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Report of the
**Auditor General
of Canada**
to the House of Commons

MAY

Chapter 1
Management of Fees in Selected Departments
and Agencies



Office of the Auditor General of Canada

The May 2008 Report of the Auditor General of Canada comprises A Message from the Auditor General of Canada, Main Points—Chapters 1 to 8, and eight chapters. The main table of contents for the Report is found at the end of this publication.

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Chapter

1

Management of Fees in
Selected Departments and Agencies

All of the audit work in this chapter was conducted in accordance with the standards for assurance engagements set by The Canadian Institute of Chartered Accountants. While the Office adopts these standards as the minimum requirement for our audits, we also draw upon the standards and practices of other disciplines.

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Management of Fees in Selected Departments and Agencies

Main Points

What we examined

Federal government fees can be charged to an individual or organization for a good, a service, or the use of a facility, such as a park campsite. Fees can also be charged for the right or privilege to use publicly owned or managed resources—the fee for a commercial fishing licence, for example.

We selected thirteen such fees established by six federal organizations responsible for a major portion of the fee revenue reported by the government: Citizenship and Immigration Canada, Fisheries and Oceans Canada, Foreign Affairs and International Trade Canada, Health Canada, Industry Canada, and the Parks Canada Agency. We looked at how these organizations established the cost of the fee and determined the amount to be charged for the fee; we also looked at how they measured, monitored, and reported on the performance of the fee-related activities. In addition, we looked at any related policy or guidance on fees that the Treasury Board of Canada Secretariat has provided to departments and agencies; we also looked at the scope and application of the *User Fees Act* passed in 2004.

Why it's important

In their 2006–07 performance reports, federal departments and agencies reported a total of about \$1.9 billion in fees collected for everything from a passport to a licence for manufacturing pharmaceuticals. The amount charged for these fees must be related to the cost or the value of what is provided. In determining the amount to be charged for the fee, government organizations also need to consider, for example, what proportion of the cost or value is appropriately borne by the fee payer and what proportion by the general taxpayer through tax revenues.

Increasingly, fee payers are challenging the validity of fees, and courts have held that where a reasonable relationship could not be demonstrated between the fee and the cost or value of the fee, the fee represented an unlawful tax and, in a recent Supreme Court case, had to be repaid.

What we found

- For the cost-based fees we audited, the organizations varied from those with costing systems and practices that captured the full cost of fee-related activities to organizations that did not know the cost of related activities. The rationale for the amount charged for the fee also varied—for six of the fees, the organizations had a comprehensive rationale for the amount charged; the other fees had been based on factors unrelated to the recent cost or value of what was provided. As a result, organizations may not have all of the necessary information for determining the amount to be charged for the fee and whether there is a reasonable relationship to the cost or value of the fee.
- Foreign Affairs and International Trade Canada allocated to the consular services fee (included in the cost of an adult passport) costs for activities beyond those outlined in the original approval of the fee. These additional costs are for activities performed on behalf of other government organizations; some other fees for these particular costs are also levied separately. Following the Department's initial calculations, reported in its departmental performance report, our recalculations and the Department's showed that more was collected in consular fees than the cost of providing the related services. This means that the Department is at risk of appearing to have not determined the charge for the fee in a way that was consistent with a view to cost recovery, as its legislation requires. The Department has acknowledged that it needs to review the impact of the surpluses on the amount charged for the fee, as well as related issues.
- Many important accountability provisions of the *User Fees Act* cover only new fees and increased fees. This means that for the vast majority of fees set before the Act was passed, the organizations are not required to publicly report costs, performance standards, and performance information, or to reduce fees when service standards are not achieved.

The departments have responded. The departments agree with our recommendations. Their responses follow each recommendation throughout the chapter.

Introduction

Government fees

1.1 The federal government charges the public and industry diverse fees, covering such things as licences for the manufacture of pharmaceuticals and permits for newcomers to study or work in Canada. The fees differ according to the good, service, or benefit provided, and to who pays the fee. Fees differ from taxes, as the charge is linked to what the individual or organization receives, beyond what the general public receives.

1.2 There are two categories of fees. The first category includes fees for goods, services, or the use of a facility; examples include the amount charged for a government publication (good), the charge for inspection services (service), and the cost to enter a federal park (use of a facility). For these fees, the amount charged is normally intended to recover all or part of the cost to the government (not only the organization concerned) of providing that good, service, or use of a facility.

1.3 The second category of fees includes those for rights or privileges, which mainly include authorization to use publicly owned or managed resources. Examples include a licence to fish commercially or to operate a business on federal property. The amount charged for these fees has normally not been related to costs but rather to the market value of the right or privilege, which can be determined by looking at equivalent fees or proxies (domestic or international) or by assessing a fee's potential value. The objective for these fees is to earn a fair return for Canadians from the rights or privileges granted by the government on behalf of all Canadians.

1.4 In the 1995 federal budget, the government announced a decrease in program spending and an increase in the use of fees to recover costs. One of the government's objectives in charging fees was to promote an approach to financing government programs that would fairly charge those who received a service or derived benefits beyond those general taxpayers enjoy. Another objective of the government was to ensure use of a government resource at a fair economic return to the general public. The 2003 federal budget further indicated that the government was committed to improving the approach to managing fees by calling for a more open, transparent, and accountable system of policies and practices.

1.5 During the 2006–07 fiscal year, federal departments and agencies publicly reported on some 220 fees in their departmental performance reports. Their figures indicate that these fees generated about \$1.9 billion in revenues, representing about one percent of all government revenue.

Managing and controlling fees

1.6 The authority and control framework for fees includes departmental legislation and regulations, the *Financial Administration Act*, the *User Fees Act*, and the Treasury Board Policy on Service Standards for External Fees. There is also the Treasury Board of Canada Secretariat’s guidance, as well as relevant case law. In addition, fees can be charged under a minister’s contracting authority. Departments and agencies are responsible for managing fees. The Treasury Board and its Secretariat provide policies, which are mandatory for departments and agencies to follow; provide advice and written guidance on sound practices; and collect information to identify broader issues related to fees.

1.7 Fees for a good, service, or the use of a facility can be set either in an enabling statute or by regulation when the enabling statute provides authority to the **Governor in Council** or minister to set fees by regulation. With respect to fees that are set in an enabling statute, that statute provides the express authority of Parliament to levy either a fee or a tax.

Governor in Council—The Governor General acting on the advice of the Privy Council, as the formal executive body that gives legal effect to those decisions of Cabinet that are to have the force of law.

1.8 With respect to fees that are set by regulation, as Parliament cannot provide express authority to levy a tax by regulation, such fees cannot exceed the cost to the government of providing the good, service, or use of a facility. If a fee does exceed that cost, it can be declared an unlawful tax and the regulation can be declared outside the scope of its enabling statute. Under case law, this requirement that revenue from a fee not exceed its cost is normally interpreted to mean that there must be a “reasonable relationship” between the cost and the fee.

1.9 In 2004, Parliament passed the *User Fees Act*. A key objective was to enhance the role of parliamentarians with respect to fees, by permitting them, through committee, to review proposals for new fees or fee increases. Another objective was to give fee payers a stronger voice, by requiring consultation with stakeholders before fees are set or revised. Finally, the Act introduced reporting requirements for fees, as well as consequences for departments and agencies by mandating

them to reduce fees that had been reviewed pursuant to the Act if they failed to meet service standards associated with the fees.

1.10 Increasingly, fee payers are challenging the validity of fees in the courts. It is important, therefore, given the application of relevant case law, that departments and agencies distinguish their fees from taxes, as any fee imposed by regulation could be subject to a court challenge. A reasonable relationship between the fee and its cost or value, whichever is relevant, is critical to establishing that such a fee is not a tax. Where there is no such reasonable relationship, there is a risk that, if challenged in court, the fee could be determined to be an unlawful tax. Moreover, a Supreme Court of Canada decision released in January 2007 held that a fee in New Brunswick that had been determined to be unlawful had to be repaid to fee payers. In the future, any other fee found to be unlawful may need to be repaid.

Focus of the audit

1.11 The audit focused on thirteen selected fees in five departments and one agency:

- Citizenship and Immigration Canada,
- Fisheries and Oceans Canada,
- Foreign Affairs and International Trade Canada,
- Health Canada,
- Industry Canada, and
- Parks Canada Agency.

1.12 The fees selected included five fees for goods, services, or the use of a facility and eight fees for rights or privileges, as outlined in the table on page 33 in **About the Audit** at the end of this chapter. We selected these fees to ensure that we examined a significant amount of the fee-based revenue the government generates. We also wanted to examine a variety of fee types and legislative authorities that established the fees.

1.13 In our audit, we also examined the role of the Treasury Board of Canada Secretariat with respect to these fees. We looked at whether the Secretariat provided departments and agencies with appropriate policy direction and guidance relevant to fees.

