

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

Chairperson
Ms. Jennifer Howard
Constituency of Fort Rouge

Vol. LXI No. 2 - 6 p.m., Monday, May 25, 2009

ISSN 1708-668X

MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Ninth Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON LEGISLATIVE AFFAIRS

Monday, May 25, 2009

TIME – 6 p.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Ms. Jennifer Howard (Fort Rouge)

VICE-CHAIRPERSON – Mr. Tom Nevakshonoff (Interlake)

ATTENDANCE – 11 QUORUM – 6

Members of the Committee present:

*Hon. Messrs. Chomiak, Doer, Swan,
Hon. Ms. Wowchuk*

*Messrs. Derkach, Dewar, Faurshou, Goertzen,
Ms. Howard, Mr. Nevakshonoff, Mrs. Taillieu*

Substitutions:

Mr. Maguire for Mr. Faurshou

APPEARING:

Mr. Kevin Lamoureux, MLA for Inkster

Mr. Hugh McFadyen, MLA for Fort Whyte

*Mr. Richard D. Balasko, Chief Electoral Officer,
Elections Manitoba*

MATTERS UNDER CONSIDERATION:

Annual Report of Elections Manitoba for the year ending December 31, 2003, including the conduct of the 38th Provincial General Election June 3, 2003

Annual Report of Elections Manitoba for the year ending December 31, 2004, including the conduct of the Minto and Turtle Mountain by-elections June 22 and June 29, 2004

Annual Report of Elections Manitoba for the year ending December 31, 2005, including the conduct of the Fort Whyte by-election December 13, 2005

Annual Report of Elections Manitoba for the year ending December 31, 2006

Annual Report of Elections Manitoba for the year ending December 31, 2007, including the conduct of the 39th Provincial General Election May 22, 2007

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Madam Chairperson: Good evening. Will the committee please come to order.

Committee Substitution

Madam Chairperson: Before we begin, I want to let the committee know that we have a substitution. Substituting Mr. Maguire for Mr. Faurshou.

* * *

Madam Chairperson: Our next item of business is the election of a Vice-Chairperson. Are there any nominations?

Mr. Gregory Dewar (Selkirk): I nominate Mr. Nevakshonoff.

Madam Chairperson: Mr. Nevakshonoff has been nominated. Are there any other nominations?

Hearing no other nominations, Mr. Nevakshonoff is elected Vice-Chairperson.

This meeting has been called to consider the Annual Report of Elections Manitoba for the years ending December 31, 2003, including the conduct of the 38th Provincial General Election June 3, 2003; December 31, 2004, including the conduct of the Minto and Turtle Mountain by-elections June 22 and June 29, 2004; December 31, 2005, including the conduct of the Fort Whyte by-election December 13, 2005; December 31, 2006; and December 31, 2007, including the conduct of the 39th Provincial General Election May 22, 2007.

For the information of everyone in attendance, Legislative Assembly media services is in attendance to film these proceedings for inclusion in the video *Standing Committees of the Legislative Assembly of Manitoba*.

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

Hon. Andrew Swan (Minister of Competitiveness, Training and Trade): I'd suggest we go until 8 o'clock and then we revisit at that time and see how we're doing.

Madam Chairperson: It's been suggested that we meet until 8 o'clock and then revisit. Any other discussion?

Mr. Kelvin Goertzen (Steinbach): I know that the committees typically go two hours. We're starting an hour earlier. You know, it might be wise just to say we're going to go to 9 o'clock, have those three hours, and that's probably the time people might have allotted anyway then review it at that point.

Madam Chairperson: Any other discussion?

Hon. Dave Chomiak (Minister of Justice and Attorney General): Normally, we do the two o'clock and revisit—I mean the two hour and then revisit after two hours, so why don't we just work our way through that and proceed on that basis?

Madam Chairperson: Okay. Is it agreed that we sit until 8 p.m. and then revisit?

Some Honourable Members: Agreed.

Madam Chairperson: Agreed.

Are there any suggestions has the order in which we should consider the reports? Any suggestion how we should proceed with our—Mr. Swan?

Mr. Swan: Since no one else coming forward, maybe we should go chronologically and start to work through some of the—the older reports.

An Honourable Member: Makes sense.

Madam Chairperson: Okay, so, chronologically, which would be has it appears on the agenda.

Mr. Kevin Lamoureux (Inkster): Madam Chair, just given the number, I think there might be more—more benefit if we just look at them in—from a global perspective and then, at the end of the evening, we'll look in terms of what reports we might be able to—to pass. At least that's what we've done in other committees. By looking at it globally there seems to be more of a sense of—you know, because some of the reports are somewhat dated. And then if we can pass some at the end, we'll pass.

Mr. Chomiak: I think that makes some sense insofar as the way we've been moving committees lately in this Chamber has been to deal with the reports but then to pass them, so that we do a bit of both. So if we can—we could do general, but I think we ought to make certain that we're in a position, by eight o'clock, to at least pass one or two reports so that the committee can make some progress, rather than having reports sit on year after year after year, and

that's been a trend we've been trying to get away from in the PAC committee and other committees and we've done—been fairly successful at that.

Mr. Goertzen: I think my experience on the committees is in—when it's being done on a global basis it does tend to increase the chances of reports being passed. I think it's difficult, obviously, to commit to passing certain reports simply because we don't, you know, know the sort of answers we'll get, the sort of time allocation individual members will be given also. I mean, the committee hasn't met for almost a year and so probably the solution to having more reports passed isn't locking an individual into passing at—at a committee but simply having more committee meetings and that's probably something the two House leaders can resolve and I think that that'll be a positive step.

Madam Chairperson: Is there anything else, or is it agreed that we'll go through the reports on a global basis? Is that agreed?

Mr. Chomiak: Yeah, I think, Madam Chairperson, generally, that the negotiations I've had with the Opposition House Leader and with the chair of PAC committee have—have moved us towards that direction. I just think that we ought to—as a committee, we've met eight times since the last election and I happen to recall, during the period of time when I was elected, for nine years we never met.

So I think we're making progress. I think we don't want to get too off the road. I think we ought to follow the practice that we've been trying to do in the Legislature which is try to allow people to speak and get information out but try to deal with older reports, as well. So I think that makes sense that we proceed on that basis.

Madam Chairperson: So we'll proceed through the reports on a global basis.

Does the honourable First Minister wish to make an opening statement, and—

An Honourable Member: Yes—

Madam Chairperson: —and—sorry—would he please introduce the officials in attendance?

Hon. Gary Doer (Premier): Yes, thank you very much, Madam Chair. Chief Electoral Officer, Mr. Balasko. He's joined by his staff, Ms. Verma, who is now the Deputy Chief Electoral Officer, and Mary Skanderbeg, the Manager of Election

Operations and Communications. So I'd like to thank all of them for being here tonight.

I also want to pass on to Mr. Scott Gordon our thanks on behalf of Manitobans for 21 years of service to the people of this province as the former Deputy Chief Electoral Officer.

We'd like to thank the Chief Electoral Officer and her staff for making significant progress on improving legislation in—in Manitoba. We certainly know that the independent, non-partisan Chief Electoral Officer is very, very important for our democracy.

Since our last meeting, we did have an amendment on the timing of the fixed election laws, an amendment moved by the member from Inkster, and we've had two by-elections since that last, last committee meeting—we would argue, very successful by-elections, from the perspective of democracy—

An Honourable Member: Process.

Mr. Doer: —and the, yes, the advanced polls worked quite well, and I want to pass that on to the Chief Electoral Officer. I think it continues to allow us to have people participate in our elections with—with advanced polls working more—in a more user-friendly basis.

* (18:10)

I think it's important—the member, the minister pointed out the number of committee meetings we had in the 1990s. The elections and privileges committee did not meet except for specific legislation, and so we've had—this is our eighth meeting in this decade, so eight meetings versus the past. I think we are improving the accountability of the Chief Electoral Officer and of the government generally.

We've also made a lot of progress on recommendations that have been made by the Chief Electoral Officer in the—in this last decade. I think we've implemented a number of recommendations that he has made—43 recommendations that have been made to the government. I think there's five still outstanding from the Chief Electoral Officer. We certainly believe that some of those recommendations have been very, very helpful to the democracy in Manitoba—the super polls, the average number of voters in rural polls, the expansion of voting places in apartment blocks, the expansion of Elections Manitoba mandate to undertake public information and education, the number of changes in

other provisions. I would also point out that the ability to appoint returning officers, which was maintained by the Cabinet of the day, has been—has been changed and has been allocated to the Chief Electoral Officer, not to the Cabinet of the day, and I think again that reinforces the separation of elections from government to the Chief Electoral Officer. We think that some of these reforms are, again, very logical in their application, and we certainly believe that there's a couple of other recommendations from the Chief Electoral Officer that we are looking at for purposes of future legislation.

Some of the other changes had been—been enunciated. We did deal with the fixed election date that had been raised for purposes of discussion by the Chief Electoral Officer. We did deal with access to voters lists prior to election campaigns. We did deal with enumeration, and I believe the issue of enumeration pay was dealt with by—hopefully by the administrative bodies of government, consistent with the recommendations of the Chief Electoral Officer. We've got the Commissioner of Elections with different tools and responsibilities. We've got new legislation dealing with voluntary agreements on compliance with the commissioner to ensure compliance with the act. We've got the ability of dealing with the commissioner having to deal with injunctions. We also have the ability now with the Commissioner of Elections to comment on investigations where the commissioner believes it's in the public interest, and any compliance agreements and cautionary letters will be made, by law, public for purposes of transparency in Manitoba.

We're pleased to also pay tribute to the Chief Electoral Officer and the commission on electoral boundaries. We added a representative from the north, a statutory representative of the north, with Brandon—or with the University College of the North, and a statutory representative from rural Manitoba that was not part of previous boundary commission work, and even though that was a bigger body to deal with those decisions, at least—I think it provided the statutory provision of having representation from outside of Winnipeg. I think the boundaries commission has released its final report and now those boundaries are final. The Legislature, in the past, could decide whether to accept those boundaries or not accept them. In fact, we had a situation in 1999 where we didn't even know in the spring of '99 what boundaries we'd run on, the proposed boundaries from the Chief Electoral

Officer and the commission or the existing boundaries and—not that it was any disadvantage to an opposition party at the time—

An Honourable Member: But we didn't know either.

Mr. Doer: Well, you knew more than we did. I can tell you that right now. But, nevertheless, it always presents challenges, particularly when seats are being eliminated and all the various discussions that go on in any party on that basis.

I just think we should pay tribute to the fact that this process of boundary redistribution has been in place since the 1950s—actually, it was the last act that's still in existence from the Liberal Party and Douglas Campbell, and we've been able to maintain this process for—for the last 60 years, and it's a very good process, I think, for the people of this province and a very, very fair process for elections.

