the financial statements of Memorial, the subject Employee Information does not appear as a line item in Memorial's consolidated financial statements.

Genesis and the ATIPPA, the Auditor General Act and other Public-Sector Legislation

20. Genesis operates on the belief that legislative policy adopted by the Province, enacted in public-sector legislation, distinguishes Genesis from Memorial, and that the Province has recurrently demonstrated its legislative intent that Genesis not be bound by public-sector legislation.

21. Prior to the issuance of Report A-2024-006, Genesis has operated on the belief that it is not a “public body” to which the public right of access to information applies under the *ATIPPA*. Genesis’ belief is partially informed by the Information and Privacy Commissioner of Newfoundland and Labrador’s (the “**Commissioner**”) reasons in Reports A-2023-020 and A-2023-029, in which the Commissioner concluded that other SIEs in relation to Memorial were not public bodies under the *ATIPPA*. True copies of the Commissioner’s reports A-2023-020, A-2023-029 and A-2024-006 are appended hereto as **Exhibits “D”, “E” and “F”**.
22. Genesis was not given opportunity to make representations or provide evidence to the Commissioner, or to otherwise participate in the Commissioner’s investigation of the access to information requests at issue in these proceedings, which ultimately resulted in the Commissioner’s issuance of Report A-2024-006.
23. Genesis also operates on the belief that it is not subject to audit under the *Auditor General Act, 2021*, SNL 2021, c. A-22.1. On April 7, 2022, the Lieutenant-Governor in Council issued Order in Council OC2022-088, requesting, under the authority of section 22 of the *Auditor General Act, 2021*, that the Auditor General perform an audit of the operations and spending at Memorial (the “**Audit**”). During the Audit, at Memorial’s request, Genesis voluntarily submitted the Employee Information to the Auditor General on a confidential basis. The confidential nature of the Employee Information shared by Genesis, and Genesis’ belief that the Auditor General did not have jurisdiction to audit Genesis or to include the personal information of Genesis’ employees within the Audit report, were repeatedly stated by Genesis to the Auditor General during the Audit process.
24. On August 11, 2023, Genesis’ legal counsel wrote to the Auditor General in relation to a draft of the Auditor General’s Audit report, to request removal of information pertaining to Genesis and its employees from the report. In the letter, Genesis stated its position:
 - a. That inclusion of the information within the Audit exceeded the Auditor General’s jurisdiction and, if published, would violate the privacy of Genesis employees;

- b. That OC2022-088 did not authorize the Auditor General to conduct an audit of Genesis, or to include an audit of Genesis within the Auditor General's audit of Memorial;
- c. That as a result of its independent legal status, Genesis was not subject to legislation governing public bodies in Newfoundland and Labrador and had never publicly disclosed information pertaining to its employees' remuneration;
- d. That Genesis had voluntarily shared its information with the Auditor General on a confidential basis in order to assist with its Audit of Memorial's operations, and not to enable an audit of Genesis;
- e. That Genesis did not consent to the use of its confidential information in the Audit report;
- f. That Genesis' employees did not consent to the disclosure of their personal information pertaining to their remuneration in the Audit report; and
- g. That publication of the Audit report with the information included would constitute a violation of privacy under the *ATIPPA* and the *Privacy Act*, RSNL 1990, c. P-22.

A true copy of the August 11, 2023 letter is appended hereto as **Exhibit "G"**.

25. On October 20, 2023, following the Auditor General's refusal of Genesis' request and delivery of the Audit report to the Lieutenant-Governor in Council on October 19, 2023, Genesis' legal counsel wrote to the Clerk of the Executive Council and Cabinet Secretariat, as adviser in the Executive Council to the Lieutenant-Governor in Council, to express Genesis' concerns about the contents of the Audit report. In the letter, Genesis reiterated the points previously stated in its letter to the Auditor General of August 11, 2023, and further stated:
- a. That the Audit report in the Lieutenant-Governor in Council's custody and control was subject to the *ATIPPA* and the protections it affords, specifically the protection from unauthorized disclosure under subsection 64(1) of the Act;

- b. That none of the circumstances enumerated in subsection 68(1) of the *ATIPPA*, in which a public body may disclose personal information in its custody and control, applied to the Employee Information;
- c. That publication of the Audit report without redacting the Employee Information would contravene subsection 68(1) of the *ATIPPA*, and subsection 40(1) of the *ATIPPA*, the latter of which requires a public body to refuse to disclose personal information where the disclosure would constitute an unreasonable invasion of personal privacy.
- d. That the Audit report adopted a tenor that served to challenge legislative policy choices already made by the Government of Newfoundland and Labrador, to the detriment of Genesis and the Province;
- e. That accordingly, Genesis requested the Employee Information in the Audit report be redacted, or protected through other means, when tabling, releasing, publishing or otherwise discussing the report.

A true copy of the October 20, 2023 letter is appended hereto as **Exhibit “H”**.

- 26. On October 23, 2023, the Lieutenant-Governor in Council released the Auditor General’s Audit report on Memorial, with Genesis’ Employee Information redacted. A true copy of the redacted Audit report is appended hereto as **Exhibit “I”**.
- 27. Genesis is not designated in the Schedule of the *Public Sector Compensation Transparency Regulations*, NLR 81/16 as a “public body” for the purposes of the *Public Sector Compensation Transparency Act*, SNL 2016, c. P-41.02. Accordingly, the Employee Information relating to Genesis employees is not included in the annual disclosures of public-sector compensation (the proverbial “sunshine list”) pursuant to the *Public Sector Compensation Transparency Act*.
- 28. Genesis also operates on the belief that its employees are not employees to which the *Memorial University Pensions Act*, RSNL 1990, c. M-8 applies. The *Memorial University*

Pensions Act does not explicitly reference Genesis. The Act explicitly references, in subsection 3(1)(b), the statute's application to the employees of another SIE in relation to Memorial, namely the Memorial University Recreation Complex Inc.

Importance of the legislative distinction to Genesis' Business

29. Designation of Genesis as a "public body" to which the *ATIPPA* public right of access to information applies, either as a result of Genesis' relationship with Memorial, or directly through legislative amendments of public-sector legislation, would undermine Genesis' effectiveness and the pursuit of Genesis' Business.
30. Imposing public body statutory obligations on Genesis would significantly impede its ability to undertake Genesis' Business. Given its small structure, Genesis would be significantly constrained were it required to undertake compliance with public sector legislation while maintaining the level of service that Genesis' Business requires. It would consume Genesis' time and detrimentally detract from Genesis' Business, were Genesis required to consider and implement operational changes to comply with, for instance: the *ATIPPA*; the *Management of Information Act*, SNL 2005, c. M-1.01; the *Public Bodies Reporting Act*, SNL 2018, c. P-35.2; the *Public Procurement Act*, SNL 2016, c. P-41.001; the *Public Sector Compensation Transparency Act*; and the *Transparency and Accountability Act*, SNL 2004, c. T-8.1.
31. The reporting and transparency requirements set out in the aforementioned public section legislation would be antithetical to Genesis' Business. Disclosure of Genesis' financial information would hinder its competitive advantage and its ability to win contracts with new innovation enterprises. Similarly, whereas Genesis competes with private commercial enterprises in the labour market, disclosure of its salaries would negatively impact its competitiveness in employee recruitment and retention. Most harmful would be the ability of members of the public and third party competitors' to seek access to the proprietary, technological and commercially sensitive information that third party innovation enterprises entrust to Genesis to help grow their ideas and their businesses, through the *ATIPPA* or public body reports.
32. I make this Affidavit in support of Memorial's Originating Application pursuant to section 50(2)(a) of the *ATIPPA* seeking a declaration that the University is not required to comply

with the Commissioner's recommendations set out in Report A-2024-006, and swear that the information contained in this Affidavit is true to the best of my knowledge, information and belief.

SWORN TO BEFORE ME at the City of St. John's, in the Province of Newfoundland and Labrador, this 30th day of August, 2024.



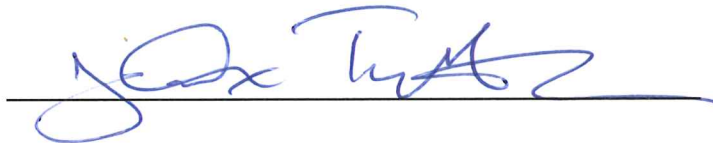
A Barrister of the Supreme Court of Newfoundland and Labrador



KARLA CONNOLLY

TAB A

This is Exhibit "A" referred to in the Affidavit of **Karla Connolly**, sworn to in St. John's, Newfoundland and Labrador, under my direction, this 30th day of August 2024.



J. ALEXANDER TEMPLETON
A Barrister of the Supreme
Court of Newfoundland & Labrador

No. 13600



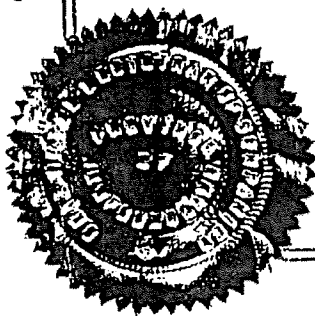
Certificate of Incorporation

I hereby Certify, That the

SEABRIGHT CORPORATION LIMITED

is this day Incorporated under The Companies Act, Chapter 54 of The Revised Statutes of Newfoundland, 1970, and that the Company is Limited.

Given under my hand and seal at St. John's, Newfoundland, this 3rd day of October One Thousand Nine Hundred and eighty



[Signature]
Registrar of Joint-Stock Companies
for
Province of Newfoundland and Labrador



NEWFOUNDLAND

THE CORPORATIONS ACT

FORM 12

CERTIFICATE OF CONTINUANCE

(Section 292, 412)

SEABRIGHT CORPORATION LIMITED

Name of Corporation

13600

Number

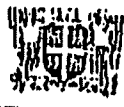
I certify that the Corporation was continued under *The Corporations Act* as set out in the attached Articles of Continuance.

Registrar

William P. Hillier

Date of Continuance

October 19, 1987



NEWFOUNDLAND

THE CORPORATIONS ACT
FORM 11

ARTICLES OF CONTINUANCE
(Sections 291, 411)

MINISTRY OF MANUFACTURES

Reg. No. 13660
Filed 19/87
Paper No. 4644
Fee paid 150.00 No. 444091
M Ryan
Registrar of Companies (NFCA)

1 - Name of Corporation

SEABRIGHT CORPORATION LIMITED

2 - The place in Newfoundland where the registered office is situated

C/O FRENCH, BROWNE & DODD
329 Duckworth Street
P. O. Box 1733, St. John's, NF, A1C 5P5

3 - The classes and any maximum number of shares that the corporation is authorized to issue
The annexed Schedule 1 is incorporated in this form.

4 - Restrictions if any on share transfers
The annexed Schedule 2 is incorporated in this form.

5 - Number (or minimum and maximum number) of directors
Minimum of Three (3) directors and a Maximum of Seven (7)

6 - Restrictions if any on business the corporation may carry on
NONE

7 - (1) If change of name effected, previous name
N/A

(2) Details of Incorporation Originally incorporated in Newfoundland on October 3, 1980 by Memorandum and Articles of Association.

8 - Other provisions if any

The annexed Schedule 3 is incorporated in this form.

REGISTERED

COPY

Date	Signature	Description of Office
Sept 17, 1987	Francis M. Nichols	Secretary

For Departmental use only

Corporation No.

13660

Filed 19/87

SCHEDULE 1

This is Schedule 1 annexed to and forming part of the foregoing articles of Incorporation.

3. The classes and any maximum number of shares that the Corporation is authorized to issue

- (1) The Corporation is authorized to issue one class of shares, to be designated as common shares, 10,000 shares having no par value.

SCHEDULE 2

This is Schedule 2 annexed to and forming part of the foregoing Articles of Incorporation.

4. Restrictions on Share Transfers

- (1) No shares of the Corporation shall be transferred without the approval of the directors evidenced by resolution of the board, provided that approval of any transfer of shares may be given as aforesaid after the said transfer has been effected upon the records of the Corporation, in which event, unless the said resolution stipulates otherwise, the said transfer shall be valid and take effect as from the date of its entry upon the books of the Corporation.
- (2) No share may be transferred to a member or to a person who is not a member without first being offered to all the members of the Company, who may purchase such share or shares in proportion to the shares already held by them where there is more than one wishing to purchase either at a price to be agreed or at a price equal to the fair value thereof as shown by the Company's last Balance Sheet.
- (3) The instrument of transfer of any share in the Company shall be in writing signed by the Transferor and the Transferee and the Transferor shall be deemed to remain the holder of the share until the name of the Transferee is entered in the register in respect thereof.

SCHEDULE 3

This is Schedule 3 annexed to and forming part of the foregoing Articles of Incorporation

7. Other Provisions

- (1) The number of shareholders of the Corporation exclusive of persons who are in its employment and employment of the Corporation were, while in that employment, and have continued after the termination of that employment to be, shareholders of the Corporation, is limited to not more than 50, 2 or more persons who are the joint registered owners of 1 or more shares being counted as 1 shareholder.
 - (2) An invitation to the public to subscribe for securities of the Corporation is prohibited.
 - (3) Without limit to the powers of the Board of Directors as provided in The Corporations Act, the Board of Directors may, without authorization of the shareholders, from time to time, in such amounts and on such terms as the Board of Directors deem expedient:
 - (a) borrow money on the credit of the Corporation;
 - (b) issue, reissue, sell or pledge debt obligations of the Corporation;
 - (c) charge, mortgage, hypothecate, pledge or otherwise create a security interest in all or any currently owned or subsequently acquired real or personal, movable or immovable property of the Corporation, including book debts, rights, powers, franchises and undertaking to secure any debt obligation or any money borrowed or other debt or liability of the Corporation; or
 - (d) give financial assistance by means of a loan, guarantee or otherwise to any persons, firm or corporation except when expressly prohibited by The Corporations Act.
4. The Board of Directors may from time to time delegate to such 1 or more of the Directors and Officers of the Corporation as may be designated by the Board all or any of the powers conferred on the Board above to such extent and in such manner as the Board shall determine at the time of each such delegation.



NEWFOUNDLAND

THE CORPORATIONS ACT

FORM 4

ARTICLES OF AMENDMENT
(Sections 56, 281)

1 - Name of Corporation Seabright Corporation Limited	2 - Corporation No. 13600
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3 - The articles of the above-named corporation are amended as follows:

The number of directors is increased from a minimum of three (3) and a maximum of seven (7) to a minimum of three (3) and a maximum of twenty-five (25).

REGISTERED

Date	Signature	Description of Office
22 May 90	<i>[Signature]</i>	President & CEO

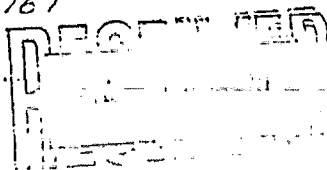
For Departmental use only

Filed -

REGISTRY OF COMPANIES

Reg. No. 13600
 Filed May 25 1990
 Paper No. 002757
 Fee Paid \$50.00 Rec. No. 245161

[Signature]
 Registrar of Companies (Nfld.)





GOVERNMENT OF
NEWFOUNDLAND AND LABRADOR
THE CORPORATIONS ACT
FORM 5

CERTIFICATE OF AMENDMENT
(Sections 25, 54, 286, 314, 315 and Section 451)

Genesis Group Inc.
Name of Corporation

13600

Number

I certify that the Articles of the Incorporation were amended

- (a) under section 25 of *The Corporations Act* in accordance with the attached Notice;
- (b) under section 54 of *The Corporations Act* as set out in the attached Articles of Amendment designating a series of shares;
- (c) under sub-section 286(1) of *The Corporations Act* as set out in the attached Articles of Amendment;
- (d) under section 314 of *The Corporations Act* as set out in the attached Articles of Reorganization;
- (e) under section 315 of *The Corporations Act* as set out in the attached Articles of Arrangement.
- (f) under section 451 of *The Corporations Act* as set out in attached Articles of Amendment.

Registrar

Sees - Chahal

Date of Amendment

September 10, 2000



NEWFOUNDLAND

COPY

THE CORPORATIONS ACT REGISTRY OF COMPANIES

FORM 4

Reg. No. 13600
Filed Sept 19 2000
Paper No. 000490

ARTICLES OF AMENDMENT
(Sections 54, 285)

Fee Paid \$100 Rec. No. 2009810
M. Ryan
Registrar of Companies (Nfld.)

1 - Name of Corporation Seabright Corporation Limited	2 - Corporation No. 13600
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3 - The articles of the above-named corporation are amended as follows:

By changing the name of the Corporation to and by deleting paragraph 1 of the Articles of Continuance and substituting the following therefor,

Genesis Group Inc.

REGISTERED

Date	Signature	Description of Office
18 September 2000	 M. E. Ryan	Solicitor

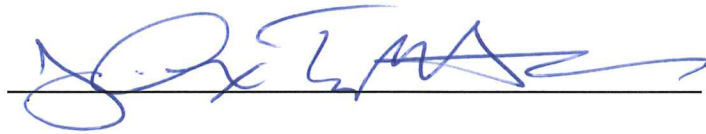
For Departmental use only

Filed -

RECEIVED
SEP 19 2000

TAB B

This is Exhibit “**B**” referred to in the Affidavit of **Karla Connolly**, sworn to in St. John’s, Newfoundland and Labrador, under my direction, this 30th day of August 2024.



J. ALEXANDER TEMPLETON
A Barrister of the Supreme
Court of Newfoundland & Labrador

By-Law No. 1

**A BY-LAW RELATING GENERALLY TO THE TRANSACTION
OF THE BUSINESS AND AFFAIRS OF
GENESIS GROUP INC.**

BE IT ENACTED and it is hereby enacted as a by-law of

GENESIS GROUP INC.

(hereinafter called the "Corporation")

GENERAL BUSINESS

MISSION

1. The mission of the Corporation is to act as a not-for-profit support network to assist and encourage academics and others associated with Memorial University and the local community in the commercialization of technological ideas, concepts and other forms of intellectual property, in order to create a culture of entrepreneurship and develop sustainable businesses to the benefit of Canada but with primary emphasis on the Province of Newfoundland and Labrador.

REGISTERED OFFICE

2. The directors may from time to time by resolution fix the location of the registered office of the Corporation within the place in Newfoundland and Labrador designated as such by the Articles of Incorporation.

SEAL

3. The Corporation may have a seal which shall be adopted and may be changed by a resolution of the directors.

FINANCIAL YEAR

4. The financial year of the Corporation shall terminate on March 31st, until changed by resolution of the directors of the Corporation.

BANKING ARRANGEMENTS

5. The banking business of the Corporation, or any part thereof, may be transacted with such bank, trust company or other firm or corporation carrying on a banking business as the directors may designate, appoint or authorize from time to time by resolution, and all such banking business or any part thereof shall be transacted on the Corporation's behalf by such one or more officers and/or other persons as the board may designate, direct or authorize from time to time by resolution and to the extent therein provided, including,

without restricting the generality of the foregoing, the operation of the Corporation's accounts; the making, signing, drawing, accepting, endorsing, negotiating, depositing or transferring of any cheques, promissory notes, drafts, acceptances, bills of exchange and orders for the payment of money; the giving of receipts for and orders relating to any property of the Corporation; the execution of any agreement relating to any banking business and defining the rights and powers of the parties thereto; and the authorizing of any officer of such banker to do any act or thing on the Corporation's behalf to facilitate such banking business. Alternatively, the banking business of the Corporation may be managed and facilitated by Memorial University, in which case the Corporation shall adhere to the financial policies of Memorial University applicable to the Corporation.

EXECUTION OF INSTRUMENTS

6. **Directors' Authority** - The directors shall have authority to sign in the name and on behalf of the Corporation all instruments in writing and any instruments in writing so signed shall be binding upon the Corporation without any further authorization or formality. The Board of Directors shall have power from time to time by resolution to appoint any other officer or officers or any person or persons on behalf of the Corporation either to sign instruments in writing generally or to sign specific instruments in writing. The signing officer may affix the corporate seal to any instrument requiring the same. The term "instruments in writing" as used herein shall, without limiting the generality thereof, include contracts, documents, powers of attorney, deeds, mortgages, hypothecs, charges, conveyances, transfers and assignments of property (real or personal, immovable or movable), agreements, tenders, releases, receipts and discharges for the payment of money or other obligations, conveyances, transfers and assignments of shares, stocks, bonds, debentures or other securities, instruments of proxy and all paper writing.
7. **Requiring Approval** - Notwithstanding paragraph 6 hereof, the directors shall not sign in the name and on behalf of the Corporation instruments in writing authorizing any work, repairs, alterations or redecoration with an estimated cost of Ten Thousand Dollars (\$10,000.00) or more for any one item without first obtaining the approval of the President of Memorial University to proceed with such work, except for monthly or recurring operating charges or unless the approval of Memorial University has been implied by the approval of budget estimates, or where any such work is urgently necessary to prevent injury, damages and/or the imposition of penalties, fines, imprisonment or other liability.

DIRECTORS

8. **Powers of Directors** - The directors shall manage the business and affairs of the Corporation which shall, at all times, be conducted in support of the Corporation's Mission Statement, as stated in paragraph 1 hereof.
9. **Number of Directors and Quorum** - Subject to the Articles of the Corporation, the number of directors of the Corporation shall be that number of directors appointed by the incorporators or elected by the shareholders from time to time within the minimum and maximum as permitted by the Articles of the Corporation, of whom a majority shall constitute a quorum for the transaction of the business at any meeting of the directors.

Notwithstanding vacancies, the remaining directors may exercise all the powers of the Board of Directors so long as the quorum of the Board of Directors remains in office.

10. **Qualifications** - Each director shall be nineteen (19) or more years of age and no person who is not an individual, who has the status of a bankrupt or who is of unsound mind and has been so found by a court in Canada or elsewhere shall be a director. If a director acquires the status of a bankrupt or becomes of unsound mind and is so found, he shall thereupon cease to be a director.
11. **Resident Canadian** - Twenty-five percent (25%) of the directors shall be resident Canadians and no business shall be transacted by the Board of Directors unless twenty-five percent (25%) of the directors present are resident Canadians unless a resident Canadian director who is unable to be present, approves in writing or by telephone or other communications facilities, the business transacted at the meeting and at least twenty-five percent (25%) resident Canadian directors would have been present had the director been present at the meeting.
12. **Election and Term** - The directors shall be elected yearly by the Board of Regents of Memorial University, upon recommendation of the President of Memorial University, to hold office until the next annual meeting of the shareholders of the Corporation or until their successors shall have been duly elected.

REMOVAL OF DIRECTORS

13. **Removal of Directors** - The Board of Regents of Memorial University may remove any director or directors from office before the expiration of his term of office, and may elect any person in his/her stead for the remainder of the term.
14. **Vacancies** - Vacancies on the Board of Directors, except a vacancy resulting from an increase in the minimum number of directors or from a failure to elect the minimum number of directors required by the Articles, may be filled for the remainder of a term of office by qualified persons selected by the remaining directors if they constitute a quorum. If there is not a quorum of directors, or if a vacancy results from an increase in the minimum number of directors or if there has been a failure to elect the minimum number of directors required by the Articles of the Corporation, the directors then in office shall forthwith call a special meeting of shareholders to fill the vacancy and if they fail to call a meeting or if there are no directors then in office, the meeting may be called by any shareholder.
15. **Calling of Meetings** - Meetings of the Board of Directors shall be held from time to time at such place, at such time and on such day as the President or Vice-President who is a director or any two (2) directors may determine, and the President or Vice-President shall call meetings when so directed or authorized. Notice of every meeting so called shall be given to each director not less than forty-eight hours (excluding any part of a Sunday or holiday as defined by the *Interpretation Act*, Chapter 19, RSNL, 1990 for the time being in force) for the time when the meeting is to be held and such notice shall specify the general nature of any business to be transacted, save that no notice of a meeting shall be necessary if all the directors are present, and do not object to the holding of the meeting,

or if those absent have waived notice of or have otherwise signified their consent to the holding of such meeting.

16. **First Meeting of New Board** - Each newly elected board may, without notice, hold its first meeting for the purpose of organization and the election and appointment of officers immediately following the meeting of the shareholders at which such board was elected, provided a quorum of directors be present.
17. **Adjourned Meeting** - Notice of an adjourned meeting of directors is not required if the time and place of the adjourned meeting is announced at the original meeting.
18. **Regular Meetings** - The directors may appoint a day or days in any month or months for regular meetings and shall designate the place and time at which such meetings are to be held. A copy of any resolution of directors fixing the place and time of regular meetings of the board shall be sent to each director forthwith after being passed and no other notice shall be required for any such regular meeting.
19. **Quarterly Meetings** - Notwithstanding paragraph 18 hereof, the executive committee of the Board, or the entire Board, shall meet at least quarterly, and shall keep minutes of such meetings.
20. **Chair of the Board** - The Chair of the Board, or in his absence the President if a director, or in his absence a director chosen by the directors at the meeting, shall be the chair of any meeting of directors.
21. **Place of Meeting** - Meetings of the board may be held at the registered office of the Corporation or at any other place within or outside of Canada.
22. **Participation by Telephone** - With the unanimous consent of all the directors, a director may participate in any meeting of directors by means of such telephone or other communications facilities which will permit all persons participating in the meeting to hear each other, and a director participating in such a meeting by such means is deemed to be present at that meeting.
23. **Votes to Govern** - At all meetings of the Board of Directors, every question shall be decided by a majority of the votes cast on the question.
24. **Remuneration of Directors** - The directors of the Corporation shall be paid such remuneration, if any, as may be approved by the Board of Regents of Memorial University of Newfoundland. Any remuneration so payable to a director who is also an officer or any employee of the Corporation or who is counsel or solicitor to the Corporation or otherwise serves it in a professional capacity shall be in addition to his salary as such office or his professional fees as the case may be. The directors shall also be paid such sums in respect of their out-of-pocket expenses incurred in attending board, committee or shareholders meetings or otherwise in respect of the performance by them or their duties as the Board of Directors may from time to time determine.

25. **Transaction of Business by Signature** - A resolution in writing signed by all the directors entitled to vote on that resolution at a meeting of directors is as valid as if it had been passed at a meeting of directors duly called, constituted and held for that purpose.
26. **Declaration of Interest** - Every director or officer of the Corporation who is a party to a material contract or a proposed material contract for the Corporation or who is the director or an officer of or has a material interest in any person who is a party to a material contract, or a proposed material contract with the Corporation, shall disclose in writing to the Corporation or request to have entered in the minutes of meetings of directors, the nature and extent of his interest. All such disclosures shall be made at the time required by the applicable provisions of the Act and directors shall refrain from voting in respect of the material contract or proposed material contract if and when prohibited by the Act.
27. **Avoidance Standards** - A material contract between the Corporation and one or more of its directors or officers or between the Corporation and another person of which a director or officer of the Corporation is a director or officer or in which he has a material interest is neither void or voidable by reason only of that relationship or by reason only that a director with an interest in the contract is present at or is counted to determine the presence of a quorum at a meeting of directors that authorized the contract, if the director disclosed his interest in accordance with paragraph 26 and the contract was approved by the directors or the shareholders and it was reasonable and fair to the Corporation at the time it was approved.
28. **Protection of Directors and Officers** - No director or officer of the Corporation shall be liable for the acts, receipts, neglects or defaults of any other director or officer or for joining in any receipts or other acts for conformity or for any loss or expense happening to the Corporation through the insufficiency or deficiency of title to any property acquired by the order of the Board of Directors for or on behalf of the Corporation or for the insufficiency or deficiency of any security in or upon which any of the monies of the Corporation shall be invested or for any loss or damage arising from the bankruptcy, insolvency or tortuous act of any person with whom any of the monies, securities or effects of the Corporation shall be deposited, or for any loss occasioned by the error of judgment or oversight on his part or for any loss, damage or misfortune, whatever which shall happen in the execution of the duties of his office or in relations thereto unless in or as a result of any action, suit or proceeding is adjudged to be in breach of any duty or responsibility imposed on him under the Act or under any other statute.
29. **Indemnity of Directors and Officers** - The Corporation shall indemnify the directors or officers of the Corporation, former directors or officers of the Corporation or any person who acts or acted at the Corporation's request as a director or officer of a body corporate of which the Corporation is or was a shareholder or creditor and his heirs and legal representatives against all costs, charges and expenses including any amount paid to settle an action or satisfy a judgment reasonably incurred by him in respect of any civil, criminal or administrative action or proceeding to which he has been made a party by reason of being or having been a director or officer of such Corporation or body corporate if:

- (a) he acted honestly and in good faith with a view to the best interest of the Corporation; and
 - (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, he had reasonable grounds for believing that his conduct was lawful.
30. **Insurance for Directors and Officers** - The Corporation may purchase and maintain insurance for the benefit of any director or officer against liabilities, costs, charges and expenses sustained or incurred by such director or officer for failure to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

OFFICERS

31. **Appointed Officers** - The Board of Directors may appoint a President, Secretary, one or more Vice-Presidents, a Treasurer and such other officers as the Board of Directors may determine, including one or more assistants to any of the officers so appointed. The officers so appointed may but need not be members of the Board of Directors. One person may hold more than one office and if the same person holds both the office of Secretary and the office of Treasurer, he may be known as the Secretary-Treasurer.
32. **Duties of Officers** - Where this by-law makes reference to the duties and/or powers of a particular officer, and that officer has not been appointed by the Board of Directors, such duties and/or powers may be assigned to a director or directors of the Corporation by the Board of Directors.
33. **Term of Office and Remuneration** - In absence of a written agreement to the contrary, the Board of Directors may remove at its pleasure any officer of the Corporation. The terms of employment and remuneration of the President and other officers appointed by it shall be settled from time to time by the Board of Directors.
34. **Committees** - The Board of Directors may appoint from their members committees of Directors and delegate to such committees the powers of the Directors. Where the Board of Directors appoints any such committee of Directors, at least 25% of the members of the committee shall be resident Canadians.
35. **President** - The President or the Chair of the Board shall preside at all meetings of the shareholders, and the President shall be charged with the general supervision of the business and affairs of the Corporation. Except when the Board of Directors has appointed a Chief Executive Officer, the President shall also have the powers and be charged with the duties of that office, and in such case may be known as the President & CEO.
36. **Chair of the Board** - During the absence or inability of the President, his duties may be performed and his powers may be exercised by the Chair of the Board.
37. **Vice-President** - During the absence or inability of the President, duties may be performed and powers may be exercised by the Vice-President, or if there are more than

one, by the Vice-President in order of seniority (as determined by the Board of Directors) save that no Vice-President shall preside at a meeting of the Board of Directors or at a meeting of shareholders who is not qualified to attend the meeting as a director, as the case may be. If a Vice-President exercises any such duty or power, the absence or inability of the President and Chair of the Board shall be presumed with reference thereto. A Vice-President shall also perform such duties and exercise such powers as the board may prescribe.

38. **General Manager** - The General Manager shall have the general management and direction, subject to the authority of the Board of Directors and the supervision of the President, of the Corporation's business and affairs and the power to appoint and remove any and all officers, employees and agents of the Corporation not elected or appointed directly by the Board of Directors and to settle the terms of their employment and remuneration. If and so long as the general manager is a director, he may but need not be known as the managing director.
39. **Secretary** - The Secretary shall give, or cause to be given, all notices required to be given to shareholders, directors, auditors and members of committees; he shall attend all meetings of the directors and of the shareholders and shall enter or cause to be entered in books kept for that purpose minutes of all proceedings at such meetings; he shall be the custodian of the stamp or mechanical device generally used for affixing the corporate seal of the Corporation and of all books, papers, records, documents and other instruments belonging to the Corporation; and he shall perform such other duties as may from time to time be prescribed by the Board of Directors.
40. **Treasurer** - The Treasurer shall keep full and accurate books of account in which shall be recorded all receipts and disbursements of the Corporation and, under the direction of the Board of Directors, shall control the deposit of money, the safekeeping of securities and the disbursements of the funds of the Corporation; he shall render to the Board of Directors at the meetings thereof, or whenever required of him an account of all his transactions as Treasurer and of the financial position of the Corporation; and he shall perform such other duties as may from time to time be prescribed by the Board of Directors.
41. **Other Officers** - The duties of all other officers of the Corporation shall be such as the terms of their engagement call for or the Board of Directors requires of them. Any of the powers and duties of an officer to whom an assistant has been appointed may be exercised and performed by such assistant, unless the Board of Directors otherwise directs.
42. **Variation of Duties** - From time to time the board may vary, add to or limit the powers and duties of any officer or officers.
43. **Agents and Attorneys** - The Board of Directors shall have power from time to time to appoint agents or attorneys for the Corporation in or out of Canada with such powers of management or otherwise (including the power to sub-delegate) as may be thought fit.
44. **Fidelity Bonds** - The Board of Directors may require such officers, employees and agents of the Corporation as the Board of Directors deems advisable to furnish bonds for

the faithful discharge of their duties, in such form and with such surety as the Board of Directors may from time to time prescribe.

SHARES

45. **Voting Shares** – Ownership of the voting shares of the Corporation shall be restricted to Memorial University.
46. **Share Certificates** - Every shareholder shall be entitled, in the case of initial issuance without payment, and in the case of any subsequent transfer upon payment of a fee of not more than three dollars (\$3.00), to a share certificate stating the number and class of shares held by him as shown by the books of the Corporation. Share certificates shall be in such form or form as the Board of Directors shall from time to time approve. Unless otherwise ordered by the Board of Directors, they shall be signed by any two Directors and need not be under the corporate seal; provided that certificates representing shares in respect of which a transfer agent and registrar (which term shall include a branch transfer agent and registrar) have been appointed shall not be valid unless countersigned by or on behalf of such transfer agent and registrar. If authorized by resolution of the Board of Directors, the corporate seal of the Corporation and the signature of one of the signing officers, or in the case of share certificates representing shares in respect of which a transfer agent and registrar have been appointed, the signatures of both signing officers, may be printed, engraved, lithographed, or otherwise mechanically reproduced in facsimile upon share certificates and every such facsimile signature shall for all purposes be deemed to be the signature of the officer whose signature it reproduces and shall be valid notwithstanding that one or both of the officers whose signature (whether manual or facsimile) appears thereon no longer holds office at the date of issue or delivery of the certificate.
47. **Replacement of Share Certificates** - The Board of Directors may by resolution prescribe, either generally or in a particular case, reasonable conditions upon which a new share certificate may be issued in lieu of and upon cancellation of the share certificate which has become mutilated or in substitution for a certificate which has been lost, stolen or destroyed.
48. **Central and Branch Registers** - The Corporation shall maintain a central securities register and may from time to time maintain one or more branch securities registers. The Board of Directors may from time to time by resolution appoint a registrar to keep the register of security holders and a transfer agent to keep the register of transfers and may also appoint one or more branch registrars to keep branch registers of security holders and one or more branch transfer agents to keep branch registers of transfers. A registrar and transfer agent may but need not be the same individual or corporation.
49. **Transfer of Securities** - Transfers of securities of the Corporation shall be registerable on the register of transfers or on one of the branch registers of transfers (if any) kept by or for the Corporation in respect thereof upon surrender of the security properly endorsed together with such additional assurance as the Corporation shall require and subject to the provisions of the Act and the restrictions on transfer set forth in the Articles of the Corporation.

50. **Dealings with Registered Holder** - The Corporation may, subject to the Act, treat as absolute owner of the security the person in whose name the security is registered in a securities register as if that person had full legal capacity and authority to exercise all rights of ownership irrespective of any knowledge or notice to the contrary or any description in its records or on the security certificate indicating a pledge, a representative or fiduciary relationship, a reference to any other instrument or the rights of any other person.
51. **Joint Holders** - If two or more persons are registered as joint holders of any security, any one of such persons may give effectual receipts for the certificate in respect thereof and for any dividend, bonus, return of capital or other money payable or warrant issueable in respect of such security.
52. **Record Date** - The directors may fix in advance a date preceding by not more than fifty (50) days or by less than twenty-one (21) days a record date for the determination of persons entitled to receive notice of a meeting of shareholders and notice of every general meeting shall specify the place, day and hour of the meeting, and when special business is to be considered, the general nature of such business, and shall be given to members entitled to be present at such meeting by notice sent by post or otherwise given in accordance with the provisions of the Act. The directors may also fix in advance a date as the record date for determination of shareholders entitled to receive payment of a dividend, entitled to participate in a liquidation distribution, or for any other purpose except the right to receive notice or the right to vote at a meeting, which such record date shall not precede by more than fifty (50) days, the date on which such particular action is to be taken.

SHAREHOLDERS

53. **Annual Meetings** - The annual meeting of shareholders shall be held subject to the provisions of paragraph 67 hereof, at such place within Newfoundland and Labrador as the directors may determine or at such place outside of Newfoundland and Labrador as the directors may determine and all the shareholders entitled to vote at that meeting so agree at such time and on such date in each year as the directors may from time to time by resolution determine for the purpose of hearing and receiving the financial reports and statements and any other documentation as required to be read and laid before the shareholders at any annual meeting, electing directors, appointing, if necessary, the auditor and fixing or authorizing the Board of Directors to fix his remuneration and for the transaction of such other business as may properly be brought before the meeting.
54. **Special Meeting** - The Board of Directors, or the President or a Vice-President who is a director shall have the power at any time to call a special meeting of the shareholders of the Corporation to be held at such time and at such place within Canada as the directors may determine or at such place outside of Canada as the directors may determine and all the Shareholders entitled to vote at that meeting so agree. The phrase "meeting of shareholders" wherever it occurs in this by-law shall mean and include the annual meeting of shareholders and a special meeting of shareholders and shall also include a meeting of any class or classes of shareholders.

55. **Notices** - No public notice or advertisement of any meeting of shareholders shall be required, but notice of the time and place of each such meeting shall be given not less than twenty-one (21) days nor more than fifty (50) days before the date on which the meeting is to be held, to the auditor, if any, the directors and to each shareholder of record entitled to vote at the meeting. Notice of a special meeting of shareholders shall state the nature of the business to be transacted in sufficient detail to permit the shareholder to form a reasoned judgment thereon together with the text of any special resolution to be submitted to the meeting. A meeting of shareholders may be held at any time without notice if all the shareholders entitled to vote thereat are present or represented by proxy and do not object to the holding of the meeting or those not so present or represented by a proxy have waived notice, if all the directors are present or have waived notice and if the auditor, if any, is present or has waived such notice.
56. **Reports to Shareholders** - Subject to the provisions of the Act, a copy of the financial statements and a copy of the auditor's report, if any, shall be sent to each shareholder not less than twenty-one (21) days before each annual meeting of shareholders or before the transaction of the annual business of the Corporation pursuant to paragraph 67 hereof.
57. **Persons Entitled to be Present** - Persons entitled to attend a meeting of shareholders shall be those entitled to vote thereat, the auditor, if any, of the Corporation and others who although not entitled to vote are entitled or required under the provisions of the Act or by-laws of the Corporation to be present at the meeting. Any other person may be admitted only on the invitation of the Chair of the meeting or with the consent of the meeting.
58. **Right to Vote** - At such meeting of shareholders every shareholder shall be entitled to vote who is, subject to paragraph 51, entered on the books of the Corporation as a holder of one (1) or more shares carrying the right to vote at such meeting or where a record date has been fixed, satisfactory evidence is produced not later than two (2) days before the meeting that such person owns shares in the Corporation and demands that his name be included on the list of shareholders entitled to vote at the meeting; save that, if the share or shares in question have been mortgaged or hypothecated, the person who mortgaged or hypothecated such share or shares (or his proxy) may nevertheless represent the shares at meetings and vote in respect thereof unless in the instrument creating the mortgage or hypothec he has expressly empowered the holder of such mortgage or hypothec to vote thereon, in which case such holder (or his proxy) may attend meetings to vote in respect of such shares upon filing with the Secretary of the meeting sufficient proof of the terms of such instrument.
59. **Representatives** - An executor, administrator, committee of a mentally incompetent person, guardian or trustee and where a corporation is such executor, administrator, committee, guardian or trustee of a testator, intestate, mentally incompetent person, ward or *cestui que* trust, any person duly appointed a proxy for such corporation, upon filing with the Secretary of the meeting sufficient proof of his appointment, shall represent the shares in his or its hands at all meetings of the shareholders of the Corporation and may vote accordingly as a shareholder in the same manner and to the same extent as the shareholder of record. If there be more than one executor, administrator, committee, guardian or trustee, the provisions of paragraph 60 shall apply.

