

Third Session - Thirty-Ninth Legislature
of the
Legislative Assembly of Manitoba
Standing Committee
on
Public Accounts

Chairperson
Mr. Leonard Derkach
Constituency of Russell

Vol. LXI No. 4 - 7 p.m., Wednesday, April 29, 2009

ISSN 0713-9462

MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Ninth Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON PUBLIC ACCOUNTS

Wednesday, April 29, 2009

TIME – 7 p.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Leonard Derkach (Russell)

VICE-CHAIRPERSON – Ms. Jennifer Howard (Fort Rouge)

ATTENDANCE – 11 QUORUM – 6

Members of the Committee present:

Hon. Mr. Selinger

Mr. Borotsik, Ms. Braun, Mr. Derkach, Ms. Howard, Messrs. Jha, Lamoureux, Maguire, Martindale, Ms. Selby, Mrs. Stefanson

APPEARING:

Mr. Blaine Pedersen, MLA for Carman
Hon. Steve Ashton, MLA for Thompson
Mr. Cliff Graydon, MLA for Emerson
Ms. Carol Bellringer, Auditor General
Ms. Linda McFadyen, Deputy Minister of Intergovernmental Affairs

MATTERS UNDER CONSIDERATION:

Auditor General's Report – Special Audit: Rural Municipality of La Broquerie dated March 2008

* * *

Mr. Chairperson: This meeting has been called to consider the Auditor General's report, Special Audit: Rural Municipality of La Broquerie, dated March 2008.

Before we get started, are there any suggestions from the committee as to how long this committee should sit this evening?

Mr. Rick Borotsik (Brandon West): May I suggest 9 o'clock, Mr. Chairman.

Mr. Chairperson: Is that in agreement? *[Agreed]*

Before we get on with the formal part of this review, I would like to ask Mr. Martindale, who has, I believe, a recommendation for the committee.

Mr. Doug Martindale (Burrows): Mr. Chairperson, I have a request of the committee, a research request for our researcher. I have an article in front of me called *Provincial and Territorial Legislatures in Canada*, edited by Gary Levy and Graham White, from 1989. There are a couple of paragraphs about the Public Accounts Committee in Manitoba, and I believe that our procedures and rules have changed substantially since then.

With permission of the committee, I would like to get the researcher to give us a report on that, either in point form or a descriptive report. I'm open to suggestions as to whether we just go back, say, four or five years, or whether we go back all the way to 1989, although I don't think very much changed for about a decade after that. But I'm open to suggestions on how far back we go, but I need consent of the committee to ask for the research.

Mr. Chairperson: Has the committee agreed to the request being made of the researcher by Mr. Martindale? *[Agreed]*

Mr. Lamoureux, you may not know about this because you were not present at the in camera session. Do you have a question regarding this before we give that direction to the researcher?

Mr. Kevin Lamoureux (Inkster): No, that's fine.

Mr. Chairperson: Okay. So is it agreed now—Mr. Martindale, you had alluded to some dates prior to, sort of, your request. Could we leave it at the discretion of the researcher?

Mr. Martindale: Yes.

Mr. Chairperson: So that is noted. One other item I would like to report to the committee, and this is something that was discussed in the in camera, but I think it should be put on the record, and that is that we do have an informal—I call it an informal steering committee—and that informal steering committee is made up of the Vice-Chair, it is made up of the Clerk, the Auditor General and the Chair. From time to time, this committee will meet to try to give some direction to the committee on issues that, perhaps, can help the committee make decisions as we proceed.

Just for the committee, I'd also like to point out that, tonight, questions come from around the table. They may come from any member around the table who is either a member of PAC, or a critic, or, for that matter, a member of government as well.

As agreed to previously, we will begin with an opening comment or statement by the Auditor, and then we will allow the deputy minister to introduce her staff and also to make an opening statement. So we are now at the point where I'm going to ask the Auditor General if she would like to make some opening comments regarding the report.

Ms. Carol Bellringer (Auditor General of Manitoba): I will. Thank you, Mr. Chair, and I'll also introduce the Director of Special Audits, who's joining me tonight, Jack Buckwald, and just behind us, an audit principal, who also worked on the audit, Brian Worth.

The audit was issued just a little over a year ago. It covered the period 2002-2006. I'm just going to read onto the record a portion of the transmittal letter. It is at the front of the audit report, but it really did sum up where we saw the areas that we felt were important for members of the Legislature to focus on.

"The Rural Municipality of La Broquerie (RM) was created under The Municipal Act and is governed directly by an elected Reeve and Council. In addition to revenue from taxation, the R.M. receives annual grants and other transfers from the Province. The Municipal Act establishes a reporting framework to the Minister of Intergovernmental Affairs, including external audit requirements of annual financial statements, an annual audit of compensation under The Public Sector Compensation Disclosure Act and the submission of an annual supplementary audit report."

I read that onto the record because it does create the framework from which the recommendations, later, that I'll mention in a second, will flow.

Rural municipalities are faced with numerous challenges. We brought this in to give some context to, again, the environment within which we were doing the audit, within which the R.M. has to operate. Their size often means there are only a few staff members, conflicts of interest are difficult to avoid and, as the municipality grows in complexity, informal administrative processes need to be replaced with a more formal structure.

Despite those challenges, we do expect, even in small communities, that elected and appointed officials will operate in a certain manner. This includes transparency of their plans, actions and results, along with an organized approach to understanding and following laws and good management practices.

* (19:10)

When we did this audit, we did find weaknesses from what we would have expected. We did find that the legislated accountability framework didn't provide for a way for the government to detect those weaknesses.

We cover a number of areas in the report. We have recommendations to the R.M. in each of these areas around the internal control environment, policies, procedures, receivables, the community development corporation, snow clearing, compliance with authority, remuneration and expenses, capital, conflicts of interest and the department monitoring.

Throughout the report, we also tried to see where we thought the department could put—strengthen some of the processes to help avoid or, at least, detect going forward where, not just this R.M., but any R.M., where there might be a situation that would occur to try to strengthen the practices so that could be avoided.

The areas that we focussed on in terms of our recommendations to the department were in four areas: one was on the monitoring of the financial information; the second, with respect to conflicts of interest for council members; as well as conflicts of interest for senior administration and staff of R.M.s; and the last area is that of the role of the external auditor, where the issuance of supplementary audit reports was something that the department was relying on, had no reason not to do so, but which really in practice was providing very limited assurance to the department.

Mr. Chairperson: Thank you. Would the Deputy Minister, Ms. McFadyen, please introduce your staff that are here and also, following that, I'll ask her for opening comments on this report.

Ms. Linda McFadyen (Deputy Minister of Intergovernmental Affairs): Sure, myself, tonight are Laurie Davidson, who is the Assistant Deputy Minister of Provincial-Municipal Support Services, and Denise Carlyle, who is the director of Municipal Finance and Advisory Services.

Mr. Chairperson: Thank you. You may proceed with your opening comments, please.

Ms. McFadyen: I'd like to say, first off, that the department supported and accepted all five of the recommendations of the Auditor General's report, and that we indicated at the time the report was tabled that we would be implementing them in a manner that was both practical and cost-effective for both the province and for municipalities. So I think, really, the idea was to try to find ways to identify the outliers, understanding that, for the most part, municipalities were doing a good job.

We wanted to look at both legislative and non-legislative or policy options and we're continuing to do that as we move along. We also thought it was really important to enhance the education and training resource materials. Our department does a lot of work around providing education. We do a lot of seminars and workshops at Association of Manitoba Municipalities' events, Manitoba Municipal Administrators' Association, but we thought it was really important to pick up on some of the things that this audit found and really try to focus on those over the next period of time. So we've been working on that as well.

We wanted to emphasize the municipal obligations for good governments—so that was really key to us, that they got a responsibility for good governance.

Immediately following release of the audit, we met with both AMM and the Municipal Administrators' Association boards to discuss the report, to talk about what possible responses we had and to obtain some feedback from them. Again, we're always sensitive to putting very onerous requirements on municipalities that are not necessary for most municipalities.

The department and both associations understood the importance of the recommendations and the need to take serious steps towards implementation. We also discussed the recommendations with municipal services officers. Those municipal services officers are the first point of contact and the day-to-day advisers to administrators and elected officials. So we wanted to ensure that the department's position as set out in the audit report, so the fact that we were accepting the recommendations and working towards implementing them were understood by our staff and also supported by all of our staff. MSOs take every contact as an opportunity to reinforce and encourage

the principles of good governance, accountability and transparency.

Recognizing the role of the Province—and the Auditor alluded to this—the Province and the role of the municipalities, we thought there was a two-pronged approach to addressing this. As I said earlier, education and training presentations have increased. We've increased those since the report. We focused on the issues that have been raised by the Auditor General, including one specifically on conflict of interest that we've done. We provided that additional education.

AMM, also, at its recent seminar, held a session delivered by an external presenter on conflict of interest.

We've begun to analyze and develop legislative and non-legislative options and, of course, that takes some time to kind of look at the cross-country and figure out what's appropriate in Manitoba, to work on those and then to work it through the system.

