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AUDITOR GENERAL
MANITOBA

March 2008

Special Audit:
Rural Municipality of La Broquerie

Website Version

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March 2008

The Honourable George Hicke
Speaker of the House
Room 244, Legislative Building
Winnipeg, Manitoba
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Dear Sir:

I have the honour to transmit herewith my report titled, *Special Audit: Rural Municipality of La Broquerie*, to be laid before Members of the Legislative Assembly in accordance with the provisions of Section 28 of *The Auditor General Act*.

Our audit was carried out under the authority of Section 15(1) of *The Auditor General Act* which permits us to conduct an examination and audit in respect of public money, in accordance with Section 14(1) of the Act which describes those matters which we may examine.

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

Rural municipalities are faced with numerous challenges – their size often means that there are only a few staff members, conflicts of interest are difficult to avoid

and as the municipality grows in complexity, informal administrative processes need to be replaced with a more formal structure.

Despite these challenges, we expect, even in small communities, that elected and appointed officials will operate in a certain manner. This includes transparency of their plans, actions and results, along with an organized approach to understanding and following laws and good management practices. In the case of La Broquerie, we found weaknesses from what we would have expected. We also found that the legislated accountability framework did not provide for a way to detect these weaknesses.

Our report includes a number of recommendations which, if implemented, will assist the RM in achieving greater transparency and a more organized approach to managing its operations. Our report also recommends changes to the Province's accountability framework to prevent similar situations from occurring in the future.

Respectfully submitted,

Carol Bellringer, FCA, MBA
Auditor General

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1.0 Objectives, Scope and Approach

Between 1989 and 2002, the Rural Municipality of La Broquerie (RM) had been governed to a large extent by the same Councillors and Reeve. The RM's Chief Administrative Officer (CAO) had been in place since 1975, at which time the RM's population was one-third of what it is today and local development was minimal. This Council and Administration worked to enhance the community by building a new arena, installation of natural gas to the RM and provided office space for the newly formed regional health authority (South Eastman Health). In the municipal elections of 2002 the RM elected a new Reeve and one new Councillor.

After about a year in his position, the new Reeve began to question certain expenditures, the lack of tendering and the rationale for providing free snow clearing of hotel parking lots. In February and March 2005, the Reeve became involved in a confrontation with the Council over a number of issues including his inability to obtain information from the Council and CAO. This culminated in the Reeve writing a letter to the Department of Intergovernmental Affairs (Department) in early March 2005 in which he expressed his concerns and requested that the Department conduct an audit of the RM.

Around this time, certain citizens of the RM were also questioning the operations of the RM and subsequently organized themselves into a group known as The Coalition for Responsible Municipal Government in the Rural Municipality of La Broquerie (Coalition). The Coalition expressed concerns relating to the RM's budgeting and approval process for the financing of three major capital projects and conflict of interest issues involving the CAO, the former Reeve, and some Councillors. Throughout 2005, the Coalition made several requests to the Reeve, Council, and the CAO for publicly accessible information relating to these issues; submitted requests for RM documentation under Part 2 of the Freedom of Information and Protection of Privacy Act; made a complaint to the Ombudsman; and made a formal complaint to the Municipal Board.

Subsequently, the Coalition came to the Office of the Auditor General (OAG) and brought forward allegations concerning the RM related to non-compliance with municipal legislation, inadequate policies and procedures, unsupported and inappropriate payments from municipal funds, and potential conflict of interest situations. They also raised concerns with the OAG about a lack of response by the Department to their allegations.

In the October 2006 municipal elections, the RM elected a new Reeve and three new Councillors. The new Reeve and two of the new Councillors were members of the Coalition. The complaint previously filed with the Municipal Board was withdrawn by the Coalition in March 2007. The Municipal Board closed its file on this matter on April 10, 2007.

Based on an assessment of the allegations, on December 12, 2006, the OAG advised the Deputy Minister of the Department and the Reeve of the RM, that the OAG would be conducting an audit in respect of the operations of the RM. The Deputy Minister was also advised that the OAG would be reviewing the complaint handling process of the Department.

Our overall objectives in conducting this audit were to assess the validity of the allegations received from citizens concerning the operations of the municipality, and to determine whether the Department has adequate processes in place to review and assess citizen complaints concerning the operations of municipalities. Our detailed objectives which are summarized in **Section 2.0** resulted from our preliminary assessment of the allegations and other matters that came to our attention during the audit.

The audit was performed in accordance with standard practices for investigative and forensic accounting engagements as recommended by the Canadian Institute of Chartered Accountants, and accordingly included such tests and other procedures as we considered necessary in the circumstances.

Our audit covered the period January 2002 to December 2006 and was conducted between January 2007 and November 2007. We reviewed available RM and Department documentation and correspondence and conducted numerous interviews with current and former RM Councillors, Reeves, administrative staff, and other municipal employees. We also interviewed Department personnel and other individuals who were identified during our audit as having pertinent information.

Our draft audit report was reviewed with current and former RM Council members, former RM senior staff, and officials of the Department. Their comments were taken into consideration in finalizing this report. Responses from the RM and the Department are included in **Section 12.0**.

A glossary of terms and acronyms utilized in this report can be found in **Appendix A**.

2.0 Summary of Objectives, Conclusions and Recommendations

The following table provides a summary of our detailed objectives and related conclusions:

Objectives	Conclusions
<p>Internal Control Environment <i>Section 4.0</i></p> <p>To determine whether the RM had appropriate internal controls for its day-to-day operations.</p>	<ul style="list-style-type: none"> • The RM did not have appropriate internal controls for its day-to-day operations and therefore the RM was exposed to the risk that inappropriate transactions had occurred and had not been detected. • In a small organization such as the RM, it is difficult to achieve an adequate level of segregation of duties and therefore it is imperative that compensating controls are in place. These controls would include formal oversight of the Assistant CAO's functions by the CAO or a designate of Council in the CAO's absence. However, as indicated above, these compensating controls were not in place at the RM during the period of our audit. • The process of having all Council members review payments during Council meetings is not efficient.
<p>Policies and Procedures <i>Section 5.1</i></p> <p>To determine whether the RM had formal policies and procedures in place for significant areas of their operations.</p>	<ul style="list-style-type: none"> • The RM operated without the benefit of any formal policies and procedures for significant areas of their operations. We have highlighted a number of instances in this report where citizens' concerns and lack of public trust in the RM administration may have been avoided if policies and procedures had been in place and followed.

Objectives	Conclusions
<p>Accounts Receivable – Paving Agreements <i>Section 5.2</i></p> <p>To determine if the amounts owing to the RM from local companies relating to paving agreements had been paid.</p>	<ul style="list-style-type: none"> • Not all of the amounts owing to the RM from local companies relating to the paving agreements had been paid. Some of the local companies did not comply with the repayment terms of the agreements. The argument for non-payment was not relevant as it related to a separate issue and had nothing to do with their obligations under the paving agreements. By not taking any action on the overdue accounts, the RM did not treat all companies on a consistent basis. • By not actively following up on the amounts owing to the RM and by not providing Council with complete information on the status of these outstanding amounts, senior staff of the RM did not act in a prudent business manner. • The CAO and Council members who entered into contracts with the RM still had a fiduciary responsibility to act in the best interests of the RM. Council should have been made aware of this conflict of interest situation and should have enforced collection of the receivables.
<p>Community Development Corporation (CDC) <i>Section 5.3</i></p> <p>To determine if the CDC had procedures and processes in place for the monitoring of its Community Works Loan Program (CWLP) and other loan programs.</p>	<ul style="list-style-type: none"> • The CDC did not have adequate procedures and processes in place for the monitoring of its loan programs. Documentation was inadequate. • Due to the lack of adequate documentation maintained by the CDC we were not able to quantify the extent to which the CDC administered loans were from the CWLP or their own loan program. • It appeared that loans were being collected except for the three interest free loans to Camp Bel-Air, the Golf Course and the Hotel La Broquerie.

Objectives	Conclusions
	<ul style="list-style-type: none"> • The CDC Board of Directors did not act in compliance with its By-Law by approving the loan and then subsequently acting as a guarantor to Illico Manitoba Inc. These two transactions individually and in total significantly exceeded the stated maximum in the CDC By-Law. • The CDC "Conflict of Interest Policy and Guidelines" provide board members with rigorous standards for ethical behaviour. The CDC did not have appropriate documentation in place to demonstrate whether they removed themselves from all discussions and did not vote in situations where they had a conflict.
<p>Snow Clearing <i>Section 5.4</i></p> <p>To determine if the RM provided free snow clearing to a local hotel in which the CAO and two Councillors had a financial interest.</p>	<ul style="list-style-type: none"> • The RM provided free snow clearing to a local hotel in which the CAO and two Councillors had a financial interest as well as to a hotel in the Steinbach area. • We found no evidence that the CAO and the two Councillors who had a financial interest in the local hotel had influenced the decision to provide free snow clearing to the hotel in La Broquerie.
<p>Operating Deficits <i>Section 6.1.1</i></p> <p>To determine whether the RM had Ministerial approval for budgeted deficits as required by <i>The Municipal Act</i>.</p> <p>To determine whether the RM advised the Minister in writing on a timely basis when a deficit was likely to occur in the year.</p>	<ul style="list-style-type: none"> • The RM's financial plans for 2002 to 2006 projected a balanced budget; therefore the RM was not required to obtain Ministerial approval for the budget. • The RM did advise the Minister of its deficits each year. However, this was not done on a timely basis as required under <i>The Municipal Act</i>. • Without an increase in the mill rate it was likely that the RM would incur an operating deficit each year and as a result, the annual financial plans approved by Council were not realistic.

Objectives	Conclusions
	<ul style="list-style-type: none"> Despite the lateness of advising the Minister of its expected operating deficits and the frequency and extent of these deficits, no formal action was taken by the Department to address this.
<p>Public Notice for Hearings Regarding Financial Plans Section 6.1.2</p> <p>To determine whether the RM provided proper public notice for the public hearings to discuss its financial plans in accordance with <i>The Municipal Act</i>.</p>	<ul style="list-style-type: none"> The RM complied with <i>The Municipal Act</i> from 2002 through 2005 with regard to providing proper public notice for public hearings for discussion of its financial plans except for the requirements to include in the public notice a description of the purpose of the hearing and that the information would be available for review at the RM office. The RM was in compliance in 2006.
<p>Recorded Votes on the Third Reading of a By-Law Section 6.1.3</p> <p>To determine whether the RM minutes recorded Councillor votes on the third reading of by-laws as required by <i>The Municipal Act</i>.</p>	<ul style="list-style-type: none"> The RM was in compliance with <i>The Municipal Act</i> after January 11, 2006.
<p>Local Urban District Annual Service Plan Section 6.1.4</p> <p>To determine whether the Local Urban District (LUD) of La Broquerie prepared an annual service plan in compliance with <i>The Municipal Act</i>.</p>	<ul style="list-style-type: none"> The RM and the LUD were not in compliance with <i>The Municipal Act</i> when they failed to have an LUD service plan prepared and adopted for the years 2002 to 2006.
<p>Organizational and Procedures By-Laws Section 6.1.5</p> <p>To determine whether the RM had established an organizational by-law and a procedures by-law in compliance with <i>The Municipal Act</i>.</p>	<ul style="list-style-type: none"> By not establishing an organizational by-law and a procedures by-law until July 2005, the RM was not in compliance with <i>The Municipal Act</i> from July 1997 until July 2005. In 2005, the RM engaged a lawyer to prepare the by-laws at a cost of \$33,700, which in our view was excessive. The RM could have utilized the samples in <i>The Municipal Act Procedures Manual</i> to produce the by-laws at minimal cost.

Objectives	Conclusions
<p>Supplementary Taxes <i>Section 6.1.6</i></p> <p>To determine whether the RM was allowing taxpayers sufficient time to pay supplementary taxes in accordance with <i>The Municipal Act</i>.</p>	<ul style="list-style-type: none"> By not allowing 90 days before imposing penalties for the non-payment of supplementary taxes, the RM was not in compliance with <i>The Municipal Act</i> from 2003 to 2006.
<p>The Municipal Council Conflict of Interest Act <i>Section 6.2</i></p> <p>To determine whether the Reeve and Councillors filed with the municipality a Statement of Assets and Interests on an annual basis as required by <i>The Municipal Council Conflict of Interest Act</i>.</p>	<ul style="list-style-type: none"> The Reeve and Councillors provided Statements of Assets and Interests in the years of their election. However, by not filing these statements annually they were not in compliance with <i>The Municipal Council Conflict of Interest Act</i>. By not notifying the Reeve and Councillors of their failure to submit their Statements of Assets and Interests on an annual basis, as required by <i>The Municipal Council Conflict of Interest Act</i>, the CAO was not in compliance with the Act. There is no requirement in <i>The Municipal Council Conflict of Interest Act</i> for the Statements of Assets and Interests filed by Council members to be independently assessed for accuracy and completeness. Additionally, there is no requirement in the Act for the CAO, who receives the filed Statements, to advise Council members when they may be in a potential conflict of interest position. The Act does provide a mechanism for "any person" to allege a member of Council has violated a provision of the Act. Accurate and complete Statements of Assets and Interests are integral to the scheme; without these documents there is limited ability to allege a violation.
<p>Senior Staff Remuneration <i>Section 7.1</i></p> <p>To determine whether senior RM staff remuneration was paid in accordance with approved wage agreements and properly reported for income tax purposes.</p>	<ul style="list-style-type: none"> Remuneration to senior staff was paid in accordance with approved wage agreements for the period 2002 to 2006 except for the payments to the Assistant CAO in 2002 and 2003 for attendance at evening municipal meetings.

Objectives	Conclusions
	<ul style="list-style-type: none"> The RM did not include all remuneration paid to senior staff on T4 information slips for the years 2002 through 2006. The RM did not include all remuneration paid to senior staff in their calculation for <i>The Public Sector Compensation Disclosure Act</i> for the years 2002 through 2006.
<p>Office Cleaning <i>Section 7.1.1</i></p> <p>To determine whether the contract for cleaning services was awarded on a competitive basis and that amounts paid for these services were reasonable.</p>	<ul style="list-style-type: none"> As a result of not seeking competitive bids for cleaning services prior to 2007, and lacking sufficient documentation to demonstrate that the level of payments supported the services provided, the RM overpaid for cleaning services during the period of our review.
<p>Senior Staff Expense Accounts and Local Meal and Entertainment Expenses <i>Section 7.2</i></p> <p>To determine whether the payments by the RM of senior staff expense accounts and local meal and entertainment expenses were appropriate, supported, and in accordance with approved RM policies and/or procedures.</p>	<ul style="list-style-type: none"> The RM did not have formal policies and procedures for claiming expense accounts and local meal and entertainment expenses. The RM did not ensure that these transactions were adequately supported and subjected to a formal review and approval process. Therefore, the RM was exposed to the risk that inappropriate expenditures had occurred and had not been detected. In addition, given the operating deficit situation the RM faced each year, Council did not appropriately control public money in their trust. In our opinion, it was not appropriate for the CAO and the Assistant CAO to claim a full day per diem on those occasions where meals were included in registration fees, or where they were not required to be out of town for a full day.

Objectives	Conclusions
<p>Councillor Remuneration and Expenses <i>Section 7.3</i></p> <p>To determine whether RM Councillor remuneration and expenses were paid in accordance with indemnity by-laws, and were supported and properly reported.</p>	<ul style="list-style-type: none"> • While payments to the Reeve and Councillors for remuneration and expenses were supported by a standard claim form and supporting documentation, the RM did not operate in compliance with its indemnity by-laws when it paid Councillors the special meeting amount to attend regular meetings. • The RM's by-laws were incomplete because they did not address the portion of their compensation that was non-taxable. The T4 information slips were therefore incorrect.
<p>Capital Projects <i>Sections 8.1, 8.1.1, 8.1.2, 8.1.3, 8.1.4</i></p> <p>To determine whether the RM's approval process for their major capital projects was open, transparent, and in compliance with <i>The Municipal Act</i>.</p>	<ul style="list-style-type: none"> • The RM's approval process for the capital projects related to the expansion of the sewage lagoon, the construction of the new municipal office building, and the expansion of the municipal park was open, transparent and in compliance with <i>The Municipal Act</i>. • The RM's administration did not maintain complete and accurate records for its capital projects. As a result, the actual cost for each capital project was not readily available and transparent to Council and the citizens of the RM. • Transactions were not initially recorded to the appropriate general ledger account and resulted in additional external audit time and costs to the RM to correct the errors. • The RM's administration did not prepare complete capital project reports for Council information and review. As a result, Council was not provided with the information needed in order for them to fulfill their capital project monitoring responsibilities. • Had a complete analysis been prepared for the new and old office leases, Council would have seen that the lease income was insufficient to cover debenture payments each year. Additionally, there were no other funds available to cover other renovation costs, as well as the excess of new office capital costs over borrowing.

Objectives	Conclusions
<p>Purchase of Land by RM for Lagoon Expansion <i>Section 9.1</i></p> <p>To determine whether the CAO was in a conflict of interest position when he and his brothers jointly purchased a parcel of land and subsequently sold a portion of the land to the RM for the purpose of expanding the sewage lagoon.</p>	<ul style="list-style-type: none"> • The Council did not act in a timely manner to purchase the additional land for the future expansion of the sewage lagoon that would eventually be required based on the report, <i>La Broquerie: CDC Vision Development Proposal</i>. • The CAO had a fiduciary responsibility to act in the best interests of the RM. By being part of the group that purchased land adjacent to the existing lagoon, and given that expansion of the lagoon could include a portion of this purchased land, the CAO immediately placed himself in a perceived conflict of interest position. • Had the RM developed and implemented a conflict of interest policy for its employees, they and the CAO would have had appropriate guidance as to the implications of the CAO's land purchase. Full disclosure and knowledge of the transactions would have provided Council with necessary information to make appropriate decisions. Public transparency might have avoided speculation that resulted in the allegations that were made. • Council's options were limited at the time that they purchased the 14 acre parcel of land to expand the sewage lagoon. The CAO was not in a position to provide them with independent advice as to their options, such as expropriation. The market value of the land was determined by negotiation because there were no other viable land options.
<p>Construction of Road on CAO Property <i>Section 9.2</i></p> <p>To determine whether the CAO was in a conflict of interest position when the RM constructed and paid for a road into a landlocked property owned by the CAO and his brothers.</p>	<ul style="list-style-type: none"> • The CAO and his brothers followed all procedures necessary to obtain and register a plan of subdivision within the RM and fully complied with all the conditions of the development agreement with the RM.

Objectives	Conclusions
	<ul style="list-style-type: none"> The CAO was in a perceived conflict of interest position and should have removed himself from the Council meeting at which the application for the subdivision was approved and should not have been a signatory to the development agreement. Full disclosure and knowledge of the transactions would have provided the public with the necessary information about the terms of the agreement.
<p>Culverts and Roadways <i>Section 10.0</i></p> <p>To determine whether the RM had expended municipal funds to provide culverts and roadways at no cost to individual property owners and/or developers.</p>	<ul style="list-style-type: none"> The RM expended municipal funds to provide culverts and roadways at no cost to some property owners and/or developers. There were no formal policies and procedures relating to these services, and as a result, the perception of conflict of interest existed and citizens could be treated inequitably.
<p>Department Process to Review Citizen Complaints <i>Section 11.0</i></p> <p>To determine whether the Department has adequate processes in place to review and assess citizen complaints concerning the operations of municipalities.</p>	<ul style="list-style-type: none"> When the Department receives a citizen complaint they provide advice as to what options are available to the citizen to resolve their concerns, including those available in legislation such as contacting the Ombudsman. The Department may also work with the municipality to address the complaint. While this approach may resolve many matters, in situations where serious concerns remain unresolved it is not sufficient, and additional involvement by the Department is necessary.

