



REPORT

INQUIRY INTO THE NORTHERN VILLAGE OF PINEHOUSE

THE HONOURABLE WILLIAM VANCISE Q.C.
Inquiry Officer

CANADA)
SASKATCHEWAN)

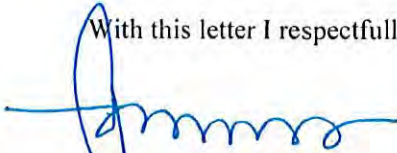
IN THE MATTER OF AN INQUIRY BY THE HONOURABLE WILLIAM VANCISE, Q.C. INTO
THE APPROPRIATENESS OF CONDUCT OF CERTAIN MEMBERS OF COUNCIL OF THE
NORTHERN VILLAGE OF PINEHOUSE ORDERED UNDER *THE NORTHERN MUNICIPALITIES
ACT, 2010*, S.S. 2010, c. N-5.2

December 20, 2019

To The Honourable Lori Carr,
Minister of Government Relations

Pursuant to the Inquiry Order, dated June 5, 2019, I have completed my Inquiry as mandated by the Terms
of Reference attached thereto.

With this letter I respectfully submit my Report on the Inquiry.



The Honourable William Vancise, Q.C.

ACKNOWLEDGMENTS

One of the most important functions of any public inquiry is the appointment of Inquiry Counsel. I was extremely fortunate that Mr. David Stack, Q.C. was appointed as Inquiry Counsel before I accepted the mandate to conduct the Inquiry. I could not have made a better choice. His expertise and experience in acting as counsel in other inquiries was invaluable. I am extremely grateful for his advice and counsel throughout the conduct of this Inquiry. He was ably assisted by his associate Ms. Laura Sayer. They provided me with research on issues as required, they interviewed potential witnesses, and collected the necessary documentation, in order to enable me to complete the Inquiry. More importantly, they organized the hearing and the examination of the witnesses who appeared before me.

I cannot thank my Inquiry Counsel enough for their diligence and advice and for the professional manner in which they conducted themselves and discharged their responsibilities.

I would also like to thank Ms. Candice Grant and Mr. Nolan Dooley, who represented the Village and Mayor Natomagan, respectively, for their assistance.

ABBREVIATIONS AND ACRONYMS

Inspection Report	Report of an Inspection of the Northern Village of Pinehouse under section 417 of <i>The Northern Municipalities Act</i>
Inquiry Officer	Honourable William Vancise, Q.C.
LAFOIP	<i>The Local Authority Freedom of Information and Protection of Privacy Act</i> , SS 1990-91, c L-27.1
Ministry	Ministry of Government Relations
NMA	<i>The Northern Municipalities Act, 2010</i> , SS 2010, c N-5.2
NMS	Northern Municipal Services
NVP	The Northern Village of Pinehouse
OIPC	Office of the Information and Privacy Commissioner
PBN	Pinehouse Business North
PHC	Pinehouse Housing Corporation
Pinehouse	The Northern Village of Pinehouse
Rules	Rules of Procedure and Practice
SUMA	Saskatchewan Urban Municipalities Association
UMAAS	Urban Municipal Administrators Association of Saskatchewan
Village	The Northern Village of Pinehouse

TABLE OF CONTENTS

ACKNOWLEDGMENTS	3
ABBREVIATIONS AND ACRONYMS	4
EXECUTIVE SUMMARY	1
PART I: INTRODUCTION	2
I. Procedural History	2
II. Minister's Inspection Order	2
(i) Inspection Order and Terms of Reference	2
III. Minister's Inquiry Order	3
(i) Inquiry Order and Terms of Reference	3
IV. Rules of Procedure and Practice	7
(i) List of witnesses	7
V. The Role of Inquiry Counsel	7
VI. Natural Justice and Procedural Fairness	10
(i) Applicable legal principles	10
(ii) Manifestation of natural justice and procedural fairness	11
(A) Minister's Order and Terms of Reference	11
(B) Standard of Conduct Memorandum	11
(C) Rules of Procedure and Practice	12
VII. Legislative Overview	13
PART II: BACKGROUND	15
The Northern Village of Pinehouse	15
(i) Controlled corporations	16
(ii) Economic development	16
(iii) Circumstances leading to the Inspection	17
PART III: FACTS	19
Summary of Witness Testimony	19
CAROLINE HILLYARD	19
MAYOR MIKE NATOMAGAN	24
VILLAGE ADMINISTRATOR MARTINE SMITH	27
COUNCILLOR CONRAD MISPONAS	34
THOMAS WILDEMAN	37
RONALD KRUZENISKI, Q.C.	38

D'ARCY HANDE.....	42
BRAD HENRY	45
AJ FELIX	49
SHANNEN FISHER.....	51
PART IV: ANALYSIS	53
Overview	53
I. LAFOIP.....	53
Access to information requests in the Village	55
II. Conflicts of Interest.....	59
(i) Obligation to file a Public Disclosure Statement.....	60
(ii) Obligation to declare conflicts of interest.....	61
(A) Mayor Mike Natomagan	62
(B) Councillor Conrad Misponas.....	63
(C) Village Administrator Martine Smith.....	63
(D) Village Council	63
(iii) Mortgages.....	64
III. Contravention of the Statutory Requirements of the NMA.....	65
(i) Bylaws mandated by the NMA	65
(ii) Employment issues.....	66
IV. Finances.....	68
(i) Payments to elected officials	69
(ii) Payments to appointed officials.....	70
(iii) Mortgages.....	71
(iv) Debt limit.....	72
(v) Disclosure of long-term debt	73
(vi) Collaboration Agreement	73
(vii) Political contributions.....	74
PART V: SUMMARY OF FINDINGS	76
PART VI: CONCLUSIONS	79
Disposition	82
PART VII: RECOMMENDATIONS.....	83
(i) LAFOIP	83
(ii) NMA: Conflicts of interest.....	85
(iii) NMA: Councillor employment	85

(iv)	Finances.....	86
(v)	Governance resources.....	86
(vi)	Village Administrator.....	86
TABLE OF AUTHORITIES.....		87
APPENDICES		89

EXECUTIVE SUMMARY

Pursuant to the directive I received under the Ministerial Order dated June 5, 2019, I was appointed to carry out an Inquiry into the circumstances identified in the Inspection Report of Mr. Neil Robertson, Q.C., namely concerns around the appropriateness of the conduct of the Mayor and Deputy Mayor of the Northern Village of Pinehouse. The Inspection Report recommended consideration of the removal of the Mayor and Deputy Mayor from office.

The Inquiry heard from nine witnesses over an eight-day period.

The evidence confirmed the Mayor, the Deputy Mayor and the Village were non-compliant with statutory requirements under *LAFOIP* and the *NMA*. The evidence, however, established that this non-compliance was not as a result of deliberate disregard for the law. Rather, the Village and Council did not have a sufficient understanding of their responsibilities under *LAFOIP* and the *NMA* and did not have sufficient resources in place to achieve legislative compliance. I heard no evidence that there has been an abuse of office by the Mayor and Deputy Mayor through self-dealing, or otherwise. While there was non-compliance with conflict of interest and employment provisions in the *NMA*, there was no evidence before me that the Mayor and Deputy Mayor engaged in fraudulent activity, nor sought to conceal any business relationships or financial transactions.

I am satisfied the Village, Mayor, and Deputy Mayor are taking the requisite steps to remedy the deficiencies that resulted in non-compliance with the *NMA*.

Through my inquiry into these matters, I have come to appreciate the great strides the Village has made in recent years towards economic development and providing housing for the residents of this remote community. This progress was in no small part due to the efforts of the Mayor and Deputy Mayor. Since active efforts are underway to achieve full compliance with *LAFOIP* and the *NMA*, I do not recommend the removal of the Mayor and the Deputy Mayor from office.

PART I: INTRODUCTION

I. PROCEDURAL HISTORY

The Inspection, and subsequent Inquiry, of the Northern Village of Pinehouse (the “Village” or “NVP”) were the result of the Village’s failure to respond in a timely fashion, or at all, to requests for information under *The Local Authority Freedom of Information and Protection of Privacy Act* [LAFOIP]¹. From 2013 to 2018, the Office of the Information and Privacy Commissioner (“OIPC”) published 13 review reports pertaining to NVP. These reports were prompted by review requests submitted to the Information and Privacy Commissioner from dissatisfied access to information applicants seeking review of the Village’s inadequate responses to access to information requests. Summaries of the review reports are outlined in the “Report of an Inspection of the Northern Village of Pinehouse under section 417 of *The Northern Municipalities Act*” (the “Inspection Report”), prepared by Mr. Neil Robertson, Q.C.

In Review Report 204-2018, the Information and Privacy Commissioner of Saskatchewan recommended the Minister of Government Relations (the “Minister”) direct an inspection or inquiry under *The Northern Municipalities Act, 2010* [NMA].²

The Minister accepted the recommendation of the Information and Privacy Commissioner and ordered an inspection under the NMA (the “Inspection”).

II. MINISTER’S INSPECTION ORDER

On December 7, 2018, Minister Kaeding issued an Order pursuant to s. 417 of the NMA due to the non-compliance of NVP with its obligations under LAFOIP. Minister Kaeding appointed Mr. Robertson to inspect and report on the matters connected with the management, administration and operation of NVP.

(i) Inspection Order and Terms of Reference

The Minister’s Order and Terms of Reference for the Inspection are attached hereto as Appendix “A”.

Mr. Robertson completed the Inspection pursuant to the Terms of Reference. He interviewed the Mayor of NVP, the Village Administrator, and the Information and Privacy Commissioner, among others, and examined numerous relevant documents, including the Village Council meeting minutes, access to information requests submitted to the Village under LAFOIP, and the corresponding Review Reports published by the OIPC.

Mr. Robertson filed his Inspection Report with the Minister on March 7, 2019, a copy of which is attached hereto as Appendix “B”. Mr. Robertson found the failure to perform duties under LAFOIP and the failure to comply with the provisions of the NMA, including contraventions related to employment with a controlled corporation of the Village, supported the disqualification of Mayor Mike Natomagan

¹ SS 1990-91, c L-27.1 [LAFOIP].

² SS 2010, c N-5.2 [NMA].

under s. 165 of the *NMA*. On account of the violations of the *NMA*, Mr. Robertson recommended the removal of Mayor Natomagan from office.

Mr. Robertson also found the failure by Deputy Mayor Conrad Misponas to file a Public Disclosure Statement under s. 160 of the *NMA*, as well as other contraventions of the *NMA*, including his employment with a controlled corporation, supported his disqualification under s. 165 of the *NMA*. As a result, Mr. Robertson recommended the removal of Deputy Mayor Misponas from office.

III. MINISTER'S INQUIRY ORDER

The Minister, recognizing the Inspection and the recommendations were made without giving the individuals in question the full opportunity to respond, ordered an Inquiry pursuant to s. 418 of the *NMA* (the "Inquiry"). On April 2, 2019, the Minister appointed Mr. Robertson as Inquiry Officer, pursuant to s. 418(3) of the *NMA*.

Mr. David Stack, Q.C. was appointed as Inquiry Counsel. Mr. Robertson and Inquiry Counsel began preparing for the Inquiry, including providing notices to interested parties. Mr. Robertson granted standing to NVP and Mayor Mike Natomagan, allowing each of the parties full participation in the Inquiry. There were no other parties who requested standing in the Inquiry. Deputy Mayor Misponas declined to request standing.

Prior to commencing the Inquiry, Mr. Robertson was appointed to the Court of Queen's Bench and his appointment as Inquiry Officer was revoked. On June 5, 2019, Minister Kaeding appointed the Honourable William Vancise, Q.C. as Inquiry Officer, pursuant to s. 418(3) of the *NMA*.

(i) Inquiry Order and Terms of Reference

1. On December 7, 2018, pursuant to section 417 of *The Northern Municipalities Act, 2010*, (the Act) I appointed Neil Robertson, Q.C. as an Inspector to inspect and report on matters connected with the management, administration or operation of the Northern Village of Pinehouse ("the Village"). A report was provided by the Inspector on March 7, 2019 that, in part, recommended that two members of the Village council be removed from office due to misconduct in contravention of various provisions of the Act and *The Local Authority Freedom of Information and Protection of Privacy Act*. The Inspector made findings in the report related to the conduct of two members of the Village council without a full opportunity for those members to respond to the findings. As a result, I found that it was appropriate to conduct an inquiry, pursuant to section 418 of the Act, in relation to the conduct of the two members of council.
2. Section 418 of *The Northern Municipalities Act, 2010* provides as follows:
 - 418(1) The minister may order an inquiry described in subsection (2):
 - (a) if the minister considers the inquiry to be necessary;
 - (b) on the request of the council; or
 - (c) Repealed. 2015, c.30, s.4-27.

- (2) An inquiry may be conducted into all or any of the following:
- (a) the affairs of the municipality, a committee or other body established by the council or a controlled corporation, municipal development corporation, public utility board or service district;
 - (b) the conduct of a member of council, including conduct in relation to a conflict of interest pursuant to Part VII; or
 - (c) the conduct of an employee or agent of the municipality, a committee or other body established by the council or a controlled corporation.
- (3) The minister may appoint an individual to conduct the inquiry, or may request the Saskatchewan Municipal Board to conduct the inquiry.
- (4) Any persons appointed to conduct an inquiry have the same powers, privileges and immunities conferred on a commission by sections 11, 15, 25 and 26 of *The Public Inquiries Act, 2013*.
- (5) The results of the inquiry must be reported to:
- (a) the minister;
 - (b) the council;
 - (c) if the inquiry is with respect to a committee or other body established by the council, the committee or other body;
 - (d) if the inquiry is with respect to a controlled corporation, the controlled corporation;
 - (e) if the inquiry is with respect to a municipal development corporation, the municipal development corporation;
 - (f) if the inquiry is with respect to a public utility board, the public utility board;
 - (g) if the inquiry is with respect to a service district, the service district; and
 - (h) if the inquiry is with respect to a counselor, employee or agent, the counselor, employee or agent.
- (6) The minister may:
- (a) disclose any information or report provided pursuant to subsection (5) in the form and manner that the minister considers appropriate; or
 - (b) in consultation with the council, allow the council to disclose the information.
3. I appointed Neil Robertson, Q.C. to conduct the inquiry on April 2, 2019. Mr. Robertson is unable to complete the inquiry due to his recent appointment to the Court of Queen's Bench. I therefore revoke the appointment of Neil Robertson, Q.C. and consider it necessary to appoint the Honourable William Vancise, Q.C. as the Inquiry Officer pursuant to subsection 418(3) of the Act to continue the inquiry into the conduct of certain members of council in

relation to the matters identified in the terms of reference set out in Schedule "A" attached hereto.

4. The Inquiry Officer shall carry out the Inquiry in accordance with the attached terms of reference.
5. The Inquiry Officer will have access to assistance from legal counsel and technical, administrative and logistical assistance from officials through the Ministry of Government Relations. The Inquiry Officer may, at his discretion, engage other clerical or expert assistance the Inquiry Officer may consider necessary to assist in exercising his duties.
6. Section 423 of the Act provides the minister may require the municipality to pay the remuneration and expenses of the person appointed as the Inquiry Officer, in the amounts set by the minister.
7. The remuneration of the Inquiry Officer shall be set at \$350.00 per hour. The Inquiry Officer's expenses shall include reasonable travelling and sustenance expenses incurred by the Inquiry Officer in the performance of his duties as well as the costs of any other clerical or expert assistance engaged. These expenses shall be reimbursed by the Northern Municipal Trust Account. The Village shall pay the Inquiry Officer's remuneration and other expenses pursuant to section 423 of the Act. This order shall take effect on the date of signing and shall terminate two weeks following receipt of the written report unless otherwise extended, or previously amended or revoked, by the Minister.

