

### 3.4 The Privatization of Newfoundland and Labrador Computer Services Limited

#### Introduction

On 13 October 1994, Government announced the completion of negotiations for the sale of all the shares of Newfoundland and Labrador Computer Services Limited (NLCS) to NewTel Enterprises Limited (NewTel) and its consortium partners Bell SYGMA Inc. (Sygma) and Andersen Consulting (Andersen), representing 80%, 10% and 10% ownership respectively. NewTel and its consortium partners incorporated a new company called NewTel Information Solutions (NIS).

As a result of the privatization of Newfoundland and Labrador Computer Services Limited, Government entered into several legal agreements whereby the Province would receive the following:

- \$9 million for the shares of NLCS with the building remaining the property of Government;
- \$35 million in new information technology (IT) business to be brought to the Province over seven years by the partners purchasing NLCS (\$15 million through NewTel, \$12 million through Andersen, \$5 million through Sygma, and \$3 million in research and development to be contracted with NIS by Andersen). Figure 1 indicates the new business commitments defined in the Industrial Benefits Agreement which were to be achieved by the consortium partners over the term of the Agreement and the commitments which were to be achieved by 31 March 1997.

Figure 1

#### Industrial Benefits Agreement Total Commitment By Consortium Partners Over the Term of Agreement and Scheduled Commitments to 31 March 1997

Consortium Partner	Total Commitment Over Term Of Agreement	Scheduled Commitment To 31 March 1997
Andersen - New Business	\$12,000,000	\$3,700,000
- R&D Centre	3,000,000	3,000,000
Sygma - New Business	5,000,000	2,400,000
NewTel - New Business	15,000,000	5,000,000
Total	\$35,000,000	\$14,100,000

Source: Industrial Benefits Agreement and the Industrial Benefits Agreement Annual Report - 31 March 1997 (Unaudited)

- the creation of 85 new jobs (20 by the third year, an additional 40 by the end of the fifth year and another 25 by the end of the agreement) and an additional 27 person years of employment over the first three years of the agreement;
- from the new company, NIS, a commitment to subcontract \$9 million in Government work and an additional \$12.2 million in non-Government work over the term of the agreements, to 31 March 2002 as shown in Figure 2; and

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**Figure 2**

### **Industrial Benefits Agreement Subcontracting Commitments for Government and Non-Government Work (\$ Millions)**

Term	Government Work	Non-Government Work	Total
July 1, 1994 to March 31, 1995	\$ 0.6	\$ 0.4	\$ 1.0
April 1, 1995 to March 31, 1996	1.2	1.2	2.4
April 1, 1996 to March 31, 1997	1.2	1.6	2.8
April 1, 1997 to March 31, 1998	1.2	1.8	3.0
April 1, 1998 to March 31, 1999	1.2	1.8	3.0
April 1, 1999 to March 31, 2000	1.2	1.8	3.0
April 1, 2000 to March 31, 2001	1.2	1.8	3.0
April 1, 2001 to March 31, 2002	1.2	1.8	3.0
Total Commitment	\$9.0	\$12.2	\$21.2

Source: Industrial Benefits Agreement

- \$587,000 annual building lease rental upon Government's completion of an approximate \$2.1 million building expansion project.

In addition, the Share Purchase Agreement entitles Government to have a representative on the Board of Directors of NIS during the term of the Service Level Agreement which covers the period from September 20, 1994 to March 31, 2002.

For their part, Government and Memorial University of Newfoundland have contracted with NIS to purchase a minimum of \$17.5 million annually in IT services during the term of the Service Level Agreement.

Additionally, NIS remains owned, operated and managed as a Newfoundland company, with benefits to be derived from alliances with Andersen and Sygma to strengthen the local IT industry. All the assets of NewTel Communications Limited's IT business including about 80 staff were transferred to NIS.

NewTel Enterprises Limited (NewTel) is providing an ongoing supplier development program which is available to local IT companies.

The investment in technology upgrading and human resources allows access to new national and international markets.

