Chapter 5
Departments of Health and Justice and Consumer Affairs Health Levy

Contents

Departments of Health and Justice and Consumer Affairs Health Levy

Background

5.1 In our 2005 Report we noted that we had begun a compliance audit of the health levy on insurers of motor vehicles.

5.2 The health levy has been in place since 1993. It is intended to recover certain specified costs incurred by the Province for the managing of personal injuries arising from motor vehicle accidents. It is charged to motor vehicle insurers in the Province based on the value of motor vehicle insurance premiums they bill. It is not the only charge that the Province has placed on motor vehicle insurance premiums. In addition to the health levy, there is an Insurance Premium Tax and a charge for the Office of the Fire Marshal (the latter under the *Fire Prevention Act)*.

5.3 This chapter includes information in the following areas:

- background
- scope
- overall conclusion
- summary of findings
- understanding the health levy
  - health levy revenue
  - premium tax revenue
  - legal authority
  - history
  - how the process works
  - compliance with legislation
  - summary of issues with the levy process
- financial analysis
  - calculating the levy amount
  - cost of administering the levy
  - summary of issues identified from the financial analysis
- recommendations

Scope

5.4 The health levy generates a significant amount of revenue for the Province and we wanted to find out what its purpose was, how it worked and what, if any, relationship it had to the Province's Insurance Premium Tax.

5.5 Our objectives for this audit were to:

- understand what the health levy is for;
- determine if the health levy process complies with legislation; and
- determine if there are any financial or value-for-money issues related to the health levy.

Overall conclusion

5.6 This chapter explains in detail the weaknesses of the health levy system that we observed during our examination. It also includes some recommendations for fixing those weaknesses. However, at the end of our work we had one overall impression: the health levy could easily be replaced with a simpler method of raising the same amount of revenue. So, our overall conclusion is that rather than fixing the weaknesses, the Province should replace the health levy.

Summary of findings

5.7 We found that the underlying concept behind the health levy is not complex, but the process of imposing it is more complex than it needs to be.

5.8 The health levy process and calculation is not working as it was intended to work. In our opinion, the amount of the levy is below the costs incurred by the Province to treat motor vehicle accident injuries.

5.9 The method used to calculate the health levy has not been recently validated. The Department of Health has started a review of the 2005 levy amount which should determine if the existing method is valid.

5.10 While the method of determining the amount of the health levy is unique, the collection process closely resembles the collection of the Insurance Premium Tax.

5.11 Like the other charges on insurance premiums - the Insurance Premium Tax and the charge for the Office of the Fire Marshal - it is very difficult for an insured individual to know how much of their insurance premium is caused by provincial taxes, levies and charges.

5.12 The existence of the three different charges on motor vehicle insurance premiums causes confusion.

5.13 While most of the legislated requirements associated with the health levy are adhered to, the legislated deadlines are not.

5.14 The revenue generated by the health levy has been decreasing since 2002. The primary reason for this is the falling number of motor vehicle accident benefit claims.

Understanding the health levy

5.15 A summary of the health levy revenue recorded from the year ended 31 March 1997 through to the year ended 31 March 2006 and the budgeted revenue for the year ended 31 March 2007 is provided in exhibit 5.1 (all figures in $ millions). These figures have all been taken either from volume II of the Province's Public Accounts or from the 2006/2007 Main Estimates.

Health levy revenue

Exhibit 5.1
Health levy revenue

Fiscal year ended 31 March										
2007 Budget	**2006**	**2005**	**2004**	**2003**	**2002**	**2001**	**2000**	**1999**	**1998**	**1997**
16.9	13.3	19.5	24.1	26.6	26.7	25.2	23.7	21.7	20.8	17.0

5.16 The large decrease in revenue in 2006 was caused by three factors:

- a decrease in the base levy due to favourable motor vehicle accident benefit claims experience;
- a re-estimate of the 2004 levy; and,
- a calculation error in 2005 which was corrected in 2006.

5.17 We have estimated that the health levy rate is about five dollars for every one hundred dollars of premiums billed as shown in exhibit 5.2.

