

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

Chairperson
Mr. Leonard Derkach
Constituency of Russell

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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Ninth Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON PUBLIC ACCOUNTS

Wednesday, March 16, 2011

TIME – 7 p.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Leonard Derkach (Russell)

VICE-CHAIRPERSON – Mr. Gregory Dewar (Selkirk)

ATTENDANCE – 11 QUORUM – 6

Members of the Committee present:

Hon. Mr. Gerrard, Hon. Ms. Wowchuk

Mr. Borotsik, Ms. Braun, Messrs. Derkach, Dewar, Mrs. Driedger, Messrs. Jha, Martindale, Mrs. Stefanson, Mr. Whitehead

Substitutions:

Mr. Pedersen for Mrs. Driedger at 7:25 p.m.

APPEARING:

Ms. Carol Bellringer, Auditor General

WITNESSES:

Hon. Gord Mackintosh, Minister of Family Services and Consumer Affairs

Mr. Grant Doak, Deputy Minister of Family Services and Consumer Affairs

MATTERS UNDER CONSIDERATION:

Auditor General's Report—Report to the Legislative Assembly: Performance Audits—December 2010—Chapter 3: Special Audit: Society for Manitobans with Disabilities

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Mr. Chairperson: Good evening, ladies and gentlemen. Will the Standing Committee on Public Accounts please come to order.

This meeting has been called to consider the Auditor General's Report to the Legislative Assembly: Performance Audits—December 2010—Chapter 3: Special Audit: Society for Manitobans with Disabilities.

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

Mr. Doug Martindale (Burrows): Mr. Chairperson, I could say this in my sleep. I recommend that we sit until 9 o'clock or until we pass the report, whichever comes first.

Mr. Chairperson: Thank you very much. I like that.

What's the view of the committee? *[Agreed]*

All right, and I'd like to welcome the minister and the deputy to this committee.

And, first of all, I'm going to ask whether or not the Auditor General wishes to make an opening statement.

Ms. Carol Bellringer (Auditor General): Thank you, Mr. Chair, I will.

In 2005 our office received a letter that was also sent to the Province from a citizen alleging that the Society for Manitobans with Disabilities had excessive administrative costs, lacked accountability for public funds and did not use them for intended purposes, and had poor governance.

We asked the Department of Family Services and Housing—and it's now reorganized within the Department of Family Services and corporate affairs—how it was following up the allegations. It had asked government's internal audit services—that's part of the Department of Finance now—to review SMD in early 2005, and they issued a report in May 2005. We decided to give the department and SMD more time to resolve the issues and the report recommendations before conducting our audit to ensure that all the concerns had been resolved.

Although there were a number of administrative problems, there were no concerns expressed by the department about the quality of services that SMD provides. During the '99-2000 fiscal year, SMD underwent a significant corporate reorganization. The new structure created a parent company known as SMD Alliance Inc. and four subsidiary companies, one being the Society for Manitobans with Disabilities. Our office focused on the funds that Services received from the department. The funding is set out in a service purchase agreement between the department and services.

Services had not been promptly providing required financial reports to the Province, but we found that throughout the period of our audit some improvements had been made. The SPA provides the Province with access to records for all areas it funds. Between 2006 and March 31st, 2010, Services had accumulated more than \$1.5 million in deferred contributions, which represents about 19 per cent of the 2009 provincial funding. The use of those funds has now been resolved. Complaints about how a transaction was handled in 2004 and confusion around the significant corporate reorganization were directly related to the allegations we received in 2005.

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

In our view, the current overhead level charged to Services by Alliance, combined with overhead costs incurred directly by Services, totals about 21 per cent; the Province has not specified the level of overhead it will fund or any restrictions on the use of the overhead. Our review of three schedules in the SPA related to specific program areas found that not all of the Province's program outcome requirements were being met. And the third point being the chief executive officer of Alliance can, in accordance with board approved policy, move up to \$300,000 amongst companies if the borrowing entity is able to repay within 120 days.

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

Mr. Chairperson: Thank you very much, Madam Auditor General.

I'm going to ask the deputy minister to introduce his staff and perhaps make an opening statement as well.

Mr. Grant Doak (Deputy Minister of Family Services and Consumer Affairs): I'm Grant Doak, Deputy Minister of Family Services and Consumer Affairs. On my left is Aurel Tess, ADM of finance

and administration. Dave Fisher is our executive director of Employment and Income Assistance, and Charlene Paquin is ADM for Disability Programs and Employment and Income Assistance.

Mr. Chairperson: Thank you very much, Mr. Doak, and you—and make your opening statement now.

Mr. Doak: Firstly, thank you for the opportunity to provide an opening statement tonight.

As the Auditor General mentioned, this audit was conducted in response to concerns about SMD's use of government funds. The audit findings and recommendations can be grouped under two themes: monitoring and compliance, with three recommendations directed at the department; governance and management practices, with eight recommendations directed at SMD.

We have accepted all the recommendations and appreciate the work of the Auditor General to strengthen our accountability systems. We have taken action on these recommendations by providing direction to SMD on overhead charges, intercompany transfers, outcomes in governance. As well, we have improved our internal systems by developing a reporting protocol that will help ensure roles and responsibilities are clear. I'll speak to those in a bit more detail.

* (19:20)

To provide some context on the organization and the department's funding relationship with them, some background may be useful. SMD is a group of five incorporated entities made up of SMD Alliance, SMD Services, SMD Foundation, SMD Ventures and SMD clearinghouse. Alliance is the controlling entity, providing administration and financial functions to the other four entities. The department provides annual grant funding of about \$6 million to SMD Services to deliver employment supports, therapies for children, service co-ordination for kids with disabilities and a communication centre for children who are deaf and hard of hearing.