### **Scope and Objectives**

During 1997 we completed a follow-up review of the privatization of NLCS. The objectives of our review were to:

- determine whether all parties have complied with the agreements and to review the process Government has in place to monitor this compliance;
- determine whether Government has received the same level of service for the same price as required by the Service Level Agreement; and
- identify performance indicators (other than those included in the agreements) which would indicate whether the objectives of the privatization (e.g. stimulation of IT industry) have been met.

The most significant aspect of the privatization of NLCS is to ensure that Government receives the future benefits which it has negotiated and which are reflected in the agreements with NewTel.

### **Conclusions**

#### **Compliance With and Monitoring of Agreements**

Government has not verified the information contained in the annual reports provided by NIS relating to the progress on the commitments of each party under the Industrial Benefits Agreement. As a result, Government has not determined whether it is receiving the benefits it negotiated under the Agreement in the 1994 privatization of NLCS.

The annual Industrial Benefits Agreement reports provided by NIS, although not verified by Government, indicated the following issues:

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- Andersen has not provided any of its \$3 million commitment to establish a research and development centre within NIS by 13 October 1997, including the creation of 27 person years of employment in the first three years of the Agreement.
- Sygma has only achieved approximately \$1 million of its required \$2.4 million commitment to bring new business into this Province by 31 March 1997.
- The reports do not provide any information to indicate whether Andersen and Sygma are using NIS as their exclusive representative in the Province and preferred representative in Atlantic Canada as required by the Industrial Benefits Agreement.

For the year ended 31 March 1997, Treasury Board Secretariat indicated that Government did not provide NIS with the \$17.5 million in revenue as required under the Service Level Agreement. Under the Agreement, failure by Government to provide the \$17.5 million in revenue to NIS in 1996-97 allows NIS to reduce its subcontracting requirements under the Industrial Benefits Agreement of \$2.8 million in 1996-97 by the amount of the shortfall in the revenue commitment. Also, NIS' commitment to maintain existing employment levels and establish new jobs as outlined in the Industrial Benefits Agreement shall cease. NIS has not used the remedies which are available to it under the Service Level Agreement.

Although the Share Purchase Agreement entitles Government to have a representative on the Board of Directors of NIS, Government has not had a representative appointed to the Board since the fall of 1996.

Our review indicated that the provisions of the following agreements have been complied with:

- Share Purchase Agreement;
- Pension Agreement;
- Software Trust Agreement; and
- Building Lease Agreement.

### Service Levels and Price

The initial rates charged by NIS for services allows Government to purchase, in the fiscal year ended 31 March 1996, the equivalent quantity of services provided in the fiscal year ended 31 March 1994 for approximately the same total cost on an annualized basis.

Under the Service Level Agreement, NIS is required to maintain service levels comparable to those provided by NLCS at the time of privatization. An independent evaluation of the Mainframe Computing portion of these services, covering the period from August 1994 to May 1995, was completed by a consultant in December 1995. The consultant reported that the service provided by NIS did meet the requirements of the Agreement. Government has not verified the service levels reported by NIS since the period covered by the consultant's report. However, Treasury Board Secretariat officials indicated that they have not received any complaints from Government IT administrators regarding service levels provided by NIS.

### Stimulation of the IT Industry

One of Government's objectives of the 1994 privatization of NLCS was to stimulate growth in innovative technologies and information industries in the Province. Government has identified performance indicators to measure growth in the IT industry in the Province since 1994; however, information on these performance indicators has not yet been gathered.

### Findings and Recommendations

#### Compliance With and Monitoring of Agreements

##### 1. Share Purchase Agreement

The Share Purchase Agreement has no items of an ongoing nature which require monitoring. When the company was privatized in October 1994, the Province was liable for a portion of severance pay and other post-retirement benefits for employees as they retire. As at 31 March 1994, the Province's portion of severance pay was estimated to be \$1.7 million. In addition, the Province was also required to make payments totalling \$6.5 million relating to the unfunded pension liability of the former NLCS employees. The shares were sold for \$9 million.