60. **Proxies** - Every shareholder, including a corporate shareholder, entitled to vote at meetings of shareholders may by instrument in writing appoint a proxy, who need not be a shareholder, to attend and act at the meeting in the same manner, to the same extent and with the same power as if the shareholder were present at the meeting in the manner, to the extent and with the power conferred by the proxy. The instrument appointing a proxy shall be in writing under the hand of the appointed or his attorney, authorized in writing, or if the appointed is a corporation, under the corporate seal or under the hand of an officer or attorney, authorized in writing, and shall cease to be valid after the expiration of one (1) year from the date thereof. The instrument appointing a proxy may be in such form as the directors may from time to time prescribe or in such other form as the chair of the meeting may accept as sufficient, and shall be deposited with the Secretary of the meeting before any vote is cast under its authority, or at such earlier time and in such manner as the Board of Directors may prescribe in accordance with the Act.
61. **Joint Shareholders** - If shares are held jointly by two (2) or more persons, any one of them present or represented by proxy at a meeting of the shareholders of the Corporation, may, in the absence of the other or others vote thereon, but if more than one of them are present or represented by proxy they shall vote together as one on the shares jointly held by them.
62. **Scrutineers** - At each meeting of shareholders one or more scrutineers may be appointed by a resolution of the meeting or by the Chair with the consent of the meeting to serve at the meeting. Such scrutineers need not be shareholders of the Corporation.
63. **Votes to Govern** - At all meetings of shareholders every question shall, unless otherwise required by articles or by-laws of the Corporation or by law, be decided by the majority of the votes duly cast on the question.
64. **Show of Hands** - At all meetings of shareholders every question shall be decided by a show of hands unless a poll thereon be required by the Chair or be demanded by any shareholder present in person or represented by proxy and entitled to vote. Upon a show of hands every shareholder present in person and entitled to vote shall have one vote for each share held by such shareholder, but the shareholder represented by proxy shall have no vote. After a show of hands has been taken upon any question the Chair may require or any shareholder present in person or represented by proxy and entitled to vote may demand a poll thereon, and a majority of the votes recorded pursuant to any such request shall decide the question. Whenever a vote by show of hands shall have been taken upon a question, unless a poll thereon be so required or demanded, a declaration by the Chair of the meeting that the vote upon the question has been carried or carried by a particular majority or not carried and an entry to that effect in the minutes of the proceedings at the meeting shall be *prima facie* evidence of the fact without proof of the number or proportions of the votes recorded in favour of or against any resolution or other proceeding in respect of the said question, and the result of the vote so taken shall be the decision of the Corporation in annual or special meeting, as the case may be, upon the question. A demand for a poll may be withdrawn at any time prior to the taking of the poll.

65. **Polls** - If a poll be required by the Chair of the meeting or be duly demanded by any shareholder and the demand be not withdrawn, a poll upon the question shall be taken in such manner as the Chair of the meeting shall direct. Upon a poll, each shareholder who is present in person or represented by proxy shall be entitled to vote for each share in respect of which he/she is entitled to vote at the meeting and the result of the poll shall be the decision of the Corporation in annual or special meeting, as the case may be, upon the question.
66. **Adjournment** - The Chair of a meeting of shareholders may, with the consent of the meeting and subject to such conditions as the meeting may decide, adjourn the meeting from time to time and from place to place.
67. **Transaction of Business by Signature** - Subject to the provisions of the Act, a resolution in writing signed by all the shareholders entitled to vote on that resolution at a meeting of shareholders and a resolution in writing dealing with all matters required by the Act to be dealt with at a meeting of shareholders and signed by all the shareholders entitled to vote at that meeting are as valid and effective as if passed at a meeting of the shareholders duly called, constituted and held for that purpose.
68. **One Shareholder** - Where the Corporation has only one shareholder, all business which the Corporation may transact at an annual or special meeting of shareholders shall be transacted in the manner provided for in paragraph 67 hereof.

SHARES AND SECURITIES IN OTHER COMPANIES

69. **Acquisitions** - The Corporation may acquire shares or other securities in other bodies corporate as agent of Memorial University, for purposes deemed appropriate by the officers and/or directors of the Corporation, including the recovery of costs incurred by the Corporation in providing services to such bodies corporate, or in lieu of a licence fee from such bodies corporate for the use of existing technologies owned by Memorial University.
70. **Revenue on Dispositions** - Any revenue on the disposition of shares or other securities held by the Corporation in other bodies corporate, including dividends received in respect of such shares shall, with the prior approval of the sole shareholder, be used solely to further the Mission of the Corporation, set out in paragraph 1 hereof, or be held by the Corporation as agent of Memorial University.
71. **Voting Shares and Securities in Other Companies** - All of the shares or other securities carrying voting rights of any other body corporate held from time to time by the Corporation may be voted at any and all meetings of the holders thereof in such manner and by such person or persons as the directors of the Corporation shall from time to time determine or failing such determination the signing officers of the Corporation; and such person may also from time to time execute and deliver for and on behalf of the Corporation instruments of proxy and arrange for the issue of voting certificates and other evidence of the right to vote in such names as they may determine.

ROYALTIES

72. **Royalty Agreements** - The Corporation may enter into royalty or licence arrangements as agent of Memorial University, for purposes deemed appropriate by the officers and/or directors of the Corporation, including the recovery of costs incurred by the Corporation in supporting the development of related inventions, discoveries or creations, and patenting processes.
73. **Royalties** - Any royalties or other revenues generated from royalty or licence arrangements shall be used solely to further the Mission of the Corporation, set out in paragraph 1 hereof, or be held by the Corporation as agent of Memorial University.

WINDING UP

74. Prior to the winding up of the Corporation, and following the payment of all then existing liabilities of the Corporation, all of the assets of the Corporation shall be conveyed to Memorial University.

NOTICES

75. **Method of Giving** - Any notice, communication or other document to be given by the Corporation to a shareholder, director, officer, or auditor of the Corporation under any provision of the Articles or by-laws shall be sufficiently given if delivered personally to the person to whom it is to be given or if delivered to his last address as recorded in the books of the Corporation or if mailed by prepaid ordinary or air mail in a sealed envelope addressed to him at his last address as recorded in the books of the Corporation or if sent by means of wire or wireless or any other form of transmitted or recorded communication. The Secretary may change the address on the books of the Corporation of any shareholder in accordance with any information believed by him to be reliable. A notice, communication or document so delivered shall be deemed to have been given when it is delivered personally or at the address aforesaid; and a notice, communication or document so mailed shall be deemed to have been given when deposited in a post office or public letter box; and a notice sent by any means of wire or wireless or any other form of transmitted or recorded communication shall be deemed to have been given when delivered to the appropriate communication company or agency or its representative for dispatch.
76. **Computation of Time** - In computing the date when notice must be given under any provision of the Articles or By-Laws requiring a specified number of days' notice of any meeting or other event, the date of giving the notice and the date of the meeting or other event shall be excluded.
77. **Omissions and Errors** - The accidental omission to give any notice to any shareholder, director, officer or auditor or any error in any notice not affecting the substance thereof shall not invalidate any action taken at any meeting held pursuant to such notice or otherwise funded thereon.
78. **Notice to Joint Shareholders** - All notices with respect to any shares registered in more than one name may if more than one address appears on the books of the Corporation in

respect of such joint holding, be given to such joint shareholders at the first address so appearing, and notice so given shall be sufficient notice to all the holders of such shares.

79. **Persons Entitled by Death or Operation of Law** - Every person who by operation of law, transfer, death of a shareholder or by any means whatsoever, shall become entitled to any share or shares, shall be bound by every notice in respect of such share or shares which shall have been duly given to the person from whom he derives his title to such share or shares, previously to his name and address being entered on the books of the Corporation (whether it be before or after the happening of the event upon which he became entitled).
80. **Waiver of Notice** - Any shareholder (or his duly appointed proxy), director, officer or auditor may waive any notice required to be given under any provision of the articles or by-laws of the Corporation or of the Act, and such waiver, whether given before or after the meeting or other event of which notice is required to be given, shall cure any default in giving such notice.

INTERPRETATION

81. In this by-law and all other by-laws of the Corporation, words importing the singular number only shall include the plural and vice-versa; words importing the masculine gender shall include the feminine and neuter genders; words importing persons shall also include companies, corporations, partnerships and any number or aggregate of persons; "Act" shall mean the *Corporations Act*, R.S.N.L. 1990, c. C-36; "Articles" shall include the original or restated Articles of Incorporation, Articles of Amendment, Articles of Amalgamation, Articles of Continuance, Articles of Reorganization, Articles of Dissolution, Articles of Revival or any amendments thereto; and "resident Canadian" means an individual who is determined to be a resident Canadian as defined by the Act.

EFFECTED as of the ____ day of _____, 2011.

David King, President & CEO

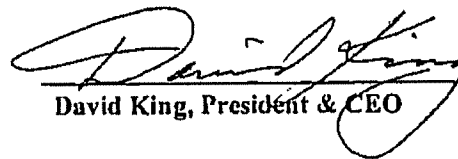
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EFFECTED as of the 14th day of OCTOBER, 2011.


David King, President & CEO

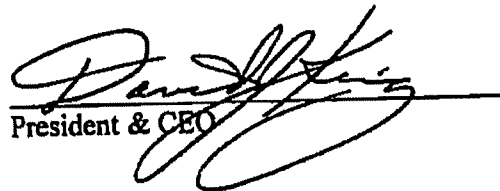
**Amendment to By-Law No. 1
Of Genesis Group Inc. (the "Corporation")**

1. Section 70 of By-Law No. 1 is hereby deleted and replaced with the following:

70. **Revenue on Dispositions** - Any revenue on the disposition of shares or other securities held by the Corporation in other bodies corporate, including dividends received in respect of such shares shall, with the prior approval of the sole shareholder, be used solely to further the Mission of the Corporation, set out in paragraph 1 hereof, or be held by the Corporation as agent of Memorial University.

Passed the 25th day of June 2014

Witness the corporate seal of the Corporation



President & CEO



GOVERNMENT OF NEWFOUNDLAND AND LABRADOR
Service NL

THE CORPORATIONS ACT
FORM 5

CERTIFICATE OF AMENDMENT

(Sections 279, 286)

Corporation Name: **Genesis Group Inc.**
Corporation Number: **13600**
Date of Amendment: **August 7, 2014**

I certify, as per the attached Articles of Amendment, that the Articles of Incorporation for this Corporation have been amended under the Corporations Act of Newfoundland and Labrador.

A handwritten signature in black ink that reads "Jean Toyl".

REGISTRAR OF COMPANIES
For Province of Newfoundland and Labrador
August 8, 2014



REGISTRY OF COMPANIES

Company No. 13600
Filed August 7, 2014
Receipt No. 800096FO

GOVERNMENT OF
NEWFOUNDLAND AND LABRADOR
Department of Government Services and Lands


James Zol
Registrar of Companies

The Corporations Act (Form 4)
Articles of Amendment (Section 54, 285)

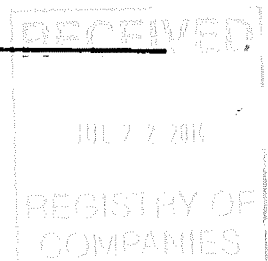
REGISTERED

1. Name of Corporation Genesis Group Inc.	2. Corporation No. 13600
3. The articles of the above-named corporation are amended as follows:	

By adding those provisions which are attached as Schedule A to this Articles of Amendment to the Other Provisions which are annexed as Schedule 3 to the Articles of Continuance.

Date 6/25/2014	Signature <i>David King</i>	Description of Office President & CEO 
For Department Use Only		

Filed:



Schedule "A"

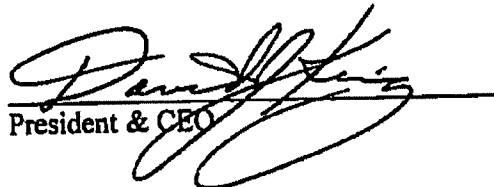
- (5) For greater certainty, the Memorandum of Association and Articles of Association dated and filed with the Registry of Companies on October 3, 1980 has been replaced by the Articles of Continuance of the Corporation, as amended.
- (6) The Corporation is to be carried on without pecuniary gain to its shareholders, except as set out herein.
- (7) Any surplus or accretions to the Corporation whatsoever and wheresoever derived, shall be applied solely towards the promotion of the objects of the Corporation, and no portion thereof shall be paid or transferred directly or indirectly or by way of dividend, bonus or otherwise, to the shareholders of the Corporation provided that nothing herein shall prevent the payment in good faith of reasonable and proper remuneration to any officer or servant of the Corporation, or to any shareholder of the Corporation, nor prevent payment of interest on money lent or proper rent for premises demised or lent by any shareholder of the Corporation to the Corporation, or prevent the distribution of net taxable capital gains (taxable capital gains less allowable capital losses) as well as a return of capital to the shareholders.
- (8) If upon winding up or dissolution of the Corporation, there remains after the satisfaction of its debts and liabilities, any property whatsoever, the same shall not be paid or distributed amongst the shareholders of the Corporation, but shall be given or transferred to an organization in the Province of Newfoundland and Labrador, the undertaking of which is charitable or beneficial to the community.

**Amendment to By-Law No. 1
Of Genesis Group Inc. (the "Corporation")**

1. Section 70 of By-Law No. 1 is hereby deleted and replaced with the following:
 70. **Revenue on Dispositions** - Any revenue on the disposition of shares or other securities held by the Corporation in other bodies corporate, including dividends received in respect of such shares shall, with the prior approval of the sole shareholder, be used solely to further the Mission of the Corporation, set out in paragraph 1 hereof, or be held by the Corporation as agent of Memorial University.

Passed the 25th day of June 2014

Witness the corporate seal of the Corporation



President & CEO

**Resolution of Sole Shareholder
of
Genesis Group Inc.
(the "Corporation")**

WHEREAS this Special Resolution in writing is passed for the purposes of setting the number of directors within the minimum and maximum provided for in the Articles of the Corporation, and for the appointment of directors for the next ensuing year.

1. **Removal of Directors** - The following directors of the Corporation were elected to hold office until June 30, 2016:

Ms. Gerlinde van Driel, Rose, van Driel, Scott
Mr. Derek Sullivan, Atlantic DataSystems
Capt. Anthony Patterson, VMT

Mr. Steve Dodd, VP, GRI Simulations Inc.
Mr. Leonard Pecore, President, Genoa Design
Mr. Jerry Byrne, Owner, Doctor's Inn

It is resolved that the above directors shall be removed and shall not be replaced effective on the date of this resolution.

2. **Setting the number of directors** - It is resolved that the number of directors be set at 16, which is between the minimum and maximum provided for in the Articles of the Corporation, until such time as amended by further resolution of the shareholder.

3. **Election of Directors** - The following persons are elected directors of the Corporation:

Mr. Fred Cahill, Cahill (Chair)
President & CEO, GENESIS, Ex-Officio
Mr. Alastair O'Rielly (BTCRD) - Non-voting
Ms. Anne Marie Vaughan, President, CNA
Ms. Susan Hollett, Hollett & Sons
Dr. Richard Marceau, VP, Research, MUN
Dr. Will Zerbe, Fac. of Bus. Admin., MUN
Dr. Gary Kachanoski, President and Vice-Chancellor, MUN
Dr. Rob Greenwood, Off. of Public Engagement, MUN

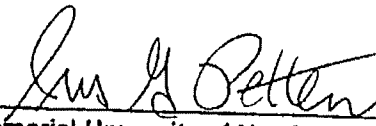
Mr. Jamie King, Verafin Inc.
Ms. Margaret Allan, Husky Energy
Mr. Robert Webb, InvestCan Energy
Ms. Sherry Walsh, Deloitte
Ms. Nora Duke, Fortis
Mr. Ken Martin (ACOA) - Non-voting
Mr. Ron Ellsworth, Ellsworth Group

to hold office until June 30, 2016.

4. **Delivery** - This resolution may be delivered by fax or in PDF via email and shall upon such delivery be fully enforceable.

THE UNDERSIGNED, being the sole shareholder of the Corporation entitled to vote thereon, by signature hereby pass the foregoing resolution pursuant to the provisions of the Corporations Act (Newfoundland and Labrador).

EFFECTED as at February 4, 2016



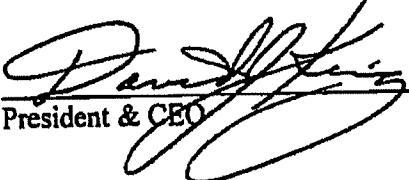
Memorial University of Newfoundland

**Amendment to By-Law No. 1
Of Genesis Group Inc. (the "Corporation")**

1. Section 70 of By-Law No. 1 is hereby deleted and replaced with the following:
 70. **Revenue on Dispositions** - Any revenue on the disposition of shares or other securities held by the Corporation in other bodies corporate, including dividends received in respect of such shares shall, with the prior approval of the sole shareholder, be used solely to further the Mission of the Corporation, set out in paragraph 1 hereof, or be held by the Corporation as agent of Memorial University.

Passed the 25th day of June 2014

Witness the corporate seal of the Corporation



President & CEO

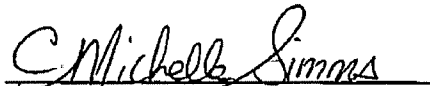
**Amendment to the By-Law No. 1
Of Genesis Group Inc. (the "Corporation")**

Section 12 of the By-Law No. 1 is hereby deleted and replaced with the following:

- 12. Election and Term** – The directors shall be elected for a period of up to two years by the Board of Regents of Memorial University, upon recommendation of the President of Memorial University, to hold office until their second annual meeting of the shareholders of the Corporation or until their successors shall have been duly elected."

Passed the 17th day of May, 2017

Witness the corporate seal of the Corporation



President & CEO
Michelle Simms.



Board of Regents

St. John's, NL Canada A1C 5S7
Tel: 709 864 8281
regents@mun.ca www.mun.ca

December 7, 2020

TO: Dr. Vianne Timmons, President and Vice-Chancellor
FROM: Tina Scott, Secretary to the Board of Regents
SUBJECT: Genesis Group Inc. – Resolution to change number of Directors

This is to advise that the Board of Regents, at a meeting held on December 3, 2020, approved a change to the number of Board members on the Genesis Group Inc. Board of Directors to a minimum of three and a maximum of eighteen and as outlined in the background documentation.

A handwritten signature in black ink, appearing to read "Tina Scott".

Tina Scott
Secretary to the Board of Regents

c: Dr. M. Abrahams
Mr. K. Decker
Ms. D. Collis
Ms. M. Simms

**Resolution of Sole Shareholder
of
Genesis Group Inc.
(the "Corporation")**

WHEREAS this Special Resolution in writing is passed for the purposes of setting the number of directors within the minimum and maximum provided for in the Articles of the Corporation.

1. **Setting the number of directors** – It is resolved that the number of directors be set at a minimum of three and a maximum of eighteen, which is between the minimum and maximum provided for in the Articles of the Corporation, until such time as amended by further resolution of the shareholder.
2. **Delivery** – This resolution may be delivered by fax or in PDF via email and shall upon such delivery be fully enforceable.

THE UNDERSIGNED, being the sole shareholder of the Corporation entitled to vote thereon, by signature hereby pass the foregoing resolution pursuant to the provisions of the Corporations Act (Newfoundland and Labrador).

EFFECTED as at December 3, 2020.



Iris Petten, Chair, Board of Regents
Memorial University of Newfoundland

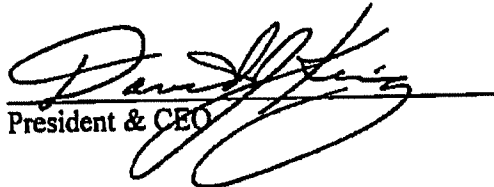
**Amendment to By-Law No. 1
Of Genesis Group Inc. (the "Corporation")**

1. Section 70 of By-Law No. 1 is hereby deleted and replaced with the following:

70. **Revenue on Dispositions** - Any revenue on the disposition of shares or other securities held by the Corporation in other bodies corporate, including dividends received in respect of such shares shall, with the prior approval of the sole shareholder, be used solely to further the Mission of the Corporation, set out in paragraph 1 hereof, or be held by the Corporation as agent of Memorial University.

Passed the 25th day of June 2014

Witness the corporate seal of the Corporation



President & CEO


Amendment to the By-Law No. 1
Of Genesis Group Inc. (the "Corporation")

Section 12 of the By-Law No. 1 is hereby deleted and replaced with the following:

- 12. Election and Term** – The directors shall be elected for a period of up to two years by the Board of Regents of Memorial University, upon recommendation of the President of Memorial University, to hold office until their second annual meeting of the shareholders of the Corporation or until their successors shall have been duly elected."

Passed the 17th day of May, 2017

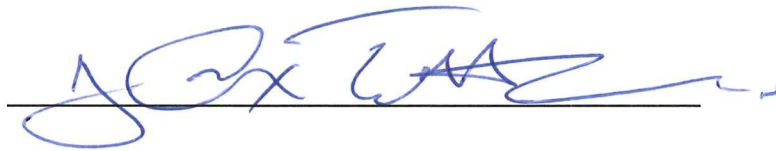
Witness the corporate seal of the Corporation



President & CEO
Michelle Simms.

TAB C

This is Exhibit "C" referred to in the Affidavit of **Karla Connolly**, sworn to in St. John's, Newfoundland and Labrador, under my direction, this 30th day of August 2024.



J. ALEXANDER TEMPLETON
A Barrister of the Supreme
Court of Newfoundland & Labrador

AMENDED AND RESTATED MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT made the 4th day of July, 2014,
at St. John's, in the Province of Newfoundland and Labrador,

BETWEEN:

MEMORIAL UNIVERSITY OF NEWFOUNDLAND, a
body corporate, pursuant to the *Memorial University of
Newfoundland Act*, R.S.N.L. 1990, c. M-7

(hereinafter called the "University")

of the one part

AND:

GENESIS GROUP INC., a corporation duly incorporated
pursuant to the laws of the Province of Newfoundland and
Labrador

(hereinafter called "Genesis" or the "Corporation")

of the other part

WHEREAS the University is the owner of the intellectual property and all other assets and facilities used from time to time in carrying on the business of Genesis (the "Assets");

AND WHEREAS the University desires to have Genesis manage the Assets as its agent and Genesis has agreed to accept such appointment as agent of the University;

AND WHEREAS this Agreement amends and replaces the Management Agreement dated December 17, 2003;

NOW THIS INDENTURE WITNESSETH that for and in consideration of the sum of Two Dollars (\$2.00) paid by each of the parties to the other, the mutual covenants contained in this agreement and other good and valuable consideration (the receipt and sufficiency of which is acknowledged by each party), the University appoints Genesis and Genesis accepts this appointment as managing agent for the University of the Assets on the terms and conditions as set forth herein;

1.1 Term

The Term of this Agreement shall extend from the date hereof for a period of one (1) year and thereafter shall continue in full force and effect from year to year unless terminated by notice in writing given by either party to the other not less than three months prior to the expiration of the original term of this agreement or any renewal thereof or upon mutual agreement by the parties hereto.

2. Genesis' Responsibilities

2.1 Genesis agrees and the University authorizes Genesis to manage the Assets as agent on behalf of the University during the term of this Agreement in a faithful, diligent and honest manner and to enter into such contracts and agreements as agent of the University as may be necessary in the performance of the following duties:

- (a) to commercialize intellectual property developed by members of the faculty and community of the University, including the entry into such contracts and licences and other arrangements as are related thereto;
- (b) to be, and to create, a support network to assist knowledge based businesses and entrepreneurs in the development of high growth enterprises;
- (c) to provide access to, and to act as a liaison with the University in respect of, the multi-disciplinary resources of the University for those persons involved in the development of knowledge based business and high growth enterprises;
- (d) to arrange and/or provide for the mentoring of persons involved in the development of knowledge based business and high growth enterprises;
- (e) to provide support, guidance, and assistance to those persons involved in research, the practical applications of research, teaching and mentoring;
- (f) to operate and manage the business of Genesis and the Assets in such a manner as to incur operating costs which do not exceed the moneys made available to Genesis for such operation, whether from the University, or other sources, unless Genesis has received approval in writing from the President of the University to exceed such amount;
- (g) to facilitate and make appropriate arrangements as it deems necessary to encourage voluntary participation in the affairs of Genesis by the community at large;
- (h) to hire, supervise and dismiss as may be necessary from time to time all persons required for the proper operation and maintenance of the Assets;

- (i) to direct and supervise any persons employed pursuant to this Agreement for the operation and maintenance of the Assets and to arrange for any technical instruction of such persons which may be required for the proper operation and maintenance of such Assets;
- (j) to specify duties and arrange for the preparation of any work schedules necessary to direct the activities of any persons employed to work at the Assets, and to provide such supervision as may be reasonably necessary in Genesis' opinion to verify the adequacy with which any duties and work is being performed;
- (k) to arrange for the supply, which may be achieved through contractual arrangements with the University, as may be required of electricity, gas, steam, fuel, water, telephone and other services, and to arrange through use of its employees or independent contractors as in each instance may seem the more desirable for the effective and economical operation, maintenance and repair of the Assets as may be required by the University or deemed desirable by Genesis, or so as to comply with the enforcement of any regulations and requirements of which Genesis is notified by any local board of health, police and/or fire departments, and/or any other municipal, provincial and federal authorities having jurisdiction which affect the Assets, and without limiting the generality of the foregoing, such arrangements shall include those for janitor service and any other cleaning, building security and ice removal, landscaping and grounds maintenance, painting and redecoration, alterations and any supervision and maintenance necessary in connection with the Assets;
- (l) to arrange for the payment of such debt, service and municipal tax obligations as may be requested by the University, and to cooperate with the University and its representatives in connection with the entering and processing of any appeals regarding municipal tax assessments levied against the Assets;
- (m) to arrange at its cost sufficient insurance coverage of the Assets including such necessary policies for fire and other peril, plate glass, public liability, fidelity, money loss, boiler and machinery and any other insurance which may from time to time be required by the University relative to the Assets or which Genesis determines is necessary for the adequate and reasonable protection of the Assets. This insurance coverage may be secured through a contractual arrangement with the University;
- (n) generally to do and perform and where desirable contract as agent for the University for all things desirable or necessary for the proper and efficient management of the Assets, and to perform every other act whatsoever in or about the Assets to carry out the intent of this Agreement, provided, however, that Genesis shall not authorize any work, repairs, alterations or redecoration with an estimated cost in excess of **Ten Thousand Dollars (\$10,000.00)** for any one item without first obtaining the written approval of the President of the University to proceed with such work except for monthly or recurring operating charges or unless the University's approval is already implied by the approval of budget estimates, except that if any such work is urgently required to be done, and failure

to do such work which would cause personal injury or damages to the Assets or which could impair the value of the University's investment at a time when the University or its duly authorized representatives cannot be reasonably located for the purpose of giving approval for such work, or if failure to do such work might expose either the University or Genesis, or both to the imposition of penalties, fines, imprisonment or any other liability, then Genesis is authorized to proceed with any work as it in its absolute discretion reasonably determines to be urgently necessary for the protection and preservation of the Assets or the University's investment therein, or to protect the University or Genesis from exposure to fines, penalties, imprisonment or other liability, except that nothing herein permits Genesis to incur any costs or expenses in excess of the funds available to Genesis within a particular fiscal year; and

2.2 All funds collected by Genesis are collected in its role as agent for the University.

2.3 Genesis shall operate on a not for profit/break even basis subject to section 12.2.

3. The University's Responsibilities

3.1 The University agrees that it will provide administrative services to Genesis relating to the management of the Assets which shall include:

- (a) payroll services with respect to all persons employed by Genesis to work at the Assets and to make all payroll reports and returns required by law and to remit to the proper authorities all deductions and payments for income tax, unemployment insurance, group coverages, union dues, Canada Pension Plan, Workers' Compensation and any other deductions or payments which may from time to time be applicable to any such persons or their employer or both;
- (b) the University shall keep and maintain full, detailed and proper records regarding all financial transactions involving the management of the Assets; and
- (c) Facilities Management shall provide support and advice as required from time to time to the maintenance and operations staff of Genesis.

3.2 The University agrees that it will provide an annual operating grant to Genesis in such amount (whether in money or "in kind" support) as determined on a fiscal year basis by the University.

4. Administration and Finance

4.1 The parties agree that the University shall provide necessary administrative and financial services to Genesis, and that Genesis shall adhere to all administrative, travel and financial policies of the University that:

- (a) are governed by federal, provincial, municipal or other laws; or
- (b) in the opinion of the University, directly impact the internal controls of the University.

4.2 Where the board of directors of Genesis proposes to resolve that it is not in the best interests of Genesis to adopt any particular administrative, travel or financial policies of the University, the board of directors (or its delegate) shall first discuss the proposed resolution with the Separately Incorporated Entities' Sub-Committee of Vice Presidents' Council, or its successor, of the University, providing a copy of the policy or policies which Genesis proposes to adopt instead of the University policy or policies. In this regard, Genesis agrees and undertakes to enter into good faith discussions with the Separately Incorporated Entities' Sub-Committee of Vice Presidents' Council, or its successor, of the University and to provide reasonable time for the conduct of those discussions prior to the adoption by resolution of the board of directors of Genesis of any such policy or policies.

5. Employment Issues

- 5.1 Genesis shall establish its own pension plan or employee RRSP plan or otherwise as recommended by the subcommittee of the Board of Regents reviewing pension issues.
- 5.2 Genesis shall in writing request the University's Department of Human Resources, as agent, to place the employees of Genesis in the group health and benefits plan.
- 5.3 The University shall act as agent for Genesis in placing Genesis employees under the University group health and benefits plan, and shall ensure the designation of the employees of Genesis as non-University employees under those group health and benefit plans. Genesis shall ensure that its employees comply with all requirements, terms and conditions from time to time, of the group health and benefit plans.
- 5.4 All employment advertising and letters of offer of employment by Genesis shall be on the letterhead of Genesis and not on the letterhead of the University, and shall clearly state that the employer is Genesis.

6. Negotiating Services with Unions

Genesis further agrees to negotiate with a union or unions for any persons whose services are required pursuant to this Agreement and agrees that its negotiators shall be persons designated and provided by the University. In the event of a strike or a lockout, Genesis shall be responsible to arrange the operation and maintenance of the Assets through the use of any of its employees who are administrative or supervisory in order to replace or fulfil the duties of the employees of the Assets who are on strike or subject to a lockout.

7. The University's Indemnity

The University shall, during and after the termination of this Agreement, indemnify and save harmless Genesis from any and all damages or injuries to persons or property or claims, actions, obligations, liabilities, costs, expenses and fees, arising from any cause whatsoever (except if due to the negligence of Genesis or those for whom it is in law responsible), provided Genesis is carrying out the provisions of this Agreement or is acting on the subsequent directions of the University.

8. Genesis' Indemnity

Genesis shall, during and after the termination of this Agreement, indemnify and save the University completely free and harmless from any and all damages or injuries to persons or property or claims, actions, obligations, liabilities, costs, expenses and fees, by reason of any cause whatsoever, if Genesis has not carried out the provisions of this Agreement or if caused as a result of the negligence of Genesis or those for whom Genesis is in law responsible, and Genesis agrees, if so requested, to provide the University with sufficient liability and blanket fidelity insurance for the purpose of indemnifying the University pursuant to this paragraph, which certificate shall include an undertaking that the insurer will provide the University with at least ten (10) days prior written notice of cancellation of any material change in the provisions of the insurance policy.

9. Insurance

The University requires Genesis to arrange, at cost to Genesis, for comprehensive liability insurance to a limit of not less than **One Million Dollars (\$1,000,000.00)** inclusive, and agrees that Genesis shall be named as an insured party along with the

University in any such policy or policies which shall provide protection against any claim for personal injury, death or property damage, or loss in the event that either the University or Genesis shall be held liable as a result of the respective obligations as owner and manager of the Assets. The University further requires that a certificate for each insurance policy shall be delivered to the University which will include an undertaking that the insurer will provide Genesis and the University with at least ten (10) days prior written notice of cancellation of any material change in the provisions thereof. This insurance coverage may be secured through a contractual arrangement with the University.

10. Indemnification

Notwithstanding anything to the contrary contained in this Agreement, under no circumstances shall Genesis be liable to the University for the amount of any loss or damage to the Assets against which the University is insured and thereby entitled to indemnification from its insurers, but only to the extent of such indemnification.

11. Organizational Structure of Genesis

- 11.1 Genesis will maintain its own registered head office separate and apart from the University and will be responsible for its own corporate record keeping.
- 11.2 Genesis will have only one class of shareholders with the right to vote.
- 11.3 Ownership of the voting shares will be restricted to the University.
- 11.4 Genesis agrees to cooperate with the Board of Regents in establishing a policy for increasing the pool of candidates available to serve as directors of Genesis from time to time.
- 11.5 The executive committee of the Board or the entire board of directors of Genesis will meet, as least quarterly, and shall keep minutes of those meetings, and shall ensure that all corporate record keeping is done in accordance with either the Corporations Act, including the filing of annual returns, notices of directors, annual shareholder or member meetings, and the like.

- 11.6 Genesis shall provide a semi-annual report to the Separately Incorporated Entities' Sub-Committee of Vice Presidents' Council, or its successor, of the University, as well as an annual report, including completed checklist in the form as is requested from time to time.
 - 11.7 Genesis agrees that it will keep all corporate income tax filings current and up to date as required by law.
 - 11.8 Genesis' board of directors acknowledges that it has a fiduciary duty to act at all times in the best interests of Genesis in its decision making.
 - 11.9 Genesis' board of directors shall report all material decisions affecting Genesis to the Board of Regents via the Vice-President (Administration & Finance) of the University as soon as practicable following such decision, but in no event later than the next scheduled semi-annual report to the Separately Incorporated Entities' Sub-Committee of Vice Presidents' Council, or its successor, of the University.
12. Winding Up and Dissolution of Genesis
- 12.1 Prior to the winding up of Genesis, and following the payment of all then existing liabilities of Genesis, Genesis agrees that any assets which are held by it in its own name as trustee will be transferred to the University.
 - 12.2 Genesis will at all times maintain a reserve of funds, in an amount acceptable to the University, or a binding commitment from a credible public or private sector source, acceptable to the University, that they will advance such funds, to provide for its outstanding liabilities upon windup, which includes sufficient funds to pay the required outstanding wages and the minimum notice or severance payments to all employees as required by legislation, any person or funds required by a supplemental retirement income plan, and to pay all statutorily required remittances, including but not limited to payroll tax, remittances to Canada Revenue Agency for outstanding Harmonized Sales Tax or source deductions, worker's compensation remittances, or any other amounts for which the directors or shareholders of a corporation may become personally liable from time to time by law.

- 12.3 In the event that the directors of Genesis determine that sufficient funding is not likely to be available for the future operations of the entity, then the directors of Genesis shall notify the Board of Regents of the University immediately and take all steps required by the Corporations Act for the orderly dissolution of Genesis, including payment of all liabilities and delivery of the necessary notices or applications to regulatory authorities.
- 12.4 In the event that the Board of Regents have determined following consultation with Genesis that the mandate of Genesis would be better carried out under a different organizational structure, the directors of Genesis will take all steps required by the Corporations Act for the dissolution of Genesis, including the payment of all its liabilities, distribution of any remaining assets, and the delivery of the necessary notices or applications to the appropriate regulatory authorities.
- 12.5 If Genesis has non-unionized employees, Genesis shall ensure that it enters into employment contracts with all of its employees which specify the employees' rights upon windup of Genesis. In the case of unionized employees, Genesis shall use its best efforts to ensure that rights of its employees upon windup of Genesis are codified in the applicable collective agreement.
- 12.6 If Genesis wishes to be totally separate from the University (including withdrawal of University funding and provision of services in kind) or wishes to convert into a corporation which operates for profit, Genesis agrees to negotiate with the Board of Regents to ensure that the interests of the University are protected and balanced with the interests of Genesis.
- 12.7 The parties agree that any assets, of whatsoever nature or kind, tangible or intangible, acquired by Genesis whether as a donation, gift, purchase or otherwise, shall be the property of the University, and Genesis agrees that it holds and will hold all such assets as bare trustee, in trust for the University, subject to the use of same by Genesis prior to windup or dissolution in the performance of this Agreement.

Miscellaneous Provisions

13. Genesis will maintain its own visual identity for the purposes of carrying out its duties

under this Agreement, which shall include, but shall not be limited to, maintaining its own identity in terms of logos, business cards, letterhead, etc.

14. Notwithstanding the foregoing, Genesis agrees to ensure that in respect of any pay stub, T-4 slip or other document whereby Genesis undertakes any obligations or liabilities, it be clearly indicated to third parties that the obligor is Genesis and not the University.
15. The University name and logo shall appear on Genesis documents and shall describe Genesis as "supported by" the University.
16. This Agreement shall enure to the benefit of and be binding on the parties, their respective heirs, executors, administrators, successors and assigns.
17. This Agreement shall not be assigned by either party without the express written consent of the other party.
18. Entire Agreement

This Agreement embodies the entire agreement of the parties with regard to the matters contained herein, and no other agreement shall be deemed to exist except as entered into in writing by both parties to this Agreement.

19. Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of the Province of Newfoundland and Labrador, and the Federal laws of Canada applicable therein.

IN WITNESS WHEREOF the parties have caused these presents to be executed on the day and year first before written.

**MEMORIAL UNIVERSITY OF
NEWFOUNDLAND**

Catherine Wilkinson

Witness

Per: *WA*

GENESIS GROUP INC.

Vincent
Witness

Per: *David King*

TAB D

This is Exhibit “D” referred to in the Affidavit of **Karla Connolly**, sworn to in St. John’s, Newfoundland and Labrador, under my direction, this 30th day of August 2024.



J. ALEXANDER TEMPLETON
A Barrister of the Supreme
Court of Newfoundland & Labrador



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2023-020

May 4, 2023

Memorial University

Summary:

The Complainant made an access to information request to Memorial University for records related to discounts, reduced fees, credits, and registration at Memorial's Childcare Centre. Memorial did not provide any records to the Complainant, stating the Childcare Centre was not a public body as defined by *ATIPPA, 2015* and that the records were not in Memorial's custody or control. The Complainant disagreed and filed a complaint with this Office. After review of submissions from both parties, the Commissioner concluded *ATIPPA, 2015* does not apply to the Childcare Centre and that the requested records were not within Memorial's custody or control.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, Sections 2, 5, and 8

Authorities Relied On:

NL OIPC Reports [A-2017-021](#), [A-2021-008](#), [A-2014-012](#), Ontario Access to Information Order [Order MO-2750](#), *Canada (Information Commissioner) v. Canada (Minister of National Defence)* [2011 SCC 25](#), [2011] 2 SCR 306

BACKGROUND

- [1] On February 7, 2023, the Complainant made an access to information request under the *Access to Information and Protection of Privacy Act, 2015* (“ATIPPA, 2015”) to Memorial University (“Memorial”) for the following:

I am requesting all information regarding discounts, reduced fees, credits, refunds, and registration for every other week (week on/week off) for after-school childcare at MUN's Childcare Centre's Activity Centre. I am requesting email (internal and external), internal documents (handwritten and digital), receipts, and any other means someone may use for recording information. I am requesting this information from the Childcare Centre's Front Office, Activity Centre, and Executive Director's Office. I am also requesting correspondence to and from the ATIPP Office and the respective departments in regards to this request.