The department funds approximately 75 per cent of SMD Services. Other funders include the Winnipeg Regional Health Authority, the United Way and private donations. Specifically regarding the recommendations directed at the department, the first is that the department improve co-ordination between the three areas that monitor compliance and, specifically, clearly identify who is responsible to follow up on concerns.

In August, 2009, we developed a reporting and compliance protocol which clearly indicates the roles and responsibilities of the units in the department financial reporting. We have combined two separate units into one to ensure we are efficient in monitoring agencies and that agencies know who to call when they need help.

I can report that improvements in SMD financial reporting were made throughout the audit period and the agency is currently in full compliance with our financial reporting requirements. We meet quarterly with SMD to review progress, ensure funds are spent appropriately and that service expectations are being met. As well, we meet with them on the outstanding audit recommendations and the progress being made. We have worked fairly closely with SMD to address the issues that were outlined in the internal audit and subsequently in the audit by the Auditor General.

The second recommendation, that the department clearly specify which overhead costs it will fund: We are developing a standard definition of overheading, including what's acceptable and what's not. We intend to limit overall overhead costs to a maximum 15 per cent for all of our agencies. This limit will be including all service purchase agreements to ensure consistency across the agencies that we fund and we have informed SMD of this plan.

The third recommendation directed at the department was that the department decide whether to assume the risk of intercompany transfers and reflect the decision in the service purchase agreement. In the Auditor General's report, it is highlighted that there was an intercompany transfer in '04-05. The OAG's observation is that practice—this practice puts government's funds at risk, and we agree. We have advised SMD that we do not support intercompany transfers and request that SMD stop this practice immediately. A clause will be added to all service purchase agreements to indicate that this practice is not allowed.

In terms of additional steps, the audit noted that SMD had accumulated a \$1.5-million surplus over several years. This surplus primarily resulted in difficulty in hiring qualified staff, mostly therapists. We have a good plan in place to deal with this surplus by providing more therapy services for children.

The report noted that although most programming met or exceeded targets, there was an area in the children's program where outcomes were

not met, which again resulted from challenging—challenges in hiring qualified therapists. SMD is now meeting all of its program targets.

The report also raised concerns related to governance. The department has indicated to SMD that the Services boards needs full control of its organization and that in our view, the chief operating officer of Services should report to the board of Services and not to the CEO of Alliance. Discussions have taken place on this topic and will continue, but the department has noted its intention to seek clarification on these roles and responsibilities in our SPA with SMD.

Ultimately, we are looking for transparency and accountability and we're committed to working collaboratively with SMD to ensure that this is the case. The challenge is to ensure that accountability and transparency are achieved without disrupting services. We believe that we have—we believe that with the good governance and solid accountability measures we have in place, and a strengthening SPA, these outstanding issues can be resolved. We are committed to continue to work with SMD in all areas, as recommended by the OAG, and to ensure that the important, high quality services that they provide will continue to be available.

Our partnership with SMD is both positive and valuable in providing services to Manitobans with disabilities. SMD has indicated its commitment to implement all of the recommendations directed at their organization and has indicated that they have already taken steps to address these recommendations, including reviewing and updating their bylaws and policy manuals, making AGM minutes available for review, organizing board training sessions, updating strategic plans, evaluating the CEO on an annual basis, and evaluating and providing financial training to staff.

The department has asked SMD to provide a plan on how they will be achieving the—how they will be implementing the recommendations along with the timelines for final implementation. We will follow up quarterly with the organization and monitor implementation of the recommendations.

We also have an internal audit advisory committee within the department which monitors all outstanding recommendations and reports regularly to management on progress. The Auditor General also requires us to provide regular reports on the progress of implementation of her recommendation and produces a public report and progress to date.

Thank you very much for allowing me to make an opening statement.

Mr. Chairperson: Thank you very much, Mr. Doak.

Committee Substitution

Mr. Chairperson: I'd just like to announce a committee change. Mr. Pedersen is sitting in for Mrs. Driedger—substituting for Mrs. Driedger. Thank you very much.

* * *

Mr. Chairperson: The floor is now open for questions.

Hon. Jon Gerrard (River Heights): I'm going to start just for a few minutes, and the first question I have deals with the estimate by the auditor that the administrative costs were running around 21 per cent. Would you confirm that that is consistent with what you had found? And from what you're doing it would appear that your judgment was that that was excessive. Is that right?

Mr. Doak: If you combine the administrative costs within the alliance, the umbrella organization, and the administrative costs in services, then the total would be, as the Auditor General identified, 21 per cent.

In fairness to SMD we need to define what's allowable and what's not and we're in the process of doing that.

Mr. Chairperson: Dr. Gerrard, can I ask you to move your microphone just a little closer, please?

Thank you. Go ahead.

Mr. Gerrard: That appears to be pretty important that you don't provide a definition which allows loopholes to—and people to put in money that's administrative when—or in services when it's actually an administrative.

One of the issues which you dealt a fair bit with was the transfer from one company, which was a not-for-profit, to another company which was a for-profit. I gather from your action that you're taking that you feel that that was inappropriate. Can you tell us how this could have happened in the first place?

Mr. Doak: Well, I think, as the Auditor General identified, it puts public funds at risk. That money should stay within the organization that we fund. I think in the absence of policy that there's a vacuum, and organizations act in good faith and do things that in hindsight may not be appropriate. So, upon

review, from the results of the internal audit and subsequently the Auditor General's report, we agree with her assessment and decided that that practice would end.