Our review also indicated that, although the Share Purchase Agreement entitles Government to have a representative on the Board of Directors of NIS during the term of the Agreement, Government has not had a representative appointed to the Board since the fall of 1996.

##### 2. Industrial Benefits Agreement

###### (a) Monitoring Process

When Government sold NLCS to NewTel and its consortium partners in 1994, there were a number of requirements in the Industrial Benefits Agreement which entitled Government to receive certain benefits. Government, therefore, had a responsibility to establish a process to determine whether it received all of the negotiated benefits. Our review indicated the following:

- An Industrial Benefits Agreement Committee was established to monitor compliance with the terms of the Agreement through meetings of the Committee and various correspondence between its members. This is a three member Committee comprised of representatives from NIS, Treasury Board

Secretariat and the Department of Industry, Trade and Technology. This committee is chaired by the Department of Industry, Trade and Technology.

- An official of the Information Technology Management Division of the Treasury Board Secretariat monitors Government work, which is to be subcontracted to the local IT industry under the Industrial Benefits Agreement, by participating in the evaluation of proposals received from local IT companies for this work.

The Industrial Benefits Agreement requires that NIS submit to Government an Annual Report on the progress being made with respect to the commitments of each party under the Agreement. The Agreement outlines the required contents of this Report. This report is intended to provide Government with the information that it requires in order to be able to determine whether it is receiving the benefits it negotiated in 1994. At the time of our review, Government had received three reports. In order for Government to conclude on the status of expected benefits, information provided by NIS should be verified. However, Government has not verified the Annual Reports provided by NIS and, therefore, has not determined whether it is receiving the benefits negotiated in 1994.

###### (b) New Business Commitments

One of the requirements outlined in the Industrial Benefits Agreement is that NewTel and its consortium partners, Andersen and Sygma, bring new IT business into the Province. Our review disclosed the following with respect to business commitments:

- Although NIS has reported that Andersen has met its commitment to bring \$3.7 million of new business into the Province by 31 March 1997, Government has not yet verified this information.

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- Andersen has not provided any of its \$3 million commitment to establish a Research and Development Centre within NIS by 13 October 1997, including the creation of 27 person years of employment in the first three years of the Industrial Benefits Agreement. The Agreement provides for a cash payment to the Province of 15% of any portion of the \$3 million investment not made. Government is currently reviewing its options to resolve this issue.
- Sygma has only achieved approximately \$1 million of its required \$2.4 million commitment to bring new business into the Province by 31 March 1997. The Agreement provides for a cash payment to the Province of 15% of any portion of the \$2.4 million in new business not achieved. Government is currently reviewing its options to resolve this issue.
- Although NIS has reported that NewTel has met its commitment to bring \$5.0 million of new business into the Province by 31 March 1997, Government has not yet verified this information.
- As required by the Agreement, NewTel Communications Limited has transferred its IT Division to NIS and now uses NIS for all of its IT needs.

### (c) Job Creation

The Industrial Benefits Agreement requires that by 31 October 1997, NIS will have created 20 new jobs. Although the Industrial Benefits Agreement report indicates that NIS has exceeded its job creation commitments to date under the Agreement, Government has not yet verified this information. In addition, the Agreement required Andersen to create 27 person years of employment relating to a Research and Development Centre. As previously indicated, Andersen has not provided its \$3.0 million commitment for a Research and Development Centre and as a result,

the 27 person years of employment has not materialized.

### (d) Subcontracting

The Agreement also requires NIS to subcontract \$3.4 million of Government and \$2.8 million of non-Government work to the local IT industry by 31 March 1997. Under the terms of the Agreement, there are limits placed upon the amount of business that may be subcontracted to Paragon Information Systems (a subsidiary of NewTel). Although NIS has reported it has met all of its subcontracting commitments, Government has not verified this information.

### (e) Supplier Development

The Industrial Benefits Agreement also outlines commitments to be met by both Government and NIS in the area of supplier development. As required by the Agreement, NIS designated one of its employees to be a contact person for local IT businesses. As part of its commitments under the Agreement, NIS has reported the following activities:

- provided semi-annual information sessions for the local IT industry;
- provided information to the local IT industry regarding work available under the Agreement and the process of bidding on this work;
- provided advice and assistance to post-secondary institutions in the Province in the area of IT; and
- provided local IT companies with access to its training courses.