5.18 The information in exhibit 5.2 is reported on a calendar year basis because motor vehicle premium data is reported on a calendar year basis. The billed motor vehicle premiums and the health levy collections information were obtained from the annual report of the Department of Justice and Consumer Affairs on Insurance.

5.19 The Department of Health, as part of its financial year end process, reconciles annual levy amounts billed by the Department of

Justice and Consumer Affairs to the levy revenue received. This is to ensure that the levy amounts billed are collected and that the Department of Health can account for any variances. At the time of our audit, the 31 March 2006 levy reconciliation was still outstanding. The Department of Health stated this was due to pending upgrades to the Department of Justice and Consumer Affairs reporting system.

Exhibit 5.2
Health levy rates

Year ended 31 December	Billed motor vehicle premiums	Health levy collections	Health levy rate per $100 of premiums billed
2003	$539.1 million	$27.5 million	$5.10
2004	$530.5 million	$25.2 million	$4.75

Premium tax revenue

5.20 We compared the health levy to the premium tax imposed under the *Premium Tax Act*.

5.21 A summary of the premium tax revenue recorded from the year ended 31 March 1997 through to the year ended 31 March 2006 and the budgeted revenue for the year ended 31 March 2007 is provided in exhibit 5.3 (all figures in $ millions). These figures have all been taken either from volume 2 of the Province's Public Accounts or from the 2006/2007 Main Estimates.

Exhibit 5.3
Premium tax revenue

Fiscal year ended 31 March										
2007 Budget	2006	2005	2004	2003	2002	2001	2000	1999	1998	1997
39.3	37.5	37.7	40.3	32.7	28.9	27.0	24.6	23.6	23.2	23.4

5.22 Exhibit 5.4 totals the health levy revenue and the premium tax revenue (all figures in $ millions).

5.23 However, other than the fact that the health levy and the insurance premium tax are both charges that are made based on the value of premiums billed, there is no relationship between them.

Exhibit 5.4
Health levy and premium tax revenue

	Fiscal year ended 31 March										
	2007 Budget	**2006**	**2005**	**2004**	**2003**	**2002**	**2001**	**2000**	**1999**	**1998**	**1997**
Levy	16.9	13.3	19.5	24.1	26.6	26.7	25.2	23.7	21.7	20.8	17.0
Tax	39.3	37.5	37.7	40.3	32.7	28.9	27.0	24.6	23.6	23.2	23.4
Total	56.2	50.8	57.2	64.4	59.3	55.6	52.2	48.3	45.3	44.0	40.4

Legal authority

5.24 The authority for the health levy is in subsections 242.1, 242.2, 242.3, 242.4 and 242.5 of the *Insurance Act*.

5.25 Based on the Act, we have identified that the purpose of imposing the health levy is to allow the Province to recover certain specified costs of managing personal injuries arising from motor vehicle accidents.

5.26 The *Insurance Act* specifies the recoverable costs in subsection 242.1(2) as

> *(a) the cost of the entitled services provided to beneficiaries under the* Medical Services Payment Act*,*
>
> *(b) the cost of the entitled services provided to persons under the* Hospital Services Act*, and*
>
> *(c) the cost of social services provided to persons under the* Family Services Act.

History

5.27 The health levy was introduced in 1993. Prior to the introduction of the health levy, the Department of Health used legal action to recover the costs of managing personal injuries arising from motor vehicle accidents directly from the individual responsible for the accident. This meant that the health related costs were recovered on a claim-by-claim basis, and the Department incurred costs in the recovery process. For the calendar year 1990, total recoveries were $3.0 million, and total costs of recovery were $0.3 million.

5.28 The claims approach was expensive, and it did not result in full recovery of costs. Costs were not fully recovered because some claims resulted in the division of liability, some claims were settled directly between the parties, and there were limits on the insurance

policies. The claims approach did, however, have the advantage of assigning the costs directly to the individual responsible for causing those costs.

5.29 When the health levy was first implemented, the calculation of the costs to be recovered did not include the costs of managing injuries sustained as a result of an individual's own actions; it only included the costs of managing injuries caused by another. However, in 1996, the calculation of the levy was changed to include the costs of managing injuries sustained as a result of an individual's own actions.

