



OFFICE OF THE
AUDITOR GENERAL
MANITOBA

December 2010

Report to the Legislative Assembly:
Performance Audits

Web Version

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December 2010

The Honourable George Hicke
Speaker of the House
Room 244, Legislative Building
Winnipeg, Manitoba
R3C 0V8

Dear Sir:

I have the honour to transmit herewith my report titled, *Report to the Legislative Assembly - Performance Audits*, to be laid before Members of the Legislative Assembly in accordance with the provisions of Sections 14(4) and 28(1) of The Auditor General Act.

Respectfully submitted,

Original document signed by:
Carol Bellringer

Carol Bellringer, FCA, MBA
Auditor General

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Overview by the Auditor General

I am pleased to present my 2010 *Report to the Legislative Assembly - Performance Audits*.

This report combines the results of four audits, each of which is reported in a "Chapter". All four audits were conducted in accordance with assurance standards recommended by the Canadian Institute of Chartered Accountants, and accordingly included such tests and other procedures as we considered necessary in the circumstances.

All four audits in this report contained positive conclusions, yet each one identifies areas where attention is required to strengthen operations and where matters of non-compliance should be rectified.

Chapter 1: Managing Climate Change

Our audit examined management of Manitoba's climate change initiative, including the systems and practices for planning, project management, selecting and funding individual climate change projects, and reporting. Several different departments are involved in climate change issues. The Department of Conservation (the Department) is the lead.

Manitoba accounts for about 3% of Canada's total greenhouse gas emissions. Manitoba has responded positively to climate change by consulting stakeholders, creating a climate change action plan, and setting a short-term target for reducing emissions that is consistent with Canada's Kyoto commitment of reducing its greenhouse gases to 6% below the 1990 level. It has put in place over 70 different climate change initiatives. Most of the individual project selection and funding decisions we examined were adequately supported with sound data and analysis. There is a system to track government-wide expected and actual emission reductions for approved projects. And the Department has been working to improve its monitoring and status reporting.

While Manitoba's management of climate change is evolving, the 2008 action plan in place at the time of our audit is not expected to achieve the target level of emissions for 2012 of 17.5 megatonnes (6% below the 1990 level). In April 2010, the Department forecast a gap of 2.7 megatonnes in meeting the target. It has subsequently been re-evaluating the plan, seeking options to narrow the gap, and now needs to formally update the 2008 plan. Working with partner departments, the Department also needs to further refine planning, project management, and reporting processes. In particular, it requires:

- comprehensive analysis of the benefits, risks and costs of alternative approaches and tools;
- "business as usual" forecasting of greenhouse gas emissions;

- alignment of climate change action plans with the budget process;
- clarification of roles and responsibilities of lead and partner departments, as well as Cabinet sub-committees;
- better identification and management of risks related to reducing both emissions and adverse climate change impacts;
- a method of calculating emissions for public reporting purposes; and
- a system to track climate change spending and the economic and social outcomes associated with climate change projects.

Chapter 2: *Economic Development: Loans and Investments under the Development Corporation Act*

The Department of Entrepreneurship, Training and Trade (ETT) administers loans and equity investments made under Part II of *The Development Corporation Act* (the Act), two economic development programs in Manitoba's broader economic development strategy. Most Part II loans are Manitoba Industrial Opportunities Program (MIOP) business loans. Equity investments are in venture capital funds.

We examined the due diligence used in approving, disbursing and monitoring loans and investments, as well as related performance measurement and public reporting.

The two programs have stimulated economic development in Manitoba and most systems and practices were adequate. There remains room for improvement in planning, analyzing investment requests, monitoring, and ensuring that performance reporting is accurate and focused on actual economic benefits to Manitoba.

Chapter 3: *Special Audit: Society for Manitobans with Disabilities*

In 2005, our Office received a letter (also sent to the Province) from a citizen alleging that the Society for Manitobans with Disabilities (SMD):

- had excessive administration costs.
- lacked accountability for public funds (and did not use them for intended purposes).
- had poor governance.

We asked the Department of Family Services and Housing, now the Department of Family Services and Corporate Affairs (Department) how it was following up the allegations. It had asked government's Internal Audit Services to review SMD in early 2005 and they issued a report in May 2005. We decided to give the Department and SMD more time to resolve the issues and the report recommendations before conducting an audit to ensure that all the concerns had been resolved.

Although there were a number of administrative problems, there were no concerns expressed by the Department about the quality of services SMD provides.

During the 1999/2000 fiscal year, SMD underwent a significant corporate reorganization. This new structure created a parent company known as "SMD Alliance Inc." (Alliance) and four subsidiary companies, one being the Society for Manitobans with Disabilities Inc. (Services). Our audit focused on the funds that Services received from the Department. The funding is set out in a Service Purchase Agreement (SPA) between the Department and Services.

Services had not been promptly providing required financial reports to the Province but we found that throughout the period of our audit some improvements had been made. The SPA provides the Province with access to records for all areas it funds. Between 2006 and March 31, 2010 Services had accumulated more than \$1.5M in deferred contributions, which represents about 19% of the 2009 provincial funding. The use of these funds has now been resolved.

Complaints about how a transaction was handled in 2004 and confusion around a significant corporate reorganization were directly related to the allegations we received in 2005.

Our audit found that some administrative problems remain and there was a noticeable lack of trust between SMD and the Province that hampers progress. We also found that the three areas within the Department that are involved in the monitoring of SMD's compliance with the SPAs did not coordinate their efforts efficiently. Our report identifies the following issues that still need to be resolved:

- In our view the current overhead level charged to Services by Alliance, combined with overhead costs incurred directly by Services, totals about 21%. The Province has not specified the level of overhead it will fund, or any restrictions on the use of the overhead.
- Our review of 3 schedules in the SPA related to specific program areas found that not all of the Province's program outcome requirements were being met.
- The Chief Executive Officer (CEO) of Alliance can, in accordance with board approved policy, move up to \$300,000 among companies if the borrowing entity is able to repay within 120 days.

We accept the Department's decision to work with SMD to resolve issues, instead of applying sanctions. If the working relationship between the Department and SMD deteriorates, and the issues we have identified in our report are not resolved, then sanctions may be needed.

Chapter 4: Special Audit: Rural Municipality of St. Laurent

In September 2009, various allegations were made to the Office of the Auditor General of Manitoba (OAG) including conflicts of interest involving Councillors of the Rural Municipality of St. Laurent (RM), that the RM was not following its

tendering policy, and that there was a lack of accountability and reporting to the RM by some of the organizations that the RM provides grants to.

We found that certain administrative practices require strengthening. The RM did not formally tender for certain significant expenditures, including the purchase of gravel and some maintenance projects. In one case, the RM advertised for a tender but did not follow the established process. Because the RM did not keep adequate documentation, we could not assess if it had tendered a number of other maintenance projects appropriately.

Our audit of Council's procedures around two major projects - the Artificial Ice Project and the lease agreement with the Recreation Centre for RM office space - found that not all Council members had been provided with adequate or timely information when they voted on these projects.

Our audit also included issues of non-compliance with *The Municipal Council Conflict of Interest Act*. Certain of our findings related to a Councillor who was also participating on community boards. We found that the Councillor did vote on certain resolutions while he was a community board member. We noted that the Act does not distinguish between participation on a corporate board from a board which supports the community.

Conservation

Chapter 1: Managing Climate Change

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1.0 Main Points

What We Examined

Our audit examined management of Manitoba's climate change initiative, including the systems and practices for planning, project management, selecting and funding individual climate change projects, and reporting. Several different departments are involved in climate change issues. The Department of Conservation (the Department) is the lead.

Why It Matters

Most governments accept the findings of the Intergovernmental Panel on Climate Change that the earth's climate is warming; that much of the change is being caused by human activities that increase greenhouse gas emissions; and that climate change effects will worsen if action is not taken, posing a significant risk to the environment, the economy, and human health. As a result, Canada, together with several other governments, has signed and ratified the Kyoto Protocol to the United Nations Framework Convention on Climate Change. The Protocol's goal is to stabilize greenhouse gas concentrations at a level that prevents dangerous interference with the global climate.

In Manitoba, climate change may impact crop growing seasons; wildlife and fishery habitats; subsistence, commercial and recreational fishing; pests and insects; water supply and quality; winter roads, northern rail and other infrastructure; and the frequency and severity of droughts, wildfires and flooding. However, climate change also presents economic opportunities, increasing demand for hydro power and other low carbon products, as well as markets for the potential trading of carbon credits and offsets.

What We Found

Manitoba accounts for about 3% of Canada's total greenhouse gas emissions. Manitoba has responded positively to climate change by consulting stakeholders, creating a climate change action plan, and setting a short-term target for reducing emissions that is consistent with Canada's Kyoto commitment of reducing its greenhouse gases to 6% below the 1990 level. It has put in place over 70 different climate change initiatives. Most of the individual project selection and funding decisions we examined were adequately supported with sound data and analysis. There is a system to track government-wide expected and actual emission reductions for approved projects. And the Department has been working to improve its monitoring and status reporting.

While Manitoba's management of climate change is evolving, the 2008 action plan in place at the time of our audit is not expected to achieve the target level of emissions for 2012 of 17.5 megatonnes (6% below the 1990 level). In April 2010, the Department forecast a gap of 2.7 megatonnes in meeting the target. It has subsequently been re-evaluating the plan, seeking options to narrow the gap, and now needs to formally update the 2008 plan. Working with partner departments, the Department also needs to further refine planning, project management, and reporting processes. In particular, it requires:

- comprehensive analysis of the benefits, risks and costs of alternative approaches and tools;
- "business as usual" forecasting of greenhouse gas emissions;
- alignment of climate change action plans with the budget process;
- clarification of roles and responsibilities of lead and partner departments, as well as Cabinet sub-committees;
- better identification and management of risks related to reducing both emissions and adverse climate change impacts;
- a method of calculating emissions for public reporting purposes; and
- a system to track climate change spending and the economic and social outcomes associated with climate change projects.

Our findings are further summarized below.

Planning

In 2008, Manitoba responded to climate change by creating a climate change action plan, *Beyond Kyoto*, and enacting *The Climate Change and Emissions Reductions Act* (the Act). Building on an earlier 2002 plan, the 2008 plan and Act set a target of reducing Manitoba's greenhouse gas emissions to 6% below the 1990 level (to 17.5 megatonnes) by 2012. The plan also committed to a reduction of "over 3.25 megatonnes" by this date in order to achieve the target. However, by April 2010, the Department had determined that the plan would likely reduce emissions by only 1.7 megatonnes and forecast a 2.7 megatonne gap in meeting the 2012 target. In June 2010, the Department was considering options for closing this gap.

To successfully achieve its climate change objectives, the Department needs to ensure that updated climate change plans are supported by:

- a documented, coordinated and comprehensive analysis of the benefits, risks and costs of alternative approaches and tools;
- longer-term targets (although not a requirement of the Act), as well as a short-term target;
- estimated costs;

- completed development of “business as usual” forecasts that model Manitoba’s greenhouse gas emissions growth in the absence of planned reduction initiatives; and
- a vulnerability assessment documenting the likely future impacts of climate change on government services, programs and resources.

Project Management

The Department managed the horizontal nature of the climate change initiative, initially through an inter-departmental committee of Deputy Ministers, and then through one-on-one meetings with departmental staff and officials. However, it could make greater use of standard project management practices. To manage its climate change initiative successfully, the Department needs to:

- clarify roles and responsibilities of the lead and partner departments, as well as how the lead department is to liaise with Cabinet sub-committees (such as the Community Economic Development Committee and Treasury Board);
- manage risk more effectively;
- ensure all greenhouse gas reduction estimates are based on sound data and reviewed for consistency with the emissions accounting standards and practices used by Environment Canada in compiling its annual National Inventory Report on Greenhouse Gas Sources and Sinks;
- establish regular progress reporting on whether the climate change initiative is on time, on budget, and going to accomplish its stated goals; and
- develop best case, most likely case, and worst case forecasts of expected emission reductions as part of progress reporting.

Project Selection and Funding

Most project selection and funding decisions were adequately supported with sound data and analysis. When selecting most projects, consideration was given to costs, likely greenhouse gas emission reductions, and related economic and social outcomes. However:

- in a limited number of cases, decisions were made with only brief project descriptions and minimal supporting data;
- in some cases, analysis was not sufficiently focused on expected environmental, economic or social outcomes; and
- information used for decision-making could be further improved by assessing the likelihood of identified risks and their potential impact on expected outcomes.

In one case, \$3 million of Manitoba's \$53.8 million share of federal eco-trust funding was retroactively paid to partially reimburse a financially distressed company for its 2001 investment in equipment to reduce its coal use. The Province viewed this payment as supporting an early adopter in sustaining its greenhouse gas reduction efforts. There was no written agreement between the federal government and Manitoba specifying how Manitoba's share of the federal eco-trust fund was to be used.

Reporting

The Department has developed a government-wide system to track expected and actual climate change emission reductions for approved projects. In addition, Treasury Board Secretariat is tracking climate change spending for climate change projects funded through the federal eco-trust, as well as some secondary outcomes for those projects that are also part of a "Budgeting for Outcomes" pilot project. However, there is no government-wide system to track all climate change spending and related economic and social outcomes (such as the number of jobs created, the non-Provincial funding leveraged, and the number of low-income housing units retro-fitted) as a result of climate change projects.

The Department needs to determine how it will respond to existing challenges in measuring and reporting on Manitoba's greenhouse gas emissions to determine progress in reducing emissions. Challenges include:

- determining the method of calculating emissions for public reporting purposes;
- obtaining annual emissions data within the Act's 12 month timeframe for reporting; and
- complying with the Act's requirement for "expert consultation" in determining a method of calculating emissions.

The Department also needs to develop the capacity and systems for modeling and reporting on emission reductions likely to be achieved by 2020 and 2025, as required by the Act.

2.0 Background

Climate change: Climate change refers to the change in long-term weather patterns over decades and centuries, not day-to-day weather changes. Most governments accept the findings of the Intergovernmental Panel on Climate Change that the earth's climate is warming; that much of this change is being caused by human activities; and that climate change effects will worsen if action is not taken, posing a significant risk to the environment, the economy, and human health. On this basis, the majority of governments, including Manitoba, have agreed on the need to respond to climate change.

Climate change impacts: Climate change may affect Manitoba in various ways. There may be impacts on crop growing seasons; wildlife and fishery habitats; subsistence, commercial and recreational fishing; pests and insects; water supply and quality; winter roads, northern rail, and other infrastructure; and the frequency and severity of droughts, wildfires and flooding. This may in turn impact government programs and services, as well as government resources. However, while climate change presents several challenges, it also presents economic opportunities. There will be increased demand for hydro power and other low carbon products, as well as markets for the potential trading of carbon credits and offsets.

Climate change also involves uncertainty. The impacts of climate change could be more or less serious than most scientists currently project. This means that governments, including Manitoba, need to balance the risks of doing too much or too little, recognizing both may have significant environmental and economic consequences. As well, climate change research is on-going and methods for forecasting greenhouse gas (GHG) emissions and calculating and verifying GHG emissions and reductions continue to evolve as more is learned.

Manitoba's emission profile: Figure 1 shows Manitoba's 2008 GHG emissions compared to the other provinces and territories. Manitoba's total emissions were 21.9 megatonnes (1 megatonne equals 1 million tonnes), or about 520,000 tonnes per \$1 billion dollars of Manitoba's Gross Domestic Product (the value of all goods and services made in a year). Manitoba accounts for about 3% of Canada's total GHG emissions, and Canada accounts for about 1.5% of the world's total emissions.

Figure 1

Manitoba accounts for about 3% of Canada's emissions

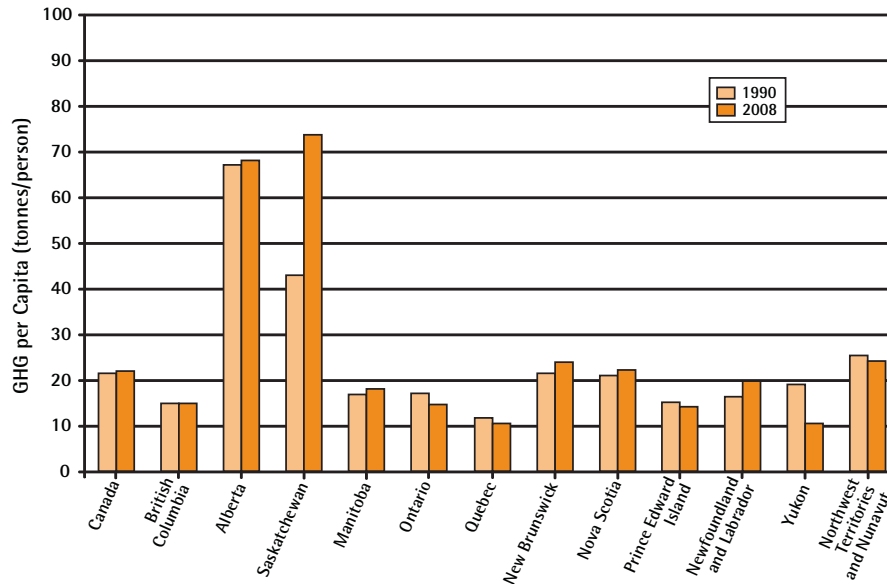
Province/Territory	2008 GHG Emissions (megatonnes)	Percentage of Canada's Emissions
Alberta	244.0	33%
Ontario	190.0	26%
Quebec	82.0	11%
Saskatchewan	75.0	10%
British Columbia	65.1	9%
Manitoba	21.9	3%
Nova Scotia	20.9	3%
New Brunswick	18.0	3%
Newfoundland and Labrador	10.1	1%
Northwest Territories and Nunavut	1.8	-
Yukon	0.4	-
Unallocated	4.8	1%
Total Emissions for Canada	734.0	100%

Source: Environment Canada's 2008 National Inventory Report on Greenhouse Gas Sources and Sinks in Canada (most recent National Inventory Report at June 2010).

Figure 2 shows Manitoba's per capita emissions in both 1990 and 2008 compared to Canada and the other provinces and territories. On a per capita basis, each Manitoban contributed on average about 18.1 tonnes of emissions in 2008 compared to 16.8 tonnes in 1990, an increase of 7.7%. In contrast, per capita emissions for all of Canada only grew 2.8% during this same period, from 21.4 tonnes to 22.0 tonnes.

Figure 2

Manitoba's per capita emissions were 7.7% higher in 2008 than in 1990



Source: Environment Canada's National Inventory Reports on Greenhouse Gas Sources and Sinks in Canada.

Figure 3 shows the sources of Manitoba's 2008 GHG emissions. About 68% of Manitoba's emissions come from the agriculture and transportation sectors. Agriculture emissions result from livestock digestive processes, manure management, and fertilizer use. Manitoba's transportation emissions are mostly from road transportation, primarily from light-duty cars and trucks, as well as heavy-duty diesel vehicles. Because of Manitoba's hydro resources, it does not have the same level of emissions from fossil fuels as many other provinces.

Figure 3

Most Manitoba emissions are from the agriculture and transportation sectors

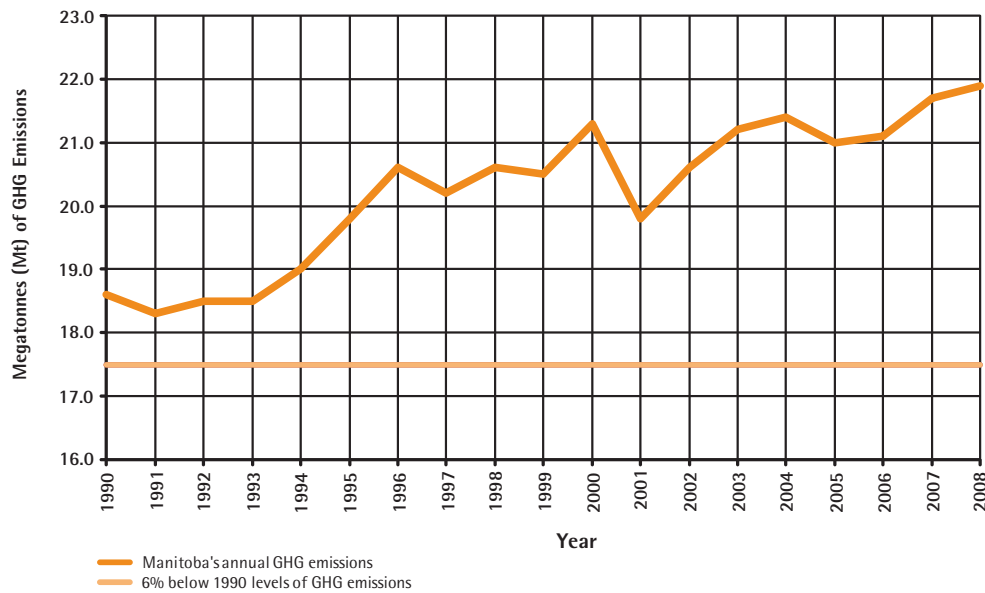
Source	2008 GHG Emissions (megatonnes)	Percentage
Agriculture	7.60	35%
Transportation	7.31	33%
Stationary Combustion (energy production for other than transportation)	4.78	22%
Waste	0.86	4%
Fugitive Sources	0.70	3%
Industrial Processes	0.65	3%
Total	21.90	100%

Source: Environment Canada's 2008 National Inventory Report on Greenhouse Gas Sources and Sinks in Canada.

Figure 4 shows the trend in Manitoba's total emissions since 1990. Manitoba's emissions in 2008 were 17.6% higher than in 1990. The increase was due to growth in the road transportation sector (31%) and the agriculture sector (44%), offset by reductions in the residential, commercial, and institutional energy sectors.

Figure 4

Manitoba's emissions were 17.6% higher in 2008 than in 1990



Source: Environment Canada's National Inventory Reports on Greenhouse Gas Sources and Sinks in Canada.

Environment Canada's National Inventory Report on Greenhouse Gas Sources and Sinks in Canada notes that, as a result of its economic structure and hydroelectric resources, Manitoba has the lowest percentage (at 58.4%) of emissions from the energy sectors (transportation, stationary combustion, and fugitive sources combined) of any province or territory in Canada and the highest percentage (at 34.7%) of emissions from the agriculture sector.

Using Statistics Canada data, a Departmental report noted that while Canada experienced a 6.5% increase in total annual light-duty vehicle kilometres travelled between 1996 and 2006, over the same period Manitoba experienced an increase of 27%, the highest among all Canadian provinces. And, during this period, the proportion of Canadians commuting to work by personal vehicle decreased by 1.3%, but in Winnipeg the proportion increased by 1.4%, the largest increase among the 35 metropolitan areas surveyed.

Manitoba's Climate Change Action Plan: Manitoba released its most recent Climate Change Action Plan, *Beyond Kyoto*, in April 2008. Building on the climate change plan released in 2002, the 2008 Plan inventoried in detail all existing Provincial programs related to climate change and listed several intended next steps. It also set a target, legislated one month later, of reducing Manitoba's GHG emissions to 6% below its 1990 level (to 17.5 megatonnes or less) by December 31, 2012 and committed to a reduction of "over 3.25 megatonnes" by that date.

While the Plan identified approximately 70 different initiatives and future actions, the Department's supporting documents showed that 80% of the 3.25 megatonne reduction was to come from just 12 major initiatives totalling 2,609,081 tonnes, as shown in Figure 5.

Figure 5

A dozen major initiatives accounted for 80% of initial planned GHG reductions

Project Description	Planned GHG Emission Reduction by 2012 (tonnes)
Ethanol mandate requiring a minimum percentage of ethanol to be blended in gasoline	400,554
Manitoba Hydro reduced use of coal-powered Brandon generating station	300,000
Manitoba Sustainable Agriculture Practices Program	300,000
New federal regulatory framework capping emissions for large emitters	288,926
Other coal reduction initiatives	273,000
Climate Friendly Woodlot Practices Program for agriculture producers	261,000
Biodiesel mandate requiring a minimum percentage of biodiesel to be blended in diesel fuel	229,675
New vehicle fuel efficiency standards	118,926
Manitoba Hydro Power Smart programs for natural gas energy reduction	118,000
Landfill gas capture	117,000
New heat pump technology	110,000
Increased uptake of geothermal systems	92,000
Total	2,609,081

Source: Manitoba's 2008 Climate Change Action Plan and Department of Conservation records.

Other planned initiatives, while important, had less measurable or smaller expected GHG reductions by 2012. These included initiatives raising public awareness, funding and fostering research, adapting to climate change, demonstrating government leadership, and expanding green energy exports.

Climate Change Legislation: *The Climate Change and Emissions Reductions Act* (the Act) was passed in June 2008. The stated purpose of the Act is “to address climate change, to encourage and assist Manitobans in reducing emissions, to set targets for reducing emissions and to promote sustainable economic development and energy security”. The Act sets a legislated target of reducing Manitoba’s GHG emissions to 6% below the 1990 level by 2012. Only one other province (Quebec) has a similarly aggressive short-term target, which is not legislated. The Act also requires periodic public reporting on Manitoba’s progress in responding to climate change. Manitoba must issue its first public report, on climate change progress to 2010, by December 31, 2011.

Lead Department and Partners: While originally the Department of Innovation, Energy and Mines was the lead department for the climate change initiative, this role was transferred to the Department of Conservation following a government reorganization in November 2009. The people in the Department of Innovation, Energy and Mines responsible for coordinating the initiative were transferred to the Department of Conservation as part of the reorganization. References in this audit report to the “Department” are to the lead department at the time.

Climate change partner departments are those with individual climate change projects or initiatives contributing to Manitoba’s Climate Change Action Plan, including the lead department. Partner departments are:

- Aboriginal and Northern Affairs;
- Agriculture, Food and Rural Initiatives;
- Entrepreneurship, Training and Trade;
- Conservation;
- Housing and Community Development;
- Finance;
- Infrastructure and Transportation;
- Innovation, Energy and Mines;
- Labour and Immigration;
- Local Government; and
- Water Stewardship.

Manitoba Hydro, a Provincial Crown Corporation, is also an important contributor. Manitoba’s climate change plan expects Manitoba Hydro to produce a significant share of the GHG emission reductions through reduced use of its coal-powered generating station in Brandon, continued promotion of its Power Smart initiatives (which promote energy conservation to residential, commercial and industrial customers), and further development of hydro, wind and geothermal initiatives.

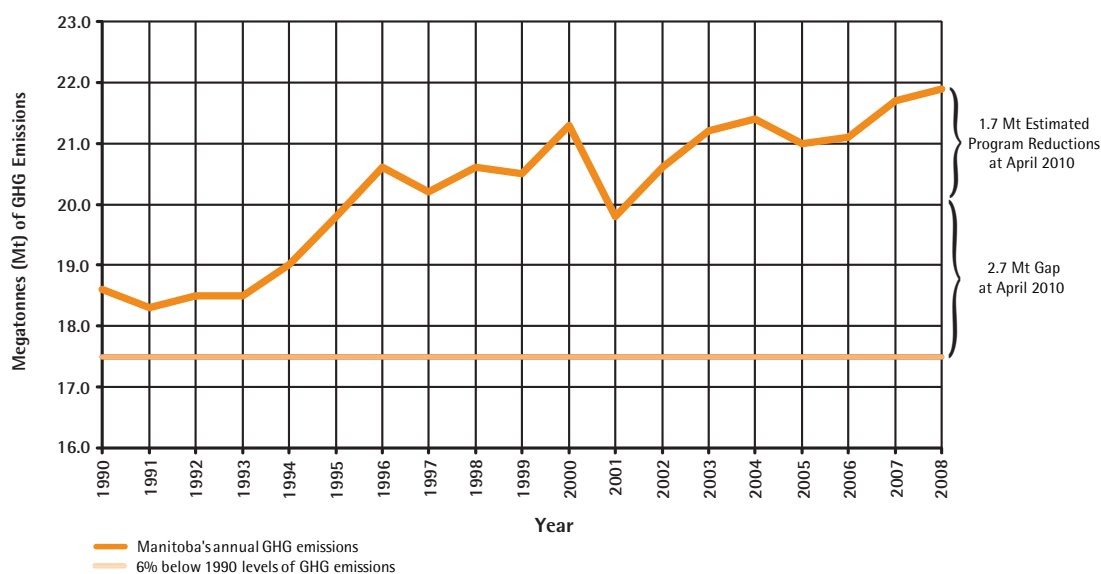
Progress to date: In the fall of 2009, the Department recognized that the emission reductions expected to result from its 2008 Action Plan would be 1.7 megatonnes rather than “over 3.25 megatonnes”. The explanation for the decrease

was that initial estimates were too high, actions weren't being implemented as originally envisioned, and program participation rates were lower than originally anticipated.

In April 2010, Environment Canada released its National Inventory Report on 2008 emission levels. The Report showed Manitoba's total emissions had increased to 21.9 megatonnes. The effect on the Department's gap calculation is shown in Figure 6. After taking into account the expected reductions from the 2008 Action Plan, there was a gap of 2.7 megatonnes (assuming no further growth in Manitoba's emissions), 61% of the 4.4 megatonne reduction required to meet the 2012 target.

Figure 6

Manitoba identified a significant expected gap in meeting its target



Source: Environment Canada's National Inventory Reports on Greenhouse Gas Sources and Sinks in Canada and Department of Conservation documents.

3.0 Audit Approach

Audit Objective

We examined the adequacy of the management framework supporting Manitoba's climate change initiative. This included the systems and practices in place in the lead (Department of Conservation) and partner departments for:

- planning;
- project management;
- project selection and funding; and
- reporting.

Audit Scope

We conducted the audit between November 2008 and June 2010 and examined management processes related to the climate change initiative in place between April 1, 2007 and April 30, 2010. Our audit was performed in accordance with the value-for-money audit standards recommended by the Canadian Institute of Chartered Accountants and, accordingly, included such tests and other procedures as we considered necessary in the circumstances.

The audit included review and analysis of applicable legislation, policies and practices, management information systems, files, records, plans, reports, correspondence and other documentation, as well as discussions and interviews with staff from the Department of Conservation and other climate change partner departments. We also reviewed climate change plans and reports from selected other provinces. Our audit team received assistance from an external consultant with climate change expertise.

4.0 Detailed Audit Findings and Recommendations

4.1 Planning

4.1.1 Stakeholder input to the Action Plan was sought

The Department created the 2008 Climate Change Action Plan following consultation with a variety of stakeholders representing the agriculture, transportation, municipal, and business sectors, as well as representatives from aboriginal and northern communities, non-government organizations, and academic institutions. Consultation primarily occurred through a series of round-table workshops held in September and October of 2007. Plan development also considered earlier stakeholder consultations conducted by the 2001 Climate Change Task Force, as well as consultations held when Manitoba developed an earlier Climate Change Plan in 2002.

4.1.2 The Action Plan was developed based on informal assessment of policy options and tools

Various approaches can be taken to reduce GHG emissions. These approaches might be used to alter human behaviour, the physical properties of emission sources, or both. For example, reducing GHG emissions from personal transportation might involve initiatives designed to alter the number of vehicle kilometres travelled by individuals, driver choice of vehicle, driver speed and idling behaviour, vehicle fuel efficiency, the carbon intensity of the fuel, or a mix of some or all of these.

There are also various tools that can be used to implement the approaches selected. These include, but are not limited to, regulations and standards, taxation policies, subsidization, public awareness and education initiatives, financial incentives, and investment in research and development.

In-depth analysis of a variety of different approaches and tools ensures that policy choices are based on sound data and adequate consideration of the associated benefits, risks, and costs.

The 2008 Climate Change Action Plan was developed by considering Provincial programs already in place and an informal and undocumented assessment of a variety of policy options and tools. In addition, departmental officials told us that government departments and stakeholders were consulted on various options for reducing GHG emissions. However, there was not a more comprehensive, coordinated and strategic investigation of different approaches and tools in order

to arrive at the desired mix for reducing each sector's and Manitoba's overall emissions.

Recommendation

1. We recommend that the Department of Conservation support development of updated climate change action plans with documented, coordinated and comprehensive analysis of the benefits, risks, and costs of alternative approaches and tools.

4.1.3 A short-term target was set, but longer-term targets and plans have not yet been developed

The 2008 Climate Change Plan has a short-term target: total emissions are to be 6% below the 1990 level – at 17.5 megatonnes or lower by 2012. Departmental officials told us that Manitoba deliberately chose to adopt an aggressive short-term target, as opposed to a less aggressive short-term target and a more aggressive longer-term target. But adequate strategic planning for climate change requires on-going planning beyond the short-term 2012 target, whether or not the longer-term targets are publicly declared or legislated. Unlike most other jurisdictions, Manitoba has not set a longer-term target, either publicly or more informally, beyond its commitment to reducing its emissions to 17.5 megatonnes by 2012.

The Act requires all climate change progress reports (to be issued for 2010, 2012, and every fourth year thereafter) to report on the future emission reductions likely to be achieved by 2020 and 2025. It would be useful to compare these expected reductions to targets to assess if progress is satisfactory.

Recommendation

2. We recommend that the Department of Conservation set longer-term climate change targets when developing updated climate change action plans.

4.1.4 Some Action Plan funding was identified, but the total cost of the Plan was not estimated

The Province did not calculate the expected total cost of the projects and programs outlined in the 2008 Climate Change Action Plan or establish an overall budget for the climate change initiative.

In April 2008, the Province publicly announced a \$145 million commitment to help implement the Plan, to be spent between then and December 31, 2012. However, this did not represent the likely total cost of all the Provincial projects identified

under the Action Plan umbrella for the four and a half years ending December 31, 2012. The Department's estimates showed that just the planned ethanol industry incentives alone would be \$110.5 million from 2008 to 2012 (and \$149.5 million in total for 2008 – 2015, the timeframe of the incentive program).

Proper planning includes ensuring adequate resources will be available to accomplish the desired outcome within the desired timeframe. To that end, the resources required for the initiatives, programs, and projects outlined in the 2008 Action Plan should have been identified and an appropriate budget established. At a minimum, we expected the Province to have calculated the cost of the 12 major initiatives expected to account for 80% of its planned GHG reductions.

Recommendation

3. We recommend that the Department of Conservation calculate the estimated total cost of updated climate change action plans and integrate climate change planning with the budget process.

4.1.5 A “Business as Usual” emissions forecast was under development

The Action Plan focused on reductions from Manitoba's last known level of emissions at the time the Plan was created, which was the 20.3 megatonnes reported in Environment Canada's National Inventory Report for 2005. (In later years, Environment Canada revised the emissions level for 2005 to the 21.0 megatonnes shown in **Figure 4**.) Departmental officials did not initially attempt to model how Manitoba's GHG emissions were likely to grow by 2012 in the absence of current and future planned initiatives to reduce emissions. This type of modelling is known as “Business as Usual” (BAU) forecasting.

The initial lack of a Provincial BAU forecast contrasted with the good practice expectations the Province placed on municipalities. To obtain climate change funding from its Community Led Emissions Reduction Program, the Department of Local Government required participant municipalities to follow a framework adopted by the Federation of Canadian Municipalities, which included establishing a baseline GHG inventory and forecasting emissions using a BAU scenario.

BAU forecasting lessens the risk that planned GHG reduction initiatives may be insufficient to meet the target. All other provinces we examined (Quebec, Ontario, British Columbia, Nova Scotia, New Brunswick) performed this modeling in developing their climate change plans. Ontario also had an external expert provide an assurance opinion on its BAU forecast, as well as its emission reduction forecast. The opinion stated that the forecasts were fairly stated in accordance with best practices in GHG emissions forecasting, as well as best practices in evaluating GHG mitigation programs.

In 2006, Natural Resources Canada prepared a document entitled “Canada’s Energy Outlook”. It estimated Manitoba’s GHG emissions would grow to 23.3 megatonnes by 2010 and 24.1 megatonnes by 2015 (using as a baseline the 2004 GHG emissions level reported by Environment Canada in its National Inventory Report).

In December 2008, consultants with climate change expertise prepared a paper for the Department modelling the different carbon price levels required to meet differing GHG emission reduction targets. The consultants used a BAU forecast of 21.6 megatonnes of emissions for 2012. They noted this was less of an increase than had been forecast by Natural Resources Canada, primarily because of differing assumptions about the penetration of new technologies and oil prices.

In early 2010, recognizing the need to consider BAU growth, the Department estimated growth in commercial trucking, private vehicle use, and housing starts between 2007 (the most recent year for which Environment Canada emissions data was available) and 2012 would increase GHG emissions by 100,000 tonnes and that contraction in certain agricultural and industry sectors would reduce GHG emissions by 135,000 tonnes. In June 2010, Department officials told us they were working with consultants and the Manitoba Bureau of Statistics on a more accurate BAU forecast.

Recommendation

4. We recommend that the Department of Conservation develop and periodically revise “business as usual” greenhouse gas emissions forecasts for Manitoba. These forecasts should be prepared on a basis consistent with best practices in greenhouse gas emissions forecasting and be used to periodically update climate change plans.

4.1.6 Adaptation planning was under development

In climate change literature, reducing GHG emissions is referred to as “mitigation”, while adjusting natural and human systems to minimize climate change impacts is referred to as “adaptation”.

Manitoba officials are aware that climate change will impact winter roads, northern rail and other infrastructure, wildlife and fishery habitats, wildfires, the magnitude and frequency of drought and other severe weather events, crop growing seasons, pest infestations, plant breed requirements, and water supply and quality.

Manitoba’s Climate Change Action Plan included a limited number of adaptation initiatives (such as re-locating winter roads, polar bear research and investigating use of airships to transport goods to northern regions). But the main focus was on GHG reduction initiatives.