- [2] Memorial responded that Memorial's Childcare Centre (the “Daycare”) is not a public body and that the requested records were not in the custody or control of Memorial. As access had been refused by Memorial, the Complainant filed a complaint with this Office.
- [3] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

PUBLIC BODY'S POSITION

- [4] It is Memorial's position that the Daycare is a separately incorporated entity and thus is not captured by *ATIPPA, 2015*'s definition of public body.
- [5] Memorial states further the requested records are not within the custody or control of the public body as the documents relate to core, day-to-day functions of the Daycare and do not pertain to the University. Memorial maintains that it does not have physical possession of the requested records and would not have access to them.

COMPLAINANT'S POSITION

- [6] The Complainant states the Daycare is a public body and that they are entitled to the requested records. Even if not a public body, the Complainant states Memorial has 'custody and control' of the emails as they are on a shared ("@mun.ca") email server. The Complainant also suggests the shared email server is evidence that the employees of the Daycare are employees of Memorial.
- [7] In the Complainant's view, the Daycare is Memorial and the two cannot be logically separated. Thus, since Memorial is specifically referenced as a public body in section 2(h) of *ATIPPA, 2015*, Daycare must also be a public body as it is a part of Memorial.
- [8] The Complainant further submits that because Daycare employees are represented by the Canadian Union of Public Employees Union ("CUPE") then they must be employees of a public body and of Memorial and thus the Daycare's records are subject to *ATIPPA, 2015*. He also raises the fact that the Daycare serves as a research facility for various departments within Memorial.

ISSUES

- [9] There are two issues to be addressed:
- a. Whether the Daycare meets the definition of a public body under *ATIPPA, 2015*, and
 - b. Whether the requested records are in the custody or control of Memorial.

DECISION

- [10] Section 5 of *ATIPPA, 2015* states the Act applies to all records in the custody of or under the control of a public body.

Application of ATIPPA, 2015 to the Daycare

[11] Relevant definitions at section 2 of ATIPPA, 2015 are as follows:

2. *In this Act*

...

(h) *"educational body" means*

(i) *Memorial University of Newfoundland ,*

...

(o) *"local government body" means*

(i) *the City of Corner Brook ,*

(ii) *the City of Mount Pearl ,*

(iii) *the City of St. John's ,*

(iv) *a municipality as defined in the Municipalities Act, 1999 , and*

(v) *a body designated as a local government body in the regulations made under section 116 ;*

(p) *"local public body" means*

(i) *an educational body,*

...

(x) *"public body" means*

...

(ii) *a corporation, the ownership of which, or a majority of the shares of which is vested in the Crown,*

(iii) *a corporation, commission or body, the majority of the members of which, or the majority of members of the board of directors of which are appointed by an Act, the Lieutenant-Governor in Council or a minister,*

(iv) *a local public body,*

...

(vi) *a corporation or other entity owned by or created by or for a local government body or group of local government bodies, which has as its primary purpose the management of a local government asset or the discharge of a local government responsibility*

[12] After reviewing the definition of a public body under ATIPPA, 2015, our conclusion is that the Daycare is not a 'public body'. Further, while Memorial is a public body, the Daycare is not an integral party of Memorial and is a separate entity. The Daycare operates and is managed

independently of Memorial, is regulated by its own articles of incorporation, and is financially self-governing. Based on a plain reading, an entity incorporated separately from an educational body such as Memorial would not be captured by *ATIPPA, 2015*'s definition of public body.

[13] *ATIPPA, 2015* specifically recognizes certain corporations as public bodies in section 2(x). Section 2(x)(ii) recognizes corporations majority-owned by the Crown as public bodies. Section 2(x)(iii) recognizes corporations as public bodies where the majority of its board members are appointed by an Act or Cabinet. Neither of these apply to the Daycare.

[14] With regards to section 2(x)(vi), which discusses corporations set up by local government bodies, a local government body means a city or municipality as defined in section 2(o) and does not include Memorial. Had the legislature intended *ATIPPA, 2015* to apply to corporations, such as the Daycare, established by an educational body, it would have been specifically enumerated in the Act.

Custody or Control of Daycare Records

[15] While the Daycare is not a public body subject to *ATIPPA, 2015*, this is not determinative of whether Memorial must provide responsive records in response to the Complainant's access request. Section 8 of the *ATIPPA, 2015* establishes the right of access:

8.(1) A person who makes a request under section 11 has a right of access to a record in the custody or under the control of a public body, including a record containing personal information about the applicant.

[16] Therefore, even if the Daycare is not a public body, any records about the Daycare which are in Memorial's "custody or control" are subject to *ATIPPA, 2015*. Memorial states it is not in physical possession of the requested records. However, that does not end the analysis.

[17] The Supreme Court of Canada considered the meaning of custody or control in the context of the federal *Access to Information Act*, RSC 1985 in *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, [2011 SCC 25](#), [2011] 2 SCR 306. At paragraph 50, the Court stated a two-part test for whether a document is under the control of an institution:

... in the context of these cases where the record requested is not in the physical possession of a government institution, the record will nonetheless be under its control if two questions are answered in the affirmative: (1) Do the contents of the document relate to a departmental matter? (2) Could the government institution reasonably expect to obtain a copy of the document upon request?

[18] The court elaborated further on the test at paragraph 55:

Step one of the test acts as a useful screening device. It asks whether the record relates to a departmental matter. If it does not, that indeed ends the inquiry. The Commissioner agrees that the [Access to Information Act](#) is not intended to capture non-departmental matters in the possession of Ministers of the Crown. If the record requested relates to a departmental matter, the inquiry into control continues.

[19] As to the first question, the request for “all information regarding discounts, reduced fees, credits, refunds, and registration for every other week (week on/week off) for after-school childcare at MUN's Childcare Centre's Activity Centre” is specific to the day-to-day operations of the Daycare and appear to not relate to a departmental matter. Despite this, it is still necessary to address the second part of the test and the relationship between the Daycare and Memorial.

[20] With respect to the second part of the test, all relevant factors must be considered, as stated by the Supreme Court of Canada in *Minister of National Defence*. A non-exhaustive list of factors has been developed and used in other jurisdictions in assessing custody and control, which was considered by this office in [A-2021-008](#) and [A-2014-012](#). [Order MO-2750](#) from the Information and Privacy Commissioner of Ontario sets out these factors as follows:

- *Was the record created by an officer or employee of the institution?*
- *What use did the creator intend to make of the record?*
- *Does the institution have a statutory power or duty to carry out the activity that resulted in the creation of the record?*
- *Is the activity in question a “core”, “central” or “basic” function of the institution?*
- *Does the content of the record relate to the institution’s mandate and functions?*
- *Does the institution have physical possession of the record, either because it has been voluntarily provided by the creator or pursuant to a mandatory statutory or employment requirement?*

- *If the institution does have possession of the record, is it more than “bare possession”?*
- *If the institution does not have possession of the record, is it being held by an officer or employee of the institution for the purposes of his or her duties as an officer or employee?*
- *Does the institution have a right to possession of the record?*
- *Does the institution have the authority to regulate the record’s content, use and disposal?*
- *Are there any limits on the use to which the institution may put the record, what are those limits, and why do they apply to the record?*
- *To what extent has the institution relied upon the record?*
- *How closely is the record integrated with other records held by the institution?*
- *What is the customary practice of the institution and institutions similar to the institution in relation to possession or control of records of this nature, in similar circumstances?*

[21] Not all of the above factors relate to the requested records, but it is clear they do not relate to Memorial’s mandate, for example. They also do not relate to a “core” or “basic” function of Memorial and are not closely integrated with Memorial records, as it is a separate entity providing childcare. Rather, the information requested, which is for receipts and documentation relating to discounts and payments, among other related items, relate to the Daycare’s day-to-day operations. It is also apparent that Memorial would not have the right to regulate the content or use of the requested records, and that Memorial would not be relying upon such records.

[22] The existence of a shared email server in itself does not establish custody or control. Memorial provides email service to students, staff, retirees, and alumni. While Daycare employees do use the email server provided by Memorial, not all emails sent and received through @mun.ca are in the control of Memorial (see, for example, [A-2017-021](#)).

[23] The Complainant points out that employees of the Daycare are members of CUPE and argues this is evidence they are employees of Memorial. However, Daycare employees and Memorial employees are members of two separate, distinct bargaining units (CUPE 4554-01 and CUPE 1615, respectively). Moreover, CUPE represents other bargaining units, such as non-profit organizations, for example, which would fall outside *ATIPPA, 2015* and the mere fact of an organization’s employees being represented by a union that generally – but not

exclusively – represents public employees does not determine that the employer is itself a public body for ATIPPA, 2015 purposes.

[24] The Complainant submitted that as the Daycare also serves as a research facility for various departments within Memorial (such as Psychology, Early Childhood Education, Education, Nursing, and Human Kinetics), this means the Daycare is a ‘core’ part of Memorial’s functions. However, as it relates to custody or control, the question is whether the requested records relate to a ‘core’ function of the institution, which in our view they do not.

[25] To further assess the issue of custody or control, it is important to explore the structure of the Daycare’s operations and links it has to Memorial. In a history document on Memorial’s website, Dr. Carole Peterson writes about the Daycare’s organization within Memorial, and how it became a separate entity in 2006:

*As a consequence of the negotiations, the Board of the Childcare Centre was reorganized and the Centre became a Separately Incorporated Entity (SIE) within the University community in 2006. That meant that, financially and in other ways, we were on our own. We were **independent of both the Students’ Union and MUN**, and it was our responsibility to balance our books and run ourselves – of course still under the direction of the Board of Directors. Both the Students’ Union and members of the MUN administration sit on the Board, along with parent representatives and faculty members who have expertise in relevant areas (child development and education). But ultimately, **it is the Board who is responsible for the financial and policy well-being of the Centre**. We are now captains of our own fate.*

[26] With regards to the composition of the Daycare’s Board of Directors, Memorial’s website states the following:

Campus Childcare is operated by an appointed Board of Directors consisting of:

*University faculty members
human resources personnel
financial services personnel
legal counsel
student representatives
parent representatives
the centre’s executive director (ex-officio)*

[27] Elections for parent representatives are usually conducted in an open parent meeting in the Fall semester. As per the Daycare's Articles of Incorporation, the board shall be made up of nine individuals, four of which shall be elected by the Memorial University Students' Union and parents and five being Memorial appointees. The Daycare's board, while appointed by the Memorial's Board of Regents, operates separately and independent from Memorial. Employees of the Daycare are not employees of Memorial, nor does Memorial provide any pension or benefits.

[28] Memorial employees who sit on the board are not involved in the schedules or operational issues which related to the requested documentation. Memorial employees would have access to records such as board meeting minutes or agendas; however, the requested records do not relate to such documentation but relate to specific operational records of the Daycare itself. Furthermore, even if Memorial employees who sit on the board did have such operational records in their physical possession, an analysis would still be required to determine if those records were in Memorial's control or custody or not for the purposes of *ATIPPA, 2015* (see, for example, Report A-2021-008).

[29] The Daycare's financial statements, which are not at issue in the present case, are consolidated with the Memorial's financial statements each year, which does demonstrate a level of integration between the Daycare and Memorial. However, the documents requested are far more specific and thus fall outside Memorial's control.

[30] On balance, while there is a degree of connection between the Daycare and Memorial, for the purposes of *ATIPPA, 2015*, the Daycare is not a public body, nor are the requested documents within Memorial's custody or control.

RECOMMENDATIONS

[31] Under the authority of section 47 of *ATIPPA, 2015*, I recommend that Memorial maintain its position.

[32] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of Memorial must give written notice of his or her decision with respect to these recommendations to the Commissioner and any person who was sent a copy of this Report within 10 business days of receiving this Report.

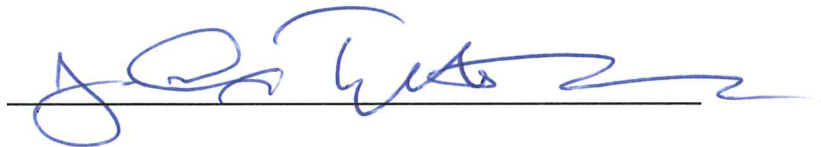
[33] Dated at St. John's, in the Province of Newfoundland and Labrador, this 4th day of May 2023.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador

TAB E

This is Exhibit "E" referred to in the Affidavit of **Karla Connolly**, sworn to in St. John's, Newfoundland and Labrador, under my direction, this 30th day of August 2024.



J. ALEXANDER TEMPLETON
A Barrister of the Supreme
Court of Newfoundland & Labrador



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2023-029

June 29, 2023

Memorial University

Summary:

The Complainant made an access to information request to Memorial for records related to swimming pool chemicals purchased for the Aquarena, which is part of the Memorial University Recreation Complex Inc. (MURC). Memorial did not provide any records to the Complainant, stating MURC was not a public body as defined by *ATIPPA, 2015* and that, in any case, the records were not in Memorial's custody or control. The Complainant responded by filing a complaint with this Office. After review of submissions, the Commissioner concluded *ATIPPA, 2015* does not apply to the MURC and that the requested records were not in Memorial's custody or control.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, Sections 2, 5, 8.

Authorities Relied On:

NL OIPC Report [A-2023-020](#), Ontario Access to Information Order [MO-2750](#), *Canada (Information Commissioner) v. Canada (Minister of National Defence)* [2011 SCC 25](#), [2011] 2 SCR 306

Other Resources:

[Submission of the Information and Privacy Commissioner](#) to the Access to Information and Protection of Privacy Review Committee, June 16, 2014, [Report of the 2014 Statutory Review of the Access to Information and Protection of Privacy Act](#)

BACKGROUND

[1] On March 20, 2023, the Complainant made an access to information request under the *Access to Information and Protection of Privacy Act, 2015* (“ATIPPA, 2015”) to Memorial University of Newfoundland (“Memorial”) for the following:

... a copy of the current March 2023 supply contract pricing for all the swimming pool chemicals purchased for the Aquarena, including the full cost of the Sodium Hypochlorite 205L drums, including the cost of drum deposit and shipping.

[2] The Aquarena is one facility that is part of a larger entity known as The Works and which is incorporated as “Memorial University Recreation Complex Inc.” (MURC).

[3] Memorial did not provide the requested records, stating the records are not in its custody or control and that MURC is not a public body subject to *ATIPPA, 2015*.

[4] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

COMPLAINANT'S POSITION

[5] The Complainant states they are entitled to the requested documents as Memorial is subject to *ATIPPA, 2015* and MURC is owned by Memorial. The Complainant did not provide submissions on the issues of custody or control or the definition of public body.

PUBLIC BODY'S POSITION

[6] Memorial states MURC is a separately incorporated entity (“SIE”) and thus is not captured by *ATIPPA, 2015*'s definition of public body.

[7] Memorial further states the requested records are not within its custody or control as Memorial was not involved in the issuance of the contract relating to the swimming pool

chemicals purchased for MURC. Moreover, Memorial states it does not have physical possession of the requested records and would not have access to them.

ISSUES

- [8] The issues to be addressed in this Report are:
- a) whether MURC meets the definition of public body under section 2 of *ATIPPA, 2015*; and
 - b) whether the requested records are in the custody or control of Memorial as per section 8 of *ATIPPA, 2015*.

DECISION

- [9] This Office recently considered the issues of custody and control and the definition of public body in Report [A-2023-020](#). In that case, the Complainant made an access to information request to Memorial for records related to discounts, reduced fees, credits and registration at Memorial's Childcare Centre. Memorial did not provide any records to the Complainant, stating the Childcare Centre was not a public body as defined by *ATIPPA, 2015* and that the records were not in Memorial's custody or control. After review of the submissions, this Office agreed with Memorial's position.
- [10] Both the Childcare Centre in [A-2023-020](#) and MURC are corporations established by Memorial to carry out specific functions. The records in question in both cases relate to day-to-day operations of the corporation and thus, at first glance, the analysis in [A-2023-020](#) appears to be applicable to the present case. However, the entities are SIEs with different functions and more analysis is needed to specifically assess MURC's status with respect to *ATIPPA, 2015* and the custody or control of the requested records.

Application of *ATIPPA, 2015* to MURC

- [11] Section 5 of *ATIPPA, 2015* states the Act applies to all records in the custody of or under the control of a public body. As noted above, this is the second time in recent months this Office has considered the application of *ATIPPA, 2015* to a corporation owned by Memorial.

While Memorial itself is a public body subject to *ATIPPA, 2015*, only certain government-owned corporations are recognized as public bodies in their own right under the legislation.

[12] On June 16, 2014, this Office provided [submissions](#) in conjunction with a statutory review of *ATIPPA*. One of our key recommendations in the submission was to “broaden the definition of “public body” to include a corporation or entity owned by or created by or for a public body or for a group of public bodies.” In response, the [Report of the 2014 Statutory Review of *ATIPPA*](#) recommended that “additional language be added to the definition of public body under section 2(p) of *ATIPPA* to include municipally owned and directed corporations.” This recommendation was accepted by government. Now, section 2(x)(vi) of *ATIPPA, 2015* specifically includes corporations created by municipalities to manage a government asset or discharge a government responsibility. It must be noted, however, that there is still no express language in *ATIPPA, 2015* with respect to corporations owned by educational bodies such as Memorial.

[13] Relevant definitions at section 2 of *ATIPPA, 2015* are as follows:

2. *In this Act*

...

- (h) "educational body" means
- (i) Memorial University of Newfoundland ,

...

- (o) "local government body" means
 - (i) the City of Corner Brook ,
 - (ii) the City of Mount Pearl ,
 - (iii) the City of St. John's ,
 - (iv) a municipality as defined in the *Municipalities Act, 1999* , and
 - (v) a body designated as a local government body in the regulations made under section 116 ;

...

- (p) "local public body" means
 - (i) an educational body,

...

- (x) "public body" means

...

- (ii) *a corporation, the ownership of which, or a majority of the shares of which is vested in the Crown,*
- (iii) *a corporation, commission or body, the majority of the members of which, or the majority of members of the board of directors of which are appointed by an Act, the Lieutenant-Governor in Council or a minister,*
- (iv) *a local public body,*
- ...
- (vi) *a corporation or other entity owned by or created by or for a local government body or group of local government bodies, which has as its primary purpose the management of a local government asset or the discharge of a local government responsibility*

[14] After reviewing the definition of a public body under *ATIPPA, 2015*, our conclusion is that MURC is not a public body. MURC operates and is managed independently of Memorial, is regulated by its own articles of incorporation, and is financially self-governing. Moreover, it maintains its own separate registered head office and is responsible for its own record keeping. Therefore, I conclude it is separate from Memorial and does not fall within the definition of “educational body” in section 2(h)(i) of *ATIPPA, 2015* or any other definition of public body provided by section 2 of the Act. Had the legislature intended *ATIPPA, 2015* to apply to corporations set up by Memorial, such as MURC, it would have been specifically enumerated in the Act.

Custody or Control of MURC Records

[15] While MURC is not a public body subject to *ATIPPA, 2015*, this is not determinative of whether Memorial must provide records in response to the Complainant’s access request. Section 8 of *ATIPPA, 2015* establishes the right of access:

8.(1) *A person who makes a request under section 11 has a right of access to a record in the custody or under the control of a public body, including a record containing personal information about the applicant.*

[16] Memorial states that it is not in possession of the requested documents. However, the analysis does not end there. As discussed in A-2023-020, the Supreme Court in *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25, [2011] 2 SCR 306 established a two-part test for whether a document is under the control of an institution at paragraph 50:

... in the context of these cases where the record requested is not in the physical possession of a government institution, the record will nonetheless be under its control if two questions are answered in the affirmative: (1) Do the contents of the document relate to a departmental matter? (2) Could the government institution reasonably expect to obtain a copy of the document upon request?

[17] The court elaborated further on the test at paragraph 55:

Step one of the test acts as a useful screening device. It asks whether the record relates to a departmental matter. If it does not, that indeed ends the inquiry. The Commissioner agrees that the Access to Information Act is not intended to capture non-departmental matters in the possession of Ministers of the Crown. If the record requested relates to a departmental matter, the inquiry into control continues.

[18] With regard to the first part of the test, records relating to swimming pool chemicals for the Aquarena appear specific to the day-to-day operations of MURC and do not appear to relate to a departmental matter (in this case, “departmental” would mean a matter relating to Memorial University). Memorial was not involved with the contract for swimming pool chemicals, nor does it purchase any materials or supplies for the Aquarena pool. On the other hand, if the MURC fitness and pool facilities are considered departmental, then records relating to their upkeep relate to a departmental matter. More analysis is therefore necessary to consider the functions and uses of MURC within Memorial.

[19] With respect to the second part of the test, all relevant factors must be considered, as stated by the Supreme Court of Canada in *Minister of National Defence*. [Order MO-2750](#) from the Information and Privacy Commissioner of Ontario sets out factors to be considered when assessing custody or control:

- *Was the record created by an officer or employee of the institution?*
- *What use did the creator intend to make of the record?*
- *Does the institution have a statutory power or duty to carry out the activity that resulted in the creation of the record?*
- *Is the activity in question a “core”, “central” or “basic” function of the institution?*
- *Does the content of the record relate to the institution’s mandate and functions?*

- *Does the institution have physical possession of the record, either because it has been voluntarily provided by the creator or pursuant to a mandatory statutory or employment requirement?*
- *If the institution does have possession of the record, is it more than “bare possession”?*
- *If the institution does not have possession of the record, is it being held by an officer or employee of the institution for the purposes of his or her duties as an officer or employee?*
- *Does the institution have a right to possession of the record?*
- *Does the institution have the authority to regulate the record’s content, use and disposal?*
- *Are there any limits on the use to which the institution may put the record, what are those limits, and why do they apply to the record?*
- *To what extent has the institution relied upon the record?*
- *How closely is the record integrated with other records held by the institution?*
- *What is the customary practice of the institution and institutions similar to the institution in relation to possession or control of records of this nature, in similar circumstances?*

[20] Not all of the above factors relate to the requested records. However, it is clear that Memorial would not have the right to regulate the records’ content and use, for example. The requested records are also not closely integrated with Memorial, as Memorial is not involved in the tendering process or purchase of swimming pool chemicals for the Aquarena. It also cannot be said that Memorial is relying upon these records in any way, nor were they created by an employee of Memorial.

[21] Memorial states swimming pool chemicals would not relate to a “core” or “central function” of the University. Instead, it states the records relate to the purchase of a product necessary for the function of MURC’s facilities. However, there is a significant level of integration between Memorial and MURC. For example, MURC provides numerous fitness, aquatic and recreational programs to the university community. The Sea-Hawks varsity basketball and volleyball teams play their home games at the Field House, a facility within MURC. The Field House is also attached to Memorial’s School of Human Kinetics and Recreation and most students have access to the MURC facilities. Arguably then, maintaining

a fitness facility is a core function of Memorial, as it would be at any University, and thus documents in relation to products purchased for same relate to its core functions.

[22] Despite this, however, the fact that a SIE provides services to the University is not necessarily determinative of custody or control. The Childcare Centre in [A-2023-020](#) also provided services to the University, and the requested documents in that case were still found to be outside Memorial's custody or control. In the present case, while MURC clearly provides facilities to the University, it also provides fitness, aquatic and recreational facilities to the general public through both drop-in classes and term-based memberships.

[23] MURC is a separately incorporated entity, established by Memorial to manage and maintain a fitness facility on Memorial's St. John's campus. As stated on its website:

Separately incorporated entities associated with Memorial University operate under the university's policies or policies approved by their individual boards. Each entity is wholly owned by the university and operates autonomously under the governance of a university-appointed board of directors that reflects the interests of its stakeholders.

[24] MURC is governed by its own Articles of Incorporation and a volunteer Board of Directors, which acts autonomously from Memorial, which was similarly the case in Report [A-2023-020](#). While Memorial owns MURC, it is not involved in operational issues such as the supply of swimming pool chemicals. Memorial states they have no correspondence or records with regards to this contract, and all documents are in the control or custody of MURC.

[25] The Complainant states previous tenders issued for Aquarena pool supplies were handled directly by Memorial as were cheques in relation to those contracts. However this is not determinative of custody or control of the requested records in this particular case. In the present case MURC entered into an agreement for the supply of swimming pool chemicals without an open tender process involving Memorial.

[26] On this point, MURC has the ability to enter into contracts as an agent of the University as may be necessary. Section 2.24 of the agreement between the two entities states MURC has the authority "...generally to do and perform and where desirable contract in its own name for

all things desirable or necessary for the proper and efficient management of the Facilities”. It is true that Memorial issues cheques on behalf of all SIEs such as MURC. However such cheques are issued from the revenue of and on behalf of all Memorial’s SIEs.

[27] There is some degree of connection between MURC and Memorial. However, on balance, and for the purposes of *ATIPPA, 2015*, I find the requested documents are not in the custody or control of Memorial.

RECOMMENDATIONS

[28] Under the authority of section 47 of *ATIPPA, 2015*, I recommend that Memorial maintain its position.

[29] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of Memorial must give written notice of his or her decision with respect to these recommendations to the Commissioner and any person who was sent a copy of this Report within 10 business days of receiving this Report.

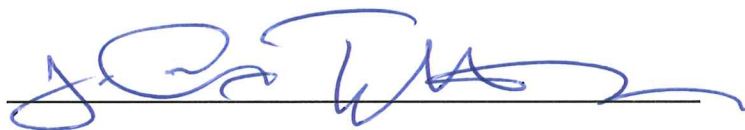
[30] Dated at St. John’s, in the Province of Newfoundland and Labrador, this 29th day of June 2023.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador

TAB F

This is Exhibit "F" referred to in the Affidavit of **Karla Connolly**, sworn to in St. John's, Newfoundland and Labrador, under my direction, this 30th day of August 2024.



J. ALEXANDER TEMPLETON
A Barrister of the Supreme
Court of Newfoundland & Labrador



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

A-2024-006

February 8, 2024

Memorial University of Newfoundland

Summary:

The Complainant submitted four access to information requests to Memorial University of Newfoundland related to expenditures incurred by three of the University's separately incorporated entities. Memorial did not perform a search for the records requested by the Complainant and instead responded claiming it does not have custody or control of the records as they relate to expenditures by the separately incorporated entities. The Commissioner noted that Memorial should have performed a search for responsive records, as without such a search a claim of lack of custody or control cannot be substantiated. Therefore, Memorial did not meet its duty to assist the Complainant pursuant to section 13(1) of *ATIPPA, 2015*. An analysis of Memorial's custody or control showed that on a balance of probabilities Memorial has custody or control of records containing information relating to the Complainant's access request.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 2, 3(1) 5(1) 8(1), and 13(1).

[Auditor General Act, 2021](#) SNL c. A-22.01, section 19.

[Memorial University Act](#) RSNL 1990 c. M-7 sections 3(1), 22(2), 34(1), and 38.

Authorities Relied On:

NL OIPC Reports [A-2023-020](#), [A-2023-029](#) and [A-2023-052](#); Ontario [IPC Order MO-2750](#); [Canada \(Information Commissioner\) v. Canada \(Minister of Defence\) \[2011\] 2 S.C.R 306](#); [PEI Order No. FI-15-002](#); [Memorial University Independent Auditor's Report](#).

BACKGROUND

- [1] The Complainant submitted the following four access to information requests to Memorial University of Newfoundland (Memorial):
- *bonuses/special payments paid to C-Core executives and bonuses paid to C-Core management employees from January 1, 2019 to October 23, 2023 (OIPC File 0020-062-23-125);*
 - *all bonuses and special payments paid to Genesis executives and all incentives paid to Genesis management employees from January 1, 2019 to October 23, 2023 (OIPC File 0020-062-23-126);*
 - *all vehicle allowances paid to Genesis executive and management staff from January 1, 2019 to present (OIPC File 0020-062-23-126);*
 - *all vehicle allowances paid to Centre for Fisheries Innovation executive and management staff from January 1, 2019 to November 2, 2023.*
- [2] Memorial's response was that C-Core, the Canadian Centre for Fisheries Innovation (CCFI), and Genesis Group Inc. are not public bodies pursuant to *ATIPPA, 2015*, and therefore Memorial did not have custody or control over records belonging to these entities.
- [3] The Complainant disagreed with this assessment, noting that C-Core, CCFI, and Genesis are located within Memorial and have substantial financial connections with the university
- [4] As informal resolution was unsuccessful, the Complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

PUBLIC BODY'S POSITION

- [5] It is the position of Memorial that C-Core, Genesis, and CCFI are separately incorporated entities (SIEs) of Memorial and function completely separate and apart from the university. Any relationship between the SIEs and Memorial are negotiated between the parties. As SIEs are separate from Memorial, they are not public bodies as defined in section 2 of *ATIPPA, 2015* and are not subject to the Act. Memorial asserts that determining that the SIEs are either part of Memorial or their own separate public body would be an improper piercing of the corporate veils of the SIEs.

[6] With respect to a lack of custody or control over the records sought by the Complainant, Memorial provided no evidence to support this claim. Memorial did acknowledge that it did not perform a search for the records requested by the Complainant. The lack of search also means that the three SIEs were not contacted as third parties with an interest in the records, pursuant to section 19 of *ATIPPA, 2019*. Such notice is only provided when records of interest to a third party exist and the public body intends to release them to the applicant.

COMPLAINANT'S POSITION

[7] The Complainant asserts that Memorial exerts a significant amount of control over the SIEs. The Complainant expressed no position as to whether this control means that the SIEs are an indivisible part of Memorial or their own public bodies, but the control is sufficient enough that it is likely that the university has custody or control over the requested records.

DECISION

[8] The sections of *ATIPPA, 2015* relevant to this matter are as follows:

2. *In this Act*

(h) *“educational body” means*

(i) *Memorial University of Newfoundland*

...

(p) *“local public body” means*

(i) *An education body,*

...

(x) *“public body” means*

(iii) *a corporation, commission, or body, the majority of the members of which, or the majority of members of the board of directors of which are appointed by an At, the Lieutenant-Governor in council or a minister,*

(iv) *a local public body*

...

- 3.(1) *The purpose of this Act is to facilitate democracy through*
- (a) *ensuring that citizens have the information required to participate meaningfully in the democratic process,*
 - (b) *increasing transparency in government and public bodies so that elected officials, officers, and employees of public bodies remain accountable;*

...

- 5.(1) *This Act applies to all records in the custody or under the control of a public body...*

...

- 8.(1) *A person who makes a request under section 11 has a right of access to a record in the custody or under the control of a public body, including a record containing personal information about the applicant.*

...

- 13.(1) *The head of a public body shall make every reasonable effort to assist an applicant in making a request and to respond without delay to an applicant in an open, accurate and complete manner.*

The sections of the *Auditor General Act, 2021* relevant to this matter are as follows:

- 19.(1) *Notwithstanding any other Act or regulation, the auditor general is the auditor of the financial statements and accounts of all agencies of the Crown and Crown controlled corporations and shall make those examinations and inquiries that the auditor general considers necessary to enable the auditor general to report as required by this Act.*

...

- 19.(3) *Where an agent has been appointed to conduct an audit of the financial statements of an agency of the Crown or of a Crown controlled corporation, the agent shall immediately*

...

- (b) *make available to the auditor general, when requested by the auditor general, all working papers, reports, schedules and other documents in respect of the audit,*

The section of the *Memorial University Act* relevant to this matter is as follows:

- 3.(1) *The Memorial University of Newfoundland, consisting of a Chancellor, Convocation, Board of Regents, Senate, faculty councils and the faculties is continued as a corporation.*

...

22.(2) *The Board shall consist of*

- (c) *17 members appointed by the Lieutenant-Governor in Council of whom 3 shall be the same person who are appointed under subsection 10(2.1) of the College Act, 1996;*

...

34.(1) *The board shall have the following power*

...

- (s) *to do and perform all other matters and things which may seem appropriate and useful for the well ordering and advancement of the university, the doing of things not repugnant to this Act or to a law in force in the province.*

...

38.(1) *The accounts of the board shall be audited at least once a year by the auditor general, or by some person appointed by the Lieutenant-Governor in Council.*

38.(2) *Where an auditor other than the auditor general audits the accounts of the board, the auditor shall comply with subsection 19(3) of the Auditor General Act, 2021.*

Duty to Assist

[9] The duty to assist an applicant with an access to information request is one of the foundations of *ATIPPA, 2015*. The Act cannot work as it is intended if the public body was not required to actively help an applicant receive the information being requested. The duty-to-assist has several different components that encompass communication with an applicant to the manner in which a search for records is conducted.

[10] In this case, Memorial acknowledged that it did not perform a search for the records that the Complainant was seeking. Not conducting a search does not mean that the public body has not met its duty to assist. In Report A-2023-052, this Office determined that the House of Assembly had still met its duty to assist even though the House had not conducted a search for the responsive records sought by the Complainant. In that instance, the Complainant fundamentally misunderstood the purpose of the House, which had no connection with the documents the Complainant requested.

[11] The same circumstances are not present in this case. There are significant connections between Memorial and the SIEs that are the subject of this Complaint that will be addressed later in this Report. Memorial's response to this access request ignores all of these connections. Further, Memorial's position is based on an argument that because the SIEs are not public bodies, that Memorial by default will not have custody or control over any of the records requested by the Complainant. This is not how *ATIPPA, 2015* functions. Memorial has a duty to conduct a search for records unless it can provide strong evidence that it is highly unlikely that such records would be in Memorial's custody or control and therefore conducting a search would be a waste of resources. That evidence was not provided by Memorial. This Office routinely addresses complaints that involve documents created by third parties that are not public bodies. Under certain circumstances such documents fall clearly within the jurisdiction of *ATIPPA, 2015*. Memorial's argument that documents that may belong to a third party are by default not under the university's custody or control is without basis.

[12] Memorial did not meet its duty to assist the Complainant. Memorial should have conducted a reasonable search for the records that were requested to determine what it had custody or control over. Once the search was conducted, there could have been a determination on whether third parties needed to be notified.

Are the SIEs Independent Public Bodies or Part of Memorial

[13] This Complaint raises the important question of how *ATIPPA, 2015* applies to Memorial's SIEs. Given the complex relationship between Memorial and its SIEs, this Report does provide an analysis of this question. With that said, the recommendations made in this Report are not dependent upon whether the SIEs are public bodies, part of Memorial, or third parties. The recommendations are based on an assessment of Memorial's relationship to the records requested by the Complainant.

[14] Memorial is a public body under *ATIPPA, 2015* in two ways. First, Memorial is defined in section 2 of the Act as an "educational body," which in turn is defined as a "local public body," which is then listed as a public body pursuant to section 2(x)(iv) of the Act. Memorial is also a public body pursuant to section 2(x)(iii), as it is a corporation with a majority of its board appointed by the Lieutenant-Governor in Council according to the *Memorial University Act*.

[15] Memorial has 5 SIEs:

- C-Core
- Genesis Group Inc.
- The Canadian Centre of Fisheries Innovation
- Memorial University Recreation Complex
- Campus Childcare Inc.

There is nothing in the *Memorial University Act* that specifically grants Memorial the ability to establish an SIE, though it appears that the ability to do so is now incorporated into board discretionary authority granted in section 34(1)(s) of that *Act*. All five SIEs operate on Memorial's campuses and the university owns the buildings in which they operate.

[16] Memorial's Board of Regents appoints the boards of directors for C-Core, Genesis, and CCFI. In the bylaws of the Board of Regents, the term "University" is defined as "Memorial University of Newfoundland and its affiliated colleges, institutes and separately incorporated entities." In the "responsibilities" section of the bylaws, it states that the Board of Regents "Participates in setting the long term vision, mission and strategic direction of the University" and "provides oversight for and monitors progress towards the achievement of the University's goals." The bylaws clearly incorporate the SIEs into Memorial's overall plans and makes no distinction between them and its responsibility for the rest of the university. Financially, Memorial incorporates the assets and liabilities of the SIEs into its statutorily required financial statements. Annually, Memorial releases a consolidated financial statement, which states under in the notes under "Significant Financial Policies" that Memorial controls its SIEs.

[17] From our assessment, it does not appear that Memorial's SIEs are stand-alone public bodies. What remains unclear is whether the SIEs are in reality simply part of Memorial and therefore subject to *ATIPPA, 2015*.

[18] Memorial rejects this position. It argues that SIEs are separate from Memorial because they are incorporated as individual organizations. Furthermore, Memorial states that because

C-Core, Genesis, and CCFI are separately incorporated and are one-step removed from the University, the SIEs are neither local public bodies nor corporations that have boards that are majority appointed by the Minister, the Lieutenant-Governor, or an Act. Moreover, any finding that the SIEs are indeed part of Memorial would be an improper piercing of the corporate veil under which the SIEs currently operate.¹

[19] Two of the stated purposes of *ATIPPA, 2015* are to allow for meaningful citizen participation in the democratic process and to increase transparency in government and public bodies. To facilitate this purpose, the definition of a public body is broad so as to encompass essentially all organizations that are primarily funded by the public purse. If a public body is not covered by the Act that is made clear in legislation.

[20] Public bodies, as defined by section 2(x) of the Act fall into two general categories. The first are those that are funded exclusively or largely from provincial revenue. This includes all government departments; corporations owned by the Crown; corporations with boards that are majority appointed by the Lieutenant-Governor, a minister, or an Act, health care authorities; government-funded education systems, such as Memorial and grade schools; and the House of Assembly and statutory offices. The second category are local governments, which the provincial government do not control but which are funded by public money. According to section 2(x), not only is the municipal body covered by *ATIPPA, 2015*, but so is any other corporation or entity created by the municipality for the management of local government assets or responsibilities; in other words, any entity created by the municipality that could be engaged in spending public money is covered by the Act.

[21] The position of Memorial is that it has the right to establish an SIE; that it can provide resources to the SIE, such as space on Memorial's campuses to operate or use of Memorial's resources; that it can incorporate the revenues of the SIE into its statements or revenue and expenditures; and that an SIE is sheltered from public oversight because it is incorporated.

¹ In law, the primary benefit of incorporation is limited liability, which confines liability to the corporation and not beyond. Under certain circumstances, courts in Canada have pierced the corporate veil for a variety of reasons including general unfairness, the interest of justice, and equitable remedies, and in doing so have held employees, directors, or shareholders responsible for the actions of a corporation.

Thus, a public body creates a non-public body that shares the same resources as the public body. Such an interpretation offends the purpose of *ATIPPA, 2015*. It could be argued that this is a legislative oversight that only the legislature can address. But that is not clear. If a board appointed by the Lieutenant-Governor creates a new entity over which it retains significant financial, structural, and policy control, then it is impossible to say that this new entity is wholly distinct from that board controlled by the provincial government. More practically speaking, if the Board of Regents wanted this new entity to change focus, it would have the ability to appoint a board to this new entity that would enact the desired changes of the Board of Regents.

[22] Memorial's assertion that a decision finding that the SIEs are part of Memorial would involve piercing the corporate veil is misplaced. The purpose of this analysis is to determine whether an entity created by a public body is bound to follow legislated rules of transparency and disclosure. For that purpose, consideration of control of the entity and how it is funded is relevant. This analysis is not done for the purpose of attaching a legal liability between the SIEs in question and Memorial. A similar finding was made in 2015 by the Privacy Commissioner of Prince Edward Island in *Re. Department of Economic Development and Tourism (Island Investment Development Inc.)*. In that case, the Department sought to withhold information relating to seven financial intermediaries and argued that requiring such information to be released would involve piercing the corporate veil. The Commissioner disagreed, noting at paragraph 92:

In my view, the concept of "piercing the corporate veil" is a common law principle which may initiate directors', officers' or shareholders' liability where there would ordinarily be none. It has no application to this review.

I agree.

[23] From our investigation and based upon the balance of probabilities, C-Core, Genesis, and CCFI are part of Memorial and subject to *ATIPPA, 2015*. There is significant evidence to support this claim. However, my recommendation in this Report is not based upon this position; instead it is clear that Memorial has custody or control over the records in question regardless of whether the SIEs are part of Memorial, third parties, or their own public bodies. This will be addressed in the next section of this Report.