The full implementation of the report isn't occurring immediately because of the need to take into account other municipal initiatives and, particularly over this period, municipalities have been really pressed to work on the recommendations of the public sector accounting board. We've had to do a considerable amount of work with the municipalities and with their CAOs to make sure that they understood the requirements of the public sector accounting board and that they could implement them.

So we've been really engaged in that process, as well.

I did want to give you just a little bit of a framework, and the report does outline a little bit of The Municipal Act, and how this was changed. But just to give our answers to the question some context here, I thought it was important to reinforce this a little bit.

Municipalities are corporations that are established by the Province. Local governments are democratically elected. The Municipal Act and the City of Winnipeg Charter, they're legislative frameworks. The Province delegates, establishes power and authority to the municipalities. The act reflects an environment, and that environment is always evolving. As legislators, you see yourselves, that the expectations of citizens are changing all of the time, and, also, outside external expectations are changing.

So we constantly are looking at The Municipal Act. The entire Municipal Act was rewritten in 1997, and it has been amended several times since then. We purposely looked at requests from FCM and municipal associations who continue to request greater levels of power and autonomy.

We really view, and this is defined in the legislation, that municipalities are mature, responsible and accountable levels of government. Local councils are responsible to their citizens first, not to the Province, for the decisions that they make. Broad authority and flexibility is necessary for them to be able to govern effectively.

So, as I said, The Municipal Act was completely rewritten in 1997 to reflect that changing view. Key features of the act include the fact that powers and authorities are the same for all municipalities, regardless of their size. They're given broad spheres of jurisdiction rather than narrow power, so the act does not set out narrow powers, it gives them power within a sphere of jurisdiction. It expanded the powers for councils to govern and manage. It streamlined the decision-making processes, significantly reduced the Provincial oversight role at that time, and it reduced the instances where a by-law was needed for decision-making.

At the same time, the act includes some checks and balances so that we reduced the provincial oversight, but it was replaced with increased opportunities for individual participation, so more hearings, more budget hearings, that kind of thing. More opportunities for influence and access. More public notice. Limitations on some of their powers so you can't budget a deficit. Opportunities for third-party oversight so citizens have access to the Provincial Ombudsman and also to the Auditor General to come in and make complaints.

*(19:20)

I should mention that there's been a recent court decision, actually, that was made. There was a case that was set out. A person made a statement of claim to the Court of Appeal against the Municipal Board, the department and the municipality, and the judge actually ruled that the department does not have general supervisory jurisdiction for municipalities. So that's always the balance that the department is trying to find here, that we are not the direct supervisor of the municipalities, but we do recognize that we have to ensure that that framework is being followed. The Province can't insert itself into the municipalities' affairs unless the legislation gives that

authority to do so, and we've actually gotten legal opinions on that as well.

I should also note, and this is my last comment, that other provinces have taken the same approach. All provinces have now renewed their municipal legislation in a similar way to Manitoba's. Amendments subsequent to introduction of new acts reflect changing citizen expectations and calls for enhanced municipal accountability. Provinces such as Ontario have responded not by increasing provincial oversight but by introducing requirements for integrity commissioners, municipal auditor generals and ombudsmen, that kind of thing.

So those are the remarks that I have.

Mr. Chairperson: Thank you very much. The floor is now open for questions.

Mr. Blaine Pedersen (Carman): The Auditor's report and the in camera session and the statements by both the Auditor General and the deputy minister have certainly raised lots of questions, so if I may get right into it, to ask the deputy minister just when did the department first become aware of problems in the R.M. of La Broquerie.

Ms. McFadyen: I'd have to check with staff on the actual dates. I think we've got a chronological time line, but certainly it was with—we were getting some complaints from citizens.

I'm told we don't have the order here, but it did start with the citizens' coalition that the Auditor General mentioned.

Mr. Pedersen: Is there any—like, what year was this? How did the citizens' coalition approach you? Did they have meetings with you, particularly the time line? What year—*[interjection]*

Mr. Chairperson: Just a minute, please. I have to recognize you by name for *Hansard's* sake, so before you speak, I'll have to just mention your name. Thank you. Okay, Madam Auditor General. *[interjection]* Pardon me. Madam Deputy Minister. I say her so often—habit.

Ms. McFadyen: I believe the coalition started in 2005. It was around 2005. They phoned. I believe there were phone calls made to our MSOs to ask questions about the requirements and to raise issues, and there were letters written subsequent to that. In 2006, there was an election and there was a change in the council as well.

Mr. Pedersen: Your department then was not aware of any financial issue, mismanagement issues prior to 2005?

Ms. McFadyen: We received, obviously, the financial statements from the municipality regularly, and that audited financial statement includes a letter. There were no issues raised in those financial statements when they came through for several years.

Mr. Pedersen: So there was no deficit? No recorded deficits in their financial statements that were issued prior to 2005?

Ms. McFadyen: There was a deficit reported in 2005, which they recovered through their surpluses, and there was a discussion with them at that point.

Mr. Pedersen: So the coalition—did the coalition ever meet with your department?

Ms. McFadyen: They met with our staff, the MSOs alone, and then they met with the MSOs and the assistant deputy minister, and then they met with the deputy minister at the time. That was before my tenure.

Mr. Pedersen: I'll defer.

Mr. Borotsik: Just to touch on that, Madam Deputy Minister. When they met with the MSOs, obviously, their concerns were expressed at that time. There were many concerns as identified in this report, and I'm sure some of those came up. What did the MSOs do at that time? Is it not their job as the municipal services officer to look into that particular situation at the time, or did they just simply set another meeting with the assistant deputy minister and the deputy minister?

Ms. McFadyen: The MSOs and the assistant deputy minister spoke to the council at that time. Most of the issues that were being raised by the coalition were issues around conflicts that were happening within the council and complaints. So we offered to the council at the time to get a mediator in, offered our assistance to help work through some of these issues, and they refused our offer of help at that time.

Mr. Borotsik: Council refused your help, yet they were the ones who were being accused of having the conflict. Did that not send up red flags in the department and suggest, perhaps, that more than just simply a mediator, that the MSO—and I believe under the act, the MSO does have the opportunity and the right to go and to look at the operations of the municipality at that time, do they not?

Ms. McFadyen: The act is quite specific where we can go in and where we cannot go in. On certain things we can look at and certain things that we cannot look at. So we certainly talk to them and we try to move them forward. But there are some decision points that we cannot question.

It really all comes back to the Auditor's report. That's our opportunity to go back in and question the council on their financial administration.

Mr. Borotsik: I'm not concerned about—well, I am concerned about the financials. By the way, just as a clarification, they were running a deficit as early as 2002. If you look at the Auditor General's report, there was a \$267,000 deficit in 2002 that should have sent a red flag up to the department as well. As I believe, and perhaps you can correct me, Madam Deputy Minister, under The Municipal Act, municipalities cannot run deficits; they must cover off those deficits in the next budget year. Is that not correct?

Ms. McFadyen: Yes, that's true, and they covered it off. They covered it off the next year.

Mr. Borotsik: They also showed a deficit in the year 2005, and they also showed a deficit in the year 2006. That, I would think, Madam Deputy Minister, should really set flags awaving if, in fact, the municipality is not looking after their financials the way they should under the act.

Ms. McFadyen: This municipality—and this is not uncommon—municipalities are subject to unexpected expenses at times, like floods, and this municipality did suffer some of those things. So our concern was that they covered it off in 2004. By the time 2005 came along, and they did it again, so it was covered off again. But we had no way of knowing that they weren't actually covering it off at that time.

* (19:30)

Mr. Borotsik: That's the financials, and we can have quite a bit of discussion on the financials.

I'd like to go back to the conflict of interest. There was a red flag. There were complaints with respect to conflict of interest. You had meetings with the MSO; you had meetings with the deputy minister; you had meetings with the assistant deputy minister, and the conflict of interest legislation is very specific: municipal councillors have to file an assets report every year. Under the act, every year they must file an assets report. They have to amend that report and it has to be done on an annual basis.

Did the MSO ask if, in fact, those conflict reports were being filed in this particular municipality?

Ms. McFadyen: No.

Mr. Borotsik: I guess that brings me to the—I used to file these reports. I was told that it was absolutely mandatory and, if we didn't file the reports, under the act I could lose my seat as a councillor.

What process is in place in your department right now to confirm that any municipality is in compliance with the conflict of interest act?

Ms. McFadyen: As of now, since the report, we have raised this with all of the CAOs, and we are actually checking on that now. But the recourse in the act for conflict of interest is through the courts not to the department.

Mr. Borotsik: Under the act, did the department insist that they do file the asset reports? That's not a court decision, that's a legislative decision under the act, if I'm correct.

Ms. McFadyen: Sorry, could you repeat the question? Sorry.

Mr. Borotsik: The act insists that you file asset reports. That's not a court decision, that's a legislative decision. So is there a follow-up as to whether those—not just this R.M. I'm talking about all R.M.s right now. There are 198 municipalities in the province of Manitoba.