In March 2009, the Province and consultants with climate change expertise hosted a Manitoba Adaptation Day workshop that brought together Manitoba-based academics and departmental personnel to discuss adaptation activities, research, and capacity in the context of a proposed Manitoba Climate Research Table. As well, Manitoba is a member of the Prairie Regional Adaptation Collaborative, a partnership with Canada, Alberta, and Saskatchewan, mandated to pursue climate change impacts and adaptation research in the Prairie Provinces. In addition, Manitoba is starting to incorporate adaptation planning in its Provincial land use policies; wildlife monitoring; investments in forest-fire fighting equipment; and plans related to watershed management, emergency preparedness, floodway expansion, and northern roads. And the Department of Agriculture, Food and Rural Initiatives is in the preliminary stages of adaptation planning, collaborating with other prairie provinces, the federal government, and the northern central states of the United States.

Some provinces are creating separate adaptation plans, apart from their plans for reducing emissions. Manitoba does not yet have a climate change adaptation plan. It also has not yet conducted a detailed government-wide vulnerability assessment that considers the likely future impacts of climate change on government programs and services, as well as on government resources. This would be the first step in developing a Provincial adaptation plan.

Recommendation

5. We recommend that the Department of Conservation, together with partner departments, assess and document the likely impacts of climate change on government services, programs, and resources.

4.1.7 The 2008 Action Plan was being updated to close the identified gap in meeting the target

Following the identification of the projected gap in meeting the 2012 target, the lead and partner Departments worked together to gather ideas for additional reductions. As well, the Department obtained advice from consultants with climate change expertise. As of June 2010, meetings with partner departments were on-going and proposals were still being discussed and considered by Cabinet. The Department told us it was revising and updating the Plan following these consultations.

Recommendation

6. We recommend that the Department of Conservation, together with partner departments, complete the updating of Manitoba's Climate Change Action Plan.

4.2 Project Management

The Department initially made limited use of standard project management practices, such as:

- documenting roles and responsibilities;
- identifying, assessing and mitigating risks; and
- establishing regular progress reporting as to whether the project was on time, on budget, and going to accomplish its stated goal.

As the climate change initiative has evolved, the Department has begun adopting aspects of standard project management practices. It is identifying some risks and tracking progress in achieving GHG reductions through periodic one-on-one meetings with partner departments. However, greater use of standard project management practices would significantly strengthen the management framework for climate change.

4.2.1 Roles and responsibilities need further clarification

Although the Department of Conservation is the “lead” department, its role is not completely clear. Appointment of a lead department recognizes the need for overall coordination and management of a project requiring several government departments and officials to work together to reduce Manitoba’s emissions to 6% below its 1990 level by 2012. However, this lead role is blurred because the Department has shared responsibility with other partner departments for tracking progress, reaching the target, implementation planning, policy and program development, and communication.

Treasury Board (a sub-committee of Cabinet responsible for the Province’s overall fiscal management and reporting) makes recommendations to Cabinet for all project selection and funding decisions concerning the climate change initiative. As required, Treasury Board is supported by advice from the Community Economic Development Committee (a sub-committee of Cabinet responsible for initiating and coordinating community and economic development activity across government).

Initially, the Department shared responsibility for the management required across departments with an interdepartmental committee known as the Deputy Ministers Green Initiatives Committee (DMGIC). The DMGIC was jointly chaired by the Deputy Minister of the lead Department, the Clerk of the Executive Council (Cabinet), and the Secretary to the Community Economic Development Committee. Deputy Ministers and senior staff represented each partner department. As set out in the September 2008 minutes, the DMGIC was to *“help to ensure Manitoba’s GHG reduction commitments, regulatory requirements and reporting deadlines are met”*; it was to *“become a critical forum to keep actions on track”*; and it was

to “meet on a monthly basis to go through individual items on a department by department basis”. However, the DMGIC only met 6 times before the meetings were discontinued in the early fall of 2009.

Lines of accountability are blurred by the existing state of shared and therefore somewhat uncertain roles and responsibilities of the lead department, partner departments, and Cabinet sub-committees. It is not completely clear how the lead department is to work with and coordinate the actions of all the various partner departments, or how it is to liaise with Cabinet sub-committees.

The Department of Conservation needs to work with partner departments, the Community Economic Development Committee and Treasury Board to identify the accountability each has in meeting Manitoba’s 2012 greenhouse gas emission reduction target and other climate change goals, and to identify any gaps in their respective roles and responsibilities.

Recommendation

7. We recommend that the Province more clearly define the role of the lead department and other partners.

4.2.2 Risk management requires improvement

Effective risk management helps identify risks, assesses both their likelihood and impact, and facilitates the development of risk mitigation strategies. Proactive and structured risk management ultimately increases the probability of project success.

The Department did not initially coordinate risk identification with partner departments, assess the likelihood and impact of those risks, and then facilitate development of risk mitigation strategies. We noted one jurisdiction enabled and coordinated its climate change risk management by using a standard template with the following risk categories:

- economic (related to the economy);
- government approval/decision-making delays;
- delivery/project completion delays;
- market adoption delays;
- external decision-making delays; and
- other external factors (for example, weather risks).

If the Department had identified risks of this nature early in its planning process, it may have been better prepared for the gap identified in the fall of 2009, or identified the likelihood of the gap sooner. Manitoba’s 2008 Action Plan had a relatively high level of inherent risk since it was relying significantly on:

- future actions of the federal government (such as the development of a new-vehicle fuel efficiency standard and a regulatory framework capping emissions for large emitters);
- uncertain ethanol and biodiesel mandates because negotiations and capacity assessments were not yet concluded; and
- relatively quick adoption of new technologies (such as geothermal and air source heat pump technology).

The Department noted that Canada had signed the Kyoto Protocol in 1998 and formally ratified it in 2002. Departmental officials told us that Manitoba had therefore reasonably expected the federal government to implement a comprehensive national plan supporting provincial efforts toward achieving the GHG reduction targets ratified through the Protocol.

The Department did not rigorously challenge initial estimated GHG emission reductions and their underlying assumptions as part of its risk management. Nor did it require any sensitivity analysis around underlying key assumptions to identify the potential GHG reductions at risk if key assumptions were to be altered or proved incorrect. As a result, when original estimated reductions for several of the more significant initiatives were updated, the gap between the revised expected emission reductions and the target was significant: 1.7 megatonnes versus the “over 3.25 megatonnes” originally expected, a decrease of approximately 50%. **Figure 7** shows the most significant changes to GHG reduction estimates, which accounted for approximately 70% of the 1,550,000 tonne decrease in expected reductions.

Figure 7

There were significant revisions to original GHG reduction estimates

Fall 2009 Changes in GHG Reduction Estimates Accounting for 70% of the Decrease in Expected Reductions			
Climate Change Initiative	Original GHG Reduction Estimate (tonnes)	Revised GHG Reduction Estimate (tonnes)	Decrease in Reduction Estimate (tonnes)
Biofuel initiatives (ethanol and biodiesel)	630,229	398,000	232,229
Large emitter reductions	288,926	nil	288,926
Other coal reduction (biomass) initiatives	273,000	117,600	155,400
New vehicle fuel efficiency standard	118,926	nil	118,926
Air source heat pump technology initiative	110,000	nil	110,000
Manitoba Hydro coal-powered generating station phase-down	300,000	204,000	96,000
Geothermal uptake initiatives	92,000	4,800	87,200
Total	1,813,081	724,400	1,088,681

Source: Department of Conservation status report documents.

In addition, there continues to be a relatively high level of inherent risk in counting on GHG emission reductions from reduced use of Manitoba Hydro's coal-powered generating station. The Act and associated regulation concerning the plant shut-down allow Manitoba Hydro to run the coal-powered generating station if required for "emergency operations". This means expected GHG reductions may not occur if Manitoba experiences serious drought conditions in 2012 and the coal-powered generating station is needed to meet Manitoba's demand for electricity.

Starting in fall 2009, the Department began recording risk information gathered through one-on-one meetings with partner departments. Most projects had an assigned overall risk rating (high, medium or low), but the underlying risks were often not clearly stated and had to be inferred from the narrative information provided. It was also unclear if the risk rating related to the likelihood of the risks occurring, the likely impact of the risks, or some combination of the two. In addition, the effects of the risks on expected GHG emission reductions were not estimated and it was unclear whether proposed risk mitigation strategies would fully or only partially mitigate the risks identified.

Recommendation

8. We recommend that the Department of Conservation, together with partner departments, implement a formal risk management process for the climate change project. This process should identify risks, assess each risk's likelihood and impact (including the greenhouse gas reduction impact), and develop risk mitigation strategies.

4.2.3 Progress monitoring and reporting require strengthening

Initially, the Department monitored progress by having each partner department enter detailed information into templates embedded in specialized software purchased to assist with climate change monitoring. For each of the approximately 70 different climate change initiatives outlined in the Climate Change Action Plan, this information was to include:

- a description of the project;
- the expected GHG emission reductions; and
- updates on the status of the project, including use of different coloured flags to indicate if the project was on track or had issues requiring resolution.

However, departments did not populate the templates on a timely basis. Several projects in the database lacked GHG emission reduction targets and meaningful descriptions of their current status; some projects had contradictory status flags attached; and expected and actual project costs were not being tracked.

In the spring of 2009, the Department's Deputy Minister and key staff began meeting one-on-one with other partner department Deputy Ministers and key staff to assess GHG reduction progress. This series of meetings identified the likely gap in meeting the GHG reduction target. Another round of these one-on-one meetings took place in the fall of 2009 and Department officials told us they intend to continue these ad hoc meetings as required.

The Department did not develop a critical path or establish key milestones. Nor did it establish monitoring priorities or place any particular focus on the larger and more significant projects that were most critical if Manitoba was going to successfully reach its stated goal of reducing emissions to 6% below the 1990 level by 2012.

The Department initially double-counted some expected GHG reduction estimates. Estimates for several smaller energy-saving initiatives overlapped with the Power Smart estimate and estimates for some smaller agriculture projects overlapped the Manitoba Sustainable Agriculture Practices Program estimate.

Officials from the Department of Agriculture, Food and Rural Initiatives told us that, in total, about 80% of Manitoba's planned GHG reductions in the agriculture sector would not lower the reported total of Manitoba's GHG emissions in Environment Canada's National Inventory Report. These reductions were to come primarily from 2 programs: the Climate Friendly Woodlot Practices Program and the Manitoba Sustainable Agriculture Practices Program.

About 90% of the GHG reductions for the Climate Friendly Woodlot Practices Program reflected the future emissions to be prevented by encouraging producers to maintain existing healthy woodlots; only about 10% reflected incremental reductions from current woodlot emissions.

As well, officials told us the National Inventory methodology and calculations were not currently precise enough to reflect about 75% of the expected GHG reductions from the beneficial farm management practices encouraged through incentives available through the Manitoba Sustainable Agriculture Practices Program. (At the time of our audit, Environment Canada reported certain land use, land-use change, and forestry emissions and removals in its National Inventory Report, but did not include them in provincial totals). This was not reflected in the Department of Conservation's calculation of the expected gap in meeting the 2012 target or well-communicated and highlighted for decision-makers.

Monitoring progress against the stated target requires a clear understanding of the GHG emissions methodology and calculations used to determine Manitoba's reported emissions in Environment Canada's National Inventory Report. However, the Department initially lacked an experienced GHG emissions analyst. In April 2010, two years after the release of the Climate Change Action Plan, a list of tasks for the analyst, which were not yet started, included:

- developing a template for departments to report quarterly on emission reductions from their programs and to allow review of calculations for potential inaccuracies;
- noting GHG emission and reduction calculation methodology issues impacting Manitoba;
- developing a “business as usual” emissions forecast;
- analyzing Manitoba’s current and future emissions profile and preparing comparisons with other jurisdictions; and
- developing options for more accurate GHG emission reporting than currently available from Environment Canada.

By June 30, 2010, the GHG emissions analyst was in place and had analyzed Manitoba’s current emissions profile, started a list of calculation and methodology issues related to the National Inventory Report to be discussed with Environment Canada, and begun working on a “business as usual” forecast. The Department decided to continue monitoring expected emission reductions through one-on-one meetings with partner departments, as opposed to developing a template for partner department use.

As noted in section 4.2.2, starting in the fall of 2009, information gathered by the Department through one-on-one meetings with partner departments included some information about risks. However, the Department did not use this information to develop best-case, most-likely-case, and worst-case forecasts of expected emission reductions. The Department monitored progress by periodically calculating and reporting a single estimate of expected emission reductions.

As noted in section 4.1.4, establishing a budget for the climate change initiative would help ensure adequate resources are available to achieve desired outcomes within the desired timeframe. Monitoring actual spending and comparing it to the planned budget would then become part of regular progress monitoring and reporting.

Recommendation

9. We recommend that the Department of Conservation work with climate change partner departments to establish regular progress reporting on whether the climate change project is on time, on budget, and going to achieve its stated goals.
10. We recommend that the Department of Conservation work with climate change partner departments to ensure all greenhouse gas reduction estimates are based on sound data and reviewed for consistency with National Inventory accounting standards and practices.

11. We recommend that the Department of Conservation develop best-case, most-likely-case, and worst-case forecasts when monitoring and reporting progress in reducing greenhouse gas emissions.

4.2.4 Climate change effects were appropriately considered in government decision-making

Governments inevitably must make some trade-offs between economic and environmental concerns when setting policy; however, this should be done with full awareness of those trade-offs. One of the over 70 climate change initiatives outlined in the Climate Change Action Plan was to ensure consideration of climate change and GHG impacts in government decision-making. We selected 2 programs where we were aware of GHG impacts that should have been flagged and assessed to determine the extent to which this “green filter” had been implemented.

In the first case, the Province increased the speed limit on certain stretches of highway from 100 to 110 kilometres per hour. The Department of Infrastructure and Transportation analyzed and calculated the expected increase in GHG emissions associated with increasing the speed limit. The increase was considered in the decision-making process, together with the benefits associated with the change in speed limit.

The second case concerned the creation of CentrePort Canada, an inland port in Winnipeg expected to bring significant economic benefits to Manitoba. The Department of Infrastructure and Transportation analyzed and calculated the expected GHG impact associated with proposed traffic flows and infrastructure. The impact was considered in the decision-making process, together with a variety of other factors.

4.3 Project Selection and Funding

Climate change projects were selected and funded through various mechanisms. Some were selected and funded through a “Budgeting for Outcomes” (BFO) pilot project, which considered and ranked several different project proposals at the same time. Others were selected and funded individually. Some received funding from Manitoba’s \$53.8 million share of federal eco-trust funds; others were funded through the Province’s usual annual Estimates Process. A small number of climate change initiatives were a regular part of on-going business operations. These included the Province’s policy of providing 50% of the funding required for net public transit operating costs in municipalities and Manitoba Hydro’s funding of Power Smart energy conservation programs.

We examined the data and analysis supporting decision-making for projects funded through the BFO process, and for other significant (\$3 million or

more) climate change projects that were not part of regular on-going business operations. The non-BFO projects included a coal reduction program, Manitoba's ethanol and biodiesel mandates, a CO₂ (carbon dioxide) enhanced oil recovery project, and Manitoba's hybrid vehicle rebate program.

4.3.1 Data and analysis supporting most "Budgeting for Outcomes" project decisions were adequate, but could be further enhanced

With the administrative assistance of Treasury Board Secretariat, Treasury Board piloted the use of a "Budgeting for Outcomes" (BFO) process to support most federal eco-trust allocations to departmental climate change projects. "Budgeting for outcomes" principles were developed by a government consulting firm in Minnesota and have been used in a number of different jurisdictions (at the state, county and city levels) in the United States. As described in Treasury Board Secretariat documents, *"this approach starts with a stated outcome desired by government and an allocation of funds, and then uses an internal proposal-call process to seek the best offers from departments to achieve that outcome."*

Treasury Board formally approved a primary outcome for the BFO project, as well as 2 secondary desired outcomes. The primary desired outcome had 2 components: transitioning to a low carbon economy and reaching the GHG reduction goal by 2012. The secondary desired outcomes were to provide additional economic benefits and reduce poverty. Treasury Board Secretariat officials told us the intended allocation of BFO funds was \$40 million (of the \$53.8 million of eco-trust funds received from the federal government) over 4 years. They also told us the intended GHG emission reduction associated with the \$53.8 million of eco-trust funds was about 1 million tonnes and that BFO was intended to provide the largest reduction possible with the \$40 million of funding.

Treasury Board Secretariat used an interdepartmental Outcomes Team to examine and rank proposed climate change projects, as well as an interdepartmental Steering Committee to review the work of the Outcomes Team before recommendations went to Treasury Board. The departments and the Outcomes Team both received support from an external consultant with climate change expertise, as well as a Provincial staff person with climate change experience.

Departments submitted project proposals that were ranked and scored by the BFO Outcomes Team to determine 2008/09 funding. Project proposals required the following information:

- nature of the project;
- target/client group to be affected;
- degree of innovation;
- estimated GHG emission reductions;
- intended process for measuring reductions;

- other intended positive outcomes (such as job creation) and the intended process for measuring these outcomes;
- partners;
- project pricing (cost/tonne);
- timelines; and
- risks.

Departments were inconsistent in the degree of detail they supplied in each of these areas. Some provided detailed assumptions to support their estimated GHG reductions; others provided only a few broad assumptions or no assumptions. Some merely listed expected project partners, while others provided details of the additional dollars to be leveraged for their projects through the partnerships. Some proposals claimed economic benefits (such as job creation), but most of these did not supply an estimate of the size of the benefit expected (such as the number of jobs expected to be created).

In some cases, departments could not supply greater detail because their planning was not yet advanced to a sufficiently detailed stage. Treasury Board Secretariat officials followed-up with departments and obtained any additional information, particularly concerning estimated GHG reductions, that departments could provide after the deadline date but before final ranking took place and project funding recommendations were made.

Although departments were asked what risks could potentially impact implementation of their initiatives, they were not asked to assess the likelihood and impact of these risks or to suggest potential mitigation strategies. Risks listed by departments included:

- availability of staff and financial resources;
- economic factors;
- uncertain participation rates; and
- adverse weather conditions.

The external expert and the Provincial staff person with climate change experience both reviewed the GHG reduction estimates provided by departments to ensure they were reasonable.

Figure 8 shows the scoring criteria the Outcomes Team used to rank BFO climate change project proposals and determine if 2008/09 initial funding would be recommended. This scoring reflected the multiple desired outcomes; therefore, only 31% of the points were for reducing GHG emissions.

Figure 8

31% of the points used to rank proposals were for reducing GHG emissions

Scoring Criteria for Ranking BFO Climate Change Project Proposals	Points	%
Previous commitment by government	10	15%
Achieving the outcome (GHG reduction target of 6% below 1990 levels by 2012): <ul style="list-style-type: none"> Is the GHG emission reduction to 2012 and beyond 2012 stated? It is clear how it will be measured and reported? Are indicators of success stated and relevant? 	20	31%
Project pricing: <ul style="list-style-type: none"> Are initial and subsequent year costs stated? Is it cost effective in terms of cost/tonne? 	10	16%
Achieving the outcome (transitioning to a green economy): <ul style="list-style-type: none"> Is it clear how it will be measured and reported on? Are the indicators of success stated and relevant? 	8	13%
Innovation	6	9%
Leveraged funding from other governments or third parties: <ul style="list-style-type: none"> Does it divert existing funding from lower to higher value strategies? Does it show contributions of partners whenever possible? 	5	8%
Discretionary points: <ul style="list-style-type: none"> Secondary factors include: alternative fuels, reduced fossil fuels, greener technology, consumer conservation, innovation, poverty reduction, additional economic benefits, adaptation 	5	8%
Maximum points	64	100%

Source: Treasury Board Secretariat documents.

Treasury Board Secretariat invited departments with projects initially supported with eco-trust funding to submit progress reports for continued BFO funding. This included a group of projects initially allocated eco-trust funds before the BFO ranking process. The information provided for decision-making for these projects was much less detailed than that provided for the original BFO projects. At the time, there were no standard criteria used to evaluate these projects and the majority had no information on expected GHG reductions.

Recommendations to Treasury Board on continued BFO funding for 2009/10 were based on Secretariat review of submitted progress reports, as well as review of updated departmental GHG reduction estimates by the external expert and Provincial staff person with climate change experience. This process resulted in some revisions to GHG reduction estimates to further refine calculations and assumptions about project participation rates.

Expected secondary economic and social benefits were not reviewed in the same detailed manner as expected GHG reductions. Although the original scoring awarded points for these secondary outcomes (such as the jobs expected to be

created, the funding expected to be leveraged from project partners, and the number of low income homes to be renovated), only progress related to low income home renovations was tracked.

Recommendations to Treasury Board on continued BFO funding for 2010/11 were based on a re-scoring of the projects by the Outcomes Team. In addition, the Team modified the evaluation process by adjusting expected GHG reductions by low, medium or high risk factors. The Team also used amended scoring criteria that:

- eliminated points previously awarded for prior commitments;
- combined and increased points for achieving the outcome of transitioning to a green economy and reducing GHG emissions (from 44% to 46%);
- increased points for project pricing from 16% to 18%;
- increased points for innovation from 9% to 18%; and
- increased points for both leveraging funding and provision of secondary benefits from 8% to 9%.

A table listing all Manitoba climate change projects funded through the federal eco-trust (including BFO projects) is in **Appendix A**. For each project, the table shows the costs incurred to March 31, 2010; funding commitment for 2010/11 (if any); and the planned annual GHG reductions by 2012.

Recommendation

12. We recommend that Treasury Board Secretariat work with climate change partner departments to continue improving the data and analysis used in selecting and funding climate change projects through allocations from the federal eco-trust.

4.3.2 Manitoba used \$3 million of the federal eco-trust funds to partly reimburse a company for reducing its emissions in 2001

In 2008, eco-trust funds of \$3 million were paid to a newsprint mill to partly offset its 2001 investment of \$125 million in a Thermo Mechanical Pulping Unit that had reduced the mill's coal use, and therefore its GHG emissions, by about 50%. To provide this funding, the Department of Innovation, Energy and Mines created a Coal Reduction Program with a retroactive large reduction component that did not apply to any Manitoba companies other than this mill.

The business case for this funding was built primarily on economic reasons as the funding was not going to be used to help Manitoba meet its climate change goal by further reducing GHG emissions. The funding was in response to concerns over the pending closure of the plant due to on-going operating losses. The Department reported the mill employed 350 people directly and another 184 people had contracts for woodland operations. The mill closed despite the \$3 million Provincial investment.

The Province viewed this funding as supporting an early adopter in sustaining its GHG reduction efforts and consistent with a Provincial commitment to significantly reduce coal consumption by helping coal users transition to cleaner fuel sources. It also noted that the eco-trust funding was intended to allow the provinces and territories the flexibility to invest in projects relating to reducing air pollutant and GHG emissions according to their respective needs and priorities.

There was no written agreement between the federal government and Manitoba specifying how Manitoba's \$54 million share of the federal eco-trust fund was to be used. However, a joint federal/provincial news release in March 2007 announcing the transfer of funds to Manitoba stated the funding was intended to support Manitoba's climate change action plans and help Manitoba reduce its GHG emissions.

4.3.3 Adequate data and analysis supported Manitoba's bio-fuel project decisions

Beginning January 1, 2008, Manitoba required all Manitoba fuel suppliers to blend a percentage of ethanol into their gasoline: 5% for the first quarter of 2008 and 8.5% thereafter. The ethanol initiative provides ethanol producers with an 8-year production incentive grant of 20-cents-per-litre for the first 2 years, 15 cents for the next 3 years, and 10 cents for the last 3 years. The Department of Innovation, Energy and Mines has estimated the total production grant will be \$149.5 million over the 8 year mandate, based on expected production of 130 million litres of ethanol per year. It also expects an annual GHG reduction of 315,000 tonnes, and that the initiative's feedstock requirement will provide Manitoba farmers with an additional market for 350,000 tonnes of grain, as well as creating 37 direct and 358 indirect jobs. At the time of our audit, there was one licensed ethanol producer in Manitoba.

Beginning November 1, 2009, Manitoba required all Manitoba fuel suppliers to blend 2% biodiesel in their overall sales of diesel fuel. Because biodiesel does not currently perform well at lower temperatures, this can be done using a higher blend than 2% during summer and regular diesel during winter. The biodiesel initiative provides biodiesel producers with a 5-year, 14-cents-per-litre production incentive grant. Manitoba has capped the production grant at \$14 million over the 5-year mandate, based on expected production of 20 million litres of biodiesel per year. The Department of Innovation, Energy and Mines expects an annual GHG reduction of 56,000 tonnes, and that the initiative's feedstock requirement will provide Manitoba farmers with an additional market for 46,000 tonnes of canola, as well as creating up to 40 direct and 380 indirect jobs. At the time of our audit, there were 3 licensed biodiesel producers in Manitoba. The capped production grant is allocated among the 3 plants based upon each plant's proportionate share of the Manitoba market.

Data and analysis provided by the Department of Innovation, Energy and Mines for bio-fuel project decision-making were generally adequate. Although these projects had significant climate change impacts, the business cases supporting them were built on economic as much as environmental considerations. Descriptive information was comprehensive, economic benefits were quantified in terms of the number of direct and indirect jobs expected to be created, and GHG emission reduction estimates were supported by detailed calculations.

4.3.4 Adequate data and analysis supported a CO₂ enhanced oil recovery project

In May 2008, an oil and gas partnership was granted a 28 month Crown oil royalty holiday to partially offset its \$5 million investment in a CO₂ (carbon dioxide) enhanced oil recovery pilot project. CO₂ is being captured from a fertilizer plant and injected into wells to increase oil recovery from the pilot project area. The partnership retains any incremental revenue associated with an increase in oil recovery, as well as the technology knowledge. The company is required to provide the Department of Innovation, Energy and Mines with annual progress reports on the performance of the pilot project. The Department estimated the net cost (foregone revenue) to Manitoba to be \$3.2 million and the GHG reduction to be 5,475 tonnes annually. But the GHG reduction will not be sustained in 2012 unless the project continues beyond its scheduled 2010/11 end date.

The data and analysis provided by the Department of Innovation, Energy and Mines for decision-making were generally adequate. Descriptive information was comprehensive; potential long-term economic benefits were noted, but not estimated because of the potential uncertainty of the project beyond the pilot project period; the holiday complied with *The Oil and Gas Act* and the *Crown Royalty and Incentives Regulation*; and GHG emission reduction estimates were supported by detailed calculations.

4.3.5 Generally adequate data and analysis supported a hybrid vehicle rebate program, but some expected GHG reduction data was lacking

From November 2006 to October 2010, Manitoba provided a rebate of \$2,000 on all new hybrid vehicle purchases. Departmental officials told us that the rebate was originally designed to bridge the cost of hybrid technology and help consumers save on fuel costs; it was not initially designed to reduce GHG emissions. The program was originally scheduled to end November 2008, but was subsequently extended, primarily to match the federal hybrid rebate program which ended in 2009. Several other provinces had similar rebate programs, although, unlike Manitoba, most limited the available rebate to the net provincial sales tax owed after purchase of the new vehicle and any disposal of an older one.

The total cost of Manitoba's hybrid vehicle rebate program to March 31, 2010 was approximately \$3 million.

The data and analysis presented to support decisions made concerning initial program implementation and subsequent extensions noted the increased fuel efficiency associated with most hybrid vehicles. And information presented to assist decision-making for extension of the program included an expected cost/tonne of GHG reduction (which ranged from \$142/tonne to \$235/tonne based on an expected vehicle life of 300,000 kilometres). However, the Department did not determine the expected GHG reduction from the program because it felt the magnitude of the reduction would be small and difficult to quantify, and that its life cycle analysis was more appropriate. Section 4.3.1 previously noted the importance of information on expected GHG reductions when making project selection and funding decisions.

The analysis also noted some non-hybrid vehicles were more fuel-efficient and emitted fewer greenhouse gases than some hybrid vehicles and that an alternative form of rebate program might be preferable. Subsequent information was also presented on the results of an optional customer survey attached to the rebate application forms. While the survey only had a 15% response rate, over 50% of the respondents indicated that they would have purchased either a fuel efficient sub-compact or a hybrid vehicle without the rebate. Various options for alternative programming were presented, although they were not ultimately selected. Section 4.1.2 previously noted the importance of comprehensive analysis of benefits, risks, and costs of alternative approaches.

4.4 Reporting Framework

The Climate Change and Emissions Reductions Act (the Act) requires Manitoba to reduce emissions to 6% below the 1990 level (to 17.5 megatonnes) by 2012. Manitoba is required to report on the climate change progress achieved by the end of 2010, 2012, and every 4 years after that. The reports must:

- assess current and predicted impacts of climate change for Manitoba;
- describe government policies, programs, incentives and measures for reducing emissions and adapting to climate change effects;
- set out, with reference to targets established, the emissions reductions that have been achieved, in Manitoba and in other jurisdictions, as a result of actions taken in Manitoba;
- set out, with reference to any targets established, the future emissions reductions likely to be achieved, in Manitoba and in other jurisdictions, by 2020 and 2025, as a result of actions taken in Manitoba;
- set out the programs and measures implemented to encourage and support others in reducing emissions;

- set out government's efforts to further inter-jurisdictional cooperation in reducing emissions; and
- describe measures taken to achieve emissions reductions in the agriculture and transportation sectors.

In addition, the 2010 report must state whether Manitoba's total emissions are less in 2010 than in 2000.

4.4.1 The Department needs to determine how it will measure Manitoba's GHG emissions to determine progress in reducing emissions

As of April 2010, the Department had not yet decided how it was going to measure Manitoba's GHG emissions for required public reporting purposes. The Act states that *"the Minister may determine the method of calculating emissions and emission offsets for the purpose of quantifying Manitoba's emissions in any given year"*. In practice, a method is required for measurement to take place. The Act further states *"the Minister shall have regard for relevant methodologies and principles that are used in other jurisdictions, including those that participate with Manitoba in regional or international climate change partnerships, and must consult with experts considered knowledgeable about standards for calculating emissions and offsets"*. This ensures the method determined by the Minister will be widely viewed as credible.

The Province used data from Environment Canada's National Inventory Report to report on Manitoba's 1990 baseline level of emissions in the 2008 Climate Change Action Plan. Logically, then, it would continue to measure progress using National Inventory Report data. However, the annual National Inventory Report is released with a 15 month time lag, so the report on Manitoba's 2012 emissions will not be released until the spring of 2014. This makes on-going use of National Inventory data difficult because the Act requires Manitoba to report on the emission reductions that have been achieved in 2010, 2012 and every four years after that *"by December 31 of the year after the year to which the report relates"*.

Environment Canada prepares the National Inventory Report to meet Canada's annual reporting obligations under the United Nations Framework Convention on Climate Change (UNFCC). The Report complies with UNFCC and Kyoto Protocol monitoring, reporting and review guidelines for national inventory reporting. While UNFCC reporting guidelines require only national-level data, Environment Canada supplies provincial-level detail as well. However, since Environment Canada's primary goal is to provide credible national totals, data for an individual province may be less precise than national data.

Environment Canada continues to improve the quality of data and methods used to develop the GHG emission and removal estimates. This causes periodic revision

to previously reported data. For example, Manitoba's emissions total for 2007 of 21.3 megatonnes, first reported in 2009, was revised to 21.7 megatonnes in 2010. Revisions of this nature significantly affect Manitoba's measured progress. The 400,000 tonne increase to Manitoba's 2007 emissions level in 2010 was equal to 12% of Manitoba's originally planned 3.25 megatonne reduction.

Environment Canada encourages provincial collaboration, but recognizes provinces may choose to develop their own estimates and that these may differ from those presented in the National Inventory Report. British Columbia has developed its own inventory, built largely from the National Inventory, but taking into account afforestation (planting of new forests) and deforestation activities not currently in National Inventory Report provincial totals.

Measuring GHG emissions is not an exact science. The National Inventory Report mostly uses what is sometimes called a "top down" approach, aggregating various statistical data to estimate emissions. A "bottom-up" approach would use site-specific data to determine emission levels.

At the time of our audit, Manitoba did not have its own separate GHG inventory system. But officials from the Department of Agriculture, Food and Rural Initiatives told us that, in consultation with Conservation, they intended to explore development of their own inventory of agriculture-related GHG emissions. This would allow adjustment for factors not currently reflected in the National Inventory Report, such as the effects of perennial cropping and reduced tillage and summer fallow. Department officials told us they were consulting with various experts in exploring development of this separate inventory: scientists working on the National Inventory Report and for Agriculture and Agri-Food Canada, academics, and external consultants.

A separate Manitoba inventory system would need to retroactively calculate the 1990 agriculture emissions baseline, as well as a 2012 agriculture emissions total. Otherwise, any comparison between the two years would not be valid.

As of June 2010, several organizations (such as the International Organization for Standardization and the International Auditing and Assurance Standards Board) had developed standards or were developing standards for providing verification assurance on GHG emissions and reductions. Conservation and partner departments did not have any plans to obtain any verification assurance for their emission reductions.

Recommendation

13. We recommend that the Minister of Conservation determine the method that will be used to calculate greenhouse gas emissions for reporting purposes under *The Climate Change and Emissions Reductions Act*.

4.4.2 The Department needs a system to report on future emission reductions likely to be achieved in Manitoba by 2020 and 2025

The Act requires each progress report, (including the 2010 progress report, which must be tabled by December 31, 2011) to report on the future GHG emission reductions likely to be achieved by 2020 and 2025. As at April 2010, the Department had not yet planned how it would meet this reporting requirement or communicated the requirement to its partner departments.

Recommendation

14. We recommend that the Department of Conservation develop the capacity and systems required to model and report on emission reductions likely to be achieved for 2020 and 2025, as required by *The Climate Change and Emissions Reductions Act*.

4.4.3 There was a government-wide system to track climate change emission reductions for approved projects, but not climate change spending or economic and social outcomes

Both the Department and Treasury Board Secretariat were tracking expected GHG reductions. Conservation was tracking reductions for all climate change projects, while Treasury Board Secretariat was tracking reductions only for BFO projects. Treasury Board Secretariat had a process and some staff resources with GHG experience in place to annually review expected reductions; the Department acquired similar GHG experience in April 2010. Both periodically reviewed and updated estimated GHG reductions to reflect the effects of project delays, revised participation rates, weather delays, changed assumptions, double-counting of the same emission reductions in more than one project, and approval of less funding than originally anticipated. Although there was not any process in place to ensure the estimated reductions in the dual tracking systems matched, we did not find any material differences between the two systems.

The Department was not tracking government-wide climate change spending. Department officials saw no need for this tracking as they had no plans to report on climate change spending in future public reports on climate change progress. In April 2010, Treasury Board Secretariat enhanced its processes for collecting BFO and eco-trust spending information, which reflected only a portion of total climate change spending.

The Department was not tracking secondary outcomes for climate change projects (economic and social benefits, such as the number of jobs created, the number of low-income housing units renovated to be more energy-efficient, and the non-Provincial dollars leveraged). Treasury Board Secretariat was tracking only

the number of low-income housing units renovated. This was despite the fact that approval of many climate change projects was at least partly based on these expected secondary outcomes.

Ideally, public reporting on climate change progress should disclose not just greenhouse gas emission reductions, but also the cost to the public purse of achieving those reductions and any other related economic and social outcomes realized. This information would also provide better data for future decisions concerning the selection of projects.

We noted one jurisdiction was producing an annual report on the projects and programs funded through its \$42.5 million share of federal eco-trust funds. The report disclosed and described the projects being funded, provincial dollars committed, additional non-provincial dollars invested, projected GHG emission reductions, and the anticipated number of jobs to be created. It also disclosed related administration costs.

Recommendation

15. We recommend that the Department of Conservation, together with partner departments, track and publicly report government-wide climate change spending and secondary climate change outcomes (such as economic and social benefits), in addition to the reduction in greenhouse gas emissions achieved.

5.0 Departmental Response and Summary of Recommendations

Manitoba was the first jurisdiction in Canada to adopt Kyoto targets and remains the only province in Canada to have legislated this aggressive short term target. Manitoba has since implemented numerous climate change policies and programs in a concerted effort to meet this goal. As the approach in other jurisdictions around the world has shifted towards less aggressive 2020 targets, Manitoba continues to strive towards significant progress by 2012 and is currently developing an updated plan to support these efforts.

The Department of Conservation thanks the Office of the Auditor General for this report and recommendations. Work to mitigate climate change is complex and these recommendations will assist the Department in more effectively handling these intricacies. The Department accepts the recommendations and has already made progress towards achieving many of them.

Planning

1. We recommend that the Department of Conservation support development of updated climate change action plans with documented, coordinated and comprehensive analysis of the benefits, risks, and costs of alternative approaches and tools.

Departmental Response

The Department of Conservation, together with partner departments, is working to update Manitoba's 2008 climate change action plan. The update is being undertaken in a manner consistent with the above recommendation.

2. We recommend that the Department of Conservation set longer-term climate change targets when developing updated climate change action plans.

Departmental Response

The Department of Conservation agrees that longer-term targets, as well as short and medium-term targets are important to making progress on climate change. The Department will report on future emissions reductions likely to be achieved in 2020 and 2025 as required in The Climate Change and Emissions Reductions Act.

3. We recommend that the Department of Conservation calculate the estimated total cost of updated climate change action plans and integrate climate change planning with the budget process.

Departmental Response

The Department of Conservation agrees with this recommendation and will continue to calculate the total cost of ongoing and future climate change initiatives. The Department will continue to work with Treasury Board Secretariat to integrate climate change planning within the budget process.

4. We recommend that the Department of Conservation develop and periodically revise “business as usual” greenhouse gas emissions forecasts for Manitoba. These forecasts should be prepared on a basis consistent with best practices in greenhouse gas emissions forecasting and be used to periodically update climate change plans.

Departmental Response

The Department of Conservation agrees with this recommendation and is developing the capacity to project business as usual emissions over short to medium terms within an acceptable margin of error. Long-term greenhouse gas emissions projections must be developed within a reasonable margin of error if they are to effectively inform public policy decisions made by government. The Department believes that long-term projections should continue to be modeled by existing federal government agencies, with input from provincial governments.

5. We recommend that the Department of Conservation, together with partner departments, assess and document the likely impacts of climate change on government services, programs, and resources.