Custody or Control of the Records

[24] Both sections 5 and 8 of *ATIPPA, 2015* state that the Act applies to all records under the custody of or control of a public body. Neither custody nor control are defined in the Act, however, the concept of control was given extensive consideration by the Supreme Court of Canada in *Canada (Information Commissioner) v. Canada (Minister of National Defence)* 2011, SCC 25. In its decision, the Court defined control as follows:

[48] *As “control” is not a defined term in the Act, it should be given its ordinary and popular meaning. Further, in order to create a meaningful right of access to government information, it should be given a broad and liberal interpretation. Had Parliament intended to restrict the notion of control to the power to dispose or to get rid of the documents in question, it could have done so. It has not. In reaching a finding of whether records are “under the control of a government institution,” courts have considered “ultimate” control as well as “immediate” control, “partial” as well as “full” control, “transient” as well as “lasting control” and “de jure” as well as “de facto” control... In this case, “control” means that a senior official with the government institution (other than the Minister) has some power of direction or command over a document even if it is only on a “partial” basis, a “transient basis” or a “de facto” basis.*

[25] The *National Defence* decision sets out a test for determining whether a public body has control over a record. The test is as follows:

[50] *in the context of these cases where the record requested is not in the physical possession of a government institution, the record will nonetheless be under its control if two questions are answered in the affirmative: (1) Do the contents of the document relate to a departmental matter? (2) Could the government institution reasonably expect to obtain a copy of the document upon request?*

[55] *Step one of the test acts as a useful screening device. It asks whether the record relates to a departmental matter. If it does not, that indeed ends the inquiry. The Commissioner agrees that the Access to Information Act is not intended to capture non-departmental matters in the possession of Ministers of the Crown. If the record requested relates to a departmental matter, the inquiry into control continues.*

[26] The information sought by the Complainant is as follows:

- Records disclosing bonuses or special payments made to C-Core executives and management;

- Records disclosing bonuses and special payments made to Genesis executives and incentives paid to management;
- Records disclosing vehicle allowances paid to Genesis executives and management; and
- Records disclosing vehicle allowances paid to executives and management of CCFI.

All of this information is financial in nature.

[27] Section 38 of the *Memorial University Act* requires that Memorial conduct an audit of the university's accounts once a year. As Memorial makes clear in its audited statements, its audit includes the expenditures and revenues of its separately incorporated entities. These expenditures and revenues are not listed separately, but are instead subsumed within the figures set forth within the financial statements.

[28] With respect to question one of the custody or control test, the information being sought by the Complainant certainly relates to a matter of importance to Memorial; in fact, it relates to a statutory obligation. The information requested by the Complainant directly impacts the result of the audit that Memorial is obligated to perform. What is being sought are expenditures made by three of Memorial's SIEs and these expenditures would have to be disclosed to Memorial in order for its audit to be accurate.

[29] As for the second part of the test, it is certainly reasonable for Memorial to be expected to obtain a copy of the record upon request. In fact, Memorial is statutorily required to be able to obtain a copy of a financial record, as section 38(2) of the *Memorial University Act* requires that the university comply with section 19(3) of the *Auditor General's Act*. This section states that the Auditor General is the auditor for all Crown and Crown-controlled corporations and that the Auditor General has access to all the information that went into an audit of these corporations. If the Auditor General can access this information upon request, then Memorial, by statutory necessity, has to either have custody, or can request copies of, the financial information sought by the Complainant.

[30] In addition to the two-part test, a non-exhaustive list of factors in Ontario IPC Order MO-275 for custody and control has been accepted in other jurisdictions. While not all circumstances considered by the Ontario decision are pertinent to this Report, numerous are and provide further evidence of Memorial's custody or control of the records sought by the complainant.

1. *Was the record created by an officer or employee of the institution?*

- This is not clear and depends on how the employees of the SIEs are classified and what resources of Memorial that the SIEs utilize. For example, some SIEs do utilize Memorial's Human Resources Department. This office does not know if the SIEs utilize Memorial's financial or accounting resources.

2. *What use did the creator intend to make of the record?*

- The creators of the record were recording the expenditures incurred by C-Core, Genesis, and CCFI, as is legally required. The creators should also know that such a document would inform the overall financial statements of Memorial because those financial statements incorporate the revenue and expenditures of the SIEs.

3. *Does the institution have a statutory power or duty to carry out the activity that resulted in the creation of the record?*

- The activity in question is not the payment of bonuses or vehicle expenses. The activity is the proper accounting of expenditures. As noted above, Memorial has a statutory duty to account for its expenditures, which includes those incurred by its separately incorporated entities.

4. *Is the activity in question a "core", "central" or "basic" function of the institution?*

- Yes. Managing Memorial's finances are a central component of the University – how it functions, its capacity, how it is viewed by the people of the province, etc. The provincial government and the public, whose taxes fund Memorial's

operations, expect the university to be accurate in its accounting of revenues and expenditures.

5. *Does the content of the record relate to the institution's mandate and functions?*

- Yes, Memorial has a mandate to manage and account for all its expenditures.

6. *Does the institution have physical possession of the record, either because it has been voluntarily provided by the creator or pursuant to a mandatory statutory or employment requirement?*

- Due to notes included in the Auditor General's Report of the university, it is likely that Memorial is in possession of the records sought by the Complainant. On page 31 of the report, table 6 covers "Entities Bonuses and Incentives Paid to Management Employees for the Period April 2019 to December 2022." This table only includes C-Core and Genesis. The number of management employees is redacted in the version of the report released to the public, as is the average bonus payment to management employees and the total payments. This information specifically relates to two of the four access requests addressed in this Report. At the bottom of the table, the source for the information that is redacted is Memorial. Similarly, tables listed on pages 27 and 28 of the report detail the management positions, bonuses, and incentive payments made by C-Core and Genesis. Again, the source of this information is listed as Memorial. There is no similar table setting out car allowances, which is the subject of the two other access requests covered in this Report, though the matter is addressed on page 32 of the report where specific car allowance amounts are listed though redacted. A review of the source for all information contained in the report shows that Genesis, C-Core, and CCFI provided no information directly to the Auditor General. Instead all financial information used in the report appears to have been sourced directly from Memorial. Therefore, it is likely that Memorial is also in possession of the records that disclose car allowances.

7. *If the institution does have possession of the record, is it more than “bare possession”? “Bare possession” means: does Memorial have ownership of the record without the right to use it for its benefit?*

- “Bare possession” means: does Memorial have ownership of the record without the right to use it for its benefit? Memorial does have more than “bare possession” of the records. It has sufficient possession to provide them to its auditor and the Auditor General to meet its legislative requirements.

8. *If the institution does not have possession of the record, is it being held by an officer or employee of the institution for the purposes of his or her duties as an officer or employee?*

- On a balance of probabilities, it is likely that Memorial has possession of the records.

9. *Does the institution have a right to possession of the record?*

- Yes, it has a statutory right.

10. *Does the institution have the authority to regulate the record’s content, use and disposal?*

- Yes. Since the financials of the three SIEs are consolidated into Memorial’s financial statements, the university would presumably regulate how the record is created, used, and maintained.

11. *Are there any limits on the use to which the institution may put the record, what are those limits, and why do they apply to the record?*

- Only those that may be imposed by legislation or the internal bylaws and policies of Memorial.

12. *To what extent has the institution relied upon the record?*

- The institution heavily relies upon the records in question as they are needed to establish accurate annual financial statements, which is legislatively required.

13. *How closely is the record integrated with other records held by the institution?*

- The records are integrated with all other financial records that are used to create Memorial's annual financial statement.

[31] There is no doubt that Memorial has custody or control over the financial records sought by the Complainant. Memorial's possession or right to access such records must exist if it is to be properly audited. While an audit does not examine every financial record, it does require access to every financial record so that the general figures and assumptions of the auditor can be confirmed.

[32] In 2023, this Office released two reports on Memorial's SIEs that contained recommendations not consistent with those set out in this Report. In Report A-2023-020, which involved Memorial's Child Care Centre, and Report A-2023-029, which involved the Memorial University Recreation Complex Inc., this Office found that the records requested – about childcare services and swimming pool chemicals, respectively - were not “departmental matters” of Memorial and were therefore not within the custody or control of Memorial. These Reports were issued before the recent performance audit of Memorial conducted by the Auditor General shone light on the fact that Memorial's financial records are consolidated with those of the SIEs. This revealed that: even if the SIEs are separate entities rather than part of the university, Memorial has financial control of them; at a minimum, it must have the authority to obtain these records for the purposes of audit; and it is likely that Memorial presently has custody of these records, having previously obtained them for audit and other purposes.

[33] In summary, by failing to perform a search for the records requested by the Complainant, Memorial did not meet its duty to assist pursuant to section 13(1) of *ATIPPA, 2015*. Such a search must be conducted regardless of the position of Memorial on custody or control over the documents. Further, as the above analysis of the legal standard of custody or control in

access to information cases makes clear, on a balance of probabilities Memorial does have custody or control over the records in question. Whether further exceptions to access apply to these records will have to be assessed once the search is concluded and the records in question are examined further.

RECOMMENDATIONS

[34] Under the authority of section 47 of *ATIPPA, 2015*, I recommend that: Memorial University of Newfoundland conduct a reasonable search for the records described in the four access to information requests that are addressed in this Report; if necessary, request any responsive records from C-Core, Genesis Group Inc., and the Canadian Centre for Fisheries Innovation; and that Memorial provide its final response to these requests to the Complainant within 30 business days of receipt of this Report.

[35] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of Memorial University must give written notice of his or her decision with respect to these recommendations to the Commissioner and any person who was sent a copy of this Report within 10 business days of receiving this Report.

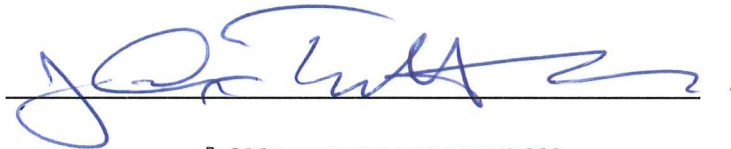
[36] Dated at St. John's, in the Province of Newfoundland and Labrador, this 8th day of February 2024.



Michael Harvey
Information and Privacy Commissioner
Newfoundland and Labrador

TAB G

This is Exhibit “G” referred to in the Affidavit
of **Karla Connolly**, sworn to in St. John’s,
Newfoundland and Labrador, under my
direction, this 30th day of August 2024.



J. ALEXANDER TEMPLETON
A Barrister of the Supreme
Court of Newfoundland & Labrador



Cabot Place, 1100 – 100 New Gower Street, P.O. Box 5038
St. John's NL A1C 5V3 Canada tel: 709.722.4270 fax: 709.722.4565 stewartmckelvey.com

File Reference: SM12031.25

Koren A. Thomson
Direct Dial: 709.570.8848
kthomson@stewartmckelvey.com

August 11, 2023

With Prejudice
Via Electronic Mail

Denise Hanrahan, Auditor General
7 Pippy Place
St. John's, NL A1B 3X2

Dear Madame Auditor General:

Re: Cease and Desist

We are counsel for Genesis Group Inc. We write in relation to a draft audit report regarding Memorial University of Newfoundland (“Memorial”) and to formally request removal of information pertaining to Genesis and its employees. Inclusion of Genesis within your audit of Memorial exceeds your jurisdiction and, if published, would violate the privacy of Genesis employees.

According to Order in Council OC2022-088, you have been authorized to conduct an audit of the operations and spending at **Memorial** under the authority of section 22 of the *Auditor General Act, 2021*, SNL 2021, c A-22.1. This Order does not extend authority to conduct an audit of Genesis, or to include an audit of Genesis, within your audit of Memorial.

Genesis is a separate corporation registered under the *Corporations Act*, RSNL 1990, c C-36. It is not governed by the *Memorial University Act*, RSNL 1990, c M-7. It does not receive funding from Memorial, nor does Memorial dictate how Genesis spends its funds. Memorial does not manage Genesis, or hire its employees. All persons employed by Genesis are Genesis employees. To put it bluntly, it is separate legal entity.

As a result of its independent legal status, Genesis is not subject to legislation governing public bodies in Newfoundland and Labrador. For instance, incorporated entities affiliated with Memorial are not subject to the *Access to Information and Protection of Privacy Act, 2015*, RSNL 2015, c A-1.2 (See Information and Privacy Commissioner Reports: Report A-2023-029; Report A-2023-020). Nor is Genesis subject to the *Public Sector Compensation Transparency Act*, SNL 2016, c P-41.02. Deputy Minister and Deputy AG Stanley, as he then was, confirmed that separately incorporated entities were not intended to be captured by that legislation during workgroup discussions on the implementation of the Act. As a result, Genesis is not designated as a public body under the *Public Sector Compensation Transparency Regulations*, OC 2016-277.

As a private corporation not subject to the foregoing public body legislation, Genesis has never publicly disclosed information pertaining to its employees’ remuneration. Nor could it be compelled to do so under those statutes. As a result, it does not have public disclosure notices in its employment contracts, and it is the expectation of its employees that their remuneration information remain confidential.

4157-0843-9113

Denise Hanrahan
August 11, 2023
Page 2

Genesis voluntarily shared its information with you on a confidential basis, in order to assist with your audit of *Memorial's operations*. It was never provided to enable an audit of Genesis.

For greater certainty, Genesis did not, and does not, consent to the use of its confidential information in your audit report. Nor do our employees consent to the disclosure of their personal information, being information pertaining to their remuneration, in your audit report. Publishing your audit report with this information included will constitute a violation of privacy under the ATIPPA and the *Privacy Act*, RSNL 1990, c P-22, and is in excess of the jurisdiction provided to you by the governing Order in Council.

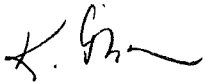
In the circumstances, we write to respectfully request that you amend your report to exclude all references to Genesis' confidential information, in particular, references to the personal information of its employees.

We ask that you confirm your intentions in this regard as soon as possible and in any event, at least ten business days in advance of publishing the report, such that we can consider further legal action on behalf of Genesis and its employees if necessary.

Please govern yourself accordingly.

Respectfully yours,

Stewart McKelvey

A handwritten signature in black ink, appearing to read 'S. McKelvey', with a stylized flourish at the end.

Koren A. Thomson
Partner

KAT

TAB H

This is Exhibit “H” referred to in the Affidavit
of **Karla Connolly**, sworn to in St. John’s,
Newfoundland and Labrador, under my
direction, this 30th day of August 2024.



J. ALEXANDER TEMPLETON
A Barrister of the Supreme
Court of Newfoundland & Labrador



Cabot Place, 1100 – 100 New Gower Street, P.O. Box 5038
St. John's NL A1C 5V3 Canada tel: 709.722.4270 fax: 709.722.4565 stewartmckelvey.com

File Reference: SM12031.25

Maureen E. Ryan, K.C.
Direct Dial: 709.570.8880
mryan@stewartmckelvey.com

October 20, 2023

Via Electronic Mail

Lieutenant Governor in Council
P.O. Box 8700
9th floor, East Block
Confederation Building

**Attention: Krista Quinlan, Clerk of the Executive Council and Cabinet Secretariat
Patricia Hearn, Deputy Clerk of the Executive Council and Associate
Secretary to Cabinet**

Dear Ms. Quinlan and Ms. Hearn:

Re: Audit of Memorial University of Newfoundland

We write to you in your capacity as advisors in the Executive Council to the Lieutenant Governor in Council.

We are counsel for Genesis Group Inc. ("Genesis"), and are writing to express serious concerns in relation to the treatment of Genesis in an Audit Report of the Auditor General of Newfoundland and Labrador (the "AG"), which we understand was delivered to the Lieutenant Governor in Council yesterday, October 19, 2023. Although we have not seen a copy of the Audit Report as delivered, we are concerned that the scope of the Audit Report is in excess of the AG's jurisdiction, improperly includes personal information of identifiable Genesis employees, and unjustifiably adopts a tenor that serves to challenge legislative policy choices already made by the Government of Newfoundland and Labrador to the detriment of our client, and this Province.

The Scope of the Audit Report is in Excess of the AG's Jurisdiction

The Audit Report was prepared pursuant to an Order in Council OC2022-088 issued under section 22 of the *Auditor General Act, 2021*, SNL 2021, c A-22.1. That Order requested that the AG, "perform an audit of the operations and spending of Memorial University of Newfoundland." Genesis is not Memorial University of Newfoundland. We expect that the AG has nonetheless included Genesis within the scope of the Audit Report, going beyond the intended breadth of the Order, based upon a draft section shared with our client.

Genesis is a separately incorporated entity (an "SIE"), whose sole shareholder is Memorial University. As a result, its financial statements are consolidated into those of Memorial University in accordance with the governing accounting practices.

However, Genesis is a distinct corporation registered under the *Corporations Act*, RSNL 1990, c C-36. It has its own legal structure and governance framework which includes an independent board of directors. It is not governed by the University's founding statute, the *Memorial University*

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Act, RSNL 1990, c M-7. While Genesis and Memorial University may exchange in-kind services, Genesis does not receive monetary funding from Memorial University, nor does Memorial University dictate how Genesis spends its funds. Memorial University does not manage Genesis, nor does it hire Genesis' employees. All persons employed by Genesis are Genesis employees. In short, Genesis operates separately from Memorial University.

It is within this context that Genesis, at Memorial University's request, voluntarily submitted information to the AG on a confidential basis in order to help facilitate the audit of the University. The confidential nature of its information shared and the fact that the AG did not have the jurisdiction to audit Genesis or include the personal information of Genesis' employees within the Audit Report, was reiterated to the AG throughout the audit process. Despite Genesis' cooperation, and its repeated position, we are concerned that the AG may have included Genesis' confidential information in the Audit Report, in particular the personal information of Genesis employees. In so doing, the AG will have unilaterally pierced the corporate veil and acted in excess of the authority granted to her. This is an action which has serious implications for our client.

The Audit Report Violates the Privacy Rights of Genesis' Employees

Despite Genesis' objections, we expect that the AG has included the remuneration of identifiable Genesis employees within the Audit Report. Genesis employees are not public body employees, nor did they provide their consent for the AG's use and disclosure of their personal information within the Audit Report. It is now incumbent on Government to protect that personal information from disclosure.

Genesis expressed its concerns about its employees' privacy to the AG upon receipt of a draft section of the Audit Report. In response, the AG indicated that she is not bound by the *Access to Information and Protection of Privacy Act, 2015*, SNL 2015, c A-1.2 (the "ATIPPA") and was entitled to collect the information. With respect, whether the AG is bound by the ATIPPA is irrelevant. The Canadian Standards Association Model Privacy Code for Protection of Personal Information was developed with input from businesses, government, consumers and other privacy stakeholders years ago. It served as a foundation for the introduction of privacy laws in Canada and its principles inform common law rights to privacy. It recognizes as a foundational principle, that individual consent is required for the disclosure of personal information, with limited exceptions which do not apply in these circumstances. None of Genesis' employees consented to the disclosure of their personal information in the Audit Report. The AG was aware that Genesis provided the information in confidence, with the expectation that it be held in confidence. It is entirely inappropriate that their personal information now be included within a document that may become public.

We expect that Government is now in the unenviable position of having within its custody and control, an Audit Report which unnecessarily includes the personal information of individuals who fall outside the scope of the Audit. In your custody and control, the Audit Report *is* subject to the ATIPPA and the protections that it affords, specifically the protection from unauthorized disclosure under section 64(1) of the ATIPPA.

Section 68(1) of the ATIPPA enumerates those circumstances in which Government may disclose personal information in its custody and control – none of which apply to authorize disclosure of Genesis' remuneration information. To be clear, Genesis' remuneration information was provided

to the AG confidentially by Genesis. We are advised that Genesis' remuneration information was not reflected in the consolidated financial statements of Memorial University.

In the circumstances, the disclosure of Genesis' remuneration information by Government would be in contravention of section 68(1) of the ATIPPA, and section 40(1) of the ATIPPA, the latter of which requires your administration to refuse to disclose personal information where the disclosure would constitute an unreasonable invasion of personal privacy.

The application of section 40(1), involves five steps:

- (a) determination of whether the information is personal information;
- (b) determination of whether the personal information falls within section 40(2), and if yes, the analysis ends and it is to be released;
- (c) whether the personal information is captured by section 40(4), and if yes, section 40(5) is engaged;
- (d) application of the balancing factors in section 40(5) to determine whether release would be an unreasonable invasion of privacy; and lastly,
- (e) if release is an unreasonable invasion of privacy, it is necessary to consider whether the public interest override in section 9 of the ATIPPA nonetheless warrants its disclosure.

Consideration of this analysis indicates that it would clearly be an unreasonable invasion of Genesis' employees' personal privacy to make the Audit Report public without redacting the personal information in question.

The remuneration information of Genesis' employees constitutes personal information under section 2 of the ATIPPA. While we anticipate that names of the employees are not listed in the Audit Report, comparison of the job positions outlined in the draft received by our client, with the limited staffing at Genesis, makes identification of the individuals in question simple and probable.

The information is not captured by the circumstances which deem disclosure not to be an unreasonable invasion of privacy in section 40(2) of the ATIPPA. For greater certainty, disclosure of the information is not disclosure about a third party's position as "an officer, employee or member of a public body" (s 40(2)(f)). The Newfoundland and Labrador Court of Appeal's interpretation of "employee" under the ATIPPA confirms that the term is limited to traditional common law employees – those who are engaged under services of contract; and, to a more limited extent, independent contractors who are "cogs" in the organizational structure in relation to the services they perform in carrying out a mandate of a public body (*College of the North Atlantic v McBreairty*, 2020 NLCA 19). Genesis' employees are not employees of Memorial University; nor are they independent contractors who are carrying out Memorial University's mandate. To be clear, section 40(2)(f) does not authorize the disclosure of the personal information of Genesis' employees.

To the contrary, the disclosure of Genesis' employees' personal information is presumed to be an unreasonable invasion of third party privacy under section 40(4)(c), as the information relates to their employment history. Furthermore, consideration of the factors under section 40(5) weigh

against disclosure. Releasing the personal information will not further the objective of subjecting the Province or Memorial University's activities to public scrutiny under section 40(5)(a). Rather, the relevant circumstances indicate that this information was provided in confidence (s 40(5)(f)) and that Genesis employees will be exposed unfairly to financial or other harm in the event that it is disclosed (s 40(5)(e)).

While there is a public interest in audits, the public interest override does not justify disclosure of information which ought not to have been included in the Audit Report in the first place. Section 40(1) exists to protect personal privacy, which is an essential component of individual freedom and a quasi-constitutional right. The Supreme Court of Canada stated:

Grounded in man's physical and moral autonomy, privacy is essential for the well-being of the individual. For this reason alone, it is worthy of constitutional protection, but it also has profound significance for the public order. The restraints imposed on government to pry into the lives of the citizen go to the essence of a democratic state (*R v Dyment*, 2 SCR 417).

There is no public interest in prying into the private lives of non-public body employees, which would warrant overriding the protection afforded by section 40(1). In the unfortunate circumstances surrounding the creation of the Audit Report, the obligation falls to Government to protect the information from disclosure. Accordingly, Genesis urges Government to redact the information or protect it through other means, when tabling, releasing / publishing or otherwise discussing the Audit Report. In our view, it would constitute a violation of Government's privacy obligations to do otherwise.

The Audit Report Improperly Suggests Genesis Should be Subject to Public Oversight

Legislative policy to-date indicates that Government has already turned its mind to the significant distinction between Genesis and the other SIEs, from public bodies such as Memorial University. This is reflected in the explicit decision not to include Genesis within the schedule of bodies subject to the *Public Sector Compensation Transparency Act*, SNL 2016, c P-41.02, a decision that the AG has unilaterally challenged by including Genesis' remuneration information in the Audit Report. The Government's recognition of Genesis as a corporation independent from Memorial has also been acknowledged by the exclusion of SIE employees from Memorial University's pension plan under section 3(c) of *Memorial University Pensions Act*, RSNL 1990, c M-8 (albeit with limited grand-fathering in of certain employees as of the date of enactment). In our view, the policy choice to recognize the distinction is well-founded, and ought to be respected going forward, notwithstanding that commentary from the AG in the Audit Report may suggest otherwise.

Our client has advised us that since its inception over 25 years ago, Genesis has grown into a globally-recognized innovation hub with national and international partners who have committed to supporting its mission to help build amazing technology companies in Newfoundland and Labrador. Genesis secures more than 50% of its annual operating revenues from private sources. And Genesis companies have secured almost a billion dollars in private capital, have created more than 2,500 jobs and bring in more than \$650M annually in recurring revenues. Genesis' success, and the resulting injection of capital and jobs into the Province, are facilitated in part by its status as a private corporation.

It is Genesis' position that recognition of Genesis as a public body, either as a result of its relationship with Memorial, or directly through legislative amendment, would undermine Genesis' effectiveness and profitability. Genesis acknowledges that as one of its supporters, Memorial has helped to facilitate Genesis' growth, and foster innovation within the Province. However, as indicated above, Genesis operates separately from Memorial University and it enjoys assurances through its agreement with Memorial that it may take steps to terminate its relationship with Memorial if circumstances require. Formal recognition of its relationship with Memorial via statute, would hinder, if not remove entirely, that assurance.

As a private corporation, Genesis has the ability to govern itself as a commercial enterprise, uninhibited by the statutory obligations imposed upon public bodies. This includes the ability to negotiate freely with third parties and to enter into contracts with innovation enterprises in a manner which promotes economic growth for the Province, while simultaneously protecting their proprietary and other interests from publication. From Genesis' perspective, imposing public body statutory obligations would very much impede the work that it does.

Genesis is a small operation, with 15 full time employees. Given its small structure, Genesis advises that it would be an insurmountable task for Genesis to focus on compliance with public body statutes while maintaining the level of service that attracts innovation and job growth in Newfoundland and Labrador. In this regard, it would consume Genesis' time and detrimentally detract from maintaining its business, to consider and enact changes required to comply with, for instance, the following legislation: the ATIPPA; the *Management of Information Act*, SNL 2005, c M-1.01; the *Public Bodies Reporting Act*, SNL 2018, c P-35.2; *Public Procurement Act*, SNL 2016, c P-41.001; *Public Sector Compensation Transparency Act*, SNL 2016, c P-41.02; and, the *Transparency and Accountability Act*, SNL 2004, c T-8.1.

More importantly, it is Genesis' position that the reporting requirements and transparency obligations inherent in most of those statutes, would make it impossible for Genesis to maintain its services. For example, disclosure of Genesis' financial information can hinder its competitive advantage and its ability to win contracts with new innovation enterprises. Similarly, whereas Genesis competes with private commercial enterprises in the labour market (as opposed to Government), disclosure of its salaries would negatively impact its competitiveness in the labour market. Most harmful, would be the ability of members of the public and third party competitors to seek access to the proprietary and technologically sensitive information that third party innovation enterprises entrust to Genesis to help grow their ideas, and their business, through the ATIPPA or public body reports. The protections for exceptions to disclosure under the ATIPPA are insufficient to guard against the harm that Genesis would suffer should it be included within such transparency legislation. It is a very real risk that third parties will not engage with Genesis to develop their companies and products, and that our client's ability to promote innovation and job growth within the Province would be adversely impacted, in the event that Government seeks to exercise control over Genesis by characterizing or declaring it to be a public body.

As a result of the foregoing, on behalf of Genesis, we request that the Lieutenant Governor in Council give due consideration to the consequences of criticism of the independence of Genesis within the Audit Report, and in particular how legislative changes could interrupt Genesis' work and the benefits it brings to the Province. We also urge the Lieutenant Governor in Council to give due consideration to the privacy interests of the Genesis' employees whose remuneration is, we believe unjustifiably, referenced in the Audit Report and to take steps to protect such information from public disclosure.

Krista Quinlan & Patricia Hearn
October 20, 2023
Page 6

We trust this in order.

Yours truly,

Stewart McKelvey

A handwritten signature in black ink, consisting of a stylized 'M' followed by a horizontal line extending to the right.

Maureen E. Ryan, K.C.*
Partner

MER

*Law Corporation

TAB I

This is Exhibit "I" referred to in the Affidavit
of **Karla Connolly**, sworn to in St. John's,
Newfoundland and Labrador, under my
direction, this 30th day of August 2024.



J. ALEXANDER TEMPLETON
A Barrister of the Supreme
Court of Newfoundland & Labrador

Memorial University

Independent Auditor's Report



October 2023

OFFICE OF THE AUDITOR GENERAL
NEWFOUNDLAND AND LABRADOR

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Audit Overview



OFFICE OF THE AUDITOR GENERAL
NEWFOUNDLAND AND LABRADOR



Objectives

To satisfy the request of government regarding Memorial's spending and operations, specifically:

- to determine whether Memorial University's executive and management compensation was comparable to the provincial government and other universities of a similar nature;
- to determine whether Memorial University managed operating expenses in a manner that ensured the best use of public money; and
- to determine whether Memorial University had effective oversight processes to manage operations.



Audit Period:

April 2019 to
December 2022



Conclusions

As part of the public sector, Memorial has a responsibility to ensure the best possible use of its public money across its entire operation. Effective decision-making and oversight by the Board of Regents requires detailed, comprehensive, and complete information and analysis. The University's executive leadership requires that same level of information and analysis in order to implement the direction of the Board, fulfill effective oversight processes, and manage this diverse and complex organization. Memorial's ability to fulfill these responsibilities is impacted by the various audit findings in this report.

We found weaknesses in administrative structures that reduced Memorial's oversight of operations; gaps in policy and processes; and inadequate oversight of its entities. Memorial did not clearly define roles, responsibilities, and accountabilities, resulting in a decentralized structure where spending and hiring autonomy have contributed to higher administrative costs as compared to other universities. Memorial did not effectively monitor its financial information, activities from delegated authorities, compensation, and expenses in a meaningful way. Compensation costs were Memorial's largest operating expense. We found that its salaries and benefits continue to be higher than the provincial public service for the same classification of work. Almost one-third of the University's expenses are the responsibility of the President and not routinely reviewed by the Board. The Board of Regents does not have a decision-making and directing role in its relationship with the University's five entities, even though Memorial acknowledges it controls them. Recommendations for improved efficiency identified through internal reviews and its internal audit function have not been implemented.



Recommendations

1. Memorial University should evaluate its oversight functions, across its entire operation, to ensure alignment of policies, appropriate management of the organization, and the best possible use of public resources.
2. Memorial University should ensure that the Board of Regents, executive and administrative management have the necessary financial information and analysis, in a sufficiently detailed and timely manner, to facilitate appropriate oversight of the operations of the University.
3. Memorial University should ensure that all executive and administrative management position roles and responsibilities are clearly defined, documented and communicated, with appropriate performance measures in place for evaluation.
4. Memorial University should evaluate its administrative structure for potential operational efficiencies, with consideration given to the combination or realignment of administrative roles or activities to ensure effective risk management and the best use of public resources.
5. Memorial University should ensure that all University policies and procedures are complete and regularly reviewed, with updates approved and implemented in a timely manner.
6. Memorial University should evaluate its compensation policies and practices, across its entire operation, including consideration of alignment with government classification, pay scales, and benefits policies, to ensure the best possible use of public resources.
7. Memorial University should ensure all University operating expenses are reasonable and appropriately monitored, to ensure the best possible use of public resources.
8. Memorial University should ensure conflict of interest and fraud risk management processes are in place and working effectively so that transactions are free of perceived or real conflicts and any potential error or fraud is managed effectively.



After reading this report, you may want to ask the following questions of government:

1. How will government ensure that Memorial acts on the recommendations made in this report?
2. Why do Memorial's entities appear to have issues with being audited by the Auditor General?

What We Found Compensation

- Memorial's compensation policies were either non-existent or outdated.
- Memorial's Board of Regents did not approve compensation policies for its five entities, nor did Memorial include compensation from its entities in its annual compensation disclosures and none of these entities published their own compensation disclosures.
- Memorial did not have position descriptions for 97% (35 of 36) of our samples.
- Memorial and its entities did not use job evaluation methodology for some positions.
- Memorial paid significantly higher total compensation as compared to government for 97% (35 of 36) of the executive and management positions examined. Memorial's entities also paid higher total compensation as compared to government for 85% (22 of 26) of the executive and management positions examined.
- While Memorial had the Board of Regents' approved executive salary scales in place during our audit, prior to May 2022 there were five incumbent staff in executive positions with salaries above those scales. The May 2022 pay scale change increased the top of the scale beyond prior capped levels.
- The new Memorial executive salary scale included the discretion to increase salaries up to 10% above the new scale.
- With respect to Memorial's entities, we found that the majority of executive positions did not follow predetermined salary progression like the provincial government.
- C-CORE paid its executives ██████████ in bonuses and one-time special payments during our audit period.
- Genesis paid its executives ██████████ in bonuses and incentives during our audit period.
- Memorial and its entities paid higher salaries than government for 90% of (43 of 48) management positions.
- We found seven instances where positions were not placed on one of the existing pay scales and were otherwise paid outside a scale or paid based on a contracted rate.
- There were no compensation reviews of management positions at C-CORE, The Works, Campus Childcare, and the Centre for Fisheries Innovation during our scope period.
- Memorial's policy for market differentials was pensionable.
- From 2019 to 2022, C-CORE's Board of Directors approved bonuses worth ██████████ for ██████████ management employees.
- From 2019 to 2022, Genesis' President and Chief Executive Officer approved incentives worth ██████████ for ██████████ management employees.
- We found significant differences between the benefits package that Memorial and its entities offered employees and the benefits package offered by government.
- Memorial and its entities contributed significantly more to health and travel, basic life, dependent life and basic accidental death and dismemberment insurance plan premiums than government.
- Memorial and its entities contributed to dental insurance plans, while government does not pay any dental plan premiums for its employees.
- Higher employer contribution percentages resulted in additional compensation costs of approximately \$16.4 million during our scope period for all active employees, approximately \$4.4 million annually.
- Memorial, Genesis, and the Centre for Fisheries Innovation provided vehicle allowances to some executive and management staff. Some of Memorial's management positions were also provided with mileage reimbursements in addition to their car allowances.
- Memorial's executive leave entitlement potentially totalled up to 95 paid leave days annually (37% of total working days), and combined, Memorial's management leave entitlement potentially totalled up to an annual 95 paid leave days.
- The pension plan for Memorial and The Works employees continues to be guaranteed by government and is more generous.
- Memorial and The Works co-pay retiree premiums for dental benefits at 40-50%. The provision of dental post-employment benefits cost Memorial \$2.8 million during our audit scope period - approximately \$0.7 million annually.
- Employee service gifts vary in cost and a total value of \$50,673 was given during our audit scope period.
- Memorial paid higher base salaries as compared to the National University Sector Market for all seven executive positions.
- For the 29 management positions examined, Memorial paid base salaries that averaged \$130,043, higher than the overall average of \$118,512 for the National University Sector Benchmark.

Audit Overview



OFFICE OF THE AUDITOR GENERAL
NEWFOUNDLAND AND LABRADOR

Operating Expenses

- Expense samples were generally within reasonable policy spending limits for 90% (110 of 122 samples) - 10% (12 of 122) were not.
- There was no policy for larger university-hosted events.
- Three of five hosting samples (60%) did not abide by policy.
- We found five hosting samples (29%) would be considered unreasonable or excessive compared to what would be permitted in the public service.
- In 2019, Memorial hosted a number of activities from July to December to celebrate the 50th anniversary of the Harlow Campus, costing more than \$127,000.
- In October 2022, an Employee Service Award Dinner for employees and their guests was held at a cost of \$6,936, including alcohol.
- In November 2022, Memorial hosted a three-day Arctic Forum for 40 attendees at a net cost of \$65,709.
- Special hosting allowance expenses for deans and directors, such as retirement functions, Christmas parties, or dinners attended solely by Memorial staff, totalled \$49,239 from April 1, 2019, to December 31, 2022.
- The former President and Vice-Chancellor organized a meeting with the vice-presidents at Signal Hill campus followed by a dinner for 10 people at their home. The cost for the event was \$1,452, including alcohol – significantly more than the allowable \$250 limit.
- Memorial used search firms to recruit 15 management and executive positions at a total cost of \$1.1 million. We also found that five of the 15 staff (33%) recruited through this method are no longer employed by the University.
- We noted a total cost of \$65,000 in fees paid for a consultant that did not submit a final report, as required in their contract. This individual was a member of the Harlow Board of Directors when hired as a consultant. University officials confirmed that no disclosure was made to the Conflict of Interest Committee about this consultant/board member.
- Memorial does not have a policy to guide donations and sponsorships. However, we found that the University executive contributed more than \$140,000 in donations and sponsorships to outside organizations during our audit scope period.
- We found two of 18 samples of gifts and other executive expenses (11%) that may be considered unreasonable or excessive. We found one sample of \$1,792 for custom-made chocolates purchased in December 2020 by the President's Office and used as gifts.
- We found that \$2,700 of \$16,828 (16%) for new furniture was for a desk and chair for the former President and Vice-Chancellor's home.
- Memorial's guidance allowed deviations with authorized approval, which was used excessively to approve spending beyond the thresholds outlined in the policy.
- 27 of the 38 relocation expenses (71%) exceeded policy spending limits for relocation expenses, such as the weight of shipped household items, requiring a deviation from policy to be approved.
- We found seven travel expenses (10%) of concern: five for the President that we question the appropriateness and two for other executives and senior management that may be considered excessive in a public sector context.
- In July and August of 2020, the former President incurred \$9,880 for a province-wide 24-day tour to visit various University facilities and personnel by car. Costs reimbursed for this travel included \$652 for car maintenance items, specifically car tire replacement and an oil change, even though the former President received a monthly car allowance of \$1,000 which included car maintenance. Memorial's travel policy does not allow for the reimbursement of maintenance costs.
- We found one trip in August 2021, in which the former President paid \$598 for a limousine service, stating there was no car rental available.
- The former President was a member of 15 boards, of which 11 were at the discretion of that President, and the former President did not take personal leave to attend six of these board meetings.
- We found that \$2 million was paid for a license fee for a management software package was not being used appropriately. A September 2021 internal audit concluded the software was inefficient and underutilized and recommended it be renewed for one year for evaluation. However, Memorial renewed the software in December 2021 for an additional five years at a cost of \$377,356 per year.

Oversight

- Memorial's policies and procedures meant to guide monitoring operating expenses were not comprehensive and did not require unit head review.
- The level of expenditure review at Memorial did not compare to the level of review within government.
- Memorial's policies and procedures were not followed effectively. Therefore, we could not confirm that appropriate oversight of expenses occurred.
- While the University created a delegation of authority policy in 2021, no registry of delegated authority or procedures on how authority was delegated had been developed.
- While Memorial had extensive policies and procedures to manage its operations, these had not been reviewed for updating as required.
- Memorial did not require Board of Regents or executive approval for its entities' policies and procedures.
- Memorial's entities' boards were responsible for approving compensation decisions within their respective entities without any requirement for approval from Memorial's Board of Regents.
- Memorial officials could not provide a policy for monitoring of the non-operating funds, nor could they advise whom amongst the vice-presidents had responsibility for monitoring or oversight of these funds. The Chair of the Board of Regents advised that oversight of Memorial's \$190 million non-operating funds was the responsibility of the President.
- There were only five financial updates provided to the Board of Regents over 45 months. The financial updates, which were used for reporting operating expenses to the Board of Regents, were highly summarized.
- There was no comparison of the year's budget to actual results presented to the Board of Regents at the end of any of the fiscal years included in our scope period.
- Unspent budgets are carried forward by individual units for potential future use.
- We could not assess the effectiveness of expense oversight due to a lack of documentation and inconsistent practice.
- There were no financial updates on non-operating funds (ancillary, plant, research, special purpose and trust) provided to the executive or Board of Regents. Further, we found that these funds were not part of the Board of Regents' budgeting process.
- There was no evidence that the Board of Regents received any updates on the financial activities of the Harlow campus from the President during our audit period.
- Annual reports and individual financial statements of Memorial's entities were not made public.
- While the Board of Regents was responsible for approving the appointment of directors to the boards of four of the University's entities, it was not responsible for making appointments to the Board of the University's fifth entity, C-CORE, as appointments were made by Memorial's President.
- Because of Memorial's decentralized nature, vice-presidents have the autonomy to manage their operations exclusively. We found that the vice-presidents acted and spent without consulting other vice-presidents in areas that overlap.
- We could not determine the exact number of staff performing specific functions within the University.
- Memorial's administrative structure allowed duplication of senior management positions because vice-presidents hired their own personnel to perform similar or identical services.
- Recommendations made by the Office of Internal Audit between February 2020 and June 2021 remain outstanding.
- In 2019 the University's Office of Internal Audit recommended the University consolidate the number of data centres. The recommendation targeted efficiencies by reducing the cost of maintenance and the risk of duplication of efforts. It remained outstanding.
- Memorial had not taken action to implement potential efficiencies identified through its own internal management reviews.
- Memorial had the highest administrative salaries per student (at \$2,369) when compared to similar universities, based on external third-party analysis. Further, Memorial's administrative cost was \$893 per student higher than the average for all universities compared.
- When compared with these same universities, Memorial has a higher number of vice-president positions reporting to the President.
- Memorial's administrative structures were less efficient than government.