Dated at the City of Regina, in the Province of Saskatchewan, this 5 day of June, 2019.

Original Signed by

Honourable Warren Kaeding
Minister of Government Relations and
Minster Responsible for First Nations, Metis and Northern Affairs

SCHEDULE "A" **TERMS OF REFERENCE**

1. The Inquiry will inquire into the appropriateness of the conduct of Mayor Mike Natomagan and Councillor Conrad Misponas, both members of the Northern Village of Pinehouse (Village) council, including, without limiting the generality of the foregoing:
 - (a) The Mayor's failure to perform duties under *The Local Authority Freedom of Information and Protection of Privacy Act* and apparent contraventions of *The Northern Municipalities Act, 2010* (Act), including his failure to file a Public Disclosure Statement within 13 days of election and thereafter update it; failure to declare conflicts of interest; and his employment by the Village and a controlled corporation of the Village; and
 - (b) Councillor Misponas' failure to comply with the Act, failure to file a Public Disclosure Statement, failure to declare conflicts of interest and

his employment both by the Village and by a controlled corporation of the Village.

2. In conducting the Inquiry into the appropriateness of conduct and affairs, the Inquiry Officer shall consider the relevant standards applicable to members of municipal council by virtue of the Act, the Official Oath prescribed in Form A of *The Northern Municipalities Regulations*, the municipality's Code of Conduct and the common law in relation to conflicts of interest as it relates to the duties of members of council to the municipality and the public.
3. In the event the Inquiry Officer is considering making an adverse finding in relation to conduct, the Inquiry Officer will provide reasonable notice of the substance of the allegation and the individual(s) would have a reasonable opportunity during the Inquiry to be heard in person or by counsel. Any notice of such alleged conduct will be delivered on a confidential basis to the person(s) to whom the allegations relate.
4. The Inquiry Officer shall prepare a written report with the results of the Inquiry outlining his findings, conclusions and any recommendations and provide the report to the minister. The minister will then provide a copy of the report to the Council, and any person who receives a notice pursuant to section 3 of the Terms of Reference. The written report will be provided on or before September 30, 2019, unless otherwise extended by the minister.
5. To conduct the Inquiry, the Inquiry Officer shall have the powers provided for in section 418 of the Act which includes the power to:
 - (a) require the attendance of any officer of the municipality or of any other person whose presence the Inquiry Officer considers necessary during the course of the Inquiry;
 - (b) require a person to give evidence under oath or after making an affirmation or declaration, orally or in writing, for the purpose of the Inquiry, and for that purpose may require a person to attend at any location; and
 - (c) require a person to produce to the Inquiry Officer, or to a person designated by the Inquiry Officer, all records and other property in his or her custody or control that may relate in any way to the matters that are the subject of the Inquiry.
6. The Inquiry Officer may determine the rules of, as well as the process and procedure for, the Inquiry as he sees fit, subject to the requirement that the Inquiry proceedings will not be open to the public.
7. The Inquiry Officer may consider any document, including electronic record, or any other evidence, verbal or written, that he considers relevant and reliable.
8. The Inquiry Officer will provide interim progress reports on the Inquiry to the minister on a monthly basis or on any other basis that the Inquiry Officer deems appropriate.

IV. RULES OF PROCEDURE AND PRACTICE

Subsequent to my appointment as Inquiry Officer, I reviewed the Inspection Report and all preliminary steps taken for the conduct of the Inquiry, as prepared by Mr. Robertson with Inquiry Counsel. I reviewed and revised the Rules of Procedure and Practice (the “Rules”) prepared by Mr. Robertson. The revised Rules are attached as Appendix “C”. The revised Rules of Procedure and Practice were served on counsel for the parties with standing, namely Mayor Natomagan and the Village. We received no comments nor objections from counsel for the parties with respect to the Rules.

I also instructed Inquiry Counsel to prepare and serve Notices of Potential Adverse Findings on Mayor Natomagan, Councillor Conrad Misponas, and the Village.

The parties granted standing and their counsel were required to, and did, execute a document entitled “Undertaking to Treat Documents, Information and Evidence as Confidential” (the “Undertaking”). Witnesses who were provided documents in advance of the hearing were also required to, and did, execute the Undertaking.³

Inquiry Counsel negotiated dates for the Inquiry hearings, which were in large measure determined by the availability of counsel representing the parties with standing and the availability of witnesses.

(i) List of witnesses

The Inquiry heard the following witnesses:

- (a) Ms. Caroline Hillyard from Grant Thornton LLP;
- (b) Mayor Mike Natomagan;
- (c) Ms. Martine Smith, the Village Administrator;
- (d) Councillor Conrad Misponas;
- (e) Mr. Thomas Wildeman;
- (f) Mr. Ronald Kruzeniski, Q.C., the Information and Privacy Commissioner;
- (g) Mr. D’Arcy Hande;
- (h) Mr. Brad Henry;
- (i) Mr. AJ Felix; and
- (j) Ms. Shannen Fisher.

V. THE ROLE OF INQUIRY COUNSEL

The role of inquiry counsel was described by Professor David Paccicco, now of the Ontario Court of Appeal, in his opening statement in the Taman Inquiry as follows:

³ Appendix “F”.

My role as Commission counsel, as you are well aware, Mr. Commissioner, is to assist you. I am not to be partisan. I am to provide a neutral and dispassionate presentation of the evidence. And the overriding obligation that I have is to assist you in uncovering the relative truth about the facts that have occurred and to marshal [*sic*] the evidence that is required in order for you to discharge this Commission. It is not an adversarial proceeding from this particular seat... It is [my] function to ultimately contribute to a truthful and complete record so that you can make appropriate recommendations.⁴

Professor Ed Ratushny defined inquiry counsel as “the operational control center for the substantive work of the commission.”⁵

Justice Steele described the role of counsel for an inquiry in *Hudson Bay Mining and Smelting Company Limited v. Cummings*:⁶

In the advancement of the administration of justice and the public interest, Crown counsel at an inquest should be impartial and neutral. He performs a public duty which requires him to ensure that all available relevant evidence is presented in a fair, impartial and objective manner. The court, in the case of *Cronkwright Transport Ltd. v. Porter*, [1983] O.J. No. 558 (H.C.J.) (QL), commented that “[i]t is not the duty of the Crown at an inquest to have an adversary position” (at para. 8). This concept is reinforced in The Honourable Mr. Justice T. David Marshall, *Canadian Law of Inquests*, 2d ed. (Toronto: Carswell, 1991), when the author states (at p. 99):

... [T]he mandate of the Attorney-General, when the Crown is not a party and there is no *lis inter partes* at an inquest, is only to preserve the general integrity of the law and the administration of justice.

Inquiry counsel should be fair, impartial and neutral. Inquiry counsel performs a public duty that requires they ensure all evidence is presented in a fair and objective manner. Inquiry counsel is the inquiry officer’s counsel and alter ego, and therefore functions are at the inquiry officer’s direction.

Madam Justice Denise Bellamy, acting as a Commissioner in the Toronto Leasing Inquiry, as quoted in *The Conduct of Public Inquiries*, explained impartiality in the following terms:

Impartiality on the part of commission counsel is not to be confused with a lack of rigor and diligence in seeking the truth. Commission counsel might still act forcefully wherever necessary to overcome resistance that could obscure truth. This persistence is particularly important wherever the transparency of public inquiries motivates resistance on the part of those would something to hide what makes commission counsel’s role unique is that they must take into consideration the public interest, the interest of all parties and furthermore must explore conscientiously all plausible explanations and outcomes regardless of

⁴ Ed Ratushny, *The Conduct of Public Inquiries, Law, Policy and Practice* (Toronto: Irwin Law Inc., 2009) at 224. See also The Honourable Roger E. Salhany, Q.C. Commissioner, *Report of the Taman Inquiry* (Winnipeg: 2008), vol A at 7, online: <http://www.tamaninquiry.ca/pdf/taman_inquiry_A.pdf> (6 September 2019).

⁵ Ratushny, *ibid* at 238-40.

⁶ 2006 MBCA 98, 272 DLR (4th) 419.

whose interests are advanced. We have now reached a point in the evolution of commission counsel's role where can be confidently asserted that every task they undertake must be infused with an impartiality inseparable from that of the commissioner.⁷

The principle function of inquiry counsel is to call evidence and to present it in a balanced and impartial manner. Again, Commissioner Bellamy described the role as follows:

While it is not the role of commission counsel to advance any particular point of view, it does not follow that they should not be vigorous and thorough in their investigation, which includes the examination of witnesses. Commission counsel assist the commissioner in trying to discover the truth. They must be prepared to ask probing questions, especially when a witness's evidence is inconsistent and evasive. Commission counsel cannot accept each statement of explanation at face value. When there is no party adverse in interest to the witness, commission counsel have a special duty to examine the witness particularly thoroughly. They are not advocates for a party, but they are advocates for the truth. They must investigate, test, and verify.⁸

Commissioner Dennis O'Connor, who presided over the Walkerton Inquiry, described the role of inquiry counsel as follows:

1. To provide advice and guidance to the commissioner on the process. This includes acting as a "sounding board".
2. To supervise and conduct the investigation into all of the information relevant to the terms of reference, including gathering documentation and interviewing witnesses.
3. To develop and maintain open communication with all parties and to encourage cooperation in facilitating the disclosure and presentation of evidence.
4. To call evidence of the hearings, including witnesses the parties seek to call. Cross-examination by the parties is likely to be limited if the prior examination by commission counsel has been thorough and fair.
5. To assist the commissioner in writing the report. This role varies with different commissioners but is easier to accept when commission counsel has acted in an "impartial and even-handed way" throughout the inquiry.
6. To serve as a media spokesman for the commission to the media.⁹

In general, inquiry counsel is to marshal the evidence and ensure the inquiry is conducted in a procedurally fair manner, but also expeditiously. Inquiry counsel must be impartial.¹⁰

⁷ Ratuskny, *supra* note 4 at 221-22.

⁸ The Honourable Madam Justice Denise E. Bellamy, Commissioner, *Toronto Computer Leasing Inquiry: Toronto External Contracts Inquiry Report, Volume 3: Inquiry Process* (Toronto: 2005) at 43, online: https://www.toronto.ca/ext/digital_comm/inquiry/inquiry_site/report/pdf/TCLI_TECI_Report_Inquiry_Process.pdf.

⁹ Justice Dennis O'Connor, "The role of commission counsel in a public inquiry" (2003) 22:1 *Advocates' Soc J* 9 (QL) at 9-11.

VI. NATURAL JUSTICE AND PROCEDURAL FAIRNESS

(i) Applicable legal principles

The law requires that inquiries accord procedural fairness to all participants. Mr. Justice Cory, in *Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System)*,¹¹ described the concept as follows:

The findings of fact and the conclusions of the commissioner may well have an adverse effect on a witness or a party to the inquiry. Yet they must be made in order to define the nature of and responsibility for the tragedy under investigation and to make the helpful suggestions needed to rectify the problem. It is true that the findings of a commissioner cannot result in either penal or civil consequences for a witness. Further, every witness enjoys the protection of the *Canada Evidence Act* and the *Charter* which ensures that the evidence given cannot be used in other proceedings against the witness. Nonetheless, procedural fairness is essential for the findings of commissions may damage the reputation of a witness. For most, good reputation is their most highly prized attribute. It follows that it is essential that procedural fairness be demonstrated in the hearings of the commission.¹²

In *Blass v. University of Regina Faculty Association*,¹³ Justice Dawson commented on the content of the principle of natural justice, and in particular, the concept of a fair hearing, stating:

“Natural justice” connotes the requirement that administrative tribunals, like courts, when reaching a decision, must do so with procedural fairness. Procedural fairness relates to fairness between the parties and before the Board. Natural justice is “the basic requirement of procedure that one who judges is neither interested nor biased” and “that the parties have enough notice and the chance to be heard” ...

Natural justice is comprised of two fundamental principles: *audi alteram partem* — that a person must know the case being made against him/her and be given an opportunity to answer it . . .; and *nemo iudex in sua causa debet esse* - the rule against bias ...

The principle *audi alteram partem* is an imperative, which translated means “hear to other side”. More generally, it refers to the requirement in administrative law that a person must know the case being made against him/her and be able to answer it before the tribunal or agency will make a decision ... The concept of “fair hearing” connotes fairness between the parties or litigants.

Generally, fair hearing refers to a process of fairness, openness and impartiality. Fair hearing requires notice of the hearing, knowing the case to be met,

¹⁰ Appendix “D”.

¹¹ [1997] 3 SCR 440, 151 DLR (4th) 1.

¹² *Ibid* at para 55.

¹³ 2007 SKQB 470 at paras 51-54, 76 Admin LR (4th) 262.

disclosure, the opportunity to present the other side, the right of reply and the right to cross-examine.¹⁴

The comments of Madame Justice L'Heureux-Dubé in *Baker v. Canada (Minister of Citizenship and Immigration)*,¹⁵ are apposite and demonstrate that the concept of procedural fairness depends upon the nature of the inquiry.

(ii) Manifestation of natural justice and procedural fairness

(A) Minister's Order and Terms of Reference

In the present case, every effort was made to ensure the parties were provided with all of the evidence that was obtained by Inquiry Counsel. The Minister's Order provided the following in the Terms of Reference:

2. In conducting the Inquiry into the appropriateness of conduct and affairs, the Inquiry Officer shall consider the relevant standards applicable to members and municipal council by virtue of the Act, the Official Oath prescribed in form A of the *Northern Municipalities Regulations*, the municipality's Code of Conduct and the common law in relation to conflicts of interest as it relates to the duties of members of council to the municipality and the public

3. In the event the Inquiry Officer is considering making an adverse finding in relation to conduct, the Inquiry Officer will provide reasonable notice of the substance of the allegation and the individuals(s) would have a reasonable opportunity during the Inquiry to be heard in person or by counsel. Any notice of such alleged conduct will be delivered on a confidential basis to the person(s) to whom the allegations relate.

(B) Standard of Conduct Memorandum

To ensure the parties subject to the Inquiry, namely Mayor Natomagan and Councillor Misponas, understood the standard applicable to municipal councillors, I directed Inquiry Counsel to prepare a memorandum setting out the standard of conduct for members of municipal council. The memorandum detailed the principles applicable to conflicts of interests and the statutory requirements under the *NMA*, including the statutory duty to act in the best interests of the community, the requirement to file a Public Disclosure Statement, the obligation to adopt a Code of Conduct, and the Oath of Office applicable to councillors. The memorandum is attached hereto as Appendix "E".

The memorandum was provided to counsel for NVP and counsel for Mayor Natomagan, and was discussed with Councillor Conrad Misponas, who was unrepresented. As previously noted, Councillor Misponas declined to request standing, but every effort was made to ensure he was provided with all relevant information to ensure the Inquiry proceeded in a procedurally fair manner. We did not receive comments or objections from counsel for the parties regarding the memorandum setting out the standard of conduct for municipal councillors.

¹⁴ *Ibid* at paras 51-54.

¹⁵ [1999] 2 SCR 817, 174 DLR (4th) 193.

(C) Rules of Procedure and Practice

The Rules of Procedure and Practice provided that any person granted standing in the Inquiry could attend the hearing and be represented by counsel.