5.30 The health levy is a levy imposed on the insurer, as stated in subsection 242.1(2) of the *Insurance Act*; however it involves the Department of Health, the Department of Justice and Consumer Affairs, the insurers, insurance agents, and the insured.

How the process works

5.31 Exhibit 5.5 lists the main responsibilities described in the *Insurance Act*.

Exhibit 5.5
Requirements in the Insurance Act

Deadline	Responsible Party	Required Action
1 October	Department of Health	Calculates an estimate of the levy that will be imposed for the next calendar year.
1 October	Department of Health	Informs the Superintendent of Insurance of the amount of the estimated levy.
15 January	Superintendent of Insurance	Gives notice to the insurer of the amount of the estimated levy that the insurer must pay.
Quarterly	Insurer	Remits to the Superintendent equal quarterly payments beginning 15 March.
Annually	Department of Health	Reevaluates the accuracy of the levy estimate in the following year and makes any needed adjustments.
Annually	Department of Health	Advises the Superintendent of Insurance of any needed adjustments.
Annually	Superintendent of Insurance	Notifies the insurer of any adjustment to the estimated levy.
Annually	Insurer	Adjusts the next quarterly payment to reflect any adjustment to the estimated levy.

5.32 The Act does not stipulate how the Superintendent of Insurance should divide the total amount of the levy among the different insurers.

5.33 Also, the Act does not place any requirements or restrictions on individual insurers about how the health levy is to be recovered from insured individuals. The health levy appears to be just a cost of doing business to the insurer, and would have to be recovered through the prices paid by the insured individuals.

5.34 The result could be that some insurers simply pass the levy on to individuals in the same manner as the Superintendent determined the insurer's share of the total levy, while others might spread it out over all insurance contracts that they sell.

5.35 The Act also does not place any requirement on the insurer to inform the insured individuals about the existence of the health levy or its impact on the price of their insurance contract.

5.36 In actual practice, the Department of Health estimates the annual health levy by extrapolating a base levy that was established by a consultant, and making certain adjustments. The Department of Health then informs the Superintendent of Insurance of the total amount of the health levy to collect. The Superintendent of Insurance determines the total value of motor vehicle insurance premiums billed by each insurer in the previous year, and uses this to divide the total levy up among the insurers. The Superintendent then bills, collects and accounts for the health levy. The insurers would then pass the levy on to their customers as part of the cost of each insurance policy.

5.37 Because the process of estimating the health levy involves multiple years, its calculation can be complex as illustrated in the sample time line in exhibit 5.6.

5.38 In addition to the steps included in the process, the Act provides the Superintendent of Insurance with enforcement powers. Specifically, subsection 242.5(1) states that the license of any insurer who does not make its payment of the levy on time is automatically suspended. The Act does not allow any discretion in this suspension.

Compliance with legislation

5.39 Exhibit 5.7 indicates the responsibilities under the *Insurance Act* and the extent to which the requirements are complied with.

Exhibit 5.6
Sample time line for estimating the health levy

Approximate Date	Responsible Party	Action
March 2004	Department of Health	Informs the Superintendent of Insurance of the estimated health levy for the 2004 calendar year.
April 2004	Insurers	All annual returns of insurers have been received by Superintendent.
June 2004	Superintendent of Insurance	Notifies insurers of their individual levy for 2004.
March 2005	Department of Health	Makes a first re-estimate of the 2004 levy.
	Department of Health	Informs the Superintendent of Insurance of the estimated health levy for the 2005 calendar year.
April 2005	Insurers	All annual returns of insurers have been received by Superintendent.
June 2005	Superintendent of Insurance	Notifies insurers of their individual levy for 2005.
February 2006	Department of Health	Makes a final estimate of the 2004 levy.
	Department of Health	Informs the Superintendent of Insurance of the final estimated levy for 2004.
	Department of Health	Makes a first re-estimate of the 2005 levy.
	Department of Health	Informs the Superintendent of Insurance of the estimated health levy for the 2006 calendar year.
April 2006	Insurers	All annual returns of insurers have been received by Superintendent.
July 2006	Superintendent of Insurance	Notifies insurers of the adjustment to their 2004 levy.
	Superintendent of Insurance	Notifies insurers of their individual levy for 2006.