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Background

Memorial University (Memorial or the University) was established in 1949 and is the province's only university. Memorial has approximately 19,000 students with seven faculties and 12 schools offering certificate, diploma, undergraduate, graduate, and postgraduate programs; as well as online courses. For the fiscal year ending March 31, 2022, Memorial's consolidated expenditures were approximately \$637.7 million, and Memorial received \$375.8 million in government operating grants, representing 78 per cent of its operating revenue.

Memorial is governed by the Memorial University Act, which specifies the roles, responsibilities, structure, and administrative aspects of the University. The University's governance structure is bicameral, meaning it has two governing bodies: the Board of Regents and the Senate:

- The Board of Regents has responsibility for university governance and is composed of 30 voting members including 17 government appointments, four student representatives, six members elected by alumni, and three University members (President, Chancellor, and Provost and Vice-President (Academic)). The Board of Regents was relevant to our audit.
- The Senate has responsibility for academic matters and is composed of 94 voting members including the Chancellor, President and Vice-Chancellor (President), Vice-Chair, 24 ex-officio members, 54 elected members and 13 students. The Senate was not part of our audit scope.

Memorial has three campuses in St. John's (St. John's campus, Marine Institute, and Signal Hill campus), one campus in Corner Brook (Grenfell campus), and one campus in Happy Valley–Goose Bay (Labrador campus). Its sixth campus, Harlow, is located in the United Kingdom. The University has five separately incorporated entities (the entities):

- C-CORE,
- Memorial University Recreation Complex Inc. (The Works),
- Campus Childcare Inc. (Campus Childcare),
- Genesis Group Inc. (Genesis), and
- Canadian Centre for Fisheries Innovation (Centre for Fisheries Innovation).

The University's structure is comprised of units, or departments, which are academic (e.g. faculties and schools) or administrative (e.g. finance and administrative services). Unit heads are deans, directors, and other senior-level administrators, including the President, vice-presidents, and associate vice-presidents.

Our audit period covered April 2019 to December 2022 and included three lines of inquiry: compensation, operating expenses, and oversight. There were six criteria to assess these lines of inquiry.

Compensation

The compensation section of this audit focused on the total compensation paid to an employee, which is the total of any salary, bonuses, incentives, and benefits provided to an employee.

The five compensation components outlined in this report are:

Base Salary: Compensation paid for a position, based on a pre-determined pay scale. Pay scales coincide with the points rating given to a position using job evaluation methodology, also known as position classification. Accountability, problem-solving, and know-how are the criteria used in this methodology. Any consideration or need for academic or professional credentials is included in know-how criteria. Memorial has one executive pay scale and three classes of management pay scales, with certain pay exceptions for executive and management positions where contracts are in place. C-CORE, The Works, and Genesis have their own pay scales. Campus Childcare and the Centre for Fisheries Innovation management pay is decided by their Boards of Directors with no established compensation scales. Memorial and entity pay scales are adjusted either due to general economic increases or as a result of compensation reviews. The provincial government has not adjusted its pay scales other than for general economic increases. Any general economic increases, also known as cost of living increases, increase all pay scales. For this audit, we use the top of the base pay scale for comparison to the provincial government and external reference markets.

Background

Salary Increases: Pay increases along a position's base salary scale, until an employee reaches the top of the pay scale. For most of Memorial's executive and management employee groups, and The Works management employees, increases result from annual performance reviews and are calculated at percentages along salary scales approved by the organization's board. For C-CORE and Genesis, increases result from annual performance reviews and are determined at amounts within the existing salary scale approved by their Boards. Campus Childcare and the Centre for Fisheries Innovation's pay increases are decided by their Boards. Provincial government employees' salary scale progression occurs annually at pre-determined steps.

Bonuses: Annual lump sum payments in excess of a base salary. C-CORE pays non-pensionable bonuses to executive and management employees, as approved by the organization's Board. Genesis pays non-pensionable bonuses to its President and Chief Executive Officer, as approved by the organization's Board. Memorial, The Works, Campus Childcare, and the Centre for Fisheries Innovation do not pay bonuses to management and executive employees. The provincial government does not provide any form of bonus compensation.

Incentives: Annual lump sum payments, also known as incentive compensation. Genesis provides non-pensionable incentive payments to executive and management, approved and based on a formula approved by the Board of Directors. Memorial, C-CORE, The Works, Campus Childcare, and the Centre for Fisheries Innovation do not offer incentive payments. The provincial government does not provide any form of incentive compensation.

Benefits: Compensation paid beyond salary, bonuses, and incentives. For Memorial, The Works, and the provincial government, employment-related benefits include group insurance premium cost-sharing; matched defined benefit pension contributions; and leave entitlements. In addition to group insurance premium cost-sharing and leave entitlements, Memorial's other entities provide pension benefits contributions in lieu of matched defined-benefit pension contributions. C-CORE and Campus Childcare offer matched retirement savings contributions, while Genesis and the Centre for Fisheries Innovation do not require matching employee contributions.

We used various job documentation in our audit of compensation, including job descriptions, job ads, and candidate profiles. Candidate profiles are written to attract applicants to apply for a position, while position descriptions contain specific information about a position's key duties and responsibilities and provides expectations, targets, and goals that aid in evaluating job performance. Position descriptions are detailed enough to facilitate classification for compensation levels.

Memorial's total compensation expense for the fiscal year ending March 31, 2022, was \$415.5 million; which represents 65 per cent of total consolidated expenses. This audit only assessed 21 per cent of that amount:

- \$2.3 million annually for 11 executive employees;
- \$80.5 million annually for 874 management employees; and
- \$5.4 million annually for 50 executive and management employees at Memorial's entities.

For this audit, other types of employees, such as non-bargaining non-management employees, bargaining unit employees, employees at the Harlow campus, academic executive and management employees (unless in a vice-president position), and the President were not considered.

Operating Expenses

Government's Treasury Board policies outline its expectations and requirements regarding discretionary and/or operating expenses within the public service. Government issued an order in council (OC2010-323) that provided Memorial with an exemption to the application of Treasury Board policies. Some of these policy areas, such as travel, relocation, professional fees, and institutional membership fees, are within the definition of operating expenses used in this audit. Our audit focused on selected discretionary expenses of the operating fund only, which are the expenses incurred by the University when performing its primary activities. Non-operating funds were not audited, including ancillary operations (e.g. bookstore); restricted funds for research activities; restricted endowed funds and externally restricted funds; and capitalized and amortized assets (e.g. major building construction and deferred maintenance projects).

Oversight

The Memorial University Act empowers the Board of Regents to establish and appoint committees and determine terms of reference for those committees in order to manage university governance. The Board of Regents had established 10 standing committees responsible for reviewing information from Memorial's executive and advising the Board on aspects of Memorial's operations.

Memorial is led by the President who is appointed by the provincial government based on recommendations from the Board of Regents and Senate. The Board approves the creation of, and appointment to, permanent executive positions (also known as vice-presidents). The President has the delegated authority to appoint executives into a temporary vice-president position. The seven vice-presidents are:

- Provost and Vice-President (Academic);
- Vice-President (Administration and Finance);
- Vice-President (Indigenous);
- Vice-President (Fisheries and Marine Institute);
- Vice-President (Advancement and External Relations);
- Vice-President (Grenfell); and
- Vice-President (Research).

The President and vice-presidents have created a number of committees to advise and assist on University matters. Memorial's administrative structure is generally distributed across units by campus location in a decentralized manner. Given Memorial's size and scale, and to fulfill our audit mandate, our audit scope focused on the effectiveness of the oversight processes managing the University's operations. We assessed the effectiveness of information flow to University executive and the Board of Regents.

Appendix II provides additional background information on Memorial and its entities.

Summary of Key Findings

Compensation

- Memorial's compensation policies were either non-existent or outdated.
- Memorial's Board of Regents did not approve compensation policies for its five entities.
- Memorial did not include compensation from its entities in its annual compensation disclosures and none of these entities published their own compensation disclosure.
- Memorial did not have position descriptions for 35 of our 36 samples (97 per cent).
- The Senior Administrative Management group's pay scales were created based on market maximum compensation, and while a 2019 review recommended no additional compensation be provided to those on the former scale, the Board approved that individuals on the former scale not be capped and be allowed to continue progressing along the scale to the maximum.
- The University and its entities did not use any job evaluation methodology for some positions. For example, no job evaluation methodology was used for Memorial's executive positions. We found that C-CORE used the same job evaluation methodology as some Memorial management groups, however, it was only applied to executive positions and not to C-CORE management positions.
- Memorial paid significantly higher total compensation as compared to government for 35 of the 36 (97 per cent) executive and management positions we examined. We also found Memorial's entities paid higher total compensation compared to government for 22 of the 26 (85 per cent) executive and management positions examined.
- For the 14 executive positions examined, we found Memorial and two of its entities (C-CORE and Genesis) paid significantly higher salaries than government.
- The Provost and Vice-President (Academic) had a top-of-scale salary of \$325,000 - almost two times that of a comparable deputy minister. Six University executive positions in our sample had top-of-scale salaries of \$290,019 and were paid approximately two-times that of a comparable assistant deputy minister position in government.
- Top-of-scale for all C-CORE executive positions, including bonus payments, were [REDACTED] that of comparable government positions; and top-of-scale for all Genesis' executive positions, including bonus and incentive payments, were higher than comparable government positions.
- While Memorial had the Board of Regents' approved executive salary scales in place during our audit, prior to May 2022 there were five incumbent staff in executive positions with salaries above those scales. The May 2022 pay scale change increased the top of the scale beyond prior capped levels.
- The new Memorial executive salary scale included discretion to increase salaries up to 10 per cent above the new scale. Memorial officials advised that they had not established procedures to support assigning executives a salary above the steps on the new executive scale.
- Some University executives, when hired or promoted, were placed on the approved pay scale while others negotiated contracts with salaries outside the executive pay scale.
- Because of the significantly higher dollar value of Memorial's executive salary scales as compared to equivalent government positions, Memorial's executive positions annual pay increases were significantly higher than government.
- We found Memorial only had two salary scales for executive positions - one salary scale for the Provost and Vice-President (Academic) and one for the remaining vice-presidents - regardless of portfolio.
- With respect to Memorial's entities, we found the majority of executive positions did not follow predetermined salary progression like the provincial government.
- Genesis' Board of Directors engaged a consultant to review the [REDACTED] compensation (completed in February 2022) and subsequently Genesis' Board of Directors approved a base salary increase from [REDACTED]
- C-CORE paid its executives [REDACTED] in bonuses and one-time special payments during our audit period.
- Genesis paid [REDACTED] in bonuses and incentives to [REDACTED] and incentives to [REDACTED] during our audit period.
- Memorial and its entities paid higher salaries than government for 43 of the 48 management positions (90 per cent) we reviewed.
- We found seven instances where positions were not placed on one of the existing scales and were otherwise paid outside a scale or paid based on a contracted rate.

Summary of Key Findings

- The Management Professional Staff salary scale had a 50 per cent increase from the bottom to the top of the scale, compared to government's scale increase of 30 per cent.
- In June 2021, Genesis' executive engaged a consultant to review compensation for [redacted] management positions; and in June 2022 they engaged the same consultant to review [redacted] management positions, including some of the positions examined in the previous review. The 2021 review resulted in a salary increase for [redacted] management position [redacted]. The 2022 review resulted in salary increases for [redacted] positions, including the same [redacted].
- There were no compensation reviews of management positions at C-CORE, The Works, Campus Childcare, and the Centre for Fisheries Innovation during our scope period.
- Memorial's policy for market differentials was pensionable.
- From 2019 to 2022, C-CORE's Board of Directors approved bonuses worth [redacted] for [redacted] management employees.
- From 2019 to 2022, Genesis' President and Chief Executive Officer approved incentive payments worth [redacted] for [redacted] management employees.
- We found significant differences between the benefits package that Memorial and its entities offered employees and the benefits package offered by government.
- Memorial and its entities contributed significantly more to health and travel, basic life, dependent life and basic accidental death and dismemberment insurance plan premiums for its employees than government.
- Memorial and its entities also contributed to dental insurance plans, while government does not pay any dental plan premiums for its employees.
- The higher employer contribution percentages resulted in additional compensation costs for Memorial of approximately \$16.4 million during our scope period for all active employees - approximately \$4.4 million annually.
- Memorial, Genesis, and the Centre for Fisheries Innovation provided vehicle allowances to some executive and management staff. Some of Memorial's management positions were also provided with mileage reimbursements in addition to their car allowances.
- Memorial's executive leave entitlement totalled up to 95 paid leave days annually (37 per cent of total work days), and combined, Memorial's management leave entitlement totalled up to an annual 95 paid leave days. Regardless of the policy, all of Memorial's entities' management employees could have availed of more paid leave than government's executive and management employees.
- The pension plan for Memorial and The Works employees continues to be guaranteed by government and is more generous. Memorial and The Works co-pay retiree premiums for dental benefits at 40-50 per cent. The provision of dental post-employment benefits cost Memorial \$2.8 million during our audit scope period, approximately \$0.7 million annually.
- Employee service gifts vary in cost and a total value of \$50,673 was given during our audit scope period.
- Memorial paid higher base salaries as compared to the National University Sector market for all seven executive positions.
- For the 29 management positions we examined, Memorial paid base salaries that averaged \$130,043, higher than the overall average of \$118,512 for the National University Sector benchmark.
- When compared to Memorial's policy comparators within the public sector for the Leadership Group (against the National Broader Public Sector), we found Memorial paid higher base salaries for seven of the eight positions (88 per cent) examined.
- When compared to Memorial's policy comparators within the public sector for Management Professional Staff (against the Atlantic Canada Public Sector) pay groups, we found Memorial paid higher base salaries for 10 of the 11 (91 per cent) positions.

Operating Expenses

- Expense samples were generally within reasonable policy spending limits for 110 (90 per cent) of our 122 samples; 12 of 122 samples (10 per cent) were not.
- There was no policy for larger university-hosted events.
- Three of five hosting samples (60 per cent) did not abide by policy.
- We found that five events samples (29 per cent) would be considered unreasonable or excessive compared to what would be permitted in the public service.
- In 2019, Memorial hosted a number of activities from July to December to celebrate the 50th anniversary of the Harlow campus, costing more than \$127,000. These expenses were recorded in various accounts, making it difficult to obtain a complete account of events.

Summary of Key Findings

- In October 2022, an Employee Service Award Dinner for attendees (employees and their guests) with 30 or more years of service, was held at the Signal Hill campus, at a cost of \$6,936, including alcohol.
- In November 2022, Memorial hosted a three-day Arctic Forum for 40 attendees at a net cost of \$65,709.
- Special hosting allowance expenses for deans and directors, such as retirement functions, Christmas parties, or dinners attended solely by Memorial staff, totalled \$49,239 for our scope period.
- The former President organized a meeting with the vice-presidents at Signal Hill campus followed by a dinner for 10 people at the President's home (for the vice-presidents and their spouses). The cost for the dinner event was \$1,452, including alcohol — significantly more than the allowable \$250 limit.
- We found six professional fee samples (15 per cent) that may be considered unreasonable or excessive in comparison to government practice.
 - In five samples, Memorial used search firms to recruit 15 management and executive positions at a total cost of \$1.1 million. We also found that five of the 15 staff (33 per cent) recruited through this method are no longer employed by the University.
 - We noted a total cost of \$65,000 in fees paid for a consultant that did not submit a final report, as required in their contract. This individual was a member of the Harlow Board of Directors when hired as a consultant. University officials confirmed that no disclosure was made to the Conflict of Interest Committee about this consultant/board member.
- Memorial does not have a policy to guide donations and sponsorships. However, we found that the University executive contributed more than \$140,000 in donations and sponsorships to outside organizations during our audit scope period.
- We found three expense samples were for donations and sponsorships, which may be considered unreasonable or excessive in comparison to government:
 - \$25,000 sponsorship by the President's Office.
 - \$2,800 for a number of sponsorships by the Office of the Vice-President (Grenfell).
 - \$8,000 sponsorship by the President's Office.
- Memorial had policies that guided spending on gifts, however, it was not clear and simply noted items of 'reasonable value' be pre-approved. There were no definitions or limitations noted for allowable gifts, or the occasions for which gifts may be provided.
- Two of the 18 samples of gifts and other executive expenses (11 per cent) may be considered unreasonable or excessive.
- We found one sample of \$1,792 for custom-made chocolates purchased in December 2020 by the President's Office and used as gifts from the former President for employees, other stakeholders and visitors.
- We found that \$2,700 of the \$16,828 (16 per cent) for new furniture was for a desk and chair for the former President's home.
- Memorial had policies that guided spending on travel which were generally consistent with government, however, we found instances where spending exceeded those policies.
- We found seven travel expenses (10 per cent) of concern: five for the former President that we question the appropriateness and two for other executives and senior management that may be considered excessive in a public sector context.
 - In July and August of 2020, the former President incurred \$9,880 for a province-wide 24-day tour to visit various University facilities and personnel by car. Costs reimbursed for this travel included \$652 for car maintenance items, specifically car tire replacement and an oil change, even though the former President received a monthly car allowance of \$1,000 which included car maintenance. Memorial's travel policy does not allow for the reimbursement of maintenance costs.
 - The former President claimed \$2,217 to travel to Corner Brook, primarily to announce the interim Vice-President (Grenfell Campus) and the resignation of the current Vice-President, in March 2021. The former President claimed \$132 for a dinner on March 17 and \$55 for meals on March 18 despite being on personal time during this portion of this trip. The dinner on March 17 included their spouse, and the former Vice-President (Grenfell) and their spouse. As stated earlier, Memorial's hosting policy does not allow hosting solely for Memorial employees.
 - We found that in November 2021, the former President travelled to Toronto and Montreal for VIA Rail board meetings and various meetings with alumni, donors and other organizations that cost the University \$1,782.
 - The former President was a member of 15 boards, of which 11 were at the discretion of that President, and the former President did not take personal leave to attend six of these board meetings.

Summary of Key Findings

- In April 2022, \$3,428 was spent for the former President to travel to Regina to attend an event at the University of Regina. The former President did not take personal leave to attend.
- We found one trip in August 2021 in which the former President paid \$598 for limousine service stating there was no other car rental available.
- We found that business class tickets were purchased in two of our 23 travel samples (nine per cent), despite the travel policy stipulating that all air travel be made at the lowest obtainable cost and should not exceed full economy fare. We also found that, for one of these business class trips for an executive member's trip to the Harlow campus 50th-anniversary celebrations, they claimed \$801 for one night's accommodations while the other accommodations had cost \$169 per night.
- The relocation policy lacked clarity and guidance on household relocation costs, specifically on reimbursement for house sale and purchase fees, shipping vehicles and scholarly goods.
- Memorial's guidance allowed deviations with authorized approval, which was used excessively to approve spending beyond the thresholds outlined in the policy.
- 27 of the 38 relocation expenses (71 per cent) exceeded policy spending limits for relocation expenses, such as the weight of shipped household items, requiring a deviation from policy to be approved.
- We found nine instances (41 per cent) where the membership fee policy was not followed. We also found one instance where the membership expense was incorrectly coded and could be considered unreasonable.
- The license fee was for a customer relationship management software package purchased to manage and improve student relations at a cost of \$2 million, but was not being used appropriately. A September 2021 internal audit report concluded this software was inefficient and underutilized and recommended the software be renewed for a year to allow an evaluation of future value. We found that Memorial renewed the software in December 2021 for an additional five years at a cost of \$377,356 per year (total contract value of \$1.9 million) with a two-year opt-out clause.
- Memorial's policies and procedures meant to guide monitoring operating expenses were not comprehensive and did not require unit head review.
- We found the checklist provided very little direction on how to perform recommended reviews and monitoring activities, and Units were not actually required to complete or submit this type of variance analysis each month.
- The level of expenditure review at Memorial does not compare to the level of review within government.
- Memorial's policies and procedures were not followed effectively. Therefore, we could not confirm that appropriate oversight of expenses occurred.
- Two of the six units (33 per cent) did not have supporting evidence to show that the required work in the financial checklist was performed. There was also no evidence that the unit head was informed of the outcome of the assessment and monitoring activities or approved that the work had been completed.
- Many units were not submitting their financial checklists on schedule.
- Oversight by the Department of Financial and Administrative Services on the review and monitoring activities consisted of the compilation of the completed checklists each month.
- There was limited oversight of expenses performed by the Budget Office.
- There was also no adequate analysis of variances between the budget and actuals documented in the submissions received and by the Budget Office at a consolidated level.
- Many units either did not submit, or were late submitting, their required budget updates. According to Memorial officials, units that did not submit their budget information for the update (39 per cent of our sample) were displayed as balanced, rather than being highlighted as missing.
- This report was only provided to units on a by request basis. We also found that the Budget Office's ability to generate this report had halted near the end of our scope period (November 2022) and its replacement had not yet been implemented as of December 31, 2022.
- We identified instances of incorrect coding of expense transactions — resulting in some expenses being overstated and some understated - that had not been identified by any expense monitoring processes.

Oversight

- While the University created a delegation of authority policy in 2021, no registry of delegated authority or procedures on how authority was delegated had been developed.
- The terms of reference for the Board's Finance Committee were vague in its requirement for monitoring the financial status of specific activities or projects.

Summary of Key Findings

- While Memorial had extensive policies and procedures to manage its operations, these had not been all reviewed for updating as required. We found that these updates did not happen and 75 of 86 policies (87 per cent) had passed the date for required review. A similar percentage of procedures had also not been reviewed, and we found that there was no formal report created or provided to executives to demonstrate the status of University procedures.
- Memorial did not require Board of Regents or executive approval for its entities' policies and procedures.
- Memorial's entities' boards were responsible for approving compensation decisions within their respective entities without any requirement for approval from Memorial's Board of Regents.
- Harlow campus' policies were incomplete and its governance policy, referenced in the 2018 Harlow Campus Usage policy, did not exist. We also found that policies and procedures for compensation at Harlow are not approved by the Board of Regents.
- Memorial officials could not provide a policy for monitoring of the non-operating funds, nor could they advise whom amongst the vice-presidents had responsibility for monitoring or oversight of these funds. The Chair of the Board of Regents advised that oversight of Memorial's \$190 million non-operating funds was the responsibility of the President.
- There were only five financial updates provided to the Board of Regents over 45 months. The financial budget updates that were completed were labelled as 'for information purposes only' and did not require any action by the Board.
- The financial updates, which were used for reporting operating expenses to the Board of Regents, were highly summarized. We found the commentary in the financial updates on the University's position was limited to one page and contained minimal analysis. Specifically, each of the executive offices, administrative departments, and most campuses were presented as a single line, compared against an overall operating budget amount. These updates did not contain a comparison to actual expenditures for the period; an analysis of significant variances by expense type; or any comparison to the prior year.
- The only information received by the Board of Regents regarding the types of expenses incurred was within the annual audited financial statements, which was presented at the consolidated level and did not provide actual versus budget comparisons.
- The Board of Regents did not receive detailed annual information on compensation expenses, which is the University's largest expense annually.
- There was no comparison of the year's budget to actual results presented to the Board of Regents at the end of any of the fiscal years included in our scope period.
- Unspent budgets are carried forward by individual units for potential future use.
- We could not assess the effectiveness of expense oversight due to a lack of documentation and inconsistent practice.
- There were no financial updates on non-operating funds (ancillary, plant, research, special purpose and trust) provided to the executive or Board of Regents. Further, we found that these funds were not part of the Board of Regents' budgeting process.
- There is no evidence that the Board of Regents received any updates on the financial activities of the Harlow campus from the President during our audit period.
- Annual reports and individual financial statements of Memorial's entities were not made public.
- The roles, responsibilities and authorities of Memorial's executive positions were not clearly defined, documented or communicated to the individuals in those positions.
- The Provost and Vice-President (Academic) had not been empowered with the authority by former Presidents to carry out the Chief Executive officer responsibilities. The executive structure had the Provost and Vice-President (Academic) at the same authority level as other vice-presidents; as a result, Memorial did not have a Chief Operating Officer and the position's responsibilities remained with the President.
- 12 of 19 executive appointments across the seven executive roles were not provided with, or required to sign, an agreement for their position. We found that while executive positions required an annual performance review by the President, due to a recent turnover in executive positions, Memorial officials were unable to state which vice-presidents currently had active performance review documentation.
- While the Board of Regents was responsible for approving the appointment of directors to the boards of four of the University's entities, it was not responsible for making appointments to the Board of the University's fifth entity, C-CORE, as appointments are made by Memorial's President.
- Because of Memorial's decentralized nature, vice-presidents have the autonomy to manage their operations exclusively. We found that the vice-presidents acted and spent without consulting other vice-presidents in areas that overlap.

Summary of Key Findings

- During the course of our audit work, we requested detailed information on personnel performing specific administrative functions within Memorial. However, the Department of Human Resources was unable to provide this data as their systems were not designed to document the roles and responsibilities of staff. As a result, we could not determine the exact number of staff performing specific functions within the University.
- Memorial's administrative structure allowed duplication of senior management positions because vice-presidents hired their own personnel to perform similar or identical services. These services were performed elsewhere in the University and were the responsibility of a different vice-president according to their candidate profile.
- Organizational charts across the University had different formats, title information, and level of detail, making it difficult to compare roles within the units and departments.
- Harlow campus did not have an organizational chart for its operations.
- Grenfell campus had a Manager of Indigenous Affairs, who was hired by, and reported to, the Vice-President (Grenfell). However, the position was also expected to maintain an indirect reporting relationship with Memorial's Vice-President's (Indigenous) portfolio. The Vice-President (Indigenous) was also responsible for coordinating all of Memorial's Indigenous relations.
- The Vice-President (Advancement and External Relations) was responsible for Memorial's communications, however, we found 14 senior communications positions reported within other vice-presidents' portfolios.
- The Vice-President (Administration and Finance) was responsible for day-to-day university administration, however, we found 25 senior administrative and finance personnel reported within other vice-presidents' portfolios.
- The Vice-President (Research) was responsible for Memorial's research activities, however, we found eight senior research personnel that reported within other vice-presidents' portfolios.
- Memorial's Office of Internal Audit had reported issues with roles, responsibilities, and the authorities of some administrative functions that were not clearly defined.
- Recommendations made by the Office of Internal Audit between February 2020 and June 2021 remain outstanding.
- The University's Office of Internal Audit in 2019 recommended the University consolidate the number of data centres. The recommendation targeted efficiencies by reducing the cost of maintenance and the duplication of equipment, systems and efforts. This recommendation had not had substantive action taken toward it .
- The University's Office of Internal Audit 2021 recommendation on the need to leverage technology to automate manual financial statement reporting processes remained outstanding.
- Memorial had not taken action to implement potential efficiencies identified through its own internal management reviews. We found no action had been taken on a recommendation from the Integrated Planning Committee to conduct ongoing reviews of administrative structures and processes to identify efficiencies and opportunities for collaboration. The recommendation noted opportunities with respect to a shared services model of administration and the use of technology to streamline processes. And no action had been taken on a recommendation from the Integrated Planning Committee to assess sustainability and the contributions of the entities to the University's core mission.
- Memorial had the highest administrative salaries per student (at \$2,369) when compared to other medium-sized universities, based on external third-party analysis. The next closest University had an administrative cost of \$1,994 per student, which was \$375 per student lower than Memorial. Further, Memorial's administrative cost was \$893 per student higher than the average for all universities compared.
- Memorial officials suggested that these universities were not comparable to Memorial, given its geographical location, multiple campuses, inclusion of a Faculty of Medicine, and position as the only university in the province. However, Memorial uses many of these same universities as market comparators for setting their executive compensation.
- When compared with other medium-sized universities we were able to obtain organizational charts from, Memorial has a higher number of vice-president positions reporting to the President.
- Memorial's administrative structures were less efficient than government.

Compensation Findings - Comparison to Government

Objective 1

Memorial University's executive and management compensation was comparable to the provincial government and other universities of a similar nature.

Criteria 1

Memorial University's executive and management compensation is comparable to the provincial government.



What We Expected

We expected Memorial, and all of its entities, to be highly aware of its roles and responsibilities as a public sector not-for-profit organization, and that this responsibility would result in the prudent pursuit of the lowest-cost alternatives, particularly where compensation expenses were concerned. Government's Order in Council (OC2010-323) provided Memorial with an exemption to the application of government's Treasury Board compensation policies. However, we would have expected Memorial to avail of this exemption with fiscal discretion.

Government pays its employees in accordance with position classification as approved by Treasury Board and in accordance with government compensation policies. We expected positions that were classified the same to be paid the same, regardless of where the employee worked in the public sector.



What We Learned

Policies and Procedures

We found Memorial's compensation policies were either non-existent or outdated. Memorial had no documented policy to guide executive compensation for vice-presidents, including no established job evaluation methodology. In some cases, compensation was based on negotiated contracts rather than a salary scale. We found Memorial did not update its 2016 management compensation policy to apply to the Leadership Group (created in 2019).

We found Memorial's Board of Regents did not approve compensation policies for its five entities. While we did not assess those compensation policies for entities, we used them to compare compensation components against government policies and practices.

We found Memorial did not include compensation from its entities in its annual compensation disclosures and none of these entities published their own compensation disclosures.

We found Memorial did not have position descriptions for 35 of our 36 samples (97 per cent). There were no position descriptions for the seven vice-president positions nor for 28 of the 29 management positions in our sample. In lieu of position descriptions, we performed our evaluation using candidate profiles developed during the recruitment process, organizational charts, job evaluation forms, and job advertisements. In three of the seven vice-president positions, we had to obtain clarifications from Memorial officials to perform the evaluation because job documentation was not sufficient enough to assess job size, accountabilities, and inter-relationships.

Comparison to Government Compensation

For the entities, we generally found that The Works, Campus Childcare, and Genesis had position descriptions for the positions we reviewed, with varying degrees of detail. The Centre for Fisheries Innovation did not have a job description for its one management position. For C-CORE, three of the 13 positions (23 per cent) reviewed did not have position descriptions; instead, we relied on employment contracts, an organizational chart and, in one case, a position description of a similar role. Nine of the remaining 10 C-CORE position descriptions provided were in draft form, including the President and Chief Executive Officer position, and had various levels of detail.

We found the Senior Administrative Management group's pay scales were created based on market maximum compensation. As noted in a consultant's review of this management group (completed in May of 2019) we also found that the salary scale became significantly higher than the National University Market Sector as a result of subsequent general economic increases. As a result, the Board of Regents approved that no further positions be placed on this scale and a new one be created that aligned with the National Broader Public Sector market. The Leadership Group management scale was implemented as a result. **While the 2019 review recommended no additional compensation be provided to those on the former scale, the Board approved that individuals on the former scale not be capped and be allowed to continue progressing along the scale to the maximum.** Any general economic increases for this management group required Board approval, however, there were none during our scope period.

We found the University and its entities did not use any job evaluation methodology for some positions. For example, no job evaluation methodology was used for Memorial's executive positions. We found that C-CORE used the same job evaluation methodology as some Memorial management groups, however, it was only applied to executive positions and not to C-CORE management positions. For the University's remaining four entities, either a different job evaluation methodology was used or the job classifications and salaries were at the discretion of the entity's Board of Directors based on the level of job function and responsibility.

In comparison, government uses the same job evaluation methodology for executive and management positions.

Compensation

We performed our examination with the assistance of a job evaluation consultant who compared 36 Memorial and 26 entity executive and management positions against positions in the provincial government that had comparable assessments (also known as points ratings) for accountability, problem-solving, and know-how criteria under the methodology. To be clear, any consideration or need for academic or professional credentials was included in the know-how criteria.

We found Memorial paid significantly higher total compensation as compared to government for 35 of the 36 (97 per cent) executive and management positions we examined. We also found Memorial's entities paid higher total compensation compared to government for 22 of the 26 (85 per cent) executive and management positions examined.

We used base salaries and salary scales that were in effect on December 31, 2022, at Memorial, its entities, and within government.



Executive Positions

For the 14 executive positions examined, we found Memorial and two of its entities (C-CORE and Genesis) paid significantly higher salaries than government. Since the assessment of accountability, problem-solving, and know-how were the same, the comparable government positions (deputy minister, assistant deputy minister or director) were equivalent from a classification point of view. Yet, the salary pay scales for equivalent positions varied significantly as shown in Table 1.

**Table 1 - Memorial and Entities Positions Compared to Government
Annual Executive Salary Compensation
As of December 2022**

Memorial

Executive Position	Base Salary (top-of-scale) Notes 2, 4	Bonus Note 3	Incentive	Total Salary	Government Base Salary (top-of-scale) Note 1	Minimal Annual Salary Difference	Minimal Annual Salary Difference %
Vice-President (Indigenous)	\$290,019	N/A	N/A	\$290,019	\$134,795	\$155,224	115%
Vice-President (Fisheries and Marine Institute)	\$290,019	N/A	N/A	\$290,019	\$140,828	\$149,191	106%
Vice-President (Advancement and External Relations)	\$290,019	N/A	N/A	\$290,019	\$140,828	\$149,191	106%
Vice-President (Grenfell)	\$290,019	N/A	N/A	\$290,019	\$143,013	\$147,006	103%
Vice-President (Research)	\$290,019	N/A	N/A	\$290,019	\$143,013	\$147,006	103%
Provost and Vice-President (Academic)	\$325,000	N/A	N/A	\$325,000	\$170,813	\$154,187	90%
Vice-President (Administration and Finance)	\$290,019	N/A	N/A	\$290,019	\$152,630	\$137,389	90%

Comparison to Government Compensation

C-CORE

Executive Position	Base Salary (top-of-scale) Notes 2, 4	Bonus Note 3	Incentive	Total Salary	Government Base Salary (top-of-scale) Note 1	Minimal Annual Salary Difference	Minimal Annual Salary Difference %
			N/A		\$155,602		
			N/A		\$120,633		
			N/A		\$127,102		
			N/A		\$127,102		
			N/A		\$127,102		

Genesis

					\$134,795		
					\$112,415		

Source: Prepared by the Office of the Auditor General based upon information provided by Memorial and the Treasury Board Secretariat (unaudited) and job analysis work completed by our consultant.

Note 1: Using the job evaluation methodology, the listed University positions are comparable to the government assistant deputy minister equivalent positions; except for the Provost and Vice-President (Academic), which is comparable to a government deputy minister. The [redacted] are comparable to the government assistant deputy minister equivalent positions, while [redacted] are comparable to government director positions. All compensation components reflect maximum rates for the positions based on entity policies and practices. Top of scale for government is step 25.

Note 2: Top of scale for Memorial vice-presidents represents step six, although the scale does allow for positions above step six, specifically five per cent and 10 per cent above step six.

Note 3: C-CORE bonus was not paid in 2022, instead a special one-time payment was made to executives.

Note 4: These position salaries may differ from public information disclosures depending on an employee's time in the role.

Comparison to Government Compensation

The Provost and Vice-President (Academic) had a top-of-scale salary of \$325,000 - almost two times that of a comparable deputy minister. Six University executive positions in our sample had top-of-scale salaries of \$290,019 and were paid approximately two times that of a comparable assistant deputy minister position in government.

Top-of-scale for all C-CORE executive positions, including bonus payments, were at least two times that of comparable government positions.

Top-of-scale for all Genesis' executive positions, including bonus and incentive payments, was higher than comparable government positions.

higher than a comparable government position.

Salary Scale Deviations and Modifications

While Memorial had the Board of Regents' approved executive salary scales in place during our audit, prior to May 2022 there were five incumbent staff in executive positions with salaries above those scales. We also noted of those five incumbents, three were appointed during our audit period whereby the President approved two interim appointments and the Board of Regents approved one permanent appointment that deviated from the scale between April 2019 and April 2022 - all of which were higher than the salary scale. For example, we found in March 2021, the Board of Regents approved the appointment of a Provost and Vice-President (Academic)'s salary of \$320,000, which was 17 per cent above the maximum of \$274,360 on the executive scale at the time of appointment.

Table 2 provides additional information on executive salary compensation, as a result of a higher scale implemented in May 2022.

**Table 2 – Memorial Pay Scale Comparison
Annual Executive Salary Compensation
As of May 2022**

Executive Position	Prior Pay Scale Base Salary (top-of-scale)	May 2022 - New Pay Scale Base Salary (top-of-scale) Note 1	Increase to Pay Scale Base Salary (top-of-scale)	Increase to Pay Scale Base Salary (top-of-scale)
Vice-President (Indigenous)	\$243,861	\$290,019	\$46,158	19%
Vice-President (Fisheries and Marine Institute)	\$243,861	\$290,019	\$46,158	19%
Vice-President (Advancement and External Relations)	\$243,861	\$290,019	\$46,158	19%
Vice-President (Grenfell)	\$243,861	\$290,019	\$46,158	19%
Vice-President (Research)	\$243,861	\$290,019	\$46,158	19%
Vice-President (Administration and Finance)	\$243,861	\$290,019	\$46,158	19%
Provost and Vice-President (Academic)	\$274,360	\$325,000	\$50,640	18%

Source: Prepared by the Office of the Auditor General based upon information provided by Memorial.

Note 1: Top-of-scale for Memorial vice-presidents represents step six, although the scale does allow for positions above step six, specifically five per cent and 10 per cent above step six.

Comparison to Government Compensation

The May 2022 pay scale change increased the top of the scale beyond prior capped levels. For example, a Vice-President (Administration and Finance) had a salary of \$253,738, which was \$9,877 (four per cent) higher than the top of the prior pay scale of \$243,861; however, with the new pay scales it was then within the new scale range. In fact, with the new scale, the position could then increase to a top-of-scale of \$290,019 - an additional increase of \$36,281 (14 per cent).

We also found that the new Memorial executive salary scale included discretion to increase salaries up to 10 per cent above the new scale. Memorial officials advised that they have not established procedures to support assigning executives a salary above the steps on the new executive scale. For example, the Provost and Vice-President (Academic) salary scale range maximum could have increased from \$274,360 to \$357,500 (a change of \$83,140 or 30 per cent) if the new 10 per cent discretion were used. The salary scale for the remaining vice-presidents maximum could have increased from \$243,861 to \$319,021 (a change of \$75,160 or 31 per cent) if the new 10 per cent discretion were used. No executives were receiving the plus five per cent or 10 per cent as of December 31, 2022.

Salary Increases

We found some University executives, when hired or promoted, were placed on the approved pay scale while others negotiated contracts with salaries outside the executive pay scale. Three Memorial executive appointments followed the steps of the salary scale or had reached the top of the scale, equivalent to a four to five per cent salary increase per year. In other cases, executives had negotiated a fixed salary amount outside of the pay scale with no pay increases across the term of the contract.

We found that Memorial's executive salary scale had six steps, allowing an executive to reach the maximum step after five years (one step per year) in the position, excluding the discretionary additional five and 10 per cent potential above the top of the scale. For comparison, government executive positions take six years (four steps each year), equivalent to a four to five per cent salary increase per year, to reach the top of their salary scale and generally do not progress beyond that.