We've also had an all-party committee on Senate elections. I wouldn't say the attendance has been overwhelming on Senate elections and Senate reform, but at least people that have an opinion on this, including existing senators, have been able to express their views. I'm not going to preclude or presume what the committee is going to do with their report, but I know the public hearings are over, I believe. I think the meeting in Norway House has been rescheduled and has happened, and I think that that, hopefully, will be released in short order. Thank you very much, Madam Chair.

Madam Chairperson: We thank the honourable First Minister.

Does the Leader of the Official Opposition have an opening statement?

Mr. Hugh McFadyen (Leader of the Official Opposition): I don't, but I'll permit the Member for Steinbach, on behalf of the opposition, to make a statement.

Mr. Goertzen: It's been almost a year since we met. At the last meeting, there was a number of discussions regarding the 2003 report and the acknowledgement in that report about irregularities in the 1999 campaign.

Because it's been almost a year since the last meeting, I want to simply recap some of the chronology for this committee before we enter questions. During the 1999 campaign, at least 13 NDP candidates used workers during the election that were assigned to their campaigns by unions.

These included NDP campaigns in The Maples, St. Vital, Riel, Fort Garry, Gimli, Springfield, St. James, The Pas, Burrows, Lakeside, Rossmere, St. Boniface and Southdale. The NDP campaign wrote cheques to the respective union to cover the salaries of these assigned workers and received a cheque back from the unions for the exact same amount in the form of a donation. It was a straight exchange of cheques.

Each of the 13 campaigns' official agents correctly classified the labour of the union worker as a donation-in-kind on the campaign's financial statement. This meant, while declared as an election expense, there would be no taxpayer subsidy of the expense, as there is with most election expenses that are not classified as a donation-in-kind.

These 13 campaigns sent in their campaign financial statements, their returns, to a central auditor who did the auditing of most of the NDP campaign financial statements. At this point, the NDP central campaign changed each of the 13 campaign financial statements by moving the expense for the assigned labour workers from a donation-in-kind to a reimbursable expense. The official agents who had signed off on their returns were not told of this change. The change meant that instead of there being a zero-dollar taxpayer reimbursement for the labour union work to the NDP party because it was a donation-in-kind as a result of the straight cheque swap, there would be a \$76,036 taxpayer reimbursement sent to the NDP party.

The 13 false claims, changed by the NDP party, were filed with Elections Manitoba. When the reimbursement cheques for each of the 13 campaigns were sent to the NDP central party, they kept the portion of the reimbursement attributable to the assigned labour workers and forwarded the reduced balance to the constituency campaigns. The reimbursement the constituency campaigns received would have been what they expected because none of the official agents claimed the labour workers as a reimbursable expense. The NDP obtained the \$76,036 with the intention of keeping it. At some point after, Elections Manitoba discovered this scheme, and, during this time, the NDP central auditor, Randy Mavins, resigned.

More than three years after the 1999 election, on April 16, 2003, the 13 NDP official agents were summoned to a meeting at NDP headquarters. Some of the 13 candidates were also in attendance, including the current Minister of Finance

(Mr. Selinger). The official agents learned of the scheme for the first time at that meeting and were told that Elections Manitoba would be in contact with them to have them sign revised campaign statements. The revision would make the union labour a donation-in-kind, as these official agents filed originally and thought had remained, instead of a reimbursable expense as devised by the NDP central campaign.

We are told that during the meeting the Minister of Finance demanded and received a letter from the NDP central campaign that cleared his campaign and his official agent of any wrongdoing and made clear that the rebate scheme was devised and executed by the NDP central campaign. The NDP central campaign made an arrangement with Elections Manitoba to return the \$76,036 that was obtained by the false claims that had been altered and filed by the NDP central campaign.

*(18:20)

One week after the April 16 meeting between the NDP and the 13 official agents, Elections Manitoba wrote the 13 agents advising them of the need to sign the revised statements, which they did. The revised statements were never reviewed and signed off by an independent auditor, which is required under The Elections Finances Act. Instead, Elections Manitoba signed off on the returns itself, resulting in the final statements of 13 NDP candidates for the 1999 election not having an independent officer opinion, and within days, the 2003 provincial election was called.

While The Elections Finances Act including, then, section 83, provides that every person or organization who files with the Chief Electoral Officer a statement or return which substantially fails to disclose the information required under the act is guilty of an offence and liable to summary conviction. No charges were ever filed in this case. Despite a change of 13 campaign returns being made without the apparent knowledge of the official agents, no charges were filed.

It is worth noting that, while exceptional steps seem to have been taken to discreetly address this issue, are the false claims and the wrongful obtaining of \$76,036 of taxpayers' funds. At the same time, Elections Manitoba was aggressively pursuing other issues related to campaigns in the 1999 election. Shortly after the election, Manitoba letters were sent out to the official, or 13 official agents, an election was called. There was no public disclosure of this

scheme until after the 2003 provincial election. In fact, the first public disclosure came three days before Christmas, on December 22, 2003, when Elections Manitoba posted a statement on its Web site referencing the need for new returns that were left without an audit opinion. A statement, then, also appeared in the 2003 Elections Manitoba report which is before this committee this evening.

Madam Chairperson: Thank you. Does the Chief Electoral Officer wish to make an opening statement?

Mr. Richard D. Balasko (Chief Electoral Officer, Elections Manitoba): Yes, thank you. It's been tradition that I've been able to make an opening statement dealing with our annual reports, and what I've done from year to year is comment on the report that's the most recent report before the committee. And so I'd like to do that this evening.

What I'd like to comment on this evening deals with the 2007 general election and the issue of voter turnout, and what's been done to try to understand a voter turnout better and to respond to the issue because it's of great concern, not just in Manitoba but really across democracies. I also want to talk a little bit about the compliance and assistance initiatives that we had during the 2007 election and, finally, to touch base on some of the recommendations that are still outstanding. And, of course, I'll do my best to answer whatever questions you may have at that point.

So as you all know, on a day much like today, except a little wetter yet, almost 7,000 field officials opened 2,700 voting stations in about 1,200 locations across the province and about 400,000 Manitobans cast a ballot. The post-election survey revealed that 94 percent of voters were satisfied or very satisfied with their voting experience but, having said that, turnout was only 57 percent, just up modestly from 54 percent in the election before.

To prepare for the last election, Elections Manitoba commissioned a survey of Manitoban voters and non-voters following 2003. The intent of the research was to become—to better understand why people vote, why they don't vote, what barriers might exist to voting and what steps might be taken to encourage voting. This research has proven to be invaluable to our efforts, to make thoughtful recommendations and we followed the same research again in 2007. And just, by the way, both of these surveys are available on our Web site, 2003, 2007.

It was discovered that voting and non-voting cut across every social stratum. The predisposition to vote or not to vote is influenced by a great number of factors and they change over time. I think, as we all appreciate, it's a very complex equation. But what is consistent is that the majority of Manitobans do hold strongly the belief that voting is important, even among non-voters. Two-thirds of non-voters are what we refer to as irregular non-voters. These are people who didn't vote in the last provincial election but who did vote in the previous provincial election or in the most recent federal or civic election. So the challenge is how to engage all eligible Manitobans to make sure that voting becomes, in fact, a priority.

In '03 the survey group, non-voters, in three classifications. The first, displaced voters; and these were voters who reported that, for reasons of administration, they determine not to vote. About 11 percent of non-voters in 2003 reported themselves as being administratively disfranchised, if you like. The issues are mostly the voting stations were too far away, perhaps they closed too early or they opened too late.

The largest group of non-voters were distracted voters, and over 40 percent of non-voters reported they intended to vote on the day of the election, however, with busy commitments, life got in the way and they were too busy, they were at work or voting just wasn't the priority on that day.

The third group and final group of non-voters classified as disassociated voters. These voters really didn't display an interest in engaging at all. They didn't—they reported not liking the choices, not thinking that it matters much in terms of the outcome of the election.

So we used this information in 2003 in order to form our recommendations for legislative change. Of course, in the legislative process, there were additional recommendations that came from—came from other locations to change the law, but in combination, a number of amendments to The Elections Act resulted in greatly expanded opportunities to vote in 2007. Changes that have been referred to—in terms of the reduced size for rural voting stations and in terms of voting stations in apartments with 100 or more eligible voters—these changes brought voting closer to voters and result in more locations, of course, and it proved to be successful.

Following 2007, 97 percent of voters responded that voting places were either convenient or very

convenient and that's up from 96 percent in the election before. Average voter turnout in apartment buildings was over 69 percent, compared with 57 percent overall. Post-2007, the survey of non-voters found that fewer people identified administrative barriers as a reason for not voting. And subsequent to that, of course, and as in effect at the by-elections, there have been amendments that now require the voting stations to open at 7 a.m. versus 8 a.m., so there's a further access to voting places.

The extension of advance voting that we've talked about around this table before was in large part intended to address the distracted voters—people with very, very busy lives—giving them another opportunity to connect with the system. And as you'll recall from 2007, advance voting was open to all voters. No reason was required to vote at advance. Advance voting included, for the first time, a Sunday—noon to 6 hours. And with the proper identification, qualified voters could vote at any voting location throughout the province.

Voter turnout at advance stations more than doubled in 2007, from just about 19,000 votes cast to almost 43,000 votes cast. Advance voting in '07 increased to 12 percent of total votes cast versus 5 percent of votes cast in the election previous, so I think that this is a very encouraging sign. Twenty-one percent of advance voters voted outside their home electoral division. In addition, changes in the by-election that have come subsequent to '07 will make voting more accessible yet. There will be another day of advance voting—the Saturday just prior to election day—so that brings now a total of eight days of advance voting in Manitoba, two Saturdays and a Sunday. So, after making locations for advance voting more accessible and convenient, the post-2007 survey of non-voters also found that fewer voters reported they were too busy to get out and vote.

How, then, to address the needs of the disassociated voters? This is the most difficult group to address. This group's engagement issues are rooted in a lot of factors, many of which are far beyond the mandate of Elections Manitoba. In 2003, about 37 percent of non-voters reported being disassociated from the process. This category increased in the last election.

But one of the things that we can do at Elections Manitoba—and it's been referred to—is engage in public education and information programs. In 2007,

for example, we launched a new education program in the schools. It's called Your Power to Choose. It's an education program that is curriculum-based and is a long-term commitment to youth engagement in Manitoba. Over 800 kits have been sent to every school across the province, and believing this to be of interest of you, we'll be happy to provide to MLAs a copy of this in advance of the coming school year. We're now examining extension of Your Power to Choose to adult literacy programs, and that looks very favourable for us.

I want to touch briefly on some of the assistance measures that we provide at Elections Manitoba. We continue to take a proactive approach to assisting political participants to comply with the law. We distribute six different information packages of guides and checklists to candidates, official agents, chief financial officers, auditors, constituency associations and leadership contestants. We held 17 campaign finance information sessions in Winnipeg, Brandon, Thompson, Dauphin and Selkirk during both the prewrite period and the writ period in the last election. Auditor information sessions were held as well, and those sessions were attended by auditors representing 76 percent of the candidates.