Objectives	Conclusions
	<ul style="list-style-type: none"> • The Department has no formal, comprehensive process in place to monitor compliance with all provisions of <i>The Municipal Act</i>. Although the Department does have a formal monitoring process in place for those provisions of <i>The Municipal Act</i> dealing with financial matters for which they have a stated role, there are other mandatory provisions of the Act that are not monitored and the Department relies solely on the supplementary audit reports provided by external auditors. • The Department relied on the Supplementary Audit Reports to provide them with assurance that the RM was operating appropriately. The external auditors indicated to us that they did not undertake additional audit procedures to prepare the Supplementary Audit Reports, but rather they designed their audit engagements to express an opinion on the financial statements and only reported other matters which came to their attention. This approach would not be sufficient to support the level of reliance that the Department placed on the Supplementary Audit Reports. • The RM had the authority to appoint the external auditors directly. The external auditors provided an engagement letter to the RM that clearly described the work that they would perform to express an opinion on the financial statements and the letter did not refer to the Supplementary Audit Report. Because the Department was not a part of this process, they did not have an opportunity to identify the gap between what they were expecting and what the auditors would provide. The requirements of the Supplementary Audit Report as described in <i>The Municipal Act</i> would, in our opinion, require significant audit work with a related increase in fees over and above the financial statement audit. • In our opinion, certain of our audit findings such as weaknesses in the internal control environment would have warranted disclosure in the external auditor's Supplementary Audit Report.

Recommendations

Based on the above conclusions we provide the following recommendations:

Section 4.0

- That the RM implement internal controls for its day-to-day transactions, including the following:
 - All staff and Councillor expense account claims should be documented on a standard expense account form;
 - All expense account claims should be signed by the claimant;
 - All supplier invoices should be signed by an appropriate staff member as evidence of goods and services being received;
 - All expense account claims and supplier invoices should be formally approved by the CAO or a designate of Council prior to processing for payment;
 - Bank reconciliations should be signed and dated by the preparer, reviewed and approved by the CAO or a designate of Council; and
 - The RM should utilize purchase orders or purchase requisitions. Administrative requisitions should be approved by the CAO and all public works related requisitions should be approved by the Public Works Foreman.
- That Council establish a Finance/Audit Committee. Responsibilities of this Committee should include the following:
 - Formal review and recommendation for approval of RM cheques and supporting documentation;
 - Formal review of the CAO's expense account claims, credit card transactions, and local entertainment charges;
 - Regular meetings with the CAO during the year to review financial statements, significant variances from budget to date, and projections to year end; and
 - Meeting with external auditors at the commencement of the annual audit to discuss audit plans and at the completion of the audit to discuss audit results.

Section 5.1

- That the RM develop formal policies and procedures to provide guidance for the significant areas of the RM's operations as recommended

throughout this report, including policies for tendering, human resources, conflict of interest, and travel and entertainment.

Section 5.2

- That the RM collect the amounts outstanding related to the paving agreements. If payments are not received in a reasonable period of time the RM should take further action as authorized under the terms of the paving agreements.
- That the development of the conflict of interest policy as recommended in **Section 5.1** include the requirement that individual Council members and staff who enter into transactions with the RM inform Council.

Section 5.3

- That the CDC Board ensure that all loan application files and loan documentation clearly indicate whether each loan is under the CWLP or the CDC's own loan program.
- That the CDC Board formally approve all loans.
- That the CDC Board add procedures to its loan application and approval process to ensure that all loan applications meet the terms and conditions of the CWLP and the CDC By-Laws.
- That the CDC Board collect the amounts outstanding as a result of the three interest free loans and formally assign responsibility for monitoring outstanding loans.
- That the CDC Board Chairman ensure that each member of the Board receives a copy of the CWLP terms and conditions and a copy of the CDC By-Laws, including the "Conflict of Interest Policy and Guidelines."
- That the CDC Board Chairman request the Department to provide training to the CDC Board and RM staff concerning their roles and responsibilities over the CWLP.

Section 5.4

- That the RM develop and implement a comprehensive policy that would address snow clearing of public and private properties.

Section 6.1.1

- That the RM review its annual budgeting procedures in order to produce a budget that better reflects the actual annual costs of the RM.

- That in the event the RM anticipates an operating deficit, the Minister be advised as soon as possible in accordance with *The Municipal Act*.
- That the Department implement procedures to better review and analyze the financial information provided to them by municipalities, to clearly identify reasons for the deficits and the appropriate corrective action to be taken by the municipality.

Section 6.1.4

- That the RM ensure that an LUD service plan is prepared by the LUD Committee and approved by Council each year to facilitate delivery of efficient and effective service to the citizens of the LUD.

Section 6.1.6

- That the RM develop a process to ensure that taxpayers are allowed 90 days to pay supplementary taxes before penalties are imposed in accordance with *The Municipal Act*.

Section 6.2

- That the RM ensure that Council members file a Statement of Assets and Interests annually in accordance with *The Municipal Council Conflict of Interest Act*.
- That the Department implement appropriate changes to *The Municipal Council Conflict of Interest Act* to provide a process for the independent review of the Statements of Assets and Interests that Council members are required to file under the Act. A process should also be established to provide assurance that the requirement for disclosure and withdrawal during meetings by Council members with a conflict of interest is being appropriately met.

Section 7.1

- That the RM properly report remuneration on T4 information slips and report all remuneration in accordance with *The Public Sector Compensation Disclosure Act*.
- That the RM consider entering into employment contracts with senior staff to take into account all aspects of the employment arrangement.

Section 7.2

- That the RM develop policies for travel and local meal and entertainment expenses that provide guidelines describing "allowable expenses" such as

a meal per diem with amounts for breakfast, lunch and dinner, and when or/if alcohol and other entertainment expenses are acceptable.

- That the RM require that all transactions are supported by original receipts using standard expense account forms.
- That the RM develop procedures for an appropriate review and approval of these expenses.

Section 7.3

- That the RM revise their indemnity by-law to appropriately reflect their intended policies on what constitutes a special meeting and what portion of their compensation should be non-taxable.

Section 8.1.4

- That the RM ensure that its records are maintained in an appropriate manner.
- That the RM prepare capital project reports that include all project costs and budgets on an ongoing basis and present the information to Council throughout the term of the project.

Sections 9.1 and 9.2

- That the RM develop and implement a formal conflict of interest policy for their senior administration and other employees.
- That the Department ensure that all municipalities develop and implement conflict of interest policies for their senior administration and other employees.

Section 10.0

- That the RM develop a policy with regards to the supplying of culverts and use of RM equipment for the benefit of individual property owners and/or developers.
- That any work done by the RM be documented on a work order/requisition form which should be approved by a designated RM employee.
- That the Grader Operators continue to record the hours charged to private parties on the Operators Daily Report forms which are to be supported by a work order/requisition. A copy of the work order/requisition should be provided to the Grader Operator and a copy should be maintained in a central file for control purposes.
- That inventory records be maintained for culverts and other RM assets.

Section 11.0

- That the Department implement appropriate processes to monitor serious citizen complaints and to follow up compliance with *The Municipal Act* by municipalities.
- That the Department, in consultation with municipalities and external auditors, review the supplementary audit report requirements to ensure that appropriate information and assurances about the administration and operations of municipalities are provided.

3.0 Background

3.1 The Municipal Act

Municipalities in Manitoba are formed and dissolved by the Lieutenant Governor in Council under the authority of *The Municipal Act* (Act). Responsibility and authority for the administration of the Act rests with the Minister of Intergovernmental Affairs (Minister) through the Department.

The Act sets out the purposes of a municipality as follows:

- To provide good government;
- To 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
- To develop and maintain safe and viable communities.

The Act governs the operations of a municipality, and sets out the role and duties of the elected council, and the procedures to be followed for passing resolutions and by-laws. Under the Act, municipalities are granted corporate, regulatory (ability to pass by-laws), and taxation powers. Municipalities' powers are limited in that they may only use them for municipal purposes.

The Act in Manitoba was substantially revised in 1997 by the current legislation in place. The revised legislation granted municipalities greater authority and flexibility, more local autonomy and less provincial supervision, and was intended to enable them to better meet local needs. Residents and non-resident property owners in a municipality elect a local council and a mayor/reeve.

The revised Act provides a statutory framework for increased public accountability in a number of ways, including:

- The requirement for a procedural by-law;
- Limitations on closed meetings;

- Requirements for an annual financial plan and public meetings;
- Increased access to municipal documents;
- Specific reporting of payments to or on behalf of Councillors;
- Making Councillors personally liable for spending municipal monies without proper authority;
- Giving citizens the right to ask the court to enforce the Act; and
- Giving citizens access to the Provincial Ombudsman.

Under the Act, municipalities must submit certain information, including annual audited financial statements, to the Minister. A municipality's financial statement is a measure of council's accountability to its citizens, and provides citizens with the opportunity to compare actual results (financial statements) with the annual financial plan (budget) adopted by municipal council.

As required under the Act the annual financial statements must be audited by an external auditor who must meet certain professional qualifications. Although an external auditor attests to the financial statements, the statements are the responsibility of the municipality.

3.2 Department of Intergovernmental Affairs

The Minister of the Department is charged with the administration of the Act. The Provincial-Municipal Support Services Division (Division) of the Department is responsible for delivering the Province's core governance, advisory and financial services and programs to Manitoba's 197 municipalities (excluding the City of Winnipeg).

The organization chart for the Department is presented in **Appendix D**.

The revised Act limits the Department's oversight role to financial matters with broad application or long-term consequences for municipalities, being the approval of deficits, borrowing and spending from reserves. Within this legislative framework, the Division's view is that, where the Department does not have a stated oversight role, its mandate is to support elected officials and municipal administrators to build municipal government capacity.

The Division provides *The Municipal Act Procedures Manual* (Manual) to every municipality to assist municipalities to understand and to implement legislative requirements. The Manual contains general information and guidance on municipal administration and operational procedures required by the municipal legislation. The Manual was developed as a companion guide to the Act and is updated as required.

The Division's three Municipal Services Officers (MSOs) provide ongoing advice and assistance to municipal councils, administrators and to citizens on a wide range of administrative, governance and financial matters, including capacity-building advisory and consultative services. The MSOs also prepare articles and conduct workshops, training seminars and other presentations for the elected officials and municipal administrators. MSOs also meet with individual municipalities on specific local matters, at the municipality's request. The Division also presents seminars at district meetings and the annual conventions of the Association of Manitoba Municipalities and the Manitoba Municipal Administrators' Association.

The Division receives all of the following financial information that is required under the Act to be submitted to the Minister annually:

- Financial plan;
- Audited financial statement;
- Name of Municipal auditor;
- Auditor's report;
- Supplementary Audit Report; and
- Tax levy by-law.

The Division maintains a database of all the required submissions that have been received from municipalities and follows up with those municipalities who have not submitted information.

The Supplementary Audit Report is to contain an opinion on the following:

- Accounting procedures and control systems;
- The disbursement of the funds in the municipality (compliance with the Act);
- Any irregularities that come to their attention during the audit;
- Any matters the auditor feels the Minister/Council should be aware of; and
- Recommendations regarding proper performance of duties and keeping of records and the books.

The Division relies on the Supplementary Audit Report to provide information on irregularities at a municipality.

3.3 Municipal Board

The Municipal Board is a quasi-judicial body that hears applications, appeals and makes reports and recommendations relating to local government matters. Due to its quasi-judicial nature, the Board operates independently and is attached to the Department for administrative reasons only.

The Municipal Board has three main functions. It acts as an appeal tribunal regarding realty and business assessments, zoning by-laws and/or proposed subdivisions and development plans. The Board must approve all borrowing by-laws by municipalities and has the power to approve, reject or vary the by-law. The Board requires a hearing only if there is the specified percentage or number of citizens who object to the by-law. It also considers other miscellaneous matters the authority for which is provided in the Act.

3.4 Rural Municipality of La Broquerie

The Rural Municipality of La Broquerie (RM) is located 70 kilometres southeast of Winnipeg and 12 kilometres east of Steinbach. The village of La Broquerie, a Local Urban District (LUD) with a population of approximately 900 residents, is the largest urban centre in the municipality.

The economic base of the RM is a diversified mix of agriculture, forestry, livestock operations, and tourism. The RM is one of Manitoba's largest dairy farm centres and also has many large pork, beef and poultry producers. The LUD has all the essential services such as water, municipal sewers, garbage pick-up, fire protection, and a variety of local businesses to serve residents' needs.

The RM is governed by a Reeve and six Councillors each representing a Ward. Each Ward (**Appendix C**) extends 18 miles in length from north to south and is 2 miles wide. The RM is administered by a Chief Administrative Officer (CAO), an Assistant CAO and support staff.

The RM is one of the fastest growing municipalities in Manitoba with a population of approximately 3,660 residents in 2006. **Figure 1** below illustrates growth rates in both population and housing units within the RM compared to the Province of Manitoba.

Figure 1

Rural Municipality of La Broquerie Growth Rates Population (Census Years)							
	1991	1996	Growth	2001	Growth	2006	Growth
RM La Broquerie	2,040	2,493	22.2%	2,894	16.1%	3,659	26.4%
Manitoba	1,091,942	1,113,898	2.0%	1,119,583	0.5%	1,148,401	2.6%
Housing Units (Census Years)							
	1991	1996	Growth	2001	Growth	2006	Growth
RM La Broquerie	630	775	23.0%	963	24.3%	1,208	25.4%
Manitoba	405,120	419,390	3.5%	477,085	13.8%	491,724	3.1%

Source: Statistics Canada

Figure 2 illustrates the rapid growth in the total taxable assessment of the RM when compared to all rural municipalities in Manitoba.

Figure 2

Rural Municipality of La Broquerie Assessment: Total Taxable and Grant* (in Millions)								
	1999	2000	2001	2002	2003	2004	2005	Growth
RM La Broquerie	\$38.8	\$44.3	\$48.0	\$56.4	\$60.0	\$62.5	\$66.0	70.2%
All RMs	\$5,627.6	\$5,781.0	\$5,915.1	\$6,568.6	\$6,692.6	\$6,809.6	\$6,944.3	23.4%

* Excludes Business Assessment

Source: Statistical Information for Municipalities, Department of Intergovernmental Affairs

Figure 3 is a summary of the RM's general operating fund results for the years 2002 to 2006. Over this five year period the RM incurred net operating losses amounting to \$1,615,434.

Figure 3

Rural Municipality of La Broquerie Summary of General Operating Fund Results					
	2002	2003	2004	2005	2006*
Net Revenues	\$2,576,609	\$2,244,044	\$2,349,307	\$2,938,500	\$3,016,045
Expenditures	3,037,939	2,396,068	2,508,091	3,285,478	3,512,363
Operating Surplus/(Deficit)	(461,330)	(152,024)	(158,784)	(346,978)	(496,318)
Nominal Surplus/(Deficit), Opening	1,205	(267,657)	43,232	227,805	(8,364)
Special tax levies	192,468	392,913	127,969	112,431	200,000
Transfer from allowance for tax assets	-	70,000	-	-	-
Adjustment for Centra Gas refund	-	-	274,729	-	-
Miscellaneous	-	-	(829)	(1,622)	15,464
GST audit results affecting prior years	-	-	(13,460)	-	-
Sick time accrual relating to prior years	-	-	(45,052)	-	-
Net adjustments	192,468	462,913	343,357	110,809	215,464
Nominal Surplus/(Deficit), Ending	\$ (267,657)	\$ 43,232	\$ 227,805	\$ (8,364)	\$ (289,218)
Note:					
Province of Manitoba Funding included in Revenues	\$ 671,214	\$ 244,967	\$ 339,876	\$ 673,106	\$ 355,877

*Draft Financial Statements

Source: RM of La Broquerie Audited Financial Statements

4.0 Internal Control Environment

In all organizations, regardless of size, appropriate internal controls are essential to ensure that all transactions processed by an organization are legitimate. Formal policies should be in place to provide guidance to staff to ensure that the best value is received for money spent. All transactions should be adequately documented, appropriately supported, recorded to the correct general ledger account and subject to a formal approval process.

Some of the allegations brought forward to the OAG included inadequate policies and procedures and unsupported and inappropriate payments being made from municipal funds. As a result, our planned audit procedures included a review of the RM's internal controls for purchases and payments. We examined the process used by the RM to initiate and approve purchases of goods and services, including expense accounts. We also reviewed the external auditor's Supplementary Audit Reports for the years 2002 to 2005.

Objective: To determine whether the RM had appropriate internal controls for its day-to-day operations.

Observations

- The RM did not utilize purchase orders or purchase requisitions to document the approval and commitment for the purchase of goods and services. Purchases of goods and services were being initiated by a number of staff and Councillors.
- Supplier invoices were not approved or initialled by the individual who initiated the transaction as evidence of the goods or services having been received.
- We noted several instances where transactions were recorded to incorrect general ledger accounts.
- Expense accounts were not documented on a standard expense account form in all instances and were not always signed by the staff member or Councillor prior to submission for reimbursement.
- Supplier invoices and expense accounts were not certified for payment by the CAO or the Assistant CAO prior to the preparation of the cheques for payment.
- Prior to the release of the cheques, a listing of payments together with signed cheques and available supporting documentation such as supplier invoices and expense reports was provided to Council for approval. During the course of the Council meeting, each Councillor had the opportunity to review this information. Although most Councillors had no concerns with this process some Councillors indicated that individually reviewing and approving accounts for payment during Council meetings may not have been the best method for authorizing payments.
- Bank reconciliations were not signed and dated by the preparer and were not approved by the CAO or a designate of Council.
- The RM did not have adequate segregation of duties, specifically with respect to the duties performed by the Assistant CAO. The Assistant CAO performed many incompatible functions, including:
 - Processing payments;
 - Preparing bank deposits;
 - Access to RM bank accounts;
 - Access to accounts receivable records;

- Ability to enter/change journal entries; and
- Preparation of bank reconciliations.

Conclusions

- The RM did not have appropriate internal controls for its day-to-day operations and therefore the RM was exposed to the risk that inappropriate transactions had occurred and had not been detected.
- In a small organization such as the RM, it is difficult to achieve an adequate level of segregation of duties and therefore it is imperative that compensating controls are in place. These controls would include formal oversight of the Assistant CAO's functions by the CAO or a designate of Council in the CAO's absence. However, as indicated above, these compensating controls were not in place at the RM during the period of our audit.
- The process of having all Council members review payments during Council meetings is not efficient.

We recommend that the RM implement internal controls for its day-to-day transactions, including the following:

- All staff and Councillor expense account claims should be documented on a standard expense account form;
- All expense account claims should be signed by the claimant;
- All supplier invoices should be signed by an appropriate staff member as evidence of goods and services being received;
- All expense account claims and supplier invoices should be formally approved by the CAO or a designate of Council prior to processing for payment;
- Bank reconciliations should be signed and dated by the preparer, reviewed and approved by the CAO or a designate of Council; and
- The RM should utilize purchase orders or purchase requisitions. Administrative requisitions should be approved by the CAO and all public works related requisitions should be approved by the Public Works Foreman.

We recommend that Council establish a Finance/Audit Committee. Responsibilities of this Committee should include the following:

- Formal review and recommendation for approval of RM cheques and supporting documentation;
- Formal review of the CAO's expense account claims, credit card transactions, and local entertainment charges;
- Regular meetings with the CAO during the year to review financial statements, significant variances from budget to date, and projections to year end; and
- Meeting with external auditors at the commencement of the annual audit to discuss audit plans and at the completion of the audit to discuss audit results.

5.0 Administrative Issues

5.1 Policies and Procedures

All organizations should have at least some formal policies in place for significant areas of their operations such as purchasing goods and services, human resources, conflict of interest, and travel and entertainment expenses. Clear, well written policies provide guidance to staff in performing their daily work activities including dealing with the public and ensuring that the best value is received for money spent. It is critical for an organization which is publicly accountable to develop formal policies that promote fair dealing and equitable relationships with citizens and vendors.

Objective: To determine whether the RM had formal policies and procedures in place for significant areas of their operations.

Observations

- Our audit disclosed that there were no formal policies and procedures. Some important policies we would have expected to be in place at the RM have been summarized below. In some of the instances, we have included references to other sections of this report where a formal policy being in place may have helped the RM avoid the concerns noted.
- We would have expected to find a formal tendering policy whereby any purchase of goods and services over a specific dollar amount would be subject to a competitive bidding process. A formal tendering policy would

help ensure that the RM obtains the best value for goods and services purchased through a documented, competitive bidding process. Refer to **Section 7.1.1** of this report relating to cleaning services. It should be noted that for major capital projects, such as the construction of the new office complex, a tendering process was followed, however, it was set up and administered by the project consultants retained by the RM. We also observed other instances where tendering did take place, however, tendering of all major purchases did not take place.