If it's not necessary to file them, as you're suggesting, and only the CAO is the one who is responsible for co-ordinating that, then why have it in the conflict of interest act in the first place if there are no checks and balances and no co-ordination?

Ms. McFadyen: The Municipal Act turned over the internal controls to municipalities. It turned it over to municipalities. They are responsible for making sure that they follow those rules.

Mr. Borotsik: So, basically, the fox is looking after the chickens then, because if the municipal clerk at the time or if the CAO at the time isn't performing that duty properly, then there is no way of discovering whether those forms are being filed at all. Your department is abdicating itself with any responsibility of making sure that those conflict of interest documents are being tabled.

Ms. McFadyen: The act does not provide the authority for doing that to the department. However, in recognition of this problem, we are strengthening

those controls. So we are providing, now, a way to find out. It's part of what we're doing around the supplementary audit, a way to find out that those conflict of interest statements have been filed.

Mr. Borotsik: Is there legislative requirement to make change? Is there going to be a requirement that it have legislative changes to the conflict of interest act, or do you have the ability now under that legislation to do what you're now putting in to place, which is that check and balance?

Ms. McFadyen: We're doing it as a policy. Now we're doing it as a departmental policy. It's not in the legislation. The decision to change legislation is a decision for government.

Mr. Lamoureux: Mr. Chair, I just had a couple of questions that I'd like to ask the deputy minister.

She makes reference, and I understand that there is, I believe it's an annual requirement to provide audited statements from the municipalities. Would that be correct?

Ms. McFadyen: Yes.

Mr. Lamoureux: One of the things that comes to my mind is that if there is that requirement, and we assume that this particular municipality was meeting that requirement, is there any concern with regard to why it is that even that internal auditing process wouldn't have discovered the issues that we are finding that the provincial Auditor's office was able to find out?

Ms. McFadyen: I'm not sure I'm following your question. Sorry.

Mr. Chairperson: Mr. Lamoureux, explain it.

Mr. Lamoureux: These annual audited statements that are being submitted, obviously, I don't know if they actually discovered anything that would have caused a red flag. How do we know that this wouldn't be happening in other municipalities? I would have thought that, when you have an audited statement and it's being submitted on an annual basis, we would have discovered issues of this nature through that audited statement. Why would it not have happened here?

Ms. McFadyen: We were relying on the audited financial statements and the audited financial statements did not identify any of these financial problems. However, I think it states in the report that we were relying on a supplementary letter with the audit that was not, in fact, providing the information

that we thought was being provided through that letter.

Mr. Lamoureux: Just with those private audits, are there any requirements for private audits to report on certain situations that they might discover, such as, as an example, improperly invoiced expenses?

Ms. McFadyen: Well, auditors rely in some part on the information that they're given, right, so I think some of this probably falls to—I'm thinking carefully about how to phrase this, actually. Municipalities—the act also turned over the ability to hire the municipalities' auditors. They hired their own auditors. So I guess that's a question at the level of—the amount that—the level of information that they're giving and that's going back and forth, that the auditor may not be providing a full report.

Mr. Chairperson: Madam Auditor General, to the same point.

Ms. Bellringer: I just thought maybe I would add a little bit of technical information around the distinction between the financial statement audit and the supplementary audit reports. This is just speaking as an Auditor.

When we're putting an opinion on a set of financial statements, it's purely to communicate whether or not those statements as presented are presenting fairly the results for the year. And you won't see the kind of detailing you're referring to—the kind of detail that we're reporting in this very—this detailed report took a long time to prepare. You would not normally see that kind of level of detail in any financial statement audit. So that's the one piece.

The other requirement for a supplementary audit report was wording that's quite historical. I don't exactly recall what it says, but it basically is a letter from the Auditor saying that all of the—all—and it's very much an all-inclusive, all of the assets are safeguarded, and you run into, from a technical perspective—we didn't look at all of the supplementary audit reports that were being submitted from all of the R.M.s, but our understanding from discussing this with some of the professionals that were actually completing those reports is they didn't see it as a letter which provided assurance; in other words, said to you, yes, you can rely on all of the safeguards for controls and that kind of thing, but rather, in the letter, they would say, there is nothing to report. So, in other words, nothing came to our attention. It's what we refer to in

auditing as negative assurance. The problem is if you don't see something, you don't report it, and I mean, you know, if you don't look for it, you don't see it.

So you see you get into what procedures can one design in order to come to that conclusion. Well, you could actually do very little and not be aware of things. So some of the options that are available to auditors, you can do things called specified audit procedures where you are directed to do certain things by the group that engages you. That wasn't the situation in this case, by the way. I'm just saying those are the kinds of things we were exploring as to other options that could be considered, or there could be some more prescriptive way of outlining what was required. But the way, the wording was, it didn't link neatly with a technical report that you would expect to see, and the understanding at both ends was very, very different. What the department took as a positive assurance, was being provided by the auditors as a negative assurance.

* (19:40)

Mr. Chairperson: Madam Deputy Minister, did you want to add to your response?

Ms. McFadyen: Sure, so, I mean, under the current system and the system that was in place with La Broquerie, we were relying on those external auditors' supplementary reports to identify irregularities with the municipalities.

But what we've since discovered is that the requirements that we were relying on weren't being audited for, and, in fact, that some of the requirements that are in The Municipal Act would require significant amounts of time and money to be audited. So, clearly, with the new accounting standards that are in place, we really have to be careful about what we're asking municipalities to do. At the same time we really have to make sure that these kinds of things aren't going on in municipalities. So that's the piece that we are working on right now, to try to correctly define a supplementary audit that will give us the right amount of information, will identify flags for us, will identify when things are going off course, but without requiring every municipality in Manitoba to spend \$50,000 or \$60,000 on an audit every year.

Mr. Lamoureux: Mr. Chairperson, I know that there are a number of members that have questions, so I'll leave this as my last question.

I was intrigued by the provincial Auditor's response, and I just throw it at the department as

something that I think is worthwhile in terms of looking at, and that is putting some sort of provision where there is a specified audit procedure that would be a part of the whole process so that when we get the letter that's coming back saying, yes, an audit was done and everything appears to be in compliance—and, again, I don't know all the proper terminology, but it just seems that there's something that could be done to feel a little bit more comfortable that whoever is doing the private audit is doing it to government's standards or satisfaction.

The last question is: If I lived in a municipality or I lived anywhere in any rural municipality, 898 municipalities, and I'm just a citizen and I hear something that's just really rotten and I feel that, you know, I phoned this place, I phoned that place, this is a last-ditch step, I'm going to call the department, and I come across as a credible individual that seems to have a lot of head knowledge of a certain situation occurring in that municipality, what, then, would the staffperson within your department do with a complaint of that nature today?

Ms. McFadyen: Of course, it would depend on the actual nature of the complaint. The department isn't auditors. You know, we have CAs in the department, so there are different things that you would do. But, when complaints come in, we take them very seriously. We certainly have discussions. They're all documented. If the MSO feels it's warranted, the MSO will speak to the senior staff. Senior staff go out and talk to CAOs all of the time if we're having to raise those issues with them and to get an explanation and to try to understand what's actually going on. We talk to the Association of Manitoba Municipalities around these things as well.

Hon. Greg Selinger (Minister of Finance): Three questions. First of all, you indicated—my first question is to the deputy minister—that the responsibility for internal monitoring of the processes of council were turned over to the municipalities, and, I think that included hiring their own accountants or auditors, I guess, would be the proper term. What year was that done that those legislative changes were made?

Ms. McFadyen: They were made in 1997.

Mr. Selinger: So it would be at that point that the department's role in investigating these things and having oversight would have been lost.

Floor Comment: That's correct. Sorry.

Mr. Selinger: My second question is to the Auditor General.

Mr. Chairperson: Oh, pardon me, I was supposed to say: Madam Deputy Minister, your response, please. You're going too fast for me.

Floor Comment: We're getting mixed up.

Mr. Selinger: Are we on the right page now?

Mr. Chairperson: No. We'll try that response again. I'm being harassed here by the minister.

I think it's still at the deputy minister's response level.

Floor Comment: What's the question?

Mr. Chairperson: Good question. Mr. Selinger, will you repeat that question, please.

Mr. Selinger: It was a two-part question. The first question was when were the legislative changes made? I heard 1997. Then I wanted to confirm if that was at the point that the department had lost its power to be in an oversight role, that it was really up to the local council to look after its own internal affairs and to hire its own auditors. Is that when the department lost its role?

Ms. McFadyen: That's correct.

Mr. Selinger: Then my next question would be to the Auditor General. If the council has to hire its own auditors, I've seen this in a couple of other instances where auditors have this big name and they get paid to audit. Aren't they supposed to identify when things are not being done properly like, for example, payments aren't being made on pavement contracts or even on a conflict of interest. If they see some inappropriate linkage between somebody making the decision to pay themselves, they point these things out? I just want to get a sense of what the role of the auditor is here, a private auditor that's been engaged by a municipality, because I think a lot of the people in the public, and I think we in government, kind of rely on auditors' opinions to a high degree. So I wondered if you could tell us sort of the limits and the responsibilities of an auditor in this kind of a circumstance.