5.40 We found that the Department of Health is fulfilling all of its responsibilities under the *Insurance Act*, however not within the legislated deadlines. However, because the insurers are not required to file their annual returns with the Superintendent of Insurance until 31 March of each year, no improvement to the process would result from the Department of Health meeting its 1 October deadline.

5.41 Also, as explained in the Financial Analysis section later in this chapter, while the Department of Health is meeting its obligations under the legislation, we believe that the base information is no longer accurate and so the levy is not actually recovering the costs it is intended to cover.

5.42 Similarly, we found that the Superintendent of Insurance is fulfilling most of its responsibilities under the *Insurance Act*, however not within the legislated deadline. Because of the 31 March deadline for insurers to file their annual returns, and because those returns are used by the Superintendent of Insurance to determine the

amount of the levy charged to each insurer, it is not possible for the Superintendent of Insurance to meet the legislated deadlines.

Exhibit 5.7
Responsibilities under the Insurance Act

Deadline	Responsible Party	Sub section	Required Action	Compliance
1 October	Department of Health	242.3(1) (a)	Calculate an estimate of the levy that will be imposed for the next calendar year	Estimate is calculated annually but not by the legislated deadline.
1 October	Department of Health	242.3(1) (b)	Inform the Superintendent of Insurance of the amount of the estimated levy	Superintendent is notified but not by the legislated deadline.
15 January	Superintendent of Insurance	242.3(2)	Give notice to the insurer of the amount of the estimated levy that the insurer must pay.	Notices are sent to the insurers but not by the legislated deadline.
Annually	Department of Health	242.4(1)	Reevaluate the accuracy of the levy estimate in the following year and make any needed adjustments.	The levy is reevaluated, but there is a one year delay.
Annually	Department of Health	242.4(2)	Advise the Superintendent of Insurance of any needed adjustments.	Superintendent is advised (one year delay re reevaluation).
Annually	Superintendent of Insurance	242.4(3)	Notify the insurer of any adjustment to the estimated levy.	Insurers are notified (one year delay re reevaluation).
As required	Superintendent of Insurance	242.5(1)	Automatically suspend the license of any insurer who fails to remit the levy within the time set for remittance.	Not done even though not all remittances are made on time.

5.43 The *Insurance Act* does not specify how the Superintendent of Insurance is supposed to determine the amount of the levy for each insurer, however using the annual returns of the insurers seems to be a reasonable approach.

5.44 Because the departments of Health and Justice are not meeting the legislated deadlines, many payments are not received from insurers within the legislated deadlines, although most remittances are made on a quarterly basis as intended by the Act.

5.45 Other than complying with deadlines, the one requirement of the *Insurance Act* related to the health levy that is not met is the requirement to automatically suspend the motor vehicle insurance license of any insurer that does not make its remittances on time. Because the departments do not comply with the deadlines in the Act, insurers can not make all their payments in accordance with the payment schedule established by the Act, thereby making many remittances late. Because the *Insurance Act* says that the licenses are

then automatically suspended, we are concerned about the possible legal implications of this.

5.46 Aside from the fact that payments are late because the insurers are not notified about their share of the levy on time, some insurers are late with their quarterly remittances of the levy payments. However, even in these cases, the Superintendent of Insurance does not enforce the automatic suspension of licenses, despite the fact that the Act does not leave room for discretion. The Act says those licenses are to be automatically suspended. Either the Superintendent of Insurance should comply with the suspension requirements of the Act or have the Act amended to allow different penalties for late payment.