- The RM has a document referred to as the *Non-Union Staff Employee Handbook* which was effective January 1, 1998 and was last revised on April 5, 2000. The Handbook sets out such things as the hours of work, statutory holidays observed, vacation, and sick leave entitlements for employees of the RM. However, the RM did not maintain any personnel files, no formal job descriptions were available for each position, staff performance evaluations were not conducted by the CAO, and Council did not conduct formal performance evaluations of the CAO. Current job descriptions and regular performance evaluations are important for staff so they know what is expected of them and also to identify their strengths and areas requiring improvement.
- The RM does not have a conflict of interest policy for staff. It is important for the protection of staff that formal guidelines are in place to provide clear standards of employee conduct. While public employees should have the right to be involved in community activities, as citizens of the community they need to be mindful that they are entrusted with the protection of the public interest in many significant areas. Therefore, it is essential that public employees maintain high standards of honesty, integrity, impartiality and conduct. Public employees should be constantly aware of the need to avoid situations which might result in actual or perceived conflicts of interest, and conduct themselves accordingly. Refer to **Section 9.0** of this report concerning conflict of interest.
- Although the RM sets the mileage and per diem rates for staff and Council each year there is no formal policy in place for reimbursable expenses while travelling on municipal business or for local meal and entertainment expenses. Formal guidelines would clarify what is considered an allowable expense and would include requirements for supporting documentation and procedures for approving expenses. A formal policy should include the requirement for all expenses to be submitted on a standard expense account form signed by the claimant, that all expenses should be supported by original receipts and should include procedures for approving expense claims. The policy should also provide guidelines for local meal and entertainment expenses including when or/if alcohol and other

entertainment expenses are acceptable. Refer to Sections 4.0 and 7.0 of this report concerning expenses.

Conclusion

- The RM operated without the benefit of any formal policies and procedures for significant areas of their operations. We have highlighted a number of instances in this report where citizens' concerns and lack of public trust in the RM administration may have been avoided if policies and procedures had been in place and followed.

We recommend that the RM develop formal policies and procedures to provide guidance for the significant areas of the RM's operations as recommended throughout this report, including policies for tendering, human resources, conflict of interest, and travel and entertainment.

5.2 Accounts Receivable – Paving Agreements

In 2001, the RM was carrying out paving work in the municipality and approached a number of local businesses to determine if they were interested in having their parking lots paved at the same time. Businesses that chose to participate would realize savings on their paving costs and would be required to enter into individual agreements with the RM to repay their portion of the costs.

Objective: To determine if the amounts owing to the RM from local companies relating to paving agreements had been paid.

Observations

- In May and June 2001, Council by resolution approved that the RM enter into a number of Development Agreements (Paving Agreements) with local companies and that the Reeve and CAO be authorized to sign the necessary documents. Our review of RM documentation found that the RM had entered into at least eight Paving Agreements. Only five of these eight agreements were approved by resolutions of Council.
- The Paving Agreements stated that the RM would enter into the necessary contracts to have the roads and various parking lots paved. The RM would initially pay the contractor for all the paving work and then the companies would be responsible to contribute to the RM their share of the cost of paving their parking lots. The total cost of the paving work for each company was set out in each company's Paving Agreement with the RM.

- The paving work was completed during the summer of 2001 and the costs of the work were subsequently paid by the RM.
- Specific repayment terms were not clearly stated in the Paving Agreements. Section 3 of the agreements stated that *"The Company hereby agrees to contribute to the Municipality towards the cost of hard topping the parking lot the sum of [each company's share of costs] payable in at such time the Municipality requests same but in any event no sooner than the time the Municipality becomes liable for the payment to the contractor."* On the first page of each agreement there are handwritten amounts which appear to be a repayment schedule over a three year period, with equal payments due beginning July 2002 and ending July 2004. We could not find a resolution of Council approving the repayment terms over a three year period. The CAO told us that the repayment term for these agreements was three years. When asked, Council members told us that they were unsure of the number of years for repayment.
- Although the final payments from the companies were all due July 2004, according to the RM records as at June 5, 2007 there were still a number of amounts owing to the RM. Based on our review of the RM records we did not locate evidence of any collection efforts made on these outstanding amounts by RM staff such as collection letters.
- In 2001, the RM and Canadian National Railways had entered into agreements for the closure of some railway crossings in the town of La Broquerie. The CAO told us that some of the companies with Paving Agreements felt that the railway crossing closures had adversely affected their business and they believed they should be compensated by the RM. We were told that as a result these companies withheld payment of the outstanding balance of their payment agreements pending receipt of compensation.
- The following is a summary of the original amounts owing by the companies, the payments made and the amounts still outstanding as at June 5, 2007:

Figure 4

Rural Municipality of La Broquerie Paving Agreements Final Payments Due July 2004			
Company	Original Amount Due	Payments	Amount Outstanding
La Brise Freeze	\$ 3,151.15	\$ 3,151.15	\$ -
Hotel La Broquerie	52,085.67	37,500.00	14,585.67
Johnny's Welding	3,525.65	3,525.65	-
Hab's Auto Service	25,016.60	8,338.86	16,677.74
La Broquerie Car Wash	5,232.30	1,744.10	3,488.20
HYTEK Feeds	57,446.70	57,446.70	-
La Verendrye Golf Course	30,778.55	10,259.51	20,519.04
La Broquerie Transfer	9,949.72	9,949.72	-
	\$187,186.34	\$131,915.69	\$ 55,270.65

Source: RM accounting records.

- The CAO and two Councillors were part owners of the Hotel La Broquerie. The CAO signed the Paving Agreement with the Hotel on behalf of the RM. The Hotel did not make any payments to the RM until May of 2005 almost three years after the first payment was due and almost a year after the entire amount was due.
- The majority owner of the Hotel La Broquerie, a business partner of the CAO and the two Councillors indicated previously, also has an interest in the Golf Course along with a member of the RM's LUD Committee. This member of the LUD Committee was also the Chairman of the La Broquerie Community Development Corporation (see Section 5.3) during the period of our audit. The Golf Course has not made the payments to the RM that were due in July of 2003 and 2004.
- We were told in the interviews of some former and current members of Council that they were not aware that the above amounts were still outstanding and they could not recall any discussions at Council meetings concerning collection efforts.
- Under the terms of the Paving Agreements the RM had the right to add any unpaid amounts to the tax roll and collect the taxes in arrears. In addition, the RM had the right to register a caveat in the Winnipeg Land Titles Office against the property. We were unable to find any evidence that either of these options had been pursued by the RM.

Conclusions

- Not all of the amounts owing to the RM from local companies relating to the paving agreements had been paid. Some of the local companies did not comply with the repayment terms of the agreements. The argument for non-payment was not relevant as it related to a separate issue and had nothing to do with their obligations under the paving agreements. By not taking any action on the overdue accounts, the RM did not treat all companies on a consistent basis.
- By not actively following up on the amounts owing to the RM and by not providing Council with complete information on the status of these outstanding amounts, senior staff of the RM did not act in a prudent business manner.
- The CAO and Council members who entered into contracts with the RM still had a fiduciary responsibility to act in the best interests of the RM. Council should have been made aware of this conflict of interest situation and should have enforced collection of the receivables.

We recommend that the RM collect the amounts outstanding related to the paving agreements. If payments are not received in a reasonable period of time the RM should take further action as authorized under the terms of the paving agreements.

We recommend that the development of the conflict of interest policy as recommended in Section 5.1 include the requirement that individual Council members and staff who enter into transactions with the RM inform Council.

5.3 Community Development Corporation

The La Broquerie Community Development Corporation (CDC) was incorporated in November 1997. The mission of the CDC is to develop and maintain a program of socio-economic development that will foster the viability and sustainability of the community. Under the by-laws of the CDC, six Directors, all appointed by the Council of the RM, shall manage the affairs of the CDC. A Director must be a ratepayer within the RM.

In 1998 the CDC entered into an agreement with the Province of Manitoba to become a participating lender in the Community Works Loan Program (CWLP). There are a number of terms and conditions included in the CWLP agreement which the CDC must follow regarding its administration of the program. Under

the CWLP the Province provided a non-interest bearing loan of \$50,000 to the CDC. These funds, together with other funds raised by the CDC, were used by the CDC to provide loans to businesses under the CWLP. In addition to the loans made under the CWLP, the CDC also issued other loans and provided funding for municipal projects.

Our audit did not include a comprehensive review of the CDC's operations. However, from our limited review of the CDC's accounting records and loan files we did note some concerns which are discussed below.

Objective: To determine if the CDC had procedures and processes in place for the monitoring of its Community Works Loan Program (CWLP) and other loan programs.

Observations

- The CDC maintains its own bank account and accounting records. However, RM staff provides bookkeeping services for the CDC.
- An employee of the Economic Development Council for Manitoba Bilingual Municipalities (CDEM) acts as a resource to the CDC by attending CDC Board meetings; assists the CDC regarding access to available grants; and also acts as the liaison with the other bilingual municipalities. Although the CDEM staff member assists the CDC with the loan application process, all the loan files, banking and accounting records are maintained at the RM office. The CDEM staff member will assist in the collection of outstanding loan payments if RM staff request assistance.
- Section 3.3(a) of the CWLP agreement signed by the CDC states that the principal amount of an approved CWLP loan shall not exceed \$10,000. Further, according to Section 3.2(j) of CDC By-Law #1, the maximum of debt financing, loan guarantees and equity capital that may be provided from the CDC to any single applicant or enterprise is \$10,000.
- From our review of the CDC's loan files, board minutes, accounting records and financial statements we noted that there is a lack of documentation to indicate whether the various loans approved by the CDC were under the CWLP or the CDC's own loan program.
- Under the terms and conditions of the CWLP agreement, CDCs are required to report to the Province in respect of the CWLP loans made by the CDC. Although we were not able to locate all of these reports at the RM offices, we were able to obtain a copy of the semi-annual report for April 1 to September 30 of the 2004/05 fiscal year from another source. This report, which was signed by the CAO and dated December 3, 2004, was the latest report available at the time of our audit.

- At the May 3, 2004 CDC Board meeting, the Board approved two resolutions relating to a loan to Illico Manitoba Inc., one being Resolution 13-2004 approving an amount of \$10,000 and the other being Resolution 14-2004 approving \$6,000. It appears that two resolutions were used in order to circumvent the \$10,000 maximum loan amount restriction under the CDC's By-Law. The Board could have approved a loan to Illico Manitoba Inc. under its CWLP and then another loan under its own loan program which may have placed them in compliance with its By-Law. However, the loan file included only one loan agreement in the amount of \$16,000 and neither the full loan amount nor any portion of the loan was recorded on the report of the CDC's CWLP loans dated December 3, 2004 and as a result the CDC Board was still not in compliance with its By-Law.
- At its November 28, 2005 meeting the CDC Board approved Resolution 32-2005 where it was resolved that the CDC be the guarantor of a \$15,000 line of credit for Illico Manitoba Inc. This action by the CDC Board is also not in compliance with its By-Law.
- From our review of the Companies Office database (Province of Manitoba) the Chairman of the CDC Board was listed as the Vice-President of Illico Manitoba Inc. There was no indication in the CDC Board minutes of May 3, 2004 or November 28, 2005 that the Chairman excused himself from the discussion due to having an interest in the company.
- In addition, during our review of the CDC loan files we found that in 2002 the CDC entered into loan agreements with Camp Bel-Air, the Golf Course and the Hotel La Broquerie. Each of these loans was interest free and was to be repaid over a five year period beginning in 2002 with the final payments due in 2006. In each case an amount of \$500 from the total loan was forgiven. We could not locate a CDC Board resolution authorizing these loans and they were not listed as part of the CWLP.
- Although these loans should have been fully paid off by December 31, 2006, according to CDC records most of the original loan balances remained outstanding as at December 31, 2006. For the most part only the first payments due in 2002 were received on these loans and the annual payments due from 2003 to 2006 have not been received by the CDC.
- The details of these three loans, according to the loan agreements and CDC accounting records, are as follows:

Figure 5

Rural Municipality of La Broquerie			
	Camp Bel-Air	Golf Course	Hotel La Broquerie
Total loan	\$3,500	\$3,500	\$5,000
Amount forgiven	500	500	500
Amount to be repaid	\$3,000	\$3,000	\$4,500
<i>Repayment Terms:</i>			
5 Annual payments	\$ 600	\$ 600	\$ 900
First payment date	Sep.30/02	Sep.30/02	Dec.31/02
Last payment date	Sep.30/06	Sep.30/06	Dec.31/06
Outstanding as at December 31, 2006 per CDC trial balance	\$2,235	\$2,300	\$3,600

Source: CDC accounting records

- There was no recorded discussion in the CDC Board minutes or agendas concerning these overdue loans.
- According to the loan agreements with Camp Bel-Air and the Golf Course the purpose of these loans was to assist the borrower in purchasing highway signage for business marketing. For the Hotel the stated purpose of the loan was to assist the borrower in the development and printing of marketing brochures. In each loan agreement it was stated that once proof of payment for the purchased signage or marketing brochures had been supplied to the CDC the \$500 amounts would be forgiven and that at that point the balances would be required to be repaid in accordance with the repayment schedule.
- The documentation used for proof of payment in the Golf Course loan file was an invoice, dated January 15, 2002, for the printing of 20,000 Camp Bel-Air/Golf Course rack cards costing \$2,964. However, as stated above the purpose of the Golf Course loan was for highway signage not golf course rack cards. In addition, the total loan to the Golf Course of \$3,500 exceeded the actual cost of \$2,964 for the rack cards which was known at the time of signing the loan agreement on February 12, 2002.
- The Chairman of the CDC Board has an interest in Camp Bel-Air and the Golf Course and one of his business partners is the majority owner of the Hotel. Also, the CAO, a former Councillor and a current Councillor of the RM are part owners of the Hotel La Broquerie and all were Directors of the CDC Board.

- Section 2.17 of CDC By-Law #1 is entitled "Conflict of Interest Policy and Guidelines". Excerpts from this section state that *"Corporation Directors and Officers shall avoid conducting themselves in any manner which may result in or create the appearance of their receiving a private gain due to their position or authority"* and *"If a member is in conflict of interest he shall not participate in the discussion nor have a vote"*.
- Some of the Directors on the CDC Board that we interviewed were not sure if the CDC had a conflict of interest policy for its Directors.
- Some Directors of the CDC Board told us that they were not aware these loans were overdue even though they had an interest in one of the companies and despite the fact that the CDC Board was presented with regular financial reports that showed the outstanding balances.

Conclusions

- The CDC did not have adequate procedures and processes in place for the monitoring of its loan programs. Documentation was inadequate.
- Due to the lack of adequate documentation maintained by the CDC we were not able to quantify the extent to which the CDC administered loans were from the CWLP or their own loan program.
- It appeared that loans were being collected except for the three interest free loans to Camp Bel-Air, the Golf Course and the Hotel La Broquerie.
- The CDC Board of Directors did not act in compliance with its By-Law by approving the loan and then subsequently acting as a guarantor to Illico Manitoba Inc. These two transactions individually and in total significantly exceeded the stated maximum in the CDC By-Law.
- The CDC "Conflict of Interest Policy and Guidelines" provide board members with rigorous standards for ethical behaviour. The CDC did not have appropriate documentation in place to demonstrate whether they removed themselves from all discussions and did not vote in situations where they had a conflict.

We recommend that the CDC Board ensure that all loan application files and loan documentation clearly indicate whether each loan is under the CWLP or the CDC's own loan program.

We recommend that the CDC Board formally approve all loans.

We recommend that the CDC Board add procedures to its loan application and approval process to ensure that all loan applications meet the terms and conditions of the CWLP and the CDC By-Laws.

We recommend that the CDC Board collect the amounts outstanding as a result of the three interest free loans and formally assign responsibility for monitoring outstanding loans.

We recommend that the CDC Board Chairman ensure that each member of the Board receives a copy of the CWLP terms and conditions and a copy of the CDC By-Laws, including the "Conflict of Interest Policy and Guidelines".

We recommend that the CDC Board Chairman request the Department to provide training to the CDC Board and RM staff concerning their roles and responsibilities over the CWLP.

5.4 Snow Clearing

The RM provides snow clearing services for the streets and roads within the municipality using RM owned equipment and RM staff. The Reeve in 2005 became aware that the RM was paying for snow clearing services that were being provided to a local hotel and questioned this practice given the association of the CAO and two Councillors with the hotel.

Objective: To determine if the RM provided free snow clearing to a local hotel in which the CAO and two Councillors had a financial interest.

Observations

- We reviewed all invoices from 2002 through 2005 relating to snow clearing. We determined that a number of individuals/companies provided the snow clearing service to two hotels within the RM. The individuals/companies invoiced the hotels for the snow clearing services. The hotels then forwarded those invoices to the RM for payment. The RM then issued cheques payable to the hotels for the full amount of the invoices.
- We were informed in interviews that snow clearing began in 1975 at a hotel located in Ward I just outside the City of Steinbach. We were told that the Councillor for the Ward at that time proposed that as the hotel was the largest taxpayer in the RM and received very few services for

its tax dollars, the RM should provide snow clearing of their parking lot. Although the RM could not provide us with any documentation to support this decision, the snow clearing of the hotel parking lot had been paid for by the RM since that time. The CAO stated that he estimated the cost for this service at that time was approximately \$200 to \$300 per year.

- We were also told that after the completion of the new hotel in La Broquerie in the spring of 2001, the Councillor for that Ward suggested that the free snow clearing service be extended to the new hotel. The rationale was that as the hotel provided the RM with employment and significant tax revenue, and had given the RM two acres of land for a street, this was a way of saying thank you for locating in the RM. Again, the RM could not provide us with any documentation and the RM minutes do not contain any resolution to support this decision. However, snow clearing of the hotel's parking lot had been paid for by the RM since that time. The CAO and Councillors interviewed provided estimates that ranged between \$1,000 and \$4,000 per year as the cost to the RM for providing this service.
- Our review of invoices from 2002 through 2005 determined that the total cost of snow clearing at the two hotels during this period was \$9,843.83. The snow clearing services were provided by six different companies as well as one councillor.
- During our review of these invoices we noted that in July 2002, the hotel in La Broquerie received a cheque from the RM for an amount of \$985 for invoices related to snow clearing that had been submitted by a councillor and another company. In May 2003, the RM issued another cheque to the hotel, a portion of which was supported by the same invoices that were utilized for the July 2002 payment. This resulted in an overpayment to the hotel in the amount of \$985. In most instances snow removal payments made to the Hotel were supported by copies of invoices rather than original invoices.
- At the Council meeting of January 26, 2005, after the Reeve became aware of this free snow clearing activity, he proposed a resolution to change the practice of the RM providing free snow clearing at the two hotels. As there was no seconder for this motion, no resolution was brought before Council. The CAO and the two Councillors that had an interest in the hotel in La Broquerie left the meeting during these discussions.
- At the Council meeting of February 23, 2005, a representative of the hotel in La Broquerie appeared before Council and stated that as they did not want to be a burden on taxpayers, they would decline municipal snow clearing of their parking lot.

- Although there was no resolution by Council at the February 2005 meeting to stop free snow clearing at the hotels, we found no payments by the RM for this service to either hotel subsequent to that meeting.

Conclusions

- The RM provided free snow clearing to a local hotel in which the CAO and two Councillors had a financial interest as well as to a hotel in the Steinbach area.
- We found no evidence that the CAO and the two Councillors who had a financial interest in the local hotel had influenced the decision to provide free snow clearing to the hotel in La Broquerie.

We recommend that the RM develop and implement a comprehensive policy that would address snow clearing of public and private properties.

6.0 Compliance with Legislative Authority

6.1 The Municipal Act

We reviewed the operations of the RM to determine its compliance with *The Municipal Act* (Act) in the following areas:

- Operating Deficits;
- Public Notice for Hearings Regarding Financial Plans;
- Recorded Votes on the Third Reading of a By-Law;
- Local Urban District Annual Service Plan;
- Organizational and Procedures By-Laws; and
- Supplementary Taxes.

6.1.1 Operating Deficits

Under the Act municipalities are required to obtain written approval from the Minister for any budgeted deficits in the general operating fund. A budgeted deficit will occur when total estimated expenditures exceed total estimated revenues and transfers in the annual budget of the general operating fund.

The Act also requires that a municipality must immediately advise the Minister in writing when during a fiscal year a deficit is likely to occur.

Objective: To determine whether the RM had Ministerial approval for budgeted deficits as required by *The Municipal Act*.

Objective: To determine whether the RM advised the Minister in writing on a timely basis when a deficit was likely to occur in the year.