* (18:30)

So we'll continue to work together with political parties to try to provide good assistance in terms of complying with the legislation. For example, in the recent by-elections, we held a new session, which was a post-election day session, as the filing deadline approached to assist people to understand which items appear on which lines properly on the campaign finance returns. And at the moment, we're developing an electronic record-keeping disk that will be made available to political participants to allow them to record income and expenditures—if they wish to use it—and to transfer that information directly to their filing disk which we already provide, and we will be consulting with the political parties on this initiative.

I want to just mention a couple of the outstanding recommendations for legislative amendments. It's—we're very encouraged by the fact that the Legislature has proceeded with many of the recommendations we've been made—that we've made over the years and with consultation with political parties and our own research and searching best practices across the country and elsewhere. Between 2003 and 2006, we made about 70 recommendations.

To date, there are only very few current recommendations that have not been addressed.

I want to mention two that are carried forwards and, I believe, that there has been some indication that they would proceed at some point after the last election, and those are attempting a plain language rewrite of The Elections Finances Act to recognize the volunteer nature of political campaigns. The rewrite of The Elections Act into plain language, I think, was a great success, and I hope that you had the same experience, but the feedback we got was that it was very positive.

Secondly, we have recommended that there ought to be a referendum act in Manitoba. Referendums may be required in Manitoba for various specified purposes. There are not regulations other than generally adapt The Elections Act, and that's insufficient to really give enough direction on referendum conduct, as well as a matter of spending in referendums.

Just very briefly, the couple of new recommendations we've made, the first one relates to the set election period, and it's our recommendation that now that we have a set date for the election in Manitoba, that that ought to be accompanied by a set election period in Manitoba as well. So, rather than having a variable election period from 28 to 35 days, as the law currently states, we know when the election date will be but we're not sure of the date it will be called. We're recommending that the day that the election is called, the writ day, be specified.

What advantages might that have? We think that by confirming in advance the writ date, that would provide us the opportunities to provide even better and more efficient service in the administrative conduct of elections. We think it would further level the playing field by providing a clear and known start date for all campaigns that would assist them to manage their resources and, as well, comply with the various spending limits.

Madam Chairperson: Sorry to interrupt, but the time is up. If you could just conclude your comments.

Mr. Balasko: Thank you very much. I'm just at the end and I appreciate that.

So we think this may assist in, as well, of recruiting of volunteers to campaigns. B.C. and Ontario have set election dates and they have set election commencement dates, and so that's what we're recommending.

The other recommendations, I think, are much more straightforward. They're nearly housekeeping matters.

So right now we're dealing with the transition to the new electoral division boundaries, assisting political parties above riding indexes and other guides to redistribution, as well as the new maps, and we're also dealing with political parties providing assistance as to what might be—what are the filing requirements for constituency associations, and we are just commencing to develop an address data base for the province of Manitoba. That should assist enumeration and increase the quality of addressing on the voters' list, and that's something, as well, that we'll be dealing with the political parties on to seek their input.

So thank you for your patience. With those comments, I appreciate this opportunity that I have to comment on the report.

Madam Chairperson: Thank you. The floor is now open for questions.

Mr. Goertzen: Mr. Balasko, Elections Manitoba is an independent office of the Legislature, as you well know. Can you tell me whether you agree that it's essential for your office to remain free from any influence that political parties might exert on your decisions or investigations?

Mr. Balasko: Yes. Elections Manitoba is absolutely independent and absolutely non-partisan.

Mr. Goertzen: Have you or your staff or external auditors that you might contract from time to time ever been subject to political pressure in the decisions that your office is—has to make in the course of fulfilling its statutory duties?

Mr. Balasko: I have taken every decision in my position as Chief Electoral Officer, and the advice of my staff has always been taken with one thing in mind, and that's public service and never in response to any type of pressure, nor have I felt that pressure by governments over time to try to influence the activities in our office.

Mr. Goertzen: So you're stating that you haven't received that pressure or you haven't felt pressured.

Mr. Balasko: We've conducted ourselves absolutely, properly non-partisan manner in an independent manner and I have never personally felt pressured by any government over time to make a decision.

Mr. Goertzen: In relation to the 13 claims that we believe are—were—falsely filed by the NDP in 1999, the ones that resulted in the overpayment of taxpayers' funds of \$76,000, can you tell us who was involved in the investigation of that matter? Was it Scott Gordon, others in your office, or did you hire that investigation out?

Mr. Balasko: Investigations in our office are always conducted in a similar fashion, from investigation to investigation. At that time, the Chief Electoral Officer was responsible to investigate as well as to make decisions on prosecution, and for that reason, the Chief Electoral Officer was not involved in the day-to-day conduct of the investigation.

An investigative counsel was appointed to lead the investigation. The investigative counsel, in this case, was Mike Green. Mike Green is the current Commissioner of Elections for Manitoba. Mike Green is the former counsel to the Monnin inquiry. Mike Green would have the ability to retain whatever resources he thought necessary. He would retain forensic auditing advice when that was deemed appropriate. He would retain investigators when that was deemed appropriate. He would retain additional legal advice where that was deemed to be appropriate.

The investigative team would go out and do its work and, when the investigation is complete, a report is made back to the Chief Electoral Officer, which is essentially the legal analysis of the situation that's being investigated. It will, as well, include recommendations for prosecution if that's the feeling of the investigative counsel.

That report then will be reviewed by our general counsel. General counsel, in this case, and has been for many years, is Blair Graham of Thompson Dorfman. Blair has represented Elections Manitoba for over 20 years. He is also the prosecuting lawyer if any matters went to court.

There would be a second detailed legal analysis prepared by Mr. Graham. Mr. Graham and Mr. Green may have discussions at that point to make sure that we understand the nature of the investigation. If we wish to redirect, we can redirect, collect additional information. Ultimately, I would receive a final advice and opinions from Mr. Green as well as from Mr. Graham.

With the benefit of two independent legal opinions, I make a decision as to whether or not to

prosecute with the matter, and I have always acted consistent with legal advice I've received.

Mr. Goertzen: Are you at liberty, in the case that we're discussing from 1999, to disclose who was the forensic auditor and the investigators on that—on that team?

Mr. Balasko: At the risk that I leave someone out—but I'll go from memory, and I'm quite sure I have got this right—certainly, the forensic auditor, his name is David Asselstine, of Hamilton & Asselstine, and Bob Tramley—sorry, Bob Tramley, would have been the lead investigator.

Madam Chairperson: There are other members who have questions. I'll come back to you.

Mr. Doer: Well, I—sorry, Madam Chair, I was going to comment on the outstanding recommendations but perhaps we can continue on with the questions, and I'll come back.

Mr. Chomiak: You now have broader powers, rather than prosecute or not prosecute, as a result of amendments to the election act and, I think, for good reason. I think for good reason because of the voluntary nature of political campaigns, et cetera, there ought to be some flexibility, et cetera.

Do you want—perhaps want to comment or elaborate to the committee on that?

Mr. Balasko: Well, thank you for the question. We do, in fact, and it had been longstanding recommendations of ours, going back, say, quite a number of years prior to these recommendations being adopted in law, that there ought to be some techniques short of prosecution so an investigation didn't result in a prosecute or not prosecute.

We saw good practices in other jurisdictions—federally, for example—where they have a couple of tools that we thought were helpful in Manitoba.

One is the compliance agreement, and so we recommended that there ought to be the provision for now the commissioner—not Elections Manitoba; since 2006, it's the commissioner, not Elections Manitoba, that investigates and prosecutes—that there could be compliance agreements, and the compliance agreements would be negotiated between the commissioner and the party that's being investigated and, if a compliance agreement were arrived at in place of a prosecution, our recommendation was that should be a public document and that now is the law.

* (18:40)

There's also the provisions for the commissioner to issue formal letters of caution where the error has been something that has been, for example, inadvertent, of a technical nature, something that might happen in a volunteer campaign. So the commissioner now has the ability to issue formal letters of caution, and those formal letters of caution, again, or a recommendation, are also public matters.

There is also the ability for the commissioner to apply for injunctions in the case that something's deemed serious enough in the course of an election campaign.

Mr. Chomiak: I wanted to highlight that, because going back in my experience, and I don't think I've ever been in an election campaign with a whole bunch of volunteers where they didn't suspect the other side was doing something, and, you know, the nature of campaigns and the nature of the emotion and the attention of people lends itself to that, so the idea of having a range of remedies when there are supposed violations and violations makes so much sense because, you know, 99.9 percent of the time it's just a bunch of people trying to do the right thing.

Very rarely have we seen something that's in the criminal law realm that had a mens rea attached to it that, in fact, it was done deliberately. So I think that is most useful, and it takes us away from some of the standard attacks on the campaigns itself and gets us back to the main issue.

So I just think that that is fundamental actually to some of the changes. Those changes that have been put in place have been fundamental to the way democracy proceeds, and I won't go on further because I just read a book about elections in Winnipeg back for a while, and I'm cranked up on that, but I'll stop there.

Madam Chairperson: Mr. Balasko, did you have a response to that?

Mr. Goertzen.

Mr. Goertzen: Mr. Balasko indicated that a team of individuals involved with an investigation including investigators obviously and forensic auditors, these individuals, I suppose, are given latitude to do the work they need. They're not given direction from any outside sources. They're sort of set to the task, given the set of facts and allowed to do the compilation of the facts and recommendations?

Mr. Balasko: The general investigative counsel is the person who directs the investigation itself, and so

that person will work with the team. They'll establish the game plan. At the end of the day, what we're concerned with, these are legal matters, legal interpretations and opinions from that individual.

Mr. Goertzen: Presumably there's a heavy reliance on these individuals, investigators, forensic auditors, on the work up to an opinion.

Mr. Balasko: Yes, absolutely, and both the investigative counsel and the general counsel who always comment on each investigation would have full access to the complete set of reports by any auditor or investigator, and they would consider those reports fully and carefully, and then they would apply their legal analysis to that, and they would arrive on their recommendations to that.

Mr. Goertzen: I think I'm fairly clear on the role of an investigator in such a situation. Could you clarify for me what the role of a forensic auditor would be?

Mr. Balasko: If there were financial matters or transactions that were detailed, we would want to make sure that the investigative team has all the resources necessary to deal with those types of matters. So the investigative—the lead investigative person being a lawyer by profession would engage an audit support person where they thought that that was necessary.

Mr. Goertzen: A forensic auditor would be well versed in The Elections Act and the operation of The Elections Act as important, I suppose?

Mr. Balasko: Yes, it would.

Mr. Goertzen: I believe you mentioned the name of Mr. Asselstine as being the individual who's assigned to this particular file. Was he a long-term employee or somebody who's contracted with Elections Manitoba from time to time?