### (f) Inventory of Skills

The Industrial Benefits Agreement requires Government to identify and maintain an inventory of the skills of the IT businesses in the Province. Government is fulfilling this commitment through

its involvement with Operation ONLINE, a non-profit corporation representing a partnership of industry with the Federal and Provincial Governments. Government is represented on the Board of Directors of Operation ONLINE by the Deputy Minister of the Department of Industry, Trade and Technology. Operation ONLINE has recently completed a Skills and Capabilities Survey which focused on determining the skills of individuals working in the IT industry in the Province. It is intended that these surveys be completed either annually or every second year in order to identify the training requirements of individuals working in the IT industry in this Province. The identification of training requirements is a requirement of Government under the Agreement.

### (g) Annual Report Contents

The Industrial Benefits Agreement requires that NIS submit an Annual Report on the progress being made with respect to the commitments of each party under the Agreement. The Agreement outlines the required contents of this Report. Our review disclosed the Annual Report contained the information required under the Agreement with the exception of the following:

- The addresses, and in certain cases the names, of the employees completing Industrial Benefits Agreement subcontracts are not supplied in the Report. Therefore, it is not possible to determine through reading the Report if the work being subcontracted is being completed by local IT businesses as required by the Agreement. To be considered a local business for Agreement purposes the employees completing the subcontracted work must be residents of the Province.
- The Report does not indicate whether Andersen and Sygma are using NIS as their exclusive representative in the Province and preferred representative in Atlantic Canada, or whether there is no business of

this nature available. Therefore, it is not possible to determine if Andersen or Sygma are meeting their commitments in this area.

### Recommendations

*Government should verify the information in the Industrial Benefits Agreement Annual Reports prepared by NIS.*

*Government, NewTel and its Consortium partners should continue efforts to resolve all areas of non-compliance with the Agreement.*

### 3. Service Level Agreement

#### (a) Monitoring Process

As with the Industrial Benefits Agreement, Government has a responsibility to determine whether NIS has complied with the terms of the Service Level Agreement. In order to determine compliance with the Service Level Agreement, a Service Level Agreement Executive Committee and a Service Level Agreement Management Committee have been established to monitor the Agreement. Both of the Committees have representatives from the Province and from NIS. All of the reporting requirements of the Agreement are being adhered to either in the form of the monthly performance reports, or through discussion and presentation of information at the monthly Management Committee meetings.

#### (b) Service Level Commitments

Government has agreed to contract with NIS for services in order to provide NIS with a minimum annual revenue of \$17.5 million (less those charges paid by Memorial University of Newfoundland (MUN) which shall not be less than \$2.0 million annually) to 31 March 2002. The Service Level Agreement is the agreement between NIS and Government which outlines the terms and conditions under which these services are to be provided. The Agreement indicates that

Government shall include Government departments and related agencies.

During the 1995-96 fiscal year NIS received the required \$17.5 million in revenue from Government. However, we were informed by Treasury Board Secretariat that during 1996-97, Government and MUN purchased services from NIS of \$16.9 million, resulting in a shortfall of \$600,000. Under the Agreement, failure by Government to provide the \$17.5 million in revenue to NIS in 1996-97 allows NIS to reduce its subcontracting requirements of \$2.8 million in 1996-97 by the amount of the shortfall in the revenue commitment. Also, NIS's commitment to maintain existing employment levels and establish new jobs as outlined in the Industrial Benefits Agreement shall cease. We were informed that NIS has not used the remedies which are available to it under the Service Level Agreement.

As required in the Service Level Agreement, an independent evaluation of some of the services provided in the Agreement was completed by a consultant in December 1995. The scope of the study was confined to the Mainframe Computing portion of the Agreement for the period from August 1994 to May 1995. The intention of Government and NIS is for the services provided under the Agreement to be price competitive for the quantities and types provided. The consultant reported that the service provided by NIS did meet the requirements of the Agreement.

