



OFFICE OF THE
AUDITOR GENERAL
MANITOBA

August 2013

Rural Municipality of Lac du Bonnet



August 2013

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

Dear Sir:

It is an honour to provide you with my report titled, *Rural Municipality of Lac du Bonnet*, to be laid before Members of the Legislative Assembly in accordance with the provisions of Sections 11 and 28(1) of *The Auditor General Act*.

Respectfully submitted,

Carol Bellringer, FCA, MBA
Auditor General

Web Version

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Main points

1. What we examined and found

In March 2008, we began receiving allegations about poor administrative practices in the Rural Municipality of Lac du Bonnet (RM). We reviewed the more significant allegations.

Our findings support many of the allegations—administrative practices in the RM and in the Lac du Bonnet Planning District were inadequate. Overall practices need to be improved. And the Department of Local Government should increase its oversight of the RM and the Planning District to ensure the improvements occur. Lastly, we draw the Province’s attention to sections 3, 5 and 6 of this report for follow-up. We found that:

1. ***The Municipal Act not followed for water project***

Water Project #1 (Project) is a local improvement that benefits only part of the RM. It will let some RM residents access drinking water and sewer service by connecting to the water supply of the Town of Lac du Bonnet. Section 310 of *The Municipal Act* (the Act) lets a municipality tax only the taxpayers that benefit from the improvement. In the RM, only the taxpayers that choose to connect to the waterlines will be charged for the Project. One allegation was that the RM was proceeding with this water project but not following the Act. This was accurate.

2. **Zoning by-laws not followed and work inadequate**

The Lac du Bonnet Planning District acts for the Town and the RM. The Planning District has a Board of Directors consisting of 3 RM councillors and 2 Town councillors, appointed by their councils. The Planning District has 2 employees: the Administrator of Planning and the Building Inspector. The Building Inspector reports to the Administrator. Some allegations were that the Building Inspector did not follow municipal zoning by-laws. Evidence confirmed that zoning by-laws were not followed and also that some of the work was inadequate. The Building Inspector was responsible for the work. And his supervisor, the Administrator of Planning, and the Planning District Board are responsible for proper oversight. However, both the Administrator of Planning and the Planning Board told us that they were apprehensive disciplining the Building Inspector because he was also the Reeve of the RM. The apprehension delayed action to hold the Building Inspector accountable for his performance. But we saw evidence that eventually the Administrator and Board took appropriate steps to hold him accountable.

3. **Conflict of interest existed**

The same person was both Reeve of the RM and the Building Inspector from November 2010 until May 2012. He was Building Inspector before his election as Reeve in November 2010. One allegation was that he violated *The Municipal Council Conflict of Interest Act*. It appears to be accurate. Another allegation does not appear to be covered by legislation.

4. **RM did not follow tendering policy**

Allegations that a former Councillor received municipal contracts from his role as Councillor could not be confirmed. Prior to December 14, 2010 there was no tendering policy. We found that after this date the RM did not follow its tendering policy requirements. As a result we were unable to determine if municipal contracts were awarded fairly.

5. **Emergency Measures Organization paid to repair improperly built ditch**

Allegations were made that a contracting company's ditch repair in 2010 was negligent and led directly to the drain failing the next year. We found evidence to support the allegations. The Emergency Measures Organization approved payment to repair the ditch in both 2010 and 2011.

6. **RM violated The Municipal Act when it wrote off taxes**

The RM wrote off property taxes for a tourist camp, violating *The Municipal Act*.

7. **Councillors' expenses complied with indemnity by-law**

All expense reports we reviewed (for all Councillors for 2008, 2009, 2010, and 2011, except August 2008, which could not be found) complied with the indemnity by-law in effect when the reports were filed.

2. **Why it matters**

The *Council Members Guide*, published by the Association of Manitoba Municipalities and the Department of Local Government, says:

Municipalities are responsible, accountable and mature governments. Recognizing this, the Act provides a flexible, enabling framework to enable municipalities to govern efficiently and effectively in today's environment. Municipalities have flexibility and autonomy to manage their own affairs and to make decisions that they think will best meet the needs of their communities.

Services that municipalities are required by legislation to deliver include waste management, maintenance of municipal roads, protective services such as fire and for some municipalities (urban municipalities of 750 or more population) police services, and land use planning.

Municipalities, however, can deliver a wide and varied range of other services that are not required by legislation, such as recreation and economic development, as long as these services are within their legislative authority.

The *2010 Statistical Information for Municipalities in the Province of Manitoba* report said that Manitoba's 198 municipalities spent over \$699 million on capital projects, including \$408 million on water and sewers, and roads, streets and bridges. The total value of municipalities' net tangible capital assets on December 31, 2010 was \$6.38 billion.