Ms. Bellringer: The answer isn't quite as simple as you would hope. It also gets into a complexity around having not reviewed files of—in this particular circumstance, I do not want to make any comment about the auditors specifically involved with this. We didn't go and look at that. We didn't verify whether or not they should have found it.

Having said that, when you find weaknesses in internal control and the kinds of non-compliance issues that we came across during the course of the audit, it would normally be something that would be provided to management in a management letter. Now, having said that, there were also some management letters issued during the period.

While my staff are thinking through that, that is different, however, than the supplementary audit report. The management letters would have been—we know that in a number of situations, information was provided—and this is specific to the R.M. of La Broquerie—information was provided by the auditors to the staff, to the senior administration around ways they could improve certain things, but it didn't percolate up to council nor to the department.

At what point do you draw the line and say it's serious enough that you should be reporting it? We debate that after every financial statement audit we do around which information should be provided to the audit committee or the board of directors, and then which information should be provided publicly to the Legislature. I understand the kinds of judgment calls that have to come into play.

You're still able to, like for example, when you get a set of accounts that aren't complete at the beginning of an audit, you're often able to pull together all of the detail from the records and be confident that the numbers that are then brought forward in the financial statements are accurate. It doesn't mean it started that way the day you walked in to start the audit, and that's not uncommon.

So it's really, at the end of the day, to what extent do you put it in the management letter? It varies significantly amongst professionals as to how they go forward with that detail, but, yes, there is an expectation to bring that information forward one way or the other.

I don't know how much more to say about it.

* (19:50)

Hon. Steve Ashton (Minister of Intergovernmental Affairs): I just want to actually go back to the context of The Municipal Act. The changes went through as 1997. I think it was billed at the time as the main or actually the first significant change to The Municipal Act in 100 years. I didn't want to acknowledge it was our Chair, actually, that was the minister at the time. I won't read the Chair's words in the record, but I do think that it's important to note the context, what had happened.

The act actually took the number of types of local government from five down to two. It did establish greater authority for municipalities. One of the key focuses of the act was reducing the number of provincial approvals related to finances and, as the announcement of bill actually indicated, allowing more flexibility in the delivery of municipal services.

A lot of effort was put into streamlining the decision-making process. I think recognizing that there has been an evolution for the constitutional basis of local government, which is that local governments are creatures of provinces, jurisdictionally, to the point at which increasingly we've acknowledged municipalities as an order of government. As minister, I don't use the phrase level of government because dare I say, as we go through some of the significant challenges we've been dealing with in the last several weeks, you tend to put some of those aspects aside.

But I did want to mention it was a significant consultation process; 250 written submissions, 200 oral submissions and the basic legislative framework is the 1997 act.

I did want to get back; I know a couple of members have asked some of basis. Obviously, the interpretation of the act and various items arising out of this Auditor General's report are based on the act and some of the evolutions and accounting principles, and I really want to echo the deputy minister's comments about the PSAB. There's been a wholesale overhaul of public sector accounting, which has been applied to municipalities, which has been a huge challenge for municipalities. But I did want to give some of the framework there.

I could read the Chair's words but I won't. I'll just say that I think a lot of the principles in the act were a wise move. This is going back to 1996 when it was introduced. So, notwithstanding some of the difficulties we're dealing with today, I think the act was an excellent framework. It was meant as a compliment, not as a shot.

Mr. Selinger: The reason I wanted to know is because I understand that in intergovernmental relationships often municipalities ask for more autonomy, and I think that might have been part of what was being contemplated at the time of the changes to the act. But also, more autonomy devolves responsibility and sometimes those responsibilities can create problems because people are monitoring themselves. That seems to be the case here; that we had some internal conflicts of interest

arise because people were monitoring themselves and they were having trouble doing that. The report indicates that people weren't necessarily stepping out of the room or declaring their personal interest when they voted on something; that's a problem. That's why the community gets concerned and the community starts raising questions and forms a coalition because they see things going on that they're concerned about.

My next question is to the minister. I guess my question would be: Given the experience we've had here, even though the intention of the legislation may have been well intended, do you have any thoughts about what you might want to do with conflict of interest legislation or any other legislative changes which might try to redress the balance again?

Mr. Ashton: I think the conflict of interest is a somewhat different dimension to this report than some other dimensions, largely because I referenced the framework, which is the current Municipal Act which governs governance and autonomy.

I think we clearly have responded here in terms, as a department, and I realize a lot of this predates even our current deputy and certainly myself as minister, but turns to immediate recommendations, but certainly we are involved in discussions with municipalities on the conflict of interest side.

It's important to recognize, by the way, it's somewhat more challenging than it probably is at the provincial level because of the scale involved. You do have some fairly small municipalities. I actually think, by the way, that's one of the great parts about Manitoba; it's the degree to which we have a fair degree of local flavour in our government. We, as a government, and the former government haven't followed the lead of some jurisdictions regarding the policy of amalgamations, which haven't always worked out very effectively because there hasn't been a buy-in from citizens. So I'm assuming we'll have over the next period of time certainly continued existence of some fairly small population but important parts of our municipal government. We're certainly open to and have been engaged in some consultation on the conflict of interest dimension, because, to my mind, that fits in with the framework of our Municipal Act and with The City of Winnipeg Act. The Province still sets the framework.

We respect some degree of our autonomy, but I think your questions lead to what this Auditor General's report will finally show, which is that it's difficult in some cases, perhaps given the scale,

perhaps given the clarity of some of the regulations, for municipalities to entirely be responsible for not only the framework but also the administration of conflict of interest regulations.

I think that's the essence of this Auditor General's report, I think, if you read it. We're certainly open to it. We've adopted many of the other technical aspects, but I think that, if there's one area on the legislative side eventually that could be useful to review, it is conflict of interest.

I want to stress again it would be consultation with the municipalities themselves because, again, we have a wide variety of municipalities, different scales, different regions, and I think it's important that we listen to them. We are engaged in that discussion as we speak.

Mrs. Heather Stefanson (Tuxedo): Mr. Chair, just wanted to note on page 38 of the Auditor General's report, and it says under section 165(1) of the act which states, and I'll just read it into the record: When a council determines during a fiscal year that expenditures are likely to exceed the revenue and transfers provided for in its budget, the council must immediately advise the minister in writing and may incur a deficiency with the minister's written approval, which may include any condition the minister considers necessary or advisable.

Again, I'm sort of taking us back in a different direction here, but back to the operating deficits, away from the conflict of interest for right now, but I'm sure we'll get back on to that subject at some point. The Auditor General's report goes on to say: From our review of the R.M.'s documentation, we found that the R.M. had advised the Minister of the anticipated operating deficits each year. However, the R.M. did not advise the Minister of these anticipated deficits on a timely basis.

I'm wondering—there was an operating deficit that was incurred in 2002. Can the deputy minister indicate at what point in time the department was made aware of the fact that the R.M. had run a deficit in 2002?

Ms. McFadyen: I can't tell you that tonight. I could find that information and get it back to you, though.

Mr. Chairperson: We'll take that as the deputy minister will provide that information to the committee.

Mrs. Stefanson: I think it's important to identify at what point in time the minister's office—or the

department—was made aware of this, because at some point in time—and, actually, maybe I'll ask the Auditor General this question, because it was indicated in her report that at some point the minister was made aware of these deficits.

Do you, in fact, know at what point in time, or can you give an indication—I think it says here maybe not on a timely date basis, but maybe a time frame after the 2002 when the department may have been aware?

Ms. Bellringer: Some of that information's on page 41, the third bullet down: The CAO and some members of Council stated that they knew that the R.M. would be incurring a deficit in the fall each year. However, for the years '02, '05, '06 the letter advising the Minister was not sent until December of the year.

The '03 deficit was sent April 6, 2004, and '04 deficit was sent February 7, '05. So we did note some of that right in there.

Mrs. Stefanson: Thank you for pointing me to a couple of pages later where there was, in fact, the answer there. I guess at this point in time I would ask the deputy minister that, obviously, these letters came to the office at that point in time, and that was significantly before 2005 or significantly before this report took place, and as early as 2003-2004. Would that not raise significant red flags in the department that essentially the R.M. was in contravention of the act?

* (20:00)

Ms. McFadyen: Contravention of the act. They were providing us with the reports, as they were in a deficit situation, and there was remediative action recommended to them, which they took each year.

Mrs. Stefanson: But it seems to be, sort of, several years in a row. This is a pretty serious situation in terms of deficits being run on a regular basis, and, obviously, we know that their municipalities are not allowed to run deficits.

Does that not raise a red flag and say within the department that there are serious issues in the municipality and that action must be taken?

Ms. McFadyen: The department worked with the municipality on each one of those years, though. They have a rationale. They have a reason for the deficit, and they are told to deal with that deficit, either by raising taxes or by going into their reserves, which they did.