1.14 Our audit focused on whether there were appropriate systems and practices to establish costs for fees and to determine the amount to be charged for the selected fees. It did not include verification of the

specific cost or other information used to determine the amount charged for selected fees.

1.15 Subsequent to completing our audit work for this chapter, a Supreme Court of Canada decision released in February 2008 on a fee for a right and privilege has implications for fees for rights or privileges that are part of a regulatory program. As this decision was released after we completed our audit work, we did not consider the implications of this decision on the fees that we examined.

1.16 More details on the audit objectives, scope, approach, and criteria are in **About the Audit** at the end of this chapter.

Observations and Recommendations

Costs of fees and determining the amounts charged

1.17 In addition to the requirements of the legislation or regulation that sets the fee, the Treasury Board of Canada Secretariat's *Guide to the Costing of Outputs in the Government of Canada* advises departments and agencies to have a comprehensive understanding of the full costs related to fees for goods, services, or the use of a facility. Departments and agencies need not charge an amount that covers all or any specific part of the cost of providing goods, services, or the use of a facility, but, as previously explained, the amount normally may not exceed the cost of doing so.

1.18 When determining the amount to charge for goods, services, or the use of a facility, organizations must first identify all the activities associated with providing these items. They must then consider which organization costs (both direct and indirect), and relevant costs that other organizations incur, can be allocated appropriately to the particular good, service, or use of a facility. This process is often referred to as determining the full cost of providing the goods, services, or use of a facility associated with a fee. Contrarily, when determining the fee for a right or privilege, a critical aspect normally involves identifying the value (usually the market value) of that right or privilege.

1.19 In addition, based on our review of government policies related to fees and best practices for determining the amount to be charged for a fee, departments and agencies need to consider other factors, such as the following three key factors:

- **The benefit to the fee payer.** This factor involves considering what proportion of costs or value the fee payer will bear, and what proportion the general taxpayer will cover through tax revenues. This is a challenging but key task to ensure that the fee payer

and the taxpayer carry fair burdens. If federal organizations undercharge fee payers for private benefits or services, the taxpayer bears a disproportionate share of the cost of providing those benefits or services, thereby subsidizing a private benefit. If organizations overcharge fee payers for benefits or services, the fee payers may be subsidizing benefits that are enjoyed by the general public.

- **The relationship of the fee to changing conditions.** This factor involves understanding how the amount to be charged for a fee may be affected by changes in program costs or market values, in the amount of benefits attributable to the fee payer, or in levels of program service. Periodically reviewing this relationship is critical to ensuring that, over time, an appropriate burden is carried by the fee payer and the taxpayer, and that the government receives appropriate revenues for the goods, services, or use of a facility, or for rights or privileges it provides.
- **The effects of the fee.** This factor involves considering how the fee can affect government programs or policies, or how the amount charged for a fee can affect demand or competitiveness.

1.20 These factors, along with information about full cost or value, may justify charging a certain amount for a fee; that amount may be less than the full cost or the value.

1.21 Accordingly, for selected fees, we expected to find that federal organizations would have put in place appropriate systems and practices to determine either the full cost of providing goods, services, or the use of a facility, or the value of a right or privilege. We also expected them to have done a comprehensive analysis to determine the amount charged, and to have periodically reviewed that analysis.

Capturing the full costs for the five cost-based fees varied

1.22 In addition to looking at the consular services fee (administered by Foreign Affairs and International Trade Canada), which is addressed later in this chapter, we examined one agency and three departments responsible for cost-based fees for goods, services, or the use of a facility: Parks Canada Agency, Citizenship and Immigration Canada, Fisheries and Oceans Canada, and Health Canada.

1.23 Parks Canada Agency. We found that the Parks Canada Agency is allowed to retain the fees collected at each park or historic site to fund activities at that location. The Agency's revenue management policy defines the framework for categorizing activities, and its

financial system matches full costs to the fees received for each of those activities.

1.24 Citizenship and Immigration Canada. We found that Citizenship and Immigration Canada has developed a cost management model that captures the costs of processing applications for immigrants for entry into Canada and allocates those costs to the corresponding fees. The Department had also requested information from other federal departments and agencies about the processing costs they incur relating to its fees, but some of these organizations had not provided the information to the Department during our audit. We noted that the costs the Department had already identified were higher than its fee revenue.

1.25 Fisheries and Oceans Canada. We found that Fisheries and Oceans Canada has a system to determine the full costs of activities performed by the Canadian Coast Guard, including the marine navigation services fee. In 2005, an internal audit found that while the system properly reported the overall total cost for the Department, the timeliness and reliability of fleet operational data, a key component used to allocate costs to the marine navigation services fee, needed to be improved. That audit further found that for shore-related activities, another component for allocating the cost to the fee, the quality and consistency of allocating costs varied significantly between sectors, regions, and responsibility centres. We also found that allocation of shore-related costs was based on subjective estimates, rather than on operational tracking of shore activities.

1.26 In our audit of Fisheries and Oceans Canada's commercial fishing licence fees, we found that, in our view, a fee for the registration of fishers and their vessels could be considered a fee for a good, service, or the use of a facility, rather than a fee for a right or privilege. This registration fee, unlike other commercial fishing licence fees, is not a fee for privileged access to a publicly owned or managed resource for business purposes, but rather functions as an administrative charge to recover the costs of processing applications. In 1995, when the fee was set, the Department estimated that revenue from registration was about \$5 million (currently estimated to be about \$2.6 million), but it did not identify any costs associated with the fee. As part of our audit work, we requested that the Department provide current information on the costs of fee-related activities, but it was not able to provide this information.

1.27 Recommendation. Fisheries and Oceans Canada should improve the reliability of the information used to allocate costs to the marine navigation services fee.

Fisheries and Oceans Canada's response. Fisheries and Oceans Canada accepts the recommendation. Since the internal audit of 2005, improvements have been made to clarify and update the business process related to the timeliness and reliability of the fleet operational data and the consistency of cost allocations. The Department is carrying out the Readiness Assessment project to prepare for the independent audited financial statements that are to be available by the 2010–11 fiscal year. The costing systems and processes will be reviewed, after which the Department will assess the actions needed and time required to improve the reliability of the information.

1.28 Recommendation. Fisheries and Oceans Canada should identify the costs associated with the registration fee for fishers and their vessels to ensure that the fee complies with all legislation, policies, and guidance associated with the fee, and take any necessary action to adjust the fee.

Fisheries and Oceans Canada's response. Fisheries and Oceans Canada accepts the recommendation. The Department has started identifying the costs associated with the issuance of fisher and vessel registrations for which fees are set under regulation. These costs will be compared to the revenues collected for the issuance of these registrations, and the Department will determine the necessary action to be taken, including adjusting the fees if required. Because of the complexity of the regulatory process, adjustments to fisher and vessel registration fees would be completed by 2011.

1.29 Health Canada. At the time of our audit, Health Canada did not know the full costs of the activities related to the medical marijuana fee. Although the fee was for a good and was to be cost-based, the Department did not have accurate figures on the cost of the fee activities when it set the fee. The Department had projected the cost of producing medical marijuana, but it lacked complete information about the costs of administering the program, of carrying out related regulatory affairs, and of conducting research. Shortly before our audit started, Health Canada hired an independent consultant to determine the full cost of the activities. A report completed in November 2007 stated that the full cost of the activities related to the medical marijuana fee was more than the fee charged.

1.30 Recommendation. Health Canada should improve its systems and practices for establishing costs of the activities related to the medical marijuana fee, to be able to accurately calculate the full cost of those activities on a periodic basis.

Health Canada's response. In the 2007–08 fiscal year, the Department developed the Corporate Cost Allocation Model (CCAM) and policies and guidelines to improve Health Canada's costing systems. Health Canada will apply the CCAM to determine the full cost of the Medical Marihuana Program and will also establish a schedule on which the full cost of the program will be recalculated. This will be completed in the 2008–09 fiscal year. Once completed, the Department will be in a position to report the full program cost.

The amount charged for six fees was based on a comprehensive analysis

1.31 Ministers are ultimately responsible for determining the amount to be charged for a fee for a good, service, or the use of a facility, or the fee for a right or privilege within their areas of responsibility. Departments and agencies are responsible for providing recommendations to ministers on the amount to be charged for fees, including ensuring that the requirements of the legislation or regulation that set the fee are met.

1.32 As we already noted, in addition to information on the cost of a fee for a good, service, or the use of a facility, or for the value of a right or privilege, federal organizations need to consider other factors in determining the amount to be charged for a fee (see paragraph 1.19).

1.33 We expected, therefore, that when determining the amount to be charged for a fee, selected organizations would have completed a thorough analysis of costs and other factors that affect the fee and would have updated that analysis periodically to ensure that the relationship between the fee and its cost or value remained reasonable. In the case of fees for rights or privileges, we expected that organizations would have explained their rationale for the amount to be charged for the fee by referring to market values or to a reasonable comparison with another jurisdiction. These analyses, along with consideration of the requirements of the legislation or regulation that set the fee, are important to demonstrate the fee's validity if it should ever be challenged before the courts.