Local citizens elect their own Councils but municipalities are created by the Province. It is important that the provincial government hold municipalities accountable for the delivery of these services and the spending of significant amounts of tax dollars.

Background

The RM is about 100 km northeast of Winnipeg, between two provincial parks: Nopiming Provincial Park to the northeast and Whiteshell Provincial Park to the southeast. The 2011 census listed the population of the RM at 2,671. Between May and October the population swells to over 8,000 residents (RM estimate). Agriculture remains a staple industry in the western portion of the municipality; hydroelectric generation, mining, and tourism are also important to the local economy. The RM is governed by a five-member Council, consisting of four Councillors and a Reeve who chairs Council meetings. Although the Town of Lac du Bonnet is surrounded by the RM, the Town is governed by its own Council.

Audit approach

Our audit covered the period from January 1, 2008 to December 31, 2012 and took place between August 2011 and December 2012. We interviewed current and former Council members and employees of the RM and the Planning District. We examined documents relating to construction projects and Council decisions.

We performed our audit in accordance with Investigative and Forensic Accounting Standards (IFA) as recommended by the Canadian Institute of Chartered Accountants. IFA standards are specifically designed for engagements that “involve disputes or anticipated disputes, or where there are risks, concerns or allegations of fraud or other illegal or unethical conduct.”

Audit findings and recommendations

This is our fifth report about rural municipalities since 2002. Common problems that these reports have identified are:

- non-compliance with municipal legislation.
- lack of administrative policies.
- policies not followed.
- poor recordkeeping practices.

Despite these 5 reports and the on-going training and information provided to municipal officials by the Department of Local Government, the number of concerns about municipal operations continues to grow. Over the past 2 years, about 23% of the citizen concerns forwarded to our Office involved municipalities.

In March 2008, we began receiving allegations about poor administrative practices in the Rural Municipality of Lac du Bonnet (RM). We reviewed the more significant allegations.

Our findings support many of the allegations—administrative practices in the RM and in the Lac du Bonnet Planning District were inadequate. Overall practices need to be improved. And the Department of Local Government should increase its oversight of the RM and the Planning District to ensure the improvements occur. Lastly, we draw the Province’s attention to sections 3, 5 and 6 of this report for follow-up.

In section 3, we describe conflict of interest situations which are not covered by legislation.

In section 5 we concluded that the Emergency Measures Organization paid to repair a ditch that was improperly built. The Department of Infrastructure and Transportation needs to review its practices to ensure payments are only made when warranted, and that payments are issued with appropriate conditions.

In section 6 we concluded that the write-off of taxes for a tourist camp contravenes the Act. Because this is crown land and involves a lease between the Province and the tourist camp, the Province should review the matter.

Recommendation 1: We recommend that the RM and the Planning District improve their overall administrative practices and the Province monitor progress.

Response of Rural Municipality of Lac du Bonnet

The Municipality and Planning District Office are making improvements to the overall administrative practices through better communications and working together.

The Administration and Council of the RM of Lac du Bonnet recognize the need for improvement of overall practices. Council is currently reviewing, updating and implementing policies, procedures, by-laws, enforcement practices, communication

practices, council practices, record keeping practices, and general administration practices.

Response from the Department of Local Government

The Department supports the Auditor General’s recommendation. The Department of Local Government will monitor the RM’s and Planning District’s progress in improving overall administrative practices, with a view to providing advisory support and assistance if requested by the municipality and Planning District.

Manitoba municipalities are governed by *The Municipal Act*. Under this Act, municipalities are considered to be mature and responsible governments, with flexibility to manage their own affairs and authority to establish policies and procedures in the best interests of their community. The intent of this Act is that municipal councils first and foremost are responsible and accountable to the citizens that elect them.

Recent amendments to *The Municipal Act* passed on June 14, 2012, strengthened the accountability and transparency of municipal councils and supported transparent decision making. A key provision now requires municipalities that have received an audit report from the Provincial Auditor General to make the report as well as council’s response to the Auditor General’s recommendations public. A time period for implementing measures to respond to the Auditor General’s recommendations must also be provided, and the Mayor/Reeve must annually report on the municipality’s progress in doing so.

In accordance with *The Municipal Act*, the RM of Lac du Bonnet council is expected to report on its response to the recommendation made by the Auditor General so citizens will be aware of the recommendation and be able to hold their council accountable for responding to the recommendation.

1. *The Municipal Act not followed for water project*

Water Project #1 (Project) is a local improvement that would benefit only part of the RM. It would let some RM residents access drinking water and sewer service by connecting to the water supply of the Town of Lac du Bonnet. Section 310 of the Act allows a municipality to tax only the taxpayers that will benefit from the improvement. The RM planned to charge only the taxpayers that choose to hook up to the waterlines for the Project.