Departmental Response

A variety of adaptation measures have been taken across government, for example increased flood protection, improved winter roads, integrated watershed management planning, enhanced emergency preparedness, more forest fire fighting resources and ongoing caribou and polar bear

monitoring. The Department has developed a framework for assessing and documenting current and future climate change impacts across government. Once this assessment has been completed a strategy for implementing best adaptation options, minimizing impacts and maximizing potential future opportunities will be developed. The Department will report on its climate change adaptation activities as required by The Climate Change and Emissions Reductions Act.

6. We recommend that the Department of Conservation, together with partner departments, complete the updating of Manitoba's Climate Change Action Plan.

Departmental Response

As indicated in our response to recommendation (1), the Department of Conservation, together with partner departments, is working to update Manitoba's 2008 climate change action plan.

Project Management

7. We recommend that the Province more clearly define the role of the lead department and other partners.

Departmental Response

As the lead agency for the climate change initiative, the Department of Conservation is responsible for cross-departmental coordination of the government's climate change initiative, ensuring the soundness of policies and measures, implementing a risk management framework, and reporting progress. Partners are responsible for program implementation, measuring effectiveness, risk management, and reporting on progress to the lead department. These roles will be more clearly outlined in future climate change action plans.

8. We recommend that the Department of Conservation, together with partner departments, implement a formal risk management process for the climate change project. This process should identify risks, assess each risk's

likelihood and impact (including the greenhouse gas reduction impact), and develop risk mitigation strategies.

Departmental Response

The Department of Conservation agrees with this recommendation. Since completion of the audit the lead department has implemented a risk management framework that will be formalized within future updated climate change action plans.

9. We recommend that the Department of Conservation work with climate change partner departments to establish regular progress reporting on whether the climate change project is on time, on budget, and going to achieve its stated goals.

Departmental Response

The Department of Conservation agrees with this recommendation and has established a regular process for meeting with partners to report on whether climate change projects will be completed on time, on budget, and will achieve stated objectives.

10. We recommend that the Department of Conservation work with climate change partner departments to ensure all greenhouse gas reduction estimates are based on sound data and reviewed for consistency with National Inventory accounting standards and practices.

Departmental Response

The Department of Conservation will continue to work with partner departments to ensure that greenhouse gas estimates are based on sound data consistent with National Inventory accounting standards and practices. In instances where the National Inventory is not viewed as appropriately reflecting Manitoba's efforts, the Department of Conservation will seek alternate protocols for calculating emission reductions or consult with Environment Canada on refining or adapting methodologies.

11. We recommend that the Department of Conservation develop best-case, most-likely-case, and worst-case forecasts when monitoring and reporting progress in reducing greenhouse gas emissions.

Departmental Response

The Department of Conservation agrees with this recommendation and has included this in its risk management framework.

Project Selection and Funding

12. We recommend that Treasury Board Secretariat work with climate change partner departments to continue improving the data and analysis used in selecting and funding climate change projects through allocations from the federal eco-trust.

Departmental Response

Treasury Board Secretariat agrees with this recommendation and, building upon 2010/11 process improvements, will continue to work with climate change partner departments to improve data and analysis for selecting and funding projects.

Reporting Framework

13. We recommend that the Minister of Conservation determine the method that will be used to calculate greenhouse gas emissions for reporting purposes under *The Climate Change and Emissions Reductions Act*.

Departmental Response

*As referenced in the Department's response to recommendation (10), the Minister of Conservation will continue to comply with all aspects of *The Climate Change and Emissions Reductions Act* when reporting on targets and programs. The first report under the Act is required by December 31, 2011.*

14. We recommend that the Department of Conservation develop the capacity and systems required to model and report on the emission reductions likely to be achieved for 2020 and 2025, as required by *The Climate Change and Emissions Reductions Act*.

Departmental Response

The Department of Conservation agrees with this recommendation and is improving its capacity and systems to model and report on emissions reductions in 2020 and 2025 as required by The Climate Change and Emissions Reductions Act. This is an evolving technical field that will require continued collaboration with other jurisdictions, experts, and the federal government.

15. We recommend that the Department of Conservation, together with partner departments, track and publicly report government-wide climate change spending and secondary climate change outcomes (such as economic and social benefits), in addition to the reduction in greenhouse gas emissions achieved.

Departmental Response

The Department of Conservation will work with partner departments to determine the most appropriate means of reporting on climate change spending and secondary outcomes, in addition to the reduction in greenhouse gas emissions achieved.

Appendices

Appendix A Approved Eco-Trust Projects⁽¹⁾

Projects	Actual Spending to March 31, 2010 (\$000s)			Funding for 2010/11 (\$000s)	Planned Annual GHG Reduction by 2012 (tonnes)
	Eco-Trust Funds	Dep't. Funds	Total		
Hybrid Vehicle Rebate Program	\$ 489	\$ 2,615	\$ 3,104	\$ -	-
Coal Reduction Program	3,000	-	3,000	-	-
Low Income Residential Energy Efficiency Expansion Initiative	1,845	478	2,323	1,000	2,700
Manitoba Sustainable Agriculture Practices Program ⁽²⁾	-	2,144	2,144	1,000	90,000
Tree Planting Initiative - "Trees for Tomorrow"	1,534	-	1,534	1,240	23,500
Eco-energy Audits	1,173	94	1,267	600	14,000
Community Led Emissions Reductions - Municipalities	700	173	873	550	28,000
Testing Support for Biodiesel Mandate	847	-	847	-	-
GHG Reduction Strategy for the Healthcare Sector	-	839	839	-	-
Green Schools Initiative	801	-	801	-	-
Advancing Green Buildings – Codes and Market Mechanisms	800	-	800	-	10,400
Green Registry	697	50	747	-	-
Wetland Restoration	-	743	743	200	3,700
Climate Friendly Woodlot Practices Program ⁽²⁾	-	712	712	400	250,000
Biomass Initiatives and Crop Residue Burning Mitigation	142	532	674	-	-
Community Led Emissions Reductions - Neighbourhoods	357	166	523	250	3,000
Churchill Northern Studies Centre	500	-	500	-	-
Geothermal Incentive Program	486	-	486	250	4,000
Green Trucking Program	-	481	481	250	9,000
Community Wind Monitoring	398	-	398	-	-
Ethanol Transitional Support	387	-	387	-	-
Geothermal Industry Support	328	-	328	-	-
Plug-in Hybrid Electric Vehicles Project	296	-	296	-	-
Pineland Nursery Conversion to Biomass Energy	253	37	290	-	920
Public Awareness	229	1	230	-	-
Heat Pump Demonstration Project	167	-	167	-	-
Landfill Gas Capture	10	73	83	2,600	195,000
Western Canada Grid Initiative Study	75	-	75	-	-
CO ₂ Enhanced Oil Recovery Feasibility Study	70	-	70	-	-
Interactive Education Centre for Geothermal Technology	47	-	47	-	-
Business "Smart Shops"	46	-	46	-	-
GHG Reduction Monitoring and Tracking	25	-	25	-	-
Biodiesel Feasibility Study	4	-	4	-	-

Approved Eco-Trust Projects⁽¹⁾

Appendix A (cont'd.)

Projects	Actual Spending to March 31, 2010 (\$000s)			Funding for 2010/11 (\$000s)	Planned Annual GHG Reduction by 2012 (tonnes)
	Eco-Trust Funds	Dep't. Funds	Total		
Aviation Central Dispatch	-	-	-	-	-
Biomaterials for a Green Economy Demonstration	-	-	-	-	-
Carbon Neutral Government Air Travel	-	-	-	-	-
Geothermal Feasibility Study	-	-	-	-	-
Geothermal Training and Inspecting	-	-	-	-	-
Leaders in Innovation	-	-	-	-	-
Reduction of Diesel Energy in Northern Communities Study	-	-	-	-	-
Vehicle Scrappage Program	-	-	-	225	390
Total	\$15,706	\$9,138	\$24,844	\$8,565	634,610

Source: Treasury Board Secretariat and Department of Conservation documents.

- (1) Approved projects may not be implemented.
- (2) As noted in section 4.2.3, a portion of the planned reductions for these initiatives would not lower the reported total of Manitoba's GHG emissions in Environment Canada's National Inventory Report.

Appendix B The Climate Change and Emissions Reductions Act

The Climate Change and Emissions Reductions Act

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This is an **unofficial version**.
This version is current as of August 3, 2010 and has been in effect since June 12, 2008.
The Act has not been amended.

C.C.S.M. c. C135

The Climate Change and Emissions Reductions Act

(Assented to June 12, 2008)

WHEREAS reducing greenhouse gas emissions is essential for the protection of human health and our environment;

AND WHEREAS actions taken by Manitobans can both reduce greenhouse gas emissions and promote sustainable economic development and energy security;

AND WHEREAS almost all electrical power generated in Manitoba is derived from renewable energy sources, and further reductions in the use of carbon-based fuels will make Manitoba's electrical system among the cleanest on the continent;

AND WHEREAS the federal government is taking actions and may take further actions to reduce greenhouse gas emissions from vehicles, and jurisdictions such as California have also taken actions to reduce emissions;

AND WHEREAS reducing greenhouse gas emissions and adapting to the effects of climate change will require co-operative, complementary and compatible activities across all sectors of the Manitoba economy;

THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

DEFINITIONS

Definitions

1 The following definitions apply in this Act.

"**dealer**" means a person who operates a retail establishment that, in the ordinary course of business, offers new private vehicles for sale or lease in Manitoba. (« concessionnaire »)

"**distributor**" means a person, including a manufacturer, who sells, consigns or delivers new private vehicles to a dealer for sale or lease in the ordinary course of business. (« distributeur »)

"**emissions**" means the release into the atmosphere of greenhouse gases that are attributable to human activity. (« émissions de gaz à effet de serre »)

"**greenhouse gases**" means the following gases:

- (a) carbon dioxide;
- (b) methane;
- (c) nitrous oxide;
- (d) hydrofluorocarbons;
- (e) perfluorocarbons;
- (f) sulphur hexafluoride;
- (g) a prescribed gas. (« gaz à effet de serre »)

"**minister**" means the minister appointed by the Lieutenant Governor in Council to administer this Act. (« ministre »)

"**new private vehicles**" means new passenger vehicles and light-duty trucks sold or leased in Manitoba. (« véhicules particuliers neufs »)

"**prescribed**" means prescribed by regulation under this Act.

PURPOSE

Purpose

2 The purpose of this Act is to address climate change, to encourage and assist Manitobans in reducing emissions, to set targets for reducing emissions and to promote sustainable economic development and energy security.

The Climate Change and Emissions Reductions Act

TARGETS AND PROGRAMS

Initial target

3(1) The initial emissions reduction target for Manitoba is to reduce Manitoba's emissions by December 31, 2012, to an amount that is at least 6% less than Manitoba's total 1990 emissions.

Additional emissions reduction targets

3(2) The Lieutenant Governor in Council may make regulations establishing further emissions reduction targets beyond 2012, including different reduction targets for different greenhouse gases.

Calculating emissions and offsets

3(3) The minister may determine the method of calculating emissions and emissions offsets for the purpose of quantifying Manitoba's emissions in any given year.

Considerations re making determinations

3(4) In making a determination under subsection (3), the minister shall have regard for relevant methodologies and principles that are used in other jurisdictions, including those that participate with Manitoba in regional or international climate change partnerships, and must consult with experts considered knowledgeable about standards for calculating emissions and offsets.

Programs and agreements to combat climate change

4 To assist in meeting the emissions reduction targets established under section 3 and in adapting to the effects of climate change, the minister may

- (a) establish or participate in programs and other measures to reduce emissions; and
- (b) enter into agreements to establish targets and to undertake co-operative, complementary or compatible activities
 - (i) with a person,
 - (ii) with representatives of different sectors of the Manitoba economy, or
 - (iii) if the Lieutenant Governor in Council approves, with the Government of Canada or of another province or a territory, or with an agency of any of them, or with the government of another jurisdiction.

REPORTING

Report on climate change

5(1) For 2010, 2012 and every fourth year after 2012, the minister must prepare a report that

- (a) assesses the current and predicted impacts of climate change for Manitoba; and
- (b) describes the government's policies, programs, incentives and measures for assisting Manitobans and others to reduce emissions and adapt to the effects of climate change.

Report re emissions reductions

5(2) The minister's report must also set out, with reference to the emissions reduction targets established under section 3,

- (a) the emissions reductions that have been achieved, in Manitoba and in other jurisdictions, as a result of actions taken in Manitoba;
- (b) the future emissions reductions that are likely to be achieved, in Manitoba and in other jurisdictions, by 2020 and 2025, as a result of actions taken in Manitoba;
- (c) the programs and measures implemented by the government to encourage and support the activities of others in reducing emissions; and
- (d) the government's efforts to further interjurisdictional co-operation in reducing emissions.

Additional requirement: 2010 report

5(3) In the 2010 report, the minister must state whether Manitoba's total emissions are less in 2010 than what they were in 2000.

Agriculture and transportation sectors

5(4) A report under this section must include a description of the measures that have been taken to achieve emissions reductions in the agricultural and transportation sectors of the Manitoba economy.

The Climate Change and Emissions Reductions Act

The Climate Change and Emissions Reductions Act

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Timing of reports

5(5) A report under this section must be completed by December 31 of the year after the year to which the report relates.

Report tabled in Assembly

5(6) The minister must table a copy of the report before the Legislative Assembly within 15 days after it is completed if the Assembly is sitting or, if it is not, within 15 days after the beginning of the next sitting.

GOVERNMENT INITIATIVES

Registry

Registry for emissions credits

6(1) The Lieutenant Governor in Council may make regulations designating a public registry for the purpose of enabling persons, businesses and other entities to voluntarily register

- (a) the amount of their emissions;
- (b) the amount of emissions reductions they have achieved; and
- (c) emissions offsets they have obtained.

Regulations

6(2) A regulation made under this section may include provisions respecting the operation and management of the public registry, and the description and nature of emissions reductions and offsets.

7 and 8 Not yet proclaimed.

Building construction standards

9(1) The minister responsible for *The Buildings and Mobile Homes Act* must make recommendations to Executive Council about establishing building construction standards respecting the energy and water efficiency of buildings, for implementation in 2010.

Consultations by the minister

9(2) In developing recommendations under subsection (1), the minister must work in conjunction with The Building Standards Board and may seek the advice of other relevant experts.

Residential furnace and boiler efficiency standards

10 The minister responsible for *The Energy Act* must make recommendations to Executive Council about establishing energy efficiency standards for residential furnaces and boilers, for implementation in 2009.

11 and 12 Not yet proclaimed.

Vehicle Standards — New Private Vehicles

Vehicle standards advisory board

13(1) The minister must appoint a vehicle standards advisory board for new private vehicles.

Mandate

13(2) By January 31, 2009, the advisory board must make recommendations to the minister for achieving

- (a) the most cost-effective efficiency improvements and emissions reductions that are feasible for new private vehicles in each year from 2010 to 2016 inclusive; and
- (b) further feasible and cost-effective efficiency improvements and emissions reductions for new private vehicles in 2017 and afterwards.

Considerations by advisory board

13(3) In carrying out its mandate, the advisory board must consider recommending targets, programs and measures to significantly increase

- (a) the proportion of new private vehicles that use low-emissions technologies; and
- (b) the proportion of new private vehicles that are high-efficiency private vehicles.

The Climate Change and Emissions Reductions Act

Methodology

13(4) In formulating its recommendations, the advisory board must consider using the methodology used by the California Air Resources Board in establishing vehicle emission standards for the State of California.

Membership

13(5) In appointing the members of the advisory board, the minister must seek to include

- (a) representatives of distributors and dealers;
- (b) representatives of consumers;
- (c) persons the minister considers to be knowledgeable about sustainable transportation policies and programs; and
- (d) persons the minister considers to be knowledgeable about standards for vehicle emissions and efficiency that have been adopted in other jurisdictions.

Implementing advisory board's recommendations

14(1) After the minister has received the recommendations of the vehicle standards advisory board, the Lieutenant Governor in Council may make regulations

- (a) governing the method of determining the efficiency of, and emissions from, new private vehicles;
- (b) establishing efficiency standards, emissions standards, or both, for new private vehicles or a class of new private vehicles;
- (c) prescribing a minimum proportion of new private vehicles distributed by a distributor or sold or leased by a dealer, in a year, that must
 - (i) meet or exceed a prescribed efficiency or emissions standard,
 - (ii) use low-emitting technologies, or
 - (iii) be high-efficiency vehicles.

Regulations may differentiate

14(2) A regulation under this section may establish classes of distributors, dealers and new private vehicles, and may provide differently for different classes.

Mitigating Landfill Emissions

Plan to mitigate landfill emissions

15(1) Every owner or operator of a prescribed landfill must submit to the minister

- (a) an assessment of the potential for mitigating emissions that may be generated at the landfill;
- (b) a proposed plan for monitoring those emissions and for controlling, collecting or using them before they are released into the atmosphere, both during operation of the landfill and after it is closed, to be implemented by December 31, 2010; and
- (c) any other information and material the minister may request about emissions that may be generated at the landfill.

Approval of proposed plan

15(2) The minister may

- (a) approve or reject a proposed plan for mitigating landfill emissions as submitted; or
- (b) refer a proposed plan back to the owner or operator with any directions the minister considers appropriate.

Action when plan is referred back

15(3) A proposed plan that is referred back to an owner or operator must be resubmitted as directed by the minister, and when it is resubmitted, subsection (2) applies.

Plan to be implemented before 2011

15(4) By December 31, 2010, or any later date permitted by the minister, an owner or operator of a prescribed landfill must implement its proposed plan, as approved by the minister, for mitigating emissions generated at the landfill.

Government assistance

The Climate Change and Emissions Reductions Act

The Climate Change and Emissions Reductions Act

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15(5) The government's estimates of expenditure for a fiscal year beginning after this section comes into force must include, as a sum to be voted for grants to the owners or operators of prescribed landfills, an amount that may be used to assist them with the capital funding needed to implement the plans as approved by the minister.

INITIATIVES RELATED TO MANITOBA HYDRO

Coal phase-out

16 Despite any provision of *The Manitoba Hydro Act*, after December 31, 2009, Manitoba Hydro must not use coal to generate power, except to support emergency operations.

Off-grid communities

17(1) No later than one year after this Act comes into force or any further period that the minister may permit, Manitoba Hydro must provide the minister with a report containing recommendations for reducing or eliminating the use of petroleum-based diesel fuel to supply power in the following communities by 2012:

- (a) the First Nations communities of Brochet, Lac Brochet, Shamattawa and Tadoule Lake;
- (b) the community of Brochet.

Consultations required

17(2) In preparing the report, Manitoba Hydro must

- (a) consult with the band councils of the First Nations mentioned in clause (1)(a) and the council of the community of Brochet;
- (b) seek input from the relevant federal authorities; and
- (c) determine the costs, and the potential sources of funds, necessary to implement the recommendations.

Tabling of report

17(3) The minister must table a copy of the report before the Legislative Assembly within 15 days after receiving it if the Assembly is sitting or, if it is not, within 15 days after the beginning of the next sitting.

Definition of "power"

18 In sections 16 and 17, "power" has the same meaning as in *The Manitoba Hydro Act*.

ADVISORY COMMITTEES

Advisory committees

19(1) The minister may appoint one or more advisory committees to provide advice and recommendations to him or her about any matter relating to the purpose of this Act.

Public consultation

19(2) The minister may direct an advisory committee to carry out public consultation before providing advice and recommendations.

Terms of reference

19(3) The minister may determine the terms of reference and the procedures of an advisory committee.

REGULATIONS

Regulations

20(1) The Lieutenant Governor in Council may make regulations

- (a) prescribing as a greenhouse gas a gas that, in the opinion of the Lieutenant Governor in Council, can reasonably be anticipated to cause or contribute to climate change;
- (b) governing fuel efficiency standards for vehicles or classes of vehicles acquired for use by the government;
- (c) for the purpose of section 15 (mitigating landfill emissions), prescribing landfills that, in the opinion of the Lieutenant Governor in Council, are significant sources of emissions;
- (d) governing requirements for reporting and recordkeeping for any purpose related to this Act;

The Climate Change and Emissions Reductions Act

- (e) governing methods and procedures for conducting sampling, analyses, tests, measurements, verification and monitoring for any purpose related to this Act;
- (f) respecting the use of economic and financial instruments and market-based approaches directed to reduce emissions or achieve an emissions reduction target established under this Act;
- (g) defining a word or expression used but not defined in this Act;
- (h) respecting any matter that the Lieutenant Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

Incorporation by reference

20(2) A regulation under this Act may adopt by reference, with any changes the Lieutenant Governor in Council considers appropriate, all or part of a code, rule or standard made by a governmental authority or by any other body, and the code, rule or standard may be adopted as amended from time to time.

21 to 25 **NOTE: These sections contained consequential and related amendments to other Acts.**

C.C.S.M. REFERENCE AND COMING INTO FORCE

C.C.S.M. reference

26 This Act may be referred to as chapter C135 of the *Continuing Consolidation of the Statutes of Manitoba*.

Coming into force — royal assent

27(1) Subject to subsection (2), this Act comes into force on the day it receives royal assent.

Coming into force — proclamation

27(2) Sections 7, 8, 11, 12, 21 and 23 come into force on a day to be fixed by proclamation.

Entrepreneurship, Training and Trade

Chapter 2: Economic Development: Loans and Investments under *The Development Corporation Act*

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Appendix

Loans and Investments under Part II of *The Development Corporation Act* at
March 31, 2009

Web Version

1.0 Main Points

What We Examined

The Department of Entrepreneurship, Training and Trade (ETT) administers loans and equity investments made under Part II of *The Development Corporation Act* (the Act), two economic development programs in Manitoba's broader economic development strategy. Most Part II loans are Manitoba Industrial Opportunities Program (MIOP) business loans. Equity investments are in venture capital funds.

We examined the due diligence used in approving, disbursing and monitoring loans and investments, as well as related performance measurement and public reporting.

Why It Matters

At March 31, 2009, loans and equity investments under these two economic development programs totaled \$107 million (MIOP loans - \$75 million, other Part II loans - \$11 million, venture capital fund investments - \$21 million). Economic development programs are used by the federal and all provincial governments to provide and leverage business capital, create and maintain jobs, improve wage and skill levels, attract new employers, help employers become more competitive, and promote economic growth and diversification.

What We Found

The two programs have stimulated economic development in Manitoba and most systems and practices were adequate. There remains room for improvement in planning, analyzing investment requests, monitoring, and ensuring that performance reporting is accurate and focused on actual economic benefits to Manitoba. Our summary of key findings follows.

MIOP Loans

Planning: Senior officials describe the loan portfolio as response-oriented, designed to selectively respond to economic risks and opportunities as they arise, with risk tolerance dependent on the expected economic benefits. ETT has developed lending criteria which it applies flexibly in making lending decisions. ETT needs to more clearly communicate this flexibility in publicly available information.

Analysis of Requests: ETT analyzes loan requests by reviewing applicants' business plans and financial information, loan security, and management expertise. However, ETT needs to obtain more complete business plan information

and scrutinize financial projections and economic benefits to Manitoba more thoroughly when analyzing loan applications. Before disbursing loans, ETT ensures all loan terms and conditions have been met.

Monitoring: ETT monitors loans adequately through receipt and review of audited and other financial information, site visits, security confirmations, and audits to verify the number of jobs created or maintained. In some cases it needs to receive more timely information from borrowers. It also needs to improve its documentation of monitoring activities.

Loan Pricing: ETT needs to develop guidelines for setting interest rates, penalties for failing to meet agreed upon job targets, and administration fees. Currently, ETT sets these on a case-by-case basis using professional judgement, without documenting a supporting rationale.

Venture Capital Fund Investments

Planning: ETT considers requests for Provincial investment in venture capital funds as they arise. ETT has negotiated a variety of different agreement terms encouraging, but not requiring, funds to invest a portion of their capital in Manitoba-based businesses. ETT has not recently formally assessed how successfully its venture capital fund strategy is contributing to the Province's economic development goals.

Analysis of Requests: When analyzing a request to invest in a venture capital fund, ETT considers each fund's expected rate of return and the fund manager's expertise and experience. It should also consider the capital likely to be invested in Manitoba, the number of Manitoba businesses likely to benefit, and the number of jobs likely to be created or maintained in Manitoba. As well, ETT needs to more consistently review and document fund managers' past returns and specific knowledge of Manitoba businesses and target industry sectors.

Monitoring: ETT appropriately monitors individual fund performance. It also is generally aware that it has multiple exposures to some individual companies through its various fund investments, but should calculate and monitor its total exposure to any one company on a more regular basis. And ETT needs to ensure that conflicts-of-interest, both in placing investments and operating the funds, are identified and responded to.

Performance Measurement and Reporting

Performance measurement and reporting were in place, but improvements are required to ensure that results reported are accurate and focused on actual economic benefits to Manitoba.

2.0 Background

The federal and all provincial governments use economic development programs to provide and leverage business capital, create and maintain jobs, improve wage and skill levels, attract new employers, help employers become more competitive, and promote economic growth and diversification.

The loans and equity investments made under Part II of *The Development Corporation Act* (the Act) are two important economic development programs in Manitoba's broader economic development strategy. At March 2009, these totaled \$107 million [Manitoba Industrial Opportunities Program (MIOP) loans - \$75 million, other Part II loans - \$11 million, venture capital fund investments - \$21 million]. There were also \$36 million of approved commitments (MIOP loans - \$26 million, venture capital fund investments - \$10 million) not yet disbursed.

Manitoba Development Corporation and the Act: The Manitoba Development Corporation (MDC) lends and invests as the Province's agent under Part II of the Act, meaning all lending and investing activities are done at the direction of the Province. The Province provides all the financing for Part II initiatives and ultimately bears all the costs, including exposure to changes in fair market value, credit risk, and interest rate fluctuations. MDC operations are administered by the Financial Services Branch of the Department of Entrepreneurship, Training and Trade (ETT). Part I of the Act allows MDC to initiate its own lending and investing activities, but MDC's operations under Part I were suspended in 1977.

Manitoba Industrial Opportunities Program Loans: Most Part II loans are MIOP loans, although other types of loans may be made. MIOP's objective is *"to secure significant Manitoba investments which would not occur without MIOP loan assistance"*. ETT's 2008/09 Supplementary Expenditure Estimates further described MIOP as providing *"highly flexible loans to support businesses that are expanding in Manitoba and that provide significant job creation or strategic economic development benefits to Manitoba"*. In 2009/10, the budget for new MIOP loans tripled to \$185 million to ensure Manitoba companies continued to have sufficient access to credit after the global economic downturn in 2008.

From MIOP's beginning in 1988 to March 31, 2009, MDC made 117 loans totaling \$249 million to Manitoba-based companies. Loan write-offs during this time were \$28 million, or 11% of loans disbursed. Most of these write-offs (\$26 million) related to loans made between 1988 and 1999. The Legislature approves MIOP loan authority through an annual vote of *The Loan Act*.

At March 31, 2009, the MIOP loan portfolio held by MDC consisted of 19 loans to 17 companies totaling \$75 million. The related allowance for doubtful accounts was \$12 million, or 16% of the loan portfolio.

Other Part II Loans: At March 31, 2009, MDC held an interest-free Part II loan made to the City of Winnipeg of \$11 million, as well as six small loans totaling \$130,000 made to school divisions. The \$11 million loan helped to partially fund the City's contribution to the Canadian Human Rights Museum in Winnipeg and the school division loans fund international education projects.

Part II Equity Investments: At the time of our audit, equity investments were in venture capital funds. ETT documents describe the objectives for the Province's investments in venture capital funds as follows:

- to leverage private-sector growth-capital into Manitoba-based businesses;
- to increase the number of private growth-capital investments for Manitoba-based businesses; and
- to increase the number of Manitoba-resident skilled management teams for placing, managing and exiting private growth capital.

ETT's 2008/09 Supplementary Expenditure Estimates noted these objectives were accomplished by *"investing in pools of privately-managed venture capital"* and *"the pools invest their capital in Manitoba-based business opportunities"*.

From the venture capital fund program's beginning in 1996 to March 31, 2009, MDC invested as a limited partner in six funds, which it still holds. At March 31, 2009, the current value of these investments was \$6 million (original cost of \$21 million less an allowance for decline in investment value of \$10 million and a pro-rata share of partnership losses of \$5 million). The decline in value is a point-in-time estimate calculated for financial statement purposes that may or may not be ultimately realized. Venture capital funds offer potentially higher rates of return in exchange for investments in riskier businesses.

3.0 Audit Approach

3.1 Audit Objectives

We examined ETT's systems and processes to determine if:

1. Roles and responsibilities related to loans and investments made under Part II of the Act were clearly defined and staff had the skills and experience required to administer the programs. (Section 4.0)
2. Sufficient and appropriate due diligence occurred in approving, disbursing, and monitoring MIOP loans (Section 5.0) and venture capital fund investments. (Section 6.0)
3. Program performance was regularly assessed and reported. (Section 7.0)

3.2 Audit Scope

We conducted the audit between November 2008 and November 2009 and examined the loan and investment processes in place between April 1, 2002 and March 31, 2009. Our emphasis was on program activities in the most recent three years. Our audit was performed in accordance with the value-for-money audit standards recommended by the Canadian Institute of Chartered Accountants and, accordingly, included such tests and other procedures as we considered necessary in the circumstances.

The audit included review and analysis of applicable legislation, policies and practices, files, records, reports, correspondence, and other program documentation, as well as discussion and interviews with staff from ETT and other government departments. We also obtained information on venture capital fund programs in selected other provinces.

4.0 Roles and Responsibilities

4.1.1 All parties had clearly defined roles and responsibilities

Roles and responsibilities for MIOP loans and fund investments were shared by several different parties: the Financial Services Branch of ETT (the Branch), MDC, the Community Economic Development Committee (CEDC), and Treasury Board.

Given the number of parties involved, it was important for individual roles and responsibilities to be clearly defined and understood. The parties defined and carried out their roles as follows:

- The Branch administered both loans and investments for MDC. Branch staff:
 - handled public communication for both programs;
 - reviewed and analyzed loan and investment requests;
 - negotiated loan and investment agreements;
 - recommended to CEDC and Treasury Board which loans and investments to approve;
 - disbursed loans and investments;
 - collected loans;
 - monitored the loan and investment portfolios; and
 - reported performance and economic outcomes to MDC and the Legislature.

Branch staff did not seek CEDC or Treasury Board approval to reject a loan or investment request since ETT staff did not generally decline these requests outright. Instead, they verbally advised applicants of requirements

to be met for a favourable decision and applicants then decided whether to proceed.

- MDC held the loans and investments. The MDC Board of Directors periodically reviewed the loans and investments, but had no role in loan or investment decisions. This was a management board composed entirely of civil servants (the Deputy Minister of ETT, the Deputy Minister of Labour and Immigration, the Secretary to Treasury Board, the Secretary to CEDC, and the Executive Director of ETT's Financial Services Branch). MDC's Board had no policy-setting capability or decision-making capacity in regard to loans and investments and MDC had no employees of its own.
- CEDC, a sub-committee of Cabinet, initiates and coordinates community and economic development activity across government departments. During our audit, it was composed of Cabinet Ministers and MLAs and was chaired by the Deputy Premier. CEDC reviewed most loan and investment proposals. This review occurred before Treasury Board's review and any recommendations were included in ETT's subsequent request for Treasury Board approval.
- Treasury Board, another Cabinet sub-committee, is responsible for the overall fiscal management and reporting of the Province. It is composed of seven Cabinet Ministers and chaired by the Minister of Finance. Treasury Board approved all loans and significant loan amendments, as well as all investments. ETT officials viewed Treasury Board as similar to a private-sector bank's loan-committee. However, Treasury Board had no role in monitoring the loans or investments it approved.

4.1.2 ETT staff had the skills, knowledge and experience to administer the programs

ETT staff collectively had the skills, knowledge and experience to effectively evaluate and monitor the loans and investments. The two loan managers had business degrees and experience in analyzing business proposals. One loan manager also had commercial lending experience. The venture capital fund manager was a Chartered Financial Analyst with investment industry experience. In addition, the Director of the Financial Services Branch was a professional accountant with 20 years of Branch experience. ETT supplemented staff capability with outside consultants, hiring engineering and real estate expertise when warranted.

5.0 MIOP Loans

5.1 Loan Planning

5.1.1 Lending criteria were developed to assess MIOP loan requests

ETT had developed lending criteria for assessing MIOP loans. These criteria considered the viability of the underlying business proposal and the resulting benefits to the Manitoba economy. Specific considerations, outlined in ETT documents and on ETT's website, included:

- the number of long-term jobs created and the stability, salary and skill level of those jobs;
- the dollar value of fixed-asset investment;
- the degree of focus on technology or financial services industries;
- the degree of focus on head office operations of retail, wholesale or distribution sectors;
- a minimum equity requirement of 20%;
- a typical repayment term of five to seven years;
- security was required for all loans;
- assistance from all levels of government was not to exceed 50% of total financing;
- a typical loan size between \$300,000 and \$5,000,000; and
- a comprehensive business plan was required.

5.1.2 ETT applied lending criteria flexibly, which was not clearly communicated in publicly available information

ETT considered each loan unique, needing an individually tailored evaluation, not a “cookie-cutter” approach. Therefore, ETT staff treated MIOP lending criteria as flexible guidelines, not strict criteria.

We selected a sample of 15 loans. Examples of loans recommended by ETT and approved by Treasury Board with lending criteria flexibly applied included the following:

- borrowers provided less than the 20% equity requirement (two loans);
- loans had longer repayment terms than the typical five to seven year timeframe (six loans, with timeframes ranging from 9 to 32 years);
- funding was for working capital (day-to-day operations), not fixed assets, such as plant and equipment (four loans);
- funding was to retain existing jobs, not create new jobs (eight loans); and
- security provided had only intangible value at the time the loan was made (three loans).

ETT officials considered this flexibility one of the program's strengths and told us that it was required to respond to circumstances. They noted a 32-year term to construct a building intended to be leased to a tenant for 32 years made sense, even though the criteria suggested five to seven years. They also noted the criteria were developed at a time when many loans were for equipment expected to last five to seven years.

ETT provided information to prospective borrowers upon request. As well, ETT's website summarized the lending criteria and had Branch contact information. While this public information referred to "this flexible program", it did not fully convey the actual flexibility of the lending criteria.

Recommendation

1. We recommend that ETT clearly communicate the flexibility of the MIOP lending criteria in all publicly available information explaining the program.

5.1.3 ETT had an informal portfolio profile for MIOP loans

We expected ETT to have developed a preferred MIOP loan portfolio profile that aligned the program's goals and objectives with the Province's economic development strategy. This would provide a strategic vision for the loan program and link desired areas of investment and risk tolerances to specific Provincial economic development goals and expected economic benefits. Lending criteria would then be based on this profile.

We found that ETT had an undocumented and informal loan portfolio profile. Senior officials described the loan portfolio profile as response-oriented, designed to selectively respond to economic risks and opportunities as they arise, with risk tolerance dependent on the expected economic benefits.

The government economic development strategies in place during our audit timeframe included "investment in Manitoba" as a key component, stated as "increasing access to credit and capital", "raising and retaining investment" or "supporting investment". The MIOP loan portfolio profile and lending criteria, as applied in practice, broadly supported these objectives.

5.2 Due Diligence Analysis of Loan Requests

5.2.1 ETT sometimes lacked documented, current and complete business plan information

Business plans provide valuable information for loan analysis and decision-making. MIOP lending criteria stated applicants were to submit a comprehensive business plan, including historical and projected information on the following:

- background, history and ownership of the applicant company;
- production and distribution facilities;
- products, markets, competition, and market trends;
- planned projects, their rationale, and critical dates;
- capital expenditures and jobs;
- sources of debt and equity financing;
- key management personnel;
- loan security; and
- financial statement data.

We found that ETT sometimes analyzed loan requests and made loan recommendations to Treasury Board without current or complete business plan information. This occurred in 9 of the 15 loans selected for examination. In these cases, four applicants had only some components of a business plan, two had prior MIOP loans, two had no business plan information, and one submitted an out-of-date business plan.

ETT officials stated they always obtained any missing information necessary for decision-making, although sometimes only verbally, without documenting it in the loan files. More complete and documented business plan information would improve ETT's ability to analyze loan requests and monitor loans with due diligence, particularly if there is staff turnover. Also, a prospective borrower without a current and comprehensive business plan may be less likely to achieve anticipated economic benefits and eventually repay the loan.

Recommendation

2. We recommend that ETT obtain documented, current and complete business plan information to support its analysis of MIOP loan requests.

5.2.2 Financial projections were analyzed, but better documentation and sensitivity analysis are needed

ETT received financial projections from prospective borrowers for most loans. However, in one case, ETT did not receive any financial projections from a publicly-traded company to avoid receipt of confidential information that could be used

for insider trading if not properly protected and secured. In this case, ETT relied instead on less-detailed financial information bought from investment research companies.

Analysis of financial projections requires the underlying assumptions to be clearly stated. However, only 40% of the files we examined clearly described key assumptions. In files with these assumptions, there was evidence that ETT had reviewed their reasonableness and challenged them appropriately. ETT officials told us financial projection assumptions were always known and reviewed for reasonableness, although this information might be obtained verbally and not documented in the files.

We expected most loan files to have a variety of financial projections, including best-case, most-likely-case, and worst-case scenarios. Sensitivity analysis of this nature provides a better understanding of the effects of changes in key underlying assumptions. However, we found only a limited number of loan files had more than one financial scenario.

In some files, ETT staff noted that financial projections provided by loan applicants were “optimistic”, but they did not prepare other projections or obtain any other projections from applicants. ETT officials noted time pressures might make it difficult to obtain or prepare additional projections.

Documenting, reviewing and challenging key assumptions supporting financial forecasts and obtaining or preparing a variety of financial projections (best-case, most-likely-case, and worst-case scenarios) would provide better information for decision-making.

Recommendation

3. We recommend that ETT’s analysis of MIOP loan requests include documented review, challenge, and sensitivity analysis of key assumptions supporting financial projections.