Mr. Gerrard: Thank you. I'm going to pass. I've got to leave for a few minutes and then come back.

Mr. Rick Borotsik (Brandon West): Thank you, Mr. Chairman, and thank you, Mr. Doak, for your opening statements, your presentation.

I guess my first question would be to the Auditor General. You had indicated that this came to your attention basically complaint driven, that you received some complaints from either former board members or from staff, I assume.

I guess my question is is, was it complaint driven and is that why the audit was done in the first place?

Ms. Bellringer: Yes, indeed, it was complaint driven and when we get a complaint in we always will look at it. We probably get 30 or so complaints every year, some of which are easily remedied by a department directly, others we'll monitor it until we're satisfied that either something's been done or we'll do our own audit.

In this case we left it with the department to take the initial steps but it was—the complaints were fairly general in nature and yet we were—there were enough of them that concerned us that we wanted to keep an eye on it. And then after we read the internal audit report and saw the complexity of what was being discussed, we wanted to get in and look at it as well ourselves.

* (19:30)

Mr. Borotsik: And my next question is, who did generate those complaints? Who did they come from?

Not names, just—

Ms. Bellringer: No, no, I know.

The complaints were given to us by individuals who had formerly participated in one way or another within the organization, basically as board members of something. We actually—one of the things I'm very cautious of is we do keep the—we have no complaint mechanism within our act and when people come forward and have concerns about an organization, we guarantee them anonymity, but at the same time they

appreciate that the complaints have to be dealt with in some way, which we do that to the best of our ability to protect that.

Mr. Borotsik: Mr. Doak, did you receive any complaints with respect to SMD? Did you have any of those same individuals approach you or your department or your department's staff with respect to complaints about SMD?

Mr. Doak: Without knowing specifically which individuals complained to the OAG, I can't speak to that, but yes, we did have complaints, various complaints over the years about SMD.

Mr. Borotsik: Mr. Doak, rather than go to the AG and have a—an audit done, what was the response from the department when you received these complaints from these individuals, whether they be ex-board members or ex-staff members? What did the department do?

Mr. Doak: What we would normally do is we would meet with the organization and discuss the allegations. We would undertake an independent review of finances and program if there are program issues. We would attempt to determine if there is any substance to the complaints and put in corrective action with the organization to address them.

Mr. Borotsik: You had the complaints. Did you— you had those meetings with the administration, I assume, of SMD; you went through your process. Was there any follow-up from your department after those meetings with the—with SMD? You had complaints; you went through your process. Was it just simply dropped at that time and left to the Auditor General to do an audit?

Mr. Doak: We would have had regular meetings with SMD as we do now. We would have investigated the complaints. In fact, we initiated the internal audit in 2005 that, I believe, was fairly comprehensive. It turned up some of the same issues. We developed an action plan with SMD and made some progress on it.

So, yes, we did take action when we received the allegations.

Mr. Borotsik: Were you satisfied that all of your conditions were complied with at that time with SMD? You were satisfied that all of the precautions you had put into place were sufficient? That was it; there was nothing more required?

Mr. Doak: What I would say is there were still some outstanding issues. We still had concerns about

governance, and we had some concerns about the organizational structure. We were concerned about the intercompany transfer.

That being said, we still had, what I would consider to be a good working relationship with SMD. There were never any concerns about the quality of service. So, for that reason, we continued to work collaboratively with them to address the issues that came up in the audit and the allegations that came up before that.

Mr. Borotsik: As I understand it, from the auditor's report, the SPA, the service purchase agreement, expires for SMD March 31st of this year. In fact, it's two weeks away that that service agreement's going to expire. Are you in the process now of entering or negotiating the new SPA going forward from March 31st?

Mr. Doak: Yes, we are, and all the terms and conditions of the SPA remain in place while you're in negotiation.

Mr. Borotsik: You had indicated—and quite happy to have you indicate the fact that you're going to include additional clauses in a new SPA going forward. As a matter of fact, you'd talked at that point that there will be limits or caps placed on, for example, administration fees. It'll be a clause, I assume—and I shouldn't make assumptions, I guess—the question will be—it will be a clause that will be specifically placed in the service purchase agreement to cap it at 15 per cent. Is that clause going to be included in the SPA?

Mr. Doak: Our intention is to be quite clear when it comes to administrative charges and to limit them to up to 15 per cent.

Mr. Borotsik: Okay, I go back to my question: That clause will be included in the SPA that the limits will be at 15 per cent. Will that clause be entered into the SPA?

Mr. Doak: Our intention is yes. Yes, it will be included in the SPA and will be up to 15 per cent.

Mr. Borotsik: One of the other issues that was touched on was surpluses. I can't remember the term they used here, but it's a surplus that they had retained over a number of period of years. Will there be a clause in the new SPA as to how surpluses are going to be managed and how they're going to be either returned to the government or they're going to be allowed to continue to keep a certain amount of

those surpluses? What will be the clause with respect to surpluses?

Mr. Doak: There is a clause in the existing SPA which indicates that surpluses must stay within the organization that we fund and any plans to spend that surplus need to be approved by the department, and that will continue.

Mr. Borotsik: Are there any limits placed on those surpluses?

Mr. Doak: There are no limits placed on the surpluses.

Mr. Borotsik: Should there be limits placed on the surpluses? We were told that the reason why there were surpluses is because, with the inability to hire staff, they had a plan in place to provide certain services to certain numbers of individuals, but if they didn't have the staff they couldn't provide those services. Should there be a cap on surpluses that can go forward to the organization?