One allegation was that the RM was proceeding with this water project but not following the Act. We confirmed this. The RM did not have the required local improvement plan. Nor did it have the required borrowing by-law in place.

The Project came about in 2011 after Council received 4 different petitions asking for a water project in the RM. These petitions were all considered “sufficient” by the Chief Administrative Officer (CAO) and documented that way in the Council minutes. When

Council receives a sufficient petition, the Act requires that a Local Improvement Plan (Plan) be prepared and a public meeting held to discuss the Plan (Appendix 1 – Process for Local Improvements or Special Services). All potential taxpayers must be given at least 21 days’ written notice of the meeting. The notification has to summarize the information in the Plan and taxpayers’ rights to object to the Plan.

No local improvement plan—the RM did not prepare a Plan for any of the four petitions, contrary to the Act. And only 1 of the 4 petitions the RM received was sufficient under the Act (Appendix 2 – Petition Requirements), as the following details show.

- Petition #1 (February 2011) lacked a statement of purpose, a date, and a witness to the signatures. It also had no boundary for the project, so it’s not clear if the required 2/3 of potential taxpayers signed the petition. The CAO said she was unaware of the 2/3 requirement when she reviewed these petitions.
- Petition #2 (March 2011) had no dates or witnesses. It also has a name with no signature—only a handwritten note that the person confirmed by phone their interest in the project. The project boundary was not on the petition, so it was not clear if 2/3 of potential taxpayers signed it.
- Petition #3 (April 2011) lacked a specific purpose. It simply stated “water and sewer services”. The petition also has the names of 2 people who expressed interest in the project but did not sign it.
- Petition #4 (July 2011) had all the information Section 154 of the Act required. It had a list of the total number of residents within the boundary of the potential project. We were able to determine that 2/3 of potential taxpayers signed the petition.

The RM proceeded further with the Project, which appears to include the taxpayers that signed petitions #1 and #4. The CAO prepared a draft Plan with a complete description of the Project and the properties and taxpayers affected. Although estimated costs and borrowings of \$450,000 were included in this draft Plan, much of the information was incomplete. The Plan was not finalized and Council did not approve it.

The RM held a public meeting to discuss the Project on July 26, 2011. No Plan was given to attendees. The CAO said that all potential taxpayers were phoned about the meeting. There was no evidence of the calls. And it’s not clear if the required 21 days’ notice was provided. Section 318(1) of the Act requires this information be provided to potential taxpayers by mail—that was not done. We were told that there was a sign-in sheet at this meeting but RM staff could not produce it.

No borrowing by-law in place—in October 2011, the RM tendered for the Project, but no borrowing by-law was in place. The Act requires a borrowing by-law to be in place for any borrowing to pay for a local improvement. And a municipality may not borrow unless council obtains the Municipal Board’s approval of the by-law before the third reading of it. The RM should not have tendered the work for the Project until the borrowing by-law was approved by the Municipal Board and in place. Once the RM realized that they needed the borrowing by-law, they called the bidders and told them that they could not award the tender.

No approval from Public Utilities Board—the Project required a hook-up to the Town of Lac du Bonnet’s water supply. The estimated cost in the draft Plan for the hook-up was \$1,250. After the public meeting, the potential taxpayers were told the Town of Lac du Bonnet proposed to charge each taxpayer a \$5,000 fee to hook up to the Town’s water supply. The Town took the fee proposal to the Public Utilities Board (PUB) for approval as required by The Public Utilities Board Act. On May 10, 2013 the PUB released its order denying the Town’s request to charge the \$5,000 hook-up fee. The PUB agreed that there should be a hook-up charge, but the Town needed to substantiate the charge. The Town was encouraged to re-apply for a hook-up fee. Currently, the Project is on hold.

RM did not follow its policy on taxpayer agreements—the RM has a “Policy on Publicly Driven Infrastructure Requests” which states that before the RM will initiate any service improvements, all taxpayers involved must enter into an agreement with the RM and agree to cover all related costs. The taxpayers must also deposit at least 10% collateral with the RM. Many of the potential taxpayers signed a statement of intent listing a maximum amount they would be willing to pay for a water connection. These statements are non-binding. No agreements were entered into between taxpayers and the RM and no deposits were collected. Total accumulated costs for the project to date are \$893.48 which would have been covered by the 10% collateral.

Response of Rural Municipality of Lac du Bonnet

Council and Administration had concerns with the statement that the RM proceeded with this water project but not following the Act.

Present Council Members and CAO acknowledged and recognized that a Local Improvement Plan for the Water Project #1 was not in place, was not completed, and was not finalized by Council. The tender was in fact advertised prior to the borrowing by-law being in place and that the preliminary work or plan was started and that the procedures were not followed.