Summary of issues with the levy process

5.47 Exhibit 5.8 summarizes the issues we identified related to the health levy process.

Exhibit 5.8
Summary of issues with the levy process

Issue	Description
Allocation based on previous year's premiums.	The Superintendent of Insurance allocates the total levy to insurers based on the insurer's motor vehicle premiums as a percentage of total motor vehicle premiums written in the preceding year. This works as long as the insurer continues to offer motor vehicle insurance in the Province, and as long as the value of premiums written by the insurer stays constant. However, with new entrants into the motor vehicle insurance market or insurers exiting the market, it does not work. New entrants would not have any charge in the first year, and insurers leaving the market would be asked to pay the levy in a year that they have not billed any premiums. Also, if the value of premiums written changes significantly, it takes many months before the levy on the insurer is adjusted to reflect that change.
Is the cost burden borne by the right people?	The cost to the provincial health system of managing injuries that are the result of motor vehicle accidents is charged to insurers who then pass the cost on to the insured. If the charge is included only in motor vehicle insurance premiums, then there may be some distortions in who is paying the levy. For example, uninsured drivers would not be contributing to the cost of motor vehicle accident injuries. Also, an individual that owns two vehicles but is the sole driver of both would be bearing an extra cost for the levy.
Understanding provincial levies and taxes on premiums	The current method of taxation and levies on insurance premiums makes it difficult for an insured individual to understand how much of the cost of their insurance is caused by provincial taxes or levies. For example, an individual's motor vehicle insurance premium would have to cover the cost of the 2% premium tax, the 1% of premiums covering fire risks levied under the *Fire Prevention Act*, and the health levy which appears to be in the range of 4-5% of premiums.
Scope of cost recovery	Why does the government recover the cost of managing injuries that are the result of motor vehicle accidents through a specific charge, but the cost to the health system of other burdens is covered through general taxation?

Issue	Description
Process for assessing insurers	The process for assessing the insurers with their portion of the levy involves many steps. The Department of Health must do the calculation of costs, annual re-estimates of the costs and periodic revalidations of the baseline costs. The Superintendent of Insurance determines each insurer's share, sends out bills four times a year, makes adjustments to previous years' amounts, and manages the collection of the levy as a separate set of receivables.
Off-road vehicles	The baseline costing only included some costs incurred in accidents involving off-road vehicles. This may mean that the costs are missing a significant component.
Is the levy really a tax?	The total value of the levy is based on a periodic estimate of the cost of managing injuries resulting from motor vehicle accidents. However the levy is assessed to insurers based on the percentage of total motor vehicle insurance premiums billed by that insurer. So we believe that the levy closely resembles a motor vehicle insurance premium tax.
Why are there different processes for the levy and the premium tax?	Insurers are also required to pay insurance premium taxes to the Department of Finance under the *Premium Tax Act*. The remittance dates are similar to the health levy remittance dates, and the *Premium Tax Act* requires that insurers annually file a form in the manner prescribed by the Superintendent of Insurance showing the amount of tax payable for the year.
Legislated deadlines	As we described previously, the current method of allocating the levy to individual insurers means it is not possible to comply with the deadlines established in legislation.
Inappropriate penalty	As we described previously, the only penalty imposed by the *Insurance Act* for late payment is automatic suspension of the insurer's license. This does not provide the Superintendent of Insurance with an appropriate range of penalties to enforce payment.

Financial analysis

Calculating the levy amount

1992 costing

5.48 The Act required the Department of Health to establish the first estimated levy for the 1993 calendar year. The Department hired an actuarial consultant to arrive at this estimate. The approach used was:

- The starting point was to determine the actual recoveries that were being realized under the old claims based system.
- On a sample basis, individual files were examined to determine if the actual cost of the injury exceeded the realized recovery for that case.
- An estimate was made of whether the injury would result in long-term future costs to the health system.
- A determination was made of the value of family services that would be required by the injured party.

5.49 The cost elements did not include any amount for fixed costs such as the cost of hospital buildings.

5.50 Using this approach, the consultant was able to provide an estimate of the cost of accidents, although the consultant cautioned that the data available for doing the analysis was limited and considerable judgment had to be applied.

5.51 The estimated total cost was converted to a per vehicle amount. For 1992, the per-vehicle levy estimated by the consultant for third party costs was $18.46. The per-vehicle estimate for both third party and first party costs was $27.13.

5.52 In addition to determining the baseline costs, the original consultant's report recommended an approach to extrapolating the per-vehicle cost into the future. It was recommended that the baseline per-vehicle cost should be annually adjusted for:

- inflation on health care; and
- changes in accident claims frequency and severity.

5.53 In 1992, it was decided that an appropriate inflation factor would be the Consumer Price Index (CPI) plus 2%.

1998 costing

5.54 The Department of Health had another actuarial study done in 1998 to revalidate the baseline costs. This study used data from 1996. For 1996, the health levy per vehicle was $41.69. Based on the new costing, which included data from more sources than were available in 1992, the Department concluded that the levy of $41.69 was still valid.