Mrs. Stefanson: So there was no indication, then, at the time that—so, you were going by the audited statements, et cetera, that were provided to you even though they were running a deficit. What were some of the repercussions, I guess, or I guess there are no repercussions, then, is what you're saying. They just came to you and they told you why we're running a deficit, and you said, well, okay, that's okay, that's acceptable.

What were some of the reasons that were given for running the deficits?

Ms. McFadyen: They had flooding in the municipality, which they had to deal with. So they had to do repairs that were unbudgeted ahead of time. When they run a deficit, they're required to put in place a plan for how they're going to deal with that deficit in the coming year, which they did.

Mr. Borotsik: A couple of things—and I think I should correct the record from the minister when he had indicated that municipalities are identified as a third order of government. That is, in fact, wrong. Municipalities have been trying to get an order of government, but provincial governments have not allowed that to happen. Even under The Municipal Act of 1997, that was not identified as being an order of government. As a matter of fact, Mr. Minister, if I heard it once, I heard it a thousand times and, in fact, municipalities are a creature of the Province and will continue to be a creature of the Province. They are not an order of government, and I think that that has to be corrected.

In saying that, I was also somewhat involved with the changes to The Municipal Act, and some mature municipalities would like to have more authority and autonomy. As much as you would congratulate the chair of this committee for his foresight, there wasn't an awful lot of autonomy given to some of those mature municipalities, in fact, there were some battles that were fought at that time, meaning that the provincial government and the Department of Intergovernmental Affairs still has a responsibility for municipalities within this province.

As a matter of fact, substantial monies are flowed to municipalities on a fairly regular basis. As the Finance Minister takes great glee in telling us on a fairly regular basis, municipalities are funded by the Province. As a matter of fact, if you'll look at page 22 on the schedule, quite a substantial amount of money was flowed through to the R.M. of La Broquerie, \$671,000 from the Province in 2002 and

substantial dollars throughout the whole five-year period.

When there's government money flowing to a municipality, there is a responsibility for the provincial government to make sure that municipality is operating in its proper fashion. There is an oversight role, and I guess the question I would ask of the deputy minister, because it seems that with these changes to The Municipal Act, the department, as I have heard here, seems that that oversight role is becoming less and less.

Would the deputy minister agree with that? Does she believe that the oversight role of the municipalities is becoming less and less, rather than have an oversight responsibility for municipalities—their financials as well as your conflict of interest?

Oh, I'm going to be ruled out of order.

Mr. Chairperson: Mr. Borotsik, I'm going to rule your question out of order because you're asking for an opinion with regard to a policy. So I'm going to ask you to rephrase your question, if you would, please.

Mr. Borotsik: Thank you, Mr. Chairman. I'll head in a different direction. I do believe that there is a responsibility. As a matter of fact, we go back to the Auditor General's report and on the first page, back in 2005, there was—well, first of all, there was a change in council, the reeve and some councillors back in 2002, but in 2005, the department was made aware of the fact that there was an issue. In fact, the reeve at that time, in writing to the Department of Intergovernmental Affairs in early March of 2005, he expresses concerns and requested the department conduct an audit of the R.M. at that time. Going back to 2005, when this request came in from the municipality itself, how was that handled by the department, and could the department tell me how that would be handled today if the same kind of a request came in from another municipality?

Ms. McFadyen: I think there's an important piece of context here and that is that this was a very split council. So one member of the council was writing a letter asking for that, not the entire council, not the entire council.

Mr. Chairperson: Before I ask you to proceed, Mr. Borotsik, the minister asked to make a comment.

Mr. Ashton: I don't want to dwell on this, but I want to get back to the point on, first of all, the act and the constitutional side. My point was exactly the fact that

constitutionally, municipalities, going back to 1867, were considered creatures of the Province. That is a clear constitutional basis. But our relations of municipalities have evolved beyond the literal interpretation of the Constitution.

Other provinces take that view very seriously. They tend to follow through in terms of legislation that's based on the idea that they are creatures of the provinces, and I want to give you a very quick example of where we digress from that. When we had local government ministers here, as Chair, I actually asked the AMM to make a presentation to all the government ministers. I thought it made sense: local government talking to local government ministers. I was advised—I don't know how many people have ever watched *Yes Minister* episodes—that that was a courageous move, Mr. Minister, because there were provinces that would object to that because it created a sense of equality at the table of municipalities and provinces. We proceeded with it. It was well received by both municipalities and the provinces.

I think the key thing to recognize here is this is very much the evolution of local government in Manitoba and it's not a political statement towards this government—the act was changed in '97—but it's also the evolution of many of the financial issues you're looking at it with—we have the highest unconditional grants and we are one of the best provinces—and have been for some time, I don't want to get into a political debate here—in terms of transfers to municipalities. Many of those grants are unconditional because we recognize—and the federal government is doing this now, too, with gas tax sharing—that you have a reason for electing local governments. It is to make key policy decisions.

Now, none of that takes away from any of the discussions here with the Auditor General's report or the specific issues in La Broquerie, but I do want to stress that we in this province, I think, have moved beyond 1867. In 2009, I would actually make the argument that, de facto, we have recognized municipalities as an order of government—and when I say level, it's because they're not below the provinces, there's some degree of equality around the table. Yes, we have an overall framework through legislation for municipalities, but we respect municipalities as, I believe, an order of government, and I don't think it's a minor disagreement here. It is the fact that this is not 1867, it's 2009 and I think that's very much the framework that is here.

Mr. Chairperson: I'm going to ask that we curtail that discussion. I think there are two opposing views on that issue, but we are here to look at the administrative issues as they emerge from the Auditors' reports. I'm going to ask us to come back to that.

* (20:10)

Mr. Borotsik: I had the question to the deputy minister, and the question was, this request had come from member or members of that council to look into the circumstance in La Broquerie. I was told, at that time, that because there was a split council, it was sort of, like, municipality heal thyself. I take it that there was no—please tell me, and I won't put words in your mouth.

What process did you or your department put in place at that time to try to rectify the problem? You sent an MSO down to talk to the CAO. Was that the end of it, at that point in time? Why didn't it go further? Are you suggesting that it should have gone to the courts at that time with the conflict issues, or did the department just not feel that they had an opportunity of getting in there and trying to rectify the problem?

Ms. McFadyen: There was a request that the department do an audit. The department does not have the authority to go in and do an audit unless there has been a significant auditing issue raised in the audited accounts, right? So we don't have that authority to go in and just do an audit.

What did we do? We went and we talked to the council. What we were aware of was a significant amount of conflict that was in that council. As we said, we went and talked to the council to look into the issues and to offer a mediator to help deal with the conflict issues in the council.

Mr. Borotsik: The coalition, after not receiving what they felt was the proper response from the department, then approached the Auditor General's department, and the Auditor General does have the ability to perform that audit.

Does your department, the Department of Intergovernmental Affairs, not have the opportunity to ask an Auditor General to perform an audit?

Ms. McFadyen: Yes, I believe we would have that ability.

Mr. Borotsik: So it was, unfortunately, up to the coalition to approach the Auditor General and not the department, at that point in time, to approach. I won't

talk hypotheticals because the Finance Minister yells at me every time I talk hypotheticals.

The coalition did, in fact, precipitate the audit, which ultimately resolved in the correction of a lot of issues that we have here in this.

Are there other municipalities out there now that the department is aware of that may well fall into the same realm of malfeasance, if you will, than what this particular R.M. has fallen into?

Ms. McFadyen: Certainly, we are aware that there are other municipalities where there have been complaints, and we work with those complaints as they come in.

Mr. Borotsik: Okay, in the same fashion that you work with the complaints here? Is it up to those complainants now to approach the Auditor General to get an audit done on those R.M.s as well, or does your department kind of work the process where maybe you would be responsible to work with the Auditor General to try to find out the truth in those R.M.s?

Ms. McFadyen: I think it's fair to say that, since this audit has been carried out, we are probably more aware of the potential for these kinds of situations and that we cannot entirely rely on the audited financial statements that are coming in. We've done a lot of work with municipalities around that.

Have we got a situation where we've felt that it was necessary to go in and ask the Auditor General to do another audit? We haven't at this point, but I think it's fair to say that we would certainly be more aware—for moving in that direction.

Mr. Borotsik: You had indicated that you are aware of some other circumstances. I don't know them, but your office is where constituents, citizens, other councillors would go to lodge those complaints.

Just how many of those municipalities are we aware of in your department? Are there four instances, or a half a dozen, or is there one? I mean, like, are there a number of circumstances right now that you would perhaps look to the Auditor General to go in and do a complete audit?

Ms. McFadyen: I was not suggesting that we've got municipalities out there where we've got all kinds of complaints about financial malfeasance. We do not. We do not.

We are aware of complaints. These kinds of things come in all the time. There are always

disgruntled citizens around these situations that—so the department gets lots and lots of letters. Citizens' expectations around accountability and transparency are increasing. I would say that probably the number of letters increase over time because people's expectations are increasing.

Mr. Borotsik: Last question, and I'll let others take over, Mr. Chairman, but, back to the financials.