Mr. Balasko: Mr. Asselstine's firm was engaged to review and to help us establish a review system for the election returns in 1999—in the 1999 election across all political parties, as well as providing us some contract work from time to time, such as assessing resources within our office.

Mr. Goertzen: So he understood the process well. Had he been engaged before 1999 with Elections Manitoba?

Mr. Balasko: I'm not sure of the year of engagement, but it was leading up the election in 1999.

Mr. Doer: Yeah, I was going to talk about some of the recommendations, if it's possible.

Madam Chairperson: Yes, we'll come back. We'll come back.

Mr. Doer: First of all, the issue of the set election date and the set election period and the writ period, this was not in the proposed law. There was a flexible law; I believe it was 28 to 42 days because of the spring issue of elections and flooding and forest fires and other issues. Certainly, we are willing to look at drafting legislation consistent with that recommendation.

Secondly, on the issue of plain language, I know the drafters are working on this for the financial section. I know they got other bills that they're dealing with right now, but I'm not exactly sure where that's at, but I think the—as the Chief Electoral Officer said, the—the existing—the first act dealing with the elections laws has been well received by volunteers, as well received as any legal document can be in terms of volunteers looking at the notwithstanding that are in these laws, but I think some of these issues have been resolved.

The referendum act—the—there is one referendum act right now, or one referendum section in the act right now, dealing with the balanced budget legislation, and I was going to ask whether the Chief Electoral Officer would find the model in the balanced budget law referendum section as the appropriate model for—for consideration of the Legislature on referenda, and the issue of plebiscites is also something that is slightly different than a referenda and doesn't have the same kind of financial issues. But would he consider or would his office consider the referendum act the model under the—the balanced budget law as appropriate?

Mr. Balasko: Thank you for that question. It's—it's a— it's a helpful beginning because it makes reference to the modification of the elections legislation to the purpose of conducting referendum. However, there are some functions that are not transferable or not anticipated in elections, such as the setting of a question, and there are other financial aspects which are not addressed, such as: would there be pro-and-con committees on a referendum; what—what might their limits be; what public disclosure would they engage in; et cetera. So I think it's—I mean it's that first step, and it's really what encouraged us to make a suggestion, that we go beyond that into a—into a referendum act that would

set out with clarity for everyone exactly how referendums were to be conducted.

Mr. Doer: Well, I've read René Lévesque's book on how they established the referenda–referendum question in the first referendum. I guess it was 1981, or in or around that period of time, '80-81, and they developed the question to have sovereignty association, was like industrial park, or I could use other terminologies, but it would be partisan in terms of developing the question to get the right answer or what they prefer to be the right answer. And, of course, former Premier Parizeau in–in the–from the same party also developed a question that was quite soft, if you will, instead of a hard choice.

What is the advice about referendum law? What model do you see? You've got the Clarity Act in Ottawa that deals with a specific issue. You've got the experience of referendums that are very major in terms of their consequences in Québec. What is the recommended model? We've just had a plebiscite on the Wheat Board, one run by the Province, based on a question developed by farm organizations; another one being a three-sided question developed by the former Minister of Agriculture, or the current Minister of Agriculture.

We would argue an up-and-down question is a little–written by farmers is better for farmers to vote on. Obviously, that's at a political stalemate. But what is–what is the preferred model for referendum in looking at the–the limitations of existing laws in Manitoba? Is there any place where a question could be developed in a way that had credibility and not be, quote, loaded, unquote, for one proponent or another? What model would you recommend to the committee and why would you recommend it?

* (18:50)

Mr. Balasko: I mean, that's the million-dollar question when it comes to referendums, of course, and I've seen the different models as well. I think it's in Ontario, I believe, that the Chief Electoral Officer has a key role to play in formulating the question. That's not something at the outset that I've done a lot of research on, and nor would I jump to the front of that line necessarily. But it would seem to me that a question setting process that would involve discussion and debate in the Legislative Assembly would be something that would be helpful 'cause it would result in a question that, that's been debated and discussed and covered by media and others and presumably better understood.

An Honourable Member: Any other question?

An Honourable Member: No.

Mr. Goertzen: Thank you very much, Madam Chairperson. Mr. Balasko I'd like to table for you a letter and, for the benefit of the committee–it's a letter that's written by the provincial secretary of the New Democratic Party to Scott Gordon, then head of Elections Manitoba, dated September 9th, 2002. I'll wait till you have that.

I'll read the letter into the record, sir, dated September 9th, 2002 to Elections Manitoba.

Attention: Mr. Scott Gordon. Dear Sir. Re: the New Democratic Party of Manitoba election expenses. When we recently spoke you asked that I provide in written form our objection to Mr. David J. Asselstine being involved in the review being conducted by Elections Manitoba of the NDP's 2001 party annual return. You are aware that Mr. Asselstine has been intimately involved in the review of the party's 1999 general election matters. It's become quite clear to the NDP that Mr. Asselstine is firmly of the view that the party has conducted itself improperly in that matter. Whether or not Mr. Asselstine's views result in charges being laid remains to be seen. However, it is clear that he believes that we have in some way, shape or form violated The Elections Act for the 1999 election. Accordingly, it would be inappropriate on the basis of a perception of bias to have Mr. Asselstine assigned to the review of our 2001 party annual return and we would ask that Elections Manitoba please assign someone else to that function. And it's signed by Tom Milne, M-i-l-n-e, provincial secretary for the NDP party.

You had a chance to look at the letter, sir. Can you indicate what the–Elections Manitoba's response was to this letter?

Mr. Balasko: Yes, thank you. I want to provide some context. I'm sure you, you've read this carefully and are well aware that in the return that this is speaking to is the 2001 party annual return.

The matters that were reported in our annual report in 2003 relate to the 1999 and the 2000 election returns. It had been the policy of Elections Manitoba, in the same way that investigations and prosecutions were separate within our office, to the best we could, in the same way that we assist political parties to comply, as well as at that time we had the responsibility to ensure that they complied to make a distinction between the reviews

we did on a compliance basis and the reviews we did on an investigative basis. And it had been our approach to have different resources attached to compliance and to investigation.

So when—for the same reason that the CEO doesn't investigate and then prosecute, for the same reason we would want to have resources that were accounting on an investigative matter not also doing compliance issues because it just raises, you know, perceptions of predetermined views and this is not appropriate or healthy. So this was our general policy and it's simply not driven by the letter from Mr. Milne. This was what Elections Manitoba's policy was.

In this circumstance we carried on with the reviews of returns and, in fact, Mr. Asselstine was doing a review of the 2001 party return. It was brought to our attention. We looked at this and so we're certainly aware that we had a policy to deal with it otherwise and we made the correction. We assigned resources to the annual return. We separate compliance and investigation.

Mr. Goertzen: So the end result was from the letter that he was then removed from the review of the 2001 return. Is that correct?

Mr. Balasko: The position of Elections Manitoba was always to separate investigation and compliance and so Mr. Asselstine would continue on the investigative side of things. On the compliance side of things and returns that were not dealing with the investigative side, a different resource would be assigned.

Mr. Goertzen: In your experience is it a normal practice for political parties to contact Elections Manitoba and to express concerns about who is doing investigations or compliance reviews on, on their reports or on elections?

Mr. Balasko: We have heard from all political parties at various times in the time that we've been doing this work that they appreciate or don't appreciate some of the assistance initiatives or compliance initiatives from Elections Manitoba, and that they, from time to time, would express to us that they would feel that someone else would be better to handle the file, but we've stayed with our policies, and our policies are, within compliance, and our office, these are our staff.

We've had requests in the past from a political party that civil servants in our office not review their returns because of concern they might have. We'll

continue with the staff in our office reviewing the compliance returns. Similarly, between compliance and investigation, we'll have some resources on compliance, some resources on investigation. Nothing was taken off the investigative front.

Mr. Goertzen: Does Mr. Asselstine still do work on behalf of Elections Manitoba?

Floor Comment: He does not.

Madam Chairperson: Sorry, Mr. Balasko. I didn't recognize you. Mr. Balasko.

Mr. Balasko: I'm sorry. I've been trying to discipline myself to wait for your acknowledgement, and my apologies on that.

No, he does not.

Mr. Goertzen: When did Mr. Asselstine stop doing work for Elections Manitoba?

Mr. Balasko: There was a review in our office, and a recommendation was made in 2003.

Mr. Chomiak: I found this discourse, this cross-examination type discourse, quite interesting, and I want to reflect because I'm often in the same position, as Attorney General in the Legislature, receiving questions about the distance between—an actual difference between matters of compliance and matters of investigation and matters of prosecution.

There is an interesting philosophical question here that I think bears scrutiny and that is, we have gotten much more sophisticated in terms of how we deal with elections in the recent period of time than we did in the old days when, you know, again, in the book that I was reading about the history of Winnipeg, where seats were literally gerrymandered. Seats were moved, wards were moved in the city of Winnipeg to prevent certain people from being elected, and—

An Honourable Member: Point of order.

Point of Order

Madam Chairperson: I'm sorry. Point of order, Mr. Lamoureux?

Mr. Lamoureux: Madam Chair, I was just wondering, is the minister on a point of order or—

An Honourable Member: I'm asking a question.

Madam Chairperson: My understanding is that he's asking a question.

Mr. Lamoureux: Just, then, on my point of order, traditionally, what has happened in the committee room is that individuals are afforded to ask questions and once they're done asking their questions, then you go on to someone else that was wanting to ask questions. In my few years, 18 or 17 years, that's what I've always somewhat witnessed. Unless there's, you know, some sort of an agreement.

You know, the member from Steinbach is very determined to try to get a better appreciation and understanding of an issue, and I think that he should be at least afforded the opportunity to ask his questions. If he was asking for 45 minutes or an hour and where time becomes a concern, well, then, I would see the need to be able to go on to another question but, typically, Chairs in the past have taken a note of who's requesting to ask questions and then once the current member's done asking, then they continue on.

And I just don't think it's healthy to play a disruptive role when I'm trying to get a better understanding as to—other members are trying to get a better understanding of what's—what the, in this case, the member from Steinbach is trying to get across to the committee.

Madam Chairperson: Mr. Chomiak, on the same point of order?

Mr. Chomiak: On the same point of order, I—one of the things we've been trying to do in the Legislature daily question period is to allow everyone, including the member of the Liberal Party, to have a chance to ask questions. I think that you're going back and forth and allowing for a broad range of questions is only keeping in the spirit of how we try to operate, to allow for every member of the committee to have an equal viewpoint.

We saw a series of very rapid cross-examination-like questions that went on for a while and then you asked for another question from other members and then moved back to the member from Steinbach to do his cross-examining-type, I'm in a lawyer or a legal situation kind of questioning, and I think that's only fair and that's the way I think that the Legislature is conducted and the committees are conducted.

* (19:00)

Madam Chairperson: Further interventions on the point of order.