Observations

- Section 164(3) of the Act states that:

“The council must ensure that the total amount of the estimated transfers and revenue is not less than the total amount of estimated expenditures unless, before adopting the operating budget, the council obtains the minister’s written approval of the proposed budget, which may include any condition the minister considers necessary or advisable.”

The RM’s financial plans for the years 2002 to 2006 projected a balanced budget; therefore no Ministerial approval was required. **Figure 6** below, summarizes the RM’s general operating fund budgeted revenues, expenditures and surplus/(deficit) amounts for the years 2002 to 2006.

Figure 6

Rural Municipality of La Broquerie General Operating Fund Budget For the Years 2002 to 2006					
	2002	2003	2004	2005	2006
Revenues and transfers	\$2,140,801	\$2,491,721	\$2,286,638	\$2,911,345	\$2,835,173
Expenditures	1,929,682	2,027,506	2,137,361	2,577,340	2,452,289
Transfers and allowance for tax assets	211,119	464,215	149,277	334,005	382,884
Total expenditures and transfers	2,140,801	2,491,721	2,286,638	2,911,345	2,835,173
Budgeted Operating Surplus/(Deficit)	\$ -	\$ -	\$ -	\$ -	\$ -

Source: RM Financial Plans

- Section 165(1) of the Act states that:

“When a council determines during a fiscal year that expenditures are likely to exceed the revenue and transfers provided for in its budget, the council must immediately advise the minister in writing and may incur a deficiency with the minister’s written approval, which may include any condition the minister considers necessary or advisable.”

From our review of the RM's documentation we found that the RM had advised the Minister of the anticipated operating deficits each year. However, the RM did not advise the Minister of these anticipated deficits on a timely basis. In our view, many of the deficits could have been anticipated as early as at the time of preparing the budget.

- **Figure 7** is a summary of the RM's general operating fund results for the years 2002 to 2006. Over this five year period the RM incurred net operating losses amounting to \$1,615,434.

Figure 7

Rural Municipality of La Broquerie Summary of General Operating Fund Results					
	2002	2003	2004	2005	2006*
Net Revenues	\$2,576,609	\$2,244,044	\$2,349,307	\$2,938,500	\$3,016,045
Expenditures	3,037,939	2,396,068	2,508,091	3,285,478	3,512,363
Operating Surplus/(Deficit)	(461,330)	(152,024)	(158,784)	(346,978)	(496,318)
Nominal Surplus/(Deficit), Opening	1,205	(267,657)	43,232	227,805	(8,364)
Special tax levies	192,468	392,913	127,969	112,431	200,000
Transfer from allowance for tax assets	-	70,000	-	-	-
Adjustment for Centra Gas refund	-	-	274,729	-	-
Miscellaneous	-	-	(829)	(1,622)	15,464
GST audit results affecting prior years	-	-	(13,460)	-	-
Sick time accrual relating to prior years	-	-	(45,052)	-	-
Net adjustments	192,468	462,913	343,357	110,809	215,464
Nominal Surplus/(Deficit), Ending	\$ (267,657)	\$ 43,232	\$ 227,805	\$ (8,364)	\$ (289,218)

*Draft financial statements.

Source: RM of La Broquerie audited financial statements

- The RM also incurred operating deficits in the years 2000 and 2001. The RM last reported an operating surplus in 1999 which amounted to \$2,051.
- According to the RM's audited financial statements as at December 31, 2005, the RM's accumulated nominal surplus (retained earnings) was \$(8,365). Based on our review of the 2005 Statistical Information for Municipalities publication, prepared annually by the Department, the RM

was the only municipality in the province with a negative balance in its nominal surplus account.

- Due to the lack of funds in the RM's accumulated nominal surplus the RM had to recover much of its annual operating deficits, highlighted in **Figure 7** above, by special tax levies on the taxpayers of the RM in subsequent years. For example, the 2005 operating deficit of \$346,978 was approved by the Minister on condition that it be recovered by equal tax levies in the years 2006 and 2007. According to the RM's financial plan for 2006 a special tax levy of 2.36 mills was added to the tax bills of each taxpayer in the RM to recover approximately \$200,000 or one-half of the 2005 operating deficit. The balance of the operating deficit was to be recovered by a similar tax levy in 2007.
- The overall mill rate did not significantly change because these increases to the mill rate were offset by decreases in other areas. However, when a portion of the mill rate has to be used to cover prior year losses there are less funds available for current year expenditures unless there is an increase in the overall mill rate.
- The CAO indicated that he was under significant pressure from Council not to increase the mill rate. In a letter written to the Department requesting approval for the 2003 deficit the CAO stated that *"even with such a deficit [in 2002], council asked me to prepare a 2003 budget with no increase in the mill rate which left no room for unexpected expenses..."*.
- Although he never prepared a written report, the CAO stated that he was aware, and he informed Council each year during the preparation of the budget, that without an increase in the mill rate the budget would be very tight, and if anything out of the ordinary happened there would be a deficit.
- One Council member told us that the Council did not want to increase the mill rate and that Council would rather work with a deficit and then ask the Department for approval.
- The CAO and Council members told us that the main cause of most of the deficits was due to flooding. However, budgets were never prepared to provide for unexpected expenses. When certain costs are required each year due to annual flooding or other events, they should be provided for in the budget.
- The CAO and Council were aware that without an increase in the mill rate they would likely incur an operating deficit each year and as a result the annual financial plans approved by Council each year were not realistic.

- One of most important functions of Council is the preparation of the financial plan since it drives the annual mill rate to be applied to ratepayers in the municipality. Before adopting the financial plan, Council must give public notice and hold a public hearing in respect of the plan. The purpose of the public hearing is to provide ratepayers with information on the financial situation of their municipality and to inform them on how tax dollars are being spent. The public hearing gives ratepayers the opportunity to ask questions about the financial plan and to provide input to the municipality's short and long-term plans.
- The financial plan therefore is a key element of a municipal Council's accountability and transparency to its ratepayers. Readers of the financial plan are not fully informed if the information provided on the financial plan is not realistic.
- The CAO and some members of Council stated that they knew that the RM would be incurring a deficit in the fall each year. However, for the years 2002, 2005 and 2006 the letter advising the Minister was not sent until December of the year. The letter advising the Minister of the 2003 deficit was not sent until April 6, 2004 and the letter for the 2004 deficit was not sent until February 7, 2005.
- Although the Department was not advised of the operating deficits on a timely basis, we did not see any formal correspondence to the RM that would indicate that the Department had concerns over the timeliness of the letters or the frequency and amounts of the operating deficits being incurred by the RM. We reviewed notes in Departmental files that documented some discussions between the Department and the CAO of the RM.
- As noted above, although the CAO and Council told us that they knew the RM would be incurring a deficit in the fall each year we did not see any indication that the RM took any steps to limit the extent of the losses. There was no recorded discussion in Council Meeting minutes concerning potential deficits or for the need to try and control the extent of expenses for the remainder of the year.

Conclusions

- The RM's financial plans for 2002 to 2006 projected a balanced budget; therefore the RM was not required to obtain Ministerial approval for the budget.
- The RM did advise the Minister of its deficits each year. However, this was not done on a timely basis as required under *The Municipal Act*.

- Without an increase in the mill rate it was likely that the RM would incur an operating deficit each year and as a result, the annual financial plans approved by Council were not realistic.
- Despite the lateness of advising the Minister of its expected operating deficits and the frequency and extent of these deficits, no formal action was taken by the Department to address this.

We recommend that the RM review its annual budgeting procedures in order to produce a budget that better reflects the actual annual costs of the RM.

We recommend that in the event the RM anticipates an operating deficit, the Minister be advised as soon as possible in accordance with *The Municipal Act*.

We recommend that the Department implement procedures to better review and analyze the financial information provided to them by municipalities, to clearly identify reasons for the deficits and the appropriate corrective action to be taken by the municipality.

6.1.2 Public Notice for Hearings Regarding Financial Plans

Section 162(2) of the Act states that:

"Before adopting the financial plan, the council must give public notice, and hold a public hearing, in respect of the plan."

Section 420(1) of the Act states that:

"When this Act requires public notice to be given of a public hearing, the municipality must

a) publish the notice at least twice in a newspaper or other publication having general circulation in the municipality, during the period starting 40 days before the hearing and ending seven days before it, and the publications being at least six days apart; and

b) post the notice in the municipal office for at least 14 days in the period described in clause (a)."

Section 420(2) of the Act states that:

"A notice of a public hearing under subsection (1) must set out

a) the date, time and place of the public hearing;

b) a general description of the matter to be considered;

- c) *that the purpose of the hearing is to allow any interested person to make a representation, ask questions or register an objection; and*
- d) *that any information and documents concerning the matter and the procedures to be followed at the hearing are available for review at the municipal office or other place in the municipality."*

Objective: To determine whether the RM provided proper public notice for the public hearings to discuss its financial plans in accordance with *The Municipal Act*.

Observations

- We reviewed RM files containing documentation which evidenced that the RM had advertised for two consecutive weeks in a local newspaper their intentions to hold public meetings to discuss the RM's financial plans in each of the years 2002 through 2006.
- We determined that:
 - In each instance the advertisements were placed within the 40 day time frame, at least one week apart and seven days prior to the meeting date;
 - The date, time and place of the meetings were stated in the advertisements;
 - For the period 2002 to 2005, the stated purpose of the meeting in the advertisements was: *"... to help municipalities educate the public about the financial situation of the municipality and to assist the public to understand how tax dollars are being spent. The public hearing gives the public the opportunity to speak to the plan and ask questions about the plan, and also give council the opportunity to respond to those questions"; and*
 - The 2006 financial plan advertisement stated that *"Council will hear any person who wishes to make representation, ask questions, or register an objection to the financial plan"* and that *"The financial plan is available for review at the R. M. of La Broquerie Office after April 21, 2006"*.

Conclusion

- The RM complied with *The Municipal Act* from 2002 through 2005 with regard to providing proper public notice for public hearings for discussion of its financial plans except for the requirements to include in the public notice a description of the purpose of the hearing and that the

information would be available for review at the RM office. The RM was in compliance in 2006.

6.1.3 Recorded Votes on the Third Reading of a By-Law

Section 137 of the Act states that:

"The minutes of a meeting at which a council votes on the third reading of a by-law must show the name of each member present, the vote or abstention of each member, and the reason given for any abstention."

Objective: To determine whether the RM minutes recorded Councillor votes on the third reading of by-laws as required by *The Municipal Act*.

Observation

- We reviewed all the RM minutes related to by-laws for the period March 27, 2002 through February 28, 2007 and found that there were no recorded votes on the 3rd reading of any by-laws passed from March 27, 2002 through to January 11, 2006. However, after January 11, 2006, all 3rd readings for by-laws have had a recorded vote.

Conclusion

- The RM was in compliance with *The Municipal Act* after January 11, 2006.

6.1.4 Local Urban District Annual Service Plan

A Local Urban District (LUD) is an unincorporated urban area with a population of at least 250 residents, located wholly within the boundaries of a rural municipality. An LUD is represented by a formal committee of council, comprised of not more than three members elected by the LUD electors at a general election, and a member of the council of the rural municipality. The LUD is serviced by the rural municipality, as provided for in the LUD service plan which details the type, level and cost of municipal services to be provided. It is funded through a tax levy on the district as specified in the service plan.

Preparation of the annual service plan provides an opportunity for the LUD Committee to clearly outline its service requirements. A well prepared annual service plan will give sufficient direction to the municipality to ensure that services are delivered at a level, and in a way that meets the expectations of the LUD and its citizens. Once the LUD Committee has prepared its annual service plan, the plan is submitted to the rural municipality's council for review. The rural municipality is responsible to ensure the services are delivered and revenues are raised in accordance with the plan. As a committee of council, the LUD has no authority to provide direct delivery of service or to manage funds on its own.

Objective: To determine whether the Local Urban District (LUD) of La Broquerie prepared an annual service plan in compliance with *The Municipal Act*.

Observations

- As permitted under the Act a municipality may form an LUD, however, it is not mandatory. The RM has formed an LUD which is referred to as the "Local Urban District of La Broquerie".
- When a municipality decides to form an LUD there are a number of sections within the Act that set out the operational framework for an LUD and the municipality in which the LUD is located. Some of the sections of the Act relevant to an LUD and a municipality concerning annual service plans are as follows:
 - Section 117(1) states that:

"The committee of a local urban district is responsible for

 - a) preparing and adopting a service plan for the local urban district;*
 - b) submitting the service plan to the council before it adopts its operating and capital budgets; and*
 - c) the exercise of those powers delegated to it by the council of the municipality."*
 - Section 118(2) states that:

"A service plan must annually

 - a) describe the proposed type and level of services to be provided in the local urban district;*
 - b) describe the area of the local urban district to which each of the types of service will be provided;*
 - c) specify that the services that are to be paid for by a tax imposed on property within the local urban district;*
 - d) contain an operating budget and a capital budget for the costs of the services, including the costs of the operation of the committee; and*
 - e) propose any local improvement or special service to be initiated in the local urban district under Division 4 (Local Improvements and Special Services) of Part 10 (Powers of Taxation)".*
 - Section 120(1), in part, states that:

"The council in which a local urban district is located must

a) consult with the local urban district before adopting its annual financial plan;

b) adopt by resolution the service plan as submitted by the local urban committee".

- *The Municipal Act Procedures Manual* (Manual), issued by the Department in 1997, provides guidelines to assist municipalities in all aspects of their operations. The Manual includes a sample LUD service plan for an LUD to use as a guide when preparing its annual service plans. The Manual also includes a sample LUD budget which is to be part of the LUD's annual service plan.
- Through our review of the RM's records and our interviews with current and former staff and Council we found that the RM had no LUD service plan in place during the period of our review. The RM's financial plan did include an LUD budget each year.
- The CAO and a number of Councillors told us they were not aware that an annual service plan for the LUD was required under the Act.

Conclusion

The RM and the LUD were not in compliance with *The Municipal Act* when they failed to have an LUD service plan prepared and adopted for the years 2002 to 2006.

We recommend that the RM ensure that an LUD service plan is prepared by the LUD Committee and approved by Council each year to facilitate delivery of efficient and effective service to the citizens of the LUD.

6.1.5 Organizational and Procedures By-Laws

The Act was revised in 1996 and the revision came into force on January 1, 1997. One of the revisions was that municipalities required organizational and procedures by-laws.

Section 435(2), of the Act states that:

"The council of each municipality must pass an organizational by-law and a procedures by-law in accordance with sections 148 (organizational by-law) and 149 (procedures by-law) within six months after the coming into force of this Act."

The purpose of an organizational by-law is to formally establish the organizational structure of a municipality and set out the general and specific functions of council committees.

Sections 148(1) and 148(2) of the Act state that:

"A council must establish by by-law an organizational structure for the municipality and review the by-law at least once during its term of office."

"An organizational by-law must provide for the following:

- a) the establishment of council committees, other than committees of local urban districts, and other bodies of the council, including their duties and functions;*
- b) the appointment of a deputy head of the council to act in place of the head of council when he or she is unable to carry out the powers, duties and functions of the head; and*
- c) the manner of appointment of persons to council committees and other bodies."*

The purpose of a procedures by-law is to formally establish rules of procedure for a council.

Sections 149(1) and 149(3) of the Act state that:

"A council must establish by by-law rules of procedure and review the by-law at least once during its term of office."

"The council must in its procedures by-law provide for

- a) regular meetings of the council, and the day, time and place of the meetings;*
- b) the type and amount of notice to be given of regular meetings of the council;*
- c) the procedure to be followed and the type and amount of notice to be given to change the day, time or place of a regular meeting of the council;*
- d) rules respecting the conduct of council meetings;*
- e) rules respecting public participation at council meetings;*
- f) a procedure for the appointment of a member to act as head of council if the head and deputy head are unable to act or the offices are vacant;*
- g) the type and amount of notice to be given of a special meeting of the council; and*

h) the time within which a special meeting of the council requested under clause 151(1)(b) must be called by the head of council and must take place."

Objective: To determine whether the RM had established an organizational by-law and a procedures by-law in compliance with *The Municipal Act*.

Observations

- The Manual, discussed in the previous section, includes a sample organizational by-law and a sample procedures by-law for municipalities to use as a guide when preparing these by-laws. The Manual suggests that municipalities review the by-laws of other municipalities or consult with staff of the Department during the preparation of its organizational and procedures by-laws. Also, in discussions with former Department staff we were advised that most municipalities do use the sample by-laws in the Manual or obtain the by-laws from other municipalities when preparing these by-laws and as result there is minimal cost to the municipality.
- Based on RM records and our interviews with current and former staff and Council we determined that the RM had not established an organizational by-law or a procedures by-law until July of 2005.
- At its meeting of February 9, 2005, Council instructed the CAO to start preparing organizational and procedures by-laws as required under the Act.
- We were told that this direction to the CAO was as a result of some concerned citizens who began in early 2005 to question the Reeve, Council and CAO about the RM's operational policies and procedures. Further, we were told that the RM had never adopted organizational or procedures by-laws even though they were aware of the requirement under the Act and had knowledge of the template provided in the Manual.
- The CAO and some members of Council told us they did not feel it was necessary to have documented organizational and procedures by-laws as the operations of the RM ran smoothly, complaints were dealt with as they arose, and their meetings were completely open for public input. Subsequent to the implementation of the by-laws, these Councillors told us that they believed that public access was now restricted due to the requirement that the public had to give at least three working days notice before making a presentation at a Council meeting. It should be noted that it was Council that approved these specific rules. The Act only requires that the procedures by-law provide rules respecting public participation at Council meetings.

- Due to the continuing public scrutiny of Council's actions on this and other issues, on March 9, 2005, Council resolved that the RM retain the services of a legal firm to provide advice in preparing the by-laws.
- Our review of RM records determined that the RM paid in excess of \$33,700 for legal services related to the preparation of the organizational and procedures by-laws.
- On July 27, 2005, Council passed a resolution to approve By-Law 3-2005 to regulate the proceedings and conduct of the council and its committees and By-Law 4-2005 to establish an Organizational Structure for the RM.

Conclusions

- By not establishing an organizational by-law and a procedures by-law until July 2005, the RM was not in compliance with *The Municipal Act* from July 1997 until July 2005.
- In 2005, the RM engaged a lawyer to prepare the by-laws at a cost of \$33,700, which in our view was excessive. The RM could have utilized the samples in *The Municipal Act Procedures Manual* to produce the by-laws at minimal cost.

6.1.6 Supplementary Taxes

The Act allows a municipality to correct its property tax roll and impose supplementary taxes if, after the tax roll has been completed, the assessor reports to the municipality that:

- The property is liable to taxation but was not assessed;
- The property is liable to taxation due to change in ownership or use;
- The assessment of an improvement results in an increase to the assessment of the property;
- A change has been made in the classification of the property; or
- The land has been improved or subdivided.

The Act also provides a municipality with the authority to correct its business tax roll and impose supplementary taxes upon receipt of a report from the assessor. An assessor is an employee of the Department, not an employee of the municipality.

Section 327(1) of the Act states that:

"If supplementary taxes are imposed, the municipality must send a supplementary tax notice to the taxpayer."

Section 327(2) of the Act states that:

"A supplementary tax notice must include, in addition to the information required to be shown in a regular tax notice, a reference to the taxpayer's right of appeal..."

Section 346(4) of the Act states that:

"No penalty may be imposed in respect of unpaid taxes

a) in the case of supplementary taxes, for the first 90 days; and

b) in any other case, for the first 30 days;

after the tax notice regarding the taxes is sent to the taxpayer."

Objective: To determine whether the RM was allowing taxpayers sufficient time to pay supplementary taxes in accordance with *The Municipal Act*.

Observations

- We determined that the RM imposed supplementary taxes in each of the years during the period of our review from 2002 to 2006.
- Based on our review of the RM's documentation we found that supplementary tax notices were sent out each year and that reference to the taxpayer's right of appeal was included. However, we found that for the years 2003 to 2006 the RM did not allow at least 90 days before penalties were charged on unpaid taxes. The number of days allowed before a penalty was imposed ranged from 28 days to 59 days.
- For the 2002 year available documentation was insufficient to enable us to determine the due date on the supplementary tax notices. Therefore, we were unable to determine if the 90 days were allowed.

Conclusion

- By not allowing 90 days before imposing penalties for the non-payment of supplementary taxes, the RM was not in compliance with *The Municipal Act* from 2003 to 2006.

We recommend that the RM develop a process to ensure that taxpayers are allowed 90 days to pay supplementary taxes before penalties are imposed in accordance with *The Municipal Act*.