1.34 Excluding the consular services fee, which we deal with separately, we found that complete and up-to-date analyses were prepared for six of the twelve fees that we examined.

1.35 Parks Canada Agency. We found that the Parks Canada Agency's entry fee kept pace with related program costs, and its real property fee, which is a right or privilege, kept pace with the value of the benefit received. The real property fee is based on either a

percentage of gross revenues or a percentage of appraised land value and is self-adjusting relative to related increases or decreases. The Agency has increased its park entry fee incrementally, through multi-year schedules submitted for review by Parliament, in accordance with the *User Fees Act*. For example, depending on the level of service provided, the range of increases for entry fees to national parks and national historic sites will run from \$.50 to \$4.50 over the four-year implementation period. This multi-year fee schedule provides the Agency with greater certainty as to revenues and allows fee payers to forecast future costs with certainty. Previously, the Parks Canada Agency froze fees for periods of up to five years and found that it became difficult to double fees in one year if the costs of providing services increased. In view of this multi-year approach, the Agency will need to monitor ongoing costs to ensure that the fee reflects any significant changes in those costs.

1.36 In addition, we found that the Parks Canada Agency's fees were set following an analysis of the benefit to the fee payer. Specifically, the Agency analyzed the proportion of costs or value that fee payers and tax payers were to assume, and adjusted its fees accordingly. The Agency's User Fees and Revenue Management Policy sets out the principles of what constitutes a public (for example, preservation of a heritage site) versus private (for example, use of a campsite) benefit. The policy requires the Agency to finance its services and programs that benefit the general public through appropriations, including programs to protect and preserve natural areas, cultural and heritage resources, and educational programs for general audiences. The policy also defines what constitutes personal and commercial benefits that are to be financed through fees. The Parks Canada Agency incorporates the policy's principles in its financial recording and reporting systems. The respective costs and revenues related to public and private fee programs and services are recorded and reported separately.

1.37 Industry Canada. We found that Industry Canada determined the initial amount to be charged, according to market value, for three of the four "spectrum" licence fees we selected in our sample. These fees cover licences for cellular phone services and television signals broadcast via satellite, and facilitate fire, police, ambulance, and other public safety communications. Industry Canada took all reasonable steps to estimate the value of these licences. The fees will remain at the current amount until a review of the fees is done and the fees are adjusted. As a result, the Department will need to continue to monitor value and ensure that the fees reflect any related changes. With respect to determining the

benefit to the fee payer, the Department indicated that its policy and approach to determining the amount to be charged for these fees was to identify an amount that represented a fair return to the Canadian public for the use of a public resource and an incentive to use the spectrum efficiently.

1.38 Fisheries and Oceans Canada. We found that in 1996 Fisheries and Oceans Canada had established its marine navigation service fee at a level consistent with an agreed target, and had later revised the fee in 1998 after consultation with industry. Since 1998, the Department has reviewed the fee and its costs annually with stakeholders. We note that the fee has not changed, and its costs have remained stable. The Department and the commercial marine transportation industry have been discussing a future approach to fees. In 2007, the two parties reached an agreement that will lead to the development of a long-term solution to determining the charge for the fees that will respect the concerns of the industry and of government.

The amount charged for six fees was based on other factors, not on current cost or value

1.39 Industry Canada. We found that Industry Canada last amended the fee schedules for a radio licence in 1994. This licence represents permission to operate a radio “land mobile service,” such as a service that enables a city garage to communicate with city vehicles on a specific frequency. We found no evidence that Industry Canada had tried to determine the approximate market value of this licence at that time or since, despite Treasury Board policy requiring this at the time. As a result, the licence fees may not reflect the current market value of this component of the radio frequency spectrum.

1.40 Fisheries and Oceans Canada. We found that from 1990 to 1993, Fisheries and Oceans Canada based its commercial fishing licence fees on a percentage of the average of the “landed value” of a catch, such as crab, lobster, and shrimp. This was a reasonable approach to determining the initial amount to be charged for a fishing licence. However, the fees no longer represent an appropriate amount to be charged for access to a public resource because it no longer reflects the value of the catch in the marketplace. For example, based on department information, the landed value per kilogram of lobster rose from about \$5 in 1990 to over \$13 in 2005. The Department repeatedly carried out reviews recommending that the amount charged for the fees be revised to reflect more up-to-date marketing conditions. The approach to these reviews was reasonable and included examinations

of fish management practices of other countries. However, no changes were made to the fees. As announced in April 2007, the Department is again completing further reviews of its licence fees.

1.41 Health Canada. We found that Health Canada originally set the medical marihuana fee to develop a cost-neutral legal source of marihuana for medical research. However, without consultation with fee payers and without complete information about costs, the Department determined the amount to be charged for the medical marihuana fee largely with a view to ensuring comparability and affordability, and undercutting the illicit market price. The goal was to encourage seriously ill patients to purchase Health Canada's marihuana or marihuana seeds for their medical use, as the product was safe and free from contaminants. The Department also considered charging practices in the Netherlands and the United States.

1.42 Citizenship and Immigration Canada. As part of the government's 1995 federal budget objectives of decreasing program spending and increasing the use of fees to recover costs, Citizenship and Immigration Canada's right of permanent residence fee was introduced at a charge of \$975. The fee was intended to balance financial program pressures and the capacity of immigrants to pay the fee. The Department had consulted with a wide range of stakeholders, many of whom wanted a greater share of the costs to be transferred from the taxpayer to the direct beneficiaries, because immigration to Canada offers a wide range of benefits. The amount to be charged was reduced to \$490 in the 2006 federal budget to minimize the financial burden for applicants for permanent residence status.

1.43 The objective of Citizenship and Immigration Canada's permanent residence application fee was to recover a fair portion of the cost of processing immigrant applications to Canada. In 1986, based on an analysis of costs, the fee was initially set at \$125. By 1994, based on further analyses of costs, it had been increased four times and was at \$500. However, since then, the fee has remained substantially unchanged except for a small increase for an additional service in 2002. We saw no evidence that the fee was recently reviewed to determine if a change in the fee was required.

1.44 The Department's right of citizenship fee was introduced in 1995 at an amount of \$100 to be partial compensation for the many rights or privileges of citizenship, such as the right to vote, carry a Canadian passport, enter and remain in Canada, and be protected by Canada while abroad. The fee has remained unchanged for 13 years, and we found no evidence that the fee was subsequently reviewed to

determine whether a change in the fee was warranted. As a result, the fee may not reflect the value of the rights or privileges it confers.

1.45 Although factors other than cost or value are important in determining the charge for fees, federal organizations need to review all the factors affecting their fees when determining the amount to be charged, at the outset and periodically thereafter, to determine whether changes are needed. In doing so, organizations must ensure a fair share of the cost or value is carried by fee payers and taxpayers respectively and that the government, on behalf of all Canadians, receives a fair return for the goods, services, or use of a facility, or for the rights or privileges it provides.

1.46 Recommendation. Industry Canada (radio licence fees), Fisheries and Oceans Canada (commercial fishing licence fees), Health Canada (medical marijuana fee), and Citizenship and Immigration Canada (permanent residence application fee, right of permanent residence fee, and right of citizenship fee) should establish formal systems and practices to periodically review these fees. In this review, the departments should consider changing fee-related costs or value, the portion of the fee that should accrue to fee payers and taxpayers respectively, and other factors related to changing circumstances. They should also consider developing a longer-term approach to the fee structure that would enable the fee to be automatically adjusted to reflect these various factors, subject to the requirements of the *User Fees Act*.

Industry Canada's response. Industry Canada agrees with the recommendation and will establish practices to periodically review its spectrum and radio licence fees. The system and practices will take into consideration the factors identified. Following this review, Industry Canada plans to review the fees set in 1994 by the Governor in Council under the *Radiocommunication Regulations*.

Fisheries and Oceans Canada's response. Fisheries and Oceans Canada accepts the recommendation. The Department continues to periodically review commercial fishing licence fees. The most recent review was announced 12 April 2007, and is expected to be complete by 2010 in light of the extensive requirements associated with the regulatory process and the *User Fees Act*. The review is assessing changing factors within the commercial fishery as well as long-term approaches that would allow for timely and automatic updating of commercial fishing fees.

Health Canada's response. As per Health Canada's External Charging Policy, the Department will establish a timetable for periodic review of the fee at the time of introducing or amending the fee. Health Canada will review the medical marijuana fee in the 2008–09 fiscal year, including consideration of changing program costs and the portion of the fee that should accrue to fee payers and taxpayers respectively. As part of this review, Health Canada will consider developing a longer-term approach to the fee structure.