Mr. Leonard Derkach (Russell): I've listened carefully to the proceedings this evening, and because I chair a committee, Madam Chair, I don't know that we have adopted a practice in committees that doesn't allow for an individual around the table to complete his or her line of questioning. But if this, in fact, is a new policy of how committees are going to be run, as it seems to have been indicated by Mr. Chomiak, then I think that change in direction or policy should be made clear prior to a committee setting. Otherwise, I agree that Mr. Lamoureux does have a point of order in that this is a new practice, and perhaps committee members should be made aware that this is the way that we're going to conduct a committee.

And so I think it's only fair to give members an indication prior to a committee starting that this is the practice that is going to be adopted by the government's legislative review committee and other committees.

Mr. Doer: On the same point of order. This is the eighth committee meeting I've had on this subject that wasn't tied to an election law, and I do recall in the previous meetings and, of course, we didn't have any in the 1990s, but there has been—did I mention that before? There have been a number of questions from MLAs, from all political parties, dealing with the issue of access to voters to democracy.

I can remember, the former member from Emerson, Mr. Penner, asking a number of questions about the electoral—the size of the polling areas. I can remember Mr. Rocan asking a number of questions to the Chief Electoral Officer. I remember people—in fact, the present Chair, the present member of Fort Rouge, asking a lot of questions about seniors' access and the desire to have super polling stations in late, major seniors complexes.

So I actually—most times this committee has had MLAs raise questions about how democracy can be improved. Now I, obviously, know it can also be used to ask questions to the Chief Electoral Officer on their previous report. We know the Chief Electoral Officer's commented on some of the issues being raised last July, and so I think it's an opportunity for every MLA that's on this committee to ask some questions dealing with the issue of access to democracy.

I mean, I know that some of these discussions will probably go on in question period in a more partisan setting, and that's fine, we've had them before. But this is an opportunity that we shouldn't

lose in terms of asking the Chief Electoral Officer questions on general principles of democracy, and I had one, specifically, on referenda and referendums, that he has in his report, and questions that arise from all of the reports on voter participation, which is, ultimately, one of the goals that we all have and share together. So I don't believe it's inappropriate for other people to ask questions and alternate around.

Mr. McFadyen: The Member for Inkster (Mr. Lamoureux) has raised what we think is a valid point of order. We have asked tonight, and commented at the outset of the meeting, that we would appreciate a three-hour discussion tonight. There was agreement that we would go two hours and then revisit the issue as to whether we carried on.

Our view is that with a three-hour meeting, there should be an opportunity to get into a lot of the legitimate issues that members of the committee would like to raise and so there will be opportunity to ask questions on a variety of issues.

In his opening statement, the Premier (Mr. Doer) made the comment that the independence—one of his first points about Elections Manitoba was its independence and non-partisan nature, and we agree that that is the most fundamental issue with respect to the role that Elections Manitoba plays in the democratic system in Manitoba.

Mr. Goertzen has just tabled a letter that had not, to this point, been made public, that the NDP in 2002 had asked Elections Manitoba to remove Mr. Asselstine from review of annual returns, and Mr. Goertzen was then getting into the circumstances that led to Mr. Asselstine no longer carrying on as a forensic auditor on behalf of Elections Manitoba subsequent to that letter being sent by the NDP to Mr. Gordon, and, given that this issue of independence is right at the very heart of democracy, that I believe it's correct that Mr. Goertzen be allowed the opportunity to finish up around the circumstances relating to Mr. Asselstine's departure and the request by the NDP to have him removed so that we can be satisfied that we have all the information on that issue, and then there should be time left to move on to other important issues, as well.

Madam Chairperson: Okay, I thank all honourable members for their interventions—am consulting with the Clerk. I do understand the general practice of the House. Reading from the rules, my understanding—reading from the procedures, the manual—that the

opposition critic will generally hold the floor for most of the questions, and I have been keeping track of the number of questions and have been attempting to give him five, six, seven questions at each turn, but also that members will be called upon in the order that they put their hands up, and I've seen many hands around the table, so I've been trying to balance in that way.

The manual does suggest that, usually, the opposition critic would work out, in an informal way, some point at which he will give the floor over to other members who ask questions. I'm not sure if that's happened or not, but the manual does say, ultimately, the order of speakers is left to the discretion of the Chair. So what I'm consid—what I would like to continue to do is giving Mr. Goertzen as many questions as possible. I know that he, he has many questions that he wants to ask, but also balancing the rights of all members to ask questions. So I have been keeping him on the list and trying to alternate back and forth. So that's what I'm going to continue to do.

Madam Chairperson: I think, when we had the point of order, Mr. Chomiak had the floor.

Mr. Chomiak: I'll end at that, Madam Chairperson, just the point of how important a role and difficult a role it is to be in Elections Manitoba and that it's not like criminal law, life or death beyond a reasonable doubt, that it's citizens participating in a process where a bunch of volunteers who are working as hard as they can, and Elections Manitoba has evolved into a more helpful and educative function, and there is an adjudicative function that probably is a last resort, and just your comments on that.

Mr. Balasko: One of the recommendations that we made that was enacted in 2006 was to create the position of Commissioner of Elections, because there seemed to us to be just a basic difficult fit between assisting people to comply with the law and, on the other hand, investigating and prosecuting people for contraventions of the law.

And so, yes, the model is—has evolved over time. I think it's a better model now that allows Elections Manitoba to focus on compliance and assistance, allows us to focus on public education, allows us to focus on running the best possible elections, allows us to focus on engaging citizens assisting political parties to file their statements and their returns.

So I think that's been a extremely important change, in addition to the types of tools being made available to the commissioner. But even back in the days when, prior to 2006, we were responsible for compliance, assistance, investigations and prosecutions—a very difficult combination and quite rare to have that combination in Canada—we did what we could do to separate investigations from compliance, and that's a theme that you'll hear again and again.

* (19:10)

And I'm extremely proud of the work on the investigative side and the compliance side. And I think that the nature of the people who are involved on the investigative side, whether you're speaking of Michael Green or whether you're speaking of Blair Graham, Scott Gordon and other people in my office, are people of the absolutely highest integrity, and I think that they fulfilled their responsibilities in a tremendously positive way in the public interest. Elections Manitoba is completely independent and it is completely non-partisan and that is a factual statement.

Mr. Goertzen: Mr. Balasko, you had indicated that Mr. Asselstine ceased to do work for Elections Manitoba in 2003. I'm sorry, if you provided an exact date, I don't remember what that exact date was. Can you indicate why he ceased to do work for Elections Manitoba?

Mr. Balasko: Yes. There was a recommendation based on several contractual disputes with the individual, and I wouldn't go into the contractual disputes, and we reached a decision to retain other auditing services. Not unlike political parties making decisions to use different auditors from time to time, and we retained that. And this was a consistent decision on our part and it was consistent. When I say consistent, in relation to, as well the investigative general counsel and others.

Mr. Goertzen: I understand that Mr. Asselstine, in fact, had been doing some work with Elections Manitoba since the mid-1990s. He was even referenced in the Monnin report for good work that he—good work that he had done, and not the high water mark for our political party, I recognize that, but clearly, he's somebody who had worked both sides of the ledger when it comes to different issues that needed to be investigated from Elections Manitoba.

And I think you indicated earlier on some merit for Mr. Asselstine. And yet there was sort of a parting of the ways in 2003, not that long after, obviously, complaints had been brought forward by the provincial secretariat for the NDP.

And you can't enlighten us any further in terms of why he decided to end what was a long-term working relationship with Elections Manitoba and a person who had been cited with some good work for a lot of different issues that, on different political parties that he'd been asked to perform?

Mr. Balasko: Well, thank you for the question because it gives me the opportunity to try to sort through some concepts that, that may be overlapping a little bit in the discussion, and I want to see what I can do to address that.

Firstly, with regard to the Monnin commission of inquiry, that wasn't a creature of Elections Manitoba. We, in fact, were witnesses before the Monnin inquiry and so we did not engage the individual at that time. The individual would have been engaged, I assume, and this is an assumption on my part, but by, by the counsel to the Monnin inquiry, I think, who is, who is Michael Green. So, in terms of the association, that's where it would have started. So I just hope that clarifies your comment with regard to Elections Manitoba.

Secondly, with regard to the work, I've tried to draw a very bright line between compliance and investigation. We've kept separate compliance matters from investigation matters. There was no change on the investigative side in terms of accounting services, at that point, when the investigation was being concluded and on the ground the investigation was being concluded and provided to the commissioner or to Mr. Green, I should say.

The third point is that the work that was done by anyone who was involved with any investigation is shared with the entire investigative team and would have been shared with general counsel as well. So I can assure you that all the detailed work that was done, performed by Mr. Asselstine in his responsibilities with Elections Manitoba, that those reports would have been very carefully considered by the investigative counsel, Mr. Green, by myself, by Mr. Graham, the general counsel to Elections Manitoba, very carefully considered in every aspect that they would have commented upon. So the work was shared. The work was reviewed. At the end of the day, our decisions are based upon legal analysis and the advice from two outstanding lawyers with

strong reputations in this field, providing advice independent of each other to me and I act in consistent with that information.

Mr. Goertzen: Do you believe that Mr. Asselstine lost the confidence of Mr. Green? Is that one of the reasons he would have been asked to move on?

Mr. Balasko: I won't speculate on Mr. Green. You can ask Mr. Green, I suppose, what Mr. Green thinks.

Mr. Goertzen: In the letter that I provided you, the provincial secretary for the New Democrats indicates that Mr. Asselstine was intimately involved in the review of the 1999 general election matter that we've been discussing. Would you agree with that characterization?

Mr. Balasko: Yes.

Mr. Goertzen: Also in the letter, the provincial secretary for the NDP indicates that Mr. Asselstine is firmly of the view that the party has conducted itself improperly in that matter, referring to the 1999 general election. Is that a view that Mr. Asselstine ever shared with you?

Mr. Balasko: As you are well aware, investigations are to be conducted in private, and it's not my choice or my will to comment or not comment on the conduct of investigations and the contributions of people involved in an investigation. It's required by law to be conducted in private, and that's something that I, of course, have to respect, similar to anyone who would be involved in an investigation.

Mr. Goertzen: Also in the letter it indicates from the provincial NDP secretary, he writes, it is clear that he—being Mr. Asselstine—believes we have in some way, shape or form violated The Elections Finances Act for the 1999 election. Mr. Asselstine ever share that view with you?

Mr. Balasko: I appreciate your question, but I have to reiterate what I have said, which is that we're bound by the law, just as anyone else involved in an investigation would be bound by the law, and the law requires that investigations at that time to be conducted in private. Since that time, there's been an expansion of the investigative tools, many of which are public, all of—many of which were recommended by our office, as was the establishment of a separate office which itself, now, has an obligation to report privately—I'm sorry, publicly, where deemed in the public interest.