6.2 The Municipal Council Conflict of Interest Act

Section 9(1) of *The Municipal Council Conflict of Interest Act* (Conflict Act) states that not later than the last day of November of each year, every Councillor shall file with the clerk of the municipality a Statement of Assets and Interests. Section 424 of *The Municipal Act* (Act) defines the clerk of the municipality as the CAO.

Section 9(2) of the Conflict Act states that where a Councillor fails to comply with Section 9(1), the CAO shall notify the Councillor in writing of the failure to comply, and the Councillor shall within 30 days of receiving the notification file the Statement of Assets and Interests.

Section 5(1) of the Conflict Act states that where during any meeting there arises a matter in which a Councillor or any of his dependents has a direct or indirect pecuniary interest; or 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 dependents has a direct or indirect pecuniary liability; the Councillor shall disclose the general nature of the interest or liability; withdraw from the meeting without voting or participating in the discussion; and refrain at all times from attempting to influence the matter.

The Conflict Act defines direct pecuniary interest to include 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.

Objective: To determine whether the Reeve and Councillors filed with the municipality a Statement of Assets and Interests on an annual basis as required by *The Municipal Council Conflict of Interest Act*.

Observations

- We determined that the Reeve and Councillors only provided a Statement of Assets and Interests subsequent to the municipal elections held in 2002 and 2006. We found no evidence that the CAO had notified the Reeve and Councillors that they had failed to submit a Statement of Assets and Interest for the years 2003 through 2005.
- We were told that after the election the Reeve and all Councillors filed their Statement of Assets and Interests and that any changes to their position during their term of office were to be reported to the CAO at the time the changes occurred. The CAO indicated that in each November of the Council members' term he had a discussion with each Council member as to whether their assets and interests had changed. We found no evidence that any changes to the Statements of Assets and Interests were reported by the Reeve or any of the Councillors. The CAO indicated to us that this would have reflected that nothing had indeed changed.

- A review of all RM minutes for the period 2002 through 2006 noted several instances where Councillors excused themselves from a particular part of a meeting due to a conflict. We did not do a review of transactions for the period 2002 through 2006 of companies and/or businesses in which a Councillor had a known interest, and as a result were unable to determine if Councillors excused themselves from potential conflicts of interest in every instance.
- Section 13(1) of the Conflict Act states the CAO shall not make any Statement of Assets and Interests filed under Section 9 available for inspection by any person or reveal the contents of any Statement of Assets and Interests to any person.
- Section 13(3) of the Conflict Act states that where any person provides details of a possible violation of the Conflict Act by a Councillor and identifies a specific asset or interest in respect of which the possible violation may have occurred the CAO shall examine the Statements filed by the Councillor and shall in writing inform the person whether or not the Statements disclose the specific asset or interest.
- We reviewed the Statements of Assets and Interests that were filed in 2002 and 2006 and provided to the CAO in sealed envelopes. These envelopes had never been opened by the CAO.

Conclusions

- The Reeve and Councillors provided Statements of Assets and Interests in the years of their election. However, by not filing these statements annually they were not in compliance with *The Municipal Council Conflict of Interest Act*.
- By not notifying the Reeve and Councillors of their failure to submit their Statements of Assets and Interests on an annual basis, as required by *The Municipal Council Conflict of Interest Act*, the CAO was not in compliance with the Act.
- There is no requirement in *The Municipal Council Conflict of Interest Act* for the Statements of Assets and Interests filed by Council members to be independently assessed for accuracy and completeness. Additionally, there is no requirement in the Act for the CAO, who receives the filed Statements, to advise Council members when they may be in a potential conflict of interest position. The Act does provide a mechanism for "any person" to allege a member of council has violated a provision of the Act. Accurate and complete Statements of Assets and Interests are integral to the scheme; without these documents there is limited ability to allege a violation.

We recommend that the RM ensure that Council members file a Statement of Assets and Interests annually in accordance with *The Municipal Council Conflict of Interest Act*.

We recommend that the Department implement appropriate changes to *The Municipal Council Conflict of Interest Act* to provide a process for the independent review of the Statements of Assets and Interests that Council members are required to file under the Act. A process should also be established to provide assurance that the requirement for disclosure and withdrawal during meetings by Council members with a conflict of interest is being appropriately met.

7.0 Senior Staff, Council – Remuneration and Expenses

7.1 Senior Staff Remuneration

Each year the RM set the wages for RM staff through a wage agreement which was approved by a resolution of Council. The wage agreement outlines the annual salary and some other wage related amounts to be paid to the CAO, the Assistant CAO and other RM staff. Other wage related amounts paid to the CAO and the Assistant CAO included a monthly car allowance and payments for attendance at evening meetings. The CAO and the Assistant CAO were also paid equal shares of the total revenue earned by the RM through the issuance of Tax Certificates to citizens. The wage agreement also sets out mileage and per diem rates for RM staff.

Objective: To determine whether senior RM staff remuneration was paid in accordance with approved wage agreements and properly reported for income tax purposes.

Observations

- We reviewed the salaries paid to the CAO and the Assistant CAO for the years 2002 to 2006. We also reviewed the RM's wage related agreements for the period under review.
- We determined that the annual salary and other wage related amounts paid to the CAO and the Assistant CAO were in accordance with the approved wage agreements except for the amounts paid to the Assistant

CAO in 2002 and 2003 to attend evening meetings. Although the Assistant CAO was paid an amount to attend evening meetings from 2002 to 2006, there was no provision in the wage agreements for these payments until 2004.

- During our review we noted that the annual salary amount paid to the CAO and Assistant CAO were processed through the payroll system and were reported to the Canada Revenue Agency on RM T4 information slips. However, the other wage related amounts were paid outside of the payroll system and were not reported on the RM T4 information slips.
- A review of the *Income Tax Act* determined that the other wage related amounts paid to the CAO and Assistant CAO were income from employment and should have been included on their RM T4 information slips. The nature of these other amounts is discussed below.
 - On a monthly basis, the revenue generated by the RM from citizens requesting Tax Certificates was paid to the CAO and Assistant CAO as outlined in the wage agreement.
 - The wage agreements also provided that the CAO and Assistant CAO were entitled to be paid an amount for attendance at evening municipal meetings.
 - A monthly car allowance was paid to the CAO and Assistant CAO for travel within the RM. As the car allowance was not based on mileage actually driven as required by the *Income Tax Act*, the car allowance should be taxable. Reimbursement was also provided for actual mileage driven outside the RM.
- As discussed in more detail in **Section 7.1.1**, the Assistant CAO was paid to clean the RM's office. Payments for these services were paid outside of the payroll system and not reported on the RM's T4 information slips.
- The amounts referred to above were also omitted in the computation of compensation for the purposes of *The Public Sector Compensation Disclosure Act*. Therefore, the salary amount disclosed for the CAO in the Notes to the RM's Financial Statements from 2002 to 2006 was understated each year. Also, if the above amounts had been included in the Assistant CAO's compensation, total compensation for the years 2003 to 2006 would have exceeded the \$50,000 threshold, and as a result would require disclosure.
- The CAO left the employ of the RM and was paid an amount of \$190,479 in 2006 representing a negotiated settlement of 24 months salary plus 50% of unused sick leave credits less statutory deductions. Of this amount

\$42,000 was omitted from the compensation disclosed for the purposes of *The Public Sector Compensation Disclosure Act*.

Conclusions

- Remuneration to senior staff was paid in accordance with approved wage agreements for the period 2002 through 2006 except for the payments to the Assistant CAO in 2002 and 2003 for attendance at evening municipal meetings.
- The RM did not include all remuneration paid to senior staff on T4 information slips for the years 2002 through 2006.
- The RM did not include all remuneration paid to senior staff in their calculation for *The Public Sector Compensation Disclosure Act* for the years 2002 through 2006.

We recommend that the RM properly report remuneration on T4 information slips and report all remuneration in accordance with *The Public Sector Compensation Disclosure Act*.

We recommend that the RM consider entering into employment contracts with senior staff to take into account all aspects of the employment arrangement.

7.1.1 Office Cleaning

During the period of our review from January 2002 until October 2006, the RM leased a portion of its old office complex to South Eastman Health. With the completion of the RM's new office complex in June 2006, South Eastman Health expanded its lease to include the RM's entire old office complex. The RM provided cleaning services for all of these offices.

Objective: To determine whether the contract for cleaning services was awarded on a competitive basis and that amounts paid for these services were reasonable.

Observations

- Based on our discussions and a review of documentation we determined that the cleaning services were sole sourced as no proposals or tenders were sought from any suppliers. The Assistant CAO was paid to do the cleaning of the RM's office space in the old office complex and the payments to the Assistant CAO for cleaning the RM's office continued when the RM moved to its new office complex. Another individual was

paid by the RM to clean the offices of South Eastman Health throughout the period of our review.

- No formal agreements or contracts were in place to formally document the services to be provided or the amounts to be paid.
- Invoices were not submitted to the RM for these services. Payments for the cleaning services were only supported by a slip of paper filled out by the Assistant CAO each month.
- In the fall of 2006, after the RM moved into its new office complex, the amounts paid for cleaning services were adjusted. The cost of the cleaning services was increased to \$759 per month to clean the South Eastman Health offices and \$517 per month to clean the new RM offices. This amounts to \$1,276 per month or a total of \$15,312 annually.
- Early in 2007 the RM decided to advertise tenders for the cleaning services of the two office complexes. In April 2007, as a result of the tender process, Council approved that the RM enter into a contract with new custodians effective May 1, 2007. The contract included the hourly rate to be paid and a complete listing of duties to be performed on a weekly, monthly and annual basis.
- Based on the agreed upon number of hours and the hourly rate, cleaning costs will be approximately \$4,056 per building each year, or a total of \$8,112 annually. This amounts to a cost savings of approximately \$7,200 per year. In addition to the cost savings, RM officials told us that they will now be receiving cleaning services three days per week compared with one day per week under the prior cleaning arrangement.

Conclusion

- As a result of not seeking competitive bids for cleaning services prior to 2007, and lacking sufficient documentation to demonstrate that the level of payments supported the services provided, the RM overpaid for cleaning services during the period of our review.

7.2 Senior Staff Expense Accounts and Local Meal and Entertainment Expenses

Objective: To determine whether the payments by the RM of senior staff expense accounts and local meal and entertainment expenses were appropriate, supported, and in accordance with approved RM policies and/or procedures.

Observations

Senior Staff Expense Accounts

We examined the expense account claims reimbursed to the CAO and Assistant CAO from 2002 to 2006.

- At the time of our review the RM did not have any formal policies for reimbursable expenses. However, there are references to reimbursable expenses included in certain RM documents. The *Non-Union Staff Employee Handbook*, last revised on April 5, 2000, includes a section on travelling expenses. This section states that permanent employees will be reimbursed mileage for usage of their own automobiles on municipal business, and upon provision of receipts, will be reimbursed for room rentals and meal costs incurred while travelling on municipal business.
- The wage agreement, approved by Council each year, sets the wages for RM staff and also sets the mileage rate and per diem rates for the year.
- As noted in **Section 4.0** of this report, the RM staff expense accounts:
 - Were not always documented on a standard expense account form. For example, the Assistant CAO's expenses were recorded on a slip of paper;
 - Were not consistently signed by the staff member requesting reimbursement; and
 - Were not formally approved by the staff member's supervisor or a designate of Council in the case of the CAO's expense accounts.
- As discussed above, the wage agreements included a provision setting the per diem rate for the year. For example, Agreement 1-2005 indicates that permanent employees shall be entitled to a per diem of \$47.25, for the calendar year 2005, while on municipal business.
- During our review we noted instances where Councillors and/or staff participated in a municipal sponsored golf or curling event. Based on our review of the supporting documentation, the registration fee for these events, paid by the RM, included a lunch or dinner. Although a meal was provided at these events, we noted instances where the CAO and/or the Assistant CAO attended such an event and yet claimed the full day per diem.
- As noted above, the wage agreement stipulated a per diem rate while on Municipal business. However, there is no documented breakdown of this amount for breakfast, lunch and dinner. We noted numerous instances of the CAO and the Assistant CAO being out of town for less than a full day while still claiming the full day per diem.

- Most organizations establish a meal per diem with a maximum daily amount which is apportioned between breakfast, lunch and dinner. Employees are allowed to claim expenses for meals without supporting receipts at the established rates while on company business. The amount claimed depends on the portion of the day an employee is actually travelling on company business. Normally, if an employee is not required to spend an entire day on company business or if meals are included in registration fees, the per diem rate is reduced accordingly.

Local Meal and Entertainment Expenses

In addition to the expenses incurred by senior staff of the RM on their expense account claims, other local meal and entertainment expenses were also incurred. These amounts were incurred by senior staff and Council members at local restaurants which then billed the RM.

We examined all of the payments made to the Hotel La Broquerie (Hotel) for the period 2002 to 2006. Other meal and entertainment expenses were incurred at other locations, however, since the majority of expenses were incurred at the Hotel we limited our review to the Hotel payments. RM payments made to the Hotel for meals and accommodations related to the flood in the RM in 2002 were not included in our detailed examination.

- At the time of our review, the RM did not have any formal policies or procedures relating to claiming of local meal and entertainment expenses.
- Senior staff, Councillors and Fire Department staff of the RM charged meal and entertainment expenses at the Hotel. The Hotel would then issue an invoice to the RM for reimbursement.
- We examined payments made to the Hotel from January 1, 2002 to December 31, 2006 totalling \$42,080. Of this amount, \$6,312 related to snow removal expenses and the balance of \$35,768 related to meal and entertainment expenses.
- Based on our examination we determined that only \$17,815 (42%) of the payments made to the Hotel had adequate support. For audit purposes, we considered a payment to have adequate support if the payment was supported by original bills, the bills were initialled or signed by the person incurring the expenditure, and the purpose of the meeting and the persons attending were documented.
- The remaining \$24,265 (58%) of the payments to the Hotel did not have adequate support, as defined above. Further, there was no documented evidence that the amounts charged to the RM were reconciled to itemized bills by RM staff prior to payment. In many instances, there were no bills or only some bills attached to the invoice from the Hotel.

- From our examination, we also noted that liquor charges were regularly incurred by senior staff and Councillors of the RM at the Hotel. Liquor charges of \$5,700 were identified during the period under review. However, we could not quantify the total liquor charges due to the lack of supporting documentation in many instances.
- Significant liquor charges (included in the \$5,700) were incurred at the RM Christmas Parties in 2002, 2003 and 2004. For example, in 2002 the total cost of the RM Christmas Party held at the Hotel amounted to \$3,708, which included liquor charges of over \$1,700 before taxes. It is important to note that in this same calendar year of 2002, the RM incurred an operating deficit in excess of \$400,000.

Conclusions

- The RM did not have formal policies and procedures for claiming expense accounts and local meal and entertainment expenses. The RM did not ensure that these transactions were adequately supported and subjected to a formal review and approval process. Therefore, the RM was exposed to the risk that inappropriate expenditures had occurred and had not been detected. In addition, given the operating deficit situation the RM faced each year, Council did not appropriately control public money in their trust.
- In our opinion, it was not appropriate for the CAO and the Assistant CAO to claim a full day per diem on those occasions where meals were included in registration fees, or where they were not required to be out of town for a full day.

We recommend that the RM develop policies for travel and local meal and entertainment expenses that provide guidelines describing “allowable expenses” such as a meal per diem with amounts for breakfast, lunch and dinner, and when or/if alcohol and other entertainment expenses are acceptable.

We recommend that the RM require that all transactions are supported by original receipts using standard expense account forms.

We recommend that the RM develop procedures for an appropriate review and approval of these expenses.

7.3 Councillor Remuneration and Expenses

Section 124(2) of *The Municipal Act* (Act) states that a municipal council may through a by-law set the types, rates and conditions of payments to be made to members of the council for attending to municipal business.

The 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 indemnity by-laws of the RM set the annual indemnity amount and the amount to be paid for attending "special meetings of council", for the Reeve and Councillors. Also included in the indemnity by-laws of the RM were amounts to be paid to the Reeve and Councillors for each full-day or evening meeting while attending to municipal business. Mileage rates were also set in the indemnity by-laws.

Objective: To determine whether RM Councillor remuneration and expenses were paid in accordance with indemnity by-laws, and were supported and properly reported.

Observations

- We examined all payments to the Reeve and Councillors for indemnities, attendance at meetings and expenses for the period 2002 to 2006.
- Payments to the Reeve and Councillors were supported by a standard claim form and supporting documentation.
- **Figure 8** is a summary of the indemnities, meeting amounts and expenses paid to the Reeve and Councillors from 2002 to 2006.

Figure 8

Rural Municipality of La Broquerie Summary of Indemnities, Meeting Amounts and Expenses For the Years 2002 to 2006						
	2002	2003	2004	2005	2006	Totals
Indemnities	\$ 71,309	\$ 79,100	\$ 77,700	\$ 84,420	\$ 87,375	\$399,904
Meetings	29,352	31,157	28,462	31,617	28,644	149,232
Mileage	3,935	4,935	6,180	6,958	4,360	26,368
Miscellaneous	1,851	206	100	66	915	3,138
Totals	\$106,447	\$115,398	\$112,442	\$123,061	\$121,294	\$578,642

Source: RM accounting records.

- As noted above, the RM's indemnity by-laws state that the Reeve and Councillors shall be paid an amount for attendance at special meetings of council. This is in addition to the annual indemnity paid to the Reeve and Councillors which is intended to cover attendance at regular meetings of council. During the period of our review, in most instances, Council held two regular meetings each month and held special meetings as considered necessary. The first regular meeting was held during the day and the second regular meeting of each month was held in the evening. Although the meeting minutes and the RM's procedure by-law refer to the evening meeting held each month as a regular meeting of Council, many Councillors had claimed an amount for these evening meetings as if they were special meetings.
- For the period under review we determined that the indemnity amounts, meeting amounts and expenses paid to the Reeve and Councillors were in accordance with the amounts set out in the RM's indemnity by-laws, except that some claims made by Councillors for special meetings of Council were, in fact, for regular meetings of Council and therefore not valid according to the indemnity by-laws.
- The former and current Reeve did not claim any amounts for these evening meetings. Some Councillors told us that the practice of claiming the evening meeting as a special meeting began a number of years ago when Council only met once each month. Over time Council decided that a second meeting was needed each month and it was determined that this second meeting be held in the evening. Councillors told us, that at the time, the second meeting held each month was a special meeting and they began claiming an amount for attendance.
- Section 81(3) of the *Income Tax Act* provides for a portion of an elected municipal officer's expense allowance to be excluded from computing taxable income. The *Income Tax Act* allows the lesser of 1/3 of total compensation or the amount actually paid as a general expense allowance, to be non-taxable but only if a municipal by-law includes specific terms identifying amounts to be paid as tax free allowances from the amounts paid as salary and other compensation. *The Municipal Act Procedures Manual* includes an example for municipalities to use as a guide when drafting an indemnity by-law that separates the taxable and non-taxable portion of the compensation paid to Councillors. The RM's indemnity by-law did not include this provision.

Conclusions

- While payments to the Reeve and Councillors for remuneration and expenses were supported by a standard claim form and supporting

documentation, the RM did not operate in compliance with its indemnity by-laws when it paid Councillors the special meeting amount to attend regular meetings.

- The RM's by-laws were incomplete because they did not address the portion of their compensation that was non-taxable. The T4 information slips were therefore incorrect.

We recommend that the RM revise their indemnity by-law to appropriately reflect their intended policies on what constitutes a special meeting and what portion of their compensation should be non-taxable.

8.0 Capital Projects

During the timeframe of our audit, the RM planned to undertake three major capital projects, the expansion of the existing sewage lagoon and the municipal park and the construction of a new municipal office complex. The sewage lagoon expansion project and the construction of the new municipal office complex were completed in 2006. The project involving the expansion of the municipal park was put on hold by Council resolution in June 2005.

8.1 Approval Process

When a municipality is planning a capital project there are a number of requirements under *The Municipal Act* (Act) that must be met. A council must adopt a financial plan consisting of an operating budget, a capital budget, an estimate of operating revenue and expenditures for the following fiscal year and a five-year capital expenditure program. Before adopting the financial plan the council must give public notice and hold a public hearing in respect of the plan. Council may revise its financial plan after the public hearing, but public notice must be given and another public hearing must be conducted.

If a municipality is required to finance a capital project council must pass a borrowing by-law. A municipality must obtain approval for the borrowing from the Municipal Board before council approves the borrowing by-law on third and final reading.