As required under the Service Level Agreement, annual disaster recovery tests were performed by NIS and Government officials during 1995 and 1996. The disaster recovery tests were considered by both parties to be successful.

Although the Service Level Agreement provides Government with the right to perform a security audit, it has not completed a security audit since the Agreement was signed. During the privatization of NLCS, we informed Government of a need to have a service auditor's report on the data centre and, in our last Annual Report, we expressed concern that this audit had not yet been undertaken.

We have been informed that Treasury Board Secretariat has funding approved and is currently in the process of setting the terms of reference for a security audit to be completed during 1997-98.

The Service Level Agreement outlines an annual planning process which is intended to allow Government to budget for its IT expenditures and to allow NIS to plan and schedule the resources necessary to provide the services. The process outlined in the Agreement has been followed and a plan is in place for the 1997-98 fiscal year.

NIS, in consultation with Government, has developed an *Operating Procedures Manual* as required by the Agreement. This Manual is updated at least annually and is also updated when approved changes have been made to the systems described in the Manual.

#### 4. Pension Agreement

The Pension Agreement required payment of \$11.3 million on behalf of former employees with respect to pension benefits earned under the Public Service Pension Plan. Of the \$11.3 million, \$4.8 million was available in the Province of Newfoundland Pooled Pension Fund and the remaining \$6.5 million was paid by Government to cover the unfunded pension liability of the employees.

The Pension Agreement does not have any ongoing commitments that require regular monitoring other than the annual payments to the Province of Newfoundland Pooled Pension Fund (the Fund). Our review determined that the amounts disbursed from the Fund as a result of the transfer of employees from the Province's pension plans to the Newfoundland Telephone Company's Pension Plan (the NTC Pension Plan) were in accordance with the Pension Agreement and applicable legislation. There were a total of 204 individuals who were entitled to select between the options offered in the Pension Agreement. Figure 3 indicates the number of employees selecting each of the available options outlined in the Pension Agreement.

**Figure 3**

**Pension Agreement  
Selection of Pension Options by Employees**

Option Available	Number of Employees
Remain in Province's Pension Plan	15
Join NTC Pension Plan: Deferred Pension	1
Join NTC Pension Plan: RRSP Transfer - based on Contributions plus interest	79
Join NTC Pension Plan: RRSP Transfer - based on Actuarial Present Value	98
Join NTC Pension Plan: RRSP Transfer - based on Actuarial Reserve Calculation	11
<b>Total</b>	<b>204</b>

Sources: Department of Finance - Pensions Division  
Province's Consulting Actuary

### 5. Software Trust Agreement

NIS will hold software, included in a schedule to the agreement, in trust for Government. The agreement protects Government's interest in the software because any rights and benefits arising from the ownership of the software will be held by NIS for Government.

During our review of the privatization process in 1994, we indicated that periodic checks are needed to ensure that NIS is maintaining software in accordance with the Agreement. Our current review indicated that no such checks are performed.

#### Recommendation

*Government should perform periodic checks to ensure that NIS is maintaining software in accordance with the Software Trust Agreement.*

### 6. Building Lease Agreement

The Building Lease Agreement outlines the terms and conditions under which NIS would lease the

former NLCS building with 44,943 square feet from Government. This building had an original cost of \$4.5 million. It also outlined the process under which the extension of 17,198 square feet to the former NLCS building would be completed. This extension cost approximately \$2.1 million.

The rent due to Government, of \$9.50 per square foot totalling approximately \$630,000 annually, including GST, is being received in accordance with Clause 3 of the Building Lease Agreement. NIS is responsible for payment of maintenance costs.

The building extension was tendered and completed in accordance with the *Public Tender Act*. The *Guidelines for the Hiring of External Consultants* were complied with in the award of the contract for engineering consulting services for the building extension.

### Service Levels and Price

The stated intent of the Service Level Agreement is that the initial rates charged would allow Government to purchase in the fiscal year ended 31 March 1996 the equivalent quantity and quality of services provided in the fiscal year ended 31 March 1994 for approximately the same total cost on an annualized basis.