Mr. Goertzen: Thank you, Mr. Balasko. Despite the fact that the New Democrats avoid charges on this issue in relation to the 13 falsely filed claims in 1999, they did pay the money back for the year that they were caught in doing it. Did Elections Manitoba check to see if a similar practice had occurred with the NDP in previous elections?

Mr. Balasko: Thank you for that question. Again, it allows me an opportunity to put some information before you.

First, with regard to comment that avoided charges, I think that welcomes the opportunity to reiterate that there's a sole decision, a sole point of decision with regard to charges being laid, and that is the specific legal analysis and specific recommendations of two counsel independently provided to the Chief Electoral Officer, and the Chief Electoral Officer acting consistent with the legal advice that's been received.

With regard to the returns being filed, perhaps if you could repeat the second part of the question, I'd appreciate that.

Mr. Goertzen: Certainly. There's some indication that this practice that the NDP engaged in in 1999 may have been a common practice going back some years. Did Elections Manitoba check to see if that was the case?

Mr. Balasko: Yes, thank you for reminding me of that second part of the question.

We did consider whether or not it was appropriate for us to go back and look at prior elections. We sought legal advice specifically on that question. We received legal advice specifically on that question, and we acted consistent with the legal advice that we received.

Mr. Swan: Moving ahead the better part of a decade, Mr. Balasko, I wonder if we can just talk a little bit about voter turnout. You made comments in the 2007 report and in some of your comments today about the importance of voter turnout, and, representing an inner-city riding with a fairly transient population and a lot of apartment blocks, I know, door-to-door enumeration is a challenge. I know that the set election date will assist that, but I'm wondering if there is any, any lessons learned from the 2007 general election on enumeration to try and get more people enumerated in the hope of increasing turnout.

Mr. Balasko: Yes, that's a very strong observation, because one of the indicators of likelihood to vote is being registered to vote, and so it's extremely important that the voter registration take place.

Enumeration in Manitoba will have—we assess it, by the way, through a third-party survey company so that we get feedback objectively on the coverage. The coverage for enumeration in the province is about 86 percent and 87 percent. The accuracy of the information on the voters' list has increased tremendously from the previous election to something that is in the range of the low, of the low 90s. So the coverage is good. One of the other—but can be improved upon.

* (19:20)

One of the other advantages of enumeration is that it's a wake-up call. The Law Reform Commission, decades ago, looked at the issue of a continuous list, and it's something we stay very current with, too, because if that ever makes a point, we'd like to proceed with that. It recommended that enumeration continue because it's a wake-up call to engage people, and then finally with a set election date, really, our approach to enumeration can be entirely different. It's very difficult to recruit the work force not knowing the date of the election.

Mr. Swan: If I can make a comment, and maybe you can—you can comment on it. It seemed that there was, in some cases, greater success when the returning officers chose to use local people from the area in terms of enumeration—people who may be less concerned about entering a rooming house or less concerned about entering a building that may not be a place that everybody would want to live. It's experienced certainly in Minto, and I think the other inner-city ridings, is that the use of local people can really make sure the enumeration process is more complete.

I'm just wondering if you've got any, any thoughts on that.

Mr. Balasko: I agree 100 percent, and the charge to returning officers is to recruit a local work force. However, the difficulty in an election date that's not known in advance is you have people lined up, but when that particular Friday—remember elections are called on a Friday—when that particular Friday arrives, we need to be out enumerating on that weekend. Weekends are very important days for us.

So, to the extent that our work force carries over, it's local. We require the returning officers to stay

with that local approach for the first week of enumeration, give or take, following which we give them the ability to bring people from outside the community in. But we absolutely agree that it's best that it's community based, and with a set date, October 4, 2011, we'll be able to address our recruitment strategies to see that that's the case.

Mr. Goertzen: Thank you very much, Mr. Balasko—Madam Chairperson for Mr. Balasko.

Just returning to the question previously, did your office to attempt to calculate how much money may have been claimed in a similar fashion, prior to the 1999 election? It was discovered that there was a change or a difference of how these union labour workers were being claimed.

Did you attempt to see how much money might have, in fact, been claimed in previous elections?

Mr. Balasko: I can comment on that, as is the process, but not matters as to the specific investigation, and I would like to make that point as genuinely as I can because this is generally the situation that we're in. And this is a lot of the time, and we respect it.

What I can say is we did consider going back in time. We did seek legal advice specifically on that point. We acted consistent with the advice, and I think the advice was very reasonable, and our process was followed. This is the same process that would be followed in other circumstances.

Mr. Goertzen: You indicate, then, that the legal advice that was provided to you was that charges, despite Mr. Asselstine's views, presumably that charges should have been laid because he believes that there was a violation of the act, according to the NDP provincial secretary, that in fact charges weren't laid based on the legal advice you say you received, and yet the NDP repaid the money.

I think that most people would look at that as something of a contradiction. On the one hand, advice is presumably that the law wasn't broken, and yet, on the other hand, the money is repaid.

Can you sort of square those two notions?

Mr. Balasko: Absolutely. With respect to the repayment of reimbursement and refiling of returns. Firstly, to set some context, that's not unusual. There's not a political party in the House that hasn't refiled the financial statement, has not repaid reimbursement at one point—in some cases, more than once. So this has happened in the past, across

the board, having not resulted in prosecutions in other cases either.

Secondly, I think it's important to keep in mind that at Elections Manitoba, at the time, our responsibility was to conduct the investigation. The legal advice that I have is legal advice provided to me, and that's the position that I'm in. What the determinations or assumptions of the parties being investigated are, that's their—that's their concern. I'm not privy to that, and that's not my area of responsibility.

But I know what my legal advice was, and there's a sole reason for not proceeding with charges, and that is that two independent legal opinions came to the conclusion, following detailed analysis and a review of all the forensic work, that charges were not warranted in the case.

I also, if I could just take a moment to, to provide one other comment in terms of context. It was Elections Manitoba that uncovered the differing accounting treatments. It was Elections Manitoba that put this in its 2003 annual report. It was Elections Manitoba that, that resulted—there, our work resulted in refiled public disclosure. It was Elections Manitoba that resulted in a repayment of public funds. We did so in a way that was consistent with legal advice throughout and respectful of the same approach that we've taken in any other investigation. So, by way of saying that, Mr. Goertzen, it's, it's intended to provide some context. I certainly welcome your questions and will answer them to the extent, you know, that I can, but I—I thought that that was—that's helpful, too, if you make that comment as well.

Mr. Goertzen: Mr. Balasko, I'd like to table, for you and for the committee, a letter.

Floor Comment: Exhibit 1?

Mr. Goertzen: While I know the Minister of Justice (Mr. Chomiak) objects to a line of tables, or letters being tabled, I'm sorry that he—it offends him that things are tabled in committees.

Madam Chairperson: Have some—just some order at the table, and we'll continue with Mr. Goertzen's question.

Mr. Goertzen: Mr. Balasko, the letter that I've provided the committee is dated June 23, 2003. It's on the letterhead of Hamilton & Asselstine, that is the David Asselstine that we've been speaking of, the forensic auditor for Elections Manitoba at some time.

Number of issues that are covered in the letter that is sent to Mr. Blair Graham on behalf of his work, I think, out at Elections Manitoba. Indicate for you on page 2, at the top, Mr. Asselstine states that: I understand both you—referring, I think, to Mr. Graham—and the CEO agree that the Manitoba NDP was not entitled to the public funds that they had received since the mid-1980s that were generated as part of what the Manitoba NDP now refer to as a long-standing practice.

I gather Mr. Asselstine is indicating that this practice has gone on since the mid-1990s. Are you aware that he may have done some, some work to determine how long the practice had gone on in the past? You indicated that legal advice, I guess, had said you weren't to look back that far or to look back past 1999, but it appears from this letter he's indicating at least a time frame from when the—from when the practice had been happening.

Mr. Balasko: Yes, with regard to the letter sent to Thompson Dorfman and Mr. Graham, matters related to the investigation are not matters that are public to be discussed. They're required by law to be kept private. That's the situation that I find myself in, not through anything other than that's the fact of the law. Any comments that might have been made in the context of this letter, as well, I'm sure would have been replied to by Mr. Graham and, not having the opportunity to go point by point through this or have Mr. Graham's response point by point, I'd be pretty satisfied in the belief that Mr. Graham will have responded to some of the statements that have been made in this letter.

Mr. Goertzen: Further down on the same page, Mr. Balasko—so page 2—paragra—second-last paragraph from the bottom: On January 14, 2003, at the request of the CEO, I attended a meeting to discuss the apparent negotiations that you—referring to Mr. Graham—and the CEO were having with the Manitoba NDP concerning the findings of the investigation.

Can you indicate when those negotiations, as he describes them, would have begun with the NDP on this matter?

* (19:30)

Mr. Balasko: Once again, thanks for the question, because I can put some context to it. I would not, myself, accept the word "negotiation;" that would be Mr. Asselstine's characterization of it. But I cannot

comment on matters that were the subject of an investigation.

But, again, that is, there's a sole reason upon which charges were determined not to be laid: two independent legal opinions from, arguably, the outstanding experts in their field with a long track record to point to, and that's the sole reason that charges were not, were not laid. And Elections Manitoba finds itself in a situation, having reported in 2003 on our, on our efforts resulting in the repayment of public funds, the refiling of public statements, putting this in a report in front of the Legislative Assembly for all to see in 2003, to simply reinforce the fact that decisions are taken through a process that is respected. It's the same process across all political parties, and it results from two independent legal opinions.

Mr. Goertzen: You indicated that you didn't accept the word "negotiations." What characterization would you replace that with?

Mr. Balasko: I would not.

Mr. Goertzen: Further up, sir, on the same page, it becomes part of the discussion—

An Honourable Member: Point of order.

Point of Order

Madam Chairperson: Point of order, honourable Mr. Chomiak.

Mr. Chomiak: Yes, thank you, Madam Chairperson. The member has entered as an exhibit a letter from 2003. Mr. Balasko's indicated that he cannot comment on the investigation. The member insists on asking specific questions which, actually, you know, isn't, isn't even hearsay. It's third party discussions between other parties, and he's asking for his opinion on something that he's already said three times; he's already said three times that he has no power to deal with, and the member contin—I don't understand—I, actually, bringing in this kind of, type of allegation.

The member's already asked 12 different ways what the opinion of Elections Manitoba was. The Chief Electoral Officer's indicated they follow the procedure and their independence, and that he has no jurisdiction over investigations, yet the member persists in reading line by—I don't, I don't think that's an appropriate or relevant to this committee, Madam Chairperson.

Madam Chairperson: Mr. Goertzen, on the same point of order?

Mr. Goertzen: Yes, thank you, Madam Chairperson, the same point of order.