Objective: To determine whether the RM's approval process for their major capital projects was open, transparent, and in compliance with *The Municipal Act*.

Observations

- We reviewed Council meeting minutes and agendas from January 2000 through June 2006 and conducted interviews relating to the processes utilized by the Council to make decisions about the three major capital projects. The processes related to each project are discussed separately below. However, the following are general observations we made as to the Council involving the private and public stakeholders in their processes.
- In November 2000, Council held a "brainstorming session", that provided the opportunity for delegations from the community to present their views on the future growth and development of the RM. As a result of this session, on December 13, 2000, Council held discussions on the possible expansion of both the municipal park and the municipal office.
- Between January and March 2004, Council met with private, public, and volunteer organizations to discuss those organizations' immediate and long range plans. The RM held further brainstorming sessions that focused on a vision and strategies for the future development and expansion of the RM. The Council then considered all the information that had been provided to them.
- From our review of the RM minutes and agendas we determined that there were numerous instances where Council either discussed or reported on these projects, updates were given, or resolutions were made. The expansion of the municipal park had been included in the RM's Five Year Capital Expenditure Program within their Financial Plans each year since 2001 and the expansion of the sewage lagoon had been included since 2002. Public hearings for all financial plans from 2002 through 2006 were held.
- The Public Hearing for the RM's 2004 Financial Plan was held on April 15, 2004 and had been advertised in the Steinbach Carillon on April 1 and April 8, 2004. The Five Year Capital Expenditure Program within the 2004 Financial Plan listed the sewage lagoon expansion, the construction of a new municipal office building, and the expansion of the municipal park and the associated costs for each project.
- On January 13, 2005 the Municipal Board approved the RM's Borrowing By-Law 3-2004, subject to some minor amendments. The Council made the required amendments and approved By-Law 3-2004 at their meeting of January 26, 2005. The By-Law authorized the RM to provide for the expenditure and borrowing of \$2,000,000 for construction of three capital projects. These projects and their associated costs were:
 - Expansion of Wastewater Sewage Lagoon (\$500,000);

- Construction of a new Municipal Office complex (\$1,000,000); and,
 - Expansion of the Municipal Park (\$500,000).
- On May 11, 2005 Council approved the 2005 Financial Plan. However, there was no reference to the three capital projects which had previously been included in the RM's 2004 Financial Plan.
- On May 26, 2005 the Department, having received a copy of the RM's 2005 Financial Plan and the borrowing by-law for the capital projects, contacted the RM to advise them that borrowing for the capital projects was not included in the Plan and in order to address the matter, Council must hold a public hearing in accordance with the Act to authorize an expenditure not provided for in the Operating or Capital Budget. The CAO advised the Department that not including the capital projects and related borrowing in the 2005 Financial Plan had been an oversight.
- A public hearing was held on June 29, 2005 to discuss the revision of the 2005 Financial Plan to include the three capital projects. At this meeting Council resolved to immediately stop any future expenditure on the municipal park and to put the project on hold. The Reeve made a motion to stop construction of the new municipal office building. However, the motion was not seconded and therefore was not approved.
- On July 6, 2005, after having been advised that the cost of construction of the new municipal office building had increased by \$348,000 to \$1,348,000, the Council passed a motion to amend the 2005 Financial Plan to include the capital projects and to reflect the increase in the cost of the new municipal office building. It was stated that the increased cost would be paid from general reserves.
- The Coalition issued a complaint to the Ombudsman that the RM did not include the three projects in the capital budget of its 2005 Financial Plan and that the RM did not have the authority to amend the 2005 Financial Plan to include the three projects as well as the further expenditure of \$348,000.
- The Ombudsman conducted a review of these concerns and others raised by the Coalition. In a report dated May 10, 2006, the Ombudsman stated *"It is unfortunate that the three projects were not included in the initial capital budget under the 2005 financial plan. However, it appears that the RM followed the appropriate process for revising its financial plan to include these projects in its capital budget and as such, the Ombudsman is without grounds to make a recommendation on the Coalition's behalf"*.
- On January 25, 2006 the Council amended the capital expenditures for 2005 and increased the budget amount for the construction of the new

municipal office building to \$1,500,000. The motion stipulated that \$1,285,000 was to be borrowed, with the remaining \$215,000 coming from the RM's reserve account.

- Due to increased costs for expansion of the sewage lagoon and the construction of the municipal office, By-Law 1-2006 was approved October 11, 2006 to amend By-Law 3-2004 by altering the distribution of costs between the three projects as follows:
 - Expansion of Wastewater Sewage Lagoon (\$670,000);
 - Construction of a new Municipal Office complex (\$1,285,000); and
 - Expansion of the Municipal Park (\$45,000). The RM had committed this amount plus taxes to an architectural firm for the design and development of the park prior to the termination of the project in June 2005.

8.1.1 Lagoon Expansion

In March 1999, the La Broquerie Community Development Corporation issued a document entitled *La Broquerie: CDC Vision Development Proposal* (Proposal) which was intended to provide a developmental framework and direction for the future of the RM. The Proposal was prepared by consultants with expertise in community planning. The Proposal noted that the existing sewage lagoon would soon reach its maximum capacity and would require expansion. The Proposal contained a map that showed a potential future location of the sewage lagoon expansion site. This location was south of the existing sewage lagoon.

Observations

- On May 15, 2002, Council passed a resolution that a consultant be hired to do a feasibility study for the future expansion of the sewage lagoon.
- On March 11, 2003, the Consultant provided a report to the CAO outlining three location options, to the north, south and east of the present lagoon location. However, the report noted that if the sewage lagoon was to be expanded to meet RM requirements for the next 20 years, the expansion could only proceed to the south of the existing lagoon as only that option provided the needed acreage and the required distance from residences.
- In September 2003 Council engaged the Consultant to conduct geotechnical investigations, topographical surveys, construction budgets and environmental assessments for the sewage lagoon.
- In a December 2003 report, the Consultant outlined the results of the site investigation, the potential options for the expansion and budget cost estimates for each option.

- At the December 8, 2004 meeting, Council instructed their Consultants that the lagoon expansion was to be sized as outlined in Option 2 of the Consultant's December 2003 Report.
- The Consultants tendered the lagoon project and the lowest bidder was awarded a contract of \$1,153,303 by Council resolution on October 12, 2005. The RM received a Canada-Manitoba Infrastructure grant of \$419,676 to offset a portion of the construction costs of the lagoon.

8.1.2 New Municipal Office

In 1994, the RM, with the aid of federal infrastructure grants, constructed a 5,800 square foot municipal office building on Rue Principale in the town of La Broquerie. The grants were conditional upon the RM providing rental space to other organizations within the building. In 1997, subsequent to the creation of the South Eastman Health Regional Health Authority (South Eastman Health), South Eastman Health became a tenant in the RM's municipal office building.

Observations

- In December 2000, South Eastman Health entered into discussions with the RM to acquire more rental space in the municipal office building. In order to accommodate South Eastman Health, in May 2001 the RM entered into an agreement with an architect to expand the municipal office building to approximately 10,000 square feet.
- In August 2001, the RM passed a borrowing by-law for the expansion of the municipal office. The RM issued a debenture in the amount of \$550,000 and awarded the contract for construction of the expansion.
- By 2004, the space requirements of South Eastman Health had increased significantly. However, the municipal office building could not be further expanded to meet South Eastman Health's requirements. As a result, on July 8, 2004 Council resolved to have the CAO consult architects for design and fees for service to construct a new municipal office building to be located on Rue Simard.
- In June 2004, the RM and South Eastman Health signed a letter of intent regarding the leasing of additional office space by South Eastman Health in the existing municipal office building. The letter noted that South Eastman Health understood that the additional space would not be available until after the RM had built a new municipal office building.
- On August 16, 2004 Council approved the hiring of an architectural firm for the construction of a new municipal office building.
- At the October 27, 2004 Council meeting, the architects submitted preliminary plans for the new municipal office building. Council

authorized the architects to proceed with the detailed plans, tenders, and construction of the new building.

- At the May 3, 2005 meeting Council awarded a contract for the construction of the new municipal office to the contractor who submitted the lowest tender.

8.1.3 Municipal Park Expansion

In late 2000 and early 2001, Council held brainstorming sessions during which discussions were held that included the potential expansion of the municipal park. From our review of Council minutes from 2000 through 2005, we noted numerous instances where Council discussed this project.

Observations

- At a special meeting of Council on January 28, 2004, a number of private, public and volunteer organizations discussed the immediate and long range plans for the RM. During the presentations the expansion of the municipal park was discussed. The Minutes reflect Council's intention to brainstorm the ideas presented at the meeting with the CDC and LUD.
- A review of RM, LUD and CDC minutes, show that these entities had agreed to proceed with the expansion of the municipal park and to enter into discussions with an architect to obtain preliminary plans and estimates for this project.
- On October 27, 2004, architects appeared before Council and submitted preliminary plans for the expansion of the municipal park. As a result, Council requested the architects to provide estimates and breakdown of costs for first phase design development and analysis of the proposed expansion.
- On November 10, 2004, the architects submitted their breakdown of costs as requested and Council passed a resolution that the architects be retained to undertake a design development plan for a proposed multi-recreational municipal park.
- On June 29, 2005, as a result of public opposition, Council passed a resolution to stop all future expenditures for the expansion of the municipal park, thereby putting the project on hold.
- From our review of RM records we noted that subsequent to this resolution there were no further expenditures on the municipal park project.

8.1.4 Capital Project Costs

Figure 9 below is a summary of the costs associated with the three capital projects and renovations to the old municipal office.

Figure 9

Rural Municipality of La Broquerie Analysis of Capital Project Costs					
	New Office	Lagoon Expansion	Park Expansion	Totals	Old Office Renovations
Land purchases	\$ 31,000	\$ 77,660	\$ -	\$ 108,660	\$ -
2005 Project costs per the general ledger	821,885	389,665	44,671	1,256,221	-
2006 Project costs per the general ledger	702,634	520,802	-	1,223,436	77,367
Project costs incorrectly allocated in 2006	88,349	314,519	-	402,868	83,457
Total Project Costs	\$1,643,868	\$1,302,646	\$ 44,671	\$2,991,185	\$ 160,824
Amount borrowed per By-Law 1-2006	1,285,000	670,000	45,000	2,000,000	
Grants from the Province/ Canada	-	419,676	-	419,676	
Cost in Excess of Borrowing and Grants	\$ 358,868	\$ 212,970	\$ (329)	\$ 571,509	
			Project did not proceed		

Note 1: Project costs do not include some pre-construction costs incurred by the RM in the years 2003 and 2004.

Note 2: Project costs were accumulated through a review of various records at the RM and may not be complete as the RM did not properly allocate all project costs to the capital project accounts in the RM's general ledger.

Source: RM records.

Observations

- Project costs, summarized in Figure 9 above, were accumulated through a review of various records at the RM and may not be complete as the RM did not properly allocate all project costs to the capital project accounts in the RM's general ledger.
- Even though the RM did not proceed with one of the three capital projects anticipated under Borrowing By-Law 1-2006, the actual project costs incurred exceeded the amount borrowed and the grants received by over \$500,000.
- From our review of the RM's general ledger we noted that a number of the capital project costs had been allocated to general ledger accounts totally unrelated to the capital projects.

- The CAO explained that the project costs had exceeded the authorized borrowing and therefore some of the capital costs incurred in 2006 were allocated to other general ledger accounts.
- This is not an appropriate accounting practice. It is important that all capital project costs are allocated to the appropriate accounts within the general ledger to ensure that an accurate accounting for each project is maintained. This would provide Council and citizens of the RM with complete information of the actual costs for each project.
- We noted that Council authorized payment of progress billings from the contractors for each project. However, when we requested that the RM provide us with reports of total costs for each project, they were unable to provide us with interim or final reports.
- In order to accommodate South Eastman Health space requirements in the old municipal office, the RM had agreed to pay for the necessary renovations. The extent of these costs amounted to \$160,824 as noted below in **Figure 10**.
- These renovation costs were not properly disclosed on the RM's 2006 Financial Plan. The anticipated renovation expense of \$145,000 was incorrectly recorded as an operating expense rather than a capital expense in the capital budget section of the Financial Plan. As a result, readers of the Financial Plan were not provided with accurate information regarding the planned capital expenditures of the RM.
- At the Council meeting of August 10, 2005, Council approved the mailing of a newsletter addressed to the taxpayers and residents of the RM to be signed by the Reeve and CAO. The newsletter advised that the revenue from the long term lease agreements would service the payments on the outstanding loans for both the old and new municipal office buildings.
- The lease income of the old office in **Figure 10** below is based on the June 7, 2006 15 year agreement between the RM and South Eastman Health for the lease of 8,600 square feet in the old municipal office building.
- **Figure 10** below is a summary of the anticipated lease income and the debenture costs of the old and new municipal offices. The costs to renovate the old office and the excess of new office capital costs over the authorized borrowing are also shown to provide a complete overview of the significant financial implications of the transaction. The new office capital cost was calculated through a review of various records at the RM and may not be complete as the RM did not properly allocate all project costs to the capital project accounts in the RM's general ledger as previously stated in **Figure 9** above.

Figure 10

Rural Municipality of La Broquerie Estimated Lease Income and Debenture and Other Project Costs							
	2007	2008	2009	2010	2011	2012	2013-2021
Lease Income							
Lease Income of New Office (Lease expires in 2015)	\$ 13,000	\$ 13,000	\$ 13,000	\$ 13,000	\$ 13,000	\$ 13,000	\$ 37,917
Lease Income of Old Office (Lease expires in 2021)	111,800	118,250	121,206	124,236	127,342	130,526	1,331,805
Total Lease Income	124,800	131,250	134,206	137,236	140,342	143,526	1,369,722
Debenture Payments							
By-Law 11-2001 P&I payment (Final payment due in 2016)	59,911	59,911	59,911	59,911	59,911	59,911	239,644
By-Law 7-2006 P&I payment (Prorated at 64%, 2007-2026, 20 yrs.)	109,391	109,391	109,391	109,391	109,391	109,391	984,519
Total Debenture payments	169,302	169,302	169,302	169,302	169,302	169,302	1,224,163
Other Costs							
Old Office renovations in 2006 to prepare for Lessee occupation	160,824	-	-	-	-	-	-
Excess of New Office Capital Costs over borrowing	358,868	-	-	-	-	-	-
Total Debenture Payments and Other Costs	688,994	169,302	169,302	169,302	169,302	169,302	1,224,163
Total Payments and Costs in Excess of Income	\$(564,194)	\$(38,052)	\$(35,096)	\$(32,066)	\$(28,960)	\$(25,776)	\$ 145,559
Accumulated Payments and Costs in Excess of Income	\$(564,194)	\$(602,246)	\$(637,342)	\$(669,408)	\$(698,368)	\$(724,144)	\$(578,585)
The above estimates do not include the following:							
- all maintenance and utility costs of the leased office space are the responsibility of the RM;							
- interest costs; and							
- parking revenues to the RM from the lessee (approximately \$3,000 annually).							

Source: RM records

Calculations do not take into account the time value of money.

Conclusions

- The RM's approval process for the capital projects related to the expansion of the sewage lagoon, the construction of the new municipal office building, and the expansion of the municipal park was open, transparent and in compliance with *The Municipal Act*.

- The RM's administration did not maintain complete and accurate records for its capital projects. As a result, the actual cost for each capital project was not readily available and transparent to Council and the citizens of the RM.
- Transactions were not initially recorded to the appropriate general ledger account and resulted in additional external audit time and costs to the RM to correct the errors.
- The RM's administration did not prepare complete capital project reports for Council information and review. As a result, Council was not provided with the information needed in order for them to fulfill their capital project monitoring responsibilities.
- Had a complete analysis been prepared for the new and old office leases, Council would have seen that the lease income was insufficient to cover debenture payments each year. Additionally, there were no other funds available to cover other renovation costs, as well as the excess of new office capital costs over borrowing.

We recommend that the RM ensure that its records are maintained in an appropriate manner.

We recommend that the RM prepare capital project reports that include all project costs and budgets on an ongoing basis and present the information to Council throughout the term of the project.

9.0 Conflict of Interest

CAOs and other employees of municipalities are not subject to the sections of *The Municipal Act (Act)* and *The Municipal Council Conflict of Interest Act* relating to conflicts of interest.

The RM had no conflict of interest policy in place for their employees. A policy would require that the CAO and all other employees, who have a private or personal interest sufficient to influence or appear to influence the objective exercise of their official duties, disclose the interest, and refrain from participating in any decisions or activities affecting that interest.

9.1 Purchase of Land By RM for Lagoon Expansion

Objective: To determine whether the CAO was in a conflict of interest position when he and his brothers jointly purchased a parcel of land and subsequently sold a portion of the land to the RM for the purpose of expanding the sewage lagoon.

Observations

- In 1998, a citizen offered to sell to the RM approximately 26 acres of land located directly south and also to the west of the existing sewage lagoon. The citizen told us that he offered the land to the RM as he was aware of the need for expansion of the sewage lagoon. He advised us that he met with the Reeve, CAO and a Councillor of the RM to discuss the sale and his reasons for offering the land. He stated that he did not want the RM to have problems with available land for sewage lagoon expansion as had happened in a neighbouring municipality.
- Subsequently, on February 10, 1999, Council passed a resolution that the RM purchase the land from the citizen for \$40,000.
- In interviews, the CAO acknowledged that at the time of this purchase he was aware that expansion of the sewage lagoon would eventually be required.
- Although the *La Broquerie: CDC Vision Development Proposal* of March 1999 had indicated that the future location for expansion of the sewage lagoon could be to the south of the existing lagoon, we found no evidence that the RM was searching for additional land to accommodate the expansion.
- The same citizen sold approximately 50 acres of land to the CAO and his brothers for \$50,000. This transaction was finalized in June 2000. This land was adjacent to the parcel previously purchased from the citizen by the RM and was located directly south and to the east of the existing sewage lagoon.
- At the Council meeting of May 28, 2003, a discussion took place regarding the sewage lagoon and an industrial park. It was decided that a committee be formed to negotiate the purchase of land for these projects. The land being sought for the sewage lagoon was part of the 50 acre parcel owned by the CAO and his brothers and consisted of approximately 14 acres adjacent to and directly east of the 26 acre parcel purchased by the RM in 1999. The committee was to be comprised of the Reeve, two Councillors and the CAO. We were told in interviews with members of the committee that the CAO did not participate in the negotiations that took place for the purchase of land for the expansion of the lagoon.

- At its June 11, 2003 meeting, Council noted that the preliminary assessment of the sewage lagoon had been completed and that the assessment determined that the sewage lagoon had to be expanded and recommended the direction of the expansion be to the south of the existing lagoon. Council also noted that the committee had negotiated and recommended *"the purchase of land with adjacent land owners"*. Council accepted the committee's recommendation and passed a resolution stating that the RM's solicitors be instructed to prepare the proper offer to purchase. No mention was made in the minutes of the amount paid or that the "adjacent land owners" were the CAO and his brothers.
- At the same meeting, Council approved the subdivision of the approximately 50 acre parcel of land, south and east of the existing lagoon that had been purchased by the CAO and his brothers. The minutes documenting this subdivision did specify the names of the landowners.
- On August 12, 2003, the RM signed a development agreement with the CAO and his brothers for the subdivision of the 50 acre parcel of land into 11 lots. One of these lots, approximately 14 acres, was the parcel for the lagoon expansion sold to the RM by the CAO and his brothers. Nine of the remaining ten lots became a residential subdivision known as the Quintro Subdivision while one lot remained undeveloped.
- The RM issued a cheque dated December 31, 2003, in the amount of \$77,660, to the CAO and his brothers for the purchase of the 14 acre lot for the lagoon expansion.
- We asked Councillors and the CAO if they were aware that under the authority of the Act that the RM could have expropriated the necessary land for the lagoon expansion and if this option had been considered. In interviews, most Councillors stated that they had not thought about or discussed the expropriation option. One Councillor and the CAO told us that although they had considered the option, it was rejected as being too expensive and too long a process.

Conclusions

- The Council did not act in a timely manner to purchase the additional land for the future expansion of the sewage lagoon that would eventually be required based on the report, *La Broquerie: CDC Vision Development Proposal*.
- The CAO had a fiduciary responsibility to act in the best interests of the RM. By being part of the group that purchased land adjacent to the existing lagoon, and given that expansion of the lagoon could include a

portion of this purchased land, the CAO immediately placed himself in a perceived conflict of interest position.