#### 1. Price

Schedule F of the Service Level Agreement outlines the rates being charged to Government for IT services provided by NIS. We reviewed information on the quantity of each service element consumed and the cost of these elements individually and in total. A service element would be a type of service (e.g. an hour of an Analyst's time). For the year ended 31 March 1994, Government purchased approximately \$18.5 million in IT services from what was then NLCS.

Under the terms of the Agreement, the rates for professional (i.e. consulting) services have increased compared to what they were prior to

privatization and the rates being charged for mainframe processing services have decreased by an equal amount. In addition, effective 1 April 1997, there was a further increase in the rates charged for professional services and a decrease in the rates charged for data storage. This rate increase was in accordance with the provisions of the Service Level Agreement. Excluding the allowable price increase in April 1997, if the same quantity and mix of service elements being consumed by Government at the time of privatization were purchased today, Government would pay approximately the same total cost on an annualized basis. However, if the mix of service elements varies from the mix in 1994, the price will also vary.

Departmental IT administrators we surveyed indicated, however, that NIS is not offering quantity discounts on any of the service elements. The absence of discounts for long-term contracts involving professional services, which were available prior to privatization, was noted as a concern.

### 2. Service

Under the Service Level Agreement, NIS is required to maintain service levels comparable to those provided by NLCS at the time of privatization. Since privatization, NIS has installed a new processor which has expanded the Province's processing capacity. Monthly reports provided by NIS indicate it is meeting or exceeding the performance targets established in the Agreement in the areas of application availability and online response times. In addition, as required in the Agreement, an independent evaluation of the Mainframe Computing portion of the Agreement for the period from August 1994 to May 1995 was completed by a consultant in December 1995. The consultant reported that the service provided by NIS did meet the requirements of the Agreement. Government has not verified the service levels reported by NIS since the period covered by the consultant's report. However, Treasury Board Secretariat officials indicated that they have not received any complaints from Government IT

administrators regarding service levels provided by NIS.

Discussions with departmental IT administrators indicated that occasionally there are problems being experienced with the service from NIS. These problems include failure of NIS to be more marketing oriented and delays in receiving professional services. However, the administrators also indicated that these problems were being experienced prior to privatization.

### Stimulation of the IT Industry

One of Government's objectives in the privatization of NLCS was to stimulate growth in innovative technologies and information industries in the Province. To assess whether this objective is being met, it is necessary to have a process in place to monitor the extent of stimulation in the IT sector in the Province.

Government is monitoring the extent of stimulation in the IT sector through its involvement with Operation ONLINE. At the present time, Operation ONLINE has identified approximately 40 performance indicators to measure growth in the IT industry in the Province. Such indicators include the number of people employed in the IT industry, investment in the IT sector, and expenditures on research and development in the IT sector. They have also identified possible sources of information regarding these performance indicators and some problems which may be encountered in obtaining the information. Later this year, Operation ONLINE intends to issue a tender to hire a consultant to gather this information for them and to assemble a report which will indicate the growth in the IT industry in the Province since 1994. This survey will then be updated on an annual basis.

Government also monitors the extent of stimulation in the IT sector through its administration of the Industrial Benefits Agreement.

## Comments on Audits and Additional Examinations

### Recommendation

*Government should continue efforts to gather information on performance indicators to measure growth in the IT industry in the Province.*

### Treasury Board Secretariat's Response

#### *Compliance with and Monitoring of Agreements*

##### *Share Purchase Agreement*

*Government's representation on the Board of Directors of NIS was considered to be appropriate during the transition period. However, this has since been viewed as unnecessary in the interest of developing proper customer-supplier business relationships.*

##### *Service Level Agreement*

*A proposal call has been issued by the Treasury Board Secretariat to have a security audit conducted for the 12-month period ending November 1997. The estimated completion date of the security audit report is March 1998.*