Citizenship and Immigration Canada's response. The Department agrees. Citizenship and Immigration Canada will periodically review pricing of service fees in comparison to program costs and changing circumstances. However, the Department's ability to carry out such a review may be limited in the event that it is subject to litigation related to fees, and depending upon the nature and scope of such litigation. Since there is no obligation for a department to charge the full Government of Canada cost of providing a service, a decision to revise fees is ultimately a decision of the government of the day to strike the proper balance between costs borne by fee payers and taxpayers.

Foreign Affairs and International Trade Canada incorrectly allocated additional costs to the consular services fee

1.47 In 1995, as part of Program Review, Foreign Affairs and International Trade Canada began charging a consular services fee for all adult passports. The fee serves as insurance for Canadians who travel or live abroad and find themselves in need of protection or assistance as a result of an accident, illness, child abduction, custody dispute, crime, arrest, or detention. The core services this fee provides include assistance and evacuation in the event of a natural disaster or civil unrest, or support in cases when imprisoned Canadians require consular assistance to obtain legal assistance or representation where prison conditions do not meet Canadian standards.

1.48 When this fee was authorized, the total cost of these services was about \$37 million per year. When apportioned to the roughly 1.5 million adult passports issued yearly at the time, this total cost resulted in a fee of \$25 per passport, paid at the time an adult passport is purchased.

1.49 In addition, the consular services fee was approved on the condition that the Department would provide full disclosure of cost and associated revenues in the Department's performance reports and would adjust the fee, if necessary, to ensure that revenues did not exceed the full cost of the service. This latter requirement is consistent with the legislation and regulations under which the fee was set.

The *Department of Foreign Affairs and International Trade Act* and *Consular Services Fee Regulations* state that any fee must be set with a view to cost recovery. The only exception permitted was when a temporary spike in the demand for passports caused a short-term surplus. We found no indication of such a short-term spike in demand.

1.50 Costing methodology incorrectly calculated costs. In the authorization for the consular services fee, the total cost associated with the fee excluded costs that were related to other government activities carried out by consular staff—in particular, costs related to activities carried out on behalf of Passport Canada and Citizenship and Immigration Canada.

1.51 However, the Department’s methodology for establishing the cost of the consular services fee reduced the fee’s total cost only by the amount that it actually received from Citizenship and Immigration Canada and Passport Canada. It did not eliminate all the costs of providing these services. This methodology resulted in a repeated deficit position for the fee.

1.52 As illustrated in Exhibit 1.1, the results of this methodology were reflected in the Department’s performance reports to Parliament. The Department explained that there were some years when it reported no information or only estimated figures in these reports because the financial information necessary to calculate the surplus or deficit from all activities carried out by consular staff was not available at the time of publication.

1.53 During our audit, we used the Department’s internal financial information and time-reporting records to recalculate the costs of the fee in a manner that excluded the costs of services provided on behalf of Citizenship and Immigration Canada and Passport Canada, consistent with the methodology in the fee’s authorization. In these recalculations, the deficits resulting from the Department’s methodology were restated as surpluses for the 2003–04 to the 2005–06 fiscal years (Exhibit 1.1). We requested information on revenues and costs prior to 2002, but the Department was not able to provide us with the relevant information.

1.54 Based on our recalculations, we concluded that the Department has overstated costs of the consular services fee relative to the fee cost structure as originally approved. As a result, it is at risk of being seen to have not determined the amount to be charged for the fee in keeping with its legislative mandate to collect fees with a view to cost recovery. Consequently, adult passport holders are, in effect, helping to cover the

costs of activities that are outside the scope of what they would receive for the fee. There are also other separate fees levied upon adult passport holders for some of these particular costs, such as the fee for obtaining the passport itself.

1.55 The Department amended its costing methodology for the fee. After we informed the Department of our findings, the Department re-examined its methodology for establishing the costs of the fee. The Department agreed that it must exclude the costs of processing passport applications and the costs of services provided on behalf of Citizenship and Immigration Canada. However, in its view, the costs of the time spent responding to passport-related enquiries,

Exhibit 1.1 After excluding one-time costs in 2006–07, recalculations show a trend of surpluses for the consular services fee (\$ millions)

	Departmental performance reports of Foreign Affairs and International Trade Canada	Recalculations of the Office of the Auditor General	Recalculations of Foreign Affairs and International Trade Canada
2006–07			
Surplus (Deficit)	Not reported	(28.5)	(40.7)
2005–06			
Surplus (Deficit)	Not reported	25.3	13.3
2004–05			
Surplus (Deficit)	(10.0)	17.2	7.0
2003–04			
Surplus (Deficit)	(6.0)	5.7	6.8
2002–03			
Surplus (Deficit)	(9.0)	(2.8)	0.9

The discrepancy between the Department's and our recalculations is principally due to differing figures used for the time spent on passport-related issues abroad (see paragraphs 1.55 and 1.56).

In the 2006–07 fiscal year, the reported deficit for the consular services fee includes the costs of evacuating large numbers of Canadians from Lebanon and, as such, is higher than normal. The Department requested funding for these costs and received supplementary funds totalling \$63.1 million. These funds are not included in the Department's or our recalculations.

In the 2005–06 and 2004–05 fiscal years, the reported surplus or deficit for the consular services fee includes costs totalling about \$6 million for the Tsunami disaster and related activities. The Department also received supplementary funding for these costs, which are not included in the Department's or our recalculations.

sending out application forms, and dealing with walk-in clients were an appropriate component of the consular services fee but were not properly allocated to the fee in their time-reporting system.

1.56 As a result, in amending its calculations (Exhibit 1.1), the Department did not use its current time-reporting system, as we did in our recalculations. Rather, it followed the methodology in the original 1995 fee approval that used a 1993 study on the average time to issue a passport abroad. These figures were used as the basis for excluding the costs associated with activities performed on behalf of Passport Canada and produced different results than our recalculations (Exhibit 1.1).

1.57 Although the Department has responded to our findings by revising its methodology for establishing the costs of the fee and by amending its calculation of the costs of the consular services fee, the result points to some aspects of the fee that require reconsideration:

- The Department's revised calculations confirm our findings of a trend of annual surpluses from the consular services fee, after excluding some large one-time costs in 2006–07 (that is, evacuations from Lebanon). As a result, the Department needs to consider the impact of this trend, and the likelihood that it will continue into the future, when determining the amount to be charged for the fee, to ensure that it is setting the fee with a view to cost recovery, as its legislative framework stipulates.
- The Department also needs to update the results of the 1993 study on the average time to issue a passport abroad. Depending on the conclusions of that analysis, it may need to update its time-reporting practices or amend its methodology for establishing the costs of the consular services fee to ensure that an appropriate amount of costs incurred on behalf of Passport Canada and Citizenship and Immigration Canada are excluded from the costs of the consular services fee.

1.58 Recommendation. Foreign Affairs and International Trade Canada should review its time-reporting practices and the allocation of costs and activities to the consular services fee to ensure that they remain consistent with the authorization for the fee and exclude the costs of services on behalf of other departments and agencies that are not part of the consular services fee. The Department should then amend its reporting to Parliament, as appropriate, and take any necessary action to adjust the fee in view of the trend of surpluses.

Foreign Affairs and International Trade Canada's response.

The Department agrees that the costing methodology for the consular services fee needs to be reviewed but notes that cumulatively over the past five years, including the costs of the Lebanon evacuation in 2006–07, there is a modest deficit from the consular services fee.

Since implementation of the fee in 1995, there have been a number of significant changes in the operating environment that suggest a review of the fee would be appropriate. These changes include

- changes post-9-11 that have resulted in more complex and challenging consular cases,
- increased demand for consular services,
- increased expectations by Canadians abroad for more services, and
- large communities of Canadian citizens permanently resident abroad requiring consular services.

As a result of these new realities, the government announced in Budget 2008 that a significant investment would be made to strengthen the provision of consular services and other activities over the next five years. The Department is planning to return to the Treasury Board later this year with a comprehensive plan on how these funds will be allocated and services improved. This process will provide the opportunity for the Department to review all aspects of the consular program, including the basis for charging the fee as well as the appropriate costs to be allocated to the fee. Budget 2008 funds will be used to improve core consular services defined under the costing methodology for the consular services fee.

Budget 2008 also announced that as of 2011, Passport Canada will be issuing an electronic passport with a ten-year validity period. The change in validity period will be factored into the projected revenues for the consular fee and will also provide the opportunity to review and refine the existing consular case management system (COMIP), to clearly identify the time spent on passport applications by consular staff at missions abroad within the context of a new framework agreement with Passport Canada.

The Department will also ensure that the 2007–08 Departmental Performance Report and future departmental performance reports will contain the costing information for the year as well as report on previous years' information in accordance with the Office of the Auditor General's recommendation and the documents approving the fee.