In addition, counsel for Mayor Natomagan and NVP were provided with a summary of the anticipated testimony of each witness and all documents that would be referred to during the witness' testimony. Pursuant to the Rules of Procedure and Practice, the witness statements were to be provided to counsel for parties with standing at least three days prior to the time at which the witness was scheduled to testify. For each witness, witness statements were completed and distributed to counsel prior to the witness' testimony.

The Rules of Procedure and Practice also specified that Notices of Potential Adverse Findings would be provided to those persons affected, at least 14 days prior to the witness being required testify. Notices of Potential Adverse Findings were provided before the commencement of hearings on September 24, 2019.¹⁶

¹⁶ Appendix "G".

VII. LEGISLATIVE OVERVIEW

The legislation relevant to the Inquiry includes:

- The *NMA*;
- *The Municipal Conflict of Interest Amendment Act, 2015*, SS 2015, c 30 [*Municipal Conflict of Interest Amendment Act*]; and
- *LAFOIP*.

The *NMA* governs northern municipalities and establishes the rules for their governance and administration. The three principles underlying municipal government relevant to this Inquiry include: responsible government, subsidiarity, and open government.

The principle of responsible government is inherent to democracy, where councillors are elected by, and accountable to, the community. They have a duty to ensure the municipality is operated lawfully and prudently and are responsible for their own conduct as municipal officials.

Subsection 3(1) of the *NMA* provides:

This Act recognizes that municipalities are local governments:

- (a) are a responsible and accountable level of government within their jurisdictions created and empowered by the Province of Saskatchewan;
- and
- (b) are subject to provincial laws and to certain limits and restrictions in the provincial interests as set out in this and other Acts.

Subsection 3(2) sets out the purposes of the *NMA*, having regard to the principles mentioned in s. 3(1). Section 4 of the *NMA* describes the legal status and capacity of municipalities; namely, to provide good government and foster wise stewardship of public assets.

Members of municipal council are trustees, holding temporary office as representatives of their fellow citizens, who are trusted to make decisions in the public interest. As a rule, public powers may not be used for an improper purpose.¹⁷

The principle of subsidiarity accepts that local governments may be best positioned to provide local services and address local issues.

The principle of open government requires transparency in the operation of government and is necessary for effective accountability. This principle is reflected in s. 138 of the *NMA*, which requires councils and committees to hold meetings in public. In addition, s. 133 of the *NMA* entitles any person to inspect and

¹⁷ See *Catalyst Paper Corp. v North Cowichan (District)*, 2012 SCC 2 at para 28, [2012] 1 SCR 5.

obtain copies of certain municipal records. The provisions in the *NMA* which foster transparency existed long before *LAFOIP* was enacted as law in Saskatchewan.

LAFOIP has a dual purpose: to foster and grant public access to government records; and, to protect the confidentiality of personal information, limiting its use and access for proper public purposes.

Under s. 2(f), *LAFOIP* defines “local authority” as including: (i) a municipality; and, (v) any body appointed pursuant to the *NMA* and prescribed in *The Local Authority Freedom of Information and Protection of Privacy Regulations*,¹⁸ wherein Part 1 of the Appendix prescribes as a “local authority” a “board, association, commission or other organization appointed pursuant to [the *NMA*]”. Pursuant to s. 2(e)(i) of *LAFOIP*, the mayor of a municipality is the “head” for the purposes of *LAFOIP*.

Section 5 provides a general right of public access to the records of a local authority. In general, *LAFOIP* requires full disclosure of the records of a local authority, unless the information is exempted under clearly defined statutory language in Part III. The Saskatchewan Court of Appeal in *General Motors Acceptance Corp. of Canada v. Saskatchewan Government Insurance* underlines this philosophy:¹⁹

[*LAFOIP*] was proclaimed in force effective April 1, 1992. It was enacted to facilitate public access to “Government” documents. It is broadly conceived and like similar legislation in other jurisdictions, it seeks to permit access to official information shielded unnecessarily from public view and attempts to create a judicially enforceable public right to secure such information from reluctant or unwilling officials. [*LAFOIP*] does not limit or reduce the rights of access existing at the time of proclamation.

...

[*LAFOIP*’s] basic purpose reflects a general philosophy of full disclosure unless information is exempted under clearly delineated statutory language.²⁰

¹⁸ RRS c L-27.1 Reg 1.

¹⁹ (1993), 109 DLR (4th) 129, 1993 CanLII 9128 [cited to CanLII].

²⁰ *Ibid* at paras 10-11.

PART II: BACKGROUND

THE NORTHERN VILLAGE OF PINEHOUSE

The Village is one of 35 northern communities governed by the *NMA*. It is a remote village located 216 kilometers from the town of La Ronge and some 780 kilometers north of Regina. The Village is located on the western shores of Pinehouse Lake. Village Council describes NVP as a Metis community.²¹ Unlike First Nations reserves, which are located on Crown land, NVP is situated on freehold. As such, Village residents can, and do, own their own homes.

The current population of NVP is approximately 1,500 persons. NVP has few amenities and services. For instance, the Village has a Co-op grocery store, however there are no hotel accommodations.

NVP is governed by a locally elected Council, consisting of the Mayor and four Councillors, who each serve for a three-year term. The current Mayor of the Village is Mike Natomagan, who was first elected in 2005. Conrad Misonpas currently serves as both a Councillor and the Deputy Mayor.

In the 1970s, a documentary produced by the CBC's Fifth Estate described NVP as a community rooted in despair.²² The documentary portrayed NVP as rife with alcoholism, poverty, and child neglect, with "packs of wild children...stealing to survive"; a far cry from the current state of the Village. The community continues to experience socioeconomic problems, but they are of different nature than the problems experienced in the past. At present, pressing concerns include housing shortages and drug addiction caused by an influx of crystal methamphetamine.

Unfortunately, the media attention received by the Village continues to focus on the negatives.²³ More recently, the Saskatoon StarPhoenix reported on the delays in responding to access to information requests, highlighting Mayor Natomagan's comment in the StarPhoenix interview – "We'll get to it when we get to it, when we have time, because there are other priorities within our community".²⁴ According to Mayor Natomagan, his interview went into the broader challenges and successes of the Village, but these aspects of the interview were not reported. While the legislative non-compliance of a village is a newsworthy concern, it is also important for the media and the public to appreciate the contemporary challenges faced by this remote community and understand the great progress NVP has made from the desperate times portrayed in the Fifth Estate documentary.

The formation of the Village's controlled corporations and the concerted efforts to develop housing and promote economic development are key reasons for the Village's progress. While this may not be obvious to those who reside outside the community of NVP, the evidence I heard established that it was

²¹ Exhibit 10 at para 49.

²² The Fifth Estate, "Pinehouse Story 1977" (18 June 2015), online: YouTube <[youtube.com/watch?v=0X84idkqsTo](https://www.youtube.com/watch?v=0X84idkqsTo)>.

²³ There are some exceptions: See e.g. Exhibit 150: Derek Cornet, "Canadian Geographic interested in Michif language in Pinehouse", *National Magazine* (23 September 2019), online: [larongeNOW](https://larongenow.com/2019/09/23/canadian-geographic-interested-in-michif-language-in-pinehouse/) <<https://larongenow.com/2019/09/23/canadian-geographic-interested-in-michif-language-in-pinehouse/>>.

²⁴ Exhibit 9.

the leaders within this small community, including the Mayor and Deputy Mayor, who spearheaded these efforts.

(i) Controlled corporations

The Village established Pinehouse Business North Development Inc. (“PBN”) in 1998, incorporating it under *The Business Corporations Act*.²⁵ PBN began doing business in 2007, following Mayor Natomagan’s appointment to Village Council. PBN participated in the Business Ready Investment Development Gateway (“BRIDG”) initiative in 2010; a program delivered by Westcap Mgt. Ltd., a venture capital and private equity fund manager, and designed to provide Indigenous communities with business readiness support. With the assistance of legal counsel, Pinehouse Business North Limited Partnership (“PBNLP”) was formed in 2012, with PBN as the general partner, wherein the Village owns 100% of the shares of the general partner and 99.9% of the shares of the limited partner, PBNLP. PBN owns the remaining 0.10% of PBNLP.²⁶

Beginning in 2012, the Village administered the Summit Action Fund Housing Project (the “Summit Housing Project”); an affordable housing program modeled after a northern housing initiative undertaken by the Saskatchewan Housing Corporation and funded by the Saskatchewan Housing Corporation’s Summit Action Fund.²⁷ The housing project proposed to construct 30 houses in NVP. With the assistance of a financial advisor, the Village has constructed 13 houses.

The Village Council established the Pinehouse Housing Corporation (“PHC”) in 2014. PHC has a mandate to create affordable housing, eliminate homelessness in the community, and encourage opportunities for home ownership.²⁸ PHC strives to hire local labourers and apprentices on its projects and currently employs one fulltime administrative assistant.

(ii) Economic development

Traditionally, the residents of Pinehouse supported themselves by hunting and trapping, and in the winter months, residents operated a local fishery.

In more recent years, many Village residents secured employment with nearby mining operations, as NVP is located 220 kilometers south of the Key Lake mine site, a large uranium mine site operated by Cameco that is no longer in production. During prosperous times when uranium mines were in operation, as many as 100 Village residents were employed by Cameco. The residents of NVP who were employed by Cameco occupied high-paying jobs, with many residents, such as Mayor Natomagan, occupying skilled trades positions. The Village benefited considerably from a close collaborative relationship with Cameco in terms of job training, and industrial and social development, however the relationship also rendered the Village particularly vulnerable to fluctuations in the mining industry. The Village’s relationship with the mining industry also garnered the attention of critics of uranium mining and nuclear energy in the province.

²⁵ RSS 1978, c B-10.

²⁶ References to “PBN” throughout the present Inquiry Report refer to the operations of Pinehouse Business North Limited Partnership.

²⁷ Exhibit 111, Exhibit 151.

²⁸ Exhibit 110.

The evidence established the Mayor and Council - the elected leadership of the Village - pursued a relationship with mining companies in order to help promote economic development and generate jobs for residents of NVP. In 2012, the Village entered into a Collaboration Agreement with Cameco and AREVA Resources (now Orano Canada Inc.);²⁹ uranium mining companies operating nearby mine sites. Under the terms of the Collaboration Agreement, NVP receives, and has received, a considerable amount of funding for community development and job training. In 2017, NVP received \$18.1 million under the terms of the Collaboration Agreement, with \$9.6 million going to business development, \$4 million going to PBN, \$5.6 million going to PBN-EMW,³⁰ \$0.6 million going to community investment, and \$7.9 million going to workforce development.³¹ The amount of funding received under the Collaboration Agreement is dependent upon production, so funding varies from year to year.

In order to achieve its purposes, the relationship of the parties to the Collaboration Agreement is structured around four pillars of engagement: (1) community investment; (2) workforce development; (3) business development; and (4) community engagement and environmental stewardship.³² Pursuant to the Collaboration Agreement, a Joint Implementation Committee, comprised of representatives from the parties to the Agreement, was established to monitor and oversee the Collaboration Agreement. In addition, there is a Trust Advisory Panel that, with the assistance of the Royal Bank of Canada, makes investment decisions and determines how the funds generated under the Collaboration Agreement are distributed.

The formation of the Collaboration Agreement was the target of criticism by a group of individuals opposed to the development of nuclear energy in the province. The group questioned the relationship of NVP with the nuclear industry and raised concerns about transparency. They contended the relationship with the nuclear industry would negatively impact the residents of the Village. The initial access to information requests submitted to the Village focused on the relationship between the Village and the nuclear industry. The evidence of both Mr. D'Arcy Hande and Mayor Natomagan suggested that the Village's relationship with the nuclear industry was a motivating factor in the proliferation of access to information requests.

(iii) Circumstances leading to the Inspection

Access to information requests submitted to the Village under *LAFOIP* morphed from requesting information relating to the Village's correspondence with nuclear energy organizations, to requesting information on the governance and financial issues of NVP. In June of 2016, Mr. Hande and a group of individuals who were frustrated with the Village's delay in responding to information requests endeavored to "blitz" the Village with several access to information requests sent in quick succession. Eight requests were submitted to the Village between January and December of 2016, and the consequent review reports from the OIPC were published on June 3, 2016. The access to information requests sought a wide range of information, such as the salaries of Council members, several years of financial statements of NVP and PBN, and the details of transactions that potentially raised concerns of conflicts of

²⁹ Exhibit 108.

³⁰ PBN-EMW refers to PBN EMW Joint Venture, which was owned 51% by PBNLP and 49% by EMW Industrial Ltd., however, is no longer active.

³¹ Exhibit 10 at para 299.

³² Exhibit 108, s. 3.1.

interest. In total, between 2013 to 2019, there were 24 access to information requests submitted to the Village.

According to the testimony of Mr. D'Arcy Hande, the purpose of the access to information requests was to reveal governance issues of Village Council and obtain information from the Council to inform Village residents on issues relevant to NVP municipal elections.

The Village Administrator was not familiar with the Village's obligation to respond to the access to information requests. Initially, the Administrator sought legal assistance in responding to the requests, however the arduous task eventually seemed to overwhelm her. She did not respond to the requests within the timelines set out in *LAFOIP*, resulting in 16 review reports by the OIPC.

The Village's response, or lack thereof, to the access to information requests and the corresponding review reports eventually resulted in the Information and Privacy Commissioner, Mr. Ronald Kruzeniski, Q.C., recommending the Minister of Government Relations order an inspection into the affairs of the Village under s. 417 of the *NMA*. The Village's contraventions of *LAFOIP* formed the basis of the Minister's decision to accept the recommendation of Mr. Kruzeniski and appoint Mr. Robertson as the Inspector.

Mr. Robertson conducted the Inspection of the Village and made certain recommendations to the Minister; notably recommending the removal from office of Mayor Natomagan and Deputy Mayor Conrad Misponas.

Following Mr. Robertson's recommendation to remove Mayor Natomagan and Deputy Mayor Misponas from office, the Minister ordered an inquiry and appointed Mr. Robertson as the Inquiry Officer, pursuant to s. 418(3) of the *NMA*. Due to an appointment to the Court of Queen's Bench, Mr. Robertson was unable to continue the mandate. As a result, the Honourable W.J. Vancise, Q.C. was appointed to replace Mr. Robertson as Inquiry Officer.

PART III: FACTS

SUMMARY OF WITNESS TESTIMONY

CAROLINE HILLYARD

Ms. Caroline Hillyard (Senior Manager, Advisory Services – Risk and Forensic Services) of Grant Thornton LLP testified as an expert in forensic accounting and her qualifications were accepted by the parties. Grant Thornton LLP (the “Auditors”) was retained by the Ministry of Government Relations (the “Ministry”) to perform a financial and forensic review of NVP and its three controlled corporations to investigate allegations of potential misappropriation of assets by Village officials and to examine compliance with the *NMA*. The results were to be used by the Inquiry. The review was commissioned as a result of the recommendations made by Mr. Robertson in the Inspection Report.