The error was realized and the RM stopped the project immediately at that time.

The Water Project #1 potential participants also placed the project on hold after finding out the Town of Lac du Bonnet applied to the Public Utilities Board (PUB) for an increase in connection fee for RM residents only in the amount of \$5,000 per hook up. PUB recently denied the request and another study is in progress.

Council and the CAO were aware of the RM Policy, adopted by Resolution #139 March 13, 2007 regarding the 10% commitment for infrastructure projects but because the project was placed on hold by the municipality, the potential participants were not billed.

Water Project #1 has not moved forward to this date.

Note: There was a change in administration staff at that time.

2. Zoning by-laws not followed and work inadequate

The Lac Du Bonnet Planning District acts for the Town and RM. The Planning District has a Board of Directors consisting of 3 RM councillors and 2 Town councillors, appointed by their councils. The Planning District has 2 employees: the Administrator of Planning and the Building Inspector. The Building Inspector reports to the Administrator. Some of the allegations were that the Building Inspector did not follow zoning by-laws.

Evidence confirmed that zoning by-laws were not followed and also that some of the work was inadequate. And although the Building Inspector was responsible for the work, his supervisor, the Administrator, and the Planning District Board were responsible for proper oversight. However, both the Administrator and the Planning Board told us that they were apprehensive disciplining the Building Inspector because he was also the Reeve of the RM. Three of the 5 members of the Board are councillors of the RM. The Board told us that “if any reprimands were to be issued during this period it would have caused an undesirable impact on the RM council’s ability to function properly”. The apprehension delayed action to hold the Building Inspector accountable for his performance. But we saw evidence that eventually the Administrator and Board took appropriate steps to hold him accountable.

We reviewed the following:

- The Building Inspector neglected to bill and collect development permit fees for two large expansions to the Milner Ridge Correctional Institution. The permits, which should have been paid in 2011, totaled \$28,697.20. This contributed to the Planning District’s deficit of \$19,844.58. The Planning District Board minutes indicate the Board repeatedly asked the Building Inspector to pursue people with outstanding permit fees. By the time the Building Inspector requested development fees for the Milner Ridge expansions, the construction was complete. The Building Inspector filed a stop work order because the permit fees had not been paid. But that was after the building was occupied and so would have no effect. The development fees were collected in February 2012.
- A design for guest quarters above a garage with a full bathroom and kitchen was approved. It contravened zoning by-law 1.2.59 which states that “guest quarters shall not contain cooking facilities and shall not be serviced by public utilities independent of the cottage dwelling”.
- A resident submitted a hand-drawn sketch and a credit card number. The Building Inspector obtained an engineering drawing and stamp. And then a building permit was issued. It is not appropriate for building inspectors to obtain drawings for applicants.
- Several building permits were issued for expansions of a business in the Town. After the expansions, the building was over 6,000 square feet and therefore required the approval of the Office of the Fire Commissioner (OFC). The Planning District should have ensured OFC approval was in place before issuing the building permits. The OFC inspected the building and required that a sprinkler system or a firewall be installed in the building. As a result, the Planning District suspended all outstanding permits. There was then legal action and an out-of-court settlement where the Planning District paid the

deductible of \$2,500 and the Town's insurer paid damages of \$175,000. The Building Inspector told us that he had just begun his position and was not aware of the 6,000 square foot requirement.

- Potential property owners asked the Building Inspector for permission to build a storage building on a property before building a cottage. The Building Inspector gave verbal permission. When the residents bought the property and applied for a permit, the Building Inspector was on sick leave. The acting Building Inspector denied the permit because the municipal zoning by-laws state that “no accessory buildings may be put up prior to the construction of the main building”. The property owners are seeking a zoning variance from Council.

Response from Rural Municipality of Lac du Bonnet

The Lac du Bonnet Planning District was not made aware of the progress at Milner Ridge on a regular basis causing a delay.

We weren't aware of the hand drawn sketch and a credit card number, this was discovered when the Building Inspector of the time was away on sick leave.

Where the property owners asked the Building Inspector to build a storage building on the property before building a cottage; the Building Inspector at the time gave verbal permission but was later denied by the acting Building Inspector as no accessory buildings can be put up prior to the construction of the main building. The property owners were seeking a variance that was refused and have now built their cottage and storage building.

We believe that the Lac du Bonnet Planning District took appropriate steps to rectify the matter with the Building Inspector.

3. Conflict of interest existed

The same person was both Reeve of the RM and the Building Inspector from November 2010 until May 2012. He was Building Inspector before his election as Reeve in November 2010.