I believe it was the Minister of Justice who indicated earlier on that this wasn't a court of law, and yet he's now trying to bring in the evidence rules of a court of law. I don't suppose you can have it both ways. Perhaps he can decide which rules he would like to go under. I suspect it's the legislative rules and, and if he wants to describe something as hearsay, if he believes that there is a wrong motivation by the writer of the letter, he can certainly say it on the public record.

Madam Chairperson: Honourable Mr. Swan, on the same point of order?

Mr. Swan: Yes, thank you very much. I think the bigger point that the Attorney General is getting to, Mr. Balasko is here representing independent office. He's here representing Elections Manitoba. He can be asked and is being asked a lot of questions about the steps that Elections Manitoba takes, the procedures they follow, what changes, if any, Elections Manitoba makes in its procedures, how they move ahead to make sure the election system in Manitoba runs as well as it can and, frankly, I think that asking him to comment on what other parties might have thought or might have intended is not only not an appropriate question, I actually think it's, it's disrespectful to Mr. Balasko and his staff who are here on this somewhat wet evening to answer questions as best they can.

So I do believe there is a point of order and that the member should return to asking questions, which are actually in the jurisdiction, in the knowledge, in the ability of Mr. Balasko to answer.

Madam Chairperson: Mr. Goertzen, on the same point of order?

Mr. Goertzen: On the same point of order. Certainly—and the questions I put to Mr. Balasko—he's indicated with some questions that he's unable to answer them because of his statutory release, statutory obligation. I don't believe I've challenged that. If he chooses not to answer the question because he believes it's beyond his limitations to do so, correct me if I'm wrong, Madam Chair, but I don't believe I've challenged Mr. Balasko on that. I just moved on to a different question.

Madam Chairperson: I thank the members for their interventions. My understanding is that, as long as questions are relevant to the matters before this committee, which the reports that we listed and we'd agreed to go through those reports in a global way, that I'm inclined to allow those questions. So there's no point of order.

* * *

Mr. Goertzen: Thank you, Madam Chairperson.

So, then, returning to—well, first of all, because the minister raises it, I mean, let's ask Mr. Balasko, I mean does he—he spoke very well of Mr. Asselstine earlier in this committee. I mean, does he have any reason to believe that the information laid out in this and other documents that might come forward from Mr. Asselstine, does he believe that they're, in some ways, they would be incorrect, that he would be colouring the truth?

Mr. Balasko: As I mentioned before, the materials, certainly the second letter that you provided relates in investigation. I can't comment on the investigation, and that's a requirement that I'm expected to fulfil.

Mr. Goertzen: Thank you, Mr. Balasko. Second page further up, on that the third, in the paragraph, it discusses a conversation that was had between the provincial secretary of the NDP and Mr. Gordon from your office, at which time Mr. Gordon had apparently, in a memo dated October 2, 2001, had written that the provincial secretary for the NDP had said something to the effect that had Mr. Asselstine known of the details of an individual's family crisis when they were doing the interview, and that individual is somebody involved with the NDP, that they would take every step possible to ensure that Mr. Asselstine would never get another cent of the government's money for work.

Is that something that would concern Elections Manitoba, that a forensic auditor who you indicated early on was an important part of an investigation, would supposedly, according to this memo, have a suggestion from a political party, political party, that no more government work would flow to them in a private context if certain information was known? Would that, does that concern you as the Chief Electoral Officer?

Mr. Balasko: Mr. Goertzen, I find myself in the same situation that there's reference to matters in the context of an investigation upon which I cannot comment, and I'm being invited to comment, and

you've been, I appreciate, very respectful of where the line is, and so, once again, that's where the line is.

It's interesting this letter is produced as an '07 investigation's being conducted in private, and so I will respond basically along the same lines as you refer to the letter.

Mr. Goertzen: Now, referring to the specific quote from Mr. Asselstine that the provincial secretary of the NDP had suggested that he would no longer be able to receive a cent of government work. More generally, more generally, then, would it be unusual to have a forensic auditor on any sort of investigation? Have you seen in the past those sort of comments come against a forensic auditor in the past from a political party?

Mr. Balasko: I'm not in a position to respond to the comments that you're referring to. Whether you're referring to the line in the letter or whether you're referring to the context that's contained in the letter, that's an investigative matter.

But I will reiterate that Elections Manitoba is absolutely independent, non-partisan. Its officers are independent and non-partisan, have been. That's a statement of fact, and so I'll leave it there at the moment.

Madam Chairperson: I'm going to move to Mr. Lamoureux and then come back to Mr. Goertzen. Mr. Lamoureux.

Mr. Lamoureux: Just a couple of very quick questions. Mr. Balasko, the Monnin report that came out, Elections Manitoba, in general, is in support of that report and its recommendations. Fair assessment?

Mr. Balasko: We would concern ourselves with the recommendations more of the Monnin inquiry. The conclusion that Elections Manitoba had acted properly and done what it could within its authorities is a finding that we welcomed. Many of the recommendations from the Monnin inquiry arose from discussions or testimony that we gave as well. So, yes, there would be a lining up among the recommendations.

Mr. Lamoureux: One of the recommendations, from what I understand, and I'm going to the code of ethics. One of the recommendations was is that political parties should establish and put into place a mechanism that would ensure that there was, the code of ethics was, in fact, being practised, and had it not been practised, that there be legislation brought

forward to make it happen so that there would, in fact, be a consequence. Is that a fair reflection in terms of what the recommendation was?

*(19:40)

Mr. Balasko: Thanks, Mr. Lamoureux. I'm going from my memory here so, you know, we can review the report later on, but I read it almost the same way. The way I read the recommendation was that political parties ought to have a code of ethical conduct and if the political parties did not have a code of ethical conduct, that there ought to be legislation requiring political parties to have a code of ethical conduct. That's the way I read that.

You will recall, I think, you had some involvement in this, perhaps, that although it wasn't our mandate to do so, Elections Manitoba took the lead in meeting with all political parties and worked on a shared code of ethical conduct, which, to the credit of all the political parties, was agreed to and signed by all the political parties in the province. So they have all committed to adhering to a code of ethical—sorry, ethical conduct.

That code of ethical conduct is on our Web site. It's available for others to look at. It is self regulating. It's open to the media. It's open to other political participants to analyze.

Mr. Lamoureux: Now the enforcement of the code of conduct, again, from my recollection, was that—was political parties were expected to enforce the code of conduct. But I thought that the Monnin report had indicated that failing that, again, there should be legislation to ensure that there was an enforcement component to it.

Mr. Balasko: Oops, my helpful staff, Mr. Lamoureux, has just confirmed my memory on this, which is that the Monnin inquiry recommendations, in March 1999, stated that all registered parties should prepare a code of ethics and a mechanism for the enforcement of the ethics, and that if the parties failed to do so by December 31, 2001, then a standard code should be compulsory by legislation.

Work, brokered by Elections Manitoba, among all the political parties to arrive at a shared code of ethics, which included a mechanism for enforcement, was successfully concluded prior to 2001, and that's the code that is on the Web site for Elections Manitoba, and to which all the political parties have adhered.

Mr. Goertzen: Mr. Balasko, the last paragraph of the letter that I tabled to the second letter, dated June 23, 2003, Mr. Asselstine writes—sorry, it's page 4 or 5. Mr. Asselstine writes, our task was made more difficult by Elections Manitoba's reluctance to respond to the inappropriate conduct of the Manitoba NDP and the consequences this lack of action has on the maintenance of an appropriate compliance process.

Can you respond to the comments that Mr. Asselstine is putting in this letter?

Mr. Balasko: Thanks for the question, Mr. Goertzen. I won't respond to Mr. Asselstine's comments in the letter. What I will tell you is that the investigation, like other investigations, went where it needed to go, found what it needed to find. The process was followed. The legal analysis was done. The recommendations were made. The reports of the investigative—the forensic auditor were very carefully reviewed, fully made available to legal counsel and formed part of the considerations in arriving at the conclusions, and I acted consistent with the advice I received.

Mr. Goertzen: Can you indicate when Elections Manitoba first came to realize that the 13 returns were improperly filed, falsely filed, and that the claims should have been put as a—not as a refundable expense, but as a donation-in-kind? Can you indicate when you first learned of this?

Mr. Balasko: The process, by which we became aware of the transactions that we reviewed, was following a recommendation that we made to pick up on Mr. Lamoureux's point at the Monnin inquiry, which is that Elections Manitoba have the power of inspection and audit, similar to the powers provided in British Columbia. That was our recommendation.

Our recommendation was accepted by Chief Justice Monnin. It became law. It was under the power of our recommendation that this review was initiated that, ultimately, led to the conclusion that was publicly reported in 2003. So the law was amended. We began the review. It would have awaited the election return and the annual returns, and so I don't have the precise date as to when we began the review of the returns, but we began an inspection across all political parties of a number of financial matters under the new authorities that we asked for, and that we got, and that resulted in a refiling, repayment, disclosure and reporting in our public report to the Legislative Assembly.

Mr. Goertzen: So, then, are you able to provide us with a range of time when Elections Manitoba would've said, okay there's a problem here, something needs—needs to be changed?

Mr. Balasko: The annual, let me—allow me—allow me to ballpark this and give you my best recollection, please, with this. The returns of the '99 election would've been due in—were filed in this case in 2000. I think in the spring of 2000 the annual returns were filed. They'd be looked at in conjunction with each other, and so some time later that spring of 2000 there would've been work under inspection and audit authorities on the transactions, which would then over time—once that progressed, if there was a basis for an investigation, as there was in this case, then would've proceeded to investigation, but that would've taken some time. But it takes the time that it takes to do it thoroughly and to respect the process, and to try to, as best as possible, reassure the Assembly and others that the independent office of the Assembly takes its responsibility seriously and does its level best, and does so with a thoughtful process involving people of great integrity.

Mr. Goertzen: So maybe—maybe my question isn't precise enough. At what point would there've been some indication to the NDP that the \$76,000 should be repaid?

Mr. Balasko: The notion of the repayment of the \$76,000 came in the context of an investigation, and, as we are well aware, I'm unable by law to discuss that.

Mr. Goertzen: Is it the belief of Elections Manitoba that these 13 returns that were signed off originally by the official agents and then sent on to a central auditor at the NDP—central auditor for the NDP—that they originally indicated that the union labour was a donation in kind, so that they were filed correctly by the official agent to the auditor of the NDP—is that the belief of Elections Manitoba?

Madam Chairperson: Mr. Goertzen, or, sorry, Mr. Balasko.

Mr. Balasko: Back and forth enough that it can happen.

I wouldn't have a knowledge of how the NDP internally would've managed the returns. Our point is that returns are publicly filed with Elections Manitoba signed by the official agents, and that's where we begin our review, and at the end of the day when returns were refiled with Elections Manitoba, again, they were filed by the appropriate—signed,

sorry, by the appropriate officer of the campaigns and the central political party. So, from our perspective, Mr. Goertzen, we're dealing with the return before us, the publicly disclosed return, which is signed by the appropriate officer.