Ms. Hillyard advised that the mandate and scope of the forensic review were set out in Section 1.2 of the “Forensic Review of the Northern Village of Pinehouse (“NVP”) Prepared for the Minister of Government Relations, Government of Saskatchewan” (the “Forensic Review”), dated September 13, 2018.³³

The Auditors examined the following documents when preparing the Forensic Review:

- (a) The *NMA*;
- (b) NVP’s Policy and Procedures Manual;
- (c) NVP’s Code of Ethics Bylaw;
- (d) NVP’s Employee Code of Conduct and Workplace Ethics Bylaw;
- (e) 2018 Public Disclosure Statements for Mike Natomagan, Conrad Misponas, Walter Smith, Betty Ann Durocher, and Leona Lariviere;
- (f) Bank account and credit card statements for seven bank accounts and six credit card accounts;
- (g) Detailed General Ledger reports, such as Accounts Payable Batch Reports, Trial Balances, Chart of Accounts, and Payment Registers;
- (h) Copies of invoices and other documentation to support disbursements;
- (i) Financial Statements for the entities;
- (j) Details regarding forgivable loans and related mortgages; and
- (k) Fact-finding interviews with Village officials, NVP staff and others, including:

³³ Exhibit 106.

- (i) Mayor Mike Natomagan;
- (ii) Councillor Conrad Misponas;
- (iii) Administrator Martine Smith;
- (iv) Administrative Assistant Julia Natomagan;
- (v) Human Resources Assistant Georgina Natomagan;
- (vi) Secretary Shaylen Natomagan;
- (vii) AJ Felix; and
- (viii) Shannen Fisher.³⁴

Ms. Hillyard testified that the Forensic Review was instructed to look at the details of transactions in order to obtain an understanding of the nature of the transactions. The Forensic Review was conducted in accordance with Public Sector Accounting Standards issued by the Chartered Professional Accountants of Canada. The mandate directed the Auditors to examine all payments for the NVP and controlled corporation bank accounts, however this original mandate was scaled back because the Auditors later discovered the number of controlled corporations and quantity of transactions were more than double the number expected, and the timeframe they were allotted to complete the Forensic Review had been shortened. The Auditors also noted several joint ventures they were not made aware of under the original mandate.

Under the revised mandate, the Auditors examined transactions using a sampling approach based on related risk, as opposed to examining all transactions. The Auditors proposed to examine approximately 4,500 transactions, however this number was reduced to approximately 1,000 transactions, or 20% of the total number of transactions.

The Auditors performed the following procedures as part of the Forensic Review:

- (a) Site visits to the Village and to offices in Saskatoon to gather documents and conduct fact-finding investigations;
- (b) Obtained data, conducted interviews, and reviewed information pertaining to the following entities:
 - (i) The Village;
 - (ii) Pinehouse Business North Development Inc.;
 - (iii) PBNLP;
 - (iv) PHC;
 - (v) PBN EMW Joint Venture;
 - (vi) PBN EMW Industrial GP; and
 - (vii) PBN EMW Industrial LP.
- (c) Identified additional controlled entities to be included in the review;
- (d) Examined financial information and identified further entities with which PBNLP was involved;
- (e) Obtained supporting invoices and other documents for disbursements paid out of the various entities' bank accounts for the period of review from January 1, 2018 to December 31, 2018 (the "Period of Review");

³⁴ Exhibit 106 at 7-8.

- (f) Identified the bank accounts and credit card accounts to be reviewed;
- (g) Provided verbal updates to the Village, the Government of Saskatchewan, and other pertinent parties;
- (h) Provided a written Interim Status Update on August 16, 2019, which detailed the preliminary findings;
- (i) Reviewed and summarized transactions in the accounts of the entities to identify those that pertained to Village officials and their family members for the Period of Review;
- (j) Reviewed and summarized transactions in the entities' accounts to identify transfers between the entities;
- (k) Identified and summarized information pertaining to forgivable loans and mortgages issued to Pinehouse residents;
- (l) Performed investigative research on the individuals and entities identified during the review, in order to assist in understanding the corporate relationships and non-arm's length parties;
- (m) Determined whether expenditures were compliant with the *NMA*, using a sampling approach;
- (n) Reviewed debt limits and related financial statements to determine compliance with the *NMA* and approval by the Saskatchewan Municipal Board where relevant;
- (o) Provided responses to follow-up questions from staff, the Village, and the Government of Saskatchewan; and
- (p) Prepared the Forensic Review.³⁵

Payments to Village officials

The Auditors examined payments to both elected and appointed Village officials to assess compliance with the *NMA*. They also investigated whether payments received appropriate authorizations.³⁶

The Forensic Review noted Mayor Natomagan received a total compensation of \$160,900, and of his total compensation, only the payment from NVP for \$61,400 was compliant with s. 128 of the *NMA*.³⁷ The balance of \$86,499 from PBNLP was non-compliant with s. 128 of *NMA*.

Deputy Mayor Conrad Misponas has a contract with PHC to serve as Chairman/Director, for which he receives an \$80,000 compensation. The Forensic Review found his total compensation was \$85,373, of which \$2,700, representing his compensation from NVP, was compliant with s. 128 of the *NMA*.³⁸ As such, the remainder of his compensation was contrary to s. 128 of the *NMA*.

³⁵ Exhibit 106 at 5-7.

³⁶ Exhibit 106 at 16-17.

³⁷ Exhibit 106 at 17.

³⁸ Exhibit 106 at 17-18.

In addition to the Mayor and Deputy Mayor, the Auditors examined the remuneration of other members of Village Council.³⁹ They noted a variance in the amount paid to each member of Council, ranging from \$630 to \$174,416, and went on to list the amounts that were non-compliant with the *NMA*.

The Auditors also examined payments to the Pinehouse Co-op, Minahik Waskahigan School and Jasper Enterprises Inc., in order to both determine whether such payments were compliant with the *NMA*, and to report on intercompany transactions.⁴⁰

Mortgages

The Auditors examined a series of forgivable loans made in conjunction with an affordable housing program for Village residents.⁴¹ As part of the housing program, the Village gifted land to successful applicants in the form of a \$26,000 forgivable loan, which required successful applicants to remain on the property for ten years.

In the Inspection Report, Mr. Robertson expressed concerns that the forgivable loans violated provisions of the *NMA* relating to lending by a northern municipality.⁴² The Auditors, however, did not reach the same conclusion as Mr. Robertson. Rather, the Auditors characterized the forgivable loans as “grants” by the Village, which are within the power of the Village to bestow on residents.⁴³ The Auditors, however, concluded that the *NMA* provides public notice requirements for grants, and these requirements had not been met.⁴⁴ The Auditors also expressed some concerns regarding conflicts of interest, as many applicants shared familial ties, and questioned whether proper approvals were carried out by the Village Council.⁴⁵ The family relationships are not surprising, given the Village has a population of only 1,500 people.

The Auditors concluded the qualification process for the housing program was fair and fully disclosed to all Village residents.

Debt limit

The Auditors noted an issue with the debt limit of the Village, as reported in the financial statements. The Auditors used the modified equity method for calculating the Village’s long-term debt. According to the calculations outlined in the Forensic Review, the Village had exceeded its debt limit without approval from the Saskatchewan Municipal Board.⁴⁶ In essence, the issue was whether the debt of PBN and PHC should be included in the calculation of the Village’s debt limit. There does not appear to be unanimity on this issue.

³⁹ Exhibit 106 at 16-22.

⁴⁰ Exhibit 106 at 29-30.

⁴¹ Exhibit 106 at 33-36.

⁴² Exhibit 10 at paras 245-46.

⁴³ Exhibit 106 at 34.

⁴⁴ Exhibit 106.

⁴⁵ Exhibit 106.

⁴⁶ Exhibit 106 at 37.

Conclusions

On cross-examination, Ms. Hillyard confirmed the Auditors did not find evidence of fraud or misappropriation of funds in the sample of transactions reviewed. Although PBN's joint venture structures were more complex than initially thought, the Auditors found nothing unusual about the joint ventures as structured. Ms. Hillyard raised a concern that in some instances the signing authority of a cheque was also the payee. There was also some concern regarding the Village Administrator not being authorized to sign cheques because pursuant to s. 173 of the *NMA*, only the Administrator and one other person should be authorized to open or close Village accounts. Ms. Hillyard conceded there was nothing significant to highlight with regards to intercompany transfers.

In short, the most important finding to emerge from the Forensic Review were the conclusions confirming that there were instances of non-compliance with the *NMA*, but there was no evidence of fraud, or misappropriation of funds in the transactions reviewed by the Auditors. The Auditors made several recommendations, which are set out in Appendix "I".

MAYOR MIKE NATOMAGAN

Mayor Mike Natomagan was born and raised in the Village. He is an industrial mechanic by trade. Prior to securing an industrial mechanic position with Cameco in 2005, he worked at Cameco in other roles. He served two three-year terms on Village Council and was elected Mayor in 2005.

Mayor Natomagan volunteers a significant amount of his time towards the betterment of the community, involving himself in various community activities, such as coaching youth hockey. As the Mayor of NVP, Mayor Natomagan participates in monthly interagency meetings, where Mayor and Council meet with various groups in the community, such as the RCMP, schools, and healthcare providers, with a goal of working together to improve social conditions in the community. Mayor and Council also participate in weekly prevention meetings with several community groups in an attempt to address the community's drug issues.

Involvement with Pinehouse Business North

Prior to Mayor Natomagan's tenure, the Village community discussed forming a development corporation, however it was not until Mayor Natomagan was elected that PBN was formed. PBN was incorporated in 1998 and commenced business in 2007, largely serving as a contractor to Cameco, AREVA Resources, and the provincial government. PBN's chief objective is to employ Village residents as a means to improve the community's socioeconomic conditions. In testimony, Mayor Natomagan stated it was a "blessing" for PBN to begin operations when it did because the mining industry required labourers and the Village was in the vicinity of the Key Lake mine site.

When PBN was incorporated, Mayor Natomagan and Council were named as Directors. They were not advised they could not serve on Council while maintaining employment with PBN. At the outset, PBN was fully controlled by Mayor and Council, however as PBN expanded, the management structure evolved. At present, PBN is governed by a board of seven directors.

Mayor Natomagan was instrumental to the growth of PBN. After balancing his work with Cameco, PBN and the Village, the demands of PBN eventually became so great that Mayor Natomagan left Cameco to focus his efforts on the Village and PBN. In 2010, PBN engaged an external opinion on their governance structure and completed the BRIDG Program offered by WestCap. There were no concerns expressed by WestCap regarding Mayor Natomagan's employment relationship with PBN. Following completion of the BRIDG Program, PBN adopted a new structure for its Board of Directors, incorporating representatives from the Village and Kineepik Metis Local, in addition to external directors.

Mayor Natomagan testified that there is an agreement between PBN and the Village for payment of his expenses. Due to his dual role with the Village and PBN, PBN pays the Village \$1,000 per month to cover all of the expenses.

Mayor Natomagan testified that when the Village's annual financial audits are completed, the auditors walk through the findings with Council. It is his practice to ask the auditors whether the statements contain irregularities and he fully relies on their financial expertise. To date, the auditors have not advised Council of any irregularities in the financial statements.

In testimony, Mayor Natomagan recalled the Ministry of Government Relations alerting the Village Council to the issues with his role in PBN. He spoke with Mr. Brad Henry and the Ministry Supervisor about appropriate actions to correct the issues. He was advised it would be acceptable to occupy the role of Chairperson for PBN, so long as his remuneration was paid by the Village. Later, he instituted the changes suggested by the Ministry, however his responsibilities with PBN remained the same.⁴⁷

According to Mayor Natomagan, PBN publishes annual reports, the contents of which are presented to Village residents at annual public meetings. The reports detail PBN's operations, in addition to contributions made by PBN to the community.

Access to information requests

Prior to the Inspection, Mayor Natomagan testified he was unaware he was the "head" for the purposes of *LAFOIP*. On December 4, 2013, he delegated *LAFOIP* responsibilities to the Village Administrator, Ms. Martine Smith, as he believed she understood, and could best manage, access to information requests. While Mayor Natomagan knew the Village was behind in responding to access to information requests at one point, he simply encouraged Ms. Smith to do her best in responding because he was unable to provide assistance. Ultimately, whether the Village was able to respond to access to information requests would depend on how many requests were received.

Legislative compliance

Mayor Natomagan frankly admitted to being unfamiliar with the provisions of the *NMA*; only learning of the *NMA*'s legislative requirements at meetings in which Ms. Smith explained the provisions. When Council received a letter from Assistant Deputy Minister Keith Comstock on November 30, 2017, outlining concerns regarding the Village's compliance with the *NMA*, the letter was provided to Ms. Smith so that she could add it to the agenda for the next Council meeting. Council endeavoured to correct the concerns outlined in the letter from Assistant Deputy Minister Comstock.

At present, representatives from Northern Municipal Services ("NMS") of the Ministry of Government Relations attend Council meetings and are encouraged by Council to provide real-time advice. Village Council has been receptive to the assistance of NMS, as Council members hope to learn better governance practices. Mayor Natomagan has recognized improvements made by Council, such as better practices demonstrated within Village Council meetings.

Conflicts of interest

Mayor Natomagan testified that in past practice, conflicts of interest were only declared in Council meetings for job opportunities because conflicts were considered commonplace in a small community. It is his current practice to leave the room if he recognizes a potential conflict of interest. In his view, the Village's Summit Housing Project did not pose a conflict of interest because there was no direct competition and the Village was simply fulfilling a proposal with the Saskatchewan Housing Corporation.

⁴⁷ Exhibit 121.

Public Disclosure Statement

Mayor Natomagan learned of the requirement for a Public Disclosure Statement under the *NMA* from Ms. Smith, following which he filed the required documentation. He testified that although the Forensic Review listed entities that were not provided in his Public Disclosure Statement, he took the view that these entities were not relevant because they were largely inactive.

Summit Housing Project

Mayor Natomagan and Village Council began the Summit Housing Project when the Saskatchewan Housing Corporation issued a call for proposals. The Summit Housing Project modelled a similar Saskatchewan Housing Corporation program for affordable housing. Under the project, the Village was provided \$500,000 in progress payments for the construction of affordable housing in NVP. Applicants to the housing program were required to qualify for a bank mortgage of approximately \$120,000 to \$150,000. Ms. Shannen Fisher, a financial advisor, was engaged to assist in administering the program and she assisted Village residents in pre-qualifying for a mortgage.

Political contributions

Mayor Natomagan testified that prior to PBN adopting a CEO Committee, it was the past CEO of PBN who donated funds to the Saskatchewan Party Youth. In addition, Mayor Natomagan confirmed that tables were purchased at a fundraising dinner for MLA Laura Ross, who is related to Mr. Greg Ross. According to his testimony, Mayor and Council welcome visitors to their community as a way to demonstrate how Village residents live.

Collaboration Agreement

Mayor Natomagan sits on the Joint Implementation Committee, which has two committee members from the Village and two members from Cameco. As previously mentioned, the Joint Implementation Committee addresses how the Collaboration Agreement is functioning. Mayor Natomagan testified about the Trust Advisory Panel, which was established under the Collaboration Agreement to disburse the funds generated under the Agreement.

Mayor Natomagan testified that he has not observed any interference by Cameco with the funds received under the Collaboration Agreement.

VILLAGE ADMINISTRATOR MARTINE SMITH

Ms. Martine Smith is the Administrator for NVP; a position Ms. Smith has held since 2011. Ms. Smith obtained a diploma in Business Administration from the Saskatchewan Institute of Applied Science and Technology and the Saskatchewan Indian Institute of Technologies. She also completed the online module for certification with the Urban Municipal Administrators Association of Saskatchewan (“UMAAS”). Ms. Smith has not completed her municipal administrator certification in its entirety, as she has not yet completed the in-office inspection required to be fully certified as a municipal administrator. Ms. Smith was mentored by a Municipal Advisor from the Ministry of Government Relations; however, her mentor left the organization and there was no mentorship replacement. She has requested assistance from the Executive Director of NMS, but to date, such assistance has not transpired.