Performance information and public reporting

1.59 The Treasury Board Policy on Service Standards for External Fees requires departments and agencies to set and report measurable service standards for all external fees, except those negotiated by contract and between departments. As its underlying principle, the policy holds that those who pay fees for government services are entitled to fundamental information about the services being provided. These service standards must be developed in consultation with paying and non-paying stakeholders. The policy notes that service standards represent the government's commitment to those who use its services, particularly those who pay a fee, in a framework of transparency and accountability. The policy requires that these service standards be reported annually to Parliament.

1.60 However, the 2004 *User Fees Act* requires reporting to Parliament on costing, service standards, or performance only for fees that are new or increased under the *User Fees Act*. For the vast majority of fees that were set before passage of the Act and not increased, the department or agency is only required to annually submit to Parliament a list of those fees, but not to report to Parliament on costing, service standards, or performance results for those fees.

1.61 Given this difference in requirements between Treasury Board policy and the *User Fees Act*, the Treasury Board of Canada Secretariat addressed this matter in its 2006–07 *Guide to the Preparation of Departmental Performance Reports*. It recommended that, for all fees charged on a non-contractual basis, departments and agencies report on all elements, including the full costs, the service standards, and related performance results. This would, in effect, exceed the requirements of the Act, which requires only a listing of all fees that are not new or increased. By following the Secretariat's recommendation, departments and agencies would fulfill their accountability obligations to fee payers and to Parliament and the public.

1.62 Accordingly, we expected that departments and agencies would have measurable and relevant standards for services associated with selected fees. We also expected that departments and agencies would monitor performance against those standards.

1.63 In addition, we also expected that departments and agencies would describe, in their public performance reports or on their public websites, the goods, services, or use of a facility, or the rights or privileges for which they charge fees, and would report, with an appropriate level of detail and transparency, the costs and performance of fee programs relative to established standards and program objectives.

Service standards were established for ten fees

1.64 We found that most organizations had established their service standards for the fees examined. However, for the Parks Canada Agency's real property fees and for Fisheries and Oceans Canada's commercial fish licensing fees, we found that no service standards were established for these rights or privileges. In fact, as we report later in the chapter, we found that some organizations were confused about how to establish service standards for rights or privileges and need guidance in that regard.

1.65 For Citizenship and Immigration Canada's permanent resident application fee, its departmental website specifies the expected time to process an application at each of the Department's offices throughout the world and in Canada. This time, however, could change depending on factors beyond the Department's control, such as sudden shifts in demand and related resources. For the right of permanent residence and the right of citizenship fees, the issuing of the related right or privilege depends on successfully attaining permanent residence status or on obtaining citizenship status.

1.66 Health Canada was not required to establish service standards for the medical marijuana fee because the fee was set by contract and was consequently outside the scope of Treasury Board policy and the *User Fees Act*. However, we found that Health Canada had established quality and timeliness service standards, but as these standards were not based on consultation with fee payers, we were unable to determine their relevance to the fee payers.

Public performance reporting on eight fees is not complete

1.67 As an example of full and balanced performance monitoring and related public reporting, we found that the Parks Canada Agency included full cost information and complete information on standards and performance in its performance report.

1.68 Citizenship and Immigration Canada reports cost information on its permanent residence application fee. However, it was not able to report the full costs of processing those applications because, as we reported earlier, some other organizations had not provided information to Citizenship and Immigration Canada about the processing costs they incur related to the fee. The Department, however, has fully disclosed that this information is absent.

1.69 For reporting on performance of its permanent residence application fee, Citizenship and Immigration Canada provides actual

historical processing times to process a permanent residence application, but does not report performance results for this expected time for processing applications. Industry Canada also reports annual financial and non-financial information on the four spectrum and radio licence fees in an aggregated manner that does not enable a full understanding of the revenue received and performance results at the level of the individual fees.

1.70 For two other fees we selected, we found that departmental performance reports or websites did not always include complete or sufficient financial and non-financial performance information, including information about service standards. Specifically, we found that Fisheries and Oceans Canada does not report on the performance of its commercial fish licensing fees. We also found that Foreign Affairs and International Trade Canada has approved standards for the consular services fee and tracks performance against some of these standards, but does not report performance against any of these standards to Parliament or the public. Instead, the Department reports on levels of client satisfaction based on a small-scale survey of Canada's more than 200 consular offices and a range of consular services provided. Matters related to the Department's public reporting of cost information have been discussed previously in this report.

1.71 Finally, fee payers have access to information about the quality of the medical marijuana product on Health Canada's website. However, the Department does not publicly report all performance information or any cost information for this fee either on its website or in its performance report. Neither the *User Fees Act* nor Treasury Board policy requires the Department to make this information available for such a fee set by contract. Nevertheless, in our view, Health Canada needs to consider reporting this information given the interest of parliamentarians and Canadians in this fee.

1.72 Although the minimal disclosure of financial and non-financial performance information that we observed complies with the requirements of the *User Fees Act*, we expected to find that federal organizations exceeded these minimum standards and provided Canadians and fee payers with complete and transparent information about their fee programs. As fee payers and Canadians become increasingly interested in the fees that they pay, organizations will need to examine the nature and extent of their disclosure of performance-related information to ensure that it meets the needs of Parliament, Canadians, and fee payers.

1.73 Recommendation. Fisheries and Oceans Canada, Foreign Affairs and International Trade Canada, Citizenship and Immigration Canada, Industry Canada, and Health Canada should consider improving the transparency of their fees that were subject to this audit by providing more complete public reporting of their financial and non-financial performance information.

Fisheries and Oceans Canada's response. Fisheries and Oceans Canada accepts the recommendation. The Department will consider the means whereby the fees may be made more transparent through the medium of the Report on Plans and Priorities and the Departmental Performance Report.

Foreign Affairs and International Trade Canada's response. The Department's existing Consular Services Standards will be reviewed in light of the Department's recently approved Program Activity Architecture and Performance Measurement Framework, with the intention of establishing more meaningful standards and, in turn, better public reporting. Appropriate changes will be initiated in accordance with the provisions of the *User Fees Act* and reflected in the Department's reporting to Parliament in its Departmental Performance Report.

Citizenship and Immigration Canada's response. Citizenship and Immigration Canada (CIC) agrees in principle with the recommendation. The Department's large backlog of immigration applications and the fact that processing involves decisions by its partner departments, whose processing times are outside of CIC's control, poses challenges in reporting performance information in a meaningful way. The Department is introducing changes to its legislation to better manage its backlog in the longer term. It is committed to a phased-in implementation of setting and reporting service standards for permanent resident applications starting in early 2009. CIC will continue to work with partner departments to ensure completeness of financial information.

Industry Canada's response. Industry Canada agrees with the recommendation and will consider how it might improve the transparency of its spectrum fees, and how reporting of financial and non-financial performance information might be improved. This reporting will be provided in the Department's 2008–2009 Departmental Performance Report and its 2009–2010 Report on Plans and Priorities.

Health Canada’s response. Health Canada reports performance in Table 7B of its Departmental Performance Report. The Department will review the performance information available for the Medical Marihuana Program—what is relevant and how it should be reported. This will be completed in the 2008–09 fiscal year.

As per the response to the recommendation at paragraph 1.30, Health Canada will determine the full cost of the Medical Marihuana Program in the 2008–09 fiscal year, using the Corporate Cost Allocation Model (CCAM). Once completed, the Department will be in a position to report the full program cost.

Legislation, policy, and guidance

1.74 When originally introduced as a private member’s bill, the *User Fees Act* did not contain any preamble setting out the intent of its various sections. In order to provide government legal counsel with some basic legal information about fees and the interpretation of the *User Fees Act*, the Department of Justice issued a *Guide on User Fees* in 2005.

Treatment of fees differs because of the *User Fees Act*

1.75 Of the thirteen fees we selected, we found that only three of them were submitted to Parliament as new or increased fees under the *User Fees Act*: Industry Canada’s fee for broadband public safety communication, and the two Parks Canada Agency fees we examined. In fact, only one other fee proposal has been tabled in Parliament under the Act, for a total of four fee proposals since the Act was passed in 2004.

1.76 We also note that the *User Fees Act* has different requirements for fees that are new or increased under the Act, compared with fees that were set before the Act was passed in 2004. For new or increased fees, the Act requires that departments and agencies publicly report their cost, performance standards, and performance information, and that these fees be reduced if their service standards are not achieved. However, these requirements do not apply to the vast majority of existing fees that were set before the Act was passed. This includes about 98 percent of the 220 fees publicly reported in departmental performance reports (including 10 of the fees we audited). In those cases, the department or agency is only required to annually submit to Parliament a listing of the fees.

1.77 These different requirements result in inconsistencies in the treatment of fees that are required to comply with all provisions of the Act, compared with those fees that must comply with only the

minimum requirements of the Act. Transparency is therefore an issue for the majority of fees. Yet, Treasury Board's Policy on Service Standards for External Fees stresses that there is a government commitment to transparency and accountability for those who pay fees for government services.