One allegation was that the Reeve was in a conflict-of-interest situation. While he held both roles (Reeve and Building Inspector), Council of the RM appointed members to the Planning District Board where the Building Inspector worked, and voted to increase the annual levy paid to the Planning District by 10%.

The minutes do not show that the Reeve declared a conflict of interest or left the meeting during these votes. When a conflict arises *The Municipal Council Conflict of Interest Act* requires a councillor with the conflict not to vote. The vote was not recorded. Also, the Reeve did not declare his dual role on the Statement of Assets and Interests that is required by *The Municipal Council Conflict of Interest Act* to be completed by all councillors.

The Municipal Council Conflict of Interest Act is very specific. It seems to apply to the levy increase because the Reeve voted on it while he was an employee of the Planning District, which the Act defines as an “indirect pecuniary interest”. But the Act does not appear to

cover the appointment of members to the Planning District Board.

As described in section 2, dual roles were a problem. *Bill 23, The Local Government Statutes Amendment Act* revised *The Municipal Act* to prevent a person from holding dual roles in a municipality. The provisions that applied when a municipal employee sought or was elected to council have been extended to apply to employees of bodies that are affiliated with the municipality, such as the Planning District. Therefore, employees of a municipality or an affiliated body of a municipality are disqualified from being elected to the council of the municipality, unless they have taken a leave of absence. *Bill 23* was assented to on June 14, 2012 but the provisions about employees seeking election to council do not come into force until January 1, 2014.

We urge the Province to continue to assess how perceived conflicts of interest can be resolved.

4. RM did not follow tendering policy

We received an allegation that a former Councillor received municipal contracts because of his role as a Councillor, contrary to the tendering policy. Before December 14, 2010, there was no tendering policy. After this date, the RM did not follow its tendering policy. So we could not tell if municipal contracts were awarded fairly or confirm the allegation against the former Councillor.

At the start of each year, the RM requests hourly rates quotations for heavy machinery from contractors. Throughout the year, as the RM needs equipment, it uses the contractor with the lowest rate. We reviewed the submissions for equipment rental rate from 2008 to 2012 and found significant problems with the RM's tendering practices.

Starting in 2010, the RM created a Policy and Procedures Manual (Policy) outlining the RM's tendering policy, including the hourly equipment rate bidding process. We reviewed 4 aspects of the Policy that pertain to the awarding of contracts.

1. Issuance of purchase orders

The Policy required that purchase orders be drafted and appropriately signed by the CAO or the Public Works Manager. The CAO or Public Works Manager had signed purchase orders for all equipment rental rate agreements we reviewed.

2. Public opening of submissions

The Policy required submissions for tendered contracts to be publicly opened. Submissions for equipment rental rates were publicly opened during Council meetings for 2011 and 2012. Before 2011, there was no evidence that submissions were publicly opened.

3. No alterations to tenders

The Policy prohibits alterations to a tender after opening, unless it is decisively shown to be a computing or typing error. The bidder must be told and asked to confirm the alteration in writing.

In 2009, 6 companies submitted equipment rental rates. The RM had original handwritten copies for 3 of the 6 submissions. Three of the submissions were faxes or photocopies. Two of the submissions appeared altered, with no indication of approval by municipal staff.

In 2010, 4 submissions were received by the RM and all of them were received at the RM office in a sealed envelope. Two were date stamped and 2 had handwritten dates. None of the submissions had been altered.

In 2011, the RM received 11 equipment-rental-rate submissions, according to its matrix. Four of the submissions had altered equipment-rental rates. One company's submission had 4 of the 12 rates altered. One of them became the lowest submitted bid and another was raised to equal the lowest bid. Three other submissions had also been altered. They had no initials or signature to indicate alterations were made before Council opened the submissions, as the Policy required. We could not tell whether the rates were altered before submission or after the RM received the bids. Two of the 11 bids were received after the submission deadline, but the RM still accepted them. One of the 11 bids does not have a date stamp on the envelope. The 2 late bids each submitted bids for 2 types of equipment. Of these 4 bids, 3 were the lowest.

4. No late bids

The Policy requires bids accepted after the deadline to be returned unopened to the sender. In 2012, 13 submissions were received, 12 of them before the January 6, 2012 deadline. A 13th submission was received on April 13—but accepted. Six of the thirteen had no date stamp. One of the submissions was received with white-out on 2 of the bid numbers.

Response from Rural Municipality of Lac du Bonnet

Council, CAO and Manager of the Public Works Department felt that the yearly advertisement giving notice for Seasonal Equipment Rates was neither a tender nor a contract and felt it did not fall within the tender policies of December 14, 2010 or the current policy March 12, 2013. This was not considered a tender. We do acknowledge the fact that some submissions may have been provided, and received in error.