Mr. Doak: I hesitate to answer off the top, but what I would say is that doesn't seem like an unreasonable thing to do. I wouldn't say that the kind of surplus that SMD runs is usual, that most of our organizations run what would be—I would consider to be a healthy surplus because it's better that they're in that position than running a deficit, and often these organizations run into unexpected costs. For example, our group homes have to maintain literally hundreds of houses, so a surplus can be healthy. But it may be worthwhile looking at the issue around when a surplus hits a certain level, it should trigger some specific action.

Floor Comment: Can I just ask—

Mr. Chairperson: I'm sorry, Madam Auditor General.

Ms. Bellringer: Just—I think the use of the word surplus is just causing a little bit of confusion with this. What we referred to in the report as—like, if we're referring to the \$1.5 million that had accumulated, they weren't actually surpluses, they were contributions received that then didn't get spent, so they were deferred, you know, as contrasted with an organization that generates the surplus from its operations that, then, you know, is a healthy working capital fund. So, not to—I mean—I just—I think you're talking about two different things in this case.

Mr. Borotsik: No, actually, we're referring to the same thing, and I appreciate that. If there's an expenditure that was budgeted for that wasn't used,

then that money was in surplus. In some cases those surpluses are required to go back to the funding agency. In this particular case they were allowed to keep them, make application as to how they could spend them in different ways, that's all. And I'm just wondering if that was going to continue and my answer was, yes, it's going to continue but there are no caps.

In saying that, I have to admit I'm a bit confused with the funding. If I go to the SMD Services, core funding from the department for 2009, it was \$4.4 million. Is that the right number? Because if I go to page 117, I see that, in fact, the Services budget expenses were somewhere in the neighbourhood of \$8.9 million. The question being, Mr. Doak, what is the financial contribution from the department to SMD on an annual basis?

Mr. Doak: We provide a grant to SMD of about \$6 million per year, but we're not the only funder. The Winnipeg Regional Health Authority and the United Way also provide funding, and they also have private fundraising, which I believe would all be included in the services, and the Auditor General can speak to.

Mr. Borotsik: Yes, and, perhaps, to the Auditor General, and I appreciate that because the total expenditures in 2007-2008 were \$8.9 million. Yet, on page 111, Madam Auditor General, the core funding of the department was \$4.4 million. They show other funding which is Manitoba vocational training of 589, then they have the other revenue which was the unused core funding which was the million one ninety-five, which showed available funding of 6.2, but the actual expenditures were somewhere in the neighbourhood of 8.9. There is other funding available through other sources. In fact, the for-profit organizations that perhaps didn't make quite as much profit as they would have liked to, as well as other fundraising. Is that the number that we're missing right now, the other funding sources?

* (19:40)

Ms. Bellringer: That's correct. Approximately 70 per cent of the funding for all of the organizations comes from the Province, from one source or another.

Mr. Borotsik: And, I'm sorry, Mr. Doak, could you give me that number again as to what came from your department?

Mr. Doak: Six million dollars.

An Honourable Member: Mr. Doak, something else that you talked about with the—

Mr. Chairperson: Mr. Borotsik.

Mr. Borotsik: —I'm sorry—with the Auditor General's report was the ability for the department—or for SMD to transfer funds to another subsidiary, if you will, the for-profit section of it, and, as I understand it, a half a million dollars at one point in time was transferred to those. You had talked about whether the department or the government was prepared to take that risk. I think I heard you say that the department is not prepared to take that risk, but could you tell me where the department is with respect to that particular function?

Mr. Doak: We have sent direction to SMD indicating that we do not support intercompany loans, and we will amend the SPA to make that clear to all of our organizations.

Mr. Borotsik: There was somewhere in the Auditor General's report that the authority for the CEO was, I believe, at \$300,000 for transfer. Are you saying now, in the SMD, that that \$300,000 will no longer be available to a CEO to transfer to other organizations?

Mr. Doak: With respect to the funding that we provide, we will not allow any intercompany loans.

Mr. Borotsik: So—and I appreciate you don't have any control, but with funding that you provide—but other funding that is generated from other sources that we've just talked about, other revenue streams, that would still be available to the CEO to do. Is that correct?

Mr. Doak: Yes, that is correct because we cannot control funding that comes from other sources.

Mr. Borotsik: Then can you tell me how you can differentiate between funding that comes from your department and other sources? If there's \$300,000 or \$500,000 going to be transferred, how are you going to identify that it's not your funding that's being transferred but some other source?

Mr. Doak: We will have to work with SMD to define a protocol to ensure that provincial government money is not loaned out of services into another company. And it is a challenge when these organizations have multi sources of funding, because they also come back to us and say, in fact, that surplus is not your surplus, it's someone else's surplus. But we do have procedures and we can put

processes in place to ensure that provincial government funding is not loaned out to other organizations.

Mr. Borotsik: To the Auditor General—thank you, Mr. Doak.

I appreciate—I think I appreciate what you're saying is that there's other revenue sources and it's hard to differentiate the capital. Is there any kind of check and balance that could be put into place, Auditor General, to say that it is not provincial funding that's being transferred from one organization to another organization?