1.78 In addition, the parliamentary process under the Act can mean long delays in reviewing fees, as was the case for one Industry Canada fee that we examined. If fees were reviewed and modified more regularly, the government could face significant delays in implementing those fees and in collecting revenue.

1.79 We also found that the medical marijuana fee was initially set by contract in 2003, given the short amount of time available to Health Canada to implement the fee, and that it has been repeatedly set in this manner since then. While Health Canada can legally establish fees by entering into contracts, such fees are not required to undergo the processes that the *User Fees Act* normally applies to new or increased fees. In our view, such a repetitive use of a contract avoids the regulatory process and limits Parliament's ability to review fee proposals that are established in such a manner.

1.80 As noted in our 1993 chapter *Parliamentary Control over the Raising of Revenue by Fees*, use of contracting for fees requires careful consideration of many factors by departments, agencies, and the Treasury Board of Canada Secretariat. In accordance with that observation, we suggest that the following types of questions be asked:

- How should Parliament be given the opportunity to review fees established by contract?
- How should affected parties be consulted?
- Should contracts, rather than other statutory authorities, be used to set fees?
- Should fees set by contract be subject to the *User Fees Act*?

1.81 Finally, in March 2007, the President of the Treasury Board laid before Parliament a report on the provisions and operation of the *User Fees Act*, as the Act required during the third year following its passage. The report outlined the history of the *User Fees Act* and the scope of its provisions, the new fee proposals that had been tabled in Parliament pursuant to the Act, and developments in the area of performance reporting. Although the scope of the report did not focus greatly on the varying requirements for fees under the *User Fees Act*, or on other challenges related to the Act, our audit findings highlight the need to examine these matters more closely and table the results in Parliament.

1.82 Parliament needs better information to fully understand that the *User Fees Act* results in inconsistencies in the treatment of new or increased fees and the majority of fees that were set before the Act came into effect. Consequently, parliamentarians, fee payers, and taxpayers are receiving inconsistent information about these different types of fees. Parliament needs to consider whether to maintain this inconsistent treatment of different types of fees, or amend the *User Fees Act* to include all fees, and, at the same time, clarify other challenges related to the Act.

1.83 Recommendation. The Treasury Board of Canada Secretariat should identify challenges with respect to the scope and application of the *User Fees Act* and provide the President of the Treasury Board with that analysis, with a view to tabling a report in Parliament.

Treasury Board of Canada Secretariat's response. The Secretariat agrees that there have been challenges in the interpretation and application of the *User Fees Act* and will provide the President of the Treasury Board with its analysis of these by November 2008.

Treasury Board of Canada Secretariat guidance needs to be improved

1.84 The Treasury Board Policy on Service Standards for External Fees is not linked to the requirements of the *User Fees Act*, but it does address and reinforce the matter of service standards. There are also a number of other policies and guides addressing the process for setting fees, including, for example, guidance on the regulatory process.

1.85 Before the *User Fees Act* was introduced, a Treasury Board policy on charging was implemented in 1989, and updated in 1997 and 2003. This policy addressed all aspects of fees, from establishing costs to determining the charge for a fee, as well as service standards and performance information. However, after the Act became law, the 2003 policy was rescinded because the Treasury Board of Canada Secretariat's analysis concluded that certain provisions in the Act were in conflict with the policy.

1.86 The Treasury Board of Canada Secretariat is producing a new guide on establishing costs for government programs, including fee programs. The content of that guidance, still in draft form, improves on the earlier policy and, in our view, generally complies with best practices.

1.87 Apart from this guidance on establishing costs for government programs, we found that there is little guidance to assist departments and agencies with determining the amount to be charged as a fee.

While previous policies that had been rescinded are archived for historical reference and provide useful information, organizations indicated that they are not always considered a suitable source of guidance because they have been rescinded.

1.88 In addition to the need for general guidance in determining the amount to be charged, we found a range of other specific issues where more guidance would be helpful, including, for example, guidance on the need for a regular review and update of fees in relation to changing circumstances and how best to conduct that review.

1.89 Organizations are also unclear about how to determine the amount to be charged for a fee for a right or privilege where there is no commercial market or value associated with that fee. Furthermore, a Supreme Court of Canada decision in February 2008 on a fee for a right and privilege has implications for fees for rights and privileges that are part of a regulatory program. Finally, we found that some organizations were uncertain about how to develop service standards and performance measures for rights and privileges, as there are often no easily identifiable services or costs associated with these types of fees.

1.90 Although it is not reasonable to expect that guidance will address every possible situation, in our view, federal organizations need specific guidance and direction on determining the amount to be charged for a fee—in particular, for the areas outlined in paragraphs 1.87 to 1.89. Departments and agencies will then need to consider the implications of this guidance for their fees. In filling this gap in its policy and guidance framework for fees, it is important that the Treasury Board of Canada Secretariat be careful to ensure that any guidance is consistent with the applicable legislation.

1.91 Recommendation. The Treasury Board of Canada Secretariat should finalize its guidance on establishing costs for fees and should update guidance on the factors organizations should consider in determining the amount to be charged for a fee.

Treasury Board of Canada Secretariat's response. The Secretariat agrees. Following considerable analysis and departmental consultation, the Treasury Board of Canada Secretariat released a revised *Guide to Costing* in March 2008. The revised Guide, founded on generally accepted management accounting principles, promotes costing and the use of cost information as key tools of sound management and decision making. The Guide promotes a consistent seven-step approach that should be used in all costing exercises. Practical guidance contained in

the revised Guide will foster better understanding of the costs of fee-related services and help strengthen the base upon which the appropriate amount of a user fee may be determined.

The Treasury Board of Canada Secretariat will also undertake to update, by March 2009, its guidance on the factors to be considered in determining the amount of a fee.

Conclusion

1.92 A fee is an arrangement between the fee payer and the government for providing goods, services, or the use of a facility, or certain rights or privileges. Appropriate systems and practices are needed to establish a reasonable relationship between the fee and its associated cost or value. An accountability mechanism is also critical to ensure that Parliament, fee payers, and taxpayers receive transparent information about fees.

1.93 We found that the methodologies and practices for establishing the costs of fees varied for five cost-based fees that we examined—from those that captured the full cost of fees to those that could not identify the cost. As a result, organizations may not have the information necessary to determine the amount to be charged for the fee.

1.94 In addition, we found that Foreign Affairs and International Trade Canada was allocating costs to the consular services fee beyond those included in the cost allocations supporting the original approval of the fee. After applying a methodology consistent with the original fee approval, we identified a trend of surpluses. This means that the Department is at risk of appearing to have not determined the amount to be charged for the fee in a way that was consistent with a view to cost recovery, as its legislative framework requires.

1.95 In many of the fees examined, the amount charged was based on other factors, not on cost or value. Specifically, we noted that, two fees had not kept pace with increasing costs or the value of rights or privileges, and four fees were set based on other factors. As a result, the government may be recovering less than an appropriate amount from fee payers, or, depending on the fee, taxpayers may be inappropriately subsidizing a private benefit or fee payers may be inappropriately subsidizing a public benefit.

1.96 We found that the Treasury Board of Canada Secretariat is developing guidance on establishing costs of fees, but there are no plans to update guidance on the factors to be considered in determining the amount to be charged for the fee. This is an area where we found problems and inconsistencies. In addition, important accountability provisions of the *User Fees Act* apply only to new or increased fees; therefore, they had no applicability to most of the fees we examined, or to the majority of fees in the government inventory that were set before the Act was passed in 2004.

1.97 In the area of performance information and public reporting, we found that most of the fees we examined were accompanied by service standards. We further found that organizations' public reporting of financial and non-financial performance information for eight selected fees was not complete in their performance reports or on their websites.

1.98 The impact of the problems we found is summarized on a fee-by-fee basis in Exhibit 1.2. While our audit conclusions apply only to the fees in our sample, in our view, similar problems and weaknesses may exist for other government fees. The government may wish to explore this matter further.