- Had the RM developed and implemented a conflict of interest policy for its employees, they and the CAO would have had appropriate guidance as to the implications of the CAO's land purchase. Full disclosure and knowledge of the transactions would have provided Council with necessary information to make appropriate decisions. Public transparency might have avoided speculation that resulted in the allegations that were made.
- Council's options were limited at the time that they purchased the 14 acre parcel of land to expand the sewage lagoon. The CAO was not in a position to provide them with independent advice as to their options, such as expropriation. The market value of the land was determined by negotiation because there were no other viable land options.

9.2 Construction of Road on CAO Property

Objective: To determine whether the CAO was in a conflict of interest position when the RM constructed and paid for a road into a landlocked property owned by the CAO and his brothers.

Observations

- In April 2003, the CAO and his brothers applied to the Province of Manitoba for approval to subdivide property, a portion of which later became known as the Quintro Subdivision. This application was accepted pending approval by the RM.
- On June 11, 2003, Council approved the proposed subdivision subject to standard conditions. The CAO attended the Council meeting and there is no record in the minutes of the CAO having removed himself from the meeting when the resolution dealing with the approval of the subdivision was considered by Council.
- On August 12, 2003, the CAO and his brothers entered into a development agreement for the proposed subdivision with the RM. The agreement specified that an access municipal road on the east side of the subdivision and a proposed street within the Quintro Subdivision were to be constructed by the RM.
- The Quintro Subdivision development agreement was signed by the Reeve and the Assistant CAO on behalf of the RM and by the CAO on behalf of himself and his brothers.
- The standard RM Development Agreement format for proposed subdivisions outside of the LUD stipulated that the developer was responsible for the

construction of roads within the subdivision. Municipal roads were the responsibility of the RM.

- The CAO told us that the development agreement for the Quintro Subdivision was written to include the RM providing a public roadway into the subdivision in exchange for the CAO and his brothers providing a public reserve to the RM which was to run along the south side of the development.
- The CAO also told us that the RM built the base of the road into the subdivision (Quintro Road) and that he and his brothers had paid for A-Base gravel that was used to complete the roadbed. The CAO provided us with an invoice and a copy of the cheque for the purchase and payment of the A-Base gravel. The invoice stated that the gravel was used for Quintro Road.
- We reviewed land title documentation and confirmed that the RM did receive the public reserve as shown in the development agreement.

Conclusions

- The CAO and his brothers followed all procedures necessary to obtain and register a plan of subdivision within the RM and fully complied with all the conditions of the development agreement with the RM.
- The CAO was in a perceived conflict of interest position and should have removed himself from the Council meeting at which the application for the subdivision was approved and should not have been a signatory to the development agreement.
- Full disclosure and knowledge of the transactions would have provided the public with the necessary information about the terms of the agreement.

We recommend that the RM develop and implement a formal conflict of interest policy for their senior administration and other employees.

We recommend that the Department ensure that all municipalities develop and implement conflict of interest policies for their senior administration and other employees.

10.0 Culverts and Roadways

During the period covered by our audit the RM was experiencing population growth which was reflected in an increased need for housing development, roadways and infrastructure services. It was rumoured in the community that culverts were being provided and roadways were being constructed at no cost to certain individuals and/or developers.

Objective: To determine whether the RM had expended municipal funds to provide culverts and roadways at no cost to individual property owners and/or developers.

Observations

- For each of the years we reviewed, with the exception of 2003, the RM experienced significant flooding which caused damage to RM infrastructure including roadways, ditches and culverts. As a result of this flooding, many 12 inch to 24 inch culverts on both private and RM property were replaced by 36 inch to 48 inch culverts at the RM's expense to mitigate the risk of future flooding.
- In interviews with Councillors, former Reeves, the CAO and other RM staff we were informed that the RM had no formal policy or procedure relating to the provision of culverts and their installation for private individuals and/or developers.
- We were also told by Councillors, that within their wards and at their discretion, they would provide either the culvert or the gravel fill to cover them at no cost to individual property owners or developers of subdivisions. The rationale provided for this practice was to encourage growth for the betterment of the community.
- We were told that any work provided to individuals or developers was to be recorded and accounted for in the Operators Daily Report (ODR) for billing purposes. We were also told that several years ago, at the request of a former Reeve, some work was not recorded. However, this work was not on the former Reeve's property nor for his personal benefit.
- In interviews we were advised that as the RM had no equipment for the digging of ditches, the installation of a culvert at a subdivision lot or other private property was simply the delivery of a culvert to the site and then placing it in an existing ditch.
- We were also advised that the RM did not maintain inventory records for culverts. We reviewed culvert purchases and billings and we were able to determine that there were some instances where private individuals had been billed by the RM for the culverts.

- Based on interviews and a review of documentation, we determined that the only documentation to support billings to private individuals for work done on their property by the RM is the ODR. Unless the Grader Operator indicated on the ODR that work had been done for a private individual there was no other documentation available such as a work order or work requisition that would have indicated that work for a private individual was approved and completed.

Conclusion

- The RM expended municipal funds to provide culverts and roadways at no cost to some property owners and/or developers. There were no formal policies and procedures relating to these services, and as a result, the perception of conflict of interest existed and citizens could be treated inequitably.

We recommend that the RM develop a policy with regards to the supplying of culverts and use of RM equipment for the benefit of individual property owners and/or developers.

We recommend that any work done by the RM be documented on a work order/requisition form which should be approved by a designated RM employee.

We recommend that the Grader Operators continue to record the hours charged to private parties on the Operators Daily Report forms which are to be supported by a work order/requisition. A copy of the work order/requisition should be provided to the Grader Operator and a copy should be maintained in a central file for control purposes.

We recommend that inventory records be maintained for culverts and other RM assets.

11.0 Department Monitoring Process

Beginning in March 2005 the Reeve of the RM and the Coalition brought to the attention of the Department concerns relating to the administration and operations of the RM. These concerns included noncompliance with some provisions of municipal legislation, inadequate policies and procedures, unsupported and inappropriate payments from municipal funds and potential conflict of interest situations. They were not satisfied with the Department's response to the concerns they raised.

Objective: To determine whether the Department has adequate processes in place to review and assess citizen complaints concerning the operations of municipalities.

Observations

- Over an eighteen month period beginning in March 2005, Department officials held meetings with, wrote letters to, and made telephone calls to the various parties involved in an effort to obtain Council's and the CAO's commitment to resolve the issues raised by the Reeve and the Coalition.
- In interviews with Department officials we were informed that the Department responds to citizen complaints on an ad hoc, complaint-by-complaint basis and that no formal, comprehensive process is in place to monitor citizen complaints. Citizen complaints are handled primarily by three Municipal Service Officers (MSOs) servicing the 197 municipalities (excluding the City of Winnipeg). Files are maintained on municipalities which contain notes, correspondence, media clippings and other municipal information. In addition, an annual summary report of all calls to MSOs, including citizens' complaints by key issue, is compiled.
- We were told by the Department that when complaints are received or problems identified that they work with the municipality to resolve them. The Department's view of the municipal legislation forms the foundation of how they operate to address such matters. The Department considers that municipalities, as a responsible level of government, will govern effectively and in the best interests of their electorate, and comply with their legislative obligations. Legislation also includes specific oversight provisions and remedies, notably investigation by the Ombudsman of complaints, action by the Minister if the Council fails to take satisfactory action upon receipt of an auditor's report indicating immediate action is required, and recourse to the Courts.
- Although the Department is responsible for the administration of *The Municipal Act (Act)*, the Department does not have a formal process in

place for monitoring municipalities' compliance with all requirements of the Act.

- As noted earlier in this report, the RM operated without an organizational by-law and a procedures by-law for eight years in contravention of the Act. The external auditors of the RM told us that they do not audit for compliance with all provisions of the Act, and hence this non-compliance matter was not included in the RM's external auditor's supplementary reports. The Department only became aware of this situation as a result of this complaint.
- The Department relies on the external auditors' supplementary reports to identify irregularities in municipalities. When the Department received supplementary audit reports with no negative comments, they concluded that the RM was operating appropriately.
- The auditor's opinion on the supplementary audit reports from 2003 to 2005 stated that they had *"reviewed the accounting procedures and systems of control employed by the Municipality and report that such procedures and systems are adequate to preserve and protect the assets of the Municipality"*.

Conclusions

- When the Department receives a citizen complaint they provide advice as to what options are available to the citizen to resolve their concerns, including those available in legislation such as contacting the Ombudsman. The Department may also work with the municipality to address the complaint. While this approach may resolve many matters, in situations where serious concerns remain unresolved it is not sufficient, and additional involvement by the Department is necessary.
- The Department has no formal, comprehensive process in place to monitor compliance with all provisions of *The Municipal Act*. Although the Department does have a formal monitoring process in place for those provisions of *The Municipal Act* dealing with financial matters for which they have a stated role, there are other mandatory provisions of the Act that are not monitored and the Department relies solely on the supplementary audit reports provided by external auditors.
- The Department relied on the Supplementary Audit Reports to provide them with assurance that the RM was operating appropriately. The external auditors indicated to us that they did not undertake additional audit procedures to prepare the Supplementary Audit Reports, but rather they designed their audit engagements to express an opinion on the financial statements and only reported other matters which came to their

attention. This approach would not be sufficient to support the level of reliance that the Department placed on the Supplementary Audit Reports.

- The RM had the authority to appoint the external auditors directly. The external auditors provided an engagement letter to the RM that clearly described the work that they would perform to express an opinion on the financial statements and the letter did not refer to the Supplementary Audit Report. Because the Department was not a part of this process, they did not have an opportunity to identify the gap between what they were expecting and what the auditors would provide. The requirements of the Supplementary Audit Report as described in *The Municipal Act* would, in our opinion, require significant audit work with a related increase in fees over and above the financial statement audit.
- In our opinion, certain of our audit findings such as weaknesses in the internal control environment would have warranted disclosure in the external auditor's Supplementary Audit Report.

We recommend that the Department implement appropriate processes to monitor serious citizen complaints and to follow up compliance with *The Municipal Act* by municipalities.

We recommend that the Department, in consultation with municipalities and external auditors, review the supplementary audit report requirements to ensure that appropriate information and assurances about the administration and operations of municipalities are provided.

12.0 Response from Officials

Response from Department of Intergovernmental Affairs

The Department supports and accepts the Auditor General's recommendations. The Department will take action aimed at ensuring municipalities follow good governance practices, including compliance with legislation; financial accountability, and transparency. All citizens have a right to expect from their governments a decision-making process that is fair, transparent, accessible and mandated by law.

The Department's mission is to support the building of healthy, safe, sustainable and productive neighbourhoods and communities. Strong, democratically elected local governments are the foundation. The Department works in partnership with local governments and others to achieve this goal.

The Municipal Act, which was renewed in 1997 with broad public input, provides a legislative framework to enable municipalities to govern and operate efficiently and effectively in today's environment. The new Act adopted an approach that treats municipalities as mature and responsible governments. This changed the role of the province from one that emphasized provincial oversight of municipalities to one that now emphasizes supporting municipalities in conducting their own affairs. Municipalities were given greater autonomy and flexibility to manage their own affairs and to make decisions they think will best meet the needs of their communities. The new Act balanced this increased independence for municipalities by imposing obligations of increased public accountability. As well, the provincial ombudsman's jurisdiction was extended to municipalities to provide a means for citizens to resolve disputes with municipalities. Like Manitoba, most other provinces have renewed their municipal legislation in a similar manner.

This new legislative approach to municipal governance guides the Department's relationship with municipalities and how it does its business, including the handling of citizen complaints. The intent of the new Act is that local councils are responsible to the local electorate for the decisions they make. The Act expects that as responsible and mature governments, municipalities will comply with their legislative obligations. The Department considers failure to comply with The Municipal Act to be a serious matter.

The Department notes that in its experience most councils take very seriously the public trust bestowed on them and strive to carry out their responsibilities and exercise their authority in compliance with the legislation and good governance practices. Issues of the nature and extent described in this report are the exception. Where issues have been identified, the Department has generally been

successful in working with the municipality to resolve them. However, as this report details, the RM of La Broquerie operations have failed to meet expected public standards.

The Department, along with the RM of La Broquerie and other municipalities can learn from this report. Regardless of the exceptional nature of this situation, it is necessary to take action to ensure public trust and confidence in our local governments is not eroded. The Department is supporting and accepting the Auditor's recommendations as detailed below and is committed to taking action as outlined in the Department's Response.

Auditor General's Recommendations:

- That the Department implement appropriate processes to monitor serious citizen complaints and to follow up compliance with *The Municipal Act* by municipalities.
- That the Department implement procedures to better review and analyze the financial information provided to them by municipalities, to clearly identify reasons for the deficits and the appropriate corrective action to be taken by the municipality.
- That the Department, in consultation with municipalities and external auditors review the supplementary audit report requirements to ensure that appropriate information and assurances about the administration and operations of municipalities are provided.
- That the Department implement appropriate changes to *The Municipal Council Conflict of Interest Act* to provide a process for the independent review of the Statements of Assets and Interests that Council members are required to file under the Act. A process should also be established to provide assurance that the requirement for disclosure and withdrawal during meetings by Council members of a conflict of interest is being appropriately met.
- That the Department ensure that all municipalities develop and implement conflict of interest policies for their senior administration and other employees.

Department Response to Auditor General's Recommendations

The Department will be implementing the Auditor General's recommendations in a manner that is practical and cost-effective, and has already begun to examine both legislative and non-legislative measures. Consultation with municipalities will occur. When in place the measures will enable the Department to more effectively fulfill its role in supporting the good governance of municipalities.

In addition, the Department will enhance its efforts in providing education and training, and resource materials to municipal officials, with an emphasis

on municipalities' legislative obligations, including conflict of interest, public accountabilities and transparency in decision-making.

Response of the Former Senior Administrative Staff of the RM of La Broquerie

(Auditor General's Note: The following response has been included as submitted. The former senior administrative staff requested that no editing take place.)

General:

1. Objectives, Scope and Approach concerns:

- 1.1. This report will be beneficial for all Manitoba Municipalities as the recommendations for improvement are instructive and applicable to many if not all Municipalities.
- 1.2. The report fails to note that some members of the "Coalition" were members of Council during the years audited, were political opponents of the Administrative staff and other Council members.
- 1.3. With regard to item 6.1.5 Council instructed Administrative staff to use appropriate legal services because at the time of completing the procedures by-law Council was inundated (shocked) with challenges from members of the coalition who were pursuing their own political ambitions.
- 1.4. The report does mention that yearly external auditors' reports were done on the Municipality and that the yearly audits did not mention any of the concerns raised by this audit.
- 1.5. The report does not address the individual nature of a Municipality and the uniqueness that each elected official brings to Council or the broad diversity of Council members who are elected. These factors will have an impact on whether written policies would be a priority. The report does not address the challenges that Municipal Administrative staff and Elected Officials are faced with while working through various local issues. Elected officials and administrative staff must balance the competing interests of procedure/policy creation, local growth (development) and maintaining ever increasing costs and stabilizing taxes.
- 1.6. The report does demonstrate that the R.M. of LaBroquerie was one of the fastest growing Municipalities in Manitoba. What has not been address was why the Municipality was growing at such a rapid rate. (2+ times the provincial average) It may fairly be stated that the hard work of the Council and Senior Administrative staff helped achieved this incredible success. A reader of this report understanding the broader context of this

Municipality may well come to a more balanced conclusion had this point been made clear.

2. Item 4.0 Internal Control Environment

- 2.1. The concern focuses on a failure to have adequate controls in place to guide employees and Council in the acquisition of goods and services. It is true that such policies were not in place. The conclusion however that it was an inadequacy may well be challenged.
- 2.2. Until the early 2000, the Municipality had an extremely small staff. Policies were in place, while not written; they were well understood by all employees and Councillors alike. All receipts, invoices and purchase orders were seen by the C.A.O. and Council as part of an open system. The audit committee can be critical of this procedure (bullet point 4, Conclusions section 4.0) as inefficient, it was clearly documented and confirmed that this procedure was in place leading to constant review. The procedure was successful for this Municipality. All invoices, purchase orders and cheques were approved by Council at meetings. This put the accountability in the hands of the people it was intended to be in the "Elected Officials".
- 2.3. With regard to a lack of written policy, every Manitoba Municipality has or will have challenges with regard to how a "proper Municipal office" should or could be run. The basic question for elected officials will be "can we determine where our money was spent and did the ratepayers benefit." In many cases, the adoption of formal policies does not lead to any better analysis of this basic question. For some Municipalities the elected officials may be less "business oriented" and find the formal policies onerous and needless. In other cases, the elected officials may be former corporate members and recognize the value and the need for formal policies, and consider adopting them without hesitation. Some members of Council are happy to be led by senior administrative staff in these areas while others choose to lead based upon their own understanding of the need for such formal and written policies. It is considering these issues that may answer the question of the failure to have written policies during the years in question. With the extraordinary growth that was occurring in the Municipality it is fair to analysis this situation as one of an "emerging need" for these written policies. It may also be noted that "education" of Council members are written policies would be beneficial in producing and implementing these policies and explaining the need for such policies.
- 2.4. The report states that several entries were recorded to incorrect general ledger accounts and the Assistant C.A.O. performed many incompatible functions. The R.M. of LaBroquerie was a small municipality with very limited staff. Increasing staff was not a priority for the Municipality; it

was the efficient and direct provision of services such as roads, garbage pick up, and economic development opportunities for the ratepayers of LaBroquerie, which were the priority. Therefore, the job was tasked to the available staff member. A reader who has a fair understanding of the realities of Municipal operations may fairly conclude that the inadequacies addressed in this audit were far less a deliberate matter for either the Administrative staff or Council than is portrayed generally in the report.

2.5. It cannot be emphasized enough that the Administrative Staff welcomed the external Audits and implemented changes recommended without delay.

3. 5.0 Administrative Issues

3.1. The only matter to be addressed here is the question of what Council knew or did not know about the activities/interests of other Council members and senior Administrative staff. Council was fully informed, the R.M. of La Broquiere is a very small community, and everyone in the community was well aware of the "paving agreements" and the subsequent concerns expressed (protest) by the businesses by the closure of streets which affected their businesses.

4. 5.3 Community Development Corporation (CDC)

4.1. The report discusses weaknesses in the CDC operations. What it does not disclose is that the members of the CDC were volunteers and dedicated members of the community. The weaknesses are set out but clearly, the dedication and commitment to the community as a whole of these members cannot be questioned.

5. 6.0 Compliance with legislative Authority.

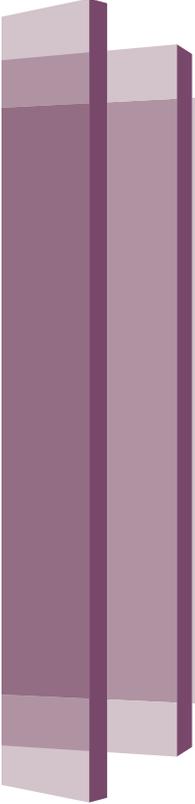
5.1. The report demonstrates that Administrative staff was aware of the requirements of the Municipal Act to report deficits in the budget and did so. The Administrative staff provided notice to the Minister, as required by the Municipal Act and also provided rationale about the failure to account for the deficit by a clear direction from elected officials not to raise the mill rate.

6. 7.2 Senior Staff expense accounts

6.1. Senior staff reported that Council would see every bill and expense. The expenses of the senior administrative staff were clearly ascertainable by all Council and public members. Nothing was left without disclosure to Council.

7. 8.1.1 Lagoon Expansion

7.1. In 1999 when the property was purchased no one had determined that the existing lagoon would be expanded in the direction ultimately recommended by the engineers. It was not until 2003 that a consultants (engineers) report was received which outlined 3 possible options. Then it was only after determination of the soil testing that took place which determined expanding south was the only option. The property in question on the south side was not a necessity until the consultants had reviewed the matters. Even so, the purchase price for that property was less per acre than was paid for industrial land (of doubtful necessity) during the same time frame. This explanation was given to the auditors who prepared this report. With the explanation, a reader of the report could fairly come to a different analysis.