5.2.3 ETT reviewed prospective borrowers’ management expertise and followed-up concerns

All loan files included biographical information about the loan applicant’s management team, outlining their management capabilities. This included relevant details of their education and training, acquired skills, and work experience. ETT staff reviewed this information as part of their due diligence process and flagged and followed-up any shortcomings appropriately. In one case where ETT concluded the management team needed more financial expertise, it then made obtaining this expertise a condition of the loan agreement.

5.2.4 ETT analyzed and negotiated loan security with due diligence

The amount of security and ETT's security position were always known and disclosed in the loan proposals ETT prepared for Treasury Board approval. All loan files we examined had detailed and thorough review and documentation of the underlying loan security. ETT received assistance with security searches and registrations from Civil Legal Services, a special operating agency of the Department of Justice.

ETT tried to negotiate sufficient security to cover each loan and to obtain the best security position possible. Typical security included a general security agreement covering land, buildings, and equipment, as well as assigning fire and life insurance and postponing repayment of shareholder loans.

ETT officials told us that often loans with only partial security were approved because of the loans' overall economic importance and benefits to the Province. In some of the files we examined, ETT's security had only intangible value. One example of this was a charge ETT had on any present and future acquired property, where the value of existing property at the time of the loan was nil. Also, in the majority of loans we examined, ETT's security position was last, behind all other creditors. Although ETT was usually not "fully secured" if loan foreclosure occurred early in the loan term, ETT's security position improved over time as other creditors in a better position were repaid.

5.2.5 ETT considered potential economic benefits to Manitoba, but analysis could be improved

Given the economic objectives of MIOP loans, we expected ETT to have a thorough and consistent method for estimating the anticipated economic benefits of each loan.

ETT's analysis always included information on capital expenditures to be made and jobs (numbers, types and salary levels) to be created or maintained as a result of a loan. Loans from other lenders (sometimes dependent on ETT's loan) were also always noted.

ETT was inconsistent in quantifying the multiplier effects of a loan. Multiplier effects are the cumulative ripple effects on the Provincial economy resulting from a single economic transaction. For example, a loan to a Manitoba-based company results in payments to that company's Manitoba-based employees and suppliers, who in turn buy more goods and services in Manitoba's economy (and so on), as well as additional Provincial tax revenue.

ETT sometimes sought assistance from the Manitoba Bureau of Statistics to calculate multiplier effects. ETT officials noted this assistance was more likely to be obtained only for larger loans and that calculation of multiplier effects might

be difficult in some circumstances, such as business start-ups where very little historical information is available. At the time of our audit, discussions were underway with the Manitoba Bureau of Statistics on how ETT could get more help in this area.

ETT considered the potential negative economic consequences of not recommending approval of a loan, such as an unsuccessful applicant relocating jobs outside of Manitoba. In one case, ETT even researched incentives being offered by other jurisdictions to attract businesses similar to the prospective borrower. ETT also considered any potential negative effects on an applicant's Manitoba competitors if it recommended approval of a loan.

Recommendation

4. We recommend that, to the maximum extent possible, ETT's analysis of a loan's anticipated economic benefits include the loan's multiplier effects.

5.3 Loan Agreements

5.3.1 Loan agreements were comprehensive and consistent with Treasury Board approval

All loan agreements we examined were comprehensive and covered the following areas: purpose of the loan, sources and uses of funding, interest rate, security, job targets (number of jobs to be created or maintained in each year of the loan), penalties, conditions to be met before loan disbursement, default conditions, and reporting requirements.

When Treasury Board approves a loan, it details the terms and conditions to include in the loan agreement. All terms and conditions in the loan agreements we examined were consistent with those approved by Treasury Board.

5.3.2 ETT set loan interest rates, penalties, and administration fees on a case-by-case basis, with no documented rationale

We expected interest rates and penalties for failing to meet job targets to reflect underlying risks and expected economic benefits. ETT officials told us that while they informally considered these factors, they negotiated interest rates and penalties on a case-by-case basis using professional judgment. They also told us that a borrower's negotiating power (and the reality that a borrower might move jobs outside the Province if loan terms were not sufficiently generous) also affected the interest rates and penalties proposed to Treasury Board.

Interest rates charged on the MIOP loans we examined ranged from Crown (the rate at which the Province borrows) less 1.75% to Crown plus 3%, although all MIOP loans since 2003 have required interest at least equal to the Crown rate. One MIOP loan had interest that was forgivable if job targets were met. Penalties for failing to meet job targets in the loan files we examined ranged from 1% to 6% additional interest.

ETT typically set a maximum administration fee based on the loan's complexity and the associated legal, consulting and other administrative charges it expected to incur. Fees ranged between \$6,000 and \$12,000 for most loans we examined, with one atypical fee of \$100,000.

Capping the administration fee simplified administrative processes, but usually resulted in less than full recovery of a loan's administrative costs. We selected a sample of seven loans and found that the fees recovered averaged only 40% of the loan administration fees actually paid by ETT. ETT told us that this usually occurred because it negotiated the fee recovery based on an estimate of only the initial expenses to be incurred in processing the loan. The fee did not include an estimate of any legal and security charges likely to be incurred in managing the loan after initial processing. In addition, ETT considered the expected economic benefits of the loan when negotiating the administration fee.

ETT had not developed any guidelines and did not document a rationale for the interest rates, penalties and administration fees being charged. Without documentation, ETT officials could not show they used a logical, equitable, and consistent process that considered lending risks, expected economic benefits and costs. Guidelines would not replace the use of professional judgment, but would allow staff to exercise it more consistently. These would be for internal management purposes only, since public disclosure might adversely affect ETT's negotiating ability.

Recommendation

5. We recommend that ETT develop internal guidelines for setting MIOP interest rates, penalties for failing to meet agreed upon job targets and administration fees, and document use of the guidelines in loan files.

5.3.3 ETT ensured loan terms and conditions were met before loan disbursement

ETT staff used a pre-disbursement checklist to ensure all loan terms and conditions were met before disbursing funds. This typically included:

- verifying the existence and value of security;

- clarifying security provisions and positions with other lenders and investors;
- obtaining proof of acquisition of assets;
- visiting the site;
- updating financial information;
- obtaining proof of insurance; and
- obtaining legal review prior to disbursement.

In addition, in some of the loan files we examined, more unique conditions had to be confirmed, such as the borrower having a minimum level of equity investment from another party or certain purchase and sales agreements being in place.

5.3.4 Treasury Board approved all loan amendments, but not waived fees and penalties

ETT occasionally amended original loan agreements. The most common amendments in the loans we examined were to defer principal payments or amend job targets (the number of jobs to be created or maintained by the borrower).

Some job target amendments were significant. In one case, the jobs to be maintained decreased from 2,400 following a company's restructuring after the original loan approval to 900 at the time of our audit, a 62% reduction. Once job targets were amended, on-going performance was monitored relative to the amended target and any penalties charged were for not meeting the new targets.

All non-trivial loan amendments were approved by Treasury Board. Typically, the documented reason for deferring principal payments or revising job targets was the borrower's inability to grow or maintain the market share originally envisioned.

ETT also occasionally waived fees and penalties, such as loan amendment fees and penalty fees for failing to meet job targets or for early loan payment. The reason for waiving fees and penalties was usually the borrower's financial circumstances. ETT officials told us they verbally informed Treasury Board about any waived fees or penalties so any concerns could be raised. There is no Treasury Board policy about how these waivers should be approved.

Recommendation

6. We recommend that ETT either obtain Treasury Board approval for all waived MIOP loan fees and penalties or request that Treasury Board formally delegate this authority to ETT.

5.4 Loan Monitoring

5.4.1 Annual loan reviews occurred, but monitoring information was not always timely or documented

Timely receipt and review of monitoring information allows early detection and mitigation of any loan problems. ETT reviewed each loan annually by:

- ensuring funds were used as intended and authorized (for example, by receiving and reviewing invoices);
- ensuring principal and interest payments were current;
- ensuring compliance with all loan terms and conditions (including job creation or job maintenance targets);
- confirming security and renewing security registrations;
- performing a site visit; and
- reviewing the borrower's audited financial statements.

Summaries of the annual reviews were prepared by ETT staff and reviewed and signed by ETT senior management.

Annual reviews of audited financial statements were always completed, but were not always timely. Delays occurred because audited financial statements were not always received from borrowers within the time set out in the loan agreements, typically between 90 and 120 days of the financial statement year-end. ETT officials told us they were proactive in trying to obtain audited financial statements within the timeframes required, but they often did not document any of this activity in the loan files and their efforts to obtain the audited financial statements in a timelier manner were not always successful.

Analysis of the financial information received from borrowers, such as the calculation of variances from expected results, was sometimes not documented. ETT staff also did not always document work done to follow-up on reasons for variances, to verify explanations provided by borrowers for variances, or to assess the impact of variances on loan repayment.

Job audits were usually completed within nine months of the calendar year-end. ETT staff audited the borrower's baseline number of jobs (the number of jobs before the MIOP loan) and the annual number of jobs actually created or maintained relative to the targets in the loan agreements.

Job audits were thoroughly documented in all the loan files we examined. However, the details of other monitoring activities during site visits (such as observation of events and discussions with borrower officials) were not always as well documented.

Loan-monitoring activities were not confined to annual reviews. For all loans examined, ETT requested and received unaudited information from borrowers on a

more frequent basis when warranted by the loan's size and circumstances. In some cases, ETT received quarterly, monthly or even weekly monitoring information. However, as with annual reviews, ETT did not always document its analysis of this information.

Recommendation

7. We recommend that ETT ensure all loan monitoring information is timely and document all monitoring activities.

5.4.2 Loan monitoring information was provided to the MDC Board

ETT provided a "MIOP Supervision Report" to the MDC Board of Directors at every quarterly Board meeting. For each loan MDC held, this report showed:

- loan amount approved;
- loan dollars disbursed to date;
- job targets (the most recent, if revised) and actual results for the past year;
- capital received from other lenders and investors;
- most recent Manitoba payroll data;
- annual review status; and
- compliance with reporting requirements.

This quarterly report was provided to the MDC Board for each quarter in 2009 and a sample of the loans we selected for detailed examination was accurately reflected in those reports.

We were told that a verbal report was also given to the Board on any matters ETT considered important enough to warrant the Board's attention, such as significant repayment and non-compliance issues.

6.0 Venture Capital Fund Investments

A venture capital fund is a pool of money contributed by investors, generally institutions with large amounts of money to invest and high-net-worth individuals. Venture capital funds typically invest in riskier businesses that are unable to obtain all their required financing from banks or other lenders. The funds' investments are usually shares in portfolio companies. Most funds sell their investments in portfolio companies within seven to twelve years, but timeframes vary. Investors make fixed capital commitments (promises to invest) to venture capital funds, but do not typically provide the money all at once. The funds "call" for the money as it is needed for investment opportunities. A fund's committed capital is the money it has been promised; its contributed capital is the money it has received.

Funds are typically limited partnerships. The General Partner invests in the fund, seeks out other investors, and is often also the fund's investment manager. The other investors are limited partners, have limited liability, and, unlike the General Partner, do not make day-to-day decisions. Limited partners may provide input on potential investments by sitting on a fund's investment advisory committee. However, investment decisions are made solely by the funds' managers and don't require advisory committee approval.

Some fund managers become actively involved in operating their portfolio companies, using their business or scientific expertise to try to generate higher rates of return to compensate for the higher risk. Investors pay fund managers (the General Partners) a fee to manage the funds' operations. This is typically 2% to 3% of the investors' committed capital. General Partners also receive a performance incentive in the form of "carried interest", which is an additional share of the partnerships' profits, typically 20% to 30% of profits.

At the time of our audit, the two funds the Province had most recently invested in were still acquiring portfolio companies. The other four funds were selling their investments in portfolio companies (including one where the General Partner was in receivership and a receiver was managing the partnership's affairs).

6.1 Investment Planning

6.1.1 ETT has not recently formally assessed its venture capital fund strategy

The stated objectives of the venture capital fund investment program (leveraging private-sector growth-capital into Manitoba-based businesses and increasing Manitoba resident private growth-capital management teams) were aligned with Manitoba's economic development objectives.

ETT belonged to Canada's Venture Capital and Private Equity Association and National Association of Seed and Venture Funds and ETT officials regularly attended several Canadian venture capital conferences. Fund managers were made aware of the Province's venture capital fund investment objectives and strategy mainly through discussions with ETT staff at these conferences. There was no information on ETT's website stating that the Province would consider requests for Provincial investment in funds, although the website did have business contact information for the two funds the Province had invested in that were still actively placing capital.

ETT considered any investment proposals received from funds on a case-by-case basis. There were no supporting guidelines or criteria for assessing proposals. Each request for Provincial investment in a fund was considered unique and received an individually tailored review.

Over the years, Manitoba used a variety of different approaches to meet the venture capital fund program's objectives, both in placing investments and in negotiating terms and conditions of agreements. ETT used a request-for-proposal process for an older sector-specific fund investment that was required to invest in Manitoba-based businesses. More recently, it adopted a reactive strategy that considered requests for Provincial investment in funds as they arose. ETT then negotiated agreement terms encouraging, but not requiring, investment in Manitoba-based businesses. The three most recent Provincial investments in venture capital funds included:

- a \$10 million commitment to a fund where the fund signed a side agreement stating it would use its best efforts to invest in Manitoba businesses;
- a \$4.8 million commitment to a fund which had a stated business objective of investing 60% of the initial closing capital in Manitoba written into the limited partnership agreement; and
- a \$5.8 million commitment to a fund required to invest only in Western Canada.

We reviewed the strategies in selected other provinces. Ontario had created a "fund of funds" with the private sector where at least 80% of the fund investments were to be in Ontario-based and Ontario-focused funds. British Columbia had set up a corporation to invest with private sector fund managers that had no requirement to invest in British Columbia. However, its fund managers were selected based on their understanding of local markets and proposed strategies for furthering investment in local companies and provincial target sectors, as well as their ability to use the government capital contribution to obtain additional funds.

A fund is likely to invest in the best opportunities it can find to maximize profit, which, in some cases, may not be in Manitoba businesses. ETT's reasons for investing in funds with no requirement to invest in Manitoba were as follows:

- the funds provided a pool of capital that Manitoba businesses could approach for funding;
- for the most recent investments, ETT ensured the funds were headquartered in Manitoba, providing head office jobs and helping to develop Manitoba-based venture capital expertise; and
- given the small number of funds operating and investing in Manitoba, no other option was available.

Given the approach of encouraging rather than requiring investment in Manitoba-

based businesses, it would be important to periodically evaluate how successfully this strategy is contributing to the Province's economic development goals. ETT had not recently formally conducted such an assessment. Nor had it recently reviewed the success of the alternative approaches used in other provinces.

Recommendation

8. We recommend that ETT assess the results achieved by the differing venture capital fund approaches that have been used in Manitoba, as well as the related costs and risks, on a more regular basis.

6.2 Due Diligence Analysis of Investment Requests

ETT staff reviewed all requests for Provincial investment in venture capital funds, considering:

- how the fund was to be managed;
- the fund's investment decision-making process;
- the fund's investment philosophy, including the expected location of fund investments, the expected types and size of investments, and the expected investment duration;
- the expected rate of return;
- ETT's involvement as a limited partner and member of the fund's investment advisory committee; and
- the potential impact on ETT's financial resources.

6.2.1 Analysis of potential economic benefits to Manitoba was limited

We expected ETT to prepare a comprehensive analysis of the anticipated economic benefits of investing in a venture capital fund, but we found this analysis was often weak.

ETT considered the additional investment dollars the fund would likely obtain as a result of the Province's investment by looking at the expected size of the fund. However, it was sometimes unclear how much of a fund's total expected capital would be contributed without the Province's investment. More importantly, it was also often unclear how much of the total contributed capital would likely be invested in Manitoba businesses.

ETT also considered each fund's expected rate of return. However, depending on the requirements of the fund, this return would not necessarily be generated by investing in Manitoba, and would therefore not necessarily stimulate any economic development in Manitoba.

ETT's analysis of the potential Manitoba jobs to be created typically considered only head office jobs of the fund itself. ETT did not usually consider jobs likely to be created through the fund's investments in Manitoba businesses, although in one case ETT estimated the number of Manitoba businesses likely to benefit from the fund.

ETT also did not quantify the economic benefits likely to occur from a fund's investments in Manitoba businesses. Estimates of this nature are difficult and uncertain, even if a fund is required to invest in Manitoba, since the actual businesses a fund will invest in are unknown when the Province is deciding whether or not to invest in a fund. However, this doesn't negate the need for due diligence analysis based on reasonable assumptions and estimates. ETT officials told us they intended to improve their economic analysis of funds by working more closely with the Manitoba Bureau of Statistics.

Recommendation

9. We recommend that ETT strengthen its analysis of potential economic benefits to Manitoba when considering investment in a venture capital fund.

6.2.2 Analysis and documentation of fund manager expertise could be enhanced

ETT considered the expertise of the fund's manager, usually the General Partner. ETT gathered information on the General Partner's senior management team and their past venture capital fund and other investment industry experience. Biographies for all key individuals were obtained and reviewed.

However, ETT did not always obtain or document details of the actual returns previously achieved by the fund managers. In addition, even when these were considered, ETT did not always consider the fund manager's knowledge of local Manitoba markets and target industry sectors. ETT considered the fund manager's overall ability to generate a profit for investors, but it did not always equally consider the fund manager's ability to stimulate economic development in Manitoba.

Recommendation

10. We recommend that ETT more consistently review and document fund managers' past returns, knowledge of Manitoba businesses and target industry sectors, and ability to stimulate economic development in Manitoba.

6.3 Venture Capital Fund Agreements

The agreements typically covered areas such as:

- liability for losses;
- General Partner compensation, including management fees and carried interest;
- distribution rules, such as allocation of income and losses;
- reporting requirements, such as audited financial statements and reports on portfolio companies;
- partnership meetings;
- nature and composition of any advisory committees, such as investment or scientific advisory committees;
- investment philosophy and any investment restrictions;
- conditions for terminating capital commitments;
- duties of the General Partner; and
- dissolution of the partnership.

6.3.1 ETT usually negotiated conditions in partnership agreements that encouraged, but did not require, investment in Manitoba businesses

ETT typically negotiated conditions in the limited partnership agreements that would encourage, but not require, the funds to invest in Manitoba businesses. This was done using a variety of different approaches.

In one case, ETT could not obtain any conditions in the limited partnership agreement encouraging the fund to invest in Manitoba. Instead, it negotiated a side agreement with the General Partner for the fund to use its best efforts to invest in Manitoba. However, the side agreement had no penalty for failure to use best efforts or failure to invest in Manitoba-based businesses. In addition, the fund's stated investment strategy was to focus on buyouts and expansions where it would hold a controlling or lead position in portfolio companies with market values between \$20 million and \$150 million. This seemed an unlikely fit for the venture capital start-up needs of Manitoba-based businesses, which would typically be smaller. The same side agreement also required the fund to maintain its head office and the majority of the senior management team and other fund employees in Manitoba. Failure to meet this requirement had a financial penalty equal to the greater of the Province's cost of capital on its remaining capital commitment or \$8,500 per month.

In the second case, ETT tried to negotiate a clause allowing the Province to terminate its obligations within the first three years of the fund for the unpaid balance of its \$5 million commitment if the fund had not, in the sole opinion of the Province, made sufficient progress toward investing in Manitoba-based

businesses and/or facilitating expansion of Manitoba business activity. ETT was unsuccessful, but did negotiate a clause in the agreement specifying a business objective *“to invest 60% of the first closing amount in companies that are resident in Manitoba”*. However, the agreement had no recourse or penalty if this objective was not met. The agreement also required 75% of the fund’s employees to be based in Manitoba, as well as 75% of the fund’s purchases to be received from Manitoba suppliers. Failure to meet either of these two requirements had a financial penalty of \$100,000.

In the third case, ETT did not negotiate any requirement for the fund to invest in Manitoba-based businesses because it felt that the fund’s mandate to invest in Western Canada and the fund’s relationship with Manitoba-based institutions (such as the University of Manitoba) was sufficient to ensure significant Manitoba investment. Saskatchewan, another one of the limited investors in this fund, negotiated a requirement that the fund use its best efforts to invest at least \$7 million in Saskatchewan (an amount equal to 70% of its capital commitment), as well as the right to terminate any remaining obligations to the fund if it felt insufficient progress was made in this area. ETT did not seek a similar clause for Manitoba. The agreement also required the fund’s head office to be located in Manitoba.

6.3.2 Membership in investment advisory committees was consistent with industry practice

Investing and divesting decisions were made exclusively by a fund’s General Partner. However, most funds allowed each limited partner (or group of limited partners) contributing a certain amount to appoint a representative to an investment advisory committee. This committee had no decision-making or approval authority. In the limited partnership agreements we examined the Province’s capital contribution was always sufficient to allow an ETT representative to sit as a member of the fund’s investment advisory committee.

6.3.3 Management fees were consistent with industry practice

Following industry practice, management fees to the General Partner were initially 2% to 3% of committed capital. Once the investment stage was complete, these fees typically decreased, sometimes in stages, to a lower percentage (for example, 1.5% to 2.5%) and the base often changed to contributed capital as opposed to committed capital.

For the more recent funds, ETT officials negotiated management fees within these industry standards. Following an exercise benchmarking management fees to industry standards, ETT also successfully renegotiated lower percentage fees for its two other funds.

6.3.4 Conflict-of-interest provisions were not adequately considered

Fund managers have significant control over fund operations. We therefore expected that the risk of fund managers (typically the General Partners) using the funds' capital to directly or indirectly benefit themselves at the expense of the Province and the other limited partners would be addressed.

We examined five limited partnership agreements. They all stated that the General Partner was to act in the best interests of the partnership, but they did not specifically define what that would include or set out any monitoring mechanism. The most recent agreement also restricted non-arms-length transactions.

In one case, a General Partner member made fund investments in businesses where the member or member's family already had a financial interest, and sometimes also a management role. This was fully disclosed to the investment advisory committee and was not necessarily in conflict with the best interests of the limited partners. The advisory committee did not express any initial concerns, but later arranged to amend the limited partnership agreement to better cover this kind of situation. The amendment prevents the General Partner from having a separate interest in a business on terms more advantageous than the fund's interest.

In another case, ETT staff informed us that a General Partner member was a significant shareholder in a company that wished to buy one of the fund's portfolio companies. This was fully disclosed to the investment advisory committee and the General Partner member did not proceed until the buy-out was structured to the satisfaction of the majority of the committee members.

Public expectations with regard to conflict-of-interest situations have evolved over the past several years and situations that once may have been tolerated are now no longer regarded as acceptable. As a result, over time, the investment advisory committees have become more vigilant over potential conflicts-of-interest in placing investments.

Because ETT invests public funds, it has a duty to limit the risks associated with potential conflict-of-interest situations involving fund managers and their use of fund capital in both placing investments and operating the funds.

Recommendation

11. We recommend that ETT ensure that conflicts-of-interest, both in placing investments and operating the funds, are identified and responded to.

6.4 Monitoring Venture Capital Fund Investments

6.4.1 ETT adequately monitored individual fund performance, but not its total exposure in all funds

ETT staff prepared quarterly monitoring reports for all fund investments. The report format varied, depending on the type and timing of the information the fund provided and the stage of its life cycle. Monitoring information on more recent fund investments was usually more detailed and focused on investing activities. Information on older funds was typically less detailed and focused on divesting activities. When our audit started, the quarterly reports were not being reviewed by ETT senior management. However, this was corrected before we finished the audit.

As an example, the information prepared for a quarterly report on a more recent investment in a fund that had acquired three portfolio companies included:

- general information (on the general partner and limited partners, their percentage ownership, units held, management fee percentages, and income allocations);
- financial information, including book and market values of the fund's investments, and management fees paid;
- committed and contributed capital;
- contributed capital used for investments versus management fees and other expenses;
- the number of fund management jobs created and maintained in Manitoba for the most recent calendar year; and
- the number and types of Manitoba companies reviewed for investment purposes in the most recent calendar year (a side agreement required the fund to use its best efforts to invest in Manitoba businesses).

As of March 31, 2009, the fund's best efforts to invest in Manitoba businesses had not yet resulted in any direct Manitoba investments. The fund reported that over the past three years it had considered investment opportunities in 27 Manitoba-based companies, but had not invested in any of them. However, one of the fund's investments was in a company based outside of Manitoba that had 3 of its 22 stores located in Manitoba and these stores employed 58 of that company's 400 full and part-time personnel.

Every other quarter, ETT staff also reviewed a semi-annual report from the fund manager. This report included unaudited financial statements, described recent fund activities, and reviewed fund performance in the context of current economic conditions and the current stage of the fund's life cycle.

Quarterly monitoring for another fund still acquiring portfolio companies included reviewing comparable information, including the fund's compliance with a requirement to invest a minimum percentage of its capital in Manitoba. At March 31, 2009, about 54% of the fund's capital (compared to a 60% objective) was invested in four Manitoba businesses with a total of 30 jobs.

Quarterly monitoring for a fund in the divesting stage included information on recent dispositions, as well as historical information. Although this fund had a mandate to invest in Western Canada, ETT separately tracked the number of Manitoba-based investments and related jobs. At December 31, 2008, the fund had invested 73% of its total capital in six Manitoba-based businesses with a total of 181 jobs.

ETT also received and reviewed audited financial statements for all the funds we examined, other than one fund where the General Partner's parent company was in receivership, and it was not possible to obtain audited financial statements for the fund. ETT never asked for or received audit assurance on the information that funds supplied on the number of Manitoba companies reviewed for investment purposes or the number of Manitoba jobs associated with a fund's portfolio companies. This contrasted with the job audits ETT performed to assess the economic benefits associated with the MIOP loans.

During the course of our audit we found examples of different funds holding investments in the same portfolio companies, as well as one example where ETT had provided a grant to one of those companies. ETT officials were generally aware that it had multiple exposures to some individual companies through its various fund investments, but did not calculate and monitor its total exposure to any one company on a regular basis. As ETT did not document their general monitoring, it could not provide us with any recent calculations showing its total exposure to individual companies. Without more detailed monitoring, ETT and other government departments will have less than complete information when considering any future investment in, or assistance to, those companies.

ETT staff told us they provided the MDC Board with verbal updates on the status of fund investments at all quarterly meetings.

Recommendation

12. We recommend that ETT calculate and monitor its total exposure to any one portfolio company through its multiple venture capital fund investments.

7.0 Performance Measurement and Reporting

We expected ETT to develop, track and publicly report on various performance measures for both the MIOP loan and venture capital fund programs. We also expected these measures to focus on the economic benefits achieved and the risk-related costs incurred for these loans and investments. Lastly, we expected the results reported to be accurate and compared to targets to assess whether program goals and objectives were met, identify trends, and take any actions needed to improve outcomes.

7.1.1 ETT had developed performance measures, but they were not easily accessible

ETT's 2008/09 annual report (available on its website) included performance information for the MIOP loan and venture capital fund programs. For most measures, 1999/00 was the baseline (starting year) for measurement purposes. The performance information consisted of the following indicators:

- For MIOP loans:
 - new MIOP loan dollars invested in 2008/09, plus additional dollars obtained from other lenders through new MIOP lending;
 - total dollars obtained from other lenders through MIOP lending, from April 1, 2000 to March 31, 2009;
 - total jobs created or maintained through new MIOP lending in 2008/09; and
 - total jobs created or maintained through MIOP lending, from April 1, 2000 to March 31, 2009.
- For venture capital fund investments:
 - total dollars invested in portfolio companies by funds with Provincial investment, from the program's start in 1996 to March 31, 2009, plus the related number of portfolio companies; and
 - total dollars available at March 1, 2009 to funds with Provincial investment (total capital commitments by all partners less the funds' investments in portfolio companies to date).

MDC's annual report (in Volume 4, Section 1 of the 2008/09 Manitoba Public Accounts) contained MDC's audited financial statements, which included loan and investment valuation information. But it did not have any accompanying management discussion and analysis. Nor did it reproduce the loan or fund performance measures from ETT's annual report.

The 2008/09 Manitoba Public Accounts (in Volume 3, Section 1, Loans and Advances) disclosed total advances to MDC outstanding at March 31, 2009 for lending and investing under Part II of the Act. This included a supporting list of loan recipients and venture capital funds with Provincial investment. Information from this list is in the **Appendix**.

When combined, these sources provided information on the recipients of loans and investments, the related economic benefits, and management of the lending and investing risks. However, this information was in three separate reports, instead of one easily accessible place.

Recommendation

13. We recommend that ETT post MDC's annual report on its website and that the report include performance measures, management discussion and analysis, and a list of all loan recipients and funds with Provincial investment.

7.1.2 Some performance information was inaccurate or inconsistent, and results were not compared to targets

Some publicly reported performance information was inaccurate. The reported dollars invested by the funds were not all invested in Manitoba businesses, contrary to what readers would reasonably expect. Also, jobs reported to have resulted from MIOP loans were the job targets, not the jobs actually created or maintained. In addition, "trend over time" data provided cumulative totals since 2000 (the baseline year), but did not inform readers if annual levels of dollars invested and jobs created were increasing, decreasing, or stable over time.

There were some inconsistencies in the performance reporting. ETT staff excluded one fund from one performance measure for venture capital fund investments because the fund's investment strategy was unlikely to meet the venture capital needs of Manitoba businesses. But the fund was not similarly excluded from another venture capital performance measure. We also noted that MIOP loans reported in the Public Accounts were less than those reported in MDC's annual report, primarily because some loans and capitalized interest were written off in the Province's accounting records, but were recorded in MDC's accounting records with a fully offsetting allowance for doubtful accounts. This latter inconsistency has subsequently been corrected by ETT management.

Setting targets and then reporting and explaining actual-versus-expected performance enhances public performance reporting. Analysis of this data over time can help identify any actions required to improve program performance and provide lessons for future economic development programs. While ETT set job targets for each MIOP loan, there was no annual job target for all MIOP lending

or any targets for other performance measures. In addition, ETT was tracking the actual jobs created or maintained compared to the most recently revised targets for loans, but not the original targets.

Other performance measures that could be useful for internal management purposes and public performance reporting include:

- ratio of dollars invested by non-Provincial sources to Provincial sources;
- actual jobs created or maintained through MIOP loans, as well as the average salary level and longevity of those jobs;
- total economic benefits of MIOP loans, including multiplier effects;
- number of Manitoba businesses receiving capital from venture capital funds with Provincial investment, as well as the percentage of the funds' capital placed in Manitoba-based businesses; and
- actual jobs created or maintained in Manitoba through the funds' portfolio companies.

Some of these measures were used and publicly disclosed for economic development programs in other provinces. We encourage the Province to explore these and other performance measures.

Recommendation

14. We recommend that ETT ensure the accuracy and consistency of performance measures for the MIOP loan and venture capital fund programs and measure results for these programs that are focused on actual economic benefits to Manitoba.

8.0 Departmental Response and Summary of Recommendations

The Department of Entrepreneurship, Training and Trade (ETT) appreciates the efforts of the Office of the Auditor General in reviewing and providing recommendations with respect to economic development loans and investments under The Manitoba Development Corporation Act. The Department is committed to implementing all of the Auditor General's recommendations.

The Manitoba Industrial Opportunities Program (MIOP) is a program of government that is designed to provide and leverage business capital, facilitate job growth and job maintenance, facilitate job upgrading in terms of wages and skill level maintenance, and assist with investment in projects that enhance the competitiveness of business in Manitoba. The Government has also used the MIOP program to assist in its reaction to the banking and credit crisis of 2008/2009.

Over the last 10 years the Department has seen its MIOP programming evolve from a tool kit that included low interest and forgivable loans to a tool kit that emphasizes placement of repayable loans with interest rates equal to or above the Province's cost of capital.

Since the inception of the MIOP program in 1988 the Department has seen loan write offs during this time frame of approximately \$28 million, or 11 percent of some \$248 million disbursed under the program. During the last 10 years of the MIOP program ending March 31, 2009 the Department has seen its MIOP loan write offs reduce to approximately \$1 million or under 1% based on disbursements of approximately \$137 million.

The Government has taken a very conservative approach to valuing their investments in third party venture capital funds. None of the venture funds that have been invested in by the Department over the last 10 years have fully completed divesting of all of the individual investments in each of the fund's portfolios.

As a result, at this point in time, many of the funds have not been able to show any realized gains in their portfolio. Typically venture capital funds show losses in their financial statements until the fund has completed divesting of most or all of their individual portfolio investments. Normally this does not happen until the funds are at or near the end of their lifecycle.

The following are highlights on the progress the Department has made in response to the Auditor General's recommendations:

MIOP Loans

1. We recommend that ETT clearly communicate the flexibility of the Manitoba Industrial Opportunities Program (MIOP) lending criteria in all publicly available information explaining the program.

Departmental Response

The Department is reviewing all of the public information available on the MIOP Program to ensure that the information, as best as possible, clearly outlines the program's flexibility and how the various loan proposals will be evaluated.

2. We recommend that ETT obtain documented, current and complete business plan information to support its analysis of MIOP loan requests.

Departmental Response

The Department will ensure it obtains current and detailed business plan information to support MIOP loans requests. In those rare circumstances where the information is not always clear the Department will document evidence in its files in terms of the procedures it took to moderate the risk associated with the loans.

3. We recommend that ETT's analysis of MIOP loan requests include documented review, challenge, and sensitivity analysis of key assumptions supporting financial projections.

Departmental Response

The Department has always considered sensitivity analysis in evaluating client provided information. The Department will ensure future files clearly state the Department's assumptions when reviewing this information.

4. We recommend that, to the maximum extent possible, ETT's analysis of a loan's anticipated economic benefits include the loan's multiplier effects.

Departmental Response

In all future files when the Department is evaluating the economic benefits the project is anticipated to have on Manitoba, if the information is available, and can be

accurately calculated, it will ensure the loan's multiplier effects are considered.

5. We recommend that ETT develop internal guidelines for setting MIOP interest rates, penalties for failing to meet agreed upon job targets and administration fees, and document use of the guidelines in loan files.

Departmental Response

The Department has internal guidelines in place for setting MIOP loan interest rates policy for the 2010/2011 fiscal year. The Department will ensure that it documents how these guidelines are considered in evaluating individual loans' interest rates. The Department will ensure its approach to applicable job creation penalties and administration fees are well documented.

6. We recommend that ETT either obtain Treasury Board approval for all waived MIOP loan fees and penalties or request that Treasury Board formally delegate this authority to ETT.

Departmental Response

The Department will ensure that every future Treasury Board Submission will clearly address any situations where the consideration of waiving any MIOP fees or penalties may arise.

7. We recommend that ETT ensure all loan monitoring information is timely and document all monitoring activities.

Departmental Response

In the future the Department will strengthen the documentation processes related to loan monitoring, analysis of client situations, Job Audits and the timely submission of client information required for the ongoing monitoring of the outstanding loan portfolio.

Venture Capital Fund Investments

8. We recommend that ETT assess the results achieved by the differing venture capital fund approaches that have been used in Manitoba, as well as the related costs and risks, on a more regular basis.

Departmental Response

In the future the Department will document, in Submissions to Treasury Board, the results of any environmental scans that it undertakes with respect to alternative approaches to venture capital funds, and their risks and costs that may be used in other jurisdictions.

9. We recommend that ETT strengthen its analysis of potential economic benefits to Manitoba when considering investment in a venture capital fund.

Departmental Response

In regard to venture capital investments it is very challenging to try and evaluate economic benefits to Manitoba from individual investments because the specific nature of the individual investments is not known when the fund is created. The Department is developing program profiles and as part of that process is exploring a number of options to better define the economic benefit of these funds on the Manitoba economy. These options may include finding ways to further track job creation and capital expenditures. In addition, the Department has requested the assistance of the Manitoba Bureau of Statistics to see if meaningful financial models can be created to assist with future benefit evaluation.

10. We recommend that ETT more consistently review and document fund managers' past returns, knowledge of Manitoba businesses and target industry sectors, and ability to stimulate economic development in Manitoba.

Departmental Response

The Department will ensure that future Submissions to Treasury Board clearly document the proposed fund manager's experience and their knowledge of the Manitoba economy and how this affects the risks attached to these funds.

11. We recommend that ETT ensure that conflicts-of-interest, both in placing investments and operating the funds, are identified and responded to.

Departmental Response

In the future, before any fund commitments are made, the Department will document in Treasury Board Submissions all potential conflict-of-interest issues that could arise, both in placing investments and operating the funds, to ensure Ministers are fully aware of the issues. For those funds that already exist the Department will ensure that it works with its investment fund partners to appropriately address any situations that arise that may be seen as a conflict-of-interest by the fund managers.

12. We recommend that ETT calculate and monitor its total exposure to any one portfolio company through its multiple venture capital fund investments.

Departmental Response

The Department has done this in the past, and in the future it will better document these situations in the specific fund files as they arise.

Performance Measurement and Reporting

13. We recommend that ETT post the Manitoba Development Corporation's annual report on its website and that the report include performance measures, management discussion and analysis, and a list of all loan recipients and funds with Provincial investment.

Departmental Response

The Department will ensure that for the year ended March 31, 2010 a list of all loan recipients and venture capital fund investments and a copy of the annual report of MDC is available on the Department's website after the annual report has been approved by the Legislature. For future years the Department will ensure the annual report is expanded to include performance measures and management discussion and analysis.

14. We recommend that ETT ensure the accuracy and consistency of performance measures for the MIOP loan and venture capital fund programs and measure results for these programs that are focused on actual economic benefits to Manitoba.

Departmental Response

The Department believes that the issue of accuracy in a report was an isolated issue and it has taken steps to ensure this does not happen again in the future. The Department also anticipates that the development of program profiles and outcome measurement reporting will assist in this area.