Ms. Bellringer: Well, it certainly becomes a big problem and, you know, once the monies are commingled, it's difficult to say which dollar is being put aside for a particular use unless it's so completely separated out into separate bank accounts, and, ultimately, really, to avoid the risk, you'd have to have it in a separate organization. I mean, I don't know within the confines of—I mean, if—just taking a hypothetical situation, if you ended up at the end of the day with that transfer causing a working capital shortfall, cash shortfall in an organization because it's been moved out and it can't be replaced, the funds continue to be at risk, and who's going to put the money into—to cover that? So, even though you may not have an obligation to, I don't think—that doesn't eliminate the risk by accepting the fact that the monies being permitted to be transferred come from someone else but within that commingled pool. So it doesn't remove the problem.

Mr. Borotsik: Thank you, Auditor General, I appreciate that answer because it was sort of where I was heading on this one.

Mr. Doak, if the department provides 70 per cent of the funding, and I do appreciate the fact that the organization, SMD, themselves, have a policy in place that the CEO has the ability to a capped level of \$300,000 to move funding from one organization to some other subsidiary. If the department is funding 70 per cent of the total operation, do you believe that you could put into the SPA a clause that says that that policy is not going to be allowed by the department?

Mr. Doak: I think that we could approach SMD and ask that such a clause be put in. Our ability to make them put it in may be challenged because some of the money that they have is not ours.

I think that what's most important and what we would approach SMD on is that we need good

governance and good accountability, and let's work together to make sure that the SPA reflects that, and because I believe strongly that's in the best interest of the Province and of SMD.

Mr. Borotsik: I couldn't agree with you more. Certainly, it has to be in the best interests of the Province and the department and, certainly, in the best interests of the clientele that are being serviced by the organization.

In the SPA—well, first of all, let me go back. It's a working relationship you talk about, but in this document, the Auditor General's report, as a matter of fact, one clause that just jumped out and sort of hit me right between the eyes when I was first looking at it, and it said our audit found that some administrative problems remain and there was a noticeable lack of trust between SMD and the Province that hampered progress. That in itself, when you're a 70 per cent funder of an organization, yet, there's a noticeable lack of trust between the two parties, red flags go up immediately. And you talked about the fact that there was some issues with complaints that were brought to your department. I'm also told in this report that the Auditor General was not given access initially to all of the financial information and all of the information that we're looking at by the organization.

Have you faced those types of situations, too, when you did your internal audit or when you had your people talk to the administration of the organization? Help me with this lack of trust and where you were heading with that in the department.

Mr. Doak: Firstly, what I would say is my personal dealings, my professional dealings with SMD, I've had a good relationship and I strongly believe that SMD acts in the best interests of persons with disabilities. At the same time, they are trying to build an organization, and the processes that they use we may not always agree with. And I wouldn't say that's entirely unhealthy. Obviously, distrust between two organizations is unhealthy.

In terms of access to information, the key issue when the internal audit was done is that it was our understanding that we did not have access to the Alliance, the overarching entity, and SMD's position is that the department was, or the department should not and could not access the financial records of the Alliance, and that was the nature of the discussion that we had with them.

The Auditor General has a different mandate. It's able to follow public funds in a manner that the department could not.

Mr. Borotsik: As I understand, though, under the SPA, even the previous SPA, the department would have had clauses in there that would have required financials to be provided by SMD to the department, I assume the ability to go in and audit, if necessary, because you've got \$6 million of investment into that particular organization. Those clauses were included in the SPA, although they weren't being complied with. Did you not at any point in time in the department look at remedies to be able to have SMD comply with what was in the SPA?

Mr. Doak: SMD allowed us access, as per the SPA, to all financial records within SMD Services. What they would not allow us access to is SMD Alliance, and is not covered in the original SPA. So we had complete access to financial statements, audited financial statements within Services, but it was their position that once the money leaves Services the department has no legal ability to look at records outside of Services.

Mr. Borotsik: Do you believe that that is the case?

Mr. Doak: I think you're asking me for a legal opinion, and what I would say is that the advice that we had is that we did not have the ability to look beyond Services because we funded SMD Services Inc. and not SMD Alliance.

Mr. Borotsik: Will that be rectified in the new SPA that's now being negotiated effective March 31st of this year?

Mr. Doak: It's corrected in a subsequent SPA which allows us to follow the money once it leaves Services. So if it moves from Services to Alliance in the form of an overhead charge we now have the ability to look at the Services financial statement with regards to that overhead charge.

Mr. Chairperson: Thank you.

* (19:50)

Mr. Bidhu Jha (Radisson): Yes, that brings to me the question to an aspect of management, and I understand here Auditor General's recommendation, page 137, that we recommend that Alliance annually review the performance of its CEO and, No. 10, that the CEO and *[inaudible]* COOs regularly evaluate their management and senior staff against performance criteria in their job descriptions.

Now, are we—I understand that you are following this particular—these two particular recommendations that—I was going to ask what did the timeline—this being completion expected—any time frame on that?

Mr. Doak: My understanding is that the review of the performance of the CEO is scheduled for March 2011. Plans are also in place for the CEO to review the performance of all COOs.

In terms of the other issues around job descriptions, SMD is still in the process of making the changes. As you know, the audit came out in December and we already have an action plan with them and they, SMD, has indicated that it's implementing the changes, adding responsibilities—sorry, my understanding is SMD is moving ahead with the implementation of those recommendations.

Mr. Jha: Yeah, one more question is on the—on this particular area of established salaries and grades consistent with the marketplace: is this being done or this is one of the recommendations again on—

Mr. Doak: My understanding is SMD is actively working on that recommendation.

Mr. Jha: Thank you.

Mr. Blaine Pedersen (Carman): Mr. Chairman, if I understand this operation correctly, and please correct me if I don't have it right, the 70 per cent of the operating funds come from government, go into SMD Services which is then transferred into SMD Alliance.