We accept the comment regarding the equipment rates submissions not being publicly opened. Prior to 2011 they were accepted, copied and filed for future use

by the Public Works Department. Since this time we have revised the process to alleviate possible issues and alterations. All submissions received in any other form being sealed and delivered are not accepted. No late submissions are accepted.

They are not opened; they are date stamped on the sealed envelope. Submissions are opened publicly at a regular council meeting, originals are filed in our vault and copies made for the Public Works Department Manager.

The rationale behind the “Hourly Contractor List” is to supplement the Public Works Department equipment when all of our equipment is busy. This list is primarily utilized during the summer construction season but can be utilized throughout the year. The Public Works Department frequently is requiring a contractor piece of equipment on a hourly basis. When required we call upon the contractor whom has submitted the lowest hourly quote that has the equipment to fulfill the job requirements. This work can last anywhere from a couple of hours to weeks at a time depending upon the project. We have specific budgeted amounts assigned to the Drainage and Road Maintenance Divisions that allow for the hiring of hourly contractors.

5. Emergency Measures Organization paid to repair improperly built ditch

The RM experienced 3 consecutive years of extreme weather events and filed claims under Manitoba’s Disaster Financial Assistance Program (DFA Program) each year. The DFA Program is a cost-sharing reimbursement program between the federal government and the province/territory affected. The Program helps an affected province/territory after a natural disaster with response and recovery costs that might otherwise put a large burden on the provincial/territorial economy and exceed what the province/territory can pay by itself. The Program is operated through the Emergency Measures Organization (EMO) of the Department of Infrastructure and Transportation.

We received allegations about a ditch repair approved by the DFA Program, known as the Grant Road ditch. The allegations were that the work done by a contractor to repair the ditch in 2010 was negligent and directly led to the drain failing the following year. Evidence supported the allegation. EMO was aware of the possibility of contractor negligence. They paid the related claim without verifying if any of the damage was due to that potential negligence.

Heavy rainfall in May 2010, combined with previously saturated soil, caused erosion along the Grant Road ditch and created a delta of sediment in the channel the ditch drains into.

The project to repair the ditch was tendered as part of a group of 10 DFA projects related to the May 2010 severe weather. The tender was awarded to the lowest bid in aggregate but not the lowest for each of the 10 individual projects. The RM could not provide a signed contract

for this tender award. Total payments under the DFA project were about \$55,500, consistent with the winning bid. The portion for the ditch was about \$26,000.

This project was tendered, but the tendering policy requires tenders only for goods and services over \$60,000. The CAO said that there has not been a contract over \$60,000 since 2010. The RM should consider reviewing this threshold.

The RM's head of Public Works said that after the ditch work was done, in 2010, the RM picked up unused geotextile, used in ditch repair.

The ditch failed after the 2011 spring thaw and another claim was filed under the DFA program. EMO hired an engineering firm to examine the failed ditch and write a report on it. The report said that the contractor did not use sufficient geotextile along the walls of the ditch, and the contractor's actions had a "direct relation to the improper installation of materials from the 2010 EMO Claim". It was the opinion of the engineer that the "site should be dismissed from the 2011 EMO Claim list". Once the RM knew from EMO that insufficient geotextile had been used, they should have verified if any of the damage was due to contractor negligence.

The contractor said that all of the geotextile that the RM supplied was used in the ditch and that he asked for more but was denied. The contractor also said that it was very hard to build a ditch in winter, but did so because the RM insisted. The Public Works Manager confirmed that the RM wanted the ditch completed before spring thaw.

EMO officials said that damage to eligible infrastructure approved for DFA claims was covered by the Program and the RM alone was responsible for its relationship with the contractor. They said if the contractor was negligent in repairing infrastructure, the municipality must ensure the work is done correctly or sue the contractor. But EMO never made this a condition of the DFA payment.

EMO inspects projects before repairs to estimate cost and provide a scope of the work that the Program will approve. EMO also reviews the work when complete. EMO inspection notes said that the Grant Road drain reconstruction was not inspected because heavy rain prevented the inspector from viewing the site. No further effort was made to inspect the project before the drain failed a second time.

Officials from the Department of Conservation and Water Stewardship also became involved in meetings with landowners and RM officials. Notes of department officials said that "the repairs were not done well, evidence that shortcuts were taken" by the contractor. The notes go so far as to say that "wherever contractor was erosion got worse instead of better".

Response from Rural Municipality of Lac du Bonnet

We accept and acknowledge the fault stated in Stantec's Engineering report indicating the first repair was not sufficient and have made improvements for repairing drains which includes geotextile.

The Municipality was trying to complete this project prior to winter elements to ensure further damage would not occur in the spring.