I do know that the deputy minister has indicated that she and the department are looking at some process for supplemental audits, something that's got to balance. It's got to balance with costs of the municipality. It's certainly got to balance with, you know, provide information that certainly will allow the department, then, to look in more detail, more depth into the financials.

Going back to the R.M. of La Broquerie—and I guess we all learn from bad examples—as identified by the Auditor General, there was an accumulated operating deficit of some \$1.6 million in this particular rural municipality over a period of five years. That's quite large, actually, when you're talking 1.6-million accumulated operating deficit.

When municipalities are putting forward budgets, there are extraordinary costs, there's no question, with regard to municipalities or provincial governments or businesses. But, if there are extraordinary costs on an annual basis, they're no longer extraordinary costs. If you're using flooding as an excuse and flooding happens three out of four years, then that should be budgeted. That should be an item that's budgeted. The mill rates should be raised. They should be able to raise those funds and either put them in a reserve or have them on an operating side.

Again, I'm disappointed, actually, and perhaps a little confused why the department didn't see those red flags on the ongoing operating deficits. We've identified that they've identified the operating deficit, but they usually filed six and eight months later than what was actually required under the act. Has the department got a program in place now that would catch that? Like, if there's a municipality who's filing constantly six and eight months late with their operating deficits, would you catch that? And if you did catch it, how would you react to it, and how would you be able to correct some of those issues?

Ms. McFadyen: We don't yet have the new requirements for the supplementary audit. That's the piece that we are working on right now. As we said,

there are a number of major initiatives that municipalities are working on, and we needed to work with them through that. They're very important partners in that piece.

I have the answer. We are developing right now a formal monitoring framework and policies to monitor the deficits of municipalities. When a municipality notifies the department of an ongoing deficit, part of the review request is to examine the deficit history of the municipality so that we're not just looking at one year in isolation, we're looking at previous years. Obviously, you would treat a one-time occurrence differently than you would treat the recurring kinds of deficits.

If a municipality has a history of deficit requests, then we'd require a further examination of their financial position to make sure that they're doing that budgeting properly. If the review that we do uncovers systemic issues, which was obviously the case here—and that would be our financial officer's role—it would be brought to the assistant deputy minister for corrective actions. We would sit down with the municipal CAO and with the council and ensure that we try to address those issues right up front. If it continued, then we could call in for the Auditor General to do an audit. But we are working on strengthening those procedures as we move along.

* (20:20)

Mr. Martindale: I note that on page 41 of the Auditor General's report it says, as noted above, although the CAO and council told us that they knew the R.M. would be incurring a deficit in the fall each year we did not see any indication that the R.M. took any steps to limit the extent of the losses. There was no recorded discussion in Council Meeting minutes concerning potential deficits or for the need to try and control the extent of expenses for the remainder of the year.

So, obviously, the R.M. of La Broquerie had some responsibility to do something about the problems that they were aware of. But, going to a March 2008, Auditor General's report my understanding of the process is that the Auditor makes recommendations and the department follows up or responds to those recommendations, and changes often occur because of that.

So I have a couple of questions for the deputy minister, and the first would be, what is the current process to review and analyze financial information

provided by the R.M.s and who conducts these reviews.

Ms. McFadyen: The current process is what I just outlined, a monitoring framework, and we're developing the policies. We're looking at both a current deficit and whether or not there's a history of deficit, and working to take corrective actions. Those reviews are conducted by our supervisor of municipal accounting, who is a CA.

Mr. Martindale: I had three more questions in a similar vein, but I think Mr. Borotsik already asked them, but the next question is: How is the current process different from the process that was in place at the time of the audit?

Ms. McFadyen: The current process is formalized and documents what was previously in place, so it's made it very formal and we've got documentation of it. Monitoring and follow-up has been formalized so that we make sure that we don't lose track of year-over-year kind of deficit. We're certainly putting much more emphasis on historical analysis to identify any systemic issues, and those systemic issues are not being left at the staff level; they're being raised to the assistant deputy minister so that we can take corrective action in a timely way.

Mr. Martindale: I'd like to move on to The Municipal Council Conflict of Interest Act. The minister spoke to that. If the act was amended would the statement of assets and interest filed by council members be independently assessed? Would that be the kind of thing that would be in the act or would that be in regulations?

Mr. Chairperson: Mr. Martindale, that's a policy question.

Mr. Martindale: Well, ask the minister, then.

Mr. Chairperson: I will let the minister answer that question.

Mr. Ashton: Thank you. That certainly could be one of the elements that could be considered. I indicated before that certain conflict of interest is part of that framework, and some of the issues that have arisen out of this report, I think, could be a useful guideline in terms of developing future policy, both within the existing framework, but also looking at future changes to legislation. So the short answer is that could be one of the options that we could look at.

Mr. Martindale: Will the amendments also address the process for members of council excusing themselves from meetings where they're in a conflict

of interest position, and I'll ask the minister that question as well.

Mr. Ashton: Well, clearly one of the things that comes out of this report is some of the procedural issues that are involved. We're certainly involved in this Legislature over the last number of years, more than 20 years' worth of experience with our system. I think it's important with municipalities, recognize that, I think, the Auditor General's report points to some of the weaknesses. But certainly one thing that could be part of, again, an improved framework for conflict of interest in municipalities, I believe, could be very much some defined procedures, not just the filing of reports, but what you are referencing in the question, specific ways in which people can respond, so that's certainly something that could be looked at.

Mr. Martindale: Could the minister or deputy minister tell me what actions have taken place to implement conflict of interest policies in the R.M.s to address senior administration and staff?

Ms. McFadyen: As I said, we've accepted the Auditor General's recommendations about conflict of interest for both senior administration and staff, and we are continuing to take action to implement them. We're looking at legislative changes as well, as I've said, as non-legislative changes. Currently, conflict of interest policies for senior administration or staff are not required by the act, so that would obviously require a legislation change if we were going to do that. At this point, the department's efforts have really focussed on education and training for elected and non-elected municipal officials. We've recommended to municipalities that they adopt conflict of interest policies for administration and for staff.

Mr. Cliff Graydon (Emerson): I have a question that—I think I'll just go back a little bit and try and frame this and try and understand it a little better. But the operating deficits that were accumulating didn't seem to raise any of the red flags because of the audit done by the municipal auditor. They didn't raise any flags with the department at that time. However, there was a huge debt accumulating as they went forward. The tardiness of filing—the late filing of the notices of deficits, I would have thought, would have created some type of a red flag with someone and, apparently, that hasn't taken place. I understand the explanation by the deputy minister.

However, with the process that is being put forward today, and if a municipality or a CAO was to operate in the same fashion or be as tardy as this

was, what are the consequences to the council or the CAO? Is there any force to make them comply with the act?

Ms. McFadyen: There is no authority in the act to make them comply. We have the ability to go forward and to talk to them and remind them and go forward, but there aren't consequences in the act that talk about that, other than the consequences of being taken to court, or have it raised with the Ombudsman, or go to the provincial Auditor.

Mr. Graydon: Thank you for that answer. I then wonder, Madam Deputy Minister, the situation, then, when the coalition brought their concerns forward. A former reeve made an application to you to do an audit, or to the Auditor General to do an audit, I'm not exactly sure where that application went. I would have thought that that would have raised enough flag, enough red flag, that it would have been taken more seriously than just having a discussion. If you have the power to do that, why was it not done at that time?

Ms. McFadyen: There was not a resolution on behalf of council. This was a letter from an individual that came forward. We had nothing in the audits that suggested to us that there was a problem, an ongoing problem, so we acted in accordance to the way that we did at the time. We went and sat down with them and pointed those things out. Again, there was significant conflict within the—so you were getting—there were two stories being presented at the same time, right?

Mr. Graydon: Then I really need to wonder how this coalition was able to convince the Auditor General to do an audit, then. If they weren't able to get your attention and your department would just go back and talk to the council, why would the Auditor General have taken the initiative? You can see the result of the initiative. It was certainly, certainly necessary and it's been a meaningful audit. How did the coalition then get the attention of the Auditor General to go forward?

* (20:30)

Ms. McFadyen: The way the act is written, it says, in 196.1, if the Auditor's report indicates immediate action is required, that's the trigger for the department, the Auditor's report. The act also has other avenues of recourse, and that was the trade-off that was made in 1997. Remove provincial oversight, provide other avenues for the Ombudsman that complaints could be taken to the Ombudsman and

going to the Auditor General. Those kinds of things can happen. The trigger for the department is audited reports.

Mr. Graydon: I have difficulty with that explanation, but if that's what you want to have for an explanation, that's fine.

I would go, then, to the recommendation by the department to implement proper processes to monitor—this is a recommendation from the Auditor General—serious citizens' complaints and to follow up compliance with The Municipal Act by municipalities.

I would like to know from you, Madam Deputy Minister, how the department is to handle this and what they've done today to keep this from happening again. As we understand, if I come forward with a serious complaint, as the coalition did—they came forward with a very serious complaint. The reeve of the time asked for an audit. The red flags, in my opinion, and humble as that is, the red flags were already there with the poor reporting of deficits that were going to be occurring, much later than what your department has for a deadline.