SMD Alliance has a CEO, chief executive officer, and there is COOs, chief operating officers, of Services, Foundation, clearinghouse and Ventures. Am I correct so far?

Mr. Doak: I think you're correct. Just for clarification though, the money that we provide to Services does not flow out to the Alliance. A portion of it—a portion flows out to Alliance to cover overhead, for example, HR functions, administrative functions. So not all of it flows then.

Mr. Pedersen: Okay, so are there performance reviews done by the CEO on each of the four—and I'm calling them subcompanies—on the COOs? Who does performance reviews of the COOs?

Mr. Doak: The COOs report to the CEO of Alliance and he would be responsible with the appropriate HR practices. He would be responsible for doing the performance reviews.

Mr. Pedersen: And then there is—is there a performance review? Has there been a performance review done on the CEO of the Alliance then?

Mr. Doak: My understanding is that—excuse me a minute—that the review of the performance of the CEO is scheduled for March 2011.

Mr. Pedersen: And who'll be doing that review?

Mr. Doak: We don't have that information.

Mr. Pedersen: So it's supposed to be done by this March or by March 2011. Will it be reported then or is this part of the previous SPA to report this back to you when this—it hasn't been done before but it's going to be done now in March. Will you get a—through the SPA are you getting a report back then of this performance review?

Mr. Doak: If I may, with respect, the CEO of Alliance is responsible to the board of Alliance. Our department funds SMD Services. Where there's a COO our interest would be in the evaluation of the COO and not necessarily the evaluation of the CEO of Alliance.

Mr. Pedersen: So based on that, then—on that answer, then, you will not be getting a report back on the CEO of Alliance who is running the administration of SMD, and from that, then, I can take it from there, then, that you will not—this will not be part of the new SPA that you're currently in negotiations with?

Mr. Doak: A specific request for a performance evaluation of the CEO of Alliance will not be part of the SPA. That being said, we are interested in the good health and good governance of SMD, of SMD Services and SMD as a whole, because there's an umbrella organization that oversees SMD Services. If we have concerns with the way that organization's run, we'll raise it with the board of SMD Services, and if necessary, the board of SMD Alliance.

Mrs. Heather Stefanson (Tuxedo): As I understand, just to back up a little bit and go to what—the Auditor General's opening statement, she indicated that her office received a letter from a citizen alleging certain things of the Society of Manitobans with Disabilities, and at that point in time, as I understand, she or her office asked the Department of Family Services at the time how it was following up the allegations, and they indicated that they had asked the government's internal audit services to review SMD in early 2005 and they issued a report in May 2005, and at that point in time

the auditor gave the department and SMD more time to resolve the issues, and it was not until July 28 of 2008 when the auditor's office advised the minister of the department and SMD that they would conduct an audit. What initiated that? Why was there so much time in between those, and what suddenly came about where you felt that it was necessary to go in and do an audit?

Ms. Bellringer: There was no specific—nothing new happened. There was no sort of triggering incident or anything like that. There were no further complaints. It actually fit in with our schedule at that point. I mean, it wasn't anything more than we do our annual schedule and for the first two years we let it be, but at the same time we were having fairly intensive conversations with the department so we knew what was going on, but we didn't schedule it until that 2008 period and it wasn't for any particular reason.

Mrs. Stefanson: Did the department at any point during those discussions over that three-year period say, you know what, we've got some concerns here, could you please follow up? Or there were some red flags or anything along those lines during the discussions at the time?

Ms. Bellringer: I wouldn't say those words were used, but we were both aware of the results of the internal audit report, so there was quite a lot of information on the table. What the department didn't know at that point was where monies had been spent once they moved into Alliance for overhead, for example, and we knew that we could follow those dollars and we were still wanting to know that information. So we knew from reviewing the report and talking to them that the only way to get that information would be to go and look ourselves, and they weren't trying to talk us into it nor out of it. I mean, it was pretty much a statement of fact from our side that we were going to be looking at it, so, you know, I can't think of—I'm not sure, like, if you're looking for some sort of—was there anything they said that swayed us one way or the other? No, there really wasn't.

Mrs. Stefanson: So you're saying basically that your decision to go back and do the audit was based on the report that was issued back in May 2005 and it took sort of more than three years just because it maybe didn't fit into the schedule of your audits to sort of come back and—like, what came out in that report that was issued in 2005 that would have wanted you to follow up with an audit?

Ms. Bellringer: A lot of the information that's included in our audit report was covered by the internal audit. A lot of the governance areas were included in there.

* (20:00)

I'd say, during that two-year period, what was happening was a couple of the individuals who had originally contacted us would have continued to ask how things were going or provide additional information or ask other people to talk to us, so, you know, we did have other things happening. It wasn't an—I've always had a concern about it ever since I first read that internal audit report. But I did believe and I still believe the department was taking significant action to try to come to terms with it and make the changes that were necessary.

But you really don't know whether that's the case until you get in and look at some really detailed information. We didn't have all of the information around the transaction that we referred to that happened in 2005. We knew that there was a transfer of funds. We didn't know the exact number until we got in and actually looked at some really detailed records, and it was quite time consuming to figure out exactly what had happened there. We weren't entirely comfortable about the corporate structure and the changes there because they didn't go in to look at all of the bylaw changes and so on, and we wanted more information on that.

I'm getting the feeling that there was sort of like this—we didn't have the 2005 internal audit report sitting there going, and then suddenly in 2003 it suddenly appeared to be more of concern. It was more of a matter of how much time is worth leaving the department and SMD to work through a constructive process, and then go in and hope that you're able to see now what has occurred as a result of that, which we thought was a much more useful piece of information to then see what needed—was left to deal with, going forward.