Appendix

Web Version

Loans and Investments under Part II of *The Development Corporation Act* at March 31, 2009

Appendix

Recipient Name	Amount
MIOP Loans:	
Acetek Composites Inc.	\$ 682,030
Acsion Industries Inc.	392,263
Apotex Fermentation Inc.	726,620
Color Ad Packaging	7,256,800
CP Loewen Enterprises Ltd.	8,300,000
DeFehr Furniture	4,000,000
Ensis Growth Fund Inc.	239,682
Intelligent Hospital Systems Inc.	2,000,000
Magellan Aerospace Limited	4,066,667
Monarch Industries Ltd.	3,499,964
Motor Coach Industries Limited	6,800,000
Paletta and Company Hotels Ltd.	5,500,000
Palliser Furniture Ltd.	15,000,000
Premier Horticulture Ltd.	2,522,650
Prendiville Corporation	791,666
Shape Foods Inc.	3,960,897
Winnipeg Airports Authority Inc.	9,014,591
Sub-total	\$ 74,753,830
Other Part II Loans:	
City of Winnipeg	\$ 11,100,000
International Education Loans to School Divisions	130,000
Sub-total	\$ 11,230,000
Investments in Venture Capital Funds:	
Canterbury Park Capital L.P.	\$ 3,626,316
CentreStone Ventures L.P.	2,415,672
Manitoba Capital Fund L.P.	4,363,200
Manitoba Science and Technology Fund L.P.	1,780,103
Renaissance Capital Manitoba Ventures Fund L.P.	3,000,000
Western Life Sciences Fund L.P.	5,800,000
Sub-total	\$ 20,985,291
Total Loans and Investments	\$ 106,969,121

Source: 2008/09 Manitoba Public Accounts, Volume 3, Section 1.

Web Version

Web Version

Family Services and Consumer Affairs

Chapter 3: Special Audit: Society for Manitobans with Disabilities

Web Version

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1.0 Main Points

What We Examined

In 2005, our Office received a letter (also sent to the Province) from a citizen alleging that the Society for Manitobans with Disabilities (SMD):

- had excessive administration costs.
- lacked accountability for public funds (and did not use them for intended purposes).
- had poor governance.

We asked the Department of Family Services and Housing, now the Department of Family Services and Corporate Affairs (Department) how it was following up on the allegations. It had asked government's Internal Audit Services to review SMD in early 2005 and they issued a report in May 2005. We decided to give the Department and SMD more time to resolve the issues and the report recommendations before conducting an audit to ensure that all the concerns had been resolved.

On July 28, 2008, we informed the Minister of the Department and SMD that we would do an audit. The audit covered the period April 1999 to June 2010 and took place between September 2008 and July 2010. We reviewed available Department and SMD documentation and interviewed many current and former board members, senior management, and staff of SMD. We also interviewed Department staff and other people with pertinent information.

Why It's Important

SMD provides program services to improve the lives of Manitoba children and adults with disabilities. It receives funding from several sources, primarily the Department, the Winnipeg Regional Health Authority, and the United Way.

Our audit focused on the funds that the Society for Manitobans with Disabilities Inc. (Services) received from the Department (Services is a subsidiary of SMD Alliance Inc.). The funding is set out in a Service Purchase Agreement (SPA) between the Department and Services. Of the total funding that Services receives to provide program services for disabled children and adults in Manitoba, about 70% is from government sources. Of that, about 80% is from the Department.

A constructive working relationship between SMD and the Department is critical to deliver effective programs and to assure the Legislature that public funds are being spent wisely. The Board of Directors of Services is responsible to ensure that its management meets the funding and service requirements of the SPA.

The Province is responsible to ensure that this is taking place and for monitoring compliance with the SPA.

What We Found

Although there were a number of administrative problems, there were no concerns expressed by the Department about the quality of services SMD provides.

Services had not been promptly providing required financial reports to the Province but we found that throughout the period of our audit some improvements had been made. The SPA provides the Province with access to records for all areas it funds. Between 2006 and March 31, 2010 Services had accumulated more than \$1.5M in deferred contributions, which represents about 19% of the 2009 provincial funding. The use of these funds has now been resolved.

During the 1999/2000 fiscal year, SMD underwent a significant corporate reorganization. This new structure created a parent company known as "SMD Alliance Inc." (Alliance) and four subsidiary companies, one being Services. Alliance sets the overall strategic direction and provides corporate administration support to Services and the other subsidiaries, charging overhead based on a percentage of their total spending. The corporate reorganization was useful in separating non-profit operations from for-profit activities, but the reorganization resulted in a complex web of interrelationships amongst the entities that were created. Their roles and responsibilities had not been adequately clarified for the Boards of Directors or staff. Further, SMD did not adequately clarify its structure to external funders. The Province raised concerns about the complexity of the structure and resulting governance and transparency issues with SMD.

In 2004, almost \$500,000 was transferred from Services to supply needed cash flow to one of the other subsidiaries. The transaction put public funds at risk and was done without the full knowledge of Services Board of Directors, or the Province. Alliance has since repaid the funds to Services.

Complaints about how the transaction was handled and confusion around the reorganization were directly related to the allegations we received in 2005.

Our audit found that some administrative problems remain and there was a noticeable lack of trust between SMD and the Province that hampered progress. We also found that the three areas within the Department that are involved in the monitoring of SMD's compliance with the SPAs did not coordinate their efforts efficiently. Our report identifies the following issues that still need to be resolved:

- In our view the current overhead level charged to Services by Alliance, combined with overhead costs incurred directly by Services, totals about 21%. The Province has not specified the level of overhead it will fund, or any restrictions on the use of the overhead.

- Our review of 3 schedules in the SPA related to specific program areas found that not all of the Province's program outcome requirements were being met.
- The Chief Executive Officer (CEO) of Alliance can, in accordance with board approved policy, move up to \$300,000 among companies if the borrowing entity is able to repay within 120 days.

We accept the Department's decision to work with SMD to resolve issues instead of applying sanctions. If the working relationship between the Department and SMD deteriorates, and the issues we have identified in our report are not resolved, then sanctions may be needed.

2.0 Background

2.1 Society For Manitobans With Disabilities

The Society for Manitobans with Disabilities (SMD) describes itself as "a family of organizations that are working together to improve the lives of persons with disabilities in Manitoba." (See text box for brief history of SMD.) Since 1999/2000, SMD is comprised of 5 corporations: SMD Alliance Inc. is the controlling entity, and it has 4 subsidiaries. SMD Alliance Inc. was created under the Canada Corporations Act as a non-share capital (not-for-profit) corporation. The 4 subsidiaries were incorporated under *The Corporations Act* of Manitoba as non-share capital corporations. Three of them (SMD Services, SMD Foundation and SMD Clearinghouse) are registered with Canada Revenue Agency as charitable organizations.

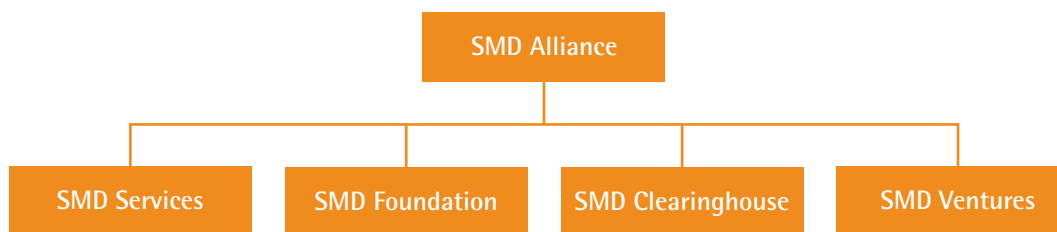
SMD history

SMD began in Manitoba in 1946 when the Cerebral Palsy Parents' Council, with the help of the Kinsmen Club of Winnipeg, opened a treatment centre at the Winnipeg Children's Hospital. Inspired by the success of the project, other Kinsmen Clubs in Manitoba began adding their support. In 1948, a group of Manitoba business women created a program known as the Wheelchair Center for women with disabilities. The work done by both groups got the attention of both the Provincial Government and the Winnipeg Welfare Council, who in 1950 approved and supported a new committee, known as the Society for Crippled Children of Manitoba, supporting children whose normal muscular movement was restricted because of disease, accident or defect. The role of the newly-founded Society grew quickly and support services were expanded, the Multiple and Physically Handicapped Program was established, and the Society was placed in charge of the program to provide wheelchairs to people living with disabilities anywhere in Manitoba. By 1954, the Society was the central rehabilitation agency for all Manitobans living with physical disabilities, and its name was changed to The Society for Crippled Children and Adults of Manitoba. In April 1985, the organization officially changed its name to the Society for Manitobans with Disabilities Inc.

Source: http://smd.mb.ca/smd_history.aspx

The role of each entity is as follows:

- **SMD Alliance Inc. (Alliance):** provides strategic direction and coordination for all SMD operations including centralized administrative, accounting, human resource and information technology services.
- **Society for Manitobans with Disabilities Inc. (Services):** initiates and coordinates programs and services for disabled children and adults, in areas ranging from education and work experience to counseling and therapy programs.
- **Society for Manitobans with Disabilities Foundation Inc. (Foundation):** raises funds, primarily through its Easter Seals Manitoba activities.
- **SMD Self-Help Clearinghouse Inc. (Clearinghouse):** supports external self-help organizations that, in turn, support people seeking self-help services.
- **SMD Ventures Inc. (Ventures):** builds partnerships, coordinates joint ventures, and manages investments for SMD.



Each subsidiary is governed by a board of directors. Prior to June 2007, the Alliance Board consisted of one representative appointed by each subsidiary and up to 11 other members elected by its membership. As of June 2007, the Alliance Board consists of a minimum of 3 and a maximum of 15 directors, elected by its membership. The Alliance Board now selects members from the Board to act as representatives of Alliance on each subsidiary board.

SMD receives funding from various sources, including the Department of Family Services and Consumer Affairs (Department), the Winnipeg Regional Health Authority, and the United Way. It also raises funds through the SMD Foundation, from private business partnerships, and from fees for services.

Our audit focused on Services. The Province, represented by the Minister of the Department, provides grants to Services for services and programs for children and adults with disabilities. The services are described in a 3-year SPA between the Department and Services. The current SPA expires on March 31, 2011.

Services is to establish and operate five programs and to provide services for those programs under the following schedules to the SPA:

- Schedule A – Case Management for Adult’s General and Deaf Services and Employment Services; Employment Services; and, Service Reporting, Administration and Funding
- Schedule B – Employment Preparation Centre Services
- Schedule C – Provincial Outreach Therapy for Children
- Schedule D – Service Coordination for Children with Disabilities and Children who are Deaf or Hard of Hearing
- Schedule E – Communication Centre for Children who are Deaf and Hard of Hearing

The following table shows the Department funding for Services SPAs in effect from 2002 to 2009. The core funding is monies provided for the SPAs. The unused core funding shows as “Other Revenue – unused core funding deferred”.

Table 1: SMD Services Core Funding from the Department for the SPAs in effect during the time period shown:

Revenue Source	Year Ending March 31							
	2002	2003	2004	2005	2006	2007	2008	2009
Core Funding - the Department	\$3,869,174	\$4,083,370	\$4,057,501	\$4,179,620	\$4,229,061	\$4,121,812	\$4,241,631	\$4,455,317
Other Funding - MB - Vocational Training	553,995	556,904	536,092	556,916	674,745	665,154	601,097	589,664
Sub-total	4,423,169	4,640,274	4,593,593	4,736,536	4,903,806	4,786,966	4,842,728	5,044,981
Services "Other Revenue" - unused core funding deferred	0	0	0	0	0	612,109	908,823	1,195,060
Total available funding	\$4,423,169	\$4,640,274	\$4,593,593	\$4,736,536	\$4,903,806	\$5,399,075	\$5,751,551	\$6,240,041

Source: Services Audited Financial Statements

2.2 Monitoring by the Department

In 2004, the Department established the Agency and Accountability Unit, later renamed the Agency Accountability and Support Unit (AASU), to monitor the more than 200 SPAs the Department had signed. This was done to “ensure that public funding provided to community agencies is used for the purpose intended i.e., to hold community agencies accountable for funding received.” As of June 2010, AASU had 16 staff positions and 12 of them were filled. AASU is still evolving, but it has made significant progress and introduced several processes to monitor SPAs.

Three areas in the Department analyze the reports from SMD and follow up with them: the AASU, the Administration and Finance Division, and the Disability Programs and Employment and Income Assistance Division. For the SPA with Services, a primary analyst from the Administration and Finance Division does the financial analysis of Services' returns, and those of 50 other agencies.

SPAs have an Appendix outlining agency reporting requirements. In January 2006, the Department changed the reporting requirements for all agencies and renamed them the Financial Reporting Requirements (FRR).

To record and track receipt of service providers' reports, AASU implemented an Agency Status (Internal) Report. AASU uses an interim reports checklist, a budget checklist, and an audited financial statement checklist to analyze agency reports. Since early 2009, a risk assessment tool has provided a standardized documented process to assess the risks of funding service providers. AASU plans to integrate this tool into their financial checklists. AASU has also prepared a "Financial Reporting Requirements: Reporting Compliance Protocol" effective August 13, 2009 with procedures and guidelines to ensure agency reports are promptly received.

AASU personnel said that even with serious non-compliance by agencies, the SPAs during 2005 – 2008 did not impose any significant consequences on agencies and that the Department had only limited power to act. SPAs now have a new clause allowing the Department, in certain cases, to appoint a provisional administrator to exercise all the powers of the agency under the SPA.

3.0 Audit Findings and Recommendations

3.1 Monitoring and Compliance with the SPA

3.1.1 Department Monitoring of Services

Because 3 areas monitor compliance with SPAs, confusion about who is responsible for what has resulted. Staff from one area indicated to us that they had notified staff in another area of problems identified through their analysis. They thought the other area would resolve the problems but that did not happen.

In addition, Program staff had corresponded and met with Services on financial issues, including the treatment of surpluses, the method used to record the surpluses in financial statements, and the levels of Services' overhead costs. These discussions involved complex financial and accounting issues, but there was no evidence that a finance representative from either of the other 2 areas (AASU or Finance) was in the meetings. In our view, their participation would assist in earlier resolution of these issues.

Recommendation

1. We recommend that the Department improve coordination between the 3 areas that monitor compliance and, specifically, clearly identify who is responsible to follow up on concerns.

3.1.2 Provision of Information by Services

Services had not provided reports to the Department promptly and did not comply with the Financial Reporting Requirements (FRR) from 2005/06 to 2009/10. The SPA with Services outlines the reporting and financial information it must give the Department. To assess if Services was complying with the FRR and meeting the outcomes specified in the SPA schedules, we reviewed all AASU and Department files with the FRR reports from Services; reviewed AASU compliance checklists; conducted file reviews at Services; and interviewed AASU, Department and Services staff.

Staff in the Department told us that they found Services was reluctant to supply information to them. Our examination of AASU files with the FRR reports submitted by Services for 2005 to 2008 found that they had often been submitted late and that they did not have all of the required information. Under its Reporting Compliance Protocol, on January 6, 2010, AASU asked Services to submit 12 major financial reports outstanding for fiscal years 2007/08 (3 reports), 2008/09 (7 reports), and 2009/10 (2 reports). AASU received the reports on February 2, 2010. Services said that it had already sent one of the 2007/08 reports and 3 of the 2008/09 reports, but agreed to resend them and the other 8 reports.

3.1.3 Services Compliance with SPA Schedules

Our review of compliance with Schedules A, D and E of the SPA found that most SPA requirements were met but under Schedule D, services were not provided to the number of children in Winnipeg as agreed to under the SPA.

For Schedule A, we randomly selected 30 files from each of the 2005/06, 2006/07, and 2007/08 fiscal years to see if they met Individual Service Plan standards in the SPA. This means all files should have had an assessment plan, goals, at least an annual review, and an assessment and review at discharge. Almost all files had all required information.

The SPA also included employment placement goals in Schedule A. The goals reported by Services greatly exceeded the required levels.

Under Schedule D, Services has to develop and implement an intake process to assess the eligibility and needs of a child, and to coordinate, implement, and monitor the services provided to that child on an ongoing basis. We reviewed files to verify that service coordination was provided to 450-500 children in Winnipeg

and 300-325 children outside of Winnipeg as expected under the SPA. As Table 2 notes, service coordination did not reach the minimum required for Winnipeg in any year or for rural files in 2005/06.

Table 2

Year	Winnipeg	Rural
2005/06	296	229
2006/07	269	318
2007/08	331	318

Source: Services Financial Information

We also randomly selected 30 files from each of the 2005/06, 2006/07, and 2007/08 fiscal years to confirm that they had a service plan that was updated or reviewed at least annually. All files were annually reviewed or updated in 2007/08, but 3 files were not reviewed or updated in 2005/06 and 7 in 2006/07.

For Schedule E services, we randomly selected 15 files from each of the 2005/06, 2006/07, and 2007/08 fiscal years to verify that each file had a service plan (assessment, goals and recommendations) and to assess if comprehensive services were delivered to between 54 and 64 preschool children annually as set out in the SPA. We also ensured that training was offered to staff at the receiving school if the child graduated from the program, and that a provincial level workshop was held annually. All files for all years had an appropriate service plan and services were provided at the required levels (see Table 3). In all cases where a student graduated from the program, evidence of training for staff of the receiving school division was provided and provincial workshops were offered annually.

Table 3

Year	# of children receiving services
2005/06	57
2006/07	69
2007/08	75

Source: Services Financial Information

3.1.4 Accumulated Surpluses of Services

Services had accumulated a surplus of about \$1.5 million in unused funding as of March 31, 2010. Table 1 (section 2.1) shows that Services' significant surpluses began in 2006/07 and continued through 2009/10. As of the 2009/10 fiscal year-end, Services reported an accumulated surplus of \$1,534,747 to be carried into the 2010/11 budget.

Surpluses grew because Services did not fill vacant therapist positions (Occupational, Physical and Speech and Language Pathologists) to work with children. Services told us that because government funding was not guaranteed, they could not guarantee therapist positions for more than a year or two, and it felt that therapists would not agree to short-term employment.

To use the surplus, Services has to make proposals to the Department and wait for approval. If the Department rejects a proposal, Services then submits another proposal. On July 21, 2010, the Department said that it had agreed with Services on spending all but \$54,950 of the surpluses on 3 projects over the next 2 years.

3.1.5 Overhead and Administrative Costs of Services

The Department has not said how much overhead it will fund. Alliance has consistently applied the percentages for calculating overhead amounts based on its stated practices and policy.

One allegation was that Services' administration costs, calculated by the Department to be about 21% of Services' budget, were excessive and that repeated requests by the Department for clarification were met with resistance. Our discussions with both Services and the Department revealed varying opinions on exactly what overhead is and how much it should be.

The Department recognized the problem and recommended on January 29, 2008 that, "the Service Purchase Agreement due April 1, 2008 reflect guidelines concerning acceptable levels of administrative overhead." The current SPA, signed by SMD in May 2009 and in March 2010 by the Department, does not have any guidelines on administrative overhead.

Alliance defines overhead, in broad policy terms, as those costs that pertain to the centralized accounting, human resource, and information technology functions; as well as those costs related to the governance and management functions of Alliance. The overhead costs of Alliance are prorated to the subsidiaries based on their percentage share of consolidated expenses.

Alliance treats similar costs that relate directly to service provision as direct program costs, not overhead. The question is, "Where does overhead end and program begin?"

From 2003/04 to now, Alliance charges overhead to each subsidiary based on the subsidiary's total expenditures, up to 15%. Before 2003/04, overhead was based on several items including the number of staff years in the department, number of phones, and number of computers.

Our review of Services overhead expenses found several items that could be overhead expenses paid by Services—beyond the overhead and corporate allocations charged by Alliance. These include:

1. Amortization of fixed assets
2. Monthly billing
3. Mobile/cellular
4. Building maintenance supplies
5. Building cleaning
6. Building space rental
7. Office equipment – purchases
8. Building/property insurance
9. Building rent
10. Office furniture
11. Employee meals
12. Monthly internet billing
13. Telephone answering equipment
14. Furniture and furnishings
15. Light and power
16. Office equipment
17. Executive management services
18. Liability insurance
19. Building improvements

We analyzed SMD financial information to verify that the percentage of Services overhead costs related to budgeted expenditures did not exceed 15%. Table 4 indicates that the overhead cost charges from Alliance to Services did not exceed 15% of Services' total budgeted expenditures from 2003/04 to 2007/08, inclusive. But when expenses in Services (as listed above) are added, the total percentage of budget exceeds 15%. Alliance considers these additional expenses "program" costs, not overhead.

Table 4 - Budgeted Overhead Expenses

Year	Services Budgeted Expenses	Budgeted Overhead Allocation Paid to Alliance	% of Budget	OAG Calculated Additional Overhead Expenses in Services	Total % of budget
1999/00	\$8,495,071	\$1,175,677	13.8%		
2000/01	\$8,359,013	\$1,252,712	15.0%		
2001/02	\$8,336,837	\$1,142,697	13.7%		
2002/03	\$8,409,537	\$1,156,351	13.8%		
2003/04	\$8,426,897	\$1,036,958	12.3%	\$710,826	20.7%
2004/05	\$8,530,500	\$1,060,101	12.4%	\$697,992	20.6%
2005/06	\$8,599,090	\$1,122,651	13.1%	\$738,968	21.6%
2006/07	\$9,115,862	\$1,110,014	12.2%	\$691,335	19.8%
2007/08	\$8,922,501	\$1,133,656	12.7%	\$723,112	20.8%

Source: Services Financial Information

Overhead charges are recalculated on the "actual" expenditures at the end of the fiscal year and redistributed back to the entities by Alliance Board motion. But Alliance is retaining surpluses from excess overhead charged to Services. At the October 3, 2006 Alliance Board meeting, a motion was carried *"That the SMD Alliance may establish a cumulative surplus and that the SMD Alliance Board will, each year prior to the approval of the year-end financial statements, make the decision respecting additional accumulation of surpluses."* Table 5 outlines the overhead surplus amounts retained each year by Alliance.

Table 5 - Overhead Surplus Retained

Year	Overhead Surplus Retained?	Services Overhead Overpayment	Amount Retained by Alliance
1999/00	No	N/A	N/A
2000/01	Yes	N/A	\$289
2001/02	Yes	\$54,888	\$78
2002/03	Yes	\$81,278	\$23
2003/04	Yes	\$18,097	\$35
2004/05	Yes	\$50,071	\$50,071
2005/06	Yes	\$49,262	\$49,262
2006/07	Yes	\$12,548	\$6,275
2007/08	Yes	\$129,703	\$50,000

Source: Services Financial Information

Recommendation

2. We recommend that the Department clearly specify which overhead costs it will fund.

3.1.6 Intercompany Transactions

In 2004, Alliance transferred almost \$500,000 from Services to supply needed cash flow to one of the subsidiaries. While the funds have since been repaid to Services by Alliance, the transaction put public funds at risk and was done without the full knowledge of Services Board of Directors or the Province.

The SPA supporting the provincial funding is between the Department and Services. In 2005, Alliance signed an accompanying agreement with the Province that permits the Province to audit and evaluate the operations of Services and any transaction between Services and any other entity owned and controlled by Alliance.

In the mid-1990s, SMD formed 2 entities incorporated as not-for-profit companies, Kildonan Hearing and AccessAbility. These were established as separate entities because the SMD Board was concerned that these entities could be seen as competing with private companies selling similar products and services. The Board did not want public money to support these entities. In 1999 Kildonan Hearing and AccessAbility became part of (and operated by) Ventures.

Over the next few years, Kildonan Hearing and AccessAbility were not profitable. In March 2004, the CEO of Services reported to the Services Board that Ventures was closing its AccessAbility and Kildonan Hearing operations. Later, AccessAbility's assets were bought from Ventures by a third party. Kildonan Hearing was declared bankrupt by the Ventures Board and closed its doors in March 2004.

At the June 16, 2004 Services Board meeting, a discussion took place with the SMD auditor and the Board decided that no loans could be made to offset losses of other SMD entities.

At their June 22, 2004 meeting, Alliance approved a Cash Flow Management Policy effective June 30, 2004. This policy aimed to ensure adequate working capital was available for operations and to optimize investment income for SMD. The policy set out the authorities and limitations on the internal transfer of money between entities. The Alliance CEO could approve transfers up to \$300,000 if the borrowing entity is able to repay within 120 days and Alliance Board approval would be required only for more than \$300,000 or if the borrowing entity was not able to repay within 120 days.

In December 2004, Alliance signed a promissory note to repay Services the amounts transferred to Alliance for Ventures. A promissory note between Alliance and Services for \$479,657 was set up to reflect payments of \$13,577 per month at an initial interest rate of 2.75%. On March 1, 2005, the interest rate was to increase to 3.00%. The transferred amount was to be completely paid off by December 1, 2007. The repayment schedule from the Alliance financial department showed the note was fully paid by February 1, 2007.

The CEO of Alliance can still move up to \$300,000 among companies without board approval in accordance with board approved policy, if the borrowing entity is able to repay within 120 days. As a result, the CEO can still enter into future transactions similar to those described above. In that case, public funds would again be at risk.

Recommendation

3. We recommend that the Department decide whether to assume the risk of intercompany transactions and reflect the decision in the SPA.

3.2 Governance and Management Practices

Since 1999/2000, SMD has been organized into five corporations, with Alliance as the controlling entity and with four subsidiary organizations, one of which is Services (detailed in Section 2.1). Documentation states that the SMD structure “is intended to foster long-term sustainability for SMD and to reduce SMD’s reliance on public sector funding. In order to optimize success, the structure has vested certain centralized controls with the parent company, SMD Alliance. In order to ensure its continued relevance to people with disabilities, control of the parent company has been placed in the hands of consumers.”

To understand SMD’s transformation from one corporation to its current structure, we interviewed people involved in SMD both before and after the restructuring. They said that SMD believed that certain revenue generating activities, such as retail operations, were necessary. But this view was not always shared by funders. And the Canada Revenue Agency indicated that certain “for-profit” activities could jeopardize SMD’s charitable status. So SMD restructured to move these “for-profit” activities to another organization, separate from historically funded operations. SMD also believed it had to seek alternate revenue sources, as they believed provincial funding had declined and would continue to do so. We saw several examples of how SMD was generating additional revenue through fundraising, fees for service, and contract case management. SMD recognizes a need for accountability to its funders, but it believes that it is ultimately accountable to the community.

We interviewed 18 current and former Board members and senior staff of Alliance and Services who had served between 1999 and 2009. Governance issues were also part of our interviews with executive and senior management and staff members of Alliance and Services. We also reviewed applicable governance documentation, including the minutes of all Alliance and Services Board meetings, the by-laws from the inception of the Alliance to the present, the board orientation manual, Alliance policy manual, as well as organizational review reports, internal audit reports and staff survey results.

The Alliance Board consists of a minimum of 3 and a maximum of 15 directors, elected by its membership. At the time of our review, the Alliance Board had 8 Directors.

Each subsidiary is governed by a separate board of directors. Appointments to the subsidiaries' boards are made by the Alliance Board. At the time of our review, the Services Board had 10 Directors.

The roles and responsibilities of the Alliance Board are detailed in its By-Law #1 and the roles and responsibilities of each of the subsidiaries are detailed in their By-Law #1. Alliance By-Law #1, dated March 1999, outlines the corporate mission and sets out the Directors' authorities and responsibilities.

Services By-Law #1 dated June 1999, states Services' objectives and basic operating principles, and sets out the Directors' authorities and responsibilities.

3.2.1 By-laws

Alliance's by-laws have not always reflected current practices but have been updated periodically. Alliance did not get federal approval for the 2005 and 2007 amendments to its By-Law #1.

Corporate by-laws set the foundation for the policies and procedures that govern organizations. Alliance is federally incorporated under *The Canada Corporations Act*. This Act requires that a company's by-laws include specific provisions that Alliance has incorporated into its by-laws. This Act also requires by-law amendments to be submitted to Industry Canada for approval by the Minister. Amendments must be approved by the company's members before the Minister's approval is sought.

Alliance's By-Law #1 was approved March 1999 and Services By-Law #1 was approved June 1999. Amendments were made to each by-law in June 2005 and again in June 2007. The June 2005 amendments were not approved by the Board until May 2006. None of the people we interviewed could explain why the amended By-Law #1, passed by the Services Board in July 2005, was not brought back to them until April 2006.

Amendments to Alliance's by-laws are not effective until confirmed by a resolution of not less than two-thirds of the members present at a meeting. They cannot be enforced or acted on until approved by the Minister of Industry Canada. We requested a copy of the Minister's approval for the 2005 and 2007 amendments. But the approvals had not been sought. As a result, Alliance asked for the Minister's approval on January 14, 2010, and received it on February 3, 2010, with approval dated January 14, 2010.

Because Alliance did not have the Minister's approval of the by-law amendments, it could not enforce or act on them. The amendments would let Alliance appoint the Services Board members. Alliance was consolidating its control of the subsidiaries by appointing its CEO as the CEO of all the subsidiaries and requiring the subsidiaries' Chief Operating Officers (COOs) to report directly to the Alliance CEO. We did not see any results of this omission, but Alliance's authority and control of its subsidiaries from June 2005 to January 2010 was open to challenge.

Recommendation

4. We recommend that the Alliance Board regularly review its by-laws to ensure that they are current and reflect Alliance's current needs and practices.

3.2.2 Membership Recruitment and Board Appointments

The Alliance Board members did not comply with its by-laws when recruiting members and appointing members to the Alliance Board. A lack of Alliance membership resulted in Alliance not having a quorum at its annual general meeting (AGM) in 2002/03. It is questionable if a quorum was present at the 2003/04 AGM.

Ongoing renewal and sustainability of a board are key to good governance. Board member recruitment ensures that a board has people with the necessary skills, ability and commitment to fulfill their governance responsibilities. A board needs members with varied qualifications and competencies to effectively carry out its governing duties.

The 1999 Alliance By-Law #1 said that the Board consists of 3 to 15 directors, the majority of whom are qualified members of Alliance, and that their term of office is generally 3 years. Each Alliance subsidiary is to have one representative on the Board and the membership can elect the same number of directors plus one. By-Law #1 requires Alliance to have a nominating committee of not less than three people appointed by the directors. At least 30 days before the AGM, the nominating committee must notify all members of the meeting and request nominations for the board. People nominated as directors are to be elected by the members at a meeting of the members.

Vacancies from resignations or removals of an elected member may be filled at the members' meeting where the director is removed, and a quorum of directors may fill a board vacancy. The appointed director holds office for the unexpired term of the vacating director.

The 1999 Services By-Law #1 said that Alliance is the sole member of Services and elected Services Board members are appointed annually by Alliance at the AGM. Services Board of Directors has between 15 and 20 directors, and no director, other than the officers of Services, can serve more than 6 consecutive years. In June 2000, the minimum number of directors was reduced to 10 by a resolution at the AGM.

Services By-Law #1 requires the nominating committee to prepare a list of people to be appointed to the Services Board and submit it to Services' head office at least 14 days before the annual meeting. The By-Law requires the Board to consider having representation from Winnipeg, communities outside of Winnipeg, clients, people with disabilities, and to improving Services' fundraising capabilities. Alliance may remove a Director of the Services Board. The Services Board may appoint officers to fill vacancies occurring after the annual meeting and those appointed can serve only the unexpired term of the vacant office they fill. In April 2005, Alliance removed 2 Services Board members for non-attendance at Board meetings. It then appointed 6 Alliance Board members to the Services Board until the June 2005 AGM, bringing the Services Board up to the required number of directors.

Previous and current Alliance and Services Board members told us that the membership issue was an ongoing concern in SMD and that Alliance and Services were having trouble recruiting people to become members of their boards. The membership concern and the desire to focus on increasing membership were first noted at Alliance Board meetings in December 2000 and January 2001. This issue was not resolved over the next few years. By June 2003, the AGM scheduled for June had to be postponed as membership was low and a quorum of 25 members would not be reached. The low membership numbers continued until 2005.

Membership was an issue in the Internal Audit report of May 2005, which recommended that Alliance continue its effort to increase membership and representation on the Board. In a July 2006 response to Internal Audit, Alliance's CEO reported that efforts to recruit members had been hampered by privacy legislation, which prevented accessing Services' client records to solicit interest in Alliance membership. The CEO's response also said that the initiative to recruit members was to be championed by the Services COO, and that clients applying for support from the Foundation's Assistive Technology Fund may have to become an Alliance member.

The responsibility for recruiting board members and building membership has become Services' responsibility, as only Services staff can communicate with their clients. Services staff give their clients information about membership requirements and interested people can apply to Alliance for membership. In September 2008, Services inserted a mail out to parking permit clients to solicit interest. This campaign significantly increased Alliance membership to about 750 people.

SMD does not have a structured or planned process or recruitment policy—it uses primarily a referral process. People interested in becoming a board member fill out a form available from the agency. The information is submitted to the Board of the applicable entity. During our interviews some former board members expressed concern that because the Alliance CEO interviewed all potential board members, people recommended for appointment are those who would support the CEO, and potentially swing votes in the CEO's favour.

It is critical that Alliance continue to focus on recruiting qualified board members and implementing a strategy to increase the pool for selecting board members. Board members should be involved in this process. The CEO's support in this area should be limited to administrative assistance to the Board.

The Alliance By-Law #1 has always required nomination papers in the form set out in 1999 and still does. Between 1999 and the 2006 amendments to the Services By-Law #1, prospective board members of Services also had to file nomination papers. As of June 2006, Services By-Law #1 states that Alliance will appoint Services directors and decide the process for doing so.

We asked for completed nomination forms of 24 Alliance and Services Board members. We were told that they had located biographies and resumes for several of the 24 board members but SMD could not find the nomination forms for them.

As a result of the membership problems in these years, SMD had trouble attaining a quorum to hold its AGM in 2002/03 and possibly in 2003/04. Alliance By-Law #1 says that if there is no quorum, the only business that can be done is to adjourn. The June 2003 AGM was postponed due to registration below the required quorum of 25 members. Although their lawyer said an AGM would need to be held by September 2003, the AGM was postponed repeatedly. By March 2004, the AGM had not been held and legal advice about the non-compliance was sought. Alliance's lawyer recommended that the 2002/03 and 2003/04 AGM's be held back-to-back. This was done on June 29, 2004, but the Services Board, in the minutes, questioned whether there had been a quorum at the meeting. As there are no minutes of the AGM meetings, we could not tell if a quorum was achieved.

Recommendation

5. We recommend that Alliance ensure that the AGM minutes are recorded and kept on file.

3.2.3 Board Orientation and Training

A formal board orientation program has only been in place since 2006. No ongoing formal board training is done. Lack of clarity about the role of board members has been an ongoing issue raised by board members. The ambiguity of the relationship with the Alliance Board, and the duties and role of the subsidiary boards in relation to the Alliance Board, was first noted in 2001.

In its May 2005 report, Internal Audit recommended that Alliance clearly state the roles and responsibilities of the Services Board; give board members sufficient orientation to properly understand their responsibilities; and update the orientation manual with this information (once the board's roles and responsibilities are clearly defined).

A board orientation manual for Services was developed and became available in May 2006. Board members receive the manual and presentations by the Alliance CEO on the organizational structure and reporting roles. Periodically, Services' program staff presents overviews of their roles and the services they provide.

Ongoing board training is important. Given the unusually complex nature of the organizational structure, it is especially important to have clear roles and responsibilities and to ensure that all board members know and support the organizational structure. The nature of the board training is currently limited. Key governance skills such as strategic planning, risk management and financial literacy are not included. Some of this training may be available externally, however individual board members would benefit from central coordination of this information.

Recommendation

6. We recommend that Alliance and its subsidiaries make training available to its board members in key governance skills such as strategic planning, risk management and financial literacy.

3.2.4 Board Roles and Responsibilities

The Alliance Board has overall control over Services strategic direction and administrative policies. The Alliance CEO hires the Services Chief Operating Officer (COO) who must report to the Alliance CEO.

In June 2005, Alliance amended its By-Law #1 to say that Alliance, as the sole member of the subsidiaries, must set:

- the overall role and mission statement of the subsidiaries.
- the strategic direction of each subsidiary and the administrative and management services required by Alliance and its subsidiaries and allocate the costs among them.
- the administrative policies and procedures to be followed by Alliance and the subsidiaries.

The amended Services By-Law #1, signed in May 2006, included the Alliance amendments noted above. In June 2007, Services By-Law #1 was again amended to say that the Alliance CEO is the CEO of Services. The amendment removed the reference that previously permitted the Services COO to employ, supervise or discharge employees of Services. The Alliance CEO must be notified of, and can attend all Services Board meetings but cannot vote.

At the January 7, 2002 Alliance Board meeting, the Board discussed a November 14, 2001 meeting between the Alliance Board and its subsidiary boards. That earlier meeting had discussed issues between the boards and made suggestions. One suggestion was for Alliance to increase emphasis on developing policies affecting all entities and communicating the policies to all board members and their CEOs. Another suggestion was for the Alliance Board to increase emphasis on dispute resolution. We were told that they have been working on policy development since that time.

Internal Audit Services audited Services in 2005 because of an ongoing conflict between the Boards of Alliance and Services in 2004 and Department concerns about SMD's structure. In a May 2005 report, Internal Audit recommended that SMD ensure open channels of communication and develop a dispute resolution policy. SMD still lacks a formal dispute resolution policy to resolve conflicts between the entities in the Alliance group.

Alliance By-Law #1 (1999) says that the Board will delegate to the President and CEO of Alliance the full authority to manage and direct the business and affairs of Alliance and to employ and discharge agents and employees of Alliance but may delegate less power. The CEO is to follow all lawful orders of the board and give the board all necessary information about Alliance. The CEO can attend all board meetings but cannot vote.

Services By-Law#1 (1999) says that Services will sign a contract with Alliance to provide a senior staff person to be President and CEO of Services and to manage and direct the business affairs of Services. The Alliance Board had directed its lawyer to draft such an agreement in April 2001. The Alliance CEO noted in June 2001 that the documentation from the lawyer had been received, but not dealt with yet. He agreed to report to the board after speaking to the Alliance auditor. No other reference to the agreement was in Board minutes, and the Board did not follow up.