Because of the significantly higher dollar value of Memorial's executive salary scales as compared to equivalent government positions, Memorial's executive positions annual pay increases were significantly higher than government. For example, the salary increase of a University vice-president moving from step one to step two would be from \$232,015 to \$243,616, a change of \$11,601 (five per cent). In comparison, the salary of a comparable assistant deputy minister moving from step one to step five would be an increase from \$110,010 to \$115,511, a change of \$5,501 (five per cent).

We found that Memorial only had two salary scales for executive positions - one salary scale for the Provost and Vice-President (Academic) and one for the remaining vice-presidents - regardless of the portfolio. In comparison, government has numerous salary pay scale levels for executive positions (depending on position classification relating to accountability, problem-solving and know-how).

With respect to Memorial's entities, we found the majority of executive positions did not follow pre-determined salary progression like the provincial government. C-CORE's President and Chief Executive Officer did not have a salary scale, instead, its Board of Directors determined a set salary amount and approved salary increases based on annual performance reviews. The remaining C-CORE executives did have a salary scale and progressed along the scale subject to salary increases approved by its Board of Directors, which were based on annual performance reviews and not at pre-determined scale increments. The vice-presidents' salary scale ranged from [REDACTED]

Genesis had a salary scale for executives which its Board of Directors used as guidance for salary increases in conjunction with annual performance reviews. The total percentage increase from the bottom of the Genesis scale to the top ranged between [REDACTED] depending on the executive position. For example, [REDACTED] salary scale ranged from [REDACTED]

Comparison to Government Compensation

We found Genesis' Board of Directors engaged a consultant to review the [redacted] compensation (completed in February 2022) and subsequently Genesis' Board of Directors approved a base salary increase [redacted]

Base Salary Pay Increases (General Economic Increases)

Memorial's executives did not receive any general economic increases during our audit period. However, future general economic increases will be at the discretion of the Board of Regents.

C-CORE executive positions received a total of [redacted] per cent in general economic increases during our audit period. Genesis' executive positions did not receive general economic increases during the same period. Entity officials advised that general economic increases were not provided during this time due to a number of factors, including ongoing compensation reviews. The Board of Regents did not approve any of the general economic increases of the five entities.

Government executive positions received a total of six per cent in general economic increases during the same period. In 2022, all provincial government employees received a one-time payment of \$2,000.

Bonuses and Incentive Pay

We found C-CORE paid bonuses to all executive positions during our audit period. C-CORE provided short-term, non-pensionable, discretionary bonuses based on established performance goals approved by its Board of Directors. The bonuses were paid for the years 2019 and 2020, however not for 2021 and 2022 and instead its Board approved a one-time payment in June 2022, in lieu of the short-term bonus. C-CORE paid [redacted] in bonuses and special payments to its [redacted] during our audit period, with the largest single bonus payment of [redacted] paid in 2020. C-CORE also paid total bonuses and one-time special payments of [redacted] to its [redacted] during our scope period. In all, C-CORE paid its executives [redacted] in bonuses and one-time special payments during our audit period as shown in Table 3.

**Table 3 – C-CORE Bonuses and Special Payments
Paid to Executive Employees
For the Period April 2019 to December 2022**

C-CORE Executives	2019	2020	2021	2022	Total
[redacted]			\$ -		
[redacted]			\$ -		
[redacted]			\$ -		
[redacted]			\$ -		
[redacted]			\$ -		
Total Executive Payments			\$ -		

Source: Prepared by the Office of the Auditor General based on information provided by Memorial.

Comparison to Government Compensation

We found that Genesis paid ██████████ in bonuses and incentives to ██████████ and incentives to ██████████ during our audit period.

Genesis paid ██████████ to its ██████████ during the audit period for bonus and incentive payments. The bonus payments were based on performance objectives and achievement of the metrics, as approved by its Board of Directors. Genesis' incentive payments were capped at ██████████ for the ██████████ (prior to June 2022 the cap was ██████████).

Genesis paid ██████████ to its ██████████ during the period for incentive payments. Genesis' incentive payments were capped at ██████████ for the ██████████ ██████████.

Memorial and provincial government executives did not receive bonuses or incentive pay during the scope period of our audit.



Management Positions

We found that Memorial and its entities paid higher salaries than government for 43 of the 48 management positions (90 per cent) we reviewed. Since the assessment of accountability, problem-solving, and know-how were the same, the comparable government management positions were equivalent from a classification point of view. Yet, the salary scales varied significantly as shown in Table 4.

**Table 4 – Memorial and Entity Positions Compared to Government
Annual Management Salary Compensation
As of December 2022**

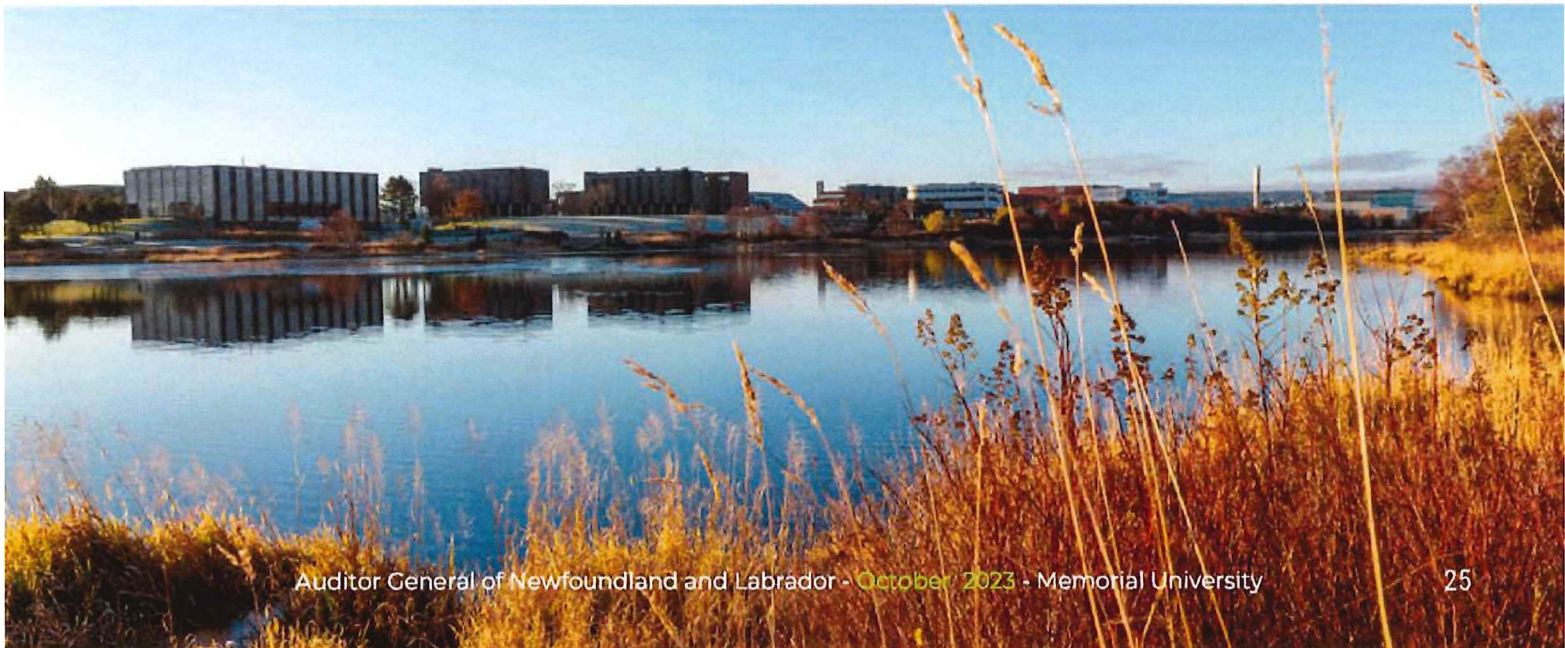
Memorial - Leadership Group

Management Position	Base Salary (top-of-scale) Notes 2, 4, 5	Bonus Note 3	Incentive	Total Salary	Government Base Salary (top-of-scale) Note 1	Minimal Annual Salary Difference	Minimal Annual Salary Difference %
Director, Human Resources	\$213,295	N/A	N/A	\$213,295	\$127,102	\$86,193	68%
Chief Information Officer	\$213,295	N/A	N/A	\$213,295	\$134,795	\$78,500	58%
Director, Signal Hill Campus, Operations, Conference Services and Events	\$116,994	N/A	N/A	\$116,994	\$75,236	\$41,758	56%
Campus Registrar	\$140,393	N/A	N/A	\$140,393	\$95,619	\$44,774	47%
Senior Administrative Officer	\$116,994	N/A	N/A	\$116,994	\$82,515	\$34,479	42%
Associate Vice-President Administration & Finance, Marine Institute	\$168,472	N/A	N/A	\$168,472	\$120,633	\$47,839	40%
General Counsel	\$213,295	N/A	N/A	\$213,295	\$153,169	\$60,126	39%
Manager, Human Resources Marine Institute	\$116,994	N/A	N/A	\$116,994	\$95,619	\$21,375	22%

Comparison to Government Compensation

Memorial - Senior Administrative Management

Management Position	Base Salary (top-of-scale) Notes 2, 4,5	Bonus Note 3	Incentive	Total Salary	Government Base Salary (top-of-scale) Note 1	Minimal Annual Salary Difference	Minimal Annual Salary Difference %
Associate Director, Service, Delivery & Operations	\$137,561	N/A	N/A	\$137,561	\$75,236	\$62,325	83%
Director, Health Sciences Information and Media Services	\$153,123	N/A	N/A	\$153,123	\$86,641	\$66,482	77%
Director, Student Residences	\$153,123	N/A	N/A	\$153,123	\$86,641	\$66,482	77%
Director, Engagement Grenfell	\$137,561	N/A	N/A	\$137,561	\$86,641	\$50,920	59%
Director, Marketing & Communication Grenfell	\$153,123	N/A	N/A	\$153,123	\$100,472	\$52,651	52%
Chief Operating Officer (Faculty of Medicine)	\$153,123	N/A	N/A	\$153,123	\$112,415	\$40,708	36%



Comparison to Government Compensation

Memorial - Management Professional Staff

Management Position	Base Salary (top-of-scale) Notes 2, 4, 5	Bonus Note 3	Incentive	Total Salary	Government Base Salary (top-of-scale) Note 1	Minimal Annual Salary Difference	Minimal Annual Salary Difference %
Coordinator, Research Budgets	\$77,412	N/A	N/A	\$77,412	\$54,610	\$22,802	42%
Development Officer	\$102,034	N/A	N/A	\$102,034	\$75,236	\$26,798	36%
Manager, Business Development	\$93,139	N/A	N/A	\$93,139	\$75,236	\$17,903	24%
Manager, Communications	\$88,964	N/A	N/A	\$88,964	\$75,236	\$13,728	18%
Senior Administrative Officer	\$93,139	N/A	N/A	\$93,139	\$82,515	\$10,624	13%
Manager, Systems and Operations	\$84,928	N/A	N/A	\$84,928	\$75,236	\$9,692	13%
Team Lead, Financial Operation	\$84,928	N/A	N/A	\$84,928	\$75,236	\$9,692	13%
System Analyst	\$84,928	N/A	N/A	\$84,928	\$75,236	\$9,692	13%
Manager, Media Services	\$93,139	N/A	N/A	\$93,139	\$86,641	\$6,498	8%
Communications Advisor	\$77,412	N/A	N/A	\$77,412	\$75,236	\$2,176	3%
Manager, Finance & Administration	\$93,139	N/A	N/A	\$93,139	\$95,619	(\$2,480)	(3%)

Comparison to Government Compensation

Memorial - Other Management

Management Position	Base Salary (top-of-scale) Notes 2, 4,5	Bonus Note 3	Memorial Incentive	Total Salary	Government Base Salary (top-of-scale) Note 1	Minimal Annual Salary Difference	Minimal Annual Salary Difference %
Associate Vice-President (Public Engagement & External Relations)	\$208,375	N/A	N/A	\$208,375	\$117,661	\$90,714	77%
Special Advisor to President, Continuing Education	\$178,530	N/A	N/A	\$178,530	\$120,633	\$57,897	48%
Ethics Director	\$102,847	N/A	N/A	\$102,847	\$100,472	\$2,375	2%
Director, Nunavut Arctic College Partnership	\$121,000	N/A	N/A	\$121,000	\$120,633	\$367	0%

C-CORE

	N/A		\$106,053
	N/A		\$106,053
	N/A		\$106,053
	N/A		\$106,053
	N/A		\$100,472
	N/A		\$115,038
	N/A		\$115,038
	N/A		\$95,619

Comparison to Government Compensation

The Works

Management Position	Base Salary (top-of-scale) Notes 2, 4,5	Bonus Note 3	Incentive	Total Salary	Government Base Salary (top-of-scale) Note 1	Minimal Annual Salary Difference	Minimal Annual Salary Difference %
		N/A	N/A		\$63,589		
		N/A	N/A		\$127,102		
		N/A	N/A		\$86,641		
		N/A	N/A		\$86,641		
		N/A	N/A		\$63,589		
		N/A	N/A		\$108,044		

Campus Childcare

		N/A	N/A		\$95,619		
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Genesis

		N/A			\$100,472		
		N/A			\$86,641		
		N/A			\$95,619		

Centre for Fisheries Innovation

		N/A	N/A		\$115,038		
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Source: Prepared by the Office of the Auditor General based upon information provided by Memorial and the Treasury Board Secretariat (unaudited) and job analysis work completed by our consultant.

Note 1: Using the job evaluation methodology, the listed positions are generally comparable to government director or manager positions for the Leadership Group and Senior Administrative Management groups as well as the entities, while some of the Management Professional Staff and entities were comparable to government supervisor, consultant and administration roles. Top-of-scale for government is step 25.

Note 2: For some of the above University and entity positions, there is no pay scale. As a result, our consultant used the actual base salary to compare to the comparator markets with rounding for confidentiality.

Note 3: C-CORE bonus was not paid in 2022, instead a special one-time payment was made to management as shown in the table above.

Note 4: These position salaries may differ from public information disclosures depending on an employee's time in the role.

Note 5: Market differentials have been included as a part of base salary where applicable.

Comparison to Government Compensation

The Leadership Group position salaries we reviewed were all higher than comparable government positions, with the differences ranging between \$21,375 (22 per cent) for the Manager, Human Resources Marine Institute position to \$86,193 (68 per cent) for the Director, Human Resources position.

The Senior Administrative Management position salaries we reviewed were all higher than comparable government positions, with the differences ranging between \$40,708 (36 per cent) for the Chief Operating Officer position to \$66,482 (77 per cent) for the Director, Health Sciences Information and Media Services and Director, Student Residences positions.

Ten of the 11 Management Professional Staff position salaries we reviewed were higher than comparable government positions, with differences ranging between \$2,176 (three per cent) for the Communications Advisor position to \$26,798 (36 per cent) for the Development Officer position.

Across the three University management groups, nine of the 29 samples (31 per cent) were more than 50 per cent higher than government, and 14 of the 29 samples (48 per cent) were at least 40 per cent higher than government.

Entity position salaries were mostly higher than comparable government positions, with 15 positions of 19 (79 per cent) higher. The more significant differences were in C-CORE management with differences ranging between

Salary Scale Deviations and Modifications

While Memorial had salary scales for all management groups, we found seven instances where positions were not placed on one of the existing scales and were otherwise paid outside a scale or paid based on a contracted rate. Four of these seven positions (57 per cent) were selected in our review (categorized in this report's tables as Other Management). For example, the Ethics Director position was placed on a management scale but compensated at an off-scale amount of \$102,847 - five per cent higher than the top of that management scale of \$97,497. The Associate Vice-President (Public Engagement and External Relations) position, when created, was not assigned to any management scale and subsequently classified to the Leadership Group. The incumbent's salary of \$208,375 was \$39,903 (24 per cent) higher than the top-of-scale of \$168,472.

We found [REDACTED] C-CORE management position [REDACTED] above the applicable top-of-scale.

Salary Increases

Memorial and The Works' management employees progressed annually along base salary scales per their performance evaluations - which ranged from two per cent to five per cent depending on the scale.

Salary scales for management in the Leadership and Senior Administrative Management groups had nine steps each, taking eight years for a management employee placed on step one to advance to the maximum of the scale. The salary scales for the Leadership and Senior Administrative Management groups had a percentage increase from step one to step nine of 32 per cent, which amounts to three to four per cent per year.

The salary scale for Memorial's Management Professional Staff had 36 steps, and the maximum could be reached between 14 and 18 years depending on the salary band. **The Management Professional Staff salary scale had a 50 per cent increase from the bottom to the top of the scale, compared to government's scale increase of 30 per cent.**

Based on The Works' salary scale of 12 steps, a management employee could reach the top of the scale after 11 years. The salary scales had a percentage increase from step one to step 12 of 31 per cent, which amounts to two to five per cent per year.

C-CORE and Genesis management positions progressed along their salary scale annually subject to a performance review. The total percentage increase from the bottom of the scale to the top was 50 per cent for all C-CORE management positions. The total percentage increase from the bottom of the Genesis scale to the top ranged between 35 per cent and 38 per cent, depending on the management position.

Comparison to Government Compensation

In June 2021, Genesis' executive engaged a consultant to review compensation for management positions; and in June 2022 they engaged the same consultant to review management positions, including some of the positions examined in the previous review. The 2021 review resulted in a salary increase for [REDACTED]

The 2022 review resulted in salary increases for [REDACTED] positions, including the same [REDACTED] position [REDACTED]

Campus Childcare and the Centre for Fisheries Innovation did not use salary scales, instead, increases were determined by their Board of Directors. While the Centre for Fisheries Innovation did not have a salary scale, there were two increases during our scope period of [REDACTED] each, for a total of [REDACTED]. Campus Childcare management did not receive salary increases during the scope period, other than the general economic increases mentioned previously. **We found that there were no compensation reviews of management positions at C-CORE, The Works, Campus Childcare, and the Centre for Fisheries Innovation during our scope period.**

Provincial government management employees receive pre-determined annual salary adjustments on the anniversary date they were hired, averaging three to four per cent annually – a total percentage increase from step one to step 25 of 30 per cent. In the provincial government, step increments do not normally go beyond the top of the scale and government does not provide salary adjustments or incentive payments as a form of compensation for performance.

Memorial's policy for market differentials was pensionable. In comparison, the provincial government's market adjustment policy is non-pensionable.

Memorial provided salary increases above the base salary in the form of pensionable market differentials for 24 management employees worth \$424,982 annually. Table 5 outlines averages by position.

**Table 5 – Memorial Management Positions with Market Differentials
Averages by Position
As of December 31, 2022**

Position Title	Number of Employees	Actual Base Salary (average)	Annual Market Differential (average)	Total Salary (average)
Special Advisor to President (Continuing Education)	1	\$146,400	\$32,130	\$178,530
Associate General Counsel*	1	\$140,393	\$14,039	\$154,432
Manager, Health Education, Technology & Learning	1	\$93,139	\$34,238	\$127,377
Manager, Course Development & Maintenance	1	\$93,139	\$34,238	\$127,377
Clinical Veterinarian	1	\$93,139	\$27,750	\$120,889
Senior Instructional Design Specialist	5	\$88,287	\$26,629	\$114,916
Development Officer	7	\$83,772	\$17,106	\$100,878
Supervisor, Electrical Systems	2	\$93,362	\$4,622	\$97,984
Supervisor, External Plant	1	\$88,742	\$4,160	\$92,902
Project Manager III	4	\$81,490	\$4,074	\$85,564

Source: Prepared by the Office of the Auditor General based on position information provided by Memorial.

*The Associate General Counsel position had the amount of \$14,039 miscoded as a market differential. This amount actually represents a salary approved beyond the top-of-scale.

Comparison to Government Compensation



The largest average annual market differentials of \$34,238 were provided to two positions: the Manager, Health Education, Technology and Learning, and the Manager, Course Development and Maintenance.

Base Salary Pay Increases (General Economic Increases)

Two of Memorial's three management pay groups (the Leadership Group and Management Professional Staff) received a total of four per cent general economic increase for the first three years of our audit period. The timing and amount of the 2022 general economic increase for these management groups is pending based on the completion of Memorial union negotiations. Memorial's third management pay group (Senior Administrative Management) did not receive general economic increases during our scope period as a result of the previously mentioned compensation review that highlighted this management group was paid above its market comparator.

The Boards of Directors for C-CORE, The Works, and Campus Childcare each approved general economic increases totalling [REDACTED] respectively, for their management employees during our audit period. Genesis' officials advised that general economic increases were not provided during this time due to a number of factors, including ongoing compensation structure reviews. The Centre for Fisheries Innovation did not provide general economic increases during our audit period.

In comparison, government management employees received a total six per cent general economic increase during our audit period.

Bonuses and Incentive Pay

From 2019 to 2022, C-CORE's Board of Directors approved bonuses worth [REDACTED] for [REDACTED] management employees. C-CORE discretionary bonuses were short-term, non-pensionable, and based on established performance goals approved by its Board of Directors.

From 2019 to 2022, Genesis' President and Chief Executive Officer approved incentive payments worth [REDACTED] for [REDACTED] management employees. These incentive payments were capped at [REDACTED] of management employees' annual salary.

**Table 6 – Entities Bonuses and Incentives
Paid to Management Employees
For the Period April 2019 to December 2022**

Entity	Number of Management Employees	Average Payment per Employee	Total Payments
C-CORE	[REDACTED]	[REDACTED]	[REDACTED]
Genesis	[REDACTED]	[REDACTED]	[REDACTED]
Total Bonuses and Incentives	[REDACTED]	[REDACTED]	[REDACTED]

Source: Prepared by the Office of the Auditor General based upon information provided by Memorial.

Memorial's management employees, as well as management employees of The Works, Campus Childcare, and the Centre for Fisheries Innovation did not receive bonuses or incentive pay during our audit scope period. The provincial government does not provide any form of performance pay to its management employees.

Executive and Management Employee Benefits

We found significant differences between the benefits package that Memorial and its entities offered employees and the benefits package offered by government.

Group Health/Life and Dental Insurance

Table 7 shows a comparison of employer contributions for group benefits. Memorial and its entities contributed significantly more to health and travel, basic life, dependent life and basic accidental death and dismemberment insurance plan premiums for its employees than government.

Memorial and its entities also contributed to dental insurance plans, while government does not pay any dental plan premiums for its employees.

The higher employer contribution percentages resulted in additional compensation costs for Memorial of approximately \$16.4 million during our scope period for all active employees - approximately \$4.4 million annually.

While we did not fully audit the coverage of group health, life, and dental insurances, we do note that it appears that Memorial offered more benefits than the provincial government's plan. For example, Memorial's nursing and personal care coverage was \$10,000 per year compared to government's home nursing care and personal care workers subject to a lifetime maximum of \$10,000.

**Table 7 – Employer Contribution Comparison
Benefit Premiums for Active Employees
As of December 31, 2022**

Benefit Types	Memorial and Entities	Government
Health and Travel	82%	50%
Basic Life	83%	50%
Dependent Life	75%	50%
Basic Accidental Death and Dismemberment	100%	50%
Dental	60%	0%

Source: Prepared by the Office of the Auditor General based on information provided by Memorial and the Treasury Board Secretariat.

Car Allowances

We found that Memorial, Genesis, and the Centre for Fisheries Innovation provided vehicle allowances to some executive and management staff. In total, during our audit period:

- Memorial paid \$29,223;
- Genesis paid [REDACTED] and [REDACTED]
- Centre for Fisheries Innovation paid [REDACTED]

Within Memorial, the annual allowances included \$5,000 for the Vice-President (Fisheries and Marine Institute) position and approximately \$700 annually for six management positions. Genesis provided [REDACTED] the Centre for Fisheries Innovation received a [REDACTED] annual allowance during our audit period.

Some of Memorial's management positions were also provided with mileage reimbursements in addition to car allowances. The remaining executive and management employees within the entities were reimbursed based on mileage claims.

By comparison, government generally does not provide car allowances to executive or management staff, instead offering mileage reimbursement for work-related travel.

Severance

Memorial paid severance that was consistent with government's former severance policy, which paid employees a maximum of 20 week's salary if an employee had up to 20 continuous years' service. While government ended severance in May 2018, Memorial continued its severance accrual up to December 2021 for employees hired prior to October 2004; it ceased the practice for new hires after October 2004. Campus Childcare discontinued severance in March 2021. The Works discontinued severance in December 2021. The remaining three entities did not offer severance payments.

Leave Entitlements

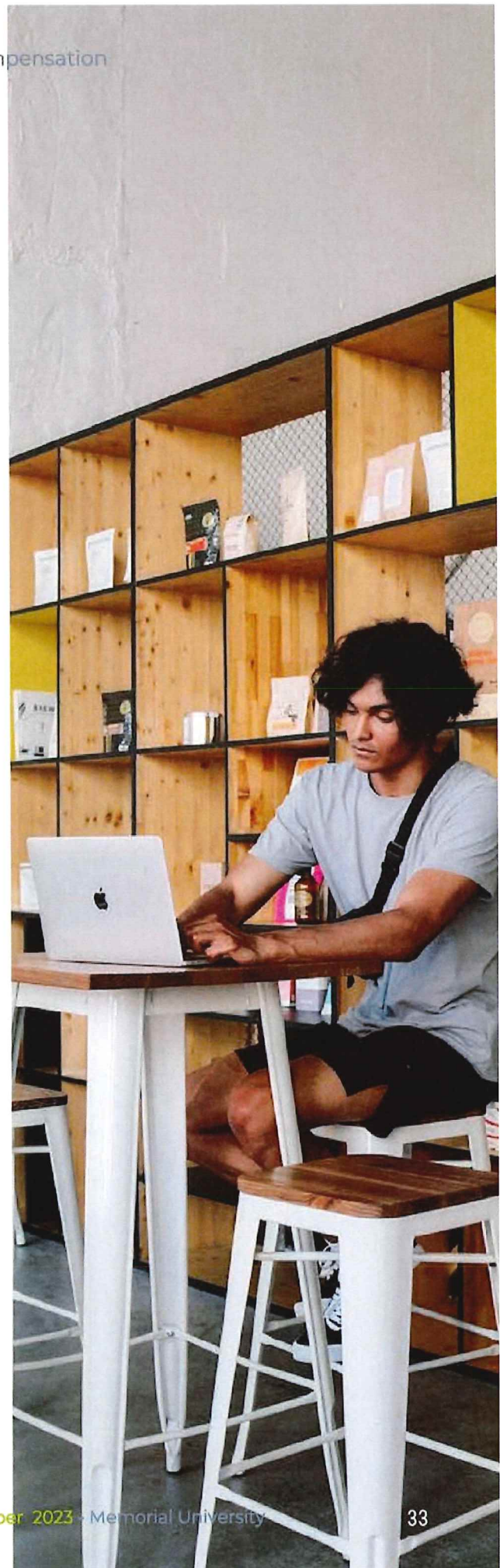
Annual leave for Memorial's executive employees varied between 20 and 30 days. Executive employees also had access to an employer-paid short-term disability leave program, which provided up to 60 paid sick days per incident. Combined with up to six family leave days in each two-year fiscal period, and two extra leave days between Christmas and New Year's Day, **Memorial's executive leave entitlement totalled up to 95 paid leave days annually (37 per cent of total work days).**

Some vice-presidents were also entitled to administrative leave, which accumulated to 48 days per year and was to be taken at the end of their term, usually five years. Administrative leave is intended for academic staff re-entering academic duties at the conclusion of an administrative appointment. For those in the vice-president positions during our scope period, 12 of the 17 executives (71 per cent) were entitled to this additional leave.

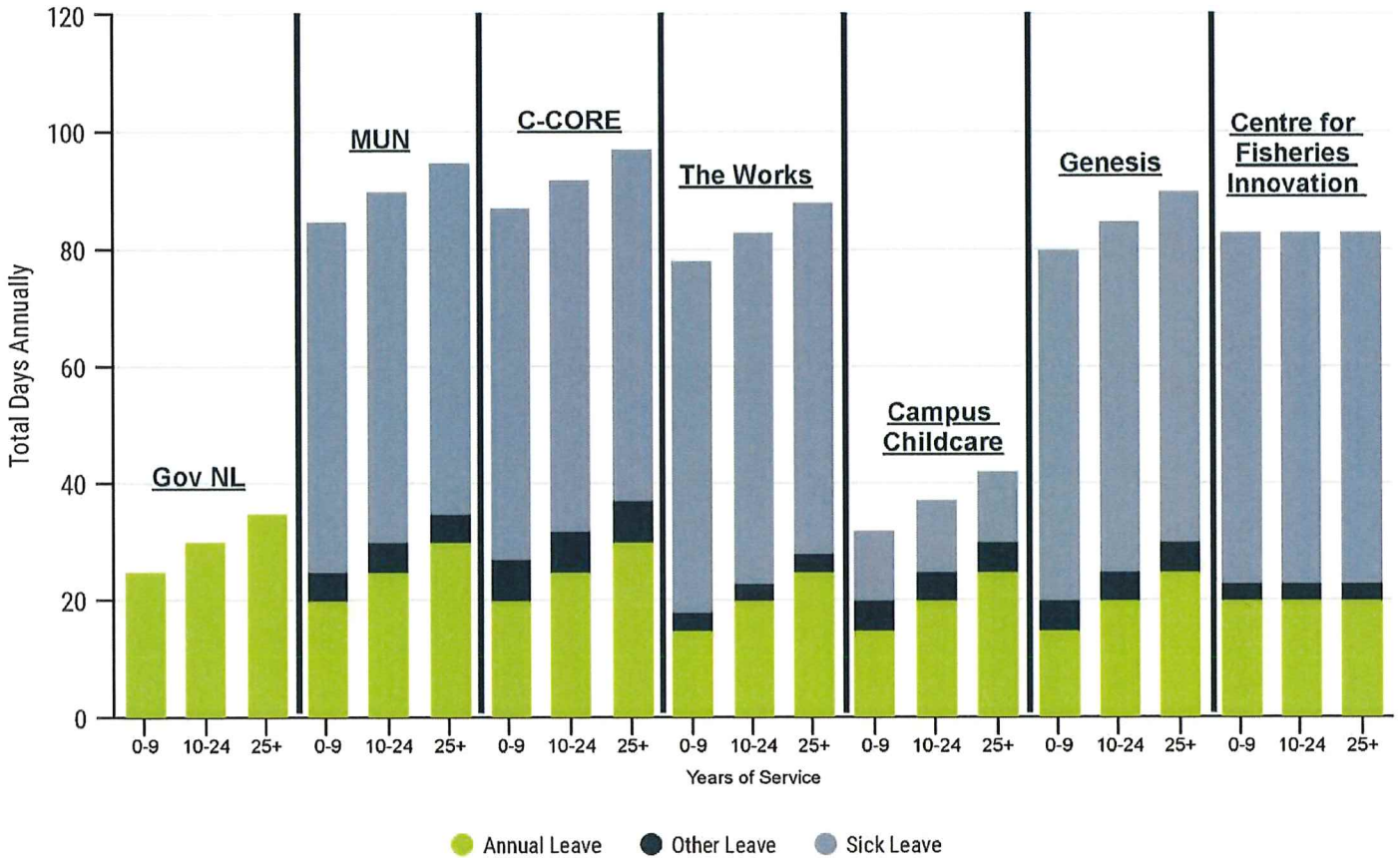
Memorial's management employees received 20 to 30 annual leave days depending on years of service (including an additional five days in lieu of paid overtime); two extra leave days between Christmas and New Year's Day; and up to six family leave days in each two-year fiscal period. Memorial's management employees also had access to an employer-paid short-term disability leave program, which provided up to 60 paid sick days per incident. **Combined, Memorial's management leave entitlement totalled up to an annual 95 paid leave days.**

We found that there was a range of different leave entitlements across Memorial's entities. Genesis followed Memorial's leave policies, while the other entities followed their own leave entitlement policies. **Regardless of the policy, all of Memorial's entities' management employees could have availed of more paid leave than government's executive and management employees.** Further details are shown in Graph 1.

In comparison, provincial government executive and management employees receive between 25 and 35 paid leave days annually, depending on standard hours and years of service. These government employees do not have an employer-paid short-term disability leave program; do not earn sick leave entitlements while in executive or management positions; and do not have separate family or personal leave days.



**Graph 1 – Employee Benefits Comparison
Annual Management Leave Entitlements
As of December 2022**



Source: Prepared by the Office of the Auditor General based upon information provided by Memorial and the Treasury Board Secretariat.
Note 1: Other leave may include family leave, leave in lieu of overtime, and additional leave days during December holidays.

Pension Entitlements

Memorial, The Works, and government provide defined benefit pension plans to employees.

We found the pension plan for Memorial and The Works employees continues to be guaranteed by government and is more generous. Most provincial government employees are subject to a joint trusteeship arrangement that changed their pension entitlements and risks as of 2015 under the Public Service Pension Plan and the Teachers' Pension Plan. The Memorial plan includes a pension benefit based on an employee's best five years average salary, retirement at age 55, and indexing. In comparison, the Public Service Pension Plan's benefit is based on the employee's best six years average salary (if hired after January 2015), retirement at age 58, and has no indexing from 2015 onward.

Table 8 outlines the pension benefits offered by the remaining four entities.

**Table 8 – Pension Benefits
Maximum Employer Contribution
As of December 2022**

Entities	Maximum Employer Contribution	Type of Retirement Plan
C-CORE	6-8%	Matched group registered retirement savings plan – based on years of service
Campus Childcare	3-6%	Matched group registered retirement savings plan – based on years of service
Genesis	8%	Employer payment in lieu of pension benefits - no employee matching contribution
Centre for Fisheries Innovation	9%	Employer contribution to a registered retirement savings plan - no employee matching contribution

Source: Prepared by the Office of the Auditor General based on information provided by Memorial.

Other Post-Employment Benefits

Government, Memorial, and The Works contribute 50 per cent for health, travel, and basic life for retirees hired on or before March 31, 2020, and 40 per cent for retirees hired on or after April 1, 2020. Similarly, **Memorial and The Works co-pay retiree premiums for dental benefits at 40-50 per cent.** The provincial government does not pay any dental plan premiums for retirees. **We found that the provision of dental post-employment benefits cost Memorial \$2.8 million during our audit scope period - approximately \$0.7 million annually.**

The remaining entities either do not co-pay (C-CORE) or do not provide post-employment benefits (Genesis and Centre for Fisheries Innovation). We could not determine Campus Childcare’s premiums for retirees as there is no policy and no one has retired from its one management position. Table 9 provides comparative information.

**Table 9 – Employer Contribution Comparison
Benefit Premiums for Retired Employees
As of December 31, 2022**

Benefit Type	Memorial and The Works	C-CORE, Genesis, Centre for Fisheries Innovation	Government
Health and Travel	40-50%	0%	40-50%
Basic Life	40-50%	0%	40-50%
Dependent Life	0%	0%	40-50%
Basic Accidental Death and Dismemberment	0%	0%	40-50%
Dental	40-50%	0%	0%

Source: Prepared by the Office of the Auditor General based upon information provided by Memorial and the Treasury Board Secretariat.

Service Awards

The University gives employee gifts for service starting at 20 years and for every five years thereafter. **We found employee service gifts vary in cost and a total value of \$50,673 was given during our audit scope period.** In comparison, government recognizes 20, 25, 30 and 35 years of service with a certificate, and no gifts are provided to recognize years of service.



Why It Matters

Compensation costs were Memorial's largest operating expense - comprising 65 per cent of its 2022 annual expenses. As a public sector corporation, Memorial has a responsibility for fiscal stewardship on behalf of taxpayers and students.

The use of a consistent and appropriate compensation methodology within the public service can ensure that the accountability, problem-solving, and know-how of executive and management positions are used to correctly determine the level and value of compensation provided to an employee. This disciplined approach, combined with appropriate and equitable compensation reviews, also ensures comparability and equity.

When a public service entity's salary and benefit practices are more lucrative than others, it creates disparity in the public service; adds to recruitment and retention challenges; and ultimately reduces the public's trust that public money is being managed appropriately. Aspects of the compensation system, such as disparity of wage scales and employer benefits, add to such disparity. Inconsistent policies among the University and its own entities create further differences and beg questions about management oversight and equity.

Since Memorial's pension plan has not undergone reform like the other public sector pension plans, the government remains responsible for covering potential pension benefit payments and administration costs if Memorial's pension plan does not have sufficient assets to cover deficits. Furthermore, Memorial's pension includes retiree benefits that are more costly than those provided by other public service pension plans.



Compensation Findings - Comparison to Market

Criteria 2

Memorial University's executive and management compensation is comparable to other universities of a similar nature.



What We Expected

We expected Memorial to be highly aware of its roles and responsibilities as a public sector non-profit organization. As such, we expected that comparisons to industry, with respect to compensation practices, would only be relevant in instances where documented recruitment and retention issues existed. When such issues were identified, it is reasonable to expect that Memorial would consider market adjustment policies similar to those that exist in government. We expected Memorial to conduct market reviews every three to five years if deemed necessary from a pressing operational need, and only for the employee groups where that need existed.



What We Learned

We compared 36 Memorial positions against benchmark market positions with comparable assessments for accountability, problem-solving, and know-how criteria.

Memorial uses different market comparators for its executive and management groups:

- National University Sector market for executives and Senior Administrative Management;
- Broader Public Sector market for Leadership Group; and,
- Atlantic Canada Public Sector market for Management Professional Staff.

Market benchmarks of total cash (base salary plus bonuses and incentives) were available and used only for our comparison of the Leadership Group to the National Broader Public Sector market. While we compared salaries to other similar universities, we did not compare the benefit packages of these universities. All of Memorial's entities were included in this audit report; however, we did not compare compensation for their respective industries.

Executive

We found Memorial paid higher base salaries as compared to the National University Sector market for all seven executive positions. Four vice-president positions had the largest discrepancy - \$61,492 (27 per cent) above the market base salary as shown in Table 10. The other three positions with base salaries above market ranged between a difference of \$14,862 and \$23,890.

**Table 10 – Memorial Positions Compared to Market
Annual Executive Salary Compensation
As of December 2022**

Executive Position	Base Salary (top-of-scale)	University Sector Market Base Salary (median; mid-point)	Minimum Annual Salary Difference	Minimum Annual Salary Difference %
Vice-President (Grenfell)	\$290,019	\$228,527	\$61,492	27%
Vice-President (Fisheries and Marine Institute)	\$290,019	\$228,527	\$61,492	27%
Vice-President (Indigenous)	\$290,019	\$228,527	\$61,492	27%
Vice-President (Advancement and External Relations)	\$290,019	\$228,527	\$61,492	27%
Vice-President (Administration and Finance)	\$290,019	\$266,129	\$23,890	9%
Vice-President (Research)	\$290,019	\$266,129	\$23,890	9%
Provost and Vice- President (Academic)	\$325,000	\$310,138	\$14,862	5%
Average	\$295,016	\$250,929	\$44,087	18%

Source: Prepared by the Office of the Auditor General based on job analysis work completed by our consultant and information provided by Memorial.

Management

For the 29 management positions examined, Memorial paid base salaries that averaged \$130,043 higher than the overall average of \$118,512 for the National University Sector benchmark, as shown in Table 11. Specifically, we found Memorial paid higher management base salaries than the National University Sector Market for 20 positions (69 per cent) and paid lower than the National University Sector Market for nine positions (31 per cent).

We found Memorial's Leadership Group's base salaries were mostly higher than the National University Sector Market used for comparison. Seven of the eight positions (88 per cent) were above the market base salaries and the other position (13 per cent) was one per cent below the market. The differences compared to the National University Sector Market ranged between \$14,645 (14 per cent) and \$25,788 (23 per cent).

For Memorial's Senior Administrative Management group, we found all six of the positions examined were above the National University Sector Market. The differences compared to the National University Sector Market ranged between \$23,477 (18 per cent) and \$50,774 (50 per cent).

We found mixed results when comparing Memorial's Management Professional Staff base salaries to the National University Sector Market. Five of the 11 positions (45 per cent) were above the National University Sector Market and the other six (55 per cent) were below the market base salaries. The above market differences compared to the National University Sector Market ranged between \$1,095 (one per cent) and \$18,625 (22 per cent).