Mr. Goertzen: So you get the returns in the office of Elections Manitoba, and you really have no knowledge sort of how things were worked up before that. You don't know what the official agents did or didn't do, and then what the auditor did or didn't do. You just simply get these returns.

Mr. Balasko: As a matter of course, what we receive is an audited financial statement with an external audit providing a certain level of assurance, as we had at discussion last time at this committee, and that's the point from which we begin our review. If we get into an investigation, that 's not something that I could comment upon.

Mr. Goertzen: I'd like to table for you a letter as well and for the benefit of this committee—

An Honourable Member: Exhibit 3.

Mr. Goertzen: Well, again, you know, the Minister of Justice dislikes—

An Honourable Member: Have gone outside of here to the media maybe.

Mr. Goertzen: —information that gets provided to committees, but—[interjection]

Madam Chairperson: Had you completed your question, Mr. Goertzen?

Mr. Goertzen: No, thank you, Madam Chairperson. This is a letter that Mr. Balasko will see and the committee members will see from Scott Gordon on Elections Manitoba letterhead. The name has been redacted in terms of who it's going to. It is my understanding, though, that it went to one of the 13 official, official agents on the 13 campaigns in question, and this is one of them, and I suppose the letters would've been quite similar that went out. In the third paragraph, it indicates that we've been advised that it's possible that neither you nor your candidate were aware of this at the time form 922 was filed, as matters concerning the revision of some campaign workers was apparently handled through the central office of the NDP.

* (19:50)

So there seems to be some indication, at least from Mr. Gordon, that the official agents—if I understand it correctly—weren't, and candidates may

not have known of a change that took place after. Is that what you would concur with now, Mr. Balasko?

Mr. Balasko: As I've just replied a moment ago, once you get into an investigation, we're not in a position to comment publicly. It's interesting and gives me pause to give some thought to the fact that this letter, for example, and perhaps others clearly relate, or appear to—and perhaps they need to be reviewed more carefully—to an investigation.

Investigations are required by law to be conducted in private, and so we can't comment on these letters, and they—and the fact that the letters are before us now is interesting, but, unfortunately, I can't comment on them. They're investigative matters that are to be kept by law in private.

Mr. Chomiak: I was just wondering so far, as it's ten to eight and the member's only pursued one line of questioning on one report and one issue which, in fact, he raised the last time we're here, and we've done this now for two hours, almost two hours. I'm wondering if we can get sense of—from the member, if he's going to get off his line of cross examination and laying out exhibits of evidence on one issue that clearly is an investigatory issue—so we can move on to other issues, or if the member's going to continue on the same course of action over and over and over again, Madam Chairperson, because there's other questions. There's four reports or five reports to deal with here. So I'm just wondering if the member might advise us how long he's going to continue playing cross examination on something that he goes over and over and over again, of which he knows the Chief Electoral Officer cannot comment on by law.

Madam Chairperson: Okay, I didn't sense a question there to the Chief Electoral Officer. So we'll go back to Mr. Goertzen.

Mr. Goertzen: Right. I'm not sure that I should, if I should respond to—

Point of Order

Madam Chairperson: Point of order, Mr. Chomiak.

Mr. Chomiak: I wonder if the member can give us any indication of how many more exhibits, or how many more hours he intends to—how many more hours he intends to cross examine on this one particular issue that he's been told is an investigatory issue, so that we can deal with our time allocations for other questions?

Madam Chairperson: Mr. Goertzen, on the same point of order.

Mr. Goertzen: I can indicate that I have plenty more exhibits, and I'm not sure why I should have to give an assurance to the Minister of Justice where I'm going to ask my questions. I mean, next he'll want me to provide him all of my questions before question period. I mean, this is a committee and we're allowed to ask questions. If he doesn't like the line of questioning, that's fine. He's every entitled—he's entitled not to like the line of questioning, but he's not entitled to tell me what I can and cannot ask at a committee.

Madam Chairperson: Okay, I think I've heard enough on the point of order.

We had agreed to revisit where we're at at eight o'clock. So I'm going to go back to Mr. Goertzen with his questions, and we'll revisit at eight o'clock.

* * *

Mr. Goertzen: Mr. Balasko, then, not referring specifically then to the letter that was tabled for the committee, but more generally then in the procedure of elections, would it be unusual for an official agent to file with an auditor—would you consider it to be unusual for an official agent to file with an auditor a return and then have that return materially altered before it got to your office without somebody advising the official agent. I mean, would that be considered to be, at the very least, poor practice?

Mr. Balasko: I want to return to the point that we become involved in this. We become involved in this when we see a return that's signed by an official agent which contains certain information, and that's where our review begins. If, in the course of an investigation, the internal handling of documents comes to our attention, that's something that's within the context of an investigation, but I'm sure you'd appreciate that the return that's filed and signed by the official agent is the place to begin, and there's an assumption that there's a signed financial return accompanied by an audit report that gives us a level of assurance that the information contained in the report is correct. Now, having said that, that's why we asked for and got additional powers, so that we can undertake further work, which we have and which we did in this case, resulting in the, resulting in the public disclosure and the amended returns that were filed.

Mr. Goertzen: I sense my time is drawing short, and I'm not confident of the will of this committee to move beyond 8 o'clock based on the comments by the Minister of Justice (Mr. Chomiak).

Just in relation to the timing of the release of this information, Mr. Balasko, were you provided any advice from individuals involved with the investigation that, that providing this information prior to the 2003 campaign might impact the 2003 campaign?

Mr. Balasko: Mr. Goertzen, I can tell you without any hesitations and in terms of the individuals involved and the service to the province over many years and many elections, Elections Manitoba does not time its reports. It does not time its disclosure. It follows consistent practices among investigations. This investigation that we conducted resulted in amended public disclosure, the repayment of funds to the Province. Decision to prosecute was upon the advice of two independent legal opinions from outstanding practitioners and scholars in the area, consistent with that, and so to find—and so I would say that Elections Manitoba, of course, conducted itself absolutely properly and independently and in a completely non-partisan form.

Mr. Doer: A lot of the material that has, in terms of the principles and the concept and the investigation, was contained within July 10, 2008 presentations by Mr. Balasko to this committee dealing with this matter in quite a lengthy way in terms of how it's been—other parties have gone through similar processes.

Mr. Balasko, the two lawyers that provided independent legal advice, the two lawyers that provided you with independent legal advice, as I understand it, were Mr. Green and Mr. Blair Graham. Is that the case?

Mr. Balasko: Yes, that's correct.

Mr. Doer: Mr. Green was the independent counsel for the Monnin inquiry, and I believe he conducted himself with a fair degree of integrity, obviously, diligence. Was he not the same lawyer was at the—was legal counsel for the Monnin inquiry?

Mr. Balasko: Yes, that is correct.

Mr. Doer: Mr.—when the three parties were consulted on who would be the investigative lawyer—I forget the title of it—but the independent office to investigate any allegations under Elections Manitoba, did not the—I am led—my recollection is that all three parties agreed that Mr. Green was the one with credibility, with integrity and with experience in dealing with the elections laws and was supported by not only you, in terms of your

recommendation, but by all three political parties in your consultations.

Mr. Balasko: That's certainly my understanding, and I believe Mr. Green received some correspondence or comments congratulating him on his appointment.

Mr. Doer: So, in terms of all of this—these questions that are dealing with the report that you've provided to us, including how people would vote in the 2003 election, I guess I could ask you how to comment on what's going to happen in 2011, but I wouldn't do that because I think it's out of order. The individuals, Mr. Green and Mr. Graham, Mr. Green has the trust and confidence of your office; Mr. Graham has as well. And, again, they were the ones that provided you the advice about how to proceed with this investigation and the disposition of this investigation.

* (20:00)

Mr. Balasko: It is accurate. It's accurate to say that throughout the investigation Elections Manitoba acted consistent with the legal advice it received from these individuals.

Madam Chairperson: The hour is 8 p.m. We agreed that we would revisit at 8 p.m.

Is it the will of the committee to proceed to the passage of the reports?

Some Honourable Members: Pass

Some Honourable Members: No

Madam Chairperson: What is the will of the committee?

An Honourable Member: Continue.

Mr. Chomiak: Pass the report.

Some Honourable Members: Committee rise.

Madam Chairperson: Committee rise? Okay.

Mr. Lamoureux: I just had a, just a few questions in which then I'd be prepared personally to be able to see some of the reports passed, and it was just related to page 44. If I could just ask just a couple of brief questions on that, that would be good. Myself personally.

Madam Chairperson: My understand—I asked the question what the will was of the committee, what I heard was the committee to rise. Is that the will of the committee?

Some Honourable Members: No.

Some Honourable Members: Committee rise.

An Honourable Member: Point of order, Madam Chair.

Point of Order

Madam Chairperson: Point of order, Mr. Derkach.

Mr. Derkach: I'm sitting right beside Mr. McFadyen, and his hand was up prior to Mr. Doer saying that that the committee should rise. I would have hoped that you would have recognized Mr. McFadyen prior to hearing Mr. Doer say committee rise.

Madam Chairperson: My understanding was that we would revisit at 8 o'clock what the committee wanted to do. It was 8 o'clock, and so I'm asking the committee what they want to do. That's in your hands.

Some Honourable Members: Committee rise.

An Honourable Member: Point of order.

Point of Order

Madam Chairperson: Mr. McFadyen, on a point of order.

Mr. McFadyen: The—there were some comments made earlier by the Premier and other committee members that they had a number of areas that they wanted to explore that they thought were important, and we certainly have further questions we would like to ask. And so it appears that there's a contradiction between what's now being said and what was being said earlier about the amount of ground that would be covered by tonight's committee

meeting, and so we would certainly prefer to carry on till 9 o'clock and revisit at that stage.

Madam Chairperson: Okay, members. I've heard three bits of advice, none of which agree, that we rise, that we entertain a couple more questions, that we extend to 9 o'clock. So I'm going to ask those in favour of the committee rising to indicate.

Those opposed?

Voice Vote

Madam Chairperson: So all those in favour of the committee rising, say aye?

Some Honourable Members: Aye.

Madam Chairperson: All those opposed, say nay.

Some Honourable Members: Nay.

Madam Chairperson: In my opinion, the Ayes have it. The Ayes have it.

* * *

Mr. Larry Maguire (Arthur-Virden): Given that, Madam Chair, and the importance of a lot of the information, there's a good deal of information—

Madam Chairperson: I'm sorry, Mr. Maguire. I thought you were going to do something else. I shouldn't have tried to read your mind. I agreed—we asked for a vote. The committee voted to rise. We are risen.

An Honourable Member: Well, mine is a point of order, Madam Chair.

Madam Chairperson: You can't have a point of order during a committee. So my, I would suggest that we're adjourned.

COMMITTEE ROSE AT: 8:04 p.m.

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