We do not believe the contractor was negligent for the reoccurring damage.

Note: There was a change in public works management at that time.

6. RM violated *The Municipal Act* when it wrote off taxes

A tourist camp (Camp) in the RM leased crown land from the Province of Manitoba. The RM charged property taxes directly to the Camp. Over about 5 years ending in 2000, the Camp did not pay property taxes. So it owed more than \$83,000 in tax. In 2000 and 2001, the Camp entered into agreements with the RM to make monthly installment payments on the tax arrears and to pay current taxes each year. The Camp continued to make the monthly installments and current tax payments that it agreed to in the 2001 agreement. The RM did not take any further action.

The Camp's regular payments of arrears and current taxes continued until 2009, when the Camp wrote to the Council asking it to reduce its tax balance. Council and the Camp entered into a November 27, 2009 agreement when taxes owing were \$69,735, according to the agreement. But at the same time, the balance on the tax ledger was \$60,973. The RM could not reconcile the difference. Under this agreement, the RM received \$12,000 and a commitment from the Camp to pay all future taxes. In return, the RM would write-off the rest of the tax arrears. The Camp made the payments and the RM wrote off tax arrears of \$48,973.

The Act allows RMs to cancel or reduce assessed taxes only in the following situations:

300(6) A municipality may correct its tax roll and cancel or reduce taxes in respect of a property if, after the tax roll has been completed, the assessor reports to the municipality that

(a) the property is entitled to exemption from taxation due to change in ownership or use;

(b) the assessment of the property requires reduction because of a change in the physical condition of the property; or

(c) a change has been made in the classification of the property under The Municipal Assessment Act or a regulation under that Act.

The Municipal Act Procedures (manual) also says that "Municipalities may not consider tax cancellations for any other reason".

The manual says that all tax cancellations must be authorized by a resolution of Council. In this case, there is a resolution authorizing Council to enter into an agreement with the Camp. But it does not say that any taxes will be cancelled.

The Act permits Council to establish financial assistance programs that provide tax credits to people and businesses based on criteria the Council established. This must be done through the by-law process, which requires public discussions.

In conclusion, this write-off of taxes violated the Act. Because this is crown land and involves a lease between the Province and the Camp, the Province should review the matter.

Recommendation 2: We recommend that the Province follow-up on the property taxes written off at the tourist camp.

Response from Rural Municipality of Lac du Bonnet

The Tourist Camp owner was operating a business on leased crown land in the RM of Lac du Bonnet.

They had a significant amount of arrears owing to the RM and were in trouble. They could not see a way out and asked the RM council to help because he may go out of business and have to give up the crown lease. He had some older cabins, which he was renting out on weekends, and probably some for a week or more. They operated a small restaurant to try and make ends meet.

The RM council of the day was concerned that if the tourist camp went bankrupt or if the Province canceled their lease, the RM wouldn't get any of the taxes owing or any future taxes from this property.

The decision to enter into this agreement was not solely to help out a business in our RM, but to do what we thought was in the best interest of the taxpayers of the municipality. We did not want to shut him down and get nothing.

Going forward, the present CAO acknowledges the violation and understands Section 300(6) of *The Municipal Act*.

Response from the Department of Local Government

The Department supports the Auditor General's recommendation and will follow-up with Crown Lands and Property Agency, Crown Land Leases and Permits section as well as the RM of Lac du Bonnet. In accordance with municipal legislation, lessees of Crown land are responsible for paying property taxes to the municipality but tax sale is not a recourse when lessees are in tax arrears. However, municipalities do have recourse to pursue debt collection through the Courts and, in some situations, seize and sell goods. The Department will examine how best to support municipalities in the collection of tax arrears.