Exhibit 1.2 Most federal organizations did not meet all of the audit criteria

Category	Fee	Organization	Systems and practices for costing and pricing fees	Service standards established and negotiated	Performance information and public reporting
Fee for good, service, or use of a facility	Marine navigation services fee	Fisheries and Oceans Canada	Criteria not met	Criteria met	Criteria met
Fee for good, service, or use of a facility	Consular services fee	Foreign Affairs and International Trade Canada	Criteria not met	Criteria met	Criteria not met
Fee for good, service, or use of a facility	Entry fee	Parks Canada Agency	Criteria met	Criteria met	Criteria met
Fee for good, service, or use of a facility	Permanent residence application fee	Citizenship and Immigration Canada	Criteria not met	Criteria met	Criteria not met
Fee for good, service, or use of a facility set by contract	Medical marijuana fee	Health Canada	Criteria not met	Fee set by contract and thus excluded from this requirement	Fee set by contract and thus excluded from this requirement

Exhibit 1.2 Most federal organizations did not meet all of the audit criteria (continued)

Category	Fee	Organization	Systems and practices for costing and pricing fees	Service standards established and negotiated	Performance information and public reporting
Right or privilege	Right of permanent residence fee	Citizenship and Immigration Canada	Criteria not met	Criteria met	Criteria met
Right or privilege	Right of citizenship fee	Citizenship and Immigration Canada	Criteria not met	Criteria met	Criteria met
Right or privilege	Commercial fishing licence fee	Fisheries and Oceans Canada	Criteria not met	Criteria not met	Criteria not met
Right or privilege	Personal communication services WTS (cellular/PCS) fee	Industry Canada	Criteria met	Criteria met	Criteria not met
Right or privilege	Direct broadcasting satellite at orbital position 91° W longitude (12.2-12.7 GHz & 17.3-17.8 GHz) fee	Industry Canada	Criteria met	Criteria met	Criteria not met
Right or privilege	4940-4990 MHz for broadband public safety communications fee	Industry Canada	Criteria met	Criteria met	Fee approved March 2008 and thus excluded from this requirement
Right or privilege	Fixed stations in land mobile service fee	Industry Canada	Criteria not met	Criteria met	Criteria not met
Right or privilege	Real property fee	Parks Canada Agency	Criteria met	Criteria not met	Criteria met

About the Audit

Objective

The objectives of this audit were to determine

- whether selected federal organizations had appropriate systems and practices in place for establishing the costs of selected fees and determining the amount to be charged for them;
- whether the organizations appropriately measured, monitored, and reported over time on the performance of selected fees;
- whether the Treasury Board of Canada Secretariat had provided organizations with appropriate central agency policy and guidance relevant to fees; and
- how the *User Fees Act* affects a selection of fees.

Scope and approach

Our audit approach consisted of the following:

- reviewing Treasury Board of Canada policies and Treasury Board of Canada Secretariat guidance to determine if they represented best practice in the area of establishing the costs of fees and determining the amount to be charged for them;
- examining a selection of fees, through the use of review and enquiry, to determine whether systems and practices for establishing costs of fees, determining the amount to be charged for them, setting and monitoring standards, and publicly reporting fee programs complied with Treasury Board of Canada policy, Treasury Board of Canada Secretariat guidance or best practices, and provided complete and accurate financial and non-financial information; and
- reviewing the impact of the *User Fees Act* on a selection of fees.

Our audit focused on whether there were reasonable and appropriate systems and practices to establish costs and determine the amount to be charged for selected fees. It did not include verification of the specific cost or other information used to determine the amount charged for selected fees.

Subsequent to the completion of our audit work for this chapter, a Supreme Court of Canada decision released in February 2008 on a fee for a right and privilege has implications for fees for rights or privileges that are part of a regulatory program. As this decision was released after we completed our audit work, we did not consider the implications of this decision on the fees that we examined.

Our audit covered selected fees that were publicly reported in departmental performance reports from 1 April 2006 to 31 March 2007.

The federal organizations included in the audit were

- Citizenship and Immigration Canada,
- Fisheries and Oceans Canada,

- Foreign Affairs and International Trade Canada,
- Health Canada,
- Industry Canada, and
- Parks Canada Agency.

We examined thirteen fees in these six organizations (see table on page 33). Our examination included a variety of

- fee types (fees for goods, services, or use of a facility or for rights or privileges);
- the legislative authorities that set the fees; and
- the risks that are likely to arise in managing fee-related activities (for example, establishing the cost of fees and determining the amount to be charged, and the risks of inaccurate or incomplete reporting of performance information to Parliament or other stakeholders).

We did not examine fees for leasing or sale of government property.

We also examined the role the Treasury Board of Canada Secretariat played in these fee programs.

Criteria

Our criteria were based on the expected actions of the government as prescribed in legislation and in government policies.

We expected that the Treasury Board of Canada Secretariat would have established appropriate policies and guidance for federal organizations concerning the costs and charges of fees, and related performance standards and reporting.

We expected that organizations would have

- followed Treasury Board of Canada Secretariat policy and guidance and put appropriate systems and practices in place to determine the full cost of providing goods, services, or the use of a facility and to determine the charge for a fee;
- developed, applied, and monitored service standards and taken any necessary corrective measures; and
- described, in their performance reports or on their websites, the goods, services, or use of a facility or the rights or privileges for which they charged a fee, and publicly reported the financial and non-financial performance of fee activities in relation to established standards and program objectives.

Fees selected for audit

Department	Fee	Description	Legislation or regulation	2006–07 Revenue (\$ million)	Type
Citizenship and Immigration Canada	Right of permanent residence fee	A fee paid by newcomers for the right to obtain permanent residence status in Canada.	<i>Immigration and Refugee Protection Regulations</i>	74	Right or privilege
	Permanent residence application fee	A fee paid by newcomers to process an application for immigration to Canada.	<i>Immigration and Refugee Protection Regulations</i>	177*	Fee for good, service, or use of a facility
	Right of citizenship fee	A fee paid by permanent residents for the right to obtain citizenship status in Canada.	<i>Citizenship Regulations, 1993</i>	18	Right or privilege
Fisheries and Oceans Canada	Marine navigation services fee	A fee paid by the commercial shipping industry for certain marine navigational services.	<i>Oceans Act</i>	29	Fee for good, service, or use of a facility
	Commercial fishing licence fee	A fee paid by commercial fishermen to fish commercially.	<i>Fisheries Act</i>	38	Right or privilege
Foreign Affairs and International Trade Canada	Consular services fee	A fee that is included within the overall cost of an adult passport for protection or assistance to Canadians abroad.	<i>Consular Services Fees Regulations</i>	76	Fee for good, service, or use of a facility
Health Canada	Medical marihuana fee	A fee paid by seriously ill patients to obtain marihuana or marihuana seeds.	<i>Marihuana Medical Access Regulations</i>	0.7	Fee set by contract
Industry Canada	Personal communication services WTS (cellular/PCS) fee	A fee paid by service providers to permit the transmission of cellular phone services.	<i>Department of Industry Act</i>	133	Right or privilege
	Direct broadcasting satellite at orbital position 91° W longitude (12.2-12.7 GHz & 17.3-17.8 GHz) fee	A fee paid by service providers to permit the broadcast of television signals.	<i>Department of Industry Act</i>	2	Right or privilege

Fees selected for audit (continued)

Department	Fee	Description	Legislation or regulation	2006–07 Revenue (\$ million)	Type
	4940-4990 MHz for broadband public safety communications fee	A fee paid by public safety organizations to permit the transmission of their communications.	<i>Department of Industry Act</i>	Approved March 2008 under the <i>User Fees Act</i>	Right or privilege
	Fixed stations in land mobile service fee	A fee paid by organizations to permit the operation of a radio land mobile service.	<i>Radiocommunication Act</i>	48	Right or privilege
Parks Canada Agency	Entry fee	A fee paid by visitors to access the national parks.	<i>Parks Canada Agency Act</i>	49	Fee for good, service, or use of a facility
	Real property fee	A fee paid by enterprises to occupy lands owned by the Parks Canada Agency for business and residential purposes.	<i>Parks Canada Agency Act</i>	17	Right or privilege

*includes permanent resident travel document fees, permanent resident card fees, and sponsorship fees

Audit work completed

The audit work for this chapter was substantially completed on 30 November 2007.

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Appendix List of recommendations

The following is a list of recommendations found in Chapter 1. The number in front of the recommendation indicates the paragraph where it appears in the chapter. The numbers in parentheses indicate the paragraphs where the topic is discussed.