##### *Software Trust Agreement*

*The Secretariat has reviewed this matter with NIS and the respective client departments. It has been determined that three (3) of the nine (9) software licences listed are no longer used in Government. The other six (6) will remain under the Software Trust Agreement until such time as they are no longer required by the respective client departments.*

##### *Service Levels and Price*

###### *Price*

*While NLCS did provide discounts prior to privatization, Schedule F-Pricing of the SLA was developed with the specific recognition that discounts would not be provided after privatization. However, the Secretariat is of the opinion that Government would not expect NIS to*

*offer quantity discounts, because, as stated in your report, "...if the same quantity and mix of service elements being consumed by Government at the time of privatization were purchased today, Government would pay approximately the same total cost on an annualized basis.". The Secretariat therefore considers that from a Government-wide perspective, the concern expressed by client departments carries no consequential value in terms of IT expenditures at NIS.*

###### *Service*

*Government receives service level reports from NIS on a monthly basis. In addition, the ITM Division of the Treasury Board Secretariat is informed, by the client departments, if they experience downtime or poor response time. To date, discrepancies have not been reported between the service levels reported by the supplier, and, the service levels experienced by client departments.*

*It should also be noted that although the first review of Mainframe Computing by the independent consultant included an assessment of service levels relative to the SLA, the consultant has subsequently advised that this service can no longer be part of their evaluation. They have advised that they cannot verify actual service levels without the possible threat of manipulation of data by the supplier. As such, they recommended that Government consider whether service level reports provided by the supplier, reflect the level of service experienced by client departments. Further, that if a significant discrepancy is detected between the two, a thorough review of the matter should be conducted. This is the practice that has been adopted by the Secretariat since the consultant adopted the above policy.*

### Department's Response

*The Department of Industry, Trade and Technology is responsible for the monitoring of the Industrial Benefits Agreement, and therefore our comments will be limited to that component of your report.*

## Comments on Audits and Additional Examinations

*This Department has been working with NIS and its partners for some time in an effort to resolve all areas of non-compliance with the Agreement. We recognize that significant effort was expended in the negotiation of this Agreement with the aim of growing the local IT sector. We do not feel that seeking remedies in the form of liquidated damages will accomplish this goal and would only like to go this route when we have exhausted all other options. A Cabinet paper outlining our recommendations on these non-compliance areas is in the final stage of preparation. We would like to make note of one particular area, however. You note that Andersen is committed to creating 27 person years of employment through the R & D Centre. The Agreement reads that Andersen "...will use Best Efforts to work with NLCS to create 27 person years of employment at NLCS..."*

*One of the recommendations in your report is for Government to verify the information in the Industrial Benefits Agreement Annual Reports prepared by NIS. While this Department has not had an independent audit undertaken as yet, we are monitoring the results on an ongoing basis, through the activities of the Industrial Benefits Agreement Committee, regular meetings with the private sector and in particular the Newfoundland and Labrador Alliance of Technical Industries, and through numerous meetings at all levels, with NIS. In addition, the Department has recently engaged the Internal Audit Division of Treasury Board to undertake such an audit. We anticipate this audit will be undertaken soon, and thereafter on an annual basis.*

*Another recommendation made by your office involves Government's efforts to monitor the growth of the local IT sector. Through its creation, ONLINE has taken on the responsibility of playing a role in developing the Province's IT sector. Given the focus of this organization, Government will continue to work with ONLINE on this matter.*

*Another area of concern outlined in your report is that of residency, and the fact that it is not easily determined by reading the Annual Reports if employees of sub-contractors are resident in*

*Newfoundland and Labrador. The Industrial Benefits Agreement Committee undertook a significant effort early in the life of the Industrial Benefits Agreement to insure residency requirements are met. While this information is not detailed in the Annual Report, it is a mandatory requirement of all Request for Proposals that contractors provide information necessary to determine residency. The review conducted by Internal Audit will examine this issue for non-government work.*

*We acknowledge that the Annual Reports do not report on the preferred contractor relationships between NIS and Andersen, and NIS and Bell Sygma. We intend to rectify this omission in the future and request a separate report from NIS for the current period.*