What do you have today to prevent that from happening in another municipality as you have said and indicated here tonight that there are other municipalities with complaints? Now, I'm talking about serious complaints, not frivolous complaints, but serious complaints by a number of individuals, such as the coalition.

Ms. McFadyen: As I indicated today, we'd formalize the monitoring so that we have a process in place to formalize this monitoring. We are certainly more aware. If we get a complaint around those, we will go back to our monitoring process and take a look. Did those complaints appear to be borne out by the records that we have in our monitoring?

Mr. Graydon: Perhaps the deputy minister can explain to me. I was on council at one time, but it was a long time ago, and my memory doesn't always serve me as well as it should.

When a council does a budget, that budget has to be passed by your department?

Ms. McFadyen: No. That was one of the big changes in 1997. No, we do not have to pass their budget.

Mr. Graydon: So you wouldn't know if there was a deficit, then, for a full year?

Ms. McFadyen: They cannot file a report under the act. They cannot file a budget with a deficit, so their budget that they table can't have a deficit in it.

They come into our office for information purposes. We actually have examples in the last few years of a couple of municipalities that have identified that they're going not be able to do their budget without a deficit. We sit down and we work out something so that we make sure that they are either raising their taxes or dealing with their reserves, so they are not tabling a budget with a deficit.

Mr. Graydon: If they intend to file a deficit, then they have to sit down with you to do that?

Ms. McFadyen: They cannot—they cannot—table a budget with a deficit.

Mr. Graydon: I'd like to ask a question about debentures. Can the deputy minister tell me at what percentage of the municipality's assets that the debentures can be?

Ms. McFadyen: Sorry, their borrowing limit is 20 percent of their assessment, or 7 percent principal and interest—*[interjection]*—repayment.

Mr. Graydon: Could the deputy minister, then, tell me who monitors that?

Ms. McFadyen: The Municipal Board does as well, as we do as well.

Mr. Graydon: Could you explain how the rural municipality was allowed, then, to float a debenture at 7.15 percent?

Ms. McFadyen: They are guidelines, and the Municipal Board approves their borrowing.

Mr. Graydon: When they exceed these guidelines, Madam Deputy Minister, would this not raise a red flag as well with the numerous other red flags that were raised?

Ms. McFadyen: Not if it was approved by the Municipal Board.

Mr. Graydon: If I understand correctly from the answer that you gave before, it was approved by your department and the Municipal Board. Now is it just the Municipal Board?

Ms. McFadyen: Sorry, I misspoke. We do not approve it. The Municipal Board approves it. We are aware of it.

Mr. Graydon: Then, in fact, if you are aware of it, not that you've approved it, but you're aware of it, would that not raise the red flag along with the other red flags that were raised along the way?

Ms. McFadyen: They are approved by the Municipal Board, and we don't have the authority to not approve them. They are approved by the Municipal Board.

Mr. Graydon: That wasn't the question. The question was would that not have raised more red flags in your department along with the other red flags that I've identified before.

Ms. McFadyen: At the time, we were relying on the audited statements, and these were approved by the Municipal Board. We are taking steps, and we are strengthening those things right now through a more formal monitoring process.

Mr. Chairperson: Thank you. We'll move on to Mr. Maguire.

Mr. Larry Maguire (Arthur-Virden): Mr. Chair, just a couple of questions as well. The Auditor General's report, in section 3.2, Department of Intergovernmental Affairs, states: The Minister of the Department is charged with the administration of the Act, which, I think, is self-explanatory in regard to these issues, any compliance, rules and regulation changes, that sort of thing. Just for the record, the Auditor General has also stated that the Rural Municipality of La Broquerie was created under The Municipal Act and is governed directly by the elected reeve and council. Of course, those are just jurisdictional issues, but it does state, I think, responsibility.

It's fine to have an audited report, I guess, that comes out in March of '08, but it does show a great deal of need and a lot of uncompliance, I guess you could say, that occurred in this particular circumstance, particularly in some of the later years. Is it of the opinion of the deputy that this situation—this report comes out from '02 to '06. Is it your understanding that things kept getting worse from '02 to '06?

Ms. McFadyen: It's difficult for me to answer that question, whether it kept getting worse over—I mean, the Auditor's report in hindsight has identified that things were going on and were not being corrected. We were working with the municipality to make sure that they didn't have a deficit in the next year, and

they were doing things that offset that underneath—that we weren't aware of.

Mr. Maguire: I know it also states in the audit that there were shortfalls in revenue there in 2000 and 2001, I believe, as well, which is before this statement started. I'm only saying that, looking at the audited report, I don't expect you to give that answer based on what you knew, of course, at that time in '02 and '03 because you didn't find out till '05 when the coalition came forward, I'm of the understanding, anyway, from previous answers.

* (20:40)

Something that caught my eye was that the simple establishment of organizational by-laws and procedures for the municipality—paying \$33,700 to someone, to a lawyer, to prepare by-laws for a municipality that only had to make a phone call to AMM or the department to have by-laws set up seems unusual to me. I guess I would say that that happened in '05. There were a number of things that happened in '05, and so, with hindsight of looking at the Auditor's report, would you be able to suggest that the situation kept getting worse towards, you know, in '05 and '06 than, say, '02, '03 and '04?

Ms. McFadyen: If I look to the Auditor's report on figure 3 and the draft financial statements, they filed—the audited financial statements showed a deficit in '02, did not in '03, did not in '04, then did in '05 and did in '06. In hindsight, it appears that yes, it was getting worse, but on the information that was coming to the department, it did not appear to be getting worse at the time. I guess that's the best way I can answer.

Mr. Maguire: Thank you. That clarifies it for me because I was asking your opinion based on the report.

You know, it certainly seems as if the department has worked with the new CEO and staff and auditors, I'm assuming, to try to rectify things. I know it may be outside the scope of this report because it only looks up to '06, but of course there are recommendations being made there. I wonder, can the minister confirm for me just whether or not they are still monitoring La Broquerie with the personnel that are there now, and can she provide me with an update on the latest status of the audited reports for the last few years?

Ms. McFadyen: Staff are looking for the audited reports, but we requested an update from the municipality on all of the actions that they've taken

to address the recommendations that were made to them, and they have made significant progress. They've addressed many, many of those internal policy issues, internal procedural kinds of issues and done a lot of work to address all of those situations.

The municipality showed a surplus on their audited financial statements in 2007 and 2008.

Mr. Maguire: I certainly believe that new staff, new council would certainly take corrective action and I appreciate the deputy minister's answer.

I go back to what the Member for Brandon West (Mr. Borotsik) indicated: that over a five-year period there was a \$1.6-million loss in this municipality incurred in net operating losses. I guess when I look at it, at the bottom of page 39, based on the review of the 2005 statistical information from municipalities' publications, prepared annually by the department, the R.M. was the only municipality in the province with a negative balance in its nominal surplus account. Was that something that raised a red flag for the department as well, prior to this coming forward?

Ms. McFadyen: Certainly we would have been aware of that. You know, we were working with the municipality, and we were trying to address those issues at that time. We weren't completely ignoring this situation. We were working with the municipality within what we felt were the authorities that we had in place in the act to try to move things forward.

Mr. Maguire: Have there been similar circumstances where there are other municipalities in Manitoba with negative balances since this one came forward in the 2005 statistics information report by the department?

Ms. McFadyen: Sorry. You were asking whether or not any other municipalities have filed a negative balance?

Mr. Maguire: Yes.

Ms. McFadyen: We're checking. In this current year there's one for \$560.

Mr. Maguire: Just for clarity, and my clarity, that's a municipality that has a negative balance in its nominal surplus account?

Ms. McFadyen: That would be correct.

Mr. Maguire: A couple more, Mr. Chairman. I wanted to ask, I know the deputy minister indicated that there were complaints, other complaints that have come forward. Apart from those specific

complaints to, perhaps, those particular municipalities that they've had complaints come in on, as part of the new procedures, and I know that they rely on the audited statements coming forward from the municipalities themselves, have there been any spot checks done by the department in the last three or four years, first of all?

Ms. McFadyen: Sorry. Could I ask for clarification? Spot checks on?

Mr. Maguire: Spot checks on the types of accounting procedures that occurred in this particular municipality, instead of relying totally on an audited statement coming in from the municipality. Have they gone in, for instance, and said, we'll do a spot check?

There are 198 municipalities in the province. I don't know if they're even allowed legally to go in and do a spot check on one or two of them a year by saying, well, we're going to, just to make sure that this audited statement is a truly audited statement, to go further into it as the Auditor General has had to do here, in the case of La Broquerie. And because the department, of course, is so closely aligned and is responsible for municipalities in the province, have they done spot checks on the accounting procedures that have been used and some of regular audited programming that a municipality would use in its day-to-day operations?