Recommendation	Response
Costs of fees and determining the amounts charged	
<p>1.27 Fisheries and Oceans Canada should improve the reliability of the information used to allocate costs to the marine navigation services fee. (1.25)</p>	<p>Fisheries and Oceans Canada accepts the recommendation. Since the internal audit of 2005, improvements have been made to clarify and update the business process related to the timeliness and reliability of the fleet operational data and the consistency of cost allocations. The Department is carrying out the Readiness Assessment project to prepare for the independent audited financial statements that are to be available by the 2010–11 fiscal year. The costing systems and processes will be reviewed, after which the Department will assess the actions needed and time required to improve the reliability of the information.</p>
<p>1.28 Fisheries and Oceans Canada should identify the costs associated with the registration fee for fishers and their vessels to ensure that the fee complies with all legislation, policies, and guidance associated with the fee, and take any necessary action to adjust the fee. (1.27)</p>	<p>Fisheries and Oceans Canada accepts the recommendation. The Department has started identifying the costs associated with the issuance of fisher and vessel registrations for which fees are set under regulation. These costs will be compared to the revenues collected for the issuance of these registrations, and the Department will determine the necessary action to be taken, including adjusting the fees if required. Because of the complexity of the regulatory process, adjustments to fisher and vessel registration fees would be completed by 2011.</p>
<p>1.30 Health Canada should improve its systems and practices for establishing costs of the activities related to the medical marijuana fee, to be able to accurately calculate the full cost of those activities on a periodic basis. (1.29)</p>	<p>In the 2007–08 fiscal year, the Department developed the Corporate Cost Allocation Model (CCAM) and policies and guidelines to improve Health Canada’s costing systems. Health Canada will apply the CCAM to determine the full cost of the Medical Marijuana Program and will also establish a schedule on which the full cost of the program will be recalculated. This will be completed in the 2008–09 fiscal year. Once completed, the Department will be in a position to report the full program cost.</p>

Recommendation	Response
<p>1.46 Industry Canada (radio licence fees), Fisheries and Oceans Canada (commercial fishing licence fees), Health Canada (medical marihuana fee), and Citizenship and Immigration Canada (permanent residence application fee, right of permanent residence fee, and right of citizenship fee) should establish formal systems and practices to periodically review these fees. In this review, the departments should consider changing fee-related costs or value, the portion of the fee that should accrue to fee payers and taxpayers respectively, and other factors related to changing circumstances. They should also consider developing a longer-term approach to the fee structure that would enable the fee to be automatically adjusted to reflect these various factors, subject to the requirements of the <i>User Fees Act</i>. (1.39–1.45)</p>	<p>Industry Canada’s response. Industry Canada agrees with the recommendation and will establish practices to periodically review its spectrum and radio licence fees. The system and practices will take into consideration the factors identified. Following this review, Industry Canada plans to review the fees set in 1994 by the Governor in Council under the <i>Radiocommunication Regulations</i>.</p> <p>Fisheries and Oceans Canada’s response. Fisheries and Oceans Canada accepts the recommendation. The Department continues to periodically review commercial fishing licence fees. The most recent review was announced 12 April 2007, and is expected to be complete by 2010 in light of the extensive requirements associated with the regulatory process and the <i>User Fees Act</i>. The review is assessing changing factors within the commercial fishery as well as long-term approaches that would allow for timely and automatic updating of commercial fishing fees.</p> <p>Health Canada’s response. As per Health Canada’s External Charging Policy, the Department will establish a timetable for periodic review of the fee at the time of introducing or amending the fee. Health Canada will review the medical marihuana fee in the 2008–09 fiscal year, including consideration of changing program costs and the portion of the fee that should accrue to fee payers and taxpayers respectively. As part of this review, Health Canada will consider developing a longer-term approach to the fee structure.</p> <p>Citizenship and Immigration Canada’s response. The Department agrees. Citizenship and Immigration Canada will periodically review pricing of service fees in comparison to program costs and changing circumstances. However, the Department’s ability to carry out such a review may be limited in the event that it is subject to litigation related to fees, and depending upon the nature and scope of such litigation. Since there is no obligation for a department to charge the full Government of Canada cost of providing a service, a decision to revise fees is ultimately a decision of the government of the day to strike the proper balance between costs borne by fee payers and taxpayers.</p>

Recommendation	Response
<p>1.58 Foreign Affairs and International Trade Canada should review its time-reporting practices and the allocation of costs and activities to the consular services fee to ensure that they remain consistent with the authorization for the fee and exclude the costs of services on behalf of other departments and agencies that are not part of the consular services fee. The Department should then amend its reporting to Parliament, as appropriate, and take any necessary action to adjust the fee in view of the trend of surpluses. (1.47–1.57)</p>	<p>The Department agrees that the costing methodology for the consular services fee needs to be reviewed but notes that cumulatively over the past five years, including the costs of the Lebanon evacuation in 2006–07, there is a modest deficit from the consular services fee.</p> <p>Since implementation of the fee in 1995, there have been a number of significant changes in the operating environment that suggest a review of the fee would be appropriate. These changes include</p> <ul style="list-style-type: none"> • changes post-9-11 that have resulted in more complex and challenging consular cases, • increased demand for consular services, • increased expectations by Canadians abroad for more services, and • large communities of Canadian citizens permanently resident abroad requiring consular services. <p>As a result of these new realities, the government announced in Budget 2008 that a significant investment would be made to strengthen the provision of consular services and other activities over the next five years. The Department is planning to return to the Treasury Board later this year with a comprehensive plan on how these funds will be allocated and services improved. This process will provide the opportunity for the Department to review all aspects of the consular program, including the basis for charging the fee as well as the appropriate costs to be allocated to the fee. Budget 2008 funds will be used to improve core consular services defined under the costing methodology for the consular services fee.</p> <p>Budget 2008 also announced that as of 2011, Passport Canada will be issuing an electronic passport with a ten-year validity period. The change in validity period will be factored into the projected revenues for the consular fee and will also provide the opportunity to review and refine the existing consular case management system (COMIP), to clearly identify the time spent on passport applications by consular staff at missions abroad within the context of a new framework agreement with Passport Canada.</p>

Recommendation	Response
	<p>The Department will also ensure that the 2007–08 Departmental Performance Report and future departmental performance reports will contain the costing information for the year as well as report on previous years' information in accordance with the Office of the Auditor General's recommendation and the documents approving the fee.</p>
<hr/> <p>Performance information and public reporting</p>	
<p>1.73 Fisheries and Oceans Canada, Foreign Affairs and International Trade Canada, Citizenship and Immigration Canada, Industry Canada, and Health Canada should consider improving the transparency of their fees that were subject to this audit by providing more complete public reporting of their financial and non-financial performance information. (1.68–1.72)</p>	<p>Fisheries and Oceans Canada's response. Fisheries and Oceans Canada accepts the recommendation. The Department will consider the means whereby the fees may be made more transparent through the medium of the Report on Plans and Priorities and the Departmental Performance Report.</p> <p>Foreign Affairs and International Trade Canada's response. The Department's existing Consular Services Standards will be reviewed in light of the Department's recently approved Program Activity Architecture and Performance Measurement Framework, with the intention of establishing more meaningful standards and, in turn, better public reporting. Appropriate changes will be initiated in accordance with the provisions of the <i>User Fees Act</i> and reflected in the Department's reporting to Parliament in its Departmental Performance Report.</p> <p>Citizenship and Immigration Canada's response. Citizenship and Immigration Canada (CIC) agrees in principle with the recommendation. The Department's large backlog of immigration applications and the fact that processing involves decisions by its partner departments, whose processing times are outside of CIC's control, poses challenges in reporting performance information in a meaningful way. The Department is introducing changes to its legislation to better manage its backlog in the longer term. It is committed to a phased-in implementation of setting and reporting service standards for permanent resident applications starting in early 2009. CIC will continue to work with partner departments to ensure completeness of financial information.</p>

Recommendation	Response
	<p>Industry Canada’s response. Industry Canada agrees with the recommendation and will consider how it might improve the transparency of its spectrum fees, and how reporting of financial and non-financial performance information might be improved. This reporting will be provided in the Department’s 2008–2009 Departmental Performance Report and its 2009–2010 Report on Plans and Priorities.</p> <p>Health Canada’s response. Health Canada reports performance in Table 7B of its Departmental Performance Report. The Department will review the performance information available for the Medical Marihuana Program—what is relevant and how it should be reported. This will be completed in the 2008–09 fiscal year.</p> <p>As per the response to the recommendation at paragraph 1.30, Health Canada will determine the full cost of the Medical Marihuana Program in the 2008–09 fiscal year, using the Corporate Cost Allocation Model (CCAM). Once completed, the Department will be in a position to report the full program cost.</p>
Legislation, policy, and guidance	
<p>1.83 The Treasury Board of Canada Secretariat should identify challenges with respect to the scope and application of the <i>User Fees Act</i> and provide the President of the Treasury Board with that analysis, with a view to tabling a report in Parliament. (1.74–1.82)</p>	<p>The Secretariat agrees that there have been challenges in the interpretation and application of the <i>User Fees Act</i> and will provide the President of the Treasury Board with its analysis of these by November 2008.</p>

Recommendation	Response
<p>1.91 The Treasury Board of Canada Secretariat should finalize its guidance on establishing costs for fees and should update guidance on the factors organizations should consider in determining the amount to be charged for a fee. (1.84–1.90)</p>	<p>The Secretariat agrees. Following considerable analysis and departmental consultation, the Treasury Board of Canada Secretariat released a revised <i>Guide to Costing</i> in March 2008. The revised Guide, founded on generally accepted management accounting principles, promotes costing and the use of cost information as key tools of sound management and decision making. The Guide promotes a consistent seven-step approach that should be used in all costing exercises. Practical guidance contained in the revised Guide will foster better understanding of the costs of fee-related services and help strengthen the base upon which the appropriate amount of a user fee may be determined.</p> <p>The Treasury Board of Canada Secretariat will also undertake to update, by March 2009, its guidance on the factors to be considered in determining the amount of a fee.</p>

Report of the Auditor General of Canada to the House of Commons—May 2008

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