5.55 The 1996 study actually determined that the health levy should have been within the range of $41.22 to $49.81 per vehicle, so while the actual levy of $41.69 was within that range, it was at the low end of the range.

5.56 The actuary's conclusion was:

> *The lower end of the range obtained from our calculations support the current level of the levy. The upper end of the range suggests an increase of about 20%.*
>
> *Based on the best data available and the work that was carried out, we feel that the levy is probably at a minimum level. There is also evidence to suggest that the levy could even be increased.*

5.57 The Department concluded that:

...based on the data retrieved in the Health Services Levy Revalidation Project that the amounts billed for the 1996 Auto Levy accurately represent the healthcare costs incurred as a result of motor vehicle accidents.

5.58 As a result, no changes were made to the base per-vehicle rate and no changes were made to the method of extrapolating the costs into the future.

Analysis

5.59 We would have expected that the revalidation exercise would have placed the actual 1996 per-vehicle rate in the middle of the acceptable range if the extrapolations for the 1993 to 1996 years were appropriate. Since the actual rate fell at the low end of the range, since there has not been a revalidation of the levy since 1996, and since the extrapolation method has not changed, we would expect that the current levy which is $40.52 would actually fall below the range if a new revalidation exercise were completed.

5.60 One factor in particular in the extrapolation formula appears to be suspect. That is the inflation factor which was set at CPI plus 2% a year in 1992, and has not been changed since. If we ignore adjustments for accident rates, and simply extrapolated the 1996 per-vehicle rate of $41.69 using an inflation adjustment only, we would arrive at a 2006 per vehicle rate of $62.36.

5.61 The actual per-vehicle levy for 2006 was $40.52, so favorable adjustments for accident claims frequency have prevented the per-vehicle levy from reaching the $62.36 rate. However, the health inflation rate of CPI plus 2% appears to be a low estimate of health inflation for the years from 1996 to 2006. We looked at three areas of government health spending over the same time period and found that the costs of providing health care have increased by more than CPI plus 2% per year on average, as the following table illustrates.

Year	2006	2005	2004	2003	2002	2001	2000	1999	1998	1997	1996
Ambulance Services	50.3	42.5	38.9	36.5	35.3	32.7	30.3	19.4	12.3	11.6	7.5
Hospital Services	1,026.6	956.7	892.9	841.1	806.6	753.0	703.2	644.9	611.6	609.3	594.5
Medicare	404.9	387.0	355.5	323.2	306.1	273.2	262.2	238.9	229.7	217.2	210.9
Total	1,481.8	1,386.2	1,287.3	1,200.8	1,148.0	1,058.9	995.7	903.2	853.6	838.1	812.9
% Increase	6.9%	7.7%	7.2%	4.6%	8.4%	6.3%	10.2%	5.8%	1.8%	3.1%	

5.62 If we apply the rates of increase from the preceding table to the 1996 per-vehicle levy rate, again assuming a constant accident profile, the per-vehicle levy rate in 2006 would have been $75.99, or about 30% higher than the rate calculated using CPI plus 2%.

5.63 We would therefore expect that if a new revalidation exercise was done, it would find that the actual inflation of costs of managing the injuries incurred in motor vehicle accidents has exceeded the assumed rate that is used in establishing the health levy.

5.64 The other factor in the extrapolation formula is an adjustment for the frequency of accident benefit claims. The source of the data used in this factor is a letter from the Insurance Bureau of Canada. It is obvious that since the per-vehicle rate for 2006 was set at $40.52 as compared to a 1996 inflation adjusted rate of $62.36, the frequency and/or severity of accidents has been decreasing to such an extent that it has been more than offsetting the inflation factor.