**Table 11 – Memorial Positions Compared to University Market
Annual Management Salary Compensation
As of December 2022**

Leadership Group

Executive Position	Base Salary (top-of-scale)	National University Sector Market Base Salary (median; mid-point)	Minimum Annual Salary Difference	Minimum Annual Salary Difference %
Director, Signal Hill Campus, Operations, Conference Services and Events	\$116,994	\$92,044	\$24,950	27%
Campus Registrar	\$140,393	\$114,605	\$25,788	23%
Manager, Human Resources Marine Institute	\$116,994	\$102,349	\$14,645	14%
Senior Administrative Officer	\$116,994	\$102,349	\$14,645	14%
Director, Human Resources	\$213,295	\$197,052	\$16,243	8%
Chief Information Officer	\$213,295	\$197,052	\$16,243	8%
General Counsel	\$213,295	\$197,052	\$16,243	8%
Associate Vice- President Administration & Finance, Marine Institute	\$168,472	\$170,591	(\$2,119)	(1%)
Average	\$162,467	\$146,637	\$15,830	13%

Senior Administrative Management

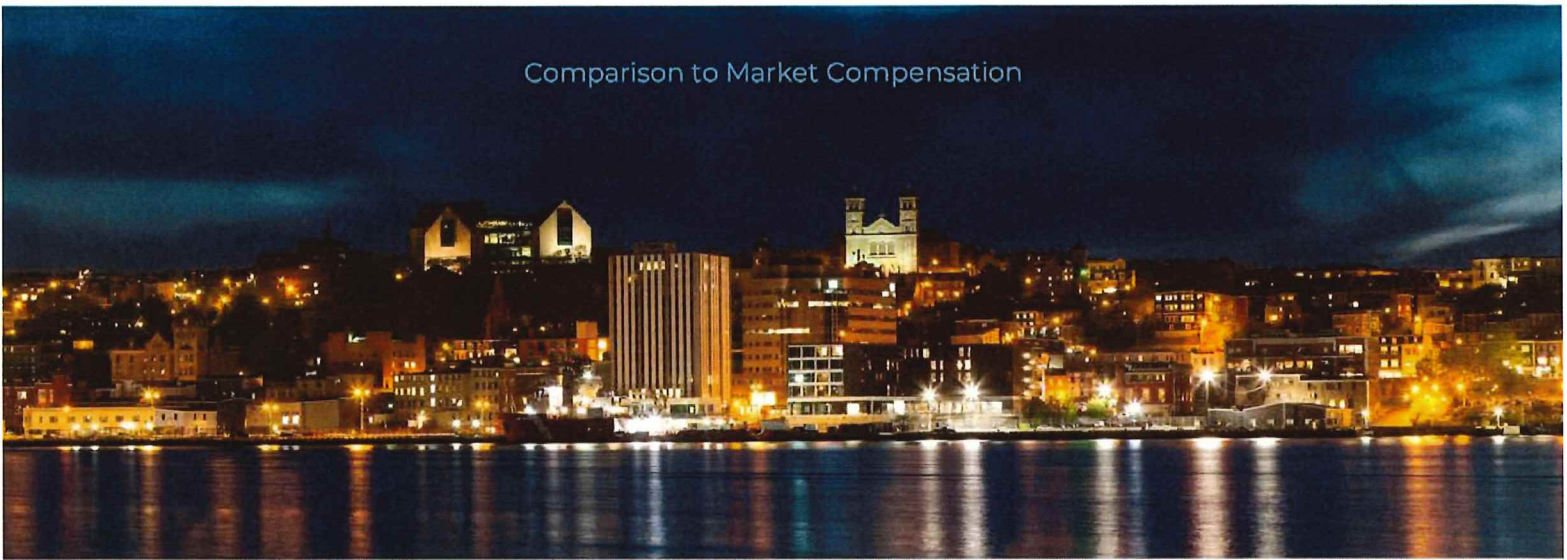
Director, Health Sciences Information and Media Services	\$153,123	\$102,349	\$50,774	50%
Director, Student Residences	\$153,123	\$102,349	\$50,774	50%
Associate Director, Service, Delivery & Operations	\$137,561	\$92,044	\$45,517	50%
Director, Marketing & Communications, Grenfell	\$153,123	\$114,605	\$38,518	34%

Comparison to Market Compensation

Executive Position	Base Salary (top-of-scale)	National University Sector Market Base Salary (median; mid-point)	Minimum Annual Salary Difference	Minimum Annual Salary Difference %
Director, Engagement Grenfell	\$137,561	\$102,349	\$35,212	34%
Chief Operating Officer (Faculty of Medicine)	\$153,123	\$129,646	\$23,477	18%
Average	\$147,936	\$107,224	\$40,712	39%

Management Professional Staff

Development Officer	\$102,034	\$83,409	\$18,625	22%
Coordinator, Research Budgets	\$77,412	\$64,956	\$12,456	19%
Manager, Systems and Operations	\$84,928	\$83,409	\$1,519	2%
System Analyst	\$84,928	\$83,409	\$1,519	2%
Manager, Business Development	\$93,139	\$92,044	\$1,095	1%
Manager, Communications	\$88,964	\$92,044	(\$3,080)	(3%)
Communications Advisor	\$77,412	\$83,409	(\$5,997)	(7%)
Team Lead, Financial Operations	\$84,928	\$92,044	(\$7,116)	(8%)
Senior Administrative Officer	\$93,139	\$102,349	(\$9,210)	(9%)
Manager, Media Services	\$93,139	\$102,349	(\$9,210)	(9%)
Manager, Finance & Administration	\$93,139	\$114,605	(\$21,466)	(19%)
Average	\$88,469	\$90,366	(\$1,897)	(1%)



Other Management

Executive Position	Base Salary (top-of-scale)	National University Sector Market Base Salary (median; mid-point)	Minimum Annual Salary Difference	Minimum Annual Salary Difference %
Associate Vice-President (Public Engagement & External Relations)	\$208,375	\$170,591	\$37,784	22%
Special Advisor to President, Continuing Education	\$178,530	\$170,591	\$7,939	5%
Ethics Director	\$102,847	\$114,605	(\$11,758)	(10%)
Director, Nunavut Artic College Partnership	\$121,000	\$170,591	(\$49,591)	(29%)
Average	\$152,688	\$156,595	(\$3,907)	(3%)
Overall Management Average	\$130,043	\$118,512	\$11,531	10%

Source: Prepared by the Office of the Auditor General based on job analysis work completed by our consultant and information provided by Memorial.

Note 1: Data does not include incentives for the National University Sector Market, if any.

Note 2: Where salary scales are not used, our consultant compared the actual base salary to the comparator markets.

When compared to Memorial’s policy comparators within the public sector for the Leadership Group (against the National Broader Public Sector), we found Memorial paid higher base salaries for seven of the eight positions (88 per cent) examined, as per Table 12. For the Leadership Group positions examined, Memorial paid an average base salary of \$162,467, which is higher than the total cash average of \$150,049 for the National Broader Public Sector. The average salary of the eight positions was approximately \$12,418 above the base salary of the National Broader Public Sector market.

**Table 12 – Comparison to National Broader Public Sector
Leadership Group
As of December 2022**

Position Title	Base Salary (top-of-scale)	Public Sector Total Cash Salary (median; mid-point) Note 1	Minimum Annual Salary Difference	Minimum Annual Salary Difference %
Director, Signal Hill Campus, Operations, Conference Services and Events	\$116,994	\$91,080	\$25,914	28%
Campus Registrar	\$140,393	\$116,481	\$23,912	21%
Manager, Human Resources Marine Institute	\$116,994	\$103,560	\$13,434	13%
Senior Administrative Officer	\$116,994	\$103,560	\$13,434	13%
Director, Human Resources	\$213,295	\$203,401	\$9,894	5%
Chief Information Officer	\$213,295	\$203,401	\$9,894	5%
General Counsel	\$213,295	\$203,401	\$9,894	5%
Associate Vice-President Administration & Finance, Marine Institute	\$168,472	\$175,504	(\$7,032)	(4%)
Average	\$162,467	\$150,049	\$12,418	11%

Source: Prepared by the Office of the Auditor General based on job analysis work completed by our consultant and information provided by Memorial.

Note 1: Total cash salary includes base salary plus incentive compensation and bonuses for the National Broader Public Sector.

Comparison to Market Compensation

When compared to Memorial's policy comparators within the public sector for Management Professional Staff (against the Atlantic Canada Public Sector) pay groups, we found Memorial paid higher base salaries for 10 of the 11 (91 per cent) positions, as per Table 13.

For the 11 Management Professional Staff positions, Memorial paid base salaries that averaged \$88,469, which is \$8,104 higher than the overall average of \$80,366 for the Atlantic Canada Public Sector.

**Table 13 – Comparison to Atlantic Canadian Public Sector
Management Professional Staff
As of December 2022**

Position Title	Base Salary (top-of-scale)	Public Sector Base Salary (median; mid-point)	Minimum Annual Salary Difference	Minimum Annual Salary Difference %
Development Officer	\$102,034	\$75,056	\$26,978	36%
Coordinator, Research and Budgets	\$77,412	\$61,037	\$16,375	27%
Manager, Business Development	\$93,139	\$81,640	\$11,499	14%
Manager, Systems and Operations	\$84,928	\$75,056	\$9,872	13%
System Analyst	\$84,928	\$75,056	\$9,872	13%
Manager, Communications	\$88,964	\$81,640	\$7,324	9%
Senior Administrative Officer	\$93,139	\$89,499	\$3,640	4%
Manager, Media Services	\$93,139	\$89,499	\$3,640	4%
Team Lead, Financial Operation	\$84,928	\$81,640	\$3,288	4%
Communications Advisor	\$77,412	\$75,056	\$2,356	3%
Manager, Finance & Administration	\$93,139	\$98,845	(\$5,706)	(6%)
Average	\$88,469	\$80,366	\$8,104	11%

Source: Prepared by the Office of the Auditor General based on job analysis work completed by our consultant and information provided by Memorial.

Note 1: Data does not include incentives for the Atlantic Canada Public Sector market.



Why It Matters

Compensation costs were Memorial's largest operating expense - comprising 65 per cent of its 2022 annual expenses. As a public sector corporation, Memorial has a responsibility for fiscal stewardship on behalf of taxpayers and students.

While it is fair to acknowledge that Memorial was competing against other private and public sector companies for employees, Memorial and its entities are public sector organizations and share the need for fiscal prudence, transparency, and equity across the broader public service. When a public sector entity's salary and benefits' practices are more lucrative than others, it creates disparity in the public service, adds to recruitment and retention issues, and ultimately reduces the public's trust that public money is being managed appropriately.



Operating Expenses Findings - Reasonability

Objective 2

To determine whether Memorial University managed operating expenses in a manner that ensured the best use of public money.

Criteria 1

Memorial University's operating expense policies are comparable to the provincial government and operating expenses are incurred with consideration of the cost to taxpayers.



What We Expected

We expected Memorial University's policies and procedures to clearly define all acceptable operating expenses, as well as clearly define spending limits and approval requirements. We expected Memorial's actual operating expenses to be within those stated spending limits. It is reasonable to expect that appropriate management oversight happened routinely, ensuring a pressing business need for the expenditure before it is incurred.

We expected Memorial University to be highly aware of its role and responsibilities as a government not-for-profit organization. It is reasonable to expect that this responsibility would result in the prudent pursuit of the lowest-cost alternatives, particularly for expenses that are considered discretionary. Government's Order in Council (OC2010-323) provided Memorial with an exemption to the application of Treasury Board policies, specifically travel, relocation, and professional and membership fees in this audit report. However, we would have expected Memorial to avail of this exemption with fiscal discretion.



What We Learned

Policies and Procedures

We reviewed Memorial's operating policies and procedures to assess whether they clearly define all allowable operating expenses, spending limits and approval requirements. Table 14 summarizes our findings and our observations about policy gaps.

Table 14 – Operating Expenses – Policy Assessment

Type of Operating Expense	Does the Policy Define the Allowable Expense?	Have Spending Limits been Outlined in the Policy?	Have Approvals been Outlined in the Policy?	Does the Policy Compare to Government?
Hosting	Some	Some	Some	No
Professional Consultant Fees	Yes	N/A	Yes	Yes
Executive Donations and Sponsorships	No	No	No	N/A
Gifts and Other Executive Expenses	Some	Some	Yes	No

Reasonability of Operating Expenses

Type of Operating Expense	Does the Policy Define the Allowable Expense?	Have Spending Limits been Outlined in the Policy?	Have Approvals been Outlined in the Policy?	Does the Policy Compare to Government?
Travel	Yes	Yes	Yes	Some
Relocation	Most	Some	Yes	No
Institutional Membership Fees	Yes	No	Yes	Yes
Other Operating Expenses*	Yes	Yes	Yes	Yes

Source: Prepared by the Office of the Auditor General based upon information provided by Memorial University

* Other operating expenses include building and space rentals, library acquisitions and renewals, and finance and insurance fees.

We examined 225 samples of operating expenses incurred between April 1, 2019 and December 31, 2022. Of these samples, 122 had relevant spending policies. All of these policies apply to Memorial, except entities that may elect to have their own policies. **Expense samples were generally within reasonable policy spending limits for 110 (90 per cent) of these 122 samples; 12 of 122 samples (10 per cent) were not.**

Hosting

Memorial's hosting policy states hosting with third parties at restaurants is permitted with prior approval, using a per-person cost of \$15 for breakfast, \$25 for lunch and \$50 for dinner. **There was no policy for larger university-hosted events**, and University officials advised they used the University's hosting policy as a guide to determine the reasonableness of large university-hosted events. Government has a limit of \$2,500 for events such as receptions, dinners, press conferences and luncheons with Treasury Board approval required for exceptions.

We tested 17 samples of University events (including large events, small events, home hosting and special hosting by deans and directors). **Three of five hosting samples (60 per cent) did not abide by policy.** While these deviations may have been approved by the appropriate authority within the University, approval documentation was dated after the event for two of our three samples. **We found that five events samples (29 per cent) would be considered unreasonable or excessive compared to what would be permitted in the public service.**

#1

In 2019, Memorial hosted a number of activities from July to December to celebrate the 50th anniversary of Harlow campus, costing more than \$127,000. These expenses were recorded in various accounts, making it difficult to obtain a complete account of events. Celebrations included dinners (one of which included alcohol for attendees), a pub event, and ticketed theatre shows. The alcohol for attendees was initially paid for by Memorial but was subsequently covered by a donation from one of the attendees, who joined the Harlow Board of Directors three months later. Events were held in both London and Newfoundland and Labrador for personnel and alumni of the Harlow, St. John's, and Grenfell campuses, with event attendance ranging from 21 to 50 people. Total costs included:

- \$44,431 for project management fees (consultant to coordinate the events);
- \$42,292 for direct event costs, including advertising of \$19,351;
- \$31,403 for travel by University officials at an average of \$3,925 for two trips each for two officials and one trip each for four officials; and,
- \$9,172 for artwork shipped to Harlow campus from St. John's.

#2

In October 2022, an Employee Service Award Dinner for attendees (employees and their guests) with 30 or more years of service, was held at the Signal Hill campus, at a cost of \$6,936, including alcohol. Typically an annual evening event, the 2022 event covered 2019 to 2022 due to the pandemic. Per the guidance, the allowance was \$4,500 total, an average of \$2,436. By comparison, the government recognizes employee service with non-monetary awards and ceremonies.

#3

In November 2022, Memorial hosted a three-day Arctic Forum for 40 attendees at a net cost of \$65,709 as detailed in Table 15. The first day was held in St. John's and the other two days at a hotel on Fogo Island. While the hosting policy states the guidelines are not applicable where the cost is being recovered through external revenues, we used the hosting policy as a comparator. We found the Fogo Island portion of the trip had a catering cost of \$19,752 (including alcohol) versus the guidance - an overage of \$12,552 and almost triple the \$7,200 guidance used by the University.

Table 15 – Arctic Forum Costs

Cost Breakdown	Cost
Fogo accommodations cost for 11 Memorial staff	\$10,872
Event administrative costs (net of contributions)	\$27,438
Transportation and on-board entertainment	\$6,415
Travel claims by six Memorial staff for transportation	\$6,694
Meal costs (net of contributions)	\$14,290
Total Net Costs to Memorial	\$65,709

Source: Prepared by the Office of the Auditor General based on expenses data from Memorial University.

#4

Special hosting allowance expenses for deans and directors, such as retirement functions, Christmas parties, or dinners attended solely by Memorial staff, totalled \$49,239 for our scope period. We found that policy stated that this allowance was specifically to pay for expenses that would not normally be permitted under the hosting policy. For example, this allowance permits deans and directors to perform hosting for invited guests and employees or to pay for working luncheons. The policy does not define allowable expenses, but does provide an annual allowance for these expenses depending on the specific position which ranged from \$1,700 to \$4,100.

#5

Memorial's hosting policy allows for 'home hosting' is limited to \$15 (per person) for lunches, \$25 for dinners and \$250 for a reception (25 people).

We found in one of our home hosting samples the former President organized a meeting with the vice-presidents at Signal Hill campus followed by a dinner for 10 people at the President's home (for the vice-presidents and their spouses). The cost for the dinner event was \$1,452, including alcohol – significantly more than the allowable \$250 limit. The hosting policy in general also does not permit luncheons or dinners attended solely by University employees or activities involving spouses of faculty or staff.



Professional Consultant Fees

Memorial's spending on professional fees is guided by the University's purchasing policy. Given professional fees did not have a spending limit, we did not find any instances in which spending exceeded policy. We tested 40 samples of professional consultant fees for reasonability. **We found six professional fee samples (15 per cent) that may be considered unreasonable or excessive in comparison to government practice.**

#1 - #5

In five samples, Memorial used search firms to recruit 15 management and executive positions at a total cost of \$1.1 million. Two search firms had been engaged to recruit five positions, including the Provost and Vice-President (Academic), Vice-President (Fisheries and Marine Institute), Vice-President (Administration and Finance), Associate Vice-President (Indigenous), and the President. **We found that five of the 15 staff (33 per cent) recruited through this method were no longer employed by the University.** Furthermore, we found that of the five samples, three resigned within one year.

The recruitment costs ranged from \$42,000 to \$70,000 for each position, plus additional administrative and engagement support fees as incurred. The base salary for these positions ranged from \$134,184 to \$450,000. Contracts stipulated that if the candidate recruited leaves for performance-related issues within 12 months, the search would be conducted again at no additional cost (excluding administrative and engagement support fees). This clause excluded situations where the candidate resigns due to personal matters or changes in the duties or reporting relationship of the position.

#6

In the sixth sample, we noted a total cost of \$65,000 in fees paid for a consultant that did not submit a final report, as required in their contract. The consultant was hired in 2019 to provide advice on maintaining and further developing Harlow campus. The contract had no term limit, and over the course of the contract, only one written document was submitted by the consultant despite the contract requiring monthly updates to Memorial's executive. The only additional evidence that Memorial officials could provide regarding the consultant's work was one written summary of a meeting the consultant held with Memorial officials.

We found that this individual was a member of the Harlow Board of Directors when hired as a consultant. Memorial has a conflict of interest policy which requires all individuals to refer potential and real conflicts of interest to the University's Conflict of Interest Committee for review. However, **University officials confirmed that no disclosure was made to the Conflict of Interest Committee about this consultant/board member.**

Executive Donations and Sponsorships

Memorial does not have a policy to guide donations and sponsorships. However, we found that the University executive contributed more than \$140,000 in donations and sponsorships to outside organizations during our audit scope period. Since we did not audit other expense categories, our findings are limited to executive expenses.

We found three expense samples were for donations and sponsorships, which may be considered unreasonable or excessive in comparison to government.

#1

\$25,000 sponsorship by the President's Office for a table at the India@75 Anniversary Celebrations in Ottawa (attended by the former President and one University employee).

#2

\$2,800 for a number of sponsorships by the Office of the Vice-President (Grenfell), such as a municipal Come Home Year pub event and a municipal fire department.

#3

\$8,000 sponsorship by the President's Office to the Institute for Research on Public Policy for a table at a gala in Ottawa in November 2022, which was attended by the former President who was also a Board member.

Gifts and Other Executive Expenses

Memorial had policies that guided spending on gifts, however, it was not clear and simply noted items of 'reasonable value' be pre-approved. There were no definitions or limitations noted for allowable gifts, or the occasions for which gifts may be provided. We also examined expenses related to renovations within the University's executive offices. We examined 18 samples for reasonability and found **two of the 18 samples of gifts and other executive expenses (11 per cent) which may be considered unreasonable or excessive.**

#1

We found one sample of \$1,792 for custom-made chocolates purchased in December 2020 by the President's Office and used as gifts from the former President for employees, other stakeholders, and visitors. A review of the full data provided by Memorial for our scope period revealed a total of \$22,800 in purchases across the University for these same custom-made chocolate products. These purchases were made by 17 executive and non-executive offices, with nearly half incurred by the Division of Events - Marketing and Communications (\$4,589), the President's Office (\$3,354), and the Office of the Provost (\$2,691).

#2

One executive expense sample was for renovations of the Office of the President in 2020. The total cost was \$56,504, of which \$16,828 (30 per cent) was for new furniture and equipment. **We found that \$2,700 of the \$16,828 (16 per cent) for new furniture was for a desk and chair for the former President's home.**

Travel

Memorial had policies that guided spending on travel which were generally consistent with government, however, we found instances where spending exceeded those policies.

We reviewed all trips made by the two former Presidents during our scope period, as well as 23 samples of travel by other executives and senior management. We did not assess the reasonableness of the President's travel, however, our review raised some questions as to the appropriateness of certain travel expenses. For context, the two former Presidents we assessed had 44 trips for a total of \$105,477.

- The first former President had five trips between April 2019 and March 2020 of our scope period totalling \$9,569 (approximately one every two months). No issues were noted in the travel of the first former President.
- The most recent former President had 39 trips between March 2020 to December 2022 totalling \$95,908 (approximately one per month). All references below refer to the immediately former President.

We found seven travel expenses (10 per cent) of concern: five for the President that we question the appropriateness of, and two for other executives and senior management that may be considered excessive in a public sector context.

#1

We found that in July and August of 2020, the former President incurred \$9,880 for a province-wide 24-day tour to visit various University facilities and personnel by car. Costs reimbursed for this travel included \$652 for car maintenance items, specifically car tire replacement and an oil change, even though the former President received a monthly car allowance of \$1,000 which included car maintenance. Memorial's travel policy does not allow for the reimbursement of maintenance costs. We also found that during this trip, the former President claimed accommodations for a weekend costing approximately \$342 per night, during which time they had no university-related business. We note that this cost was \$180 higher than the average of \$162 per night incurred for the other 22 days of the trip. The former President did not use any personal leave for this trip.

#2

We found the former President claimed \$2,217 to travel to Corner Brook, primarily to announce the interim Vice-President (Grenfell Campus) and the resignation of the current Vice-President, in March 2021. We found this amount included four nights in the executive suite of a hotel costing \$1,288 (\$322 per night). We also found that the former President claimed \$132 for a dinner on March 17 and \$55 for meals on March 18 despite being on personal time during this portion of this trip. Memorial policy only allows meal per diems to be claimed when travelling for university business. The dinner on March 17 included their spouse, and the former Vice-President (Grenfell) and their spouse. As stated earlier, Memorial's hosting policy does not allow hosting solely for Memorial employees.

#3

We found that in November 2021, the former President travelled to Toronto and Montreal for VIA Rail board meetings and various meetings with alumni, donors and other organizations that cost the University \$1,782. The former President was a board member of VIA Rail, unrelated to the former President's role at Memorial. The former President attended VIA Rail Board meetings, for which VIA Rail paid for meals, accommodations, and a portion of airfare, resulting in a net cost of \$491 to the University. We also found that the former President did not claim personal leave for the days related to the VIA Rail board meetings.

In addition to this sample travel item, we also found that the former President was a member on 15 boards, of which 11 were at the discretion of that President. Six of the 39 trips (15 per cent) taken during our scope period were for the former President's attendance at meetings of two boards, which Memorial officials confirmed would be considered discretionary membership. Only the President attended these board meetings. Memorial was a member of five of these boards previously; of the remaining six, two related to the former President's research; we also found that the former President did not take personal leave to attend the six meetings. Five of these six trips (83 per cent) had a portion of the cost of airfare and accommodation paid for by the respective board - VIA Rail and the Institute of Research for Public Policy.

#4

We found that, in April 2022, \$3,428 was spent for the former President to travel to Regina to attend an event at the University of Regina. Attendance to this event appeared to be the primary purpose for travel as only one night's accommodations was claimed. The former President did not take personal leave to attend.

#5

We found one trip in August 2021 in which the former President paid \$598 for limousine service stating there was no other car rental available. The purpose of the two-day trip to Halifax was to visit with two potential donors. The limousine service was used to travel to and from the airport as well as to and from one meeting which was an hour away from the hotel. Memorial's travel policy requires employees use the most economical mode of transportation available.

#6 & #7

We reviewed \$431,491 of other executive travel expenses across the audit period and found instances of excessive spending. We found that business class tickets were purchased in two of our 23 travel samples (nine per cent), despite the travel policy stipulating that all air travel be made at the lowest obtainable cost and should not exceed full economy fare. We also found that, for one of these business class trips for an executive member's trip to the Harlow campus 50th-anniversary celebrations, they claimed \$801 for one night's accommodations while the other accommodations had cost \$169 per night. We further found that, from our testing on event expenses, another trip to attend Harlow Board meetings and a dinner related to 50th-anniversary celebrations had the same executive member spend \$1,406 (average of \$703 nightly) for two nights' accommodation.

Relocation

The relocation policy lacked clarity and guidance on household relocation costs, specifically on reimbursement for house sale and purchase fees, shipping vehicles, and scholarly goods. Reimbursement for these costs was offered in some employment contracts. Government policy addressed these costs in detail, imposing limits and requirements for house sale and purchase fees and shipping vehicles.

Memorial had policies that guided spending on relocations. Memorial's guidance allowed deviations with authorized approval, which was used excessively to approve spending beyond the thresholds outlined in the policy. We examined 38 samples of relocation expenses within Memorial for reasonability. We found that 27 of the 38 relocation expenses (71 per cent) exceeded policy spending limits for relocation expenses, such as the weight of shipped household items, requiring a deviation from policy to be approved. While these deviations may have been approved by the appropriate authority within the University, the number of these samples that required a deviation from policy appeared unusual because the policy is intended to set and ensure the threshold is adhered to. We also found that five of these 27 samples with deviations (19 per cent) included shipping costs for motor vehicles, which was above government's \$3,000 policy limit for these expenses. Costs ranged from \$3,116 to \$4,423.

Institutional Membership Fees

Policies that guided membership fees did not outline a spending limit; however, they did require a justification form. We examined 26 samples of institutional membership fee expenses for reasonability (22 membership and four subscription samples). We found nine instances (41 per cent) where the membership fee policy was not followed. We also found one instance where the membership expense was incorrectly coded and could be considered unreasonable.

#1

We found there were nine of the 22 membership renewal fee samples (41 per cent) that did not have appropriate documentation outlining the reason for renewals as required on an Eligibility of Membership form. This form requires staff provide a reason for a membership fee, including its benefits to the institution. However, we found that only a description of the membership being renewed was provided, instead of a reason for that renewal.

#2

During our sample selection, we found one expense that was coded to memberships, but was actually a license fee. On further investigation, it was noted that this license fee may be considered unreasonable or excessive in a public sector context. We found that the license fee was for a customer relationship management software package purchased to manage and improve student relations at a cost of \$2 million, but was not being used appropriately. A September 2021 internal audit report concluded this software was inefficient and underutilized and recommended the software be renewed for a year to allow an evaluation of future value. We found that Memorial renewed the software in December 2021 for an additional five years at a cost of \$377,356 per year (total contract value of \$1.9 million) with a two-year opt-out clause.

Other Operating Expenses

We found there were policies that guided other operating expenses such as building and space rentals, library acquisitions and renewals, and finance and insurance fees. We examined 16 samples for reasonability. We did not find any instances of expenses that were unreasonable or excessive.



Why It Matters

Clearly defined policies and procedures ensure that employees know what spending is acceptable, what expenses can be reimbursed, and what controls are in place for approvals. Management oversight is expected in the approval process to ensure expenses incurred are appropriate, supported by a business purpose and able to be reimbursed. With respect to operating expenses, there is a risk that inappropriate spending, lack of internal controls, or unacceptable costs being reimbursed could happen due to a lack of policy guidance. The extent of approved deviations from policy also brings into question whether the policy is considered adequate or appropriate.

Discretionary expenses are often not mandatory to incur or can be subject to internal corporate policy, which can be changed if costs outweigh benefits. Operating expense policies that are not consistent across the public sector environment can lead to disparity in the service and the development of corporate cultures that may allow excessive or unreasonable expenses to occur.



Operating Expenses Findings - Monitoring

Criteria 2 Memorial University is effectively monitoring operating expenses.



What We Expected

We expected Memorial University would have clear guidance to monitor operating expenses across all areas of the organization. We expected that Memorial would perform regular and detailed variance analysis between the budget and actual expenditures for all expense categories and that this analysis would occur consistently at all levels of the organization. We expected variance analysis across units to be consolidated and reported to the appropriate department heads and then to the responsible vice-president. We also expected information to be completed and provided to senior management in a timely manner and in sufficient detail for appropriate oversight, and corrective action if necessary, to be performed.



What We Learned

Policies and Procedures

We found Memorial's policies and procedures meant to guide monitoring operating expenses were not comprehensive and did not require unit head review.

According to the University Operating Budget policy, unit heads have responsibility for all funds allocated to them. The Department of Financial and Administrative Services did set out a Monthly Financial Oversight Checklist, which is a one-page document that outlines the minimum transaction review and budget monitoring activities that should be performed on a monthly basis by all units that make financial transactions. However, we found the activities noted in this checklist were not comprehensive, such as variance analysis is not required to be performed or submitted.

We also found the checklist provided very little direction on how to perform recommended reviews and monitoring activities. For example, the budget monitoring guidance recommended a review and assessment of the actual versus budgeted results by account and to take appropriate action. However, there was no direction on the threshold for this review or the actions that may be required or deemed appropriate in the case of variances or concerns. Furthermore, Memorial officials confirmed that **units were not actually required to complete or submit this type of variance analysis each month.** The only required variance analysis carried out annually is done by the Department of Financial and Administrative Services for the external auditors of the University's financial statements.

The level of expenditure review at Memorial does not compare to the level of review within government. Government has comprehensive financial monitoring processes for government departments, including bi-weekly payroll register approvals and monthly budget monitoring reports. The Department of Finance oversees monthly budget monitoring and each department provides detailed variance explanations to its Deputy Minister for approval. This information is then submitted to the Department of Finance for review and follow-up with each department.

Expenditure Monitoring

We found that Memorial's policies and procedures were not followed effectively. Therefore, we could not confirm that appropriate oversight of expenses occurred.

We requested supporting documentation for the June 2021 checklists from six units to assess the monitoring process. **We found that two of the six units (33 per cent) did not have supporting evidence to show that the required work in the financial checklist was performed. There was also no evidence that the unit head was informed of the outcome of the assessment and monitoring activities or approved that the work had been completed.** Financial checklists only required the signature of the senior administrative officer or equivalent for a unit and not the unit head (dean or director). Despite the University Operating Budget policy stating that unit heads have ultimate responsibility for the funds allocated to their unit, we found that there is no verification requirement that the steps in the financial checklist were actually performed.

It appears, according to instructions on the checklist, that the Department of Financial and Administrative Services completed a very limited oversight function regarding the transaction review and budget monitoring activities. The instructions noted that completed checklists for a given month were to be filed with the Department of Financial and Administrative Services by the 15th of the following month. However, in our sample of two months of checklists, **we found that many units were not submitting their financial checklists on schedule.** For example, for the month of June 2021, 32 of the 54 units (59 per cent) had not submitted checklists on time, with nine units (17 per cent) having checklists outstanding for two or more months prior. **Oversight by the Department of Financial and Administrative Services on the review and monitoring activities consisted of the compilation of the completed checklists each month.**

We found that there was limited oversight of expenses performed by the Budget Office. The Budget Office's role is to ensure there is stewardship of financial resources and that units spend within their budget allocations. **There was also no adequate analysis of variances between the budget and actuals documented in the submissions received and by the Budget Office at a consolidated level.** For example, the analysis was not based on a predetermined threshold, not all significant variances were explained, and some explanations lacked sufficient details.

We also found that many units either did not submit, or were late submitting, their required budget updates. We examined the submissions for the September 30, 2022, update and found that 21 of the 54 units (39 per cent) had not submitted any information for the budget update, while a further nine units (17 per cent) had submitted their information too late to be included in the update. **According to Memorial officials, units that did not submit their budget information for the update (39 per cent of our sample) were displayed as balanced, rather than being highlighted as missing.**

The Budget Office also had the ability to generate a report monthly from the University's financial system outlining the previous month's budget changes. Budget changes include transfers (one-time reallocations between expense categories) within and between units that are approved and finalized by the Budget Office. **We found that this report was only provided to units on a by-request basis.** This report could have been very valuable for oversight by the Budget Office and unit head if it had required the report to be distributed to and reviewed monthly by the units. **We also found that the Budget Office's ability to generate this report had halted near the end of our scope period (November 2022) and its replacement had not yet been implemented as of December 31, 2022.**

Inaccurate Accounting Records

During the course of our audit work, we identified instances of incorrect coding of expense transactions – resulting in some expenses being overstated and some understated - that had not been identified by any expense monitoring processes.

In one instance, we found that software rental expenses, related to the previously noted customer relationship management software package, were understated by \$2.0 million across our scope period because these costs were incorrectly charged to the membership fees account. In another instance, we found that \$277,835 in relocation expenses were incorrectly charged to another account meant for local office moving expenses. As a result, relocation expenses were understated. During our sampling process for home hosting, we found half of the expenses were miscoded into the home hosting accounts as they related to other activities and expenses. In another instance, we found the sample for the dean's special hosting allowance expense had also been miscoded in the accounting records.



Why It Matters

Operating expenses are by their very nature expenses that need to be managed, reviewed and scrutinized. They require consistent and constant management oversight to ensure they are reasonable and appropriate. Monitoring and budgetary processes facilitate this while ensuring adherence to policies and guidelines. If actual expenses exceed their policy limits, management attention may be required to ensure corrective action is taken and cost escalation is controlled. Occasionally, policies may require review given changing organizational requirements.

Information on monitoring must be provided in sufficient detail to those overseeing operations to ensure that they are aware of the activity and can respond to issues in a manner that allows them to be addressed. Centralized oversight allows for strategically focused efficiencies, identifying areas where spending should be reduced and allowing for better decision-making for future expenditures. Accurate expense coding is also critical. As the ultimate head of the organization, executive and board members need to be appropriately and comprehensively informed on all aspects of the organization's operating expenses in order to perform their due diligence and oversight. Due to procedures not being verified as being completed by the unit head, we could not conclude that unit heads are monitoring or providing oversight appropriately.



Oversight Findings - Information Flow

Objective 3

To determine whether Memorial University had effective oversight processes to manage operations.

Criteria 1

Memorial University's oversight processes promote effective information flow to the executive and the Board of Regents.



What We Expected

We expected Memorial would have implemented a structure that promoted the clear, relevant, and timely flow of information about its operations to its executive and those charged with governance. We also expected policies and procedures to exist that reinforced this information flow within the University structure and that these policies and procedures would be reviewed and updated in a timely manner.

We expected Memorial would have clearly defined delegations of authority, from the Board to the executive to the administration; and a registry that would clearly define the roles and responsibilities of each level of authority over operations and relevant information.

For effective oversight of Memorial's compensation and operating expenses, we expected the Board of Regents would receive detailed financial information on all University funds and operations, including relevant variance analysis and explanations. We expected that these updates would have been provided on a regular basis, including a comparison of year-end results.



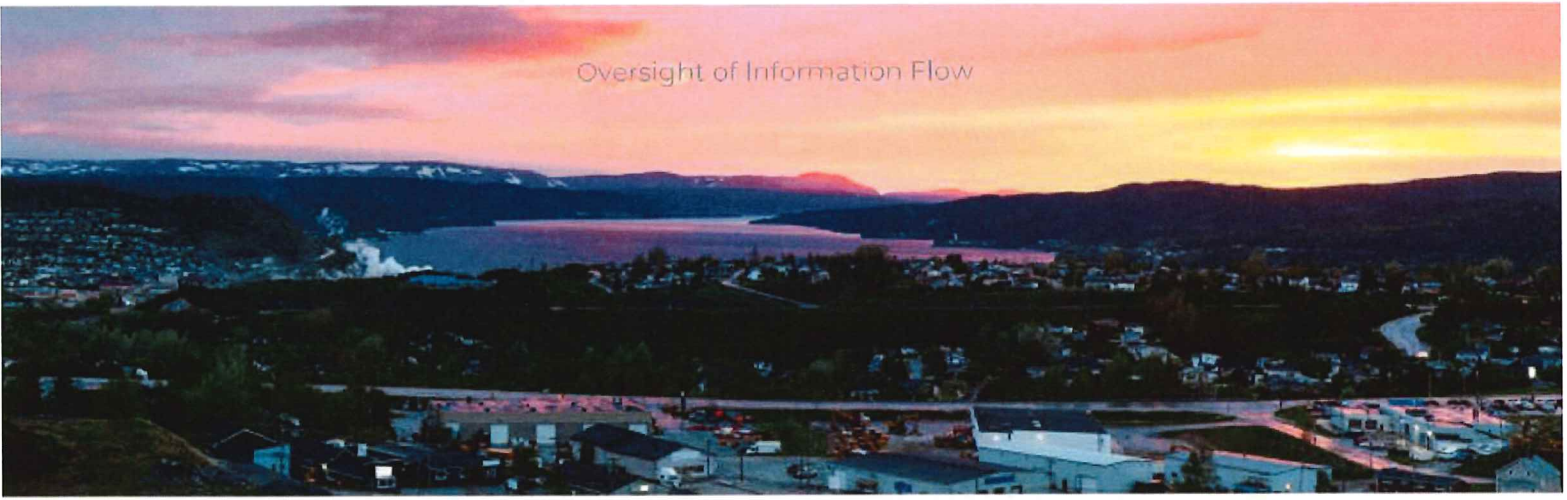
What We Learned

Policies and Procedures

As stated in the background of this report, the University is governed by the Memorial University Act, which specifies the roles, responsibilities, structure and administrative aspects of the University. Memorial operates with six campuses and five entities as a government not-for-profit organization. Its Board of Regents holds power over the management, administration, and control of University affairs. A combination of academic and administrative structures were led by the President and the executive, with authority delegated to staff to facilitate efficient operations.

We found that, while the Board of Regents had created a Board delegations of authority policy in 2021, no registry of delegated authority or procedures on how authority was delegated had been developed. A recommendation to create this policy and registry was provided by the University's Office of Internal Audit and had been accepted by the Board of Regents. However, these had not been created by the end of our audit period.

We found the terms of reference for the Board's Finance Committee were vague in its requirement for monitoring the financial status of specific activities or projects, with the wording in the terms of reference describing this monitoring as being determined from time to time by the Board.



We found that, while Memorial had extensive policies and procedures to manage its operations, these had not all been reviewed for updating as required. The Board of Regents is responsible for approving all University policies, and the Office of the Board of Regents maintains an online database of active policies and procedures for the University, as well as a framework for reviewing and updating these policies on a scheduled basis. Policies also have an assigned sponsor responsible for reviewing the policy every four years for potential updates. **We found that these updates did not happen and 75 of 86 policies (87 per cent) had passed the date for required review.**

Procedures, which are connected to policies, are not approved by the Board and are the responsibility of the sponsor and their administrative staff to create and maintain. Memorial's procedure framework specifies that procedures require updating when their associated policy is updated. Given that 87 per cent of policies had not been reviewed on time, **a similar percentage of procedures had also not been reviewed.** However, **we found that there was no formal report created or provided to executives to demonstrate the status of University procedures.**

We found that Memorial did not require Board of Regents or executive approval for its entities' policies and procedures. These entities could choose to adopt Memorial's policies or create their own. In that case, they are required to inform the Vice-President (Administration and Finance) of their alternative policy. No approval is required or provided on these alternative policies and procedures.