Mrs. Stefanson: So is it fair to say you had ongoing discussions, I think you mentioned, with the department with respect to this report? Were you satisfied that they were taking necessary steps that came out of that report moving in a positive direction? And what sort of reporting did they have back to you to sort of satisfy you at that time that things were moving in the right direction? Was there a regular kind of reporting back to you, or how was that done?

Ms. Bellringer: It was much more informal than that, which was—and we really didn't have a thorough understanding of everything until we did go in and do our own audit. We didn't ask for and look at any of the backup information the internal audit may have looked at in order to write their report, and so it was more of a—it was at least every six months, but it would have just been my picking up the phone and calling the deputy minister and saying how are things going. It was not a formal reporting back like we have when we do our follow ups.

Mrs. Stefanson: I guess my concern is just the time frame here and that it taking sort of three years from that initial report coming out, and then you coming out with your report, actually, was almost probably five years—and I'm not blaming anyone here. I understand how that works.

But in your report it actually says that there was a noticeable lack of trust between SMD and the Province that hampered progress. And to me if, you know, if there was an indication somewhere that progress was being made, I wouldn't expect that to come out in a later report saying, well, there's a lack of trust here and, you know, this is not happening. And so, I mean—I guess I just would ask—I mean, I know that you have time constraints in your department, you can only do so much, but, you know, if you got the initial complaint, you followed up with the department, you asked the department to look into it, the department did look into it, came out with a report, and to me it just kind of looks like nothing really happened between that report and your report because, you know, there was this lack of trust and maybe lack of anything going on, and to me it just seems like we may have lost a few years there where we could've gotten this mess cleaned up a little bit earlier.

And, you know, again, it's not a blame of anything, but it's just, in just looking at this, it just seems that, you know, I guess we would hope that things could happen a little bit more expeditiously. And maybe I'd ask the deputy minister, during that point in time in 2000—between when your internal report was issued in May of 2005, and you got word from the Auditor General that they were going to conduct an audit, what took place? Like, what steps did you take, as a result of that report that came out, to make things better with SMD?

Mr. Doak: We worked with SMD to resolve the issues that were identified in the internal audit. They were—there were some concerns about, for example,

the reporting, the financial reporting from SMD. So we, over that period of time, established financial reporting requirements and worked with SMD so that they understood them and that they were in compliance with them. We worked on a plan to address the surplus issue, which took us some time to do, in part because of some challenges around hiring staff. We raised with them and discussed with them the governance issues that were raised both in the Auditor General's report and in the internal audit with a view to resolving them because good governance is important for all organizations to ensure that we have healthy services at the end.

So with all the recommendations from the internal audit, as with the recommendations from the OAG, we work with SMD to resolve them and put in place action plans to implement them.

Mrs. Stefanson: Okay, but I guess I'm just asking, in that time frame because there were obviously some things, and I don't know, I haven't seen your internal report from May of 2005, but there were obviously some things that came forward; there were some actions that needed to be taken. The Auditor General gave the department some time to work this out with SMD.

What took place during that time? Because I'm not talking about later. I mean, to me, it's a little alarming that the Auditor General's report comes out saying that, you know, there's a lack of trust in this—between the two. There are still some serious issues that needed to be resolved, albeit not necessarily all on the department's side, and certainly government—governance issues, we recognize that, and unfortunately we can't have other witnesses here to ask questions along those lines today.

But I guess I'm just trying to get at—were you concerned at any point in time that maybe you'd run into a roadblock with SMD and that it would be beneficial earlier on to have the Auditor General come in a little earlier and do this audit? Would that have helped, at the time, the department resolve some of these issues with SMD a little bit earlier had they been found out earlier?

Mr. Doak: In my experience working with SMD—and I've worked with them for years—I did not run into roadblocks. SMD is a very strong organization; they have strong opinions and strong leadership, and they have a vision as to the way the organization should be run, and that's not always in line with the way we think that the organization should be run.

And that discourse is sometimes healthy and sometimes not, and I would say that there were times when our relationship with SMD could have been better, and we worked on improving it. Generally, I think we have an excellent relationship with them.

With respect to the auditor coming in early, I— you know—what I would say is that I thought the internal audit did a very good job, uncovered some of the same issues that the Auditor General later uncovered. Where the Auditor General was helpful is that she can follow the money outside of Services where our legal opinion at that time was that we couldn't. So her audit was helpful in that regard because part of the money that left Services went to another organization within the SMD family, and we were concerned about that. So I think the auditor's report—actually, the Auditor General's report complemented what was in the internal audit report.

Mr. Borotsik: First of all, Mr. Doak, a lot of the questions that arise out of this auditor's report should really be directed to the SMD, the administration and CEO of SMD. But it seems for some reason—well, we haven't changed those rules of the House to allow outside agencies to act as witnesses. So if there are questions that are posed to you that should be posed to the CEO or to administration of SMD—and I maybe get a little bit testy about it—I apologize for that. But it would be nice to have the individuals who's responsible for the organization here to answer some of those questions.

But since we don't have that, then I'm going to ask you questions.

A service purchase agreement is just that. The government, your department, purchases, through an agreement, services that are provided by, in this particular case, SMD. Are you convinced that the services that you have contracted for have been at a level that you are happy with or a level even that perhaps you're more than happy with? Where are you and your department right now with the services that are being provided by SMD?