In 2002, the Alliance CEO fired the Services COO without notice to the Services Board. The Services Board wrote to the Alliance Chair saying that they believed that there was a conflict between the Alliance and Services by-laws in relation to directing and supervising the Services COO. They were concerned that this action usurped their authority to control their COO, calling into question whether they were a board or just an advisory committee. They also said that the Services COO was in an untenable position in case of conflicting direction from the Services Board and the Alliance CEO.

The Alliance Chair responded to the Services Board in May 2002. The Chair said that the Board recognized that the termination of the Services COO had been handled improperly and that there was a lack of consultation about terminating the COO. He also noted the problems created by lack of communication of the Alliance CEO's concerns about the Services COO's performance. The Chair said that the Alliance CEO agreed with this assessment.

Alliance obtained a legal opinion in May 2002 on these concerns. It concluded that the by-laws were consistent with the common governance and management model established for the SMD group of companies and recommended that "clarity with respect to reporting and termination mechanisms" should be set out in the services agreement between Services and Alliance. The Alliance CEO confirmed that there is currently no formal agreement between Alliance and Services in this area, and that the recommendation in the 2002 legal opinion had not been acted on.

In September 2004, because of an ongoing dispute between Alliance's CEO and Board and the Services COO and Board, Alliance received a legal opinion on its structure and the legal obligations of its directors. The opinion discussed the reporting relationship between the Alliance CEO, the Services COO, and the Services Board. It concluded that there was no issue as long as the direction to the Services COO from the Alliance CEO matched the views of the Services Board. In case of a problem, it recommended that the Boards, the CEO, and the COOs be educated on their legal roles and obligations and that they discuss the issues to reach a compromise. The opinion concluded that, ultimately, Alliance can set the direction of Services because it has the authority to remove and elect directors of Services.

In January 2005, the Department told the Alliance CEO that it had several concerns, including the relationship between Alliance and Services and the other SMD subsidiaries. So the Department initiated an internal audit. The resulting Internal Audit Report of May 2005 made 13 recommendations, including one that Alliance clarifies the Services COO's responsibilities and accountability compared to those of the Services Board and the Alliance CEO.

In January 2005, the Services COO was relieved of his duties and advised that his contract was not going to be extended, without notice to or discussion with the Services Board. Alliance removed 2 Services directors for non-attendance and appointed 6 new directors to the Services Board on April 13, 2005. On April 15, 2005, 8 of the Services Board directors resigned (other than the 6 new directors appointed by Alliance). These resignations flowed from the lack of clarity—since the inception of the new structure—about the reporting relationship and the fiduciary responsibility of the Services Board. Other concerns involved transfers of money to Ventures, lack of information from Alliance on overhead costs, and a cautionary letter from Alliance's lawyer. On June 8, 2005, Alliance appointed another 3 directors to the Services Board to meet the minimum board size.

In August 2005, there were resignations from the board of another subsidiary because of conflicts with Alliance. Further resignations from that subsidiary occurred in December 2006.

Alliance further amended its By-Law #1 in June 2007, saying that in controlling its subsidiaries, Alliance must appoint its CEO as the CEO of each subsidiary. In June 2007, Services By-Law #1 was amended to say that the Alliance CEO is the CEO of Services; the Services CEO would now be known as the COO; and the COO would report to the Alliance CEO. The COO of each subsidiary is an employee of Alliance.

There was no contract between Alliance and Services to provide a COO for Services as required under section 26 of the 2007 Services By-Law #1. The Alliance CEO said that he will bring this up with the Alliance and Services Boards to change the requirement for a contract between the entities and instead state that Alliance will hire the COO for Services.

The Alliance Board did not ensure that many of its own suggestions and recommendations, as well as those from government, were acted upon.

Recommendation

7. We recommend that the Services Board of Directors be given full control over its operations, including decisions over agency agreements.

3.2.5 Strategic Planning and Business Plans

The Alliance Board and CEO did not ensure that strategic and business plans were developed and regularly updated. Despite complete changes in the functions and makeup of the boards and changes since the last strategic plan in 2004, no strategic planning has taken place to reflect the agreed-on objectives for Alliance.

Strategic planning and setting overall goals and objectives of an organization are important functions for boards of directors. They ensure that the board and management clearly establish agreed-on objectives for the organization. Because

all board members should be involved in the strategic planning process, many boards schedule an annual planning retreat or special meetings to focus on strategic issues.

Alliance By-Law #1, dated June 29, 2005, says that Alliance, as the sole member of its subsidiaries, will set the strategic direction of each subsidiary and their administrative policies and procedures. Alliance sets the strategic direction for SMD, but each subsidiary sets its own strategic planning process. The subsidiaries' plans consider budgetary and staffing issues. Much of Services' planning is constrained and controlled by the requirements of the SPAs, so Services is doing planning with logic models that help them meet monitoring and reporting requirements of the SPA.

A primary role of the Alliance CEO is to ensure that each subsidiary develops and implements a business plan with goals and objectives to achieve the Alliance Board's strategic direction. The Alliance CEO is to provide a quarterly "report card" communicating progress toward annual long-term goals.

The Alliance CEO said that Alliance's last formal strategic plan was in 2004 but he did not feel it needed to be modified. The 2004 strategic plan was developed primarily by the CEO with the management committee, which consists of the CEO and the subsidiary COOs.

Others we interviewed said that Services did not have a strategic plan but had developed logic models to improve reporting to funders. They also said that SMD did not have a business plan.

Recommendation

8. We recommend that the Alliance Board ensure that strategic plans are regularly documented and updated.

3.2.6 CEO Performance Evaluations

The Alliance Board does not formally evaluate its CEO's performance. On September 17, 2003, the Board adopted a job description for its CEO. The CEO reported that this resulted from his working with a consultant to develop job descriptions and goals. After the adoption of the job description, the Alliance Chairperson suggested that "in the not too distant future" the CEO come back to the Board with a process for personal evaluation. As of October 2008, no performance evaluation policy was in place.

The Alliance CEO said that he has had "periodic and infrequent" performance evaluations but could not say when the last one was. His contract is extended by Board motion, when the Board can review and assess his performance. He does not take part in those discussions.

Recommendation

9. We recommend that Alliance annually review the performance of its CEO.

3.2.7 Performance Evaluations of Management

The Alliance CEO did not regularly evaluate the COO of each subsidiary. And some job descriptions were not in place. Job descriptions for senior staff members were incomplete or only in draft form. Alliance got a grant for a consultant to develop a salary administration plan including as one component a revamped job evaluation process. It set up a Job Evaluation Committee consisting of the COOs of Services, Foundation, Clearinghouse, Alliance and the Human Resources manager. Alliance is creating an inventory of all job descriptions and reviewing them for consistency prior to evaluation by the Committee. They have met with the unions and said that the unions viewed their efforts positively.

Before 2008, performance evaluations had been sporadic, even though following discussions in 2002 between Services Chair and the Alliance Board, the Alliance Board agreed that policy and procedures needed to be put in place for periodic reviews of the CEO and COOs, and for continuity in the review process.

Since 2007, formalized performance evaluations of line staff have been done by directors and evaluations of directors have been done by the COOs. A number of senior staff said that they evaluate performance of their staff, but until recently, they had not received a performance evaluation. The former COO of Services and a current COO said that their evaluations should be done by the CEO. Neither had received a performance evaluation.

In 2008, the Alliance CEO said that performance evaluations of all employees were to be done and that no pay increases were to be authorized without a completed evaluation. The policy manual says in its Compensation Increases policy, that a positive performance evaluation is required for an employee to receive a merit pay increase. Services' program directors and staff estimate that about 90% of the 2009 evaluations have been completed.

Recommendations

10. We recommend that the Alliance CEO and the subsidiaries' COOs regularly evaluate their management and senior staff against performance criteria in their job descriptions.
11. We also recommend that the evaluations be documented and retained in personnel files.

3.2.8 Budget Process

While the budget process appears to be clearly outlined, there is a serious gap in how budget information is communicated to—and understood by—employees working with the budget. The FRR document has requirements for submitting budgets under the SPA. An annual operating budget for the entire corporate operation must be submitted by April 30, consisting of a consolidated budget, a budget for each cost centre and a budget for the administrative cost centre. The budget is to be presented in a specified format, and a staffing report must be submitted and reconciled with the budget.

Most employees did not understand budget development. There is a definite difference in the understanding of the whole budget process between employees, senior management and board members. Most Services employees and board members saw the budget as being “top down” and dictated to them by the Alliance executive with little, if any, opportunities for input. They also said that the budget changed as it went along. On the other hand, some Alliance executives, supervisors and Chairpersons saw the budget as “bottom up” with ample opportunity for input.

The budget process has been more efficient over the past few years, especially as a former Services COO worked on matching Services’ program budgets with SPA schedules. The Alliance CEO said that for several years the budgets had been submitted late to the funders because the Services COO had been negotiating with funders to make revenue corrections.

Recommendation

12. We recommend that Alliance ensure that all subsidiary management receive ongoing training and information on preparing the annual budget.

3.2.9 Policies and Procedures Manual

SMD policies are not up to date. SMD has a policy manual with 44 policies and a policy timeline development document dated October 1, 2008. This timeline document lists SMD’s policies by category (corporate, human resource, finance, etc.), lists the stage that policies are in (development, review/editing, or approved), and lists the effective date of the approval. Of the 128 policies in the policy development timeline:

- 23 were categorized as “Approval” and had an “as of date” stated.
- 36 were categorized as “in Review/Editing”.
- 69 were categorized as “in Development”. Of these, 17 were “in development”, 28 were “pending”, and 24 were simply “identified”.

In reviewing the policy manual and timeline document, we found no reference to evaluation policies for any SMD employee. A report entitled Performance Management in the policy manual outlines how to develop and implement a performance evaluation system. It covers preparing job descriptions and planning performance and evaluation processes, including monitoring and feedback. This report (written by a consultant) is a guide to developing a performance evaluation system, but it's not a policy.

Recommendation

13. We recommend that Alliance review its current policy manual to ensure that it is complete and current.

3.2.10 Internal Communications

Communications are—and have been—a major concern across SMD. An organizational review committee in 1998 identified several concerns relating to organizational management and leadership. Most important was poor communications in the organization and especially between senior management and line staff.

A plan was developed in 1999 that promised increased staff involvement in organizational planning, improved communication both internally and externally, and a new appraisal system.

Despite this, concerns about communications across the organization, evaluations of staff and inadequate staffing levels were again highlighted in the December 2007 Staff Satisfaction survey. These concerns continued to be expressed by several people we interviewed.

Services has been following up on several issues, including communications, through the Employee Survey Committee and has produced a document dated June 24, 2009, entitled *Employee Survey Committee Recommendations for Action*. The issues include low staff morale; lack of staff empowerment; lack of meetings with immediate supervisors; lack of value, including remuneration; and deficient operational policy. This is an ongoing planning and working document. It includes a plan to resolve communications problems. The plan includes regularly scheduled supervisor meetings and staff meetings; training and professional development; staff empowerment workshops; cross program activities and team building programs; and policy training on its Respectful Workplace Policy.

4.0 Response of Officials

4.1 Departmental Response

The Department accepts the findings and recommendations made by the Office of the Auditor General (OAG) in this report. These recommendations will help the Department strengthen its accountability framework with Society for Manitobans with Disabilities (SMD) and other funded agencies. The Department has provided direction to SMD concerning overhead charges, intercompany transfers, program outcomes and best practices in board governance. The Department will work cooperatively with SMD to resolve these issues.

To further address the issues and recommendations made in the report, work has begun in the following areas:

- The Department will develop guidelines to clearly define administration and overhead costs, including a limitation on those costs. These guidelines will be included in all Service Purchase Agreements with agencies as they are renewed.*
- The Department agrees that intercompany transfers put provincial money at risk. A clause will be added to Service Purchase Agreements indicating that this practice is not allowed.*
- The Department has begun to improve its internal coordination through the development of a protocol that addresses roles and responsibilities related to financial reporting. This protocol will be further reviewed and revised to ensure that all responsibilities are clear.*

4.2 SMD Response

SMD is a family of non-profit organizations working together to improve the lives of persons with disabilities in Manitoba. This family of corporations was designed and created to allow each member to focus and specialize in one area of activity. Each of the five members of the SMD family has its own specific role to play in SMD's non-profit operations.

This structure was created deliberately as a continuing evolution in response to the confluence of several critical trends.

- Throughout the period 1993 -1999, public sector revenue to SMD was eroded by inflation to the tune of approximately \$1 million. For a number of years the board of SMD Services struggled to maintain services to 23,000+ persons with disabilities in receipt of support at that time.*

- *Throughout this same period, the Board became aware of the escalating rate of growth in the population of people with disabilities and became concerned about the capacity of both the agency and the system to respond to the potential needs of one of Manitoba's largest minority groups.*
- *Similarly the Board became concerned that, in its efforts to preserve existing services, it had lost the capacity to respond to new and emerging needs of Manitoba's disabled population. To fulfill its mission, SMD's future had to include an increased ability to act with flexibility and independence on a long term sustainable basis in dealing with this population.*
- *Rule changes for charitable organizations at the Canada Revenue Agency, changing audit and accounting requirements at the Canadian Institute of Chartered Accountants and more intensely developed reporting and auditing requirements of funders, both public sector and charitable, have raised the costs of organizations like SMD and necessitated more focused and efficient practices.*

Philosophically, SMD believes that it is government's responsibility to level the playing field and address the needs of Manitoba's disabled. But SMD is also acutely aware of the competing pressures on government to address many issues including burgeoning costs of healthcare, pervasive poverty, and safety and security issues on our streets.

SMD believed that its choices were to reduce service in order to live within available funding or to acquire additional funding and improve cost efficiency in order to maintain and grow service levels. To the passionate and committed SMD staff and board members the decision was obvious: Become more efficient and grow service capacity through additional funding.

Over a period of time, action was taken on 3 fronts:

1. *Increasing and diversifying revenue in the public, private and voluntary sectors.*

SMD needed to increase funding from the public and voluntary sectors and it needed to develop a capacity to raise funds in the private sector. It recognized that different skill sets, cultures and operating models would be necessary to succeed in each sector. SMD also recognized that revenue from the private and voluntary sector provided a greater degree of flexibility and independence than public sector revenue.

2. *Controlling costs through several means including economies of scale in the provision of administrative services.*

In 2009/10 SMD Alliance recruited nearly 10,000 volunteer hours to support a variety of administrative, fundraising and program activities.

SMD Services utilized over 7600 hours of volunteer time. SMD also consciously sought ways to avoid adding unnecessary administrative and overhead costs. A centralized model that could leverage purchasing power and achieve economies of scale was determined to be appropriate.

3. *Systemic change.*

SMD recognized that revenue to support provision of essential services was critically needed. It also recognized that the environment, within which people with disabilities functioned, needed to be changed so as to remove existing barriers and prevent the creation of new ones.

There are now over 170,000 Manitobans with disabilities - approximately one in six people. Many continue to face a range of barriers every day that both limit their potential and prevent them from fully and equitably participating in employment, education, job training, communications, housing, public and private transportation, health care and social services. They also are limited in their enjoyment of goods, facilities, services and opportunities that most others take for granted. These barriers and their continuance come at an enormous cost - to persons with disabilities, to their families and friends, to their communities, to the public and to the overall economy. These costs will grow sharply in the coming years as the number of persons with disabilities increases with the aging of the population.

To address these circumstances required a different infrastructure than normally seen in the social services sector. SMD has borrowed concepts from the private sector and created a corporate structure that enables it to take action on these 3 fronts. SMD has created teams of board volunteers and paid staff, each operating under a common vision but each with different business models, different skill sets and different cultures.

SMD Services provides programs and services to children and adults with disabilities throughout Manitoba and is funded by United Ways in Manitoba, the WRHA and the Department as well as by private donors.

SMD Self-Help Clearinghouse provides support (including centralized administration, governance and management services and rent subsidization) to organizations engaged in the provision of self-help services.

SMD Foundation is charged with generating revenue in the voluntary, charitable sector and managing assets raised through those efforts.

SMD Ventures is responsible for generating revenue through activities in the private sector.

SMD Alliance provides strategic direction and coordination for all SMD operations, and efficiently provides centralized accounting, human resource and information and communication technology to each corporation.

The process of creating a structure to achieve our goals has been fraught with complexity. The requirements of the Canadian Institute of Chartered Accountants (CICA), Canada Revenue Agency (CRA), Service Purchase Agreements (SPA'S) and other legal, regulatory and financial institutions are complex and constantly changing. SMD's progress through this evolution has not been without errors, and many of these have been identified internally and through the audit processes SMD has undergone.

However, we are making progress. Throughout this period SMD Services has continued to provide quality programs, and this is reinforced in the OAG audit. SMD Clearinghouse continues to act as a unique funding model supporting 12 self-help organizations. Through fundraising events and the growing support of our donors, SMD Foundation is disbursing increased annual grants not only to SMD Services and Clearinghouse but also in support of other charitable activities. SMD Venture's business activities have achieved national reach and SMD has been recognized for its innovative programming.

The audits by Manitoba Finance and the OAG have identified areas in which SMD can improve. We welcome the opportunity to improve our ability to serve Manitobans with disabilities.

We believe that a number of the recommendations will enhance SMD's ability to serve Manitoba's growing population of people with disabilities and are pleased that there were no concerns about the quality of service provided by SMD. That service provision is the key driver for SMD as an organization.

The OAG report includes a number of recommendations:

4. We recommend that the Alliance Board regularly review its by-laws to ensure that they are current and reflect Alliance's current needs and practices.

SMD Response:

We agree and believe that we are taking steps to enact this recommendation. Bylaws of SMD Alliance have been reviewed and modified by the Alliance membership, now numbering 900 members, at Annual Member Meetings in 2005, 2007, 2009, 2010. SMD Alliance understands the importance of regular review and revision; and will increase its attention to this matter.

5. We recommend that Alliance ensure that the AGM minutes are recorded and kept on file.

SMD Response:

Minutes of Annual Member Meetings are on file and available to the OAG for review.

6. We recommend that Alliance and its subsidiaries make training available to its board members in key governance skills such as strategic planning, risk management and financial literacy.

SMD Response:

We agree. It should also be noted that SMD Services recently completed a board self-evaluation. SMD Clearinghouse has initiated and/or provided board training and strategic planning sessions for many of the 12 self-help groups receiving service. SMD Foundation completed a year long strategic planning process in 2009, and SMD Alliance is in the process of organizing board training sessions for 2010/2011.

SMD relies heavily on volunteers, who have donated increasing time and effort to the growing demands and complexity of non-profit community board governance. We will continue to pursue these efforts, while balancing the limited availability of volunteers, and their attraction and retention as board members.

SMD also notes that the expenses associated with certain of these activities would fall into the category of overhead and that implementing the recommendations will likely result in further increases in overhead's share of total expenses.

7. We recommend that the Services Board of Directors be given full control over its operations, including decisions over agency agreements.

SMD Response:

SMD will work with funders to address this matter. However SMD is strongly of the opinion that the Services Board of Directors has control over its operations, although it is strongly directed and influenced by external funders such as the Department. The Services Board

uses the centralized services of SMD Alliance as a more cost effective route than maintaining these services in-house. The development of agency agreements, being the result of multi-party negotiation, is beyond the control of Services Board of Directors. Terms are usually dictated by the Department and other outside funders. In terms of fulfilling Services' obligations under the agreements, the Services Board of Directors takes full responsibility and is pleased that there were no concerns expressed about the quality of service provided by SMD.

8. We recommend that the Alliance Board ensure that strategic plans are regularly documented and updated.

SMD Response:

SMD Alliance agrees and is already planning a review and update of its strategic plan which will, among other things, incorporate matters arising from and out of the OAG's report.

9. We recommend that Alliance annually review the performance of its CEO.
10. We recommend that the Alliance CEO and subsidiaries' COOs regularly evaluate their management and senior staff against performance criteria in their job descriptions.
11. We also recommend that the evaluations be documented and retained in personnel files.

SMD Response:

SMD concurs with these three recommendations of the OAG. These activities are consistent with SMD's current initiatives to revamp its model for job descriptions and train staff accordingly; to establish salary grids consistent with the marketplace; to evaluate jobs, through the establishment of a job evaluation committee, for appropriate placement on the salary grid; and to regularly evaluate staff performance.

SMD also notes that the expenses associated with certain of these activities would fall into the category of overhead and that implementing the recommendations will likely result in further increases in overhead's share of total expenses.

12. We recommend that Alliance ensure that all subsidiary management receive ongoing training and information on preparing the annual budget.

SMD Response:

SMD agrees with this recommendation. Training regarding preparation of the budget has been and will continue to be part of SMD's annual budget process. Similarly, the budget process and training is evaluated annually. Evaluation forms, completed by participants, are available to the OAG for review.

SMD also notes that the expenses associated with certain of these activities would fall into the category of overhead and that implementing the recommendations will likely result in further increases in overhead's share of total expenses .

13. We recommend that Alliance review its current policy manual to ensure that it is complete and current.

SMD Response:

SMD agrees and is continually reviewing and updating its policy manual. The OAG was provided with approximately 45 policy documents, which were in the process of development or revision. These draft policies will be reviewed to address matters raised by the OAG.

Local Government

Chapter 4: Special Audit: Rural Municipality of St. Laurent

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Appendix A

The Municipal Council Conflict of Interest Act

1.0 Main Points

What We Examined

In September 2009, various allegations were made to the Office of the Auditor General of Manitoba (OAG) including conflicts of interest involving Councillors of the Rural Municipality of St. Laurent (RM), that the RM was not following its tendering policy, and that there was a lack of accountability and reporting to the RM by some of the organizations that the RM provides grants to.

On October 30, 2009 we informed the Departments of Finance and Local Government and the Reeve of the RM that we would be conducting an audit to assess the validity of the allegations.

Why It's Important

There are 197 municipalities in Manitoba formed by the Lieutenant Governor in Council under *The Municipal Act*. In 2008, the RM received \$142,648 in grants from the Province of Manitoba (the RM's audited financial statements for 2009 were not available at the time of writing this report).

This is the third report about RMs that we have issued since 2002. This report does not discuss the role of the RM's elected Council, the Province or the Legislature. But this audit is important to alert the RM Council to the specific problems that they need to resolve. The Province and the Legislature need to understand the nature of the complaints so they can discuss how to best ensure that complaints are resolved efficiently and effectively across the Province.

What We Found

We found that certain administrative practices require strengthening. The RM did not formally tender for certain significant expenditures, including the purchase of gravel and some maintenance projects. In one case, the RM advertised for a tender but did not follow the established process. Because the RM did not keep adequate documentation, we could not assess if it had tendered a number of other maintenance projects appropriately.

Our audit of Council's procedures around two major projects - the Artificial Ice Project and the lease agreement with the Recreation Centre for RM office space - found that not all Council members had been provided with adequate or timely information when they voted on these projects.

Our audit also included issues of non-compliance with *The Municipal Council Conflict of Interest Act*. Certain of our findings related to a Councillor who was also participating on community boards. We found that the Councillor did vote on certain resolutions while he was a community board member. We noted that the Act does not distinguish between participation on a corporate board from a board which supports the community.

2.0 Audit Objective and Approach

The objective of this audit was to assess the validity of the allegations. We used standard practices for assurance engagements as recommended by the Canadian Institute of Chartered Accountants, and accordingly included such tests and other procedures that we considered necessary.

Our audit covered the period October 2006 to December 2009 and was conducted between November 2009 and July 2010. We reviewed available RM documentation and correspondence and interviewed current RM Councillors, administrative staff, and an RM consultant. Because our planned audit areas included entities within the RM, we also reviewed documentation and correspondence from these entities. The entities included the St. Laurent Community Development Corporation, the St. Laurent Cooperative Recreation Centre Inc., the Sports Committee Inc., the Artificial Ice Committee and the Oak Point Community Club.

3.0 Background

3.1 The Municipal Act

Municipalities in Manitoba are formed and dissolved by the Lieutenant Governor in Council under *The Municipal Act* (the City of Winnipeg – *The City of Winnipeg Charter*). The Minister of Local Government administers *The Municipal Act*, which says that the purposes of a municipality are to:

1. provide good government;
2. provide services, facilities or other things that, in the opinion of the council of the municipality, are necessary or desirable for all or a part of the municipality; and
3. develop and maintain safe and viable communities.

The Municipal Act governs the operations of a municipality; it sets out the role and duties of the elected council and the procedures for passing resolutions and by-laws. *The Municipal Act* gives municipalities corporate, regulatory (ability to pass by-laws), and taxation powers. The powers may only be used for municipal purposes.

3.2 Rural Municipality of St. Laurent

The RM is located about an hour drive northwest of Winnipeg on the shore of Lake Manitoba. According to RM officials, the population of the RM doubles from about 2,000 to 4,000 with the influx of the summer cottage dwellers each year. The main commercial activities are farming and fishing.

The RM is governed by a five-member Council, consisting of four Councillors and a Reeve who chairs Council meetings. Elections for the Reeve and the Council are held every four years. *The Municipal Act* gives the RM authority to pass by-laws. It also requires the RM to have an organizational by-law and a procedural by-law. The organizational by-law sets out the duties of the Reeve and Councillors and the establishment of standing committees of Council. The procedural by-law sets procedures for running Council meetings. Regular Council meetings are held every third Wednesday of the month. Special Meetings of Council may be called when necessary.

Figure 1 summarizes the RM's general operating fund results for 2006 to 2008.

Figure 1

Rural Municipality of St. Laurent Summary of General Operating Fund Results			
	2006	2007	2008
REVENUES			
Revenue from Taxation	\$ 776,895	\$ 881,257	\$ 918,153
Provincial Grants	126,410	94,341	142,648
Federal Grants	58,691	26,452	39,888
Other Revenues and Transfers from Reserves	85,314	165,577	132,227
	<u>1,047,310</u>	<u>1,167,627</u>	<u>1,232,916</u>
EXPENDITURES			
General Government Services	234,166	274,004	298,303
Protective Services	104,617	126,827	128,564
Transportation Services	259,369	338,587	463,511
Environmental Health Services	68,264	74,269	89,111
Public Health and Welfare Services	5,615	6,765	6,766
Environmental Planning and Community Development Services	28,021	17,545	17,319
Economic Development Services	57,972	49,338	41,833
Recreation and Cultural Services	86,500	88,185	93,500
Fiscal Services	34,008	58,040	57,260
Transfer to Reserve	168,778	116,452	83,065
	<u>1,047,310</u>	<u>1,150,012</u>	<u>1,279,232</u>
Operating Surplus (Deficit)	-	17,615	(46,316)
Nominal Surplus - Beginning of Year	267,504	267,207	284,822
Adjustments - Public Sector Accounting Board	-	-	4,624
Adjustments - Other	(297)	-	-
Nominal Surplus - End of Year	<u>\$ 267,207</u>	<u>\$ 284,822</u>	<u>\$ 243,130</u>
Total Reserve Funds	<u>\$ 351,305</u>	<u>\$ 399,973</u>	<u>\$ 268,119</u>

Source: RM of St. Laurent audited financial statements.

Note: The RM's audited financial statements for 2009 were not available at the time of writing this report.

3.3 RM Grants to Local Organizations

A brief description of the other entities included in our audit is as follows. Figure 2 shows the extent of RM funding to these entities for the period of our audit.

St. Laurent Cooperative Recreation Centre Inc. (Recreation Centre)

The Recreation Centre was incorporated in 1968, without share capital, under the laws of Manitoba. Its main activity is providing recreational facilities for citizens of the RM. The Recreation Centre Board is responsible for the operation of the Recreation Centre and the Arena. The minimum number of Directors on the Board is six (6); the maximum number of Directors is nine (9). Directors are elected by the community at the annual general meeting. The RM does not appoint any members to the Recreation Centre Board. Activities include bingo, community events, Aboriginal Headstart program and, until December 2009, bowling. The bowling alley was demolished and new municipal office space built in its place which opened in May 2010.

St. Laurent Sports Committee Inc. (Sports Committee)

The responsibilities of the Sports Committee include looking after arena activities and other sports programs. The Sports Committee was incorporated, without share capital, under the laws of Manitoba in September 2009. Before incorporation, the Sports Committee was a sub-committee of the Board of Directors of the Recreation Centre. The minimum number of Directors is six (6); the maximum is eleven (11). The RM has appointed one voting member to the Sports Committee Board.

Artificial Ice Committee

The Artificial Ice Committee was formed to coordinate the installation of artificial ice in the Arena. The first meeting of the committee was held on May 1, 2007. The Committee included members from the Sports Committee, the Recreation Centre and the RM. On January 22, 2009, at a meeting of the Sports Committee and the Artificial Ice Committee, the two committees agreed to merge. On January 31, 2009, the Artificial Ice Committee was dissolved.

St. Laurent Community Development Corporation (CDC)

CDC's mission is to promote and enhance business and tourism development, job creation, and to foster social development in the municipality. The CDC was incorporated under the laws of Manitoba in October 1998. The minimum number of Directors is three (3); the maximum number of Directors is thirteen (13). Directors are elected at meetings of the CDC; names are advanced to Council

and ratified as appointed to the CDC Board. Under provisions of the Articles of Incorporation, *“the Board of Directors shall include one director as appointed by the Council of the R.M. of Saint-Laurent”*. The corporation is authorized to issue, at a maximum, an unlimited number of Class (A) shares. According to By-Law No.1, *“...The Corporation will issue One Class A Share, which Share will be issued to Rural Municipality of Saint-Laurent”*.

Oak Point Community Club

The Oak Point Community Club is a community service organization located in the northern part of the municipality, in the town of Oak Point. It provides residents of that area with a variety of year-round activities. The Oak Point Community Club is a non-profit organization, incorporated in 1927 under the laws of Manitoba and is managed by a Board of 5 trustees.

Figure 2 summarizes RM grants to these local organizations for 2006 to 2009.

Figure 2

Rural Municipality of St. Laurent RM Grants to Local Organizations					
	2006	2007	2008	2009	Totals
St. Laurent Cooperative Recreation Centre Inc.	\$ 10,000	\$ 13,023	\$ 20,000	\$240,000*	\$283,023
St. Laurent Sports Committee Inc.	18,000	20,023	10,000	-	48,023
Artificial Ice Committee	-	-	80,000*	-	80,000
RM of Saint-Laurent Community Development Corporation	27,284	23,023	17,000	12,634	79,941
Oak Point Community Club	13,000	13,023	20,000	-	46,023
	<u>\$ 68,284</u>	<u>\$ 69,092</u>	<u>\$147,000</u>	<u>\$252,634</u>	<u>\$537,010</u>

* RM funding for the Artificial Ice Project

Source: RM financial records

Note: The Province of Manitoba, Department of Local Government, provided a grant of \$175,000 for the Artificial Ice Project which was flowed through the RM. This amount is not reflected in the above table.

4.0 The Municipal Council Conflict of Interest Act

The Municipal Council Conflict of Interest Act (Conflict of Interest Act) applies to all Mayors, Reeves and elected Councillors in Manitoba, including the City of Winnipeg. The purpose of the Conflict of Interest Act is to ensure elected members of municipal councils make decisions objectively and without being influenced by members who may have a personal interest in, or may benefit from, the outcome.

If someone alleges that a Councillor has violated the Conflict of Interest Act, the Council that the Councillor belongs to, may direct the Clerk of the municipality to apply to a judge of the Court of Queen's Bench for a declaration that the Councillor has violated the Conflict of Interest Act. Also, under the Conflict of Interest Act, an elector may apply *ex parte* (meaning, without notice to the other side) to the Court of Queen's Bench for authorization to apply for a declaration that the Councillor has violated the Conflict of Interest Act. To file this application, an elector must also file an affidavit showing details of the alleged violation and pay into court \$300, as security for the application. If a court finds that a Councillor has violated the Conflict of Interest Act, their seat may be declared vacant and may require the Councillor to repay any money they gained from the violation.

There were two specific allegations brought to our attention which we reviewed in the context of *The Municipal Council Conflict of Interest Act*. The results of our review are as follows:

- Certain of our findings related to a Councillor who was also participating on community boards. We found that the Councillor did vote on certain resolutions while he was a community board member. We noted that the Act does not distinguish between participation on a corporate board from a board which supports the community.
- Our other finding in this area related to a Councillor doing work for the RM. In one case (Resolution #130/07), as recorded in the draft minutes filed in the minute binder, indicated that the Councillor participated in a vote for which his company was paid \$5,300. The Chief Administrative Officer (CAO) subsequently provided us with another version of the draft of the same meeting which indicated that the Councillor left the meeting and did not return until after this vote. Neither set of minutes was signed off as the approved version of the meeting. We do not know which version accurately reflects what actually transpired. We did not find any other instances of non-compliance.

5.0 Tendering Practices

5.1 Tendering Policy and Procedures

The RM did not formally tender for significant spending, including the purchase of gravel and some maintenance projects. In one case, the RM advertised for a tender, but did not follow the established process. Because the RM did not keep adequate documentation, we could not determine if it had appropriately tendered a number of other maintenance projects.

Allegations that citizens of the RM made to us included concerns over the tendering procedures of the RM and Council not following its financial policy on tendering. The allegations involved spending on maintenance such as gravel hauling, gravel purchases, installation of culverts, and ditch clearing. The RM did not have any significant capital projects in the period of our audit. This spending is included under Transportation Services expenditures in the RM's annual audited financial statements (see Figure 1).

The RM approved the Expenditures, Estimates and Requests for Proposals Policy (Policy) by Resolution #228/04 on October 8, 2004. Sections of the Policy that relate to tendering include:

"The Chief Administrative Officer may authorize expenditures up to \$5,000.00 which have specifically or in general terms been included in the budget for the year. Authority to exceed the budget allocation must be obtained by Council.

The Chief Administrative Officer shall receive, where possible, no less than three (3) Cost Estimates or Requests for Proposals for the purchase of goods, services and/or works. Said cost estimates and/or Requests for Proposals shall be submitted to Council for consideration and Council shall by resolution award the successful cost estimate and/or proposal. If less than three (3) providers of the goods, services and/or works is reasonably available to submit a cost estimate and/or Request for Proposal the Chief Administrative Officer shall have the authority to approve the receipt of less than three (3) cost estimates and/or Request for Proposals. Cost estimates and/or Request for Proposals are to be submitted in the most uniform and similar format as is reasonably possible but in all cases the submission must be in writing.

The Council of the R.M. of St. Laurent shall have the sole right and discretion to decline acceptance of the lowest or highest or any tender, cost estimate, or Request for Proposal submitted. The R.M. of St. Laurent may further specify in the tender cost estimate and/or Request for Proposal

information on the criteria which will be used by the Municipality to consider the award of the item.”

When we asked staff and members of Council whether they were aware of the policy the responses ranged from not being aware, thought they had seen or had come across it before, to being aware of the policy. Similarly, when asked if the policy was being followed, responses ranged from not being followed, was being followed to a certain extent, to being followed except in emergency situations.

The current policy does not specifically state when tenders should be used for the purchase of goods, services and/or works. RM officials who knew of the policy thought that purchases over \$5,000 required tenders.

Discussions with RM officials revealed that maintenance expenses should have been authorized either by a tender for a specific project, or Council setting equipment rental rates with the contractor paid on an hourly rate for a particular type of equipment, or a rate per load for hauling gravel.

A review of Council meeting minutes revealed 13 cases of a discussion approving tenders or quotes for a specific project or approving hourly rates, but we could only locate four tender files. RM officials could not explain why 9 tender files were missing. The lack of documentation meant we could not determine if the tender process was appropriate or if there was a tender in these cases. For the tender files we examined, in one case the contract went to the higher of two bids. The higher bid was from a local contractor while the lowest bid was from outside of the RM.

We also noted other cases where specific project work amounting to approximately \$96,800 was not formally tendered. The RM did not formally tender gravel purchases during the period of our audit. During this time there were 6 purchases of gravel amounting to over \$300,000.

Before 2009, the RM did not formally tender for equipment rental rates. Often, a member or members of Council would contact a local contractor and negotiate rates for a specific project. The rates were then approved by a Resolution of Council. In 2008, four local contractors and three members of Council met to discuss gravel-hauling rates. After this meeting, gravel-hauling rates were set. One member of Council at this meeting was also a local contractor whose company does some RM work. Although only two members of Council thought it was appropriate to have local contractors involved in setting rates, this practice did not change until 2009. As one Councillor told us *“in prior years, the contractors essentially told us what they would accept”*.

In February 2009, the RM advertised for tenders for equipment rental rates in the Interlake Spectator and the Interlake Chatterbox, a local newsletter distributed twice a month to Warren, Woodlands, Oak Point, Lundar, and St. Laurent. The

tender advertisement read in part that the RM *“will receive sealed quotes from local and neighbouring contractors for the supply of hourly rates for construction equipment regarding the upcoming construction season”*. The quote forms that the RM gave interested contractors included the following at the bottom of the form:

“Process for calling contractors:

For small jobs where only one machine is needed:

- Low bidder is called first*
- If more than one low bidder, alternate between jobs*
- If low bidder is not available go to next bidder at their rate*

For jobs where more than one machine is needed (for example gravel hauling):

- Call low bidder(s) first*
- Anyone with a higher bid than the low bidder(s) will be offered the job at the low bidder’s rate.”*

Quotes for 11 different types of equipment were obtained from six contractors. Rather than using the above process for calling contractors, at a meeting on March 23, 2009, Council approved equipment rental rates by Resolution #99/09. Of the 11 rates approved, five were higher than the lowest quotation received. The other six rates approved were the same as the lowest quotation received. Reasons for not accepting the lowest quotation varied from - trying to be fair to local contractors, to no one would be able to do the work at that rate, to not being aware that it was done. Once the rates were established, the process was to allocate the work equally among local contractors who had submitted quotations. Six contractors had submitted quotations; one of them was not local. The non-local contractor submitted the lowest quotation for two types of equipment, but was not paid for any work related to this tender. However, we could not determine if this contractor was called to do any work, because the RM did not have any documentation and it was not clear from our interviews who actually called the contractors.