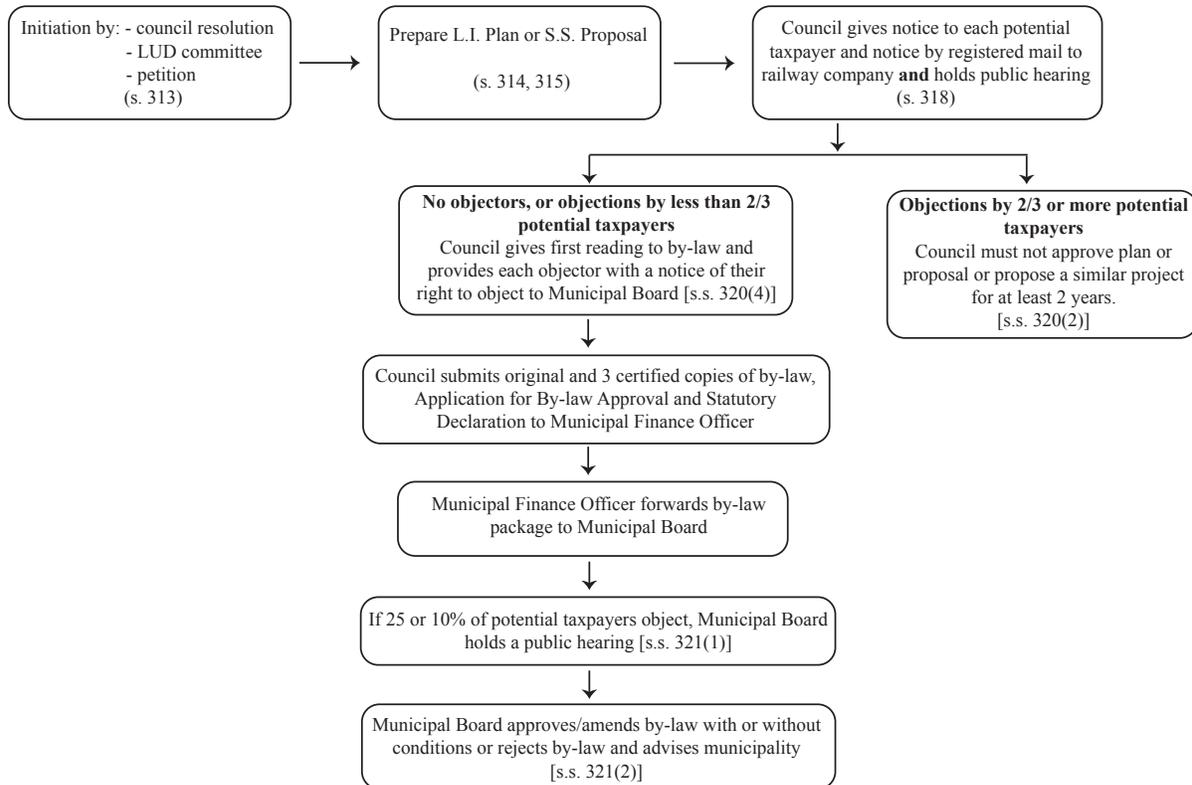
7. Councillors' expenses complied with indemnity by law

We reviewed expense reports submitted by all Councillors for each of the years 2008, 2009, 2010 and 2011, except August 2008 (expense reports for it could not be found). All the reports we reviewed complied with the indemnity by-law in effect at the time the reports were filed. The RM's financial records show the following summary of indemnities and expenses paid to the Reeve and Councillors for 2008 to 2011:

| | 2008 | 2009 | 2010 | 2011 | Total |
|----------------|-----------------|-----------------|-----------------|-----------------|------------------|
| Indemnities | \$53,285 | \$53,100 | \$53,100 | \$53,100 | \$212,585 |
| Meetings | 13,839 | 14,250 | 10,309 | 22,643 | 61,041 |
| Mileage | 6,542 | 5,459 | 4,462 | 12,244 | 28,707 |
| Cell phone | 936 | 900 | 900 | 1,990 | 4,726 |
| Per diem/meals | 857 | 391 | 681 | 1,268 | 3,197 |
| Total | \$75,459 | \$74,100 | \$69,452 | \$91,245 | \$310,256 |

Appendices

Appendix 1: Local improvement process



Source: Manitoba Municipal Act Procedures Manual

Appendix 2: Municipal Act petition requirements

| Municipal Act requirement | Petition #1 February | Petition #2 March | Petition #3 April | Petition #4 July |
|---|-------------------------|----------------------|----------------------|---------------------|
| 154(2) A petition must contain a statement of purpose, and the statement must appear on every page. | X | ✓ | X | ✓ |
| 154(3) A petition must include the following: | | | | |
| (a) in printed form, the surname and given name or initials of each petitioner; | ✓ | ✓ | ✓ | ✓ |
| (b) each petitioner's signature; | ✓ | ✓ | ✓ | ✓ |
| (c) the date on which each petitioner signs the petition; | X | X | ✓ | ✓ |
| (d) the address of each petitioner's residence; | ✓ | ✓ | ✓ | ✓ |
| (g) in the case of a petition under clause 313(c) (local improvement or special service), the address of the property in respect of which each petitioner is liable to pay the tax. | ✓ | ✓ | ✓ | ✓ |
| 154(4)(a) Each signature on the petition must be witnessed by an adult person who must sign opposite the signature of the petitioner. | X | X | ✓ | ✓ |
| 313(c) Signed by at least 2/3 of the potential taxpayers under the plan or proposal. (for local improvements and special services) | Unknown | Unknown | Unknown | ✓ |

✓ Meets Municipal Act requirement

X Does not meet Municipal Act requirement