Together with Mayor Natomagan and Village Council, Ms. Smith attends numerous interagency meetings in the Village, all of which share a common goal of reclaiming the community and confronting socioeconomic issues.

Access to information requests

The Village received its first *LAFOIP* access to information request on April 2, 2013, which was submitted by Ms. Valerie Zink, the former editor of the Regina-based Briarpatch Magazine.⁴⁸ A second request was submitted by Ms. Zink on April 16, 2013.⁴⁹ At that time, Ms. Smith had no experience with access to information requests and was unsure how to proceed. According to Ms. Smith, she sought assistance from a Ministry of Government Relations official who agreed that the access to information request was too broad and did not allow the Village to respond within the timelines set out in *LAFOIP*. The ensuing response, however, did not satisfy the applicant, leading to Review Report 004–2013.⁵⁰ The Village responded to Review Report 004–2013 on December 18, 2013.⁵¹

After receiving the initial access to information requests, Mayor Natomagan delegated responsibility for *LAFOIP* to Ms. Smith on December 4, 2013.⁵²

Ms. Smith testified that she occasionally had legal assistance when responding to access to information requests. In some cases, she received legal assistance in preparing the s. 7 response to an applicant or the s. 45 response to an OIPC review report, however the remoteness of the Village made it difficult to regularly and swiftly engage legal counsel. Ms. Smith testified that she was unfamiliar with s. 45 of *LAFOIP* and the requirement to provide a response to each OIPC review report.

The extent of the access to information requests also created difficulty for responding in an adequate and timely fashion. Ms. Smith often found the access to information requests were vaguely worded, making it difficult for the Village to determine what information was being requested. Ms. Smith regularly

⁴⁸ Exhibit 130.

⁴⁹ Exhibit 130.

⁵⁰ Exhibit 80.

⁵¹ Exhibit 130.

⁵² Exhibit 113.

consulted with third parties upon receipt of an access to information request, such as PBN or Cameco, in order to determine whether information was exempted under *LAFOIP*.⁵³

Initially, the Village did not treat access to information requests as a priority. Ms. Smith was overwhelmed by the number of access to information requests received, in conjunction with numerous other duties she performed for the Village. Many of the access to information requests sought records spanning several years, necessitating substantial search efforts.⁵⁴ Ms. Smith testified that regardless of the response she provided, the applicants were not satisfied. She denied any deliberate attempt to not respond to the access to information requests; there were simply too many requests. In some cases, there were also extraneous circumstances. For instance, forest fires in 2015 required a Village-wide evacuation and Ms. Smith was the designated coordinator for the evacuation.

Ms. Smith testified as to the circumstances surrounding the review reports issued by the OIPC in 2016. According to Ms. Smith, her recollection of the circumstances surrounding these nine review reports can be summarized as follows:

Review Report No.	Date request received by NVP	Information requested by applicant	Evidence of Ms. Martine Smith
171-2016	N/A	Remuneration received by a specific individual and an audited financial statement for the Village from 2014.	The Village could not locate any documents related to the request. Given the high number of requests, Ms. Smith had no specific recollection of the information request. The OIPC published Review Report 171-2016 on August 2, 2016. ⁵⁵
098-2016	Nov. 30, 2015	All remuneration logs, time vouchers and expense claims submitted in support of the remuneration for Councillor Greg Ross and Village Council meeting minutes approving the remuneration. ⁵⁶	On December 18, 2015, the Village responded to the applicant, requesting a 30-day extension because the Village needed to provide notice to Councillor Greg Ross. On the same day, the Village notified Councillor Ross of the request for information. ⁵⁷ On January 21, 2016, the Village wrote to the applicant, advising it would require a fee of \$270.75 for the requested documents. ⁵⁸ In March of 2016, the Village received payment from the applicant and the Village provided the responsive records.

⁵³ *NMA*, *supra* note 2, s. 17(1)(f).

⁵⁴ For example, an access to information request received by the Village on April 16, 2013 requested copies of all reports and incoming and outgoing correspondence between the Village and Cameco, AREVA Resources, and NWMO regarding money paid by the entities over the period from 2007 to 2013. On April 2, 2013, the same applicant had requested audited financial statements for PBN from 2007 to 2012.

⁵⁵ Exhibit 48.

⁵⁶ Exhibit 139.

⁵⁷ Exhibit 139.

⁵⁸ Exhibit 139.

Review Report No.	Date request received by NVP	Information requested by applicant	Evidence of Ms. Martine Smith
			<p>The OIPC published Review Report 098-2016 on June 13, 2016.</p> <p>On June 30, 2016, the Village requested an extension to provide its s. 45 response to Review Report 098-2016.</p>
110-2016	Feb. 17, 2016	Audited financial statements of PBN and PBNLP for 2013 and 2014, and quarterly reports for 2015. ⁵⁹	<p>The Village consulted with its legal counsel in determining whether the requested records could be provided to the applicant.</p> <p>On March 24, 2016, the Village responded to the applicant, advising the access to information request was denied, pursuant to <i>LAFOIP</i>, s. 17(1)(f), as the disclosure of the requested record would prejudice the economic interests of the Village.⁶⁰</p> <p>The OIPC published Review Report 110-2016 on June 10, 2016.⁶¹</p>
036-2016	Jan. 20, 2016	Remuneration and expenses of each PBN Director from 2009 to 2014, along with copies of PBN Board meeting minutes approving the remuneration. ⁶²	<p>Search efforts were carried out in March of 2016, on account of other commitments. Due to the nature of the request, the Village was required to consult with PBN to determine whether the requested records could be provided.</p> <p>The OIPC published Review Report 036-2016 on June 3, 2016.⁶³</p> <p>The Village sent a response to the applicant on June 30, 2016, requesting a 10-day extension to provide the s. 45 response.⁶⁴</p> <p>To Ms. Smith's recollection, all records were provided.</p>
037-2016	Dec. 23, 2015	The records retention and disposal bylaw for the Village, with Village Council minutes approving the bylaw, as well as any requests to dispose of records since 2008, with copies	<p>The Village requested a 30-day time extension to respond on account of the extensive search required.</p> <p>The Village provided the applicant with a copy of the June 2015 Council meeting minutes,</p>

⁵⁹ Exhibit 138.

⁶⁰ Exhibit 138.

⁶¹ Exhibit 50.

⁶² Exhibit 137.

⁶³ Exhibit 51.

⁶⁴ Exhibit 137.

Review Report No.	Date request received by NVP	Information requested by applicant	Evidence of Ms. Martine Smith
		of Council minutes of approval. ⁶⁵	<p>which addressed a records retention schedule.</p> <p>The OIPC published Review Report 037-2016 on June 3, 2016.⁶⁶</p> <p>The Village sent a response to the applicant on June 30, 2016, requesting a 10-day extension to provide the s. 45 response.⁶⁷</p> <p>The Village has since adopted a records retention and disposal bylaw.⁶⁸ Prior to adopting the current bylaw, the Village used a Ministry of Government Relations disposal schedule but the schedule was not formally adopted by Council.</p>
039-2016	Feb. 17, 2016	Village Council minutes and PBN Board meeting minutes with approvals dispensing with PBN financial statements for 2009 to 2011. ⁶⁹	<p>On March 21, 2016, the Village advised the applicant the requested records did not exist after multiple searches.⁷⁰</p> <p>The OIPC published Review Report 039-2016 on June 3, 2016.⁷¹</p> <p>On June 30, 2016, the Village requested a 10-day extension to issue its s. 45 response to Review Report 039-2016.⁷²</p>
040-2016	Jan. 26, 2016	Documentation relating to sponsorship of the Saskatchewan Party Youth Convention in November of 2015.	<p>Searches undertaken by the Village revealed no responsive records.</p> <p>On March 21, 2016, the Village informed the OIPC it would respond to the applicant with a <i>LAFOIP</i>, s. 7 letter.</p> <p>The OIPC published Review Report 040-2016 on June 3, 2016.⁷³</p> <p>The Village issued a s. 45 response to Review Report 040-2016 on October 25, 2016, detailing its search efforts.⁷⁴</p>

⁶⁵ Exhibit 136.

⁶⁶ Exhibit 52.

⁶⁷ Exhibit 136.

⁶⁸ Exhibit 33.

⁶⁹ Exhibit 135.

⁷⁰ Exhibit 135.

⁷¹ Exhibit 53.

⁷² Exhibit 135.

⁷³ Exhibit 54.

⁷⁴ Exhibit 134.

Review Report No.	Date request received by NVP	Information requested by applicant	Evidence of Ms. Martine Smith
056-2016	Feb. 27, 2016	Documentation given to the Village's external auditor in 2012 to support PBN's net income. ⁷⁵	<p>The Village consulted with PBN to determine whether the requested records fell under an exemption in <i>LAFOIP</i>.</p> <p>On March 24, 2016, the Village wrote to the applicant, declining to release the requested records, as the exemption contained in <i>LAFOIP</i>, s. 17(1)(f) applied. As such, release of the records would prejudice the economic activity of the Village.⁷⁶</p> <p>The OIPC published Review Report 056-2016 on June 3, 2016.⁷⁷</p> <p>On June 30, 2016, the Village requested a 10-day extension to issue its s. 45 response to Review Report 056-2016.⁷⁸</p>
106-2016	Mar. 16, 2016	Remuneration and expenses paid to Vince Natomagan and Glen McCallum in 2014 and 2015. ⁷⁹	<p>The OIPC published Review Report 106-2016 on June 3, 2016.⁸⁰</p> <p>On June 30, 2016, the Village requested a 10-day extension to issue its s. 45 response to Review Report 106-2016.⁸¹</p> <p>The requested information was provided to the applicant on or before January 17, 2017.⁸²</p>

In the Inspection Report, Mr. Robertson was highly critical of Ms. Smith. In my opinion, the difficulties she faced in responding to access to information requests in a timely manner were not due to a deliberate attempt to obstruct the process or to a lack of competence. Rather, her difficulties were primarily caused by Mayor and Council overloading her with a number of different tasks. She was involved in the housing program, tax enforcement, Village administration, and Council meetings, in addition to dealing with numerous access to information requests. Based on the testimony of Ms. Smith and the other witnesses, Ms. Smith was given a substantial amount of work and responsibility by the Village Council, with Mayor Natomagan and Council placing great reliance on Ms. Smith in her role as Village Administrator. The situation has since been remedied and the Village has hired additional staff to assist Ms. Smith.

Since 2013, Ms. Smith recalled receiving a total of 24 access to information requests. The most recent requests were fully responded to in a timely manner, due in part to Ms. Smith having more familiarity

⁷⁵ Exhibit 133.

⁷⁶ Exhibit 133.

⁷⁷ Exhibit 55.

⁷⁸ Exhibit 133.

⁷⁹ Exhibit 132.

⁸⁰ Exhibit 56.

⁸¹ Exhibit 132.

⁸² Exhibit 132.

with the process, and because other employees assist Ms. Smith in responding to the access to information requests.

According to Ms. Smith's testimony, Mayor Natomagan did not advise her not to comply with the access to information requests or attempt to delay responses.

Village administration and legislative compliance

Ms. Smith received a letter dated November 30, 2017, from the Assistant Deputy Minister, Mr. Keith Comstock, addressed to Mayor Natomagan and Council of NVP, outlining the Ministry's concerns with the operations of the Village. Potential non-compliance with the *NMA* was brought to the Assistant Deputy Minister's attention through the Village's response to an information request under *LAFOIP*. In the letter, the Assistant Deputy Minister demanded action on matters of legislative compliance and requested the following:

- (a) The Council procedure bylaw;
- (b) The Council remuneration bylaw;
- (c) The Records retention and disposal bylaw;
- (d) The Council code of conduct;
- (e) The Code of employee conduct;
- (f) Meeting minutes in which the above bylaws and codes were approved by Village Council;
- (g) Audited financial reports of all controlled corporations of the Village from 2014 to 2016;
- (h) Public Disclosure Statements for each member of Council; and
- (i) Written confirmation the employment situation with the Village controlled corporations had been resolved.⁸³

According to Ms. Smith, upon receipt of Assistant Deputy Minister Comstock's letter, she worked with Mayor Natomagan and Village Council to implement missing bylaws. Prior to passing the current Council Remuneration Bylaw, Village Council had an informal policy in place for determining the remuneration of Councillors. Ms. Smith sought advice from NMS regarding appropriate steps for adopting a formal bylaw.

On February 27, 2018, Ms. Smith responded to Assistant Deputy Minister Comstock, providing the records requested in the preceding correspondence.⁸⁴ The letter indicated several of the bylaws had received their first reading. Assistant Deputy Minister Comstock wrote to the Village again on May 31,

⁸³ Exhibit 41.

⁸⁴ Exhibit 38.

2018, inquiring as to whether the bylaws received their second and third readings.⁸⁵ Assistant Deputy Minister Comstock also requested detailed information about the financial statements of PHC and PBN.

On September 14, 2018, Ms. Smith responded to Assistant Deputy Minister Comstock. In testimony, Ms. Smith acknowledged Village Council's governance process became more formalized after the correspondence with the Ministry of Government Relations. Ms. Smith noted the difference between Council having the requisite policies and bylaws in place and having a working knowledge on how to implement them.

Conflicts of interest

When questioned about Village Council's previous practices for declaring conflicts of interest in Council meetings, Ms. Smith advised that when a perceived conflict arose, Mayor Natomagan or the Councillor left the room. She acknowledged Council meeting minutes were imperfect, however advised she was actively working to improve meeting documentation. She stated frankly that she never observed Mayor Natomagan remaining in a meeting when a conflict of interest arose and did not witness Mayor Natomagan attempting to influence such meetings.

Ms. Smith stated that due to the perceived conflict of interest, Mayor Natomagan was not involved in Council decisions that concerned Ms. Smith, such as her lease at Gordon Lake, or her mortgage under the Summit Housing Project.

⁸⁵ Exhibit 27.

COUNCILLOR CONRAD MISPONAS

Conrad Misponas is a member of Village Council and acts as Deputy Mayor of NVP. He is currently the Chairman of PHC and a Director of PBN.

Involvement with the Summit Housing Project

In 2012, the Village started the Summit Housing Project, an initiative designed to address the housing shortage in NVP by helping residents become homeowners. The Village engaged Ms. Shannen Fisher to administer the Summit Housing Project and help educate residents on mortgages and finances. In the initial stages, the Village hoped to construct as many houses as possible under the program, but ultimately only 13 residents were eligible for mortgages.

For the duration of the Summit Housing Project, Councillor Misponas oversaw and assisted in the construction of the houses in the role of Housing Project Supervisor. In testimony, Councillor Misponas acknowledged he was not familiar with the qualification process for the Summit Housing Project, as the program was administered by Ms. Fisher and the Village Administrator. Councillor Misponas was paid \$27.00 per hour for his services as Housing Project Supervisor.⁸⁶

Involvement with Pinehouse Housing Corporation

Councillor Misponas has been involved in PHC since its inception in 2014 and was appointed as Chairman of PHC. The mandate of PHC was not only to create affordable housing, increase home ownership, and reduce homelessness in the community, but also to ensure availability of rental units in NVP. In his role as Chairman, Councillor Misponas holds a variety of responsibilities, including securing funding for housing proposals, ensuring housing surveys are met, working with PHC consultants, and training PHC's administrative assistant.