Ms. McFadyen: With the formal monitoring system that we're putting in place right now, we certainly have a much better way of following through on those. We are also doing some of those, I guess if you wanted to call them spot checks, because of the Public Sector Accounting Board rules that are coming in. We are doing a lot of work with the municipalities on that particular piece. Where there appear to be some issues, we can go in and take a look at that.

To put something more formal in place around an ability to provide greater oversight is part of what we're looking at with the municipalities. How can we provide better assurance through those supplementary audit statements? How do we do that? That's the piece that we're working towards.

Mr. Selinger: I just wanted to follow up on the angle I've been pursuing, and it seems to me at the heart of this case study, which is what it is, of municipal governance, that the problem is bad relationships, inappropriate relationships, which is why I am focussing on the conflict of interest issue.

* (20:50)

I'm having trouble thinking that a CAO should have any business relationship with a councillor. I just think we should take a serious look whether that should be allowed. I'm having trouble thinking that a CAOs should have a business relationship with somebody asking council for benefits. At a minimum, they should be stepping aside, but I don't think CAOs—assuming they're properly paid, and I don't know what the pay scale is—should be involved in business deals in their own backyard. They're supposed to be running the municipality. I just think that's common sense, for me. Certainly couldn't happen in a bigger city; they'd get killed; everybody would be all over them.

I just think we should take a serious look at some basic rules to prevent some of these problems. I mean, we're talking about all this stuff, but at the end of the day, it comes down to having some good conflict of interest rules. Most municipalities have the common sense not to get involved in this kind of stuff. This is kind of an exception to the rule, from what I can tell, but maybe we have to put some guidelines in place about not getting involved in matters of pecuniary interest that conflict with your role to provide a public service, either at the councillor level or at the CAO level. To me, that's the heart of this whole thing. Everything else, to me, is secondary. I mean, all these other things are the result of inappropriate relationships—you know, paving people's parking lots, providing snow-clearing service—all that stuff's a result of people missing the point of what they're there for. They're not there to pad their pockets; they're there to provide a public service.

I just think we should put some rules in place, guidelines or whatever, and I think that would solve a lot of these problems and we could get on with the other stuff we have to do. I just want to cut to the chase. I'm going to ask the minister what he thinks about my comments.

Mr. Chairperson: We'll let the minister answer, and I'm also going to ask the deputy minister to respond as well.

Mr. Ashton: I think it's important to recognize that one of the key challenges with local government is the scale of a lot of the potential conflicts is quite different than, say, at the provincial level. There's clear legislation at the provincial level, clear definitions in terms of pecuniary interest. I think it's

also important, by the way, to acknowledge that our legislation works in a number of different ways, but one of the key elements is actually through disclosure. I think this is one of the key recommendations coming out of the Auditor General's report is the degree to which, without disclosure, you lose your fundamental way of ensuring that there aren't these kinds of conflicts.

Now, in saying that, one of the greater difficulties at the local government level, 198 municipalities, is we're not dealing about whether an MLA owns a piece of land that then is redeveloped with some provincial initiative. We're dealing with a situation where, on a daily basis, municipalities make decisions that have contractual relations with various suppliers, provide various services, make various different purchases, and also there are zoning and other decisions. I think the key element here is in terms of disclosure.

It's certainly been something that's been raised in the context of what we do with campaign finance reform. Provincially and federally, there's clear disclosure in terms of those contributions, and I think certainly it's worthy of consideration here as well, as another element, because the more you have disclosure, the more that you will have a No.1 fundamental check, which is the fact that when something happens, if people know it is going to be known to have happened, that is I think far more effective than some court procedure—which you need in place, some enforcement mechanism that might be put in place down the line.

Just to make it short here, because I know we're short on time—when we received the Auditor General's report, we have indicated we will look at both policy and legislative changes on the conflict of interest side.

The only caution I want to make, though is, I think one of the problems with conflict of interest generally is we sometimes miss the point. You used the word, and I think it's the important element, which is pecuniary. A lot of cases, I hear references to, well, there's a conflict of interest—and I hear this all the time; we had a case in my local community. Four city councillors on the front page of the newspaper about a proposal to change a zoning regulation for public housing. Now, none of them had a pecuniary interest. One worked for the Department of Housing and he withdrew.

I think it's very important that you not just say, well, somebody works at the provincial government

so they have a conflict of interest, because what we do is we cheapen it for situations—and I think this is what we're dealing with far more here, for the real conflict of interest, which is, the bottom line is, a clearly defined pecuniary interest of that individual and also direct relatives. So, very good point.

Mr. Chairperson: Good. I thank you for that. I think we've struck on something here, but I'm going to give the opportunity for the deputy to make a comment if she will. I know this is probably extending the rules, but I think we're on an important issue, and I want to have two other people comment on your suggestion, Minister Selinger: the deputy, and then I'm going to ask the Auditor General to make a comment as well.

An Honourable Member: Well, I honestly wasn't trying to—

Mr. Chairperson: No.

An Honourable Member: If I could just make a comment before. My question was to the minister—

Mr. Chairperson: Yes.

An Honourable Member: —and it was to the minister for a very specific reason, because it's a policy matter—

Mr. Chairperson: Okay.

An Honourable Member: —which is sort of our job. I didn't put the administration on the—in terms of their opinions, because their job is to respect our policy orientation. The reason I was driving at the CAO role here, which I think seems to be—

Mr. Chairperson: I haven't recognized you, Mr. Selinger, but perhaps I should.

An Honourable Member: I'd appreciate that.

Mr. Chairperson: —because you're halfway through it. So, Mr. Selinger, continue.

Mr. Selinger: Thank you. I'm glad I got my foot in the door.

It seems to me as I read this story, that the CAO is a common element in a lot of what's going on here, and then the relationships vary between having a relationship in a hotel, and then a relationship with certain councillors who also have a relationship in the hotel. There seems to be a link between a councillor and a community development corporation and a golf course. I'm just thinking that in municipal government or even in—like, I don't think anybody in provincial government should be

doing business in their own backyard. I just think it's pretty straightforward.

So, I just agree with the minister. It has to be about pecuniary interest, because there's a lot of confusion between conflict of interest and other matters. I mean, Manitoba's a relatively small community, there are lots of relationships, people are related but pecuniary interest is the issue, about money, about making money.

I think the CAO should just stick to his knitting and do his job in running the public government and not being involved in business matters in their own backyard. They can do it in other municipalities or other parts of the country, but they shouldn't be doing it in their own backyard. I think that would just solve a whole bunch of problems, just to cut to the chase.

Mr. Chairperson: Well, Mr. Selinger, you not only were asking the question, you were also answering it. Understanding that this committee gives direction, as well as asking questions on where departments are at. I'm going to ask, as a matter of fact, I'm going to take—

Order, please.

I'm going to take a little bit of latitude here as Chair. I'm going to ask on an administrative side of it, because the administration does have to implement, I'm going to ask the deputy to comment, and I'm going to ask the Auditor General to comment. Basically, we've just had some comments here, and this is on the record.

Ms. McFadyen: I would like to note for the committee what we are doing within the confines of the conflict of interest act which does not require conflict of interest disclosure or statements by the staff, only by the council.

We've been encouraging the CAOs to discuss their disclosure processes with their council members, so prior to a meeting so that it doesn't happen in the middle of a meeting. We've enhanced their education and training for both the elected and the non-electeds. I can give you some examples: we did a Knowledge is Wisdom training seminar; we did a municipal officials seminar; we partnered with the Manitoba Ombudsman, together with the MMAA and the AMM, all these acronyms here, to develop the Ombudsman *Understanding Fairness* guide. So, really, really the message to the municipalities is you

have to have fair decision-making processes, and they also have to be seen by your citizens as being fair decision-making processes.

Mr. Chairperson: Madam Auditor General, we have approximately one minute and ten seconds left.

Ms. Bellringer: The auditors of long ago waded into the discussion around accountability and transparency, so I don't feel it's getting into policy from my perspective.

The public disclosure piece to me is at the heart of where it probably does need to be legislated because you can't be sure it will otherwise happen, and the consequence for nondisclosure probably has to be legislated. The rest I see as practice and practice evolves and research in the governance area is bringing out all kinds of interesting debates. Some of the debates are do you or do you not remove yourself from a meeting when something is being discussed if you have a conflict.

There are two schools of thought on that one. One school of thought says you are conflicted so you get out of the room. The other school of thought you're conflicted; by getting out of the room you actually influence the decision even more so. There's debate about that. So that to me falls into the practice example. You have the choice to figure out how you deal with some of those issues, but some of it has to be legislated.

Mr. Chairperson: The hour being 9 o'clock, what is the will of the committee?

An Honourable Member: Committee rise.

Mr. Chairperson: Shall the Auditor General's report, Special Audit, Rural Municipality of La Broquerie, dated March, 2008, pass?

Some Honourable Members: No.

Mr. Chairperson: The report is not passed, then. The hour being 9 o'clock, committee rise.

Before we rise, I would appreciate if members would leave behind the unused copies of the report, so they may be collected and reused at the next meeting.

Committee rise.

COMMITTEE ROSE AT: 9 p.m.

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