The RM’s current tendering policy consists of some general procedures in an overall policy on RM expenditures and estimates. There are no detailed procedures in the tendering policy to guide staff on when to use a tender. A tendering policy should clearly indicate a specific dollar amount above which a tender is to be used, where to advertise it, what documentation to keep in each tender file, a summary of all quotations received, reasons for not accepting the lowest quotation, and a schedule of payments made on each approved tender. There should also be a formal process in place identifying who is responsible to call and assign work to contractors when equipment rental rates are being used. When interviewed, all RM officials agreed a more detailed and formal tendering policy is needed.

The RM's unwritten policy or practice is to use local contractors whenever possible. But most RM officials we talked to did not support this practice. They had concerns with the quality of work done by local contractors, and they also thought hours charged to the RM for project work were being inflated. They believed that all projects should be tendered and that the lowest qualified bidder should get the contract, regardless of whether the contractor was local. Two officials said that projects should be advertised on the basis of total cost, not hourly rate. The Agreement on Interprovincial Trade (AIT) prohibits governments (including municipalities) from adopting or maintaining measures that prevent or restrict the movement of persons, goods, services or investments across provincial or territorial boundaries. Regarding municipalities, the AIT applies only to those tenders where the procurement value is equal to or exceeds \$100,000 for goods and services and \$250,000 for construction.

Recommendations

1. We recommend that the RM develop and implement a tendering policy, which includes:
 - a specific dollar value where a tender is required;
 - information to be included on tender advertisements;
 - procedures for tender advertisements;
 - a checklist of documentation to be retained for each tender;
 - a requirement to document reasons for not accepting the lowest quotation; and
 - a formal process to be followed to call contractors and assign work when equipment rental rates are being used.
2. We recommend that the RM advertise for tenders in an open and transparent manner. If the RM intends to use only local contractors, or that preference will be given to local contractors, this information should be disclosed in the tender advertisement.
3. We recommend that the RM tender for all gravel purchases and maintenance projects above the dollar value in the proposed tendering policy and that if hourly rates are used for a project, a maximum dollar amount be set for each project.

5.2 Processing Contractor Invoices

Internal control procedures to process contractor invoices are inadequate so inappropriate transactions could occur without detection.

Our audit of contractor invoices found the following problems:

- There was no documentation indicating who initiated the transaction;
- There was no documentation indicating how the transaction was authorized, by tender or quotation;
- Contractor invoices were not approved or initialed by an appropriate person, as evidence that the goods or services were received; and
- Gravel-hauling invoices in most cases were not supported by weigh tickets and lacked detail of where the material was picked up, where it was delivered, and the distance travelled.

Before RM cheques are issued, a listing of payments together with signed cheques and supporting documentation, such as contractor invoices, is provided to Council for approval.

We would have expected that all invoices for public works would be approved for payment by the Public Works Foreman, and that all administrative invoices would be approved for payment by the Chief Administrative Officer (CAO). Since the RM does not have a Public Works Foreman, members of Council are expected to check roads and identify where maintenance work is required. At the RM, these public works responsibilities have been assigned to members of the Transportation Committee or the Water, Sewer and Drainage Committee. This means that Council members will often be faced with situations which could be considered conflicts of interest.

RM officials were divided on whether the RM should have a Public Works Foreman. Some said the RM was too small, or had tried it before and people complained about the cost and the inexperience of the person. Others said it might work if a person was hired with road and construction experience.

Recommendations

4. We recommend that contractor invoices be signed by the Council or staff member who initiated the transaction, as evidence of the goods and services being received. The applicable tender, quotation and/or Resolution of Council should be documented on the invoice.
5. We recommend that gravel-hauling invoices be supported with weigh tickets, and include more detailed delivery information.

6.0 Indemnities and Expenses

Section 124(2) of *The Municipal Act* states that a municipal council may set compensation and expense payments for members of council and council committees attending to municipal business. The types, rates and conditions of payments are set through by-laws.

The Municipal Act defines municipal business as “a duty or function that a member of a council or council committee is required to carry out under this or any other Act or a by-law or resolution, and includes attending a meeting, conference or course of instruction that relates to municipal purposes”.

The RM Indemnity By-law sets payments to the Reeve and Councillors for the following:

- monthly indemnity;
- mileage;
- reimbursement of actual expenses for travel on RM business;
- meeting and meal per diems while attending to RM business;
- monthly cell phone allowance;
- tuition, living and travelling expenses for approved courses; and
- hourly indemnity rate while working within the municipality.

6.1 Councillor Indemnities and Expenses

We examined all indemnity and expense payments from October 2006 to December 2009 inclusive, except for December 2006. Claims for expenses for December 2006 could not be located.

Figure 3 summarizes the indemnities and expenses paid to the Reeve and Councillors for the period of our audit.

Figure 3

Rural Municipality of St. Laurent Summary of Indemnities and Expenses					
	2006	2007	2008	2009	Totals
Indemnities	\$ 5,940	\$21,840	\$23,760	\$23,760	\$ 75,300
Meetings	5,300	23,700	21,900	23,780	74,680
Mileage	4,143	16,037	16,373	27,070	63,623
Miscellaneous	462	1,175	2,264	7,387	11,288
Totals	\$15,845	\$62,752	\$64,297	\$81,997	\$224,891

Source: RM financial records

The correct rates were used to calculate payments for the following expenses: monthly indemnities, mileage, meetings, cell phone allowances, and municipal work performed. As required by the Indemnity By-law, claims were authorized by a Resolution of Council.

Claims for Local Organization Meetings

It is inappropriate for Councillors to claim meeting per diems from the RM to attend the meetings of local organizations for which they were a Board or Committee member elected by the community.

In a number of cases, Councillors claimed meeting per diems from the RM to attend meetings of local organizations. The RM Indemnity By-law allows claims only for expenses incurred on RM business. These claims were for meetings of the Recreation Centre, the CDC, and the Artificial Ice Committee. In these cases, the Councillors were elected by the community to be on these Boards or Committees, with voting rights, and were not there representing the RM.

Two Councillors were voting members of a Board or Committee of a local organization at some time during the period of our audit. We noted the following:

- One Councillor was reimbursed \$2,000 by the RM to attend 40 meetings of the Recreation Centre and the CDC;
- The other Councillor was reimbursed by the RM to attend 8 meetings of the Artificial Ice Committee. The total value of these claims could not be determined because the claim submissions lacked detail; and
- These Councillors also made 54 claims with insufficient information to show whether they were for a Council committee or for a meeting of a local organization.

Indemnity and Expense Claim Process

The RM does not have adequate procedures to ensure the accuracy and appropriate authorization of indemnity and expense claim payments.

Our audit of indemnity and expense claims and discussions with RM staff found that:

- payment calculations are not checked before being processed;
- there is no confirmation of meeting dates; and
- claim forms are not signed as evidence of review by the CAO before they are authorized by Council.

We found a few claims with calculation errors. These errors were not significant but inaccurate transactions may occur and not be detected.

Claim forms have a statutory declaration printed on the bottom. This declaration is to be signed by the Councillor submitting the claim. But 48 claim forms were submitted and processed without the Councillor's signature.

Reimbursements of 8 expenses were not supported by a receipt, or the receipt was a copy, not an original.

Daily per diem maximums were exceeded. Indemnity By-laws state that *“Per Diem and meal expense of One Hundred (\$100.00) per day is the maximum amount that a Councillor or Reeve can claim as expense”*. In 2007, one Councillor made four claims over the full-day maximum per diem of \$100.

Recommendation

6. We recommend that payment calculations be checked for mathematical accuracy and completeness.

Meeting Per Diem Rate vs. Municipal Business Rate

Claims for RM business that did not involve a meeting were paid under the meeting per diem rate rather than at the municipal business rate.

Sections 3(c) to (f) of the RM Compensation and Expenses By-laws set full-day (\$40 per diem plus \$60 meal expense) and evening per diem rates (\$25 per diem plus \$25 meal expense) for municipal business meetings. All other municipal business where no actual meeting takes place should be claimed under Section 5 (municipal work paid at \$10 per hour).

Contrary to these requirements, claims were submitted with descriptions that did not indicate a meeting took place yet the claims were processed under the meeting per diem rate instead of the municipal business rate. Examples of claim descriptions processed under the Meeting per diem rates included gravel-hauling supervision, flood inspection, and checking roads.

Claim Details

Claim descriptions lack detail on the work performed.

Numerous claims had a description that lacked detail on the work performed. “RM” and “Recreation” were commonly listed as the description.

Recommendation

7. We recommend that claims be processed only when there are specific details provided on the activity being claimed.

6.2 Councillor and Staff Expenses

Credit Cards

Payments were being made in some cases without adequate supporting documentation and/or proof of payment.

All members of Council had RM credit cards during the entire period of our audit. The credit cards had a limit of \$1,000. The following people also had credit cards:

- CAO;
- Fire Chief;
- Public Works Foreman (ended January/February 2009); and
- Accounts Payable Assistant (ended December 2009).

The Indemnity By-law states that expenses should be supported by receipts. Staff acknowledged that receipts should be originals.

Figure 4 summarizes expenses paid by the RM for charges incurred with RM credit cards and the extent of unsupported payments.

Figure 4

Rural Municipality of St. Laurent RM Credit Card Expenses and Unsupported Payments					
	2006*	2007	2008	2009	Totals
All payments	\$ 2,532	\$13,770	\$18,211	\$10,641	\$45,154
Unsupported payments	\$ 787	\$ 4,119	\$ 3,556	\$ 2,476	\$10,938
Percentage unsupported	31.1%	29.9%	19.5%	23.3%	24.2%

* Includes only October 1 - December 31 credit card expense statements.

Types of unsupported payments:

- Payments were made on the basis of a credit card statement posting (without an invoice) or were supported by a copy of an invoice;
- Payments were made without a receipt or were supported by a copy of a receipt;
- Payments were made for items in cases where appropriateness or purpose of the expense was questionable;
- Gift cards were purchased and supporting documentation lacked sufficient detail of the recipients of the gift cards and why they were given gift cards;

- Payments were made on the basis of credit card transaction slips with insufficient itemized detail or a copy of a credit card transaction slip; and
- Payments were made on the basis of a register tape with insufficient itemized detail.

There was no evidence of any review or approval of the credit card transactions.

Recommendation

8. We recommend that the purpose of a credit card expense be documented and approved by authorized RM staff.

7.0 Governance

The following allegations from RM citizens and other documentation raised several governance issues:

- Signing authority was removed from the newly elected Reeve by Council;
- An ongoing 3-to-2 voting pattern on Council;
- The Reeve and a Councillor were removed from their committee responsibilities by the rest of Council;
- Certain matters were being presented to Council for a vote, but some members were not given adequate and timely information on the subject; and
- Frequent Special Meetings of Council.

Our audit covered the period primarily from October 2006 to December 2009. The RM Council consists of a Reeve and four Councillors. The current Council was elected in October 2006, except for the current Reeve. The previous Reeve resigned for health reasons, and a by-election for a new Reeve was held in December 2007.

Although media reports indicated governance issues before the current Reeve's election, matters did not improve after the election. At the first Council meeting, in December 2007, when the Reeve was sworn in, Council passed a Resolution removing the Reeve's signing authority. At a later Council meeting in January 2008, the Resolution to remove the Reeve's signing authority was rescinded, apparently after much public debate and media reports about the matter.

Allegations included an ongoing 3-to-2 voting pattern on Council and Council's removal of committee responsibilities of two members. The apparent Council division had three Councillors forming a majority, and a Councillor and the Reeve forming a minority. We examined Council minutes from December 2007, when the current Reeve was sworn in, until December 31, 2009, where a recorded vote was taken. In about 40% of these recorded votes, motions were either carried or defeated by this 3-to-2 voting pattern. Although there was not a recorded vote to remove the Reeve's signing authority in December 2007, a media article indicates it was passed by the same voting pattern.

At the December 17, 2008 Council meeting, a Resolution was passed to replace the minority members of Council on the Drainage Committee with two members from the majority. At the February 17, 2010 Council meeting, a Resolution was passed resulting in the minority members of Council not being on any of the nine Council Committees. Both these Resolutions were passed by the 3-to-2 voting pattern. Members of the minority believed their Committee responsibilities were taken away for the majority members to retain power and control. Majority members said it was done because the minority members would not do anything, would

not participate on committees, and would publicly criticize decisions passed by Council.

Adequate and Timely Information

Council members did not have adequate and timely information when asked to vote on funding for the Artificial Ice Project and to enter into a lease agreement with the Recreation Centre for RM office space.

We asked Council members if they received adequate and timely information before voting on the Artificial Ice Project and the lease agreement for office space. On March 6, 2008, a Special Meeting was held to approve funding for the Artificial Ice Project. On November 12, 2009, a Special Meeting was held to approve a lease agreement for office space.

Members of the minority felt they did not receive adequate and timely information on matters, including these two. Members of the majority thought that all members either received or had access to information. Our review of Council meeting minutes found no indication that Council received a detailed business plan for the Artificial Ice Project in a reasonable time before the March 6, 2008 Special Meeting. At this meeting, Council voted to provide funding of \$80,000 and to cover any shortfall in funding for the Project up to \$240,000.

We were told that Council received the business plan the day before the meeting. A media article, discussing the March 6, 2008 meeting, said that the minority members received the business plan the day before the meeting and that one of the majority members had the business plan three or four months before the meeting. A detailed business plan for the Project, including budgeted costs and other anticipated funding sources, should have gone to all members of Council well before the meeting. Several months later, on July 25, 2008, one of the majority members prepared an invitation to all members of Council to attend an informational meeting on the Project. The purpose of the meeting was to inform members of Council of the financial details and plans of the Project.

The RM proposed to provide a grant of \$240,000 to the Recreation Centre for the Project. This money was to be borrowed and funded by a ten-year debenture. The annual payment of principal and interest on the borrowing by the RM was to be recovered by a special mill rate charged on all rateable property in the municipality. All municipal borrowings require approval of the Municipal Board of Manitoba. Because there were a number of objections to the proposed borrowing from RM citizens, the Municipal Board held a public hearing on October 28, 2008. Although the Municipal Board approved the RM's borrowing, it included the following comments on Order No. E-08-231, dated December 17, 2008:

“Councillors were faced with having to make a decision on providing the grant with relatively short notice. If the Artificial Ice Committee, and the Councillors on the Committee, had been more open with the information on the project, it is the Board’s view that many of the issues raised by the objectors relating to the procedures could have been avoided...”

In approving the By-law, the Board recommends that in the future Councillors and the Reeve ensure that all relevant information is available to all Councillors when Council is dealing with financial matters”.

Despite this recommendation from the Municipal Board, the Council decision to enter into a lease agreement with the Recreation Centre for RM office space was also made without all members of Council having complete and timely information. On November 12, 2009, at a Special Meeting of Council, Resolution #412/09 was passed for the RM to enter into a lease agreement for office space with the Recreation Centre for no less than 15 years, with further details to be in a final lease agreement. On December 16, 2009, at a Special Meeting of Council, Resolution #445/09 was passed for the RM to enter into a lease agreement for office space with the Recreation Centre for three years. We were told the lease term was changed from 15 to three years to avoid additional procedures required by *The Municipal Act*. Members of the minority told us they were not involved in negotiating the lease nor were they aware of any negotiations with the Recreation Centre. They also told us that the only information provided at the meetings was a copy of the proposed lease and they only had minutes to examine the document before voting.

Council did not ask the CAO to prepare an analysis of the alternatives to the lease with the Recreation Centre such as renovating the existing office space, building a new office, or leasing other space in the municipality. We did not try to evaluate the decision to lease office space from the Recreation Centre, but we have concerns with the process used to approve the lease. For accountability and transparency purposes, significant decisions made by Council should be supported by documented analysis explaining the reason for the decision. And all members of Council should receive complete and timely information.

Special Meetings of Council

Matters discussed at an excessive number of Special Meetings instead of at Regular Meetings.

Minutes of Council Meetings show the frequent use of Special Meetings of Council. Over the 39 months of our review we found that 56 Special Meetings were held, an average of 1.4 Special Meetings per month. In 2009, the average number of Special Meetings held increased to 2.1 per month. *The Municipal Act* requires each municipality to establish a procedures by-law, setting the rules

of procedure for Council to govern itself. The content of the procedure by-law must include such information as the frequency, time and place of Regular Meetings of Council; rules on the conduct of council meetings; rules on the public participation at council meetings; and the type and amount of notice to be given of a Special Meeting of Council.

The RM's Procedure By-Law states there will be one regular meeting held a month, and that Special Meetings may be called at any time by the Reeve. They must be called by the Reeve, if the Reeve receives a written request from at least two members of Council stating the purpose. The minority Council members and the RM citizens who made the allegations to us thought the number of Special Meetings was excessive and that they were used to push items through to avoid discussion and attention. The majority Council members thought the number of Special Meetings was appropriate, although two members thought that if Council worked better together the number of Special Meetings could be reduced. All Council members agreed the intent of Special Meetings was to respond to urgent or unexpected events. In many cases, such as the two Special Meetings held to approve the office lease, the topics discussed could have been dealt with at a Regular Meeting.

Councillors Making Commitments to Local Organizations Before Council Discussion

Certain Council members made commitments to local organizations before matters went to Council.

Our review of meeting minutes of some organizations and committees in the municipality showed that in some cases, RM matters were discussed before the matter went to the RM Council. Minutes of an Artificial Ice Committee meeting on May 1, 2007 noted that *"the RM will have a total of \$100,000 in the Recreational Fund by this time next year. They will continue to put in \$10,000 every year thereafter"*. All three Council members of the majority attended this meeting. At that time, although the RM had provided a letter of support for the Project, there was no indication of the extent of financial support to be provided or that \$10,000 would be contributed annually.

Minutes of the Sports Committee meeting on October 29, 2007 noted that the RM was to forward \$80,000 for the Project on January 1. The estimated cost of the Project is \$500,000. The minutes did not indicate who attended this meeting. By this point, Council still had not discussed the extent of financial support. It wasn't until a Council meeting on March 6, 2008, that Council voted to provide funding of \$80,000 and to cover any shortfall in funding for the Project up to \$240,000.

Minutes of the June 9, 2008 Artificial Ice Committee meeting, attended by the majority members of Council, noted that *"the RM Councillors state that if the*

project still falls short of their financial goal that they are prepared to pass a motion to borrow from the RM debenture a total of \$240,000 which will be spread out over 10 years and raise individual taxes by approximately \$30 per year". A few days later, on June 12, 2008, Council gave first reading on a Borrowing By-Law for \$240,000.

It is important that decisions of Council be made by all members. Council should have the opportunity for a full discussion of a matter prior to discussions with other organizations.

8.0 Grant Accountability

The RM does not have a formal policy requiring grant recipients to provide the RM with audited financial statements promptly.

Another allegation was that RM grant recipients did not have current audited financial statements to indicate how they used the funds from the RM.

During the period of our review, RM grants over \$5,000 were made to each of the CDC, the Recreation Centre, the Sports Committee, and the Oak Point Community Club. In addition, the RM made a grant to the Artificial Ice Committee in 2008 for the Project. See Figure 2 for details.

Section 261 of *The Municipal Act* provides a municipal council with the power to make grants. Section 186(1)(c) of *The Municipal Act* requires an audit of any organization or other body to which the municipality has made a grant or loan of \$5,000 or more, and on whose board the municipality is represented by one or more people appointed by the council.

Of the RM's grant recipients, only the CDC has a municipal representative appointed by Council on its Board, so an audit is required. For the other entities, *The Municipal Act* doesn't require an audit, but best practices would be that audited financial statements should be prepared annually for the larger organizations receiving grants over a significant threshold. Also, the RM should be providing grants to organizations that are accountable and can show how they use grant funds.

After the start of our audit, at the December 23, 2009 meeting, Council, by Resolution #471/09, approved several grants for Recreation purposes. In addition, it resolved that any organization receiving \$5,000 or more had to submit an audited statement. But at the February 17, 2010 meeting, Resolution 44/10, Council rescinded Resolution #471/09.

We obtained financial statements from the organizations noted above, if available, to assess if financial statements were being prepared and audited promptly. The Recreation Centre's financial statements incorporate the operating activities of the Sports Committee and Artificial Ice Committee. Figure 5 summarizes the financial statements obtained and the results of our examination.

Figure 5

Rural Municipality of St. Laurent Summary of Financial Statements - Other Organizations/Committees		
Year Ended	Audited/Unaudited	Date of Auditor's Report
CDC		
December 31, 2006	Audited	April 9, 2008
December 31, 2007	Audited	February 25, 2009
December 31, 2008	Audited	October 2, 2009
December 31, 2009	Unavailable at time of this report	
Recreation Centre (includes Sports Committee and Artificial Ice Committee)		
March 31, 2006	Unaudited - Notice to Reader	April 3, 2008
March 31, 2007	Audited	April 24, 2008
March 31, 2008	Unaudited - Notice to Reader	January 30, 2009
March 31, 2009	Audited	October 19, 2009
Oak Point Community Club		
March 31, 2006	Unaudited	
March 31, 2007	Unaudited	
March 31, 2008	Unaudited	
March 31, 2009	Unaudited	

The CDC's financial statements were audited each year, but not promptly. The Recreation Centre's financial statements were audited only in 2 of the 4 years, and were not completed on a timely basis until the last year. The Oak Point Community Club financial statements were not audited during the period of our review.

Council meeting minutes did not indicate that Council had received or requested financial statements from these other organizations. Certain councillors expressed the view to us that the burden on the organizations to pay for an audit outweighed the benefit. We would concur as long as the RM reserved the right to request additional information.

Recommendation

- We recommend that the RM require grant recipients of more than a specific amount to provide the RM with audited financial statements promptly or stop requiring it.

9.0 Summary of Recommendations

1. We recommend that the RM develop and implement a tendering policy, which includes:
 - a specific dollar value where a tender is required;
 - information to be included on tender advertisements;
 - procedures for tender advertisements;
 - a checklist of documentation to be retained for each tender;
 - a requirement to document reasons for not accepting the lowest quotation; and
 - a formal process to be followed to call contractors and assign work when equipment rental rates are being used.
2. We recommend that the RM advertise for tenders in an open and transparent manner. If the RM intends to use only local contractors, or that preference will be given to local contractors, this information should be disclosed in the tender advertisement.
3. We recommend that the RM tender for all gravel purchases and maintenance projects above the dollar value in the proposed tendering policy and that if hourly rates are used for a project, a maximum dollar amount be set for each project.
4. We recommend that contractor invoices be signed by the Council or staff member who initiated the transaction, as evidence of the goods and services being received. The applicable tender, quotation and/or Resolution of Council should be documented on the invoice.
5. We recommend that gravel-hauling invoices be supported with weigh tickets, and include more detailed delivery information.
6. We recommend that payment calculations be checked for mathematical accuracy and completeness.
7. We recommend that claims be processed only when there are specific details provided on the activity being claimed.
8. We recommend that the purpose of a credit card expense be documented and approved by authorized RM staff.
9. We recommend that the RM require grant recipients of more than a specific amount to provide the RM with audited financial statements promptly or stop requiring it.

Prior to finalizing this report a municipal election was held on October 27, 2010. The previous Council chose not to provide any comments to the report.

Appendices

The Municipal Council Conflict of Interest Act

Appendix A

CHAPTER M255

THE MUNICIPAL COUNCIL CONFLICT OF INTEREST ACT

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Definitions

1(1) In this Act,

"**common-law partner**" of a person means a person who, not being married to the other person, is cohabiting with him or her in a conjugal relationship of some permanence; (« conjoint de fait »)

"**council**" means

- (a) a municipal council, or
- (b) an elected council under *The Local Government Districts Act*; (« conseil »)

"**councillor**" means a member of a council, and includes a mayor or reeve; (« conseiller »)

"**Crown agency**" means Crown agency as defined in *The Legislative Assembly Act*; (« organisme de la Couronne »)

CHAPITRE M255

LOI SUR LES CONFLITS D'INTÉRÊTS AU SEIN DES CONSEILS MUNICIPAUX

SA MAJESTÉ, sur l'avis et du consentement de l'Assemblée législative du Manitoba, édicte :

Définitions

1(1) Les définitions qui suivent s'appliquent à la présente loi.

« **conjoint de fait** » Personne qui vit dans une relation maritale d'une certaine permanence avec une autre personne sans être mariée avec elle. ("common-law partner")

« **conseil** » Selon le cas :

- a) conseil municipal;
- b) conseil élu en application de la *Loi sur les districts d'administration locale*. ("council")

« **conseiller** » Membre d'un conseil, y compris un maire ou un préfet. ("councillor")

« **électeur** » Personne qui a droit de vote lors de l'élection des membres d'un conseil. ("elector")

« **famille** » Fait partie de la famille le conjoint de fait. ("family")

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MUNICIPAL COUNCIL CONFLICT OF INTEREST

R.S.M. 1987, c. M255

"dependant" means

- (a) the spouse of a councillor,
- (a.1) the common-law partner of a councillor, and
- (b) any child, natural or adopted, of the councillor,

who resides with the councillor; (« personne à charge »)

"direct pecuniary interest" includes a fee, commission or other compensation paid or payable to any person for representing the interests of another person or a corporation, partnership, or organization in a matter; (« intérêt financier direct »)

"elector" means a person entitled to vote at an election of members to a council; (« électeur »)

"family" includes a common-law partner; (« famille »)

"municipality" includes a local government district; (« municipalité »)

"ordinary resident" means

- (a) in the case of a matter which relates to an entire municipality, an ordinary resident of the municipality, and
- (b) in the case of a matter which relates to a part of a municipality, an ordinary resident of that part of the municipality. (« simple résident »)

"subsidiary" means a corporation that is a subsidiary as described in section 2. (« filiale »)

Registered common-law relationship

1(2) For the purposes of this Act, while they are cohabiting, persons who have registered their common-law relationship under section 13.1 of *The Vital Statistics Act* are deemed to be cohabiting in a conjugal relationship of some permanence.

S.M. 2002, c. 24, s. 44; S.M. 2002, c. 48, s. 28.

Subsidiary corporation

2(1) A corporation is a subsidiary of another corporation where it is controlled by that other corporation.

« **filiale** » Corporation qui est une filiale au sens de l'article 2. ("subsidiary")

« **intérêt financier direct** » S'entend également de toute rémunération, reçue ou à recevoir par quiconque sous forme d'honoraires, de commission ou autrement, pour défendre, dans une affaire quelconque, les intérêts d'une autre personne, d'une corporation, d'une société en nom collectif ou d'une organisation. ("direct pecuniary interest")

« **municipalité** » S'entend également d'un district d'administration locale. ("municipality")

« **organisme de la Couronne** » Organisme de la Couronne au sens que lui attribue la *Loi sur l'Assemblée législative*. ("Crown agency")

« **personne à charge** »

- a) Conjoint d'un conseiller qui réside avec celui-ci;
- a.1) conjoint de fait d'un conseiller qui réside avec celui-ci;
- b) enfants biologiques et adoptifs d'un conseiller qui résident avec celui-ci. ("dependant")

« **simple résident** » S'entend :

- a) d'un simple résident de la municipalité, dans le cas d'une affaire relative à toute la municipalité;
- b) dans le cas d'une affaire relative à une partie seulement de la municipalité, d'un simple résident de la partie de la municipalité. ("ordinary resident")

Union de fait enregistrée

1(2) Pour l'application de la présente loi, les personnes qui ont fait enregistrer leur union de fait en vertu de l'article 13.1 de la *Loi sur les statistiques de l'état civil* sont, pendant la période où elles vivent ensemble, réputées vivre dans une relation maritale d'une certaine permanence.

L.M. 2002, c. 24, art. 44; L.M. 2002, c. 48, art. 28.

Filiales

2(1) Une corporation est la filiale d'une autre corporation lorsqu'elle est contrôlée par cette autre corporation.

2

Last consolidated: 2010-06-17
Current as of: 2010-09-06

Date de codification : 2010-06-17
À jour en date du : 2010-09-06

The Municipal Council Conflict of Interest Act

Appendix A (cont'd.)

CONFLITS D'INTÉRÊTS AU SEIN DES CONSEILS MUNICIPAUX

L.R.M. 1987, c. M255

Control

2(2) A corporation is controlled by another corporation where

(a) securities of the controlled corporation to which are attached more than 50% of the votes that may be cast to elect directors of the controlled corporation are held, other than by way of security only, by or for the benefit of the controlling corporation; and

(b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the controlled corporation.

Subsidiary includes subsidiaries

2(3) "Subsidiary" includes all subsidiaries of a subsidiary.

City of Winnipeg

3(1) This Act applies to The City of Winnipeg.

Area includes additional zone

3(2) For purposes of this Act

Contrôle

2(2) Une corporation est contrôlée par une autre corporation lorsque :

a) d'une part, les valeurs mobilières qu'elle a émises et qui sont détenues par l'autre corporation ou au profit de celle-ci autrement qu'à titre de garantie, comportent droit de vote quant à l'élection des administrateurs et représentent à cette fin plus de 50 % des voix;

b) d'autre part, l'exercice des droits de vote rattachés à ces valeurs suffit pour élire la majorité de ses administrateurs.

Filiale d'une filiale

2(3) « Filiale » s'entend également de toutes les filiales d'une filiale.

Ville de Winnipeg

3(1) La présente loi s'applique à la Ville de Winnipeg.

Zone rajoutée

3(2) Pour l'application de la présente loi :

Act continues on page 3.

Suite à la page 3.

Last consolidated: 2010-06-17
Current as of: 2010-09-06

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Date de codification : 2010-06-17
À jour en date du : 2010-09-06

Appendix A (cont'd.) The Municipal Council Conflict of Interest Act

CONFLITS D'INTÉRÊTS AU SEIN DES CONSEILS MUNICIPAUX

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(a) any reference to "land in the municipality" or "property in the municipality" includes, in the case of The City of Winnipeg, the additional zone; and
(b) where The City of Winnipeg has jurisdiction over a matter in the additional zone, any pecuniary interest in the matter shall be presumed to be a pecuniary interest in The City of Winnipeg.

a) les termes « biens-fonds situés dans la municipalité » ou « biens situés dans la municipalité » s'entendent également, quand il s'agit de la Ville de Winnipeg, de ceux situés dans la zone rajoutée;
b) lorsque la Ville de Winnipeg a compétence dans une affaire concernant la zone rajoutée, un intérêt financier quelconque dans cette affaire est présumé être un intérêt financier dans la Ville de Winnipeg.

Indirect pecuniary interest

4(1) For purposes of this Act, but subject to this section, a person shall be presumed to have an indirect pecuniary interest in a matter where

- (a) the person, or a nominee of the person,
 - (i) holds a beneficial interest in, or a share warrant or purchase option in respect of, 5% or more of the value of the issued capital stock, or
 - (ii) is a director or officer, of a corporation which, or a subsidiary of which, has a direct pecuniary interest in the matter; or
- (b) the person is
 - (i) a partner of or employed by, or
 - (ii) a guarantor or surety for, or
 - (iii) a creditor of,a person, corporation, partnership, or organization who or which, or (in the case of a corporation) a subsidiary of which, has a direct pecuniary interest in the matter.

Intérêt financier indirect

4(1) Pour l'application de la présente loi mais sous réserve du présent article, une personne est présumée avoir un intérêt financier indirect dans une affaire lorsque, selon le cas :

- a) cette personne ou son nominataire :
 - (i) a un droit bénéficiaire sur des actions d'une corporation représentant 5 % ou plus de la valeur des actions émises de cette corporation, ou détient un droit ou une option d'achat portant sur de telles actions,
 - (ii) est administrateur ou dirigeant d'une corporation,et que la corporation ou une filiale de celle-ci a un intérêt financier direct dans cette affaire;
- b) cette personne :
 - (i) est l'associée ou l'employée,
 - (ii) est garante ou caution,
 - (iii) est créancière,d'une personne, d'une corporation, d'une société en nom collectif ou d'une organisation qui a, ou dont la filiale a, s'il s'agit d'une corporation, un intérêt financier direct dans cette affaire.

Exception for indemnity or expenses

4(2) For purposes of this Act, councillors shall be presumed not to have a direct or indirect pecuniary interest in any matter involving the indemnity, expenses or remuneration payable to councillors.

Exception quant aux indemnités et allocations de dépenses

4(2) Pour l'application de la présente loi, les conseillers sont présumés n'avoir aucun intérêt financier, direct ou indirect, dans toute affaire relative aux indemnités, allocations de dépenses ou traitements qui leur sont payables.

No pecuniary interest in certain transactions

4(3) For purposes of this Act, a person, corporation, partnership, or organization shall be presumed not to have a direct or indirect pecuniary interest in respect of

Absence d'intérêt financier

4(3) Pour l'application de la présente loi, une personne, une corporation, une société en nom collectif ou une organisation est présumée n'avoir aucun intérêt financier, direct ou indirect, relativement à :

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(a) any contract into which the person, corporation, partnership or organization enters with a municipality on terms common to contracts between other persons, corporations, partnerships, or organizations and the municipality

(i) for the supply, provision, or sale to the person, corporation, partnership, or organization of a utility, service, or article of merchandise administered, provided, or sold by the municipality,

(ii) for payment of sewer or water rates or rents, or the installation by the municipality of sewer or water connections or appliances, or

(iii) for the construction for the person, corporation, partnership, or organization and other persons, corporations, partnerships, or organizations of any local improvement by the municipality;

(b) official notices or advertisements inserted by a municipality, or subscriptions held by a municipality, at normal commercial rates in or to a newspaper or other periodical publication of which the person, corporation, partnership or organization is the proprietor or in which he or it is otherwise interested;

(c) holding bonds or debentures of the municipality;

(d) reasonable compensation or expense money received for services as a volunteer firefighter or a driver or attendant of an emergency vehicle; or

(e) reasonable compensation received for providing work, goods or services to the municipality in an emergency.

Presumption of indirect pecuniary liability

4(4) For purposes of this Act, but subject to this section, a person shall be presumed to have an indirect pecuniary liability to another person or to a corporation, partnership, or organization where

(a) the person, or a nominee of the person,

(i) holds a beneficial interest in, or a share warrant or purchase option in respect of, 5% or more of the value of the issued capital stock, or

a) tout contrat qu'elle conclut avec la municipalité à des conditions couramment rencontrées dans les contrats similaires conclus avec la municipalité et ayant pour objet :

(i) la fourniture ou la vente, par la municipalité, de services ou de biens à cette personne, corporation, société en nom collectif ou organisation,

(ii) quant aux services d'eau ou d'égout, le paiement de ces services ou du coût des locations y relatives, ou l'installation par la municipalité de conduites ou d'accessoires,

(iii) des travaux d'améliorations locales, par la municipalité, pour l'usage de cette personne, corporation, société en nom collectif ou organisation, et d'autres personnes, corporations, société en nom collectifs ou organisations;

b) des avis officiels ou des annonces insérés par la municipalité, au tarif habituel, dans un journal ou un périodique dont la personne, la corporation, la société en nom collectif ou l'organisation est propriétaire ou dans lequel elle a un intérêt, ou l'abonnement de la municipalité à un tel journal ou périodique au tarif habituel;

c) la détention d'obligations ou de débetures émises par la municipalité;

d) la rémunération raisonnable ou l'indemnité de dépenses raisonnable reçues, en échange de services rendus, par un pompier volontaire, un secouriste ou un conducteur d'un véhicule réservé aux situations d'urgence;

e) la rémunération raisonnable reçue en échange d'un travail effectué pour la municipalité, ou de biens ou de services fournis à la municipalité, dans le cadre d'une situation d'urgence.

Responsabilité financière indirecte

4(4) Pour l'application de la présente loi, mais sous réserve du présent article, une personne est présumée avoir une responsabilité financière indirecte envers une autre personne ou envers une corporation, une société en nom collectif ou une organisation lorsque, selon le cas :

a) cette personne ou son nominataire :

(i) a un droit bénéficiaire sur des actions d'une corporation représentant 5 % ou plus de la valeur des actions émises de cette corporation, ou détient un droit ou une option d'achat portant sur des telles actions,

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(ii) is a director or officer, of a corporation which, or a subsidiary of which, has a direct pecuniary liability to the other person or to the corporation, partnership, or organization; or
(b) the person is
(i) a partner of or employed by, or
(ii) a guarantor or surety for, or
(iii) a creditor of,
a person, corporation, partnership, or organization who or which, or (in the case of a corporation) a subsidiary of which, has a direct pecuniary liability to the other person or to the corporation, partnership, or organization.

(ii) est administrateur ou dirigeant d'une corporation,
et que la corporation ou une filiale de celle-ci a une responsabilité financière directe envers cette autre personne ou envers cette corporation, cette société en nom collectif ou cette organisation;
b) cette personne
(i) est l'associée ou l'employée,
(ii) est garante ou caution,
(iii) est créancière,
d'une personne, d'une corporation, d'une société en nom collectif ou d'une organisation qui a, ou dont la filiale a, s'il s'agit d'une corporation, une responsabilité financière directe envers cette autre personne ou envers cette corporation, cette société en nom collectif ou cette organisation.

Interest or liability must be significant

4(5) For purposes of this Act, and notwithstanding any other provision of this Act,

- (a) where the direct or indirect pecuniary interest of any person, corporation, partnership, or organization in a matter does not exceed the pecuniary interest of an ordinary resident in the matter, the person, corporation, partnership, or organization shall be presumed not to have a direct or indirect pecuniary interest in the matter;
- (b) where the direct or indirect pecuniary liability of any person to another person or to a corporation, partnership, or organization does not exceed the pecuniary liability of an ordinary resident to the same person or to the same corporation, partnership, or organization, the person shall be presumed not to have a direct or indirect pecuniary liability to the other person or to the corporation, partnership, or organization; and
- (c) no person shall be presumed to have a direct or indirect pecuniary interest in any matter, or a direct or indirect pecuniary liability to another person or to a corporation, partnership, or organization, unless the value of the pecuniary interest or liability is \$500. or more.