Councillor Misponas confirmed in testimony that although PHC's 2018 Annual Report refers to him as the General Manager of PHC, he formally occupies the role of Chairman. Councillor Misponas receives annual remuneration of \$80,000 for his role as Chairman.⁸⁷

During the Inquiry, Councillor Misponas was asked about his understanding of PHC's financial statements. He stated he had minimal understanding of the financial statements and relied on the organization's financial auditors.

Involvement with Pinehouse Business North

Councillor Misponas serves as a member of PBN's Board of Directors, which is comprised of external non-resident members and Village residents.

On August 19, 2019, Councillor Misponas wrote to PBN, stating that effective August 25, 2019, he would no longer receive remuneration as a Director of PBN, but would remain on the PBN Board of Directors.⁸⁸

⁸⁶ Exhibit 145.

⁸⁷ Exhibit 100.

⁸⁸ Exhibit 120.

Prior to August of 2019, Councillor Misponas was receiving remuneration from PBN for his role as a Director.

Fishing trip with Mr. Thomas Wildeman

During the Inquiry hearing, Councillor Misponas testified about a fishing trip that occurred in September of 2018 at NVP, where he was accompanied by Mr. Thomas Wildeman, who is the partner of the Minister of Finance, Donna Harpauer. Mr. Wildeman had previously accompanied Minister Harpauer on a visit to the Village in 2016.

Councillor Misponas' testimony was that he invited Mr. Wildeman to go fishing as a friend because Mr. Wildeman expressed a keen interest in fishing, and he wished to show Mr. Wildeman the community. Councillor Misponas testified as to the difficulty in explaining what is happening in the Village to non-residents without showing people around the community. According to Councillor Misponas' testimony, the fishing trip was not intended to be a political visit. Mr. Wildeman was accompanied by his friend Rusty and Minister Harpauer did not attend NVP on this occasion. Mr. Wildeman paid for significant portions of his trip, including breakfasts and fishing supplies.

When Councillor Misponas was asked about guiding expenses claimed from the Village for the fishing trip, he explained Mr. Wildeman and Rusty were his guests for the trip and the Village tries to show appreciation for those who make efforts to associate with the Village.

Remuneration

Councillor Misponas stopped receiving hourly remuneration as the Housing Project Supervisor once the first ten houses for the Summit Housing Project were constructed. Following his role as Housing Project Supervisor, he was appointed as a Chairman of PHC, for which he receives remuneration of \$80,000, in addition to a phone allowance and expense account.

In cross-examination, Councillor Misponas testified that the compensation he receives from PHC was approved during a Village Council meeting. He recalled leaving the meeting when the motion was passed. He went on to explain that as a practice, Councillors leave the meeting room when an agenda item connected to the Councillor is considered by Village Council.

When questioned about his decision to discontinue remuneration from PBN, Councillor Misponas explained the change was targeted at rectifying the remuneration concerns specified in Mr. Robertson's Inspection Report. Prior to receiving the Inspection Report, Councillor Misponas was unaware he was violating s. 128 of the *NMA*.

Mortgages

With regard to the Village mortgages approved under the Summit Housing Project, Councillor Misponas confirmed that based on the recommendation of Ms. Fisher, all residents involved in the program were first approved for interest-free loans of \$26,000 with the Village, and were then required to qualify for bank mortgages. After the first few applicants were approved for the Summit Housing Project, the Village was compelled to actively search for more applicants in order to complete the first phase of ten

homes, as so few residents were able to secure bank mortgages. In total, 13 houses were constructed for Village residents through the Summit Housing Project, with construction of the first ten homes being supervised by Councillor Misponas in his role as Housing Project Supervisor.

Public Disclosure Statements

Councillor Misponas testified that in addition to the Public Disclosure Statement he filed on February 27, 2018,⁸⁹ he had previously filed a Public Disclosure Statement on July 4, 2017.⁹⁰

⁸⁹ Exhibit 31.

⁹⁰ Exhibit 98.

THOMAS WILDEMAN

Mr. Thomas Wildeman resides in Humboldt, Saskatchewan. As previously mentioned, he is the partner of the Minister of Finance, Donna Harpauer.

At the Inquiry hearing, Mr. Wildeman was presented with a letter from MLA David Forbes, the Official Opposition Ethics and Democracy Critic, written to Ronald L. Barclay, Q.C., the Conflict of Interest Commissioner,⁹¹ regarding allegations the Village paid invoices for visits to NVP by the Minister and Mr. Wildeman in 2016 and 2018.

Mr. Wildeman confirmed the information contained in the letter from MLA Forbes was incorrect, because although he and Minister Harpauer visited the Village in 2016, Minister Harpauer did not accompany him on the 2018 visit. As previously noted, Councillor Misponas invited Mr. Wildeman to the Village for a fishing trip and Mr. Wildeman was accompanied by his friend Rusty. Mr. Wildeman had no information as to why there was a charge for a guided tour because subsequent to the fishing trip, Mr. Wildeman asked Mr. John Durocher whether there were any expenses to be paid and was advised there were no expenses owing.

I see no need to address the 2016 trip to NVP, as I am satisfied Mr. Barclay fully addressed the allegations in his letter dated December 17, 2018.⁹² There is no basis in fact to the allegations of a conflict of interest of the Minister of Finance, as alleged by MLA Forbes.

⁹¹ Exhibit 103.

⁹² Exhibit 101.

Office of the Information and Privacy Commissioner

Mr. Ron Kruzeniski, Q.C. has held the position of Information and Privacy Commissioner for Saskatchewan since 2014. The OIPC is an independent office of the Saskatchewan Legislature and oversees three provincial statutes: LAFOIP, the *Freedom of Information and Privacy Act*, SS 1990-91 c. F22.01 and the *Health Information Protection Act*, SS 199, c H-0.021.

The OIPC has a mandate to ensure that public bodies respect privacy and access rights of Saskatchewan citizens. The OIPC mandate includes:

- (a) Informing members of the public of their information rights;
- (b) Resolving access and privacy disputes between individuals and public bodies;
- (c) Making recommendations on appeals from access to information decisions by public bodies;
- (d) Investigating and resolving privacy complaints;
- (e) Issuing recommendations on public bodies' policies and practices; and
- (f) Commenting on proposed laws and policies.

Information access legislation

LAFOIP has jurisdiction over local authorities, which includes the municipalities governed by the *NMA*. Section 5 of *LAFOIP* provides individuals the right to access the records of municipalities or villages. This provision is related to one of the principal purposes of *LAFOIP*, which is to ensure the transparency of local authorities. *LAFOIP* came into effect in 1993, however long before it came into effect, municipalities had an obligation of transparency and accountability to the public, which was provided for in municipalities legislation.

LAFOIP provides a process for local authorities to follow when an access to information request is received, which includes determining whether to charge a fee for the search. Once an access to information request is received, the local authority has 30 calendar days to respond to the applicant, which includes providing the applicant with a letter specifying the information that will or will not be provided.⁹³ *LAFOIP* also permits an extension for the local authority to respond in certain circumstances.

The access to information applicant can submit a request for review to the OIPC if the local authority does not provide a response or if the local authority's response is unsatisfactory. The OIPC will first attempt to reach a resolution between the applicant and the local authority. If such resolution is not successful, the OIPC will prepare and publish a review report. Under s. 45 of *LAFOIP*, the local authority is given 30 days to respond to the contents of the review report by indicating whether the OIPC's recommendation(s) will be followed. According to the testimony of Mr. Kruzeniski, if the local authority does not provide a s. 45 response, the OIPC interprets the lack of response as a decision by the local

⁹³ *LAFOIP*, *supra* note 1, s. 7(2).

authority not to follow the OIPC's recommendations. Following the 30-day timeline under s. 45, the applicant may appeal to the Court of Queen's Bench, regardless of any action taken by the local authority.

The mayor or reeve of a municipality is the "head" under *LAFOIP* but may delegate the responsibility for responding to access to information requests. According to Mr. Kruzeniski, best practices entail the head delegating the responsibility to the municipal administrator, as administrators are best equipped to deal with requests. The administrator can, and often does, rely on the assistance of legal counsel to respond to an access to information request.

The duty to respond to access to information requests presents challenges for small municipalities, as staff are often not trained on *LAFOIP* procedures, there is significant staff turnover of municipal officials, and there is frequently an overall lack of resources. In testimony, Mr. Kruzeniski stated he and his office are willing to assist local authorities, as the OIPC understands that municipal officials may be unfamiliar with their obligations under *LAFOIP* and may not understand the procedures they must follow.

Involvement with the Village

Mr. Kruzeniski testified that from 2013 to 2018, his office prepared 16 review reports in relation to access to information requests submitted to the Village, including the review report prepared by his predecessor. Mr. Robertson reported on 13 of the review reports in the Inspection Report. The first review report was prepared by Mr. Kruzeniski's predecessor, Mr. R. Gary Dickson, Q.C., who rendered a scathing report on November 18, 2013.⁹⁴ Mr. Dickson found the Village failed to provide a proper s. 7 response and failed to respond appropriately to the OIPC. As such, Mr. Dickson recommended the Ministry of Justice consider prosecution under *LAFOIP*. This constituted a severe recommendation for a first offense.

Mr. Kruzeniski testified about several of the review reports concerning the Village. In Review Report 040-2016, Mr. Kruzeniski noted there were clear delay issues in 14 of the 16 review reports.⁹⁵ The review process for Review Report 040-2016 was commenced because the OIPC made several unsuccessful attempts to contact the Village, including sending a registered letter, which the Village did not collect. The OIPC offered to assist the Village, so as to help it respond to the access to information requests, but the offer was not accepted. Mr. Kruzeniski concluded Review Report 040-2016 by determining there was a "deemed a refusal to provide the requested record", as the Village had "not yet cooperated with [the OIPC] by providing responses".⁹⁶

In Review Report 037-2016, the applicant requested information on January 2, 2016.⁹⁷ A whole 76 days later, the applicant had still not received a response from the Village. Mr. Kruzeniski again concluded there had been a "deemed refusal" to provide the requested records, owing to the Village's lack of cooperation with the OIPC.

Mr. Kruzeniski also discussed Review Reports 036-2016,⁹⁸ 098-2016,⁹⁹ and 171-2016.¹⁰⁰ In each case, Mr. Kruzeniski concluded there was a "deemed refusal" to provide the requested records. Mr. Kruzeniski

⁹⁴ Exhibit 80.

⁹⁵ Exhibit 54.

⁹⁶ Exhibit 54.

⁹⁷ Exhibit 52.

⁹⁸ Exhibit 51.

noted his office had provided considerable assistance to the Village in Review Report 171-2016, in addition to requesting both the Ministry of Government Relations and Saskatchewan Urban Municipalities Association (“SUMA”) assist the Village in understanding its obligations under *LAFOIP*.

In Review Report 110-2016, Mr. Kruzeniski concluded the Village did not appropriately apply an exemption claimed under s. 17(1)(f), as the Village provided no submissions to support the exemption claim.¹⁰¹ Mr. Kruzeniski recommended the Village examine its processes for responding to access to information requests and look for ways to improve its response times.¹⁰² He also recommended the Village develop a policy on how to respond to review requests.

In Review Report 104-2018, Mr. Kruzeniski noted his office had issued 11 review reports; nine of which pertained to s. 7 responses not being provided to applicants within the legislated time limits.¹⁰³ Mr. Kruzeniski stated that in all nine cases, the Village had not cooperated with requests made by the OIPC. Mr. Kruzeniski again corresponded with the Ministry of Government Relations and SUMA, requesting they assist the Village. He concluded Review Report 104-2018 by stating that if the Village continued its pattern of not cooperating with OIPC recommendations, he would consider recommending the Attorney General prosecute the Village under s. 56(3) of *LAFOIP*. In testimony, Mr. Kruzeniski explained that his recommendation was made in hopes the Village would begin taking its *LAFOIP* obligations more seriously.

The OIPC continually made recommendations to the Village concerning the Village’s efforts to provide responses and locate records, as evidenced by Review Reports 141-2015¹⁰⁴ and 039-2016.¹⁰⁵ The repeated recommendations culminated in Review Report 204-2018, wherein Mr. Kruzeniski concluded the Mayor and the Village Administrator were attempting to obstruct the lawful operation of *LAFOIP*.¹⁰⁶

In Review Report 066-2019, Mr. Kruzeniski summarized the OIPC’s involvement with the Village; the 16th report since 2013. Fifteen of the 16 reports dealt with the Village not providing s. 7 responses to applicants, inadequate responses, or delays in providing information. Mr. Kruzeniski concluded that the Village’s lack of compliance with *LAFOIP* could not continue and he believed the Village was selectively responding to access to information requests based on the identity of the applicant.

On cross-examination, Mr. Kruzeniski stated he did not agree with Mr. Dickson’s recommendation to prosecute after only one infraction by the Village, as he believed the recommendation was much too extreme. In comparison, Mr. Kruzeniski did not recommend any action be taken until after his 13th report. After publishing numerous review reports, the OIPC became less flexible and signalled to the Village that unless changes were instituted, action would be taken.

In Mr. Kruzeniski’s view, there was a deliberate failure by the Village to respond to access to information requests. While the OIPC did not follow up with the applicants or the Village after the review reports

⁹⁹ Exhibit 49.

¹⁰⁰ Exhibit 48.

¹⁰¹ Exhibit 50.

¹⁰² Exhibit 50.

¹⁰³ Exhibit 24.

¹⁰⁴ Exhibit 62.

¹⁰⁵ Exhibit 53.

¹⁰⁶ Exhibit 18.

were published, Mr. Kruzeniski conceded the Village's delays in responding to access to information requests were caused by a combination of the quantity and timing of requests received.

In testimony, Mr. Kruzeniski agreed that as a broad principle, a local authority has a duty to assist applicants. As such, if an access to information request is broadly worded, the OIPC encourages the local authority to consult with the applicant to narrow down the records sought by the applicant. In addition, the local authority cannot be compelled to create documents in order to respond to an access to information request, nor is there an obligation for the local authority to explain the information contained in the records provided to the applicant.

Mr. Kruzeniski testified that pursuant to s. 43.1 of *LAFOIP*, which was added to the statute in 2017, a local authority is permitted to make an application to the OIPC if the local authority receives access to information requests that are frivolous or vexatious. He explained there is a high threshold to meet in order to demonstrate requests are frivolous or vexatious.

Mr. Kruzeniski testified that he was not aware that many of the access to information requests submitted to the Village were part of a concerted effort by a group of applicants. In such situations, it is incumbent on the local authority to communicate with the OIPC.

Mr. Kruzeniski made several recommendations as a result of the OIPC's dealings with the Village and consulted with the provincial government regarding the recommendations. Mr. Kruzeniski's recommendations are summarized in Appendix "E".

D'ARCY HANDE

Mr. D'Arcy Hande is a resident of Saskatoon, Saskatchewan. He is a retired archivist who was previously employed by the University of Saskatchewan.

Initial involvement with NVP

As a “long-time opponent of the promotion of nuclear power as sustainable energy”,¹⁰⁷ Mr. Hande first encountered NVP in 2012, when he learned of the Collaboration Agreement. At that time, an acquaintance of Mr. Hande organized a group of people to travel to the Village with plans to have a petition signed to stop Village Council from signing the Collaboration Agreement. Mr. Hande and others in the group, along with some Village residents, were concerned with the terms of the Collaboration Agreement, however their efforts were ultimately unsuccessful.