We also found that Memorial's entities' boards were responsible for approving compensation decisions within their respective entities without any requirement for approval from Memorial's Board of Regents. For example, while Memorial's Board of Regents was provided information from Genesis in relation to its incentive program when implemented (in 2008), the Board did not provide approval for the program because "this item was for information only and did not require a resolution of the Board."

We found Harlow campus' policies were incomplete and its governance policy, referenced in the 2018 Harlow Campus Usage policy, did not exist. We also found that policies and procedures for compensation at Harlow are not approved by the Board of Regents.

We found Memorial officials could not provide a policy for monitoring of the non-operating funds, nor could they advise whom amongst the vice-presidents had responsibility for monitoring or oversight of these funds. The Chair of the Board of Regents advised that oversight of Memorial's \$190 million non-operating funds was the responsibility of the President. These non-operating funds represented almost 30 per cent of Memorial's total expenditure for the fiscal year ending March 31, 2022.

As noted in the compensation section of this report, we found Memorial's executive compensation policy did not exist and the management compensation policy had not been updated since 2016. We also found Memorial did not include compensation of its entities in its annual compensation disclosure listing and none of these entities published their own compensation disclosure listings.

As noted in the operating expenses section of this report, there were deficiencies in the monitoring of operating expenses' policies and procedures. These operating policies were generally the responsibility of the Vice-President (Administration and Finance).

Information Flow Assessment

The University's Procedure for Budget Forecasting stated that financial updates to the Board were required three times a year, which, for our audit period, should have resulted in 11 updates. **We found there were only five financial updates provided to the Board of Regents over 45 months.** Six of the expected updates were missing, with none provided at all during 2020. **The financial budget updates that were completed were labelled as 'for information purposes only' and did not require any action by the Board.**

We found the financial updates, which were used for reporting operating expenses to the Board of Regents, were highly summarized. We found the commentary in the financial updates on the University's position was limited to one page and contained minimal analysis. Specifically, each of the executive offices, administrative departments, and most campuses were presented as a single line, compared against an overall operating budget amount. Updates only included:

- the base budget;
- the adjusted budget;
- the forecasted expenditure;
- the projected surplus/deficit (difference between the adjusted budget and forecasted expenditures); and
- the cumulative carryover (prior year carryover plus current year surplus/deficit).

We found that these updates did not contain a comparison to actual expenditures for the period; an analysis of significant variances by expense type; or any comparison to the prior year.

The only information received by the Board of Regents regarding the types of expenses incurred was within the annual audited financial statements, which was presented at the consolidated level and did not provide actual versus budget comparisons.

We found that the Board of Regents did not receive detailed annual information on compensation expenses, which is the University's largest expense annually. Compensation was \$416 million or 65 per cent of its budget for the year ending March 31, 2022. The information received by the Board was once again highly summarized, composed only of the audited consolidated financial statements and the budget for the year, both of which did not provide compensation costs by unit or campus.

We found there was no comparison of the year's budget to actual results presented to the Board of Regents at the end of any of the fiscal years included in our scope period. In comparison, government requires a detailed analysis and explanation of variances between budgeted expenditures and the actual results for all expenditure categories by department.

We found that the final report for the fiscal year, which compared the University's budget to its actual expenditures for the period, was generated, but was only informally discussed with some executive. This report for fiscal 2020-21 noted that the University had generated a cumulative surplus of \$6.8 million against the expected budget for the 2020-21 fiscal period and a total surplus of \$41.9 million against the expected budget from this and prior fiscal periods. **Unspent budgets are carried forward by individual units for potential future use.** In comparison, government provides a budget to departments (by division) for a specific year only, and no surplus or savings are allowed to be carried forward for future use.

We found that a more detailed variance analysis of revenue and expenses by major financial statement categories was requested by a former Finance Committee Chair and presented to the Board of Regents in October 2020. We found this was the only time a detailed variance analysis was provided to the Board during our audit period and there were no plans for it to be provided again.

Memorial officials advised us that expense oversight was performed by the executive through meetings with staff that reported directly to them. **We could not assess the effectiveness of expense oversight due to a lack of documentation and inconsistent practice.** The President had informal discussions with their staff as well as documented regular meetings of the executive. The vice-presidents advised that they received financial and operational information for units that directly reported to them. However, through our examination of the monthly financial oversight checklist, we found that some unit heads did not perform this work.

We found that there were no financial updates on non-operating funds (ancillary, plant, research, special purpose and trust) provided to the executive or Board of Regents. We also found that non-operating funds were not clearly identifiable in the University's audited financial statements, as all funds are consolidated. **Further, we found that these funds were not part of the Board of Regents' budgeting process.**

We found there was no evidence the Board of Regents received any updates on the financial activities of the Harlow campus from the President during our audit period. The Harlow campus was included in the financial updates presented two to three times a year to the Board of Regents, but this was a single line of highly summarized information without analysis or discussion. We found that Harlow campus' financial activity was not consolidated into Memorial's financial statements. According to Memorial officials, the funds to support Harlow are expensed as a grant from Memorial on their financial statements and the Harlow financial statements are not consolidated as it is immaterial to the entity.

We found that annual reports and individual financial statements of Memorial's entities were not made public. These entities were consolidated into Memorial's financial statements, which provided results on the entire University and not on the parts that compose it. These entities were also not included in Memorial's annual report, apart from a note to the financial statements which mentioned their consolidation.



Why It Matters

As a public sector corporation, Memorial has a responsibility for fiscal stewardship and should ensure appropriate information flows to the Board and executives on all its operations. It is vital that the Board of Regents have detailed and comprehensive information about all aspects of operations. Equally vital, the executive of the University requires detailed and comprehensive information in order to implement the direction of the Board of Regents and operate the University. The flow of information across the University facilitates efficient and effective public program delivery, worth \$600 million annually.

Effective decision-making is made based on the availability of detailed, accurate, and timely information. Financial information presented to the Board of Regents that is highly summarized and with limited detail does not provide a complete picture of the financial health of the University. The fact that almost one-third of the University's expenses are delegated to the President and not reviewed routinely by the Board of Regents is concerning. The lack of reporting relationships with the entities further indicates ineffective oversight of the operations of the University.



Oversight Findings - Administrative Structure

Criteria 2

Memorial University's oversight processes have an effective administrative structure to manage operations.



What We Expected

We expected Memorial to have effective oversight structures and processes that ensured the best use of public resources.

We expected the Board of Regents had clear policies and procedures for appointing executive staff. We also expected the Board to hold the executive accountable for the operation of the University, by setting their roles, authority, responsibilities, key performance indicators, and compensation. This information was expected to be clearly documented and communicated to staff.

We expected Memorial had clearly defined administrative structures and functions that operated cooperatively and with appropriate documentation. We also expected that the administrative functions were not duplicated across the University, ensuring financial and administrative efficiencies and cost-effectiveness. We also expected that Memorial had assessed and acted on opportunities for efficiencies.



What We Learned

Roles, Responsibilities, and Authorities

We found that the roles, responsibilities and authorities of Memorial's executive positions were not clearly defined, documented or communicated to the individuals in those positions. Specifically, we found that there were no job descriptions used for the vice-president positions, with only a candidate profile available from the recruitment process. In the absence of a job description, the President was responsible for setting the authority of the vice-presidents.

According to the candidate profile, the Provost and Vice-President (Academic) is meant to serve as Memorial's Chief Operating Officer, with responsibility for internal governance and University management. The candidate profile also stated that the position was responsible for leadership of the vice-presidents and other senior personnel, in order to ensure that academic and administrative plans and activities aligned with Memorial's vision. The Provost and Vice-President (Academic) earned more compensation than the other vice-presidents to match these increased responsibilities. However, **we found that the Provost and Vice-President (Academic) had not been empowered with the authority by former Presidents to carry out these responsibilities. The executive structure had the Provost and Vice-President (Academic) at the same authority level as other vice-presidents; as a result, Memorial did not have a Chief Operating Officer and the position's responsibilities remained with the President.**

Normally, agreements are provided for executive appointments, stating the terms of employment and the conditions under which an individual may be removed from that position. **We found 12 of 19 executive appointments across the seven executive roles were not provided with, or required to sign, an agreement for their position.**

We found that while executive positions required an annual performance review by the President, due to a recent turnover in executive positions, Memorial officials were unable to state which vice-presidents currently had active performance review documentation. Memorial was only able to provide an evaluation for one vice-president for our scope period.

We found that while the Board of Regents was responsible for approving the appointment of directors to the boards of four of the University's entities, it was not responsible for making appointments to the Board of the University's fifth entity, C-CORE as appointments are made by Memorial's President. The role of Memorial's President is listed as the member, also known as the owner, of C-CORE and is responsible for the appointments to its Board. Memorial is listed as the member, also known as the owner, of the other four entities and, as a result, the Board of Regents makes appointments to its boards.

Decentralized Administrative Structure

Memorial's administrative structure is decentralized with functions, such as finance and information technology, occurring in different units and campuses.

The Chair of the Board of Regents advised that the decentralized administrative structure was not intentional, but rather evolved over time due to the history of the organization and political pressures from communities where campuses are located (such as Corner Brook for Grenfell campus).

Because of Memorial's decentralized nature, vice-presidents have the autonomy to manage their operations exclusively. We found that the vice-presidents acted and spent without consulting other vice-presidents in areas that overlap.

During the course of our audit work, we requested detailed information on personnel performing specific administrative functions within Memorial. However, the Department of Human Resources was unable to provide this data as their systems were not designed to document the roles and responsibilities of staff. As a result, we could not determine the exact number of staff performing specific functions within the University.

As a result, we found Memorial's administrative structure allowed duplication of senior management positions because vice-presidents hired their own personnel to perform similar or identical services. These services were performed elsewhere in the University and were the responsibility of a different vice-president according to their candidate profile.

We found that organizational charts across the University had different formats, title information, and level of detail, making it difficult to compare roles within the units and departments. We also found that the Harlow campus did not have an organizational chart for its operations.

We found the autonomy created within Memorial's decentralized structure had created unusual reporting relationships. For example, The Vice-President (Indigenous) was responsible for coordinating all of Memorial's Indigenous relations. Grenfell campus had a Manager of Indigenous Affairs, who was hired by, and reported to, the Vice-President (Grenfell). However, the position was also expected to maintain an indirect reporting relationship with Memorial's Vice-President's (Indigenous) portfolio.

We also found numerous examples where management positions reported outside of the portfolio of the vice-president responsible. Table 16 provides additional details. For example:

- The Vice-President (Advancement and External Relations) was responsible for Memorial's communications, however, we found 14 senior communications positions reported within other vice-presidents' portfolios.
- The Vice-President (Administration and Finance) was responsible for day-to-day university administration, however, we found 25 senior administrative and finance personnel reported within other vice-presidents' portfolios.
- The Vice-President (Research) was responsible for Memorial's research activities, however, we found eight senior research personnel that reported within other vice-presidents' portfolios.

Table 16: Positions Outside the Responsible Vice-President's Portfolio

Senior Administrative Functions	Total Number of Employees	Vice-President Responsible for Activities	Positions Reporting to Vice-President Responsible	Positions Reporting Elsewhere	
				Number of Positions	Details
Managers of Communications	18	Vice-President (Advancement and External Relations)	4 (22%)	14 (78%)	Provost and Vice-President (Academic) – 10 positions Vice-President (Administration and Finance) – 1 position Vice-President (Research) – 1 position Vice-President (Fisheries and Marine Institute) – 1 position Vice-President (Grenfell) – 1 position
Managers / Directors of Finance and Administration	37	Vice-President (Administration and Finance)	12 (32%)	25 (68%)	Provost and Vice-President (Academic) – 19 positions Vice-President (Research) – 3 positions Vice-President (Advancement and External Relations) – 1 position Vice-President (Fisheries and Marine Institute) – 1 position Vice-President (Grenfell) – 1 position
Managers of Research	17	Vice-President (Research)	9 (53%)	8 (47%)	Provost and Vice-President (Academic) – 5 positions Vice-President (Advancement and External Relations) – 1 position Vice-President (Fisheries and Marine Institute) – 1 position Vice-President (Grenfell) – 1 position
Managers of Procurement	5	Vice-President (Administration and Finance)	3 (60%)	2 (40%)	Provost and Vice-President (Academic) – 2 positions
Managers of Human Resources	9	Vice-President (Administration and Finance)	6 (67%)	3 (33%)	Provost and Vice-President (Academic) – 1 position Vice-President (Fisheries and Marine Institute) – 1 position Vice-President (Grenfell) – 1 position
Managers / Directors of Information Technology	35	Vice-President (Administration and Finance)	29 (83%)	6 (17%)	Provost and Vice-President (Academic) – 3 positions Vice-President (Research) – 1 position Vice-President (Fisheries and Marine Institute) – 1 position Vice-President (Grenfell) – 1 position

Source: Prepared by the Office of the Auditor General based upon information provided by Memorial.

Internal Reviews

We found that Memorial's Office of Internal Audit had reported issues with roles, responsibilities, and the authorities of some administrative functions that were not clearly defined. One report found that authority delegated throughout the University, and the responsibility for monitoring these delegations, was unclear. Another report indicated that roles, responsibilities, and assignments of authority for key activities, such as the preparation of financial statements, had not been defined or documented. As well, it was found that the specific allocation of roles and responsibilities for procurement personnel was unclear, making it difficult to assess the effectiveness of control activities. **Recommendations made by the Office of Internal Audit between February 2020 and June 2021 remain outstanding.**

We found that the University's Office of Internal Audit in 2019 recommended the University consolidate the number of data centres; the recommendation targeted efficiencies by reducing the cost of maintenance and duplication of equipment, systems and efforts. The proposed recommendation to consolidate data centres, if implemented, would have allowed for effective management of physical security and access control, while reducing the risk of loss due to inconsistent business continuity and disaster recovery. We found that this recommendation has not had substantive action taken toward it.

We found that the University's Office of Internal Audit 2021 recommendation on the need to leverage technology to automate manual financial statement reporting processes remained outstanding.

We also found that Memorial had not taken action to implement potential efficiencies identified through its own internal management reviews:

- **We found no action had been taken on a recommendation from the Integrated Planning Committee to conduct an ongoing review of administrative structures and processes to identify efficiencies and opportunities for collaboration.** The recommendation noted opportunities with respect to a shared services model of administration and the use of technology to streamline processes. In May 2018, in April 2019, and again in March 2020, the Integrated Planning Committee made this recommendation to Memorial.
- **We found no action had been taken on a recommendation from the Integrated Planning Committee to assess sustainability and the contributions of the entities to the University's core mission.** The Integrated Planning Committee noted that Memorial's contributions to the entities, whether direct or indirect (e.g. space, fuel, electricity, information technology services, etc.), were a cost to the University and recommended they should have been reviewed.

Comparison to Other Universities

We found Memorial had the highest administrative salaries per student (at \$2,369) when compared to other medium-sized universities, based on external third-party analysis. The next closest University had an administrative cost of \$1,994 per student, which was \$375 per student lower than Memorial. Further, Memorial's administrative cost was \$893 per student higher than the average for all universities compared.

Memorial officials suggested that these universities were not comparable to Memorial, given its geographical location, multiple campuses, inclusion of a Faculty of Medicine, and position as the only university in the province. However, Memorial uses many of these same universities as market comparators for setting their executive compensation.

We found that, when compared with other medium-sized universities we were able to obtain organizational charts from, Memorial has a higher number of vice-president positions reporting to the President. Memorial has seven vice-president positions compared to the average of five for other universities. We also found that the heads of all schools and faculties in the comparative universities report to the Provost, while this is not the case for Memorial.

Comparison to Government

We found that Memorial's administrative structures were less efficient than government.

Structurally, core government operates most major administrative functions through centralized offices or divisions, with information technology, financial services, human resources, and communications managed through single operating units.

Two examples of the administrative structure differences between Memorial and government are:

- Information technology policy, operations, and administration for the core public service are operated through the Office of the Chief Information Officer for government. By comparison, Memorial's vice-presidents were able to employ information technology staff and operate independent servers, software packages, and hardware.
- Government's communication functions are handled through its Communications and Public Engagement Branch, with communications staff assigned to individual departments to manage their communication requirements. By comparison, Memorial has a decentralized communications structure, with the Vice-President (Advancement and External Relations) directing only a portion of the University's communications staff. Most vice-presidents have their own communications staff, outside the control of the communications portfolio.



Why It Matters

As a public sector corporation, Memorial University has a responsibility for fiscal stewardship and should ensure effective oversight is exercised on all of its operations.

Clearly defined roles and responsibilities are vital for ensuring an organization is effectively governed and operated. Without them, there is an increased risk that administrative activities are duplicated, causing inefficiencies or resulting in higher overall costs to the public. Executive positions with high levels of authority hold high levels of accountability that require monitoring and evaluation.

When internal analysis and reporting structures suggest changes to make the University more efficient, accountable, or cost-effective, it is vital that management, the executive, and the Board of Regents act quickly to evaluate them. Failure to act results in continued inefficiencies and higher costs.

Centralized administrative functions can ensure consistency, efficiency and accountability by standardizing how and where a function is performed and by whom. The current decentralized administrative structure within Memorial has led to duplicated functions across faculties and portfolios, resulting in a waste of public funding.

Subsequent Events

Preliminary findings have been shared with Memorial officials since the end of the audit scope period in December 2022.

Board Changes

There were a number of Board related changes since the end of our audit period, including:

- In January 2023, a member of the MUN UK Board of Directors, who was also hired as a consultant while on the Board, resigned.
- In August 2023, the Board of Regents re-organized its committees resulting in a reduction from 10 to eight committees and new terms of reference.

Leadership Changes

A number of senior leadership changes occurred since the end of our audit period, including:

- In January 2023, Genesis eliminated the [REDACTED] position [REDACTED]. They also hired a new [REDACTED].
- In March 2023, the Vice-President (Administration and Finance) left the University and the Vice-President (Advancement and External Relations) was placed in the role on an interim basis.
- In April 2023, the former Memorial President was terminated without cause. Memorial's Executive Committee agreed, in April 2023, to pay up to \$25,000 for the former President's moving expenses and \$15,000 in legal expenses, in addition to other severance benefits. Upon the departure of the former President, a desk purchased for use at the former President's home was returned; to date, a chair has not been returned and the University has not requested its return.
- In April 2023, an interim President was appointed for a two-year period.
- In September 2023, Memorial increased the responsibilities of the Director of Financial and Administrative Services and retitled the position as Chief Financial Officer.
- As of September 2023, Memorial has not pursued replacing the former President on any of the 11 external boards that were subsequently deemed discretionary.

Policy and Other Changes

There were numerous policy and other changes since the end of our audit period including:

- In March 2023, C-CORE's Board of Directors approved a [REDACTED] increase for annual cost of living adjustment to salary bands.
- In March 2023, the Genesis Board of Directors approved the execution of Genesis' incentive payout for fiscal year 2023, resulting in a [REDACTED] payment to eligible employees.
- In May 2023, The Works' Board of Directors approved a [REDACTED] general economic increase to the management salary scale.
- In June 2023, Genesis' Board of Directors approved a compensation and benefits policy. This policy specifically excludes the [REDACTED] and made changes to more clearly define job titles and descriptions. It also requires a full review of all salary scales to be completed no less than once every three years and that employees may not advance twice in one year unless under extraordinary circumstances and at the discretion of the President and Chief Executive Officer.
- In June 2023, Memorial released its annual compensation disclosure of employees earning in excess of \$100,000, which did not include the entities.
- In July 2023, Memorial updated its travel policy and increased its meal per diem allowance. The rate increased from \$50 to \$60 per day for breakfast, lunch and dinner, resulting in Memorial's rate being \$7.56 per day higher than government.
- In July 2023, the Budget Office implemented a new financial monthly report for units to replace the report discontinued in November 2022.
- In August 2023, Memorial officials notified its software vendor of its intention to discontinue the student support software program on the early termination date effective June 2024.
- In October 2023, we were advised that a new travel claim approval process was approved for Memorial's President and vice-presidents. Travel requests for vice-presidents must be approved by the President, while travel claims for the President must be approved by the Chair of the Board of Regents.

Subsequent Events

- In October 2023, Memorial indicated resources within its Department of Human Resources will be used to support executive searches, rather than the use of executive search firms. The use of executive search firms will require approval by the President's Executive Council, based on the recommendation of the specific search committee.

Other Events

There were several other noteworthy events since the end of our audit period including:

- In July 2023, Memorial University removed itself from having significant control over the Harlow Campus with the Government of the United Kingdom in error. In October 2023, we inquired about this situation, as we had discovered it during the course of concluding our audit. Memorial advised that they had mistakenly filed a request to be removed from the registry of companies in the United Kingdom as the sole owner of MUN (UK) Ltd (the Corporation that holds the Harlow Campus of Memorial). This action resulted in there currently being no owner on record for this Corporation. Memorial officials advised that they are currently looking into this issue.
- We had considerable difficulty obtaining all of the Board of Regents and its Committees' minutes during the course of our audit. As of our audit report date, there remained 25 outstanding sets of meeting minutes related to our audit period and the subsequent period up to our audit report date.
- In August 2023, our Office received a cease and desist letter from the lawyer representing Genesis to

“...formally request removal of information pertaining to Genesis and its employees. Inclusion of Genesis within your audit of Memorial exceeds your jurisdiction...”

Also in August 2023, counsel for C-CORE sent a letter to our Office further to and in support of the issues raised in the letter sent on behalf of Genesis, with a similar comment.

Our legal counsel responded to C-CORE and Genesis in writing to advise that this audit was conducted as per s.22 of the Auditor General Act, 2021, and to meet the requirements of a special assignment (per Order in Council 2022-088). Our jurisdiction is contained wholly within the statute and is not limited by the Order in Council. As a result of being included in the Public Accounts, by way of Memorial's consolidated financial statements, the entities are considered a matter relating to the financial affairs of the Province and appropriate for audit. As a special assignment, our Office has no authority to release the particulars of this report to the public and to do so would be in violation of parliamentary privilege. The decision to release the report publicly is solely within the purview of the Lieutenant-Governor in Council.

Conclusions

Overall, we had concerns with the spending and operations of Memorial University, based on our three lines of inquiry.

As part of the public sector, Memorial has a responsibility to ensure the best possible use of its public money across its entire operation. Effective decision-making and oversight by the Board of Regents requires detailed, comprehensive and complete information and analysis. The executive leadership of the University requires that same level of information and analysis in order to implement the direction of the Board, fulfill effective oversight processes, and manage this diverse, complex organization. Their abilities to fulfill these significant responsibilities are impacted in light of the various audit findings in this report.

We found weaknesses in administrative structures that reduced Memorial's oversight of operations; gaps in policy and processes; and inadequate oversight of its entities. Memorial did not clearly define roles, responsibilities, and accountabilities, resulting in a decentralized structure where spending and hiring autonomy contributed to higher administrative costs at Memorial when compared to other universities.

Memorial did not effectively monitor its financial information, activities from delegated authorities, compensation, and expenses in a meaningful way. Compensation costs were Memorial's largest operating expense. We found that its salaries and benefits continue to be higher than the provincial public service for the same classification of work. Almost one-third of the University's expenses are the responsibility of the President and not routinely reviewed by the Board. The Board of Regents does not have a decision-making and directing role in its relationship with the University's five entities, even though Memorial acknowledges it controls them. Recommendations for improved efficiency identified through internal reviews and its internal audit function have not been implemented.

Memorial is the province's only university and has a special obligation to the people of our province. Our recommendations are intended to assist Memorial in resolving the issues and concerns we have detailed in this report.

Recommendations

1. Memorial University should evaluate its oversight functions, across its entire operation, to ensure alignment of policies, appropriate management of the organization, and the best possible use of public resources.

Memorial University's Response: Memorial University accepts this recommendation.

2. Memorial University should ensure that the Board of Regents, executive and administrative management have the necessary financial information and analysis, in a sufficiently detailed and timely manner, to facilitate appropriate oversight of the operations of the University.

Memorial University's Response: Memorial University accepts this recommendation.

3. Memorial University should ensure that all executive and administrative management position roles and responsibilities are clearly defined, documented and communicated, with appropriate performance measures in place for evaluation.

Memorial University's Response: Memorial University accepts this recommendation.

4. Memorial University should evaluate its administrative structure for potential operational efficiencies, with consideration given to the combination or realignment of administrative roles or activities to ensure effective risk management and the best use of public resources.

Memorial University's Response: Memorial University accepts this recommendation.

5. Memorial University should ensure that all University policies and procedures are complete and regularly reviewed, with updates approved and implemented in a timely manner.

Memorial University's Response: Memorial University accepts this recommendation.

6. Memorial University should evaluate its compensation policies and practices, across its entire operation, including consideration of alignment with government classification, pay scales, and benefits policies, to ensure the best possible use of public resources.

Memorial University's Response: Memorial University accepts this recommendation and recognizes that compensation policies and practices should be regularly evaluated. Memorial is committed to ensuring the best possible use of public resources while attracting and retaining employees with the necessary skills and experience to run its operations effectively within the post-secondary sector.

7. Memorial University should ensure all University operating expenses are reasonable and appropriately monitored, to ensure the best possible use of public resources.

Memorial University's Response: Memorial University accepts this recommendation.

8. Memorial University should ensure conflict of interest and fraud risk management processes are in place and working effectively so that transactions are free of perceived or real conflicts and any potential error or fraud is managed effectively.

Memorial University's Response: Memorial University accepts this recommendation and is committed to maintaining the public trust through strong risk management processes, policies and procedures.

Appendix I - About this Audit

Why this Audit was Conducted

In April 2022, the Lieutenant-Governor in Council requested that the Auditor General perform an audit of the operations and spending at Memorial University Order in Council (OC2022-088). Given the size and complexity of the University, we selected three lines of enquiry to satisfy the request broadly and in a timely manner. Specifically, our objectives were based on routine areas of audit, such as compensation and operating expenses, or areas specific to oversight at Memorial, including information flow, as well as the administrative structure.

Objectives

The objectives of our audit of Memorial University were to determine whether:

1. Memorial University's executive and management compensation was comparable to the provincial government and other universities of a similar nature.
2. Memorial University managed operating expenses in a manner that ensured the best use of public money.
3. Memorial University had effective oversight processes to manage the operations.

Criteria

The Office of the Auditor General developed criteria for this audit based on our review of relevant documentation regarding the subject matter, pertinent legislation, Memorial policies and procedures, reviews of literature including reports of other legislative auditors, as well as discussions with University officials. The Office of the Auditor General defined six criteria regarding the objectives. Memorial's senior management accepted the criteria as suitable.

The Office of the Auditor General assessed whether Memorial's executive and management compensation was comparable to provincial government and other universities of a similar nature against the following criteria:

- Memorial University's executive and management compensation is comparable to the provincial government.
- Memorial University's executive and management compensation is comparable to other universities of a similar nature.

The Office of the Auditor General assessed whether Memorial managed operating expenses in a manner that ensured the best use of public money against the following criteria:

- Memorial University's operating expense policies are comparable to the provincial government and operating expenses are incurred with consideration of the cost to taxpayers.
- Memorial University is effectively monitoring operating expenses.

The Office of the Auditor General assessed whether Memorial had effective oversight processes to manage the operations against the following criteria:

- Memorial University's oversight processes promote effective information flow to executive and the Board of Regents.
- Memorial University's oversight processes have an effective administrative structure to manage operations.

Scope & Approach

Our audit planning began in May 2022 and the audit plan was finalized in November 2022. The audit period covered April 2019 to December 2022 and included all campuses and entities of Memorial. We conducted our audit using a risk-based approach based on our understanding of the entity.

Our audit procedures included interviews and discussions with select Memorial officials and four members of the Board of Regents, including the Chair. Our procedures also included an examination of information and data, policies and procedures, correspondence, board meeting minutes, contracts, and reports. We conducted a detailed inspection of the information received and analyzed the data to assist with our audit procedures. We performed sampling procedures related to all audit objectives. Sampling selections were non-statistical and selected judgmentally.

Appendix I

The audit objective related to compensation included executives (i.e. vice-presidents) and management, as well as executive and management at the entities. However, this objective did not include comparisons to compensation and benefits of other employee groups, such as non-bargaining, non-management employees, unionized employees, employees at the Harlow campus, academic executive and management employees (unless in a vice-president's position), and the President. While we compared salaries to markets, we did not compare benefit packages. Memorial's comparison markets included: the National (Canadian) University Sector market for all executive and Senior Administrative Management group; the National Broader Public Sector for the Leadership Group; and the Atlantic Canadian Public Sector for the Management Professional Staff. We engaged a job evaluation consultant to perform comparisons to these markets using their proprietary market data and were limited to the comparisons included within their database. All of Memorial's entities were included in this audit; however, we did not make comparisons to their respective industries.

The audit objective concerning operating expenses considered selected discretionary expenses of the operating fund and did not include expenses under Memorial's other funds; such as ancillary operations (e.g. bookstore); restricted funds for research activities; restricted endowed funds and externally restricted funds; and capitalized and amortized assets (e.g. major building construction and deferred maintenance projects). We also excluded the expenses of the entities. Our audit included a review of relevant expense policies, including approval requirements, however, we did not audit approvals of expenses in our sampling.

The audit objective related to oversight focused on the effectiveness of the oversight processes managing University operations. We assessed the effectiveness of information flow to University executive (the President and seven vice-presidents) and the Board of Regents. Specifically, we assessed policies, procedures, and processes related to the communication of compensation and expenditure information to the executive, the Board of Regents and/or various Board committees. We also examined the administrative organizational structure to determine its effectiveness in managing Memorial's operations, including size and composition of the administrative structure. Our audit scope relating to oversight did not consider other governance areas, such as the Board of Regents' framework for decision-making, systems, processes or structure, and policies (except those related to executive and management compensation and selected expenses). We did not assess any matters related to the Senate or oversight activities related to Memorial's academic activities or the appropriateness of operations as related to academic activities. Information flow for oversight processes of academic and non-operating expenses was not within this audit's scope.

Audit Standards

This independent assurance report was prepared by the Office of the Auditor General of Newfoundland and Labrador on Memorial's compensation, select operating expenses, and oversight. Our responsibility was to independently audit these areas to provide objective information and recommendations. Memorial's senior management acknowledged their responsibility for the audit subject matter and the terms of the audit, including audit objectives, scope, and approach.

This audit was performed to a reasonable level of assurance in accordance with the Canadian Standard on Assurance Engagements 3001 – Direct Engagements set out by the Chartered Professional Accountants of Canada and under the authority of the Auditor General Act, 2021.

The Office applies the Canadian Standard on Quality Management 1. This standard requires our Office to design, implement, and operate a system of quality management, including policies and procedures regarding compliance with ethical requirements, professional standards, and applicable legal and regulatory requirements.

In conducting the audit work, we have complied with the independence and other ethical requirements of the Rules of Professional Conduct of the Association of Chartered Professional Accountants of Newfoundland and Labrador.

Management Representation

The President confirmed that senior management had provided the Office of the Auditor General with all the information they were aware of that had been requested or that could significantly affect the findings or conclusions of the audit report. We also received confirmation from the heads of the entities regarding the relevant information they were aware of that had been requested or that could significantly affect the findings or conclusions of the audit report, this included: the President and Chief Executive Officer, C-CORE; the Director/General Manager, Memorial University Recreation Complex Inc.; the Executive Director, Campus Childcare Inc.; the President and Chief Executive Officer, Genesis Group Inc.; and, the Managing Director, Canadian Centre for Fisheries Innovation.

Use of Expert

During this audit, the Office of the Auditor General used a compensation benchmarking and evaluation consultant. The Office also used the services of a lawyer specifically to provide advice regarding the legal letters received during the course of this audit.

Date Conclusion Reached

We obtained sufficient and appropriate audit evidence on which to base our conclusions on October 13, 2023, in St. John's, Newfoundland and Labrador.

A handwritten signature in black ink, appearing to read "D Hanrahan", with a long horizontal flourish extending to the right.

DENISE HANRAHAN, CPA, CMA, MBA, ICD.D
Auditor General

Appendix II - Additional Background Information

Financial Information

The majority of Memorial's revenues are from government grants and student fees; salaries and employee benefits are its most significant expense. The provincial grant has three components: a general operating grant, a grant in lieu of tuition increases, and an operating grant to the Faculty of Medicine. Table 17 below outlines the consolidated revenues and expenses as of March 31 of each fiscal year.

**Table 17 - Memorial University Consolidated Financial Statements
Revenues and Expenses for the Year Ending March 31**

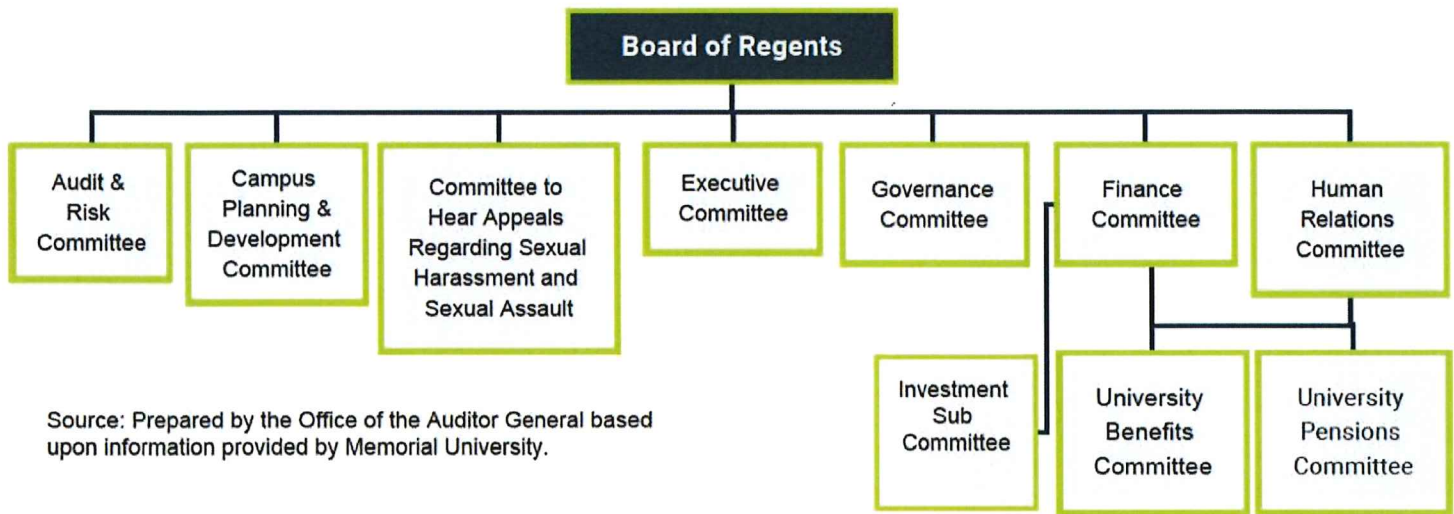
	2020	2021	2022
	\$000's	\$000's	\$000's
Revenue			
Government Grants (Note 1)	422,772	400,158	430,878
Student Fees	85,700	80,430	94,541
Other Revenues	124,278	87,551	125,849
Total Revenue	<u>632,750</u>	<u>568,139</u>	<u>651,268</u>
Expenses			
Salaries and Employee Benefits	413,600	402,959	415,514
Other Expenses	204,484	168,346	222,165
Total Expenses	<u>618,084</u>	<u>571,305</u>	<u>637,679</u>
Net Income (Deficit)	14,666	(3,166)	13,589

Source: Prepared by the Office of the Auditor General based on the Audited Financial Statements

Note 1: Included in Government Grants are the general operating of \$375.8 million, research fund of \$54.3 million, plant fund of (\$3.1 million), special purpose and trust of \$2.8 million, and ancillary fund of \$1.0 million

As of December 31, 2022, the Board of Regents had established ten committees as shown in Chart 1.

Chart 1 - Board of Regents' Committees



Harlow Campus

In 2016, Memorial established MUN UK Ltd, a limited guarantee corporation, to carry on the operations of the Harlow campus. Oversight of the Harlow campus is performed through MUN UK Ltd's Board of Directors and its Harlow Financial Oversight Committee. MUN UK Ltd's Board of Directors reports to the Board of Regents through its Chair, Memorial's President, who also sits on the Board of Regents. The Board of Regents is responsible for the budget of Harlow campus (funded from the University's operating budget) and appointments to the MUN UK Board.

Select Committees Created by Memorial's Executive Team

The President and vice-presidents formed the President's Advisory Team, which provided leadership in and stewardship of University operations. The former President also created a separate President's Advisory Council comprised of individuals from outside the University and the Board of Regents who provided strategic advice and guidance to Memorial's executive. This council did not have decision-making authority. Memorial had an Integrated Planning Committee, established in 2016, that was composed of faculty, staff and students and chaired by the Provost and Vice-President (Academic). The Committee's mandate was to advise the President on Memorial's budget planning. This Committee operated until early 2020, providing its report in March 2020, and has not operated since. Oversight for the entities is performed primarily through the Separately Incorporated Entities Committee, which reports to the Vice-President (Administration and Finance) and is comprised of Memorial officials.

Separately Incorporated Entities

Memorial has five entities that it controls and consolidates into its financial statements. The core functions of the entities, which are each managed by a Board of Directors, include:

- C-CORE offers research-based advisory services and technology solutions to clients from the St. John's campus and an office in Ottawa, Ontario.
- The Works operates the Field House, Aquarena, and other recreation facilities on the St. John's Campus.
- Campus Childcare offers childcare services and programs on the St. John's Campus.
- Genesis services technology companies to help entrepreneurs develop business plans, raise equity capital, and secure market access. It is located at the Signal Hill campus.
- The Centre for Fisheries Innovation provides scientific research and technical services to the fishery and aquaculture industry from its location at the Marine Institute campus.

Appendix II

The Board of Regents (through the Audit and Risk Committee) is responsible for the ultimate oversight of the University's entities. The Vice-President (Administration and Finance) is responsible for functional oversight and to provide information and advice to the Audit and Risk Committee on the entities. This committee is responsible for reviewing and making recommendations regarding the results of the Corporate Governance Checklists received from the entities; ensuring timely submission of the checklists; recommending appointments to entity boards (excluding C-CORE); and reporting on the current appointment status of the directors of entity' boards annually. The Committee must also review the entities' annual reports and audited financial statements, as well as management agreements to determine if any changes are needed. We note that the Centre for Fisheries Innovation was the only one of Memorial's entities that did not have a management agreement.

Representatives from Memorial sit on each entity's Board of Directors. The entities may follow Memorial's policies and procedures or develop their own. Memorial provides in-kind services to its entities, such as processing payroll and financial transactions while maintaining all records regarding the resulting transactions. Other services that may be provided include facilities management, campus enforcement services, and information technology support. For The Works, Campus Childcare, and Genesis, the University is the owner of the intellectual property, real property, and all other assets and liabilities and accordingly, these entities manage the assets.

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About Us

Vision

Promoting positive change and accountability in the public sector through impactful audits.

Mission

To promote accountability in government's management and use of public resources and encourage positive change in its delivery of programs and services.

Values

Above all else, the Office of the Auditor General must have independence, credibility and integrity. These are essential to everything we do; critical to our success. The Office of the Auditor General complies with professional and office standards to produce relevant and reliable audit reports. The Office of the Auditor General's independence of government, in fact, and in appearance, provides objective conclusions, opinions and recommendations on the operations of government and crown agencies. Our staff work in a professional and ethical manner, ensuring respect, objectivity, trust, honesty and fairness.

Audit Team

The Auditor General wishes to thank the diligent audit team who performed their work with independence, credibility and integrity:

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