Appointments

4(6) For purposes of this Act, where a councillor is appointed to serve in his official capacity as a councillor on any commission, board or agency, the councillor shall be presumed not to have a direct pecuniary interest in the appointment and the councillor shall not be presumed, solely by virtue of that appointment, to have

Degré d'intérêt ou de responsabilité

4(5) Pour l'application de la présente loi et malgré toute autre disposition de celle-ci :

- a) une personne, une corporation, une société en nom collectif ou une organisation quelconque est présumée n'avoir aucun intérêt financier direct ou indirect dans une affaire lorsque l'intérêt financier qu'elle a dans cette affaire ne dépasse pas celui d'un simple résident;
- b) une personne quelconque est présumée n'avoir aucune responsabilité financière directe ou indirecte envers une autre personne ou envers une corporation, une société en nom collectif ou une organisation lorsque cette responsabilité financière ne dépasse pas celle d'un simple résident;
- c) nul n'est présumé avoir d'intérêt financier direct ou indirect dans une affaire, ou avoir de responsabilité financière directe ou indirecte envers une autre personne ou envers une corporation, une société en nom collectif ou une organisation, sauf si la valeur de cet intérêt ou de cette responsabilité est de 500 \$ ou plus.

Nomination à un organisme

4(6) Pour l'application de la présente loi, lorsqu'un conseiller est nommé à ce titre à un poste au sein d'une commission, d'un conseil ou d'un autre organisme, ce conseiller est présumé n'avoir aucun intérêt financier direct dans sa nomination. De plus, ce conseiller n'est pas présumé pour autant :

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(a) an indirect pecuniary interest in a matter in which the commission, board or agency has a direct pecuniary interest; or
(b) an indirect pecuniary liability to another person or to a corporation, partnership, or organization to whom or which the commission, board or agency has a direct pecuniary liability.

a) avoir un intérêt financier indirect dans une affaire dans laquelle cette commission, ce conseil ou cet organisme a un intérêt financier direct;
b) avoir une responsabilité financière indirecte envers une autre personne ou envers une corporation, une société en nom collectif ou une organisation envers laquelle la commission, le conseil ou l'organisme a une responsabilité financière directe.

Employees of public bodies

4(7) For purposes of this Act, where a person is employed by

- (a) the Government of Canada or a federal Crown agency;
- (b) the Government of Manitoba or a Crown agency;
- or
- (c) a school board;

the person shall not be presumed to have

- (d) an indirect pecuniary interest in a matter in which his employer has a direct pecuniary interest; or
- (e) an indirect pecuniary liability to another person or to a corporation, partnership, or organization to whom or which his employer has a direct pecuniary liability.

Employés d'organismes publics

4(7) Pour l'application de la présente loi, lorsqu'une personne est à l'emploi :

- a) du gouvernement du Canada ou d'un organisme de la Couronne fédérale,
- b) du gouvernement du Manitoba ou d'un organisme de la Couronne,
- c) d'une commission scolaire,

cette personne n'est pas présumée avoir :

- d) un intérêt financier indirect dans une affaire dans laquelle son employeur a un intérêt financier direct,
- e) une responsabilité financière indirecte envers une autre personne ou envers une corporation, une société en nom collectif ou une organisation envers laquelle son employeur a une responsabilité financière directe.

Contribution to municipal budget

4(8) For purposes of this Act, a corporation or organization shall not be presumed to have a direct pecuniary interest in a matter solely by virtue of the fact that the corporation or organization is liable to pay a portion of a municipal budget under an agreement entered into with the municipality.

Contribution aux dépenses municipales

4(8) Pour l'application de la présente loi, une corporation ou une organisation qui est, aux termes d'une entente conclue avec la municipalité, tenue au paiement d'une partie des dépenses budgétaires de celle-ci, n'est pas pour autant présumée avoir d'intérêt financier direct dans une affaire.

Disclosure during meetings

5(1) Where during any meeting there arises

- (a) a matter in which a councillor or any of his dependants has a direct or indirect pecuniary interest; or
- (b) a matter involving the direct or indirect pecuniary interest of any person, corporation, subsidiary of a corporation, partnership, or organization to whom or which a councillor or any of his dependants has a direct or indirect pecuniary liability;

Divulgence au cours d'une assemblée

5(1) Lorsqu'il est question, au cours d'une assemblée quelconque :

- a) d'une affaire dans laquelle un conseiller ou une personne à sa charge a un intérêt financier direct ou indirect;
- b) d'une affaire relative à l'intérêt financier direct ou indirect de toute personne, corporation, filiale d'une corporation, société en nom collectif ou organisation envers laquelle un conseiller ou une personne à sa charge a une responsabilité financière directe ou indirecte,

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the councillor shall

- (c) disclose the general nature of the direct or indirect pecuniary interest or liability;
- (d) withdraw from the meeting without voting or participating in the discussion; and
- (e) refrain at all times from attempting to influence the matter.

All official meetings included

5(2) For purposes of subsection (1), "meeting" includes

- (a) a council meeting;
- (b) a meeting of any committee or subcommittee of a council, or any subcommittee of a committee, on which the councillor sits;
- (c) repealed, S.M. 2002, c. 39, s. 528;
- (d) a meeting of any commission, board or agency on which the councillor serves in his official capacity as a councillor; and
- (e) a meeting of any Court of Revision or Board of Revision on which the councillor sits.

Absence from meeting

5(3) Where a councillor fails to comply with subsection (1) by reason of the absence of the councillor from a meeting referred to therein, the councillor shall

- (a) disclose the general nature of his direct or indirect pecuniary interest or liability at the next meeting of the same body before which the matter arose; and
- (b) refrain at all times from attempting to influence the matter.

S.M. 2002, c. 39, s. 528.

Record of compliance

6(1) Where a councillor has complied with subsection 5(1), the clerk of the meeting shall record

- (a) the disclosure;
 - (b) the general nature of the direct or indirect pecuniary interest or liability disclosed; and
 - (c) the withdrawal of the councillor from the meeting;
- and the clerk of the meeting shall subsequently file with the clerk of the municipality

ce conseiller doit à la fois :

- c) divulguer sommairement la nature de son intérêt financier ou de sa responsabilité financière, directs ou indirects;
- d) se retirer de l'assemblée sans y voter ni participer aux délibérations;
- e) s'abstenir en tout temps de tenter d'influer sur le traitement de cette affaire.

Assemblée

5(2) Pour l'application du paragraphe (1), « assemblée » s'entend également :

- a) d'une séance du conseil;
- b) d'une réunion de tout comité ou sous-comité du conseil, ou de tout sous-comité d'un comité, auquel siège le conseiller;
- c) abrogé, L.M. 2002, c. 39, art. 528;
- d) d'une réunion de toute commission ou de tout conseil ou organisme au sein desquels le conseiller occupe un poste à ce titre;
- e) d'une séance de tout tribunal ou conseil de révision auquel siège le conseiller.

Absence du conseiller

5(3) Lorsqu'un conseiller ne peut se conformer aux dispositions du paragraphe (1) du fait de son absence à une assemblée visée audit article, ce conseiller doit à la fois :

- a) divulguer sommairement la nature de son intérêt financier ou de sa responsabilité financière, directs ou indirects, lors de l'assemblée suivante du même organisme;
- b) s'abstenir en tout temps de tenter d'influer sur le traitement de l'affaire concernée.

L.M. 2002, c. 39, art. 528.

Renseignements consignés

6(1) Lorsqu'un conseiller se conforme aux dispositions du paragraphe 5(1), le secrétaire de l'assemblée doit consigner à la fois :

- a) la divulgation;
 - b) la nature de l'intérêt financier ou de la responsabilité financière, directs ou indirects, que le député divulgue;
 - c) le fait que le conseiller s'est retiré de l'assemblée.
- Le secrétaire de l'assemblée doit par la suite transmettre au greffier de la municipalité :

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(d) the information recorded under clauses (a), (b) and (c); and

(e) a notation indicating whether the meeting in question was open to the public, or was a closed meeting or a meeting the minutes of which are not open to the public.

Central record of disclosures

6(2) The clerk of every municipality shall keep a central record for purposes of recording information in accordance with subsections (3) and (4).

Information disclosed at open meeting

6(3) Where the meeting referred to in subsection 5(1) was open to the public, the clerk of the municipality shall record

(a) the disclosure;

(b) the general nature of the direct or indirect pecuniary interest or liability disclosed; and

(c) the withdrawal of the councillor from the meeting;

in the central record.

Information disclosed at closed meeting

6(4) Where the meeting referred to in subsection 5(1) was a closed meeting, or a meeting the minutes of which are not open to the public, the clerk of the municipality shall record

(a) the disclosure; and

(b) the withdrawal of the councillor from the meeting;

in the central record.

Central record open to public

6(5) The clerk of every municipality shall make the central record referred to in this section available for inspection by any person without charge during normal business hours.

Reduced quorum

7(1) Where by reason of withdrawals from a meeting under subsection 5(1) the number of councillors remaining at the meeting is not sufficient to constitute a quorum, then, notwithstanding the provisions of any Act of the Legislature or any procedure or by-law of the council, the number of councillors remaining, if not fewer than two, shall be deemed to constitute a quorum for purposes of discussing and voting on any matter referred to in subsection 5(1).

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d) l'information consignée en application des alinéas a), b) et c);

e) une note indiquant s'il s'agissait d'une assemblée publique, ou d'une assemblée à huis clos ou dont la consultation du procès-verbal est interdite au public.

Registre central des divulgations

6(2) Le greffier de chaque municipalité tient un registre central dans lequel il fait les inscriptions prescrites aux paragraphes (3) et (4).

Divulgence lors d'une assemblée publique

6(3) Lorsque l'assemblée prévue au paragraphe 5(1) était publique, le greffier de la municipalité consigne au registre central à la fois :

a) la divulgation;

b) la nature de l'intérêt financier ou de la responsabilité financière, directs ou indirects, que le conseiller divulgue;

c) le fait que le conseiller s'est retiré de l'assemblée.

Divulgence lors d'une assemblée à huis clos

6(4) Lorsque l'assemblée prévue au paragraphe 5(1) était tenue à huis clos, ou lorsqu'il est interdit au public d'en consulter le procès-verbal, le greffier de la municipalité consigne au registre central à la fois :

a) la divulgation;

b) le fait que le conseiller s'est retiré de l'assemblée.

Consultation du registre

6(5) Le greffier de chaque municipalité doit permettre à toute personne qui désire consulter le registre central prévu au présent article de le faire, sans frais, aux heures de bureau habituelles.

L.M. 2010, c. 33, art. 40.

Quorum

7(1) Malgré les dispositions de toute autre loi de la Législature, ou de toute résolution ou de tout règlement du conseil, lorsqu'il n'y a plus quorum à l'assemblée en raison du retrait prévu au paragraphe 5(1), le nombre de conseillers restants, s'ils sont au moins deux, est réputé constituer le quorum aux fins des délibérations et du vote relativement à une affaire prévue au paragraphe 5(1).

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Application to Municipal Board

7(2) Where in the circumstances referred to in subsection (1) there would be fewer than two councillors remaining at a meeting, the council shall apply to The Municipal Board for an order authorizing the council to discuss and vote on any matter referred to in subsection 5(1).

Order of Municipal Board

7(3) Upon hearing an application brought under subsection (2), The Municipal Board may order that

- (a) subsection 5(1) does not apply to the council in respect of the matter; and
- (b) the council may discuss and vote on the matter in the same manner as though none of the councillors or their dependants had any direct or indirect pecuniary interest or liability in or in relation to the matter;

subject only to such conditions and directions as The Municipal Board may prescribe.

Referral to city council

7(4) Notwithstanding subsections (2) and (3), where in the circumstances referred to in subsection (1) there would be fewer than two councillors remaining at a meeting of a committee or subcommittee of The City of Winnipeg, the committee or subcommittee shall refer the matter to the council of the city, and council shall discuss and vote on the matter in place of the committee or subcommittee.

S.M. 2002, c. 39, s. 528.

Voidability of transaction or procedure

8 The failure of any councillor to comply with subsection 5(1) does not of itself invalidate

- (a) any contract or other pecuniary transaction; or
- (b) any procedure undertaken by the municipality with respect to a contract or other pecuniary transaction;

to which the failure to comply with subsection 5(1) relates, but the transaction or procedure is voidable at the instance of the municipality before the expiration of two years from the date of the decision authorizing the transaction, except as against any person, corporation, partnership, or organization who or which acted in good faith and without actual notice of the failure to comply with subsection 5(1).

Demande à la Commission municipale

7(2) Lorsqu'il reste moins de deux conseillers à l'assemblée, dans le cas prévu au paragraphe (1), le conseil doit présenter à la Commission municipale une demande d'ordonnance autorisant le conseil à délibérer et voter relativement à une affaire prévue au paragraphe 5(1).

Ordonnance de la Commission municipale

7(3) Après audition de la demande présentée en vertu du paragraphe (2), la Commission municipale peut ordonner :

- a) d'une part, que le paragraphe 5(1) ne s'applique pas au conseil dans l'affaire en cause;
- b) d'autre part, que le conseil peut procéder aux délibérations et au vote relativement à cette affaire, comme si aucun des conseillers ou des personnes à leur charge n'y avait d'intérêt financier ou de responsabilité financière, directs ou indirects,

sous réserve seulement des conditions et des directives prescrites par la Commission municipale.

Renvoi au conseil de la ville de Winnipeg

7(4) Dans le cas prévu au paragraphe (1), lorsqu'il reste moins de deux conseillers à une réunion d'un comité ou d'un sous-comité de la ville de Winnipeg, le comité ou le sous-comité doit, par dérogation aux paragraphes (2) et (3), renvoyer l'affaire au conseil de la ville pour que celui-ci délibère et vote à sa place relativement à cette affaire.

L.M. 2002, c. 39, art. 528.

Affaires ou opérations annulables

8 Le fait qu'un conseiller enfreigne les dispositions du paragraphe 5(1) ne rend pas invalides :

- a) un contrat ou une affaire d'ordre financier;
- b) une opération entamée par la municipalité relativement à un contrat ou à une affaire d'ordre financier,

auxquels est reliée l'infraction, mais ils sont annulables à la demande de la municipalité, dans un délai de deux ans à compter de la date de la décision autorisant l'affaire, sauf si la personne, la corporation, la société en nom collectif ou l'organisation intéressée a agi de bonne foi sans être avisée de cette infraction.

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Annual statement of assets and interests

9(1) Not later than the last day in November of each year, and in the case of The City of Winnipeg, not later than the fourth Wednesday in November of each year, every councillor shall file with the clerk of the municipality a statement disclosing assets and interests in accordance with section 10.

Notification of failure to comply

9(2) Where a councillor fails to comply forthwith with subsection (1), the clerk of the municipality shall forthwith notify the councillor in writing of the failure to comply, and the councillor shall, within 30 days of receiving the notification, file the statement referred to in subsection (1).

Further statement after acquisition or disposal

9(3) Where after the filing of a statement under subsection (1) or (2) a councillor or any dependant of a councillor acquires or disposes of any asset or interest of the kind mentioned in section 10, the councillor shall within 30 days of the acquisition or disposal file with the clerk of the municipality a further statement disclosing the acquisition or disposal.

S.M. 1996, c. 58, s. 462.

Assets and interests which must be disclosed

10 Subject to section 11, the councillor shall disclose in the statement filed under subsection 9(1)

(a) all land in the municipality in or in respect of which the councillor or any of his dependants has any estate or interest, including any leasehold estate and any mortgage, licence, or interest under a sale or option agreement, but excluding principal residence property;

(b) where the councillor or any of his dependants holds a beneficial interest in, or a share warrant or purchase option in respect of, 5% or more of the value of the issued capital stock of a corporation, all estates and interests in or in respect of land in the municipality held by that corporation or by a subsidiary of that corporation;

(c) the name of every corporation, and every subsidiary of every corporation, in which the councillor or any of his dependants holds a beneficial interest in 5% or more of the value of the issued capital stock, or holds a share warrant or purchase option in respect of 5% or more of the value of the issued capital stock;

État annuel des biens et des droits

9(1) Au plus tard le dernier jour de novembre de chaque année, et dans le cas de la Ville de Winnipeg, au plus tard le quatrième mercredi de novembre de chaque année, tous les conseillers déposent auprès du greffier de la municipalité un état concernant leurs biens et leurs droits, conformément à l'article 10.

Avis de contravention

9(2) Lorsqu'un conseiller ne se conforme pas aux dispositions du paragraphe (1), le greffier de la municipalité l'avise immédiatement par écrit de sa contravention. Dans les 30 jours de la réception de cet avis, le conseiller doit transmettre au greffier l'état prévu au paragraphe (1).

État supplémentaire

9(3) Si, après la production de l'état prescrit par les paragraphes (1) ou (2), un conseiller ou toute personne à sa charge acquiert des biens ou des droits tels que ceux prévus à l'article 10 ou dispose de tels biens ou droits, ce conseiller doit, dans les 30 jours de l'acquisition ou de la disposition, transmettre au greffier de la municipalité un état supplémentaire relativement à cette acquisition ou à cette disposition.

L.M. 1996, c. 58, art. 462.

Biens et droits devant être déclarés

10 Sous réserve de l'article 11, chacun des conseillers doit déclarer, dans le document produit en application du paragraphe 9(1) :

a) tous les biens-fonds situés dans la municipalité sur lesquels lui-même ou une personne à sa charge a des droits, y compris un bail, une hypothèque, un permis ou un droit quelconque consenti dans un contrat de vente ou une option, à l'exclusion de la résidence principale;

b) tout droit que possède une corporation ou sa filiale sur des biens-fonds situés dans la municipalité, lorsque le conseiller ou une personne à sa charge a un droit bénéficiaire sur des actions de cette corporation représentant 5 % ou plus de la valeur totale de ses actions émises, ou détient un droit ou une option d'achat portant sur de telles actions;

c) lorsque lui-même ou une personne à sa charge a un droit bénéficiaire sur des actions d'une corporation représentant 5 % ou plus de la valeur totale de ses actions émises, ou détient un droit ou une option d'achat portant sur de telles actions, le nom de cette corporation et de chacune de ses filiales;

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(d) the name of every person, corporation, subsidiary of a corporation, partnership, or organization which remunerates the councillor or any of his dependants for services performed as an officer, director, manager, proprietor, partner or employee;

(e) bonds and debentures held by the councillor or any of his dependants, excluding bonds issued by the Government of Canada, by the government of any province of Canada, or by any municipality in Canada, and also excluding Treasury Bills;

(f) holdings of the councillor or any of his dependants in investment funds, mutual funds, investment trusts, or similar securities, excluding Retirement Savings Plans, Home Ownership Savings Plans, accounts and term deposits held in banks, credit unions, or other financial institutions, pension plans, and insurance policies;

(g) any interest in property in the municipality to which the councillor or any of his dependants is entitled in expectancy under any trust, and any interest in property in the municipality over which the councillor or any of his dependants has a general power of appointment as executor of a will, administrator of an estate, or trustee under a deed of trust;

(h) the nature, and the identity of the donor, of every gift given to the councillor or any of his dependants at any time after the coming into force of this Act, excluding

- (i) gifts from a family member,
- (ii) gifts disclosed in any previous statement filed under section 9, and
- (iii) gifts received before the councillor was first elected to the council; and

(i) the general nature of any contract or other pecuniary transaction entered into at any time after the coming into force of this Act between the municipality and

- (i) the councillor or any of his dependants, or
- (ii) any corporation referred to in clause (c), or

d) le nom de toute personne, corporation, filiale, société en nom collectif ou organisation pour laquelle lui-même ou une personne à sa charge agit, contre rémunération, à titre de dirigeant, de directeur, de gérant, de propriétaire, d'associé ou d'employé;

e) les obligations et les débetures que lui-même ou une personne à sa charge détient, sauf les obligations émises par le gouvernement du Canada, par le gouvernement d'une province canadienne ou par une municipalité canadienne quelconque, et sauf les bons du Trésor;

f) les valeurs que lui-même ou une personne à sa charge détient dans des fonds mutuels ou des fiducies de placement, ainsi que toute autre valeur similaire, à l'exclusion des régimes d'épargne-retraite et d'épargne-logement, des comptes d'épargne et des dépôts à terme dans des banques, des caisses populaires ou toute autre institution financière, et à l'exclusion également des régimes de pension et des polices d'assurance;

g) tout droit sur des biens situés dans la municipalité duquel lui-même ou une personne à sa charge est en droit de s'attendre d'être le bénéficiaire en vertu d'une fiducie, et tout droit sur des biens situés dans la municipalité quant auquel le conseiller ou une personne à sa charge a un mandat général de désignation des bénéficiaires en sa qualité d'exécuteur testamentaire, d'administrateur d'une succession ou de fiduciaire aux termes d'une fiducie;

h) l'identité du donateur ainsi que la nature de chacun des dons faits, après l'entrée en vigueur de la présente loi, à lui-même ou à une personne à sa charge, sauf :

- (i) les dons faits par un membre de leur famille,
- (ii) les dons qui ont déjà été déclarés conformément à l'article 9,
- (iii) les dons reçus avant que le conseiller ne soit élu pour la première fois au conseil;

i) la nature de tout contrat ou de toute affaire d'ordre financier conclus après l'entrée en vigueur de la présente loi entre la municipalité et :

- (i) le conseiller ou une personne à sa charge,
- (ii) toute corporation visée par l'alinéa c),

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(iii) any partnership in which the councillor or any of his dependants is a partner,

but excluding

(iv) any such contract or other pecuniary transaction entered into before the councillor was first elected to the council, and

(v) any such contract or other pecuniary transaction disclosed in any previous statement filed under section 9, and

(vi) any transaction in which the councillor or any of his dependants is presumed under section 4 not to have a direct or indirect pecuniary interest.

General exemptions

11 For purposes of sections 9 and 10, no councillor is required

(a) to disclose any gift worth less than \$250., unless the total value of all the gifts from the donor to the councillor and his dependants during the past year exceeded \$250.; or

(b) to disclose any other asset or interest worth less than \$500.; or

(c) to estimate the value of any asset or interest disclosed; or

(d) to disclose any asset or interest acquired by a dependant of the councillor elected to the council more than two years before the person was elected to the council for the first time.

Continuing disclosure

12 Where a councillor or any of his dependants receives as a gift any of the assets or interests referred to in clauses 10(a) to (g), the councillor shall, notwithstanding that the gift has already been disclosed in a statement filed under section 9, continue to disclose the asset or interest in every statement filed under subsection 9(1) until the councillor or his dependant disposes of the asset or interest.

Statements available to public

13(1) The clerk of the municipality shall make every statement filed under section 9 available for inspection by any person without charge during normal business hours.

(iii) toute société en nom collectif dont fait partie le conseiller ou une personne à sa charge à titre d'associé,

sauf :

(iv) les contrats ou affaires d'ordre financier conclus avant que le conseiller ne soit élu pour la première fois au conseil,

(v) les contrats ou affaires d'ordre financier qui ont déjà été déclarés conformément à l'article 9,

(vi) les affaires dans lesquelles le conseiller, ou une personne à sa charge, est présumé, en application de l'article 4, n'avoir aucun intérêt financier direct ou indirect.

Exemptions générales

11 Pour l'application des articles 9 et 10, nul conseiller n'est tenu :

a) de déclarer des dons de moins de 250 \$, pourvu que la valeur totale des dons faits au cours de l'année qui précède par le donateur au conseiller et aux personnes à sa charge ne dépasse pas 250 \$;

b) de déclarer tout autre bien ou droit de moins de 500 \$;

c) d'évaluer tout bien ou tout droit déclaré;

d) de déclarer des biens ou des droits qui ont été acquis par une personne à charge du conseiller.

Déclaration répétée des dons

12 Lorsqu'un conseiller ou une personne à sa charge reçoit, à titre de don, un bien ou un droit visé à l'un des alinéas 10a) à g), ce conseiller doit, même après l'avoir initialement déclaré en application de l'article 9, déclarer ce bien ou ce droit dans chacun des documents produits en application du paragraphe 9(1), jusqu'à ce que lui-même, ou la personne à sa charge concernée, en ait disposé.

États mis à la disposition du public

13(1) Le greffier de la municipalité permet à toute personne d'examiner gratuitement pendant les heures normales d'ouverture les états déposés en application de l'article 9.

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November 2009 statements and beyond

13(2) Subsection (1) applies in respect of any statement required to be filed by a date in November 2009 and thereafter.

S.M. 2009, c. 35, s. 1.

Insider information

14 No councillor shall use, for personal gain or the gain of any other person, information which is not available to the public and which the councillor acquires in the performance of his official powers, duties and functions.

Compensation for services

15 No councillor shall receive or agree to receive any compensation, directly or indirectly, for services rendered or to be rendered by the councillor

(a) to any person, corporation, partnership or organization in relation to any by-law, resolution, contract, proceeding, or other matter before the council or any committee, subcommittee or community committee thereof, before any subcommittee of a committee, or before any commission, board or agency on which a councillor serves in his official capacity as a councillor; or

(b) in order to influence or attempt to influence any other councillor.

Use of influence

16 No councillor shall, himself or through any other person, communicate with another councillor or with an officer or employee of the municipality for the purpose of influencing the municipality to enter into any contract or other transaction, or to confer any benefit, in which the councillor or any of his dependants has a direct or indirect pecuniary interest.

Right to appear

17(1) Notwithstanding anything in this Act, but subject to subsection (3), a councillor has the same right as any other resident of the municipality to appear before a meeting for the purpose of representing his personal interests in

(a) an application for a variance in a zoning by-law; or

Application

13(2) Le paragraphe (1) s'applique aux états devant être déposés à partir de novembre 2009.

L.M. 2009, c. 35, art. 1.

Renseignements confidentiels

14 Nul conseiller ne peut utiliser, à son profit ou au profit de toute autre personne, des renseignements auxquels le public n'a pas accès et qu'il a obtenus dans l'exercice de ses fonctions et pouvoirs officiels.

Rémunération pour services

15 Nul conseiller ne peut recevoir, ni consentir à recevoir, aucune rémunération, directement ou indirectement, pour des services qu'il a rendus ou rendra

a) soit à toute personne, corporation, société en nom collectif ou organisation, concernant un arrêté, une résolution, un contrat, une instance ou toute autre affaire à l'étude devant le conseil ou un de ses comités, sous-comités ou comités communautaires, devant un sous-comité d'un comité, ou devant toute commission ou tout conseil ou organisme au sein desquels le conseiller occupe un poste à ce titre;

b) soit dans le but d'influencer ou de tenter d'influencer un autre conseiller.

Abus de pouvoir

16 Nul conseiller ne peut, directement ou par l'intermédiaire d'une autre personne, entrer en communication avec un autre conseiller ou avec un agent ou un employé de la municipalité, dans le but d'inciter la municipalité à conclure un contrat ou une affaire quelconque, ou à accorder un bénéfice quelconque, dans lesquels ou relativement auxquels lui-même ou une personne à sa charge a un intérêt financier direct ou indirect.

Droit de défendre ses intérêts

17(1) Malgré toute disposition de la présente loi, mais sous réserve du paragraphe (3), un conseiller a le droit, au même titre qu'un autre résident de la municipalité, de se présenter devant une assemblée pour défendre ses propres intérêts, dans le cadre :

a) d'une demande visant à obtenir la permission de déroger à un règlement de zonage;

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(b) an application for a conditional use under a zoning by-law; or

(c) a complaint in respect of a business, realty or local improvement assessment.

"Meeting" defined

17(2) For purposes of subsection (1), "meeting" includes

- (a) a council meeting;
- (b) a meeting of any committee or subcommittee of a council, or any subcommittee of a committee;
- (c) repealed, S.M. 2002, c. 39, s. 528;
- (d) a meeting of any commission, board or agency which has jurisdiction in the matter; and
- (e) a meeting of any Court of Revision or Board of Revision.

No right to vote

17(3) Where the councillor sits on any body which considers a matter referred to in subsection (1), the councillor shall not vote on the matter.

S.M. 2002, c. 39, s. 528.

Disqualification for violation

18(1) A councillor who violates any provision of this Act is disqualified from office, and the councillor's seat on council becomes vacant, as of the time of the declarations referred to in clauses 21(1)(a) and 21(2)(a).

Disqualification for failure to file statement

18(2) For purposes of subsection (1), a councillor violates subsection 9(1) only where, after receiving the notification referred to in subsection 9(2), the councillor fails to file the required statement within the time period referred to in subsection 9(2).

b) d'une demande d'utilisation conditionnelle en vertu d'un règlement de zonage;

c) d'une plainte concernant une évaluation relative à la taxe d'affaires, aux taxes foncières ou aux taxes imposées à des fins d'amélioration locale.

Définition d'« assemblée »

17(2) Aux termes du paragraphe (1), « assemblée » s'entend également :

- a) d'une séance du conseil;
- b) d'une réunion de tout comité ou sous-comité d'un conseil, ou de tout sous-comité d'un comité;
- c) abrogé, L.M. 2002, c. 39, art. 528;
- d) d'une réunion de toute commission ou de tout conseil ou organisme qui a compétence dans l'affaire concernée;
- e) d'une séance de tout tribunal ou conseil de révision.

Interdiction de voter

17(3) Lorsqu'un conseiller siège au sein de l'organisme qui étudie une affaire visée au paragraphe (1), il n'a pas le droit de voter relativement à cette affaire.

L.M. 2002, c. 39, art. 528.

Infraction rendant inhabile

18(1) Le conseiller qui enfreint une disposition quelconque de la présente loi est inhabile à occuper son poste et son siège au conseil devient vacant à partir du moment des déclarations prévues aux alinéas 21(1)a) et 21(2)a).

Infraction au paragraphe 9(1)

18(2) Pour l'application du paragraphe (1), un conseiller n'enfreint le paragraphe 9(1) que lorsqu'il ne transmet pas au greffier l'état de ses biens et droits dans le délai prescrit au paragraphe 9(2), après avoir reçu l'avis prévu par ce paragraphe.

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Effect on other business

18(3) Subject to section 8, no decision or transaction, and no procedure undertaken by a municipality with respect to a decision or transaction, is void or voidable by reason of a violation of this Act.

Application by clerk to Q. B.

19 Where it is alleged that a councillor has violated a provision of this Act, the council of which he is a member may direct the clerk of the municipality to apply by originating notice to a judge of the Court of Queen's Bench for a declaration that the councillor has violated a provision of this Act.

Application by elector to Q.B.

20(1) Where it is alleged that a councillor has violated a provision of this Act, and if there is no previous application outstanding or determined on the same facts, an elector may apply ex parte to a judge of the Court of Queen's Bench for authorization to apply for a declaration that the councillor has violated a provision of this Act.

Affidavit and security for application

20(2) An elector who files an ex parte application under subsection (1) shall

- (a) file an affidavit showing details of the alleged violation; and
- (b) pay into court the sum of \$300. as security for the application.

Summary dismissal or authorizing of application

20(3) Upon hearing the ex parte application, the judge may

- (a) dismiss the application and order forfeiture of all or part of the security referred to in clause (2)(b); or
- (b) authorize the applicant to apply to another judge of the Court of Queen's Bench for a declaration that the councillor has violated a provision of this Act.

Effet sur les affaires conclues par la municipalité

18(3) Sous réserve de l'article 8, une infraction à la présente loi ne rend ni nulles ni annulables une décision ou une affaire quelconque, ou une opération entamée par la municipalité relativement à une décision ou à une affaire quelconque.

Demande par le greffier à la C.B.R.

19 Lorsqu'un conseiller est soupçonné d'avoir enfreint une disposition de la présente loi, le conseil dont il fait partie peut ordonner au greffier de la municipalité de demander à un juge de la Cour du Banc de la Reine, par avis introductif d'instance, de rendre une ordonnance déclaratoire portant que le conseiller a enfreint une disposition de la présente loi.

Demande par un électeur à la C.B.R.

20(1) Lorsqu'un conseiller est soupçonné d'avoir enfreint une disposition de la présente loi, un électeur peut demander ex parte à un juge de la Cour du Banc de la Reine l'autorisation de présenter une demande d'ordonnance déclaratoire portant que le conseiller a enfreint une disposition de la présente loi, pourvu que les mêmes faits n'aient encore fait l'objet d'aucune demande.

Affidavit et garantie

20(2) Un électeur qui présente une demande ex parte en vertu du paragraphe (1) doit à la fois :

- a) produire un affidavit énonçant les faits qui constituent l'infraction reprochée;
- b) consigner au tribunal la somme de 300 \$, à titre de garantie relativement à la demande.

Rejet sommaire ou autorisation

20(3) Après audition de la demande ex parte, le juge peut :

- a) soit rejeter la demande et ordonner la retenue de tout ou partie de la garantie prévue à l'alinéa (2)b);
- b) soit autoriser le demandeur à présenter à un autre juge de la Cour du Banc de la Reine une demande d'ordonnance déclaratoire portant que le conseiller a enfreint une disposition de la présente loi.

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Disposition after hearing

21(1) Upon hearing any application for a declaration that a councillor has violated a provision of this Act and such evidence as may be adduced, the judge may

(a) declare that the councillor has violated a provision of this Act; or

(b) refuse to make the declaration;

and in either case, with or without costs.

Penalty for violation

21(2) Where the judge declares that the councillor has violated a provision of this Act, the judge

(a) shall declare the seat of the councillor vacant; and

(b) may, where the councillor has realized pecuniary gain in any transaction to which the violation relates, order the councillor to make restitution to any person, including the municipality, affected by the pecuniary gain.

Unknowning or inadvertent breach

22 Notwithstanding anything in this Act, where a judge finds that a councillor violated a provision of this Act unknowingly or through inadvertence, the councillor is not disqualified from office, and the judge shall not declare the seat of the councillor vacant, in consequence of the violation.

Election not to preclude application

23 An application for a declaration that a councillor has violated a provision of this Act may be brought notwithstanding that the councillor against whom the declaration is sought resigned or did not seek re-election, or was not re-nominated, or was re-elected or defeated subsequent to the alleged violation of this Act.

Application for restitution

24 Notwithstanding anything in this Act, where any person, whether the person is or was a councillor or not, has realized pecuniary gain in any transaction to which a violation of this Act relates, any person affected by the pecuniary gain, including any municipality, may apply to a court of competent jurisdiction for an order of restitution against the person who has realized the pecuniary gain.

Décision après audition de la demande

21(1) Après avoir entendu une demande d'ordonnance déclaratoire portant qu'un conseiller a enfreint une disposition de la présente loi, ainsi que l'ensemble de la preuve invoquée, le juge peut :

a) soit déclarer que ce conseiller a enfreint une disposition de la présente loi;

b) soit refuser de rendre l'ordonnance déclaratoire,

avec ou sans dépens dans les deux cas.

Peine pour infraction à la présente loi

21(2) Lorsque le juge déclare que le conseiller a enfreint une disposition de la présente loi :

a) il doit déclarer vacant le siège du conseiller;

b) il peut, si le conseiller a réalisé un profit d'ordre financier dans le cadre d'une affaire à laquelle est reliée l'infraction, en ordonner la restitution à quiconque en a subi préjudice, y compris la municipalité.

Infraction commise inconsciemment ou par inadvertance

22 Malgré toute autre disposition de la présente loi, lorsqu'un juge conclut qu'un conseiller a enfreint une disposition de la présente loi inconsciemment ou par inadvertance, ce conseiller ne devient pas pour autant inhabile à occuper son poste, et le juge ne peut déclarer son siège vacant.

Demande recevable en tout temps

23 Une demande d'ordonnance déclaratoire portant qu'un conseiller a enfreint une disposition de la présente loi peut être présentée lors même que, suite à l'infraction qu'on lui impute, le conseiller visé a démissionné, n'a pas tenté de se faire réélire, y compris présenté de nouveau comme candidat, ou lors même qu'il a été réélu ou qu'il a été défait.

Ordonnance restitutoire

24 Malgré toute autre disposition de la présente loi, lorsqu'une personne, qu'il s'agisse ou non d'un conseiller, a réalisé un profit d'ordre financier dans le cadre d'une affaire à laquelle est reliée une infraction à la présente loi, quiconque en a subi préjudice, y compris la municipalité, peut demander à un tribunal compétent de rendre une ordonnance restitutoire contre la personne qui a réalisé ce profit.

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Limitation period for declaration

25(1) No application for a declaration that a councillor has violated a provision of this Act shall be brought more than six years after the date of the alleged violation.

Limitation period for order of restitution

25(2) No application for an order of restitution under section 24 shall be brought more than six years after the date of the transaction which results in the alleged pecuniary gain.

No other proceedings

26 Proceedings to declare the seat of a councillor vacant, or for an order of restitution, in consequence of a violation of this Act shall be had and taken only under the provisions of this Act, and not by way of application for a writ of quo warranto or by a proceeding under any other Act of the Legislature or otherwise.

Summary Convictions Act not to apply

27 No violation of any provision of this Act is an offence for purposes of *The Summary Convictions Act*.

Prescription quant à l'ordonnance déclaratoire

25(1) La demande d'ordonnance déclaratoire portant qu'un conseiller a enfreint une disposition de la présente loi se prescrit par six ans à compter de la date de l'infraction reprochée.

Prescription quant à l'ordonnance restitutoire

25(2) La demande d'ordonnance restitutoire prévue à l'article 24 se prescrit par six ans à compter de la date de la conclusion de l'affaire dont résulte le profit d'ordre financier reproché.

Exclusion du quo warranto et d'autres procédures

26 Les procédures judiciaires visant à faire déclarer vacant le siège d'un conseiller ou à obtenir une ordonnance restitutoire suite à une infraction à la présente loi ne peuvent être intentées que conformément aux dispositions de la présente loi, à l'exclusion de la demande en quo warranto et de toute procédure judiciaire à cet effet découlant d'une autre loi de la Législature ou de toute autre source.

Non-application de la Loi sur les poursuites sommaires

27 Une infraction à la présente loi ne constitue pas une infraction au sens de la *Loi sur les poursuites sommaires*.

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