As part of his efforts, Mr. Hande presented an idea for an article to Briarpatch Magazine concerning the Collaboration Agreement and the Nuclear Waste Management Organization (“NWMO”), which he proposed to write as a freelance writer. Briarpatch Magazine accepted his idea, leading to access to information requests submitted to the Village under *LAFOIP*. The past editor of Briarpatch Magazine, Ms. Valerie Zink, submitted information requests to the Village on April 2, 2013 and April 16, 2013, requesting records that would inform Mr. Hande’s article entitled “Courting collaboration: How the uranium industry bought the Village of Pinehouse, and what residents are doing to take it back”. Mr. Hande ultimately authored four articles for Briarpatch Magazine concerning the Village and as part of that activity, he and others became aware of potential deficiencies in the governance of NVP.

Access to information requests

In his testimony, Mr. Hande detailed the significant delays he and other applicants experienced in obtaining information from the Village through access to information requests.

In 2014, Mr. Hande and several others filed a lawsuit against NVP, on account of the Village’s long delays in responding to the access to information requests submitted by Briarpatch Magazine.¹⁰⁸ The lawsuit eventually settled in mediation and further documents were released by the Village.

In 2015, Mr. Hande submitted two access to information requests. First, he requested information relating to the Canada Revenue Agency’s action against PBN in 2009 to 2011 that resulted in PBN’s bank account being frozen.¹⁰⁹ Second, he requested shareholder registers for PBN and PBNLP, indicating what shares were purchased and redeemed. He also requested an explanation for the discrepancy between PBN’s 2012 net income in its unaudited financial statement and the figure provided in NVP’s financial statement. Mr. Hande received the majority of the records he requested, along with a letter from the Village stating they had not found any documents explaining the discrepancy of PBN’s net income.

¹⁰⁷ Briarpatch Magazine, online: <<https://briarpatchmagazine.com/contributors/view/hande-darcy>>.

¹⁰⁸ Exhibit 115.

¹⁰⁹ Exhibit 62.

The Village was delayed in responding to access to information requests submitted in 2015 on account of forest fires in northern Saskatchewan.¹¹⁰

In 2016, Mr. Hande submitted an access to information request for records on the full remuneration paid to Mr. Vince Natomagan and Mr. Glen McCallum for 2014 and 2015.¹¹¹ Mr. Hande requested a review by the OIPC on May 5, 2016, as there was a significant delay in receiving the requested information.¹¹² Mr. Hande received the requested records in early 2017. Due to the recurrent delays in receiving requested information from the Village, Mr. Hande and several others decided to “blitz” NVP with access to information requests, submitting several requests in a short period of time. Mr. Hande testified there were more access to information requests submitted than those which were formally reviewed by the OIPC.

In June of 2017, Mr. Hande requested copies of the following:

- (j) The NVP Code of Ethics;
- (k) The NVP Code of Employee Conduct;
- (l) Public Disclosure Statements filed by Mayor and Council since 2015;
- (m) Village Council meeting minutes where conflicts of interest were declared since 2015; and
- (n) Documentation indicating whether any Village Council member was also an employee of NVP or any of its controlled corporations.¹¹³

The Village responded to Mr. Hande’s request for information, indicating the following:

- (a) NVP did not have a Code of Ethics, nor a Code of Employee Conduct;
- (b) Councillor Conrad Misponas was the only member of Village Council who had filed a Public Disclosure Statement;
- (c) There had been no conflicts of interest declared at Village Council meetings since November of 2015; and
- (d) The only member of Village Council declared to be an employee of NVP, or one of its controlled corporations, was Mr. Walter Smith.

Mr. Hande submitted other access to information requests to the Village in 2018. For instance, on August 17, 2018, Mr. Hande requested copies of the following records from the Village:

- (a) Salary statements, claims for per diems, other supplementary income and expense claims submitted by the following individuals from January 1, 2014 to June 30, 2018:

¹¹⁰ Exhibit 62.

¹¹¹ Exhibit 132.

¹¹² Exhibit 56.

¹¹³ Exhibit 41.

- (i) Mayor Mike Natomagan;
- (ii) Councillor Conrad Misponas; and
- (iii) Administrator Martine Smith.¹¹⁴

On cross examination, Mr. Hande conceded that the initial access to information requests that would inform his Briarpatch Magazine articles related to the relationship between the Village and the nuclear industry. He stated there were more access to information requests submitted to the Village than the requests that resulted in formal review reports by the OIPC. When asked why he and others “blitzed” the Village with access to information requests, he explained that if the Village did not cooperate, he and others in his group were going to ensure a number of questions would be put forward to make a political point that there were questions not being answered.

In 2014, numerous plaintiffs, including Mr. Hande, filed a lawsuit, naming several defendants, including Cameco, AREVA Resources, and the Mayor of NVP, and seeking an order declaring the Collaboration Agreement void.¹¹⁵ The plaintiffs also claimed damages that would enable them to identify the effects caused by the nuclear industry on NVP citizens and the environment. The action was dismissed summarily by the Court of Queen’s Bench as disclosing no reasonable cause of action and costs were awarded against the plaintiffs.

Overall, the actions of Mr. Hande and his cohorts were a significant cause of the Inspection and subsequent Inquiry. Mr. Hande’s evidence that he, along with several other individuals, engaged in a concerted effort to “blitz” the Village with information requests is very concerning to me, as this amounts to using the *LAFOIP* process in a coordinated action to overwhelm a small northern community’s administration. While the use of the access to information provisions of *LAFOIP* cannot be condoned, the access to information requests did expose some governance deficiencies within the Village.

¹¹⁴ Exhibit 141.

¹¹⁵ Exhibit 115.

BRAD HENRY

Mr. Brad Henry is the Executive Director of NMS for the Ministry of Government Relations. NMS is responsible for overseeing the operations of the Northern Municipal Trust Account and advising northern municipalities on their operations and obligations under the *NMA*. Mr. Henry oversees three distinct functional areas: providing municipal advisory services to municipalities, including compliance with the *NMA*; grant funding; and community and land use planning services.

Mr. Henry testified as to the systemic issues faced by many northern communities. For instance, there is often a lack of local leadership, which he referred to as local “champions”, such that NMS is forced to continually rely on the same individuals, risking burnout of these local “champions”. Small communities tend to have a high volume of family relationships between residents and fewer job opportunities, which has considerations for conflicts of interest and employment opportunities. Oftentimes, the municipality is the main employer in the community. In addition, northern communities have a low level of commercial and industrial assessment that would enable municipalities to obtain revenue, so the tax burden falls primarily on individual residents. As a result, northern municipalities rely largely on government grants.

Access to information requests in Pinehouse

NMS regularly prepares internal “Briefing Notes”, documents which are intended to provide real-time updates to senior management, the Minister of Government Relations, and the Minister’s Staff. NMS prepared several Briefing Notes relating to access to information requests submitted to the Village under *LAFOIP* and the Village’s corresponding failures or delays in responding to such requests.

The Briefing Notes referenced a lawsuit that was commenced by several plaintiffs in order to demand copies of documents that were requested in April of 2013 pursuant to *LAFOIP*. The requested records pertained primarily to the Village’s financial relationship with uranium mining companies.¹¹⁶ The lawsuit requested other relief, including damages to compensate for harm done to the environment by the uranium industry. The action was dismissed on account of disclosing no reasonable cause of action.

In a December 9, 2013 Briefing Note, NMS commented on the OIPC’s recommendations from Review Report LA-2013-004 and the subsequent assistance provided to the Village by the Ministry.¹¹⁷ The Briefing Note proposed actions that could be taken to assist municipalities in complying with *LAFOIP*, including the preparation of a fact sheet dealing with common questions on municipal administration and engaging municipal associations to disseminate information on *LAFOIP*.¹¹⁸

In a Briefing Note dated February 14, 2014, NMS stated the Village was aware of its responsibility to comply with *LAFOIP* but lacked the resources to comply with the access to information requests.¹¹⁹ As such, the Ministry offered the Village assistance in complying with its access to information requests and understanding its *LAFOIP* obligations.

¹¹⁶ Exhibit 43.

¹¹⁷ Exhibit 77.

¹¹⁸ Exhibit 77.

¹¹⁹ Exhibit 76.

In a Briefing Note dated December 7, 2015, NMS referenced Review Report 141-2015 and an open letter to the Minister of Government Relations, requesting the Ministry directly intervene in the autonomy of the Village.¹²⁰ Mr. Henry testified that in the Ministry's view, municipalities are autonomous entities. As such, the NMS offers advice and support, but will only interfere and directly enforce the legislation in extreme and exceptional situations.

On September 8, 2016, NMS noted the OIPC had issued eight review reports in June of 2016 and one review report in August of 2016 concerning the Village's failure to provide responses under *LAFOIP*.¹²¹ NMS recommended the provincial government explore its relationships with various organizations, including SUMA, New North, the Ministry of Justice, and the OIPC, and invite these organizations to a Village Council meeting to ensure Village officials understand their compliance obligations under *LAFOIP*. NMS mentioned that Village Council previously advised NMS it would continue its practice of using the municipality's legal counsel when responding to information requests. NMS noted that in June of 2016, the Village Administrator indicated the Village had nine outstanding access to information requests.

NMS also noted that in July of 2016, a group of access to information applicants sent a letter to the Premier of Saskatchewan alleging non-compliance by the Village with *LAFOIP* and requesting action by the Premier.¹²²

On September 25, 2018, NMS prepared a Briefing Note, stating NMS made repeated attempts to contact the Village Administrator to determine the status of the Village's response to the OIPC's recommendation to release the outstanding records under its control.¹²³

Minister Warren Kaeding, along with NMS officials, visited the Village in October of 2018, wherein the Minister emphasized the importance of complying with municipal legislation and *LAFOIP*. Mr. Henry testified that Village officials were receptive to the Minister's comments. On October 19, 2018, a Briefing Note stated the Village had not released certain outstanding records.¹²⁴ As such, Assistant Deputy Minister Comstock recommended the Minister order the Village to respond to access to information requests in a timely manner.¹²⁵

In a Briefing Note dated November 26, 2018, NMS documented the conclusion reached by the OIPC in Review Report 204-2018, wherein the OIPC concluded the Village was attempting to obstruct the lawful operation of *LAFOIP*.¹²⁶ Mr. Henry testified that there was no indication of an intent on the part of the Village to obstruct or otherwise thwart the process under *LAFOIP*. The delay in responding to access to information requests resulted primarily from a lack of resources.

¹²⁰ Exhibit 61.

¹²¹ Exhibit 74.

¹²² Exhibit 74.

¹²³ Exhibit 23.

¹²⁴ Exhibit 20.

¹²⁵ Exhibit 20.

¹²⁶ Exhibit 17.

Village administration and legislative compliance

Briefing Notes dated October 2, 2017,¹²⁷ and November 21, 2017,¹²⁸ stated NMS representatives met with Village officials to discuss the legislative requirements for public disclosure and provide assistance to the Village Council. NMS also established an escalation process to identify, validate, and mitigate instances of municipal non-compliance with statutory conflict of interest requirements.¹²⁹ The process allowed the Ministry to monitor cases of non-compliance and consider further action in cases of severe non-compliance.¹³⁰

In 2017, Mr. Henry brought Ms. Smith onto the Northern Municipal Trust Account Management Board in order to assist Ms. Smith in forming mentorship relationships with more senior northern administrators.

As previously noted, Assistant Deputy Minister Comstock wrote to Mayor and Council on November 30, 2017 regarding potential non-compliance with the *NMA* and indicated that if no response was provided, the Ministry would consider further action.¹³¹

On February 27, 2018, NVP responded to Assistant Deputy Minister Comstock, providing the requested documentation, however the response indicated the Council Remuneration Bylaw, Records Retention and Disposal Bylaw, Council Code of Conduct, and Code of Employee Conduct had only received their first reading.¹³² The letter noted the employment situation had been resolved, as employment of Village Councillors with NVP's controlled corporations was declared in Public Disclosure Statements.

On May 31, 2018, Assistant Deputy Minister Comstock inquired as to whether the previously requested bylaws had received their second and third readings and raised a number of issues about the financial statements for NVP and its controlled corporations, including the use of two accounting firms – one firm for NVP and a separate firm for the controlled corporations.¹³³ Assistant Deputy Minister Comstock also requested detailed information concerning the financial statements of PBN and PHC.

The Village responded to Assistant Deputy Minister Comstock on September 14, 2018, explaining the Village used two auditors because one auditor was specialized in municipal audits, whereas the other auditor had expertise in International Financial Reporting Standards (“IFRS”).¹³⁴ The Village also advised that PBN was properly considered a “Government Business Enterprise”, as defined by the accountant for NVP. As such, the letter explained the Village's accountant utilized the modified equity method to account for the investment of PBN, where the Village's financial statements recognize the income from PBN, net of the distributions to NVP.¹³⁵

The letter also clarified the details for a Clarence Campeau Development Fund (“CCDF”) loan, which was a syndicated loan between CCDF and Cameco to finance an equipment purchase, pledging the

¹²⁷ Exhibit 43.

¹²⁸ Exhibit 42.

¹²⁹ Exhibit 42.

¹³⁰ Exhibit 42.

¹³¹ Exhibit 41.

¹³² Exhibit 38.

¹³³ Exhibit 27.

¹³⁴ Exhibit 119.

¹³⁵ Exhibit 119.

equipment as collateral.¹³⁶ The arrangement enabled PBN to achieve favourable loan terms from Cameco and resulted in an interest-free loan with a forgivable portion based on equipment usage. The letter went on to clarify that the Village did not provide any guarantees for the loans.

In a Briefing Note dated November 26, 2018, NMS documented the conclusion reached by the OIPC in Review Report 204-2018, wherein the OIPC concluded the Village was attempting to obstruct the lawful operation of *LAFOIP*.¹³⁷ Mr. Henry had discussions with Mayor Natomagan regarding the employment relationship with elected officials and the Village's controlled corporations, providing recommendations to address non-compliance with the *NMA*.

Conclusions

On cross-examination, Mr. Henry confirmed the amendments to conflict of interest provisions in the *NMA* provided new obligations for northern municipalities. In connection with these amendments, NMS provided information, delivered several presentations, and prepared documents to assist municipalities in complying with the legislation. Mr. Henry testified that he recognized a sincere desire on the part of Village Council to receive assistance and achieve legislative compliance. In an effort to assist Village Council, Mr. Henry regularly attends Council meetings to provide real-time advice.

Mr. Henry agreed Village Council struggled with the rules concerning Village Council's relationship with its controlled corporations. He acknowledged Village Council continues to address that issue.

NMS recommended the Village amend its Council Remuneration Bylaw to improve the financial transparency of payments to Village Council members. NMS also recommended that in instances where a Councillor serves on the board of directors for one of the controlled corporations, the remuneration for such service be paid from the Village and not the controlled corporation, and the remuneration should be set out in the Village's Remuneration Bylaw. In other words, Mr. Henry recommended that the services of councillors to controlled corporations should be viewed as Village councillor work, and not as employment services, and that the remuneration for such Village councillor work should be transparently identified in the Village's Council Remuneration Bylaw.

Overall, the employment relationship between elected officials and controlled corporations of the Village creates considerable difficulty. While there is a reason for the employment prohibition found in the *NMA*, the reality is that with so few people to rely on, in practice it is problematic if the local "champions" are removed from the process. As a result, nothing will get done because it is always the same people involved and these individuals eventually experience burnout.

Mr. Henry was unable to offer an opinion as to whether NVP has exceeded its long-term debt limit.

¹³⁶ Exhibit 119.

¹³⁷ Exhibit 17.