* (20:10)

Mr. Doak: In my experience with SMD—and I probably have three or four years of experience—I've heard nothing but good things about the service that front-line delivery people provide. You know, they have excellent therapists, they provide great employment supports, they have services for children who are deaf and hard of hearing, and through the successive audits that have been done and the

reviews have been done, I haven't had any complaints about the service. Obviously, you know, in every organization there's demands for services and there's going to be some issues that come up, and nothing systemic which would cause me to question the services that SMD provides.

Mr. Borotsik: And I do appreciate that. I'm sure the services provided, as you've indicated in your—through the department, are above scrutiny. However, with the SPA, the service purchase agreement that you have paid \$6 million for, you have indicated that between 450 and 500 children in Winnipeg and 300 and 325 children outside of the city of Winnipeg are expected to have services provided to them by—under the SPA.

In fact, in this audit, that wasn't the case. As a matter of fact, in 2005-06 it was 296 in Winnipeg and 2006-07 it was 269. In 2007-08 it was 331. They were provide—to provide service to 450 to 500 for the price of \$6 million. You just told me that the people that did get the service, the 296, the 269 and 331 got exceptional service, but did you not question what it was that you were paying for and not getting?

Mr. Doak: Well, in fact, we do and we get regular reports from SMD as we do all of our organizations, and we don't pay for services that are not provided. There's a correlation between those missed targets and the—forgive me for using the incorrect term, but the surplus that was generated over a period of time.

There are rules in place around those types of surpluses, that if agencies are not able to deliver the services as outlined in the SPA, that may resolve in a surplus, that surplus can't go anywhere without our approval, can't leave the organization, can't be spent without our approval.

Mr. Borotsik: But you did pay for services that weren't provided. With those numbers that were under the SPA, they weren't met. Dollars went into a surplus account, if you will, and, again, it's the wrong term we've been using; the Auditor General cringes every time we use that term, but you didn't get services that you had paid for. So you allowed the organization to keep that money that wasn't expended and would expended on other things. Is that going to be the same arrangement that you have in this new CPA that's now being entered into as of March 31st, 2011?

Mr. Doak: I would say you're correct that we paid SMD according to budgeted numbers, and their expenditures came in less than budgeted and they

retained the surplus. We have, as I mentioned, fairly strict policies around the use of that surplus.

Going forward, I don't see that changing. These types of surpluses, the extent of the surplus, I think, is exceptional. We are protected; public money is protected in that yes, we did pay to the organization, but there are pretty strict rules around how that money is retained, especially within a not-for-profit organization. They can't simply pay a dividend to another corporation.

So, while the department could have cut the grant to SMD, our hope was, and maybe naively so, that we could come up with a plan to address the recruitment problems. We didn't; it took successive years to do but now we have a good plan in place and the reality is that that money is going into providing more speech and language therapy OT and physical therapy for kids with disabilities.

Mr. Borotsik: And it's nice if that plan comes to fruition and if it doesn't, then there's additional surpluses that go into an additional account, and then we'll be sitting here probably 12 months from now having the same—I won't be—but somebody will be having the same discussion.

I should also say, in defence of the department, in the Auditor General's report did indicate that there was no malfeasance, that everything was certainly above board with respect to the finances of the organization. And I don't mean to say that there ever has been or will be, and the services, certainly, that are provided are services that are needed for our society and we thank the department for doing that.

However, there were a number of red flags that I—I get very nervous when an organization receives 70 per cent of their funding from the department and yet refuses to comply with a number of the clauses within the SPA. If that is the case, going forward, and it may well be, with this new SPA, what remedies will be built into the SPA and under what circumstances would you ask that the organization comply or you would trigger those remedies?

Mr. Doak: The current service purchase agreement has a provisional administrative clause. So, if we think an organization's become so dysfunctional that we need to step in, we can step in. I would say that would be rare that we would use that because, obviously, it'd be pretty traumatic to the people who deliver services and the clients. But that provision is there.

I think that if we were to run into a situation like this again we can work with the organization to address it sooner. For example, it may be prudent not to provide the funding with the anticipation that you'll be able to develop a plan to deal with the recruitment problems, or whatever's generating the surplus, sooner rather than waiting several years. This is, I think, in my experience, an unusual situation and that what we want to do is work with these organizations, that these organizations, SMD included, act in good faith and with the best intentions. It's a challenge in hindsight. You look at the actions that someone's done and you can question them in hindsight. And I think that's some of what's happening here.

But, moving ahead, what I would say is that we have better reporting structures in place. We have our agency accountability and support unit that's working pretty closely with agencies like SMD to avoid problems like this. So we're trying to be proactive. At the same time, we have a duty to protect public funding and ensure that it's spent for the intended purpose. We have pretty considerable powers in our SPA to do something like that, to do something significant, but our preference is to work to resolve these kinds of issues and, generally, for all of the hundreds, all the thousands of organizations that we deal with, it's pretty rare that we have to take some—that we have to impose significant sanctions.

Mr. Chairperson: Thank you very much.

Are there any other questions?

Is the committee agreed that we have completed consideration of Chapter 3: Special Audit: Society for Manitobans with Disabilities of the Auditor General's Report to the Legislative Assembly: Performance Audits—December 2010? *[Agreed]*

The hour being now 8:17, what is the will of the committee?

An Honourable Member: Committee rise.

Mr. Chairperson: Committee rise. Thank you very much.

Before we rise, I'd appreciate it if members would leave behind any unused copies of the reports so they may be collected and reused at the next meeting. Thank you so much.

COMMITTEE ROSE AT: 8:17 p.m.

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