5.65 In fact there has been a decline in accidents in recent years as the following information taken from publications produced by the Canadian Council of Motor Transport Administrators shows:

Per 100,000 Population										
	Fatalities	**Injuries**	**Fatalities**	**Injuries**	**Fatalities**	**Injuries**	**Fatalities**	**Injuries**	**Fatalities**	**Injuries**
	2004	**2004**	**2003**	**2003**	**2002**	**2002**	**2001**	**2001**	**2000**	**2000**
Canada	8.5	664.7	8.8	702.7	9.3	725.1	9.0	713	9.4	732.3
NB	9.4	562.4	12.4	601.8	13.7	666	11.7	686.5	10.5	647

5.66 This reports a significant improvement in both the number of injuries in road vehicle accidents and the number of fatalities over the time period from 2000 until 2004. This supports the fact that the inflationary increase in the per-vehicle levy would at least be partially offset by a decrease because of an improvement in the accident profile.

5.67 There is one piece of information however that leads us to wonder if the extent of the reduction for accident frequency and severity is overstated. We compared the injuries per 100,000 population with the number of road accident claims reported by the Insurance Bureau of Canada and we found:

	2004	2003	2002
Injuries for population of 750,000	4,218	4,514	5,037
Claims	3,503	3,890	5,068
Rate of claims	83%	86%	101%

5.68 This is not enough data to draw a conclusion from. However, it indicates one reason for the frequency improvement reported by the Insurance Bureau of Canada could be due to a reduction in people making claims because of such factors as injuries were minor or insurance policy deductibles have increased.

5.69 Based on the analysis that we have done, we believe that if a new actuarial study of the health costs of managing the injuries resulting from motor vehicle accidents were completed, it would probably conclude that the current levy is not sufficient to recover the costs. It could be as much as 30% too low. If this is the case, it means the levy is no longer covering the costs it was intended to cover, and some of the costs are now being covered by other sources of government revenue.

Cost of administering the levy

5.70 The annual cost of administering the health levy is not large. The process involves two government departments; however health levy work is not a full time job for anyone. In addition to government departments there are minor administrative costs incurred by other organizations such the insurers and the Insurance Bureau of Canada. The total cost to government would normally be in the range of $40,000 to $60,000 per year.

Summary of issues from financial analysis

5.71 Exhibit 5.9 summarizes the issues identified from our financial analysis.

Recommendations

5.72 In our opinion, the health levy process and calculation is not working as it was intended to work. The amount of the levy is probably below the costs incurred in treating motor vehicle accident injuries, meaning some of the costs are now covered by general revenues. The method of calculating the amount of the levy is not, nor can it be, exact. The levy mirrors the premium tax, and is a cost that is unseen by the purchasers of insurance coverage. Furthermore, the process is more complex than it needs to be and the legislation establishes unrealistic dates and collection methods.

Exhibit 5.9
Summary of issues identified from the financial analysis

Process for arriving at levy amount	The process of estimating the cost of managing personal injuries arising from motor vehicle accidents is cumbersome. The periodic re-establishment of the baseline is time consuming. The process periodically requires the assistance of an external consultant. The number that is arrived at is necessarily based on many assumptions and estimates.
Inflation rate	The annual inflation factor appears to be low and should be revalidated.
Accident benefit claims frequency rate	The annual adjustment for accident benefit claims frequencies may not be accurate if not all accidents are being claimed through insurance.
Current levy is out of date	We expect that if a revalidation of the levy were done, it would indicate that the current per-vehicle levy rate is not sufficient to recover costs.
Administration cost	While the administration costs are not large, we believe that most of them could be avoided if changes to the process were made.

5.73 At the end of our work we had one overall impression: the health levy could easily be replaced with a simpler method of raising the same amount of revenue. So, our overall conclusion is that rather than fixing the weaknesses, the Province should replace the health levy. **We therefore recommended:**

> **The Department of Health re-evaluate the need for the health levy to determine if it could be replaced with a more efficient and transparent method of generating the same level of revenue for the Province.**

5.74 To do this the Department would have to consult with the departments of Justice and Consumer Affairs and Finance. The re-evaluation should consider the issues we have raised in this chapter. Some possible alternatives might be to add an extra charge to motor vehicle registrations or driver's licences; to roll the health levy into the Insurance Premium Tax; or to generate the revenue through general taxation.