Appendices

Glossary of Terms and Acronyms

Appendix A

Annual Service Plan	A service plan prepared by an LUD committee that provides sufficient direction to the RM to ensure that services are delivered at a level, and in a manner that meets the expectations of the LUD and its citizens.
Clerk of the Municipality	The CAO (per Section 424, <i>The Municipal Act</i>).
Conditional Grants	Restricted financial assistance provided to municipalities by the Provincial Government in support of operational or capital expenditures. Grants are awarded based on certain conditions being present at the outset, during the program life cycle or being present upon completion of the project.
Emergency Measures Coordinator	The person in the Municipality responsible for preparing and coordinating the RM's emergency preparedness programs and plans.
Fiduciary Interest	Refers to the interest of a covered individual that derives from a legal and/or ethical role the individual has to act in the best interests (e.g., the financial success) of another. Examples of fiduciary interests include, but are not limited to membership on a board of directors or a management role in a company or partnership.
Government Transfers	Revenue transfers from other governments, transfers to and from reserve funds, transfers from other funds and transfers to other funds that have affected the balance in the total Reserve Fund.
Indemnity	The annual remuneration paid to the Reeve and Council members for their services to the municipality.
Local Urban District	An unincorporated urban area with a population of at least 250 residents, located wholly within the boundaries of a rural municipality.

Appendix A (cont'd.) **Glossary of Terms and Acronyms**

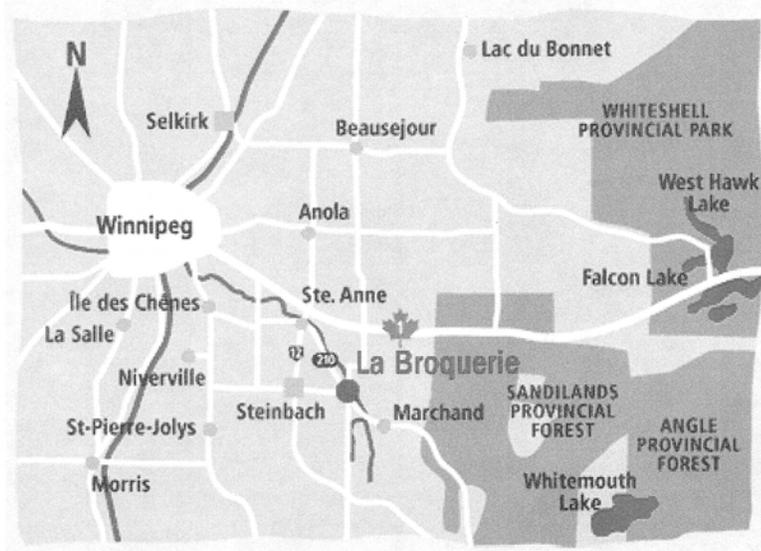
Nominal Surplus	Retained earnings.
Order-in-Council	An order made by the Lieutenant Governor in Council with the advice of the Executive Council (Cabinet), sometimes under statutory authority or royal prerogative – common types are: regulations, fees, transfers, appointments, grants, agreements including Federal/Provincial, selling Crown land, and loans.

Acronyms

CAO	Chief Administrative Officer
CDC	Community Development Corporation
CDEM	Economic Development Council for Manitoba Bilingual Municipalities
CWLP	Community Works Loan Program
EMC	Emergency Measures Coordinator
EMO	Manitoba Emergency Measures Organization
LUD	Local Urban District
MSO	Municipal Services Officer
ODR	Operators Daily Report
WLTO	Winnipeg Land Titles Office

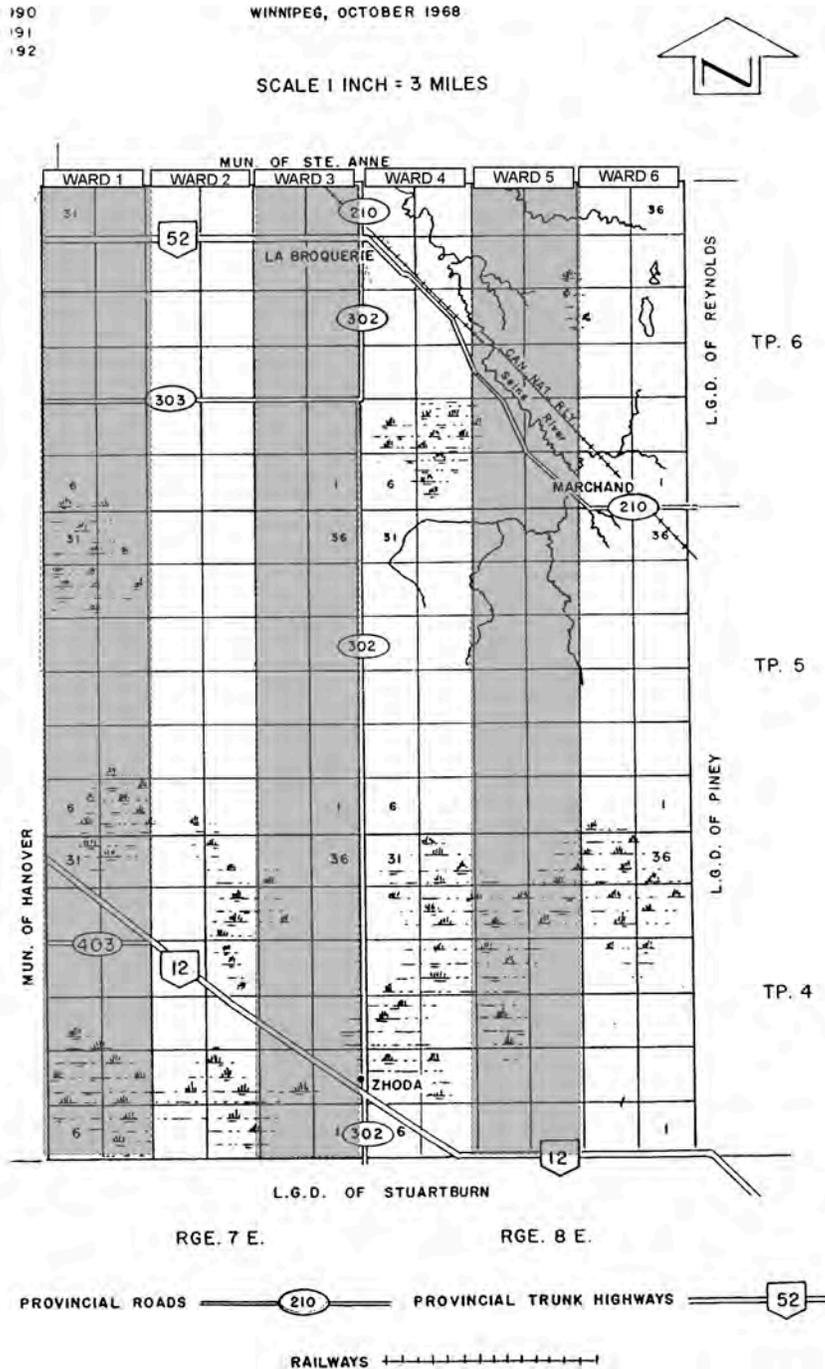
Rural Municipality of La Broquerie Location Map

Appendix B



Source: <http://www.labroquerie.com>

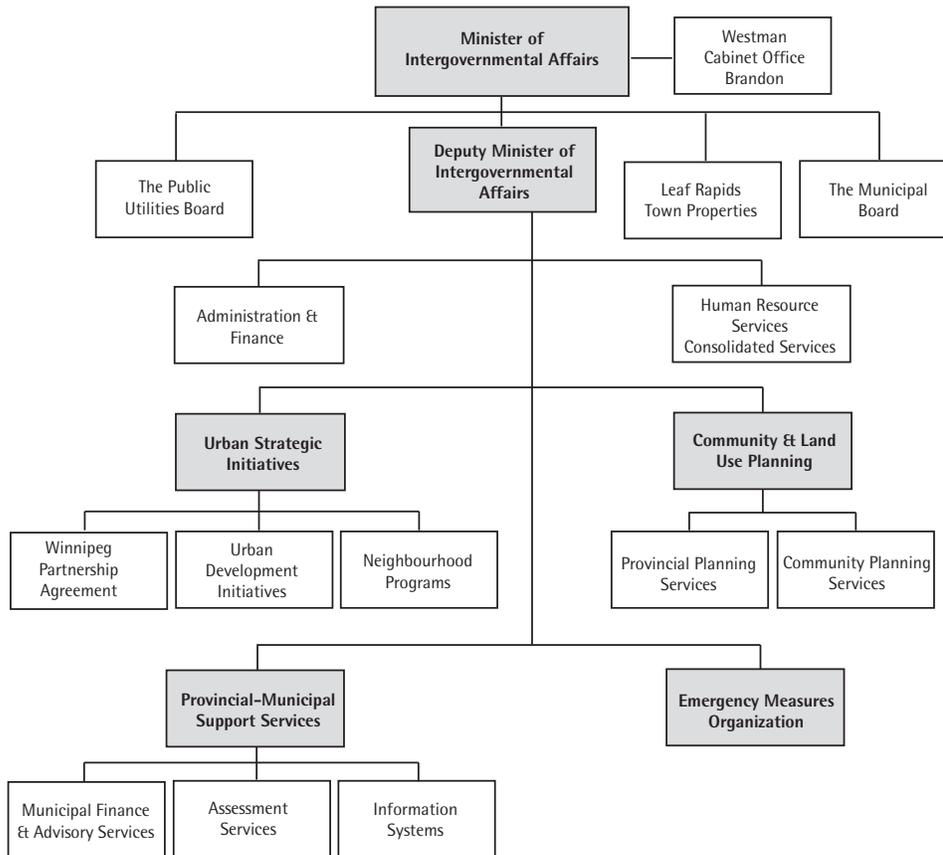
Appendix C Rural Municipality of La Broquerie Ward Map



Source: <http://www.communityprofiles.mb.ca> (Municipalities Map, RM of La Broquerie)

Intergovernmental Affairs Organization Chart

Appendix D



Source: 2007 Annual Report, Department of Intergovernmental Affairs

Appendix E Excerpts from The Municipal Act

FINANCIAL PLANS

Fiscal year is calendar year

161 The fiscal year of a municipality is the calendar year.

Council must adopt financial plan for each fiscal year

162(1) Every council must adopt a financial plan for each fiscal year in a form approved by the minister and consisting of

- (a) an operating budget;
- (b) a capital budget;
- (c) an estimate of operating revenue and expenditures for the following fiscal year; and
- (d) a five year capital expenditure program.

Council to hold public hearing on financial plan

162(2) Before adopting the financial plan, the council must give public notice, and hold a public hearing, in respect of the plan.

New public hearing when certain items revised

162(3) A council may revise its financial plan after the public hearing, but public notice must be given and another public hearing conducted if the revision

- (a) increases the estimated amount of a transfer referred to in clause 164(2)(a) or the estimated revenue from a tax referred to in clause 164(2)(c) (operating budget); or
- (b) increases any of the amounts referred to in section 166 (capital budget).

Financial plan to be filed with minister

162(4) A copy of the financial plan of a municipality for a fiscal year must be filed with the minister by May 15 of that year.

Council may request extension of time

162(5) A council that is unable for any reason to file its financial plan in accordance with subsection (4) may in writing request an extension of time, and the minister may extend the time subject to any condition the minister considers necessary or advisable.

Expenditures to be estimated in operating budget

164(1) A council must include in its operating budget for a fiscal year the estimated amount of money required for all purposes, including amounts

- (a) to provide for the council's policies and programs;
- (b) to pay debt obligations in respect of any borrowings;
- (c) to pay a requisition or any other amount that the municipality is required under an Act to collect;
- (d) to be transferred to the capital budget or a reserve fund;
- (e) to reduce or eliminate any deficiency incurred in respect of a previous fiscal year; and
- (f) in respect of any uncollected tax or any debt or grant in lieu of tax that is not collectible.

Excerpts from The Municipal Act

Revenue and transfers to be estimated

164(2) A council must include in its operating budget the estimated amount of money from transfers and each source of revenue, including

- (a) transfers from the municipality's accumulated surplus or its reserve funds;
- (b) revenue from grants and transfers from other governments;
- (c) revenue from taxes, including
 - (i) real property tax,
 - (ii) business tax,
 - (iii) personal property tax,
 - (iv) special services tax, and
 - (v) local improvement tax; and
- (d) revenue from all other sources, including fees or other charges in respect of the operation of any works, improvements, services, facilities and utilities.

Expenditures not to exceed transfers and revenue

164(3) The council must ensure that the total amount of the estimated transfers and revenue is not less than the total amount of estimated expenditures unless, before adopting the operating budget, the council obtains the minister's written approval of the proposed budget, which may include any condition the minister considers necessary or advisable.

Utilities expenditures not to exceed transfers and revenue

164(4) The council must ensure that the amount of estimated revenue and transfers provided for in the utility budget is not less than the amount of estimated expenditures in respect of the utility unless, before adopting the operating budget, the council obtains The Public Utilities Board's written approval, which may include any condition the Board considers necessary or advisable.

Transfer from accumulated surplus or reserve fund

164(5) An operating budget or capital budget may provide for the transfer of money from an accumulated surplus or a reserve fund established for a general purpose, but the transfer of an amount that exceeds the maximum amount provided for by regulation may be made only if, before adopting the budget, the council obtains the minister's written approval, which may include any condition the minister considers necessary or advisable.

Council to obtain approval for anticipated deficiency

165(1) When a council determines during a fiscal year that expenditures are likely to exceed the revenue and transfers provided for in its budget, the council must immediately advise the minister in writing and may incur a deficiency with the minister's written approval, which may include any condition the minister considers necessary or advisable.

Council to obtain approval for anticipated deficiency in utility

165(2) When a council determines during a fiscal year that expenditures of a utility are likely to exceed the revenue and transfers provided for in the utility budget, the council must immediately advise The Public Utilities Board in writing and may incur a deficiency

Appendix E (cont'd.)

Excerpts from The Municipal Act

with the Board's written approval, which may include any condition the Board considers necessary or advisable.

Content of capital budget

166 A council must include in its capital budget the estimates of

- (a) the amount of money required to acquire, construct, remove or improve capital property;
- (b) the anticipated sources and the amounts of money to pay the costs referred to in clause (a); and
- (c) the amount of money to be transferred from the operating budget.

Content of capital expenditure program

167 A council must include in its five year capital expenditure program each proposed expenditure for the next five years and the source of the money required to implement the program.

Council may establish reserve funds

168(1) A council may by by-law establish reserve funds for any general or specific purpose.

Expenditure from reserve fund with specific purpose

168(2) A council that establishes a reserve fund for a specific purpose may provide in its operating budget or capital budget for an expenditure from the fund only for that purpose unless, before making the expenditure,

- (a) the council gives public notice, and holds a public hearing, in respect of the proposed expenditure; and
- (b) in the case of a reserve fund that is supplemented with the approval of The Public Utilities Board, the Board approves the proposed expenditure.

Expenditures

169(1) A municipality may make an expenditure only if it is

- (a) provided for in the council's interim operating budget, operating budget or capital budget;
- (b) made in respect of a disaster or emergency declared by the council or head of council under The Emergency Measures Act;
- (c) ordered by a court or The Municipal Board to be paid; or
- (d) authorized by the council under this section.

Expenditure for purpose not set out in budgets

169(2) A council may authorize the expenditure of an amount provided for in an operating budget or capital budget, other than an expenditure referred to in subsection 168(2), for a purpose other than is set out in the budget if the expenditure does not affect the total of the amounts estimated under subsection 164(1) (operating budget) and section 166 (capital budget).

Excerpts from The Municipal Act

Expenditure or transfer of revenue exceeding estimate

169(3) A council may authorize expenditures from its operating budget, or transfer amounts from its operating budget to the capital budget, that are not provided for in the operating budget if the total of the expenditures and transfers does not exceed the total of

- (a) the amount of revenue from grants and transfers in excess of the amount estimated under clause 164(2)(b); and
- (b) the amount of revenue from sources referred to in clause 164(2)(d) in excess of the amount estimated under that clause.

Expenditure from capital budget

169(4) A council may authorize expenditures from its capital budget that are not provided for in the capital budget if the total of the expenditures does not exceed the amounts transferred from the operating budget under subsection (3).

Expenditures exceeding budgets

169(5) A council may authorize an expenditure for an amount not provided for in an operating budget or capital budget, and may fund the expenditure

- (a) subject to subsection 164(5), by transfer from the municipality's accumulated surplus or its reserve funds; or
- (b) subject to section 174, by borrowing.

Public hearing necessary for some expenditures

169(6) Subject to subsection (7), a council must give public notice and hold a public hearing in respect of a proposed expenditure under subsection (5).

No public hearing if specific purpose reserve is used

169(7) No public notice or public hearing is required under subsection (6) for an expenditure funded by a transfer from a specific purpose reserve unless the expenditure is for a purpose other than that for which the reserve fund was established.

Content of notice

169(8) A notice under subsection (6) must include

- (a) the amount and purpose of the expenditure; and
- (b) the expenditure's sources of funding and the portion of its cost that will be paid by each source.

BORROWING

Definitions

172 In this Division,

"borrowing" means the borrowing of money, and includes

- (a) borrowing to refinance, redeem or restructure existing debt,
- (b) borrowing to pay for a local improvement under Division 4 (Local Improvements and Special Services) of Part 10,

Appendix E (cont'd.)

Excerpts from The Municipal Act

(c) a lease of capital property with a fixed term beyond three years or a fixed term of less than three years but with a right of renewal that would, if exercised, extend the original term beyond three years,

(d) an agreement to purchase capital property that creates an interest in the capital property to secure payment of the capital property's purchase price if payment of the purchase price under the agreement exceeds three years, and

(e) issuing debentures; (« emprunt »)

"**borrowing by-law**" means a by-law referred to in clause 174(1)(a). (« règlement d'emprunt »)

Council may borrow for operating expenses

173(1) A council may by resolution borrow money for operating expenses during a fiscal year, but the amount borrowed must not exceed the amount collected in taxes and grants in lieu of taxes in the previous fiscal year.

Application to borrowing

173(2) This Division does not apply to money borrowed under subsection (1).

Borrowing must be authorized by by-law

174(1) A municipality may make a borrowing only if

(a) the borrowing is authorized by a by-law; and

(b) subject to subsection (2), the borrowing is set out as a debt obligation in the operating budget or capital budget or it is made to fund an expenditure authorized under subsection 169(5).

Council may exclude certain borrowing from budgets

174(2) A council is not required to include a proposed borrowing in its operating budget or capital budget if

(a) the borrowing refinances, redeems or restructures existing borrowings; and

(b) the amount and term of the borrowing does not exceed the unpaid principal and the longest remaining term of the existing borrowing.

Content of borrowing by-law

174(3) A borrowing by-law must set out

(a) the amount of money to be borrowed and, in general terms, the purpose for which the money is to be borrowed;

(b) the anticipated maximum rate of interest, the term and the terms of repayment of the borrowing;

(c) the source or sources of money to pay the principal and interest owing under the borrowing; and

(d) the source of any interim financing.

Excerpts from The Municipal Act

Repeal or amendment of borrowing by-law

175 After money is advanced under a borrowing by-law, the council may not repeal the by-law until the advance is repaid, and may not in any amendment reduce the amount authorized by the by-law to less than the amount advanced.

Every proposed borrowing to be approved by board

176 A municipality may not make a borrowing unless the council obtains the approval of The Municipal Board before third reading of the borrowing by-law.

Use of borrowed money restricted to stated purpose

177 A council must use money obtained under a borrowing only for the purpose for which the money is borrowed, as stated in the borrowing by-law.

Application of money borrowed

178 A person lending money to a municipality does not have to verify that the money is applied to the purpose for which it is borrowed.

Term of borrowing for capital property

179 The term of a borrowing for a capital property must not exceed the probable lifetime of the capital property.

NOTICE

Notice of a public hearing

420(1) When this Act requires public notice to be given of a public hearing, the municipality must

- (a) publish the notice at least twice in a newspaper or other publication having general circulation in the municipality, during the period starting 40 days before the hearing and ending seven days before it, and the publications being at least six days apart; and
- (b) post the notice in the municipal office for at least 14 days in the period described in clause (a).

Content of the notice

420(2) A notice of a public hearing under subsection (1) must set out

- (a) the date, time and place of the public hearing;
- (b) a general description of the matter to be considered;
- (c) that the purpose of the hearing is to allow any interested person to make a representation, ask questions or register an objection; and
- (d) that any information and documents concerning the matter and the procedures to be followed at the hearing are available for review at the municipal office or other place in the municipality.



Website Version