5.75 If, after re-evaluating the health levy, the Department of Health decides to continue imposing the levy, we recommend:

> **The Department of Justice and Consumer Affairs amend the deadlines in the *Insurance Act* related to the health levy to reflect the actual timetable being used.**
>
> **The Department of Justice and Consumer Affairs review the legislated requirement to automatically suspend licenses of insurers that make late remittances of the health levy, and either make changes to the legislation or enforce the current legislation.**

The Department of Health hire a consultant to re-establish the base health levy and the method for extrapolating the levy into the future.

The Department of Health should, as soon as possible, complete the 31 March 2006 reconciliation of the health levy revenue recorded in the Province's financial system to the original levy calculations and to the amount of health levy collected as reported by the Department of Justice and Consumer Affairs.

Department of Justice and Consumer Affairs response

5.76 The Department of Justice and Consumer Affairs provided the following comments on our report.

> *Generally, the Department of Justice and Consumer Affairs supports retaining the current Levy system. Among other things, it is consistent with systems used by the other Atlantic Provinces and insurers appreciate harmonized approaches. However, we acknowledge the problems identified in the Auditor General's Report and agree that changes to the system are warranted.....*
>
> *The Department of Justice and Consumer Affairs accepts the conclusion of the Auditor General that while most of the legislated requirements associated with the Levy are being met, the legislated timelines are not. We also agree that this is the result of the legislated timelines being impossible to meet under the current processes. We also wish to observe that most of the insurers being assessed pay their assessments promptly upon receiving them.*
>
> *If a decision is made to continue with the Levy, the Department of Justice and Consumer Affairs agrees that the deadlines set out in sections 242.1 to 242.5 of the* Insurance Act *should be amended in the future to reflect the reality of current practices. Also, a provision should be added to provide for a mechanism for making adjustments to the Levy and to credit or reassess insurers.*
>
> *In addition, the Department of Justice and Consumer Affairs agrees that the mandatory suspension of the insurer's license for non-payment of the Levy within the prescribed timelines is too harsh. Mandatory suspension is particularly problematic where the current system makes it impossible for insurers to comply with the timelines. A*

mandatory suspension is also inconsistent with the treatment of insurers who are late in paying their premium tax or assessments made against the insurance companies under section 94(5) of the Act. Further, if the mandatory suspension was being enforced as required by the Act, it would likely have unintended adverse effects on consumers who would lose their insurer without notice and could allow insurers to circumvent the withdrawal provisions set out in sections 120.1 to 120.3 of the Insurance Act*, which were adopted to protect consumers. We support amending the relevant provision to provide for some alternative type of consequence for failing to pay the Levy on time, such as a discretionary power to suspend (as used in Ontario) and/or a penalty or interest charge (as used in Alberta).*

Department of Health response

5.77 The Department of Health provided the following comments on our report.

The Levy rate was initially based on an actuarial assessment of the healthcare costs incurred by the Department of Health in New Brunswick as well as using data from other Canadian provinces for comparison. As a component of the actuarial assessment a formula was presented to re-establish the Levy rate on an annual basis factoring in the changes to consumer price index (CPI), health cost factor (as a component of CPI) and the change in accident frequency. This methodology allowed the Department of Health to restate the estimated healthcare cost incurred as the result of motor vehicle accidents on an annual basis. It should be noted that this methodology is also currently used by all four Atlantic Provinces. The process is also similar in Alberta and Ontario.

The Department of Health has acknowledged that the estimates calculated on an annual basis should be revalidated regularly to ensure that the Levy amount billed to the industry through the Department of Justice and Consumer Affairs accurately reflects the true costs. As noted in your report, a revalidation was completed in 1998 and another is currently underway by Department of Health staff. The results of the 1998 revalidation study reflected a nominal variance which did not provide sufficient grounds to the Department of Health to alter the methodology used in calculating the Levy.

The Department of Health also acknowledges, however, that the Levy system must remain under constant review. As in 1996, with the inclusion of first party costs in the Levy, the Department is prepared to act should it feel that the Levy no longer reflects the true costs of motor vehicle accidents to the healthcare system. As mentioned, the Department of Health is currently undertaking a study to revalidate the levy amount, as in 1998.

In your report, you raise a number of issues which point to an underestimation of the healthcare costs recovered by the Levy. It is the opinion of the Department of Health that it would be premature to address these issues until the completion of the revalidation study in early 2007, at which time we would be in a better position to comment on the recommendations you have identified.