AJ FELIX

Mr. AJ Felix is a chartered accountant who regularly provides business advice to Indigenous communities. According to Mr. Felix, northern communities experience challenges that are primarily related to governance issues and a lack of capital.

Involvement with Pinehouse Business North

PBN contracted Mr. Felix to provide business consulting services and Mr. Felix continued to work with PBN for approximately six years. When establishing the corporate structure of PBNLP, Mr. Felix, along with legal counsel, focused on the *Business Corporations Act* and considerations of liability and taxation. It did not occur to those involved in establishing the corporate structure of PBN that there were provisions in the *NMA* relating to such business ventures.

PBN operates as an industrial construction company, with a focus on highway maintenance, building construction and waste management. The company hires residents from NVP for its permanent staff.

Mayor Natomagan is the President of PBN and Mr. Felix testified as to Mayor Natomagan's value to the organization. In September of 2017, the PBN Board of Directors re-examined Mayor Natomagan's compensation and set his salary at \$86,500. Mayor Natomagan's salary was set after surveying the remuneration received by those in comparable positions in the industry. Mr. Felix explained Mayor Natomagan holds the position of PBN President, not because he is the Mayor, but because he has the skillset required for the role. His remuneration was meant to reflect that reality.

Mr. Felix testified that on September 22, 2019, Mayor Natomagan advised the PBN Board of Directors he would no longer receive compensation for his role as Director and Officer of PBN but would remain in the position.¹³⁸ Mayor Natomagan's responsibilities with PBN did not change.

Commentary on the Forensic Review

In preparation for his testimony, Mr. Felix reviewed the Forensic Review prepared by Grant Thornton and provided clarification on several areas.

- (a) First, Mr. Felix provided an explanation for the monthly payment of \$1,000, made to the Village from PBN. Due to the Mayor's overlapping duties (and thus expense reimbursements) with PBN and the Village, the PBN Board of Directors decided a monthly payment would be made to the Village, which would cover expenses incurred by Mayor Natomagan, rather than Mayor Natomagan submitting expense reports to both the Village and PBN. The amount of \$1,000 was settled on as a reasonable number.
- (b) The Auditors highlighted areas of non-compliance with the *NMA* regarding certain expenses and cheque authorization. In some instances, the payee on a cheque was also one of the authorizing signatures.¹³⁹ Mr. Felix clarified that in such cases, prior to the cheque being issued, there was a process in place to validate the payment being made. The PBN Board of

¹³⁸ Exhibit 121.

¹³⁹ Exhibit 106.

Directors also instituted various control measures and approves the budget annually. In addition, Mr. Felix believed the Auditors' concerns with the transfer of funds to the Village, from the Village, amounted to an overly technical concern.

- (c) In the Forensic Review, the Auditors commented on the use, or lack of use, of a three-bedroom condominium owned by PBN located in Saskatoon, Saskatchewan. Mr. Felix remarked that because the condominium is limited to three bedrooms, some Councillors may be required to stay in alternate accommodations when Mayor and Council travel to Saskatoon for conferences, however the condominium is fully utilized when it is available.
- (d) Mr. Felix also noted the Village discussed making changes to its future financial statements, such that the Councillors' compensation from controlled corporations would also be included in the financial statement in an effort to improve transparency.
- (e) Mr. Felix clarified that PBN rents office in Saskatoon, Saskatchewan from a third-party. Jasper Enterprises Inc. operates out of a separate office.
- (f) Mr. Felix discussed the operation of PBN and noted PBN directly competes with the largest contractor in the area. As such, the disclosure or release of financial information about PBN projects to the public would be detrimental to PBN's competitiveness vis-à-vis other northern contractors.
- (g) The Summit Housing Project was completed before Mr. Felix's services were retained; however, Mr. Felix believed the housing program was fully disclosed to all Village residents and the primary deciding factor for awarding a forgivable loan was whether an applicant qualified for a mortgage with a third-party institution. In addition, he commented that conflicts of interest, as defined by the *NMA*, are commonplace in small communities, as there are many familial ties among residents.
- (h) Finally, Mr. Felix opined that in terms of the Village's debt limit, the debt and the revenue ought to be included in the debt limit calculation, as opposed to the Auditors' method of adding only the debt into the calculation based on his interpretation of the *NMA*.

SHANNEN FISHER

Ms. Shannen Fisher is an independent financial advisor with Thierman Financial in Prince Albert, Saskatchewan. She holds designations as a Certified Financial Planner and Certified Executor Advisor. Ms. Fisher handles insurance, investments, and lending products, in addition to assisting clients in obtaining mortgages through Manulife Bank.

Ms. Fisher has advised several northern communities on mortgages and how to save for a down payment on a home.

Involvement with the Village's housing program

In May of 2012, Ms. Fisher had discussions with Mayor Natomagan, legal counsel for the Village, and other Village officials regarding Mayor Natomagan's idea for a housing program in the Village. The Village was experiencing a housing shortage and had an opportunity to access funds from the Saskatchewan Housing Corporation to construct houses. Ms. Fisher became involved in the Summit Housing Project in her professional capacity, which involved educating residents on home ownership and providing mortgages.¹⁴⁰

Initially, Ms. Fisher believed the housing program would be straightforward to administer, as the Village had access to \$500,000 from the Saskatchewan Housing Corporation and the entry-level homes were projected to cost approximately \$150,000. Ms. Fisher first visited the Village in July of 2012 and as part of the initial stages of the housing program, she offered Village residents a presentation on how mortgages work, how to save for a down payment, and how to apply for a mortgage.¹⁴¹ Her presentation was widely advertised in the Village. Before pre-qualifying Village residents for a mortgage, she first endeavored to illustrate the affordability of home ownership; a realization that was highly emotional for many residents.

Ms. Fisher also met with Village residents individually and met approximately 40 households to discuss mortgage pre-qualification. As part of the pre-qualifying process, Ms. Fisher looked at tax filings and paystubs to determine residents' income. At this stage, most residents earned enough income to support the projected mortgage payment.

Ms. Fisher completed credit checks for residents who had the income to support a mortgage payment; only pulling credit scores if residents met two income thresholds (the Gross Debt Service Ratio and the Total Debt Service Ratio) to support a mortgage. Ms. Fisher testified as to the shocking results of the vast majority of credit checks, as she witnessed a high frequency of bad credit scores. Ms. Fisher believed the Village faced four major impediments to good credit:

- (a) "Predatory lenders" contacting the community from automotive dealerships in larger city centers, who would sell residents vehicles over the phone with very high financing rates. For these residents, even if they kept their debt in good standing, they did not have enough disposable income to support a mortgage payment.

¹⁴⁰ Exhibit 153.

¹⁴¹ Exhibit 154.

- (b) The community used heating fuel to heat their homes and some residents either fell behind in making payments for this service or were in dispute with the service company on how much they owed. Residents may have had collections for smaller amounts showing on their credit.
- (c) Some residents did not fulfill their cell phone contracts, so a collection would show on their credit.
- (d) Overall, Village residents had a lack of education on credit and budgeting.

Once Ms. Fisher became aware of the credit issues in the community, she took the time to explain to the community how lending works, identifying credit problems, and what residents could do to correct their credit.

Of the 40 households that were initially interested in the housing program, only two qualified for a mortgage with Manulife Bank and two qualified with another bank. Ms. Fisher testified that she was also informed of other residents who obtained mortgages later on through other banks. As credit checks were completed and residents were pre-qualified for a mortgage, Manulife Bank provided an approval letter with the individual's name and this was given to the Village Administrator, Ms. Smith.

Ms. Fisher testified that she did not witness any favouritism from Village officials as to which residents were awarded a lot in the housing program. If residents related to Village officials were approved for mortgages, it was likely a result of the small size of the community. In addition, residents working in the Village office learn proper financial skills, because at a municipal office people are trained in finance and budgeting. There were so few people that pre-qualified for mortgages, Ms. Fisher and Ms. Smith were eventually compelled to actively seek out applicants for the program.

PART IV: ANALYSIS

OVERVIEW

The Minister's Order directed an Inquiry into the appropriateness of the conduct of Mayor Mike Natomagan and Councillor Conrad Misponas. In particular, Mayor Natomagan's failure to perform his duties under *LAFOIP* and the *NMA*, including his failure to file a Public Disclosure Statement and declare conflicts of interest, and his employment by the Village and a controlled corporation of the Village. I was also directed to inquire into the failure by Councillor Conrad Misponas to comply with the *NMA*, including his failure to file a Public Disclosure Statement and declare conflicts of interest, and his employment by the Village and a controlled corporation of the Village.

Subsequent to the Order, the Minister accepted the recommendation made by Mr. Robertson to order a forensic review of the Village and its controlled corporations to assess the Village's compliance with the governing statutes and investigate allegations of the misappropriation of assets by Village officials. The Ministry engaged Grant Thornton LLP to complete the Forensic Review.

The foregoing necessarily raises the following issues:

- I. Compliance with *LAFOIP* by Mayor Natomagan and NVP;
- II. Conflicts of interest;
- III. Non-compliance with the requirements under the *NMA* by the Village and Council; and
- IV. Village finances and the Forensic Review.

I. *LAFOIP*

The relevant provisions of *LAFOIP* are set out here for convenience:

Right of access

5 Subject to this Act and the regulations, every person has a right to and, on an application made in accordance with this Part, shall be permitted access to records that are in the possession or under the control of a local authority.

...

Response required

7(1) Where an application is made pursuant to this Act for access to a record, the head of the local authority to which the application is made shall:

- (a) consider the application and give written notice to the applicant of the head's decision with respect to the application in accordance with subsection (2); or

(b) transfer the application to another local authority or to a government institution in accordance with section 11.

(2) The head shall give written notice to the applicant within 30 days after the application is made:

(a) stating that access to the record or part of it will be given on payment of the prescribed fee and setting out the place where, or manner in which, access will be available;

(b) if the record requested is published, referring the applicant to the publication;

(c) if the record is to be published within 90 days, informing the applicant of that fact and of the approximate date of publication;

(d) stating that access is refused, setting out the reason for the refusal and identifying the specific provision of this Act on which the refusal is based;

(e) stating that access is refused for the reason that the record does not exist;

(f) stating that confirmation or denial of the existence of the record is refused pursuant to subsection (4); or

(g) stating that the request has been disregarded pursuant to section 43.1 and setting out the reason for which the request was disregarded.

(3) A notice given pursuant to subsection (2) is to state that the applicant may request a review by the commissioner within one year after the notice is given.

(4) If an application is made with respect to a record that is exempt from access pursuant to section 14, 20 or 21 or subsection 28(1), the head may refuse to confirm or deny that the record exists or ever did exist.

(5) A head who fails to give notice pursuant to subsection (2) is deemed to have given notice, on the last day of the period set out in that subsection, of a decision to refuse to give access to the record.

...

Decision of head

45 Within 30 days after receiving a report of the commissioner pursuant to subsection 44(1), a head shall:

(a) make a decision to follow the recommendation of the commissioner or any other decision that the head considers appropriate; and

(b) give written notice of the decision to the commissioner and the persons mentioned in subsection 44(2).

According to the testimony of Mr. Kruzeniski, *LAFOIP* is designed to ensure the transparency of local authorities. *LAFOIP* has jurisdiction over local authorities, including municipalities governed by the

NMA. Section 5 of *LAFOIP* provides individuals the right to access the records a local authority. The legislation provides a process for local authorities to follow when an access to information request is received; requiring the local authority provide a response within 30 calendar days¹⁴² and, in some circumstances, allowing for an extension of time to respond.¹⁴³ Mr. Kruzeniski emphasized the timelines specified in *LAFOIP* are mandatory, leaving the OIPC no discretion to waive and or extend the timeline.

Pursuant to *LAFOIP*, if an access to information applicant finds a local authority's response unsatisfactory, the applicant may request a review by the OIPC. Prior to commencing the review, the OIPC typically endeavours to reach a resolution between the parties. If the OIPC cannot reach a resolution, the review is initiated, resulting in a formal review report. Pursuant to s. 45 of *LAFOIP*, a local authority has 30 days to respond to a review report, indicating whether it will follow the recommendations made by the OIPC.

LAFOIP applies to both the records in the possession or under the control of the local authority, and to the records of its controlled corporations; a subject the OIPC addressed in Review Report 036-2017 concerning the City of Saskatoon (the "City") and the Remai Modern Art Gallery (the "Remai").¹⁴⁴ The City took the position that it did not have control over the requested records, namely the expenses of the Executive Director of the Remai, and as such, had no obligation to disclose the requested information. Mr. Kruzeniski found the City had sufficient control of the records to respond to the access to information request by reason that the Remai was a controlled corporation of the City and was therefore subject to *LAFOIP*. Notably, Mr. Kruzeniski found s. 4(a) of *LAFOIP* complements, rather than replaces, the existing procedures for access to information or records in the possession or under the control of the local authority.¹⁴⁵

Mr. Kruzeniski acknowledged *LAFOIP* poses challenges to small, remote municipalities, where staff may be untrained, and the community often lacks adequate resources to respond to access to information requests. While the mayor is the "head" for the purposes of *LAFOIP* and responsible for responding to an access to information request, he or she may delegate the responsibility to another individual; typically, the municipal administrator. Mr. Kruzeniski confirmed it is a good practice for the mayor to delegate the authority to respond to access to information requests to a municipal administrator. It is evident the OIPC understands the difficulties remote municipalities experience in responding to access to information requests, and Mr. Kruzeniski indicated the OIPC is prepared to assist municipalities in responding to these requests.

Access to information requests in the Village

The Inspection Report detailed the circumstances of 13 review reports published by the OIPC from 2013 to 2018. The Inquiry heard evidence of subsequent review reports by the OIPC and the context surrounding these reports. According to the testimony of Mr. Kruzeniski, there were a total of 16 review reports prepared by the OIPC from 2013 and 2019 concerning the Village. The Village received some 24 access to information requests during this period. The first review report was prepared by Mr.

¹⁴² *LAFOIP*, *supra* note 1, s. 7.

¹⁴³ *Ibid*, s. 12.

¹⁴⁴ Saskatchewan OIPC, Review Report 036-2017, City of Saskatoon (September 11, 2017).

¹⁴⁵ *Ibid* at para 14.

Kruzeniski's predecessor, Mr. Dickson, who recommended prosecution of NVP for its first offense in failing to respond to an access to information request in a timely fashion. From Mr. Kruzeniski's perspective, his predecessor's recommendation was too extreme for a first offense.

The OIPC made several other recommendations regarding the Village in its review reports. For instance, in Review Report 110-2016, Mr. Kruzeniski recommended NVP examine its processes for responding to access to information requests and develop a policy for responding to the OIPC when a review report is received. The OIPC also requested SUMA and the Ministry of Government Relations assist the Village in complying with access to information requests.¹⁴⁶

In 14 of the 16 review reports, the OIPC noted delay issues on the part of the Village. In instances where the Village failed to cooperate with the OIPC and did not respond to the access to information applicant within the prescribed timelines, the OIPC concluded there was a "deemed refusal" to provide the requested records. Following repeated response delay and a string of failed attempts to have the Village comply with s. 7 of *LAFOIP*, Mr. Kruzeniski concluded the Mayor and the Village Administrator were attempting to obstruct the operation of *LAFOIP*.¹⁴⁷ As a result, Mr. Kruzeniski cautioned that if the Village did not cooperate, he would contemplate recommending the Attorney General consider prosecution.¹⁴⁸

The failures of the Village culminated in Review Report 066-2019, wherein Mr. Kruzeniski concluded "there continued to be a complete disregard by the village for what *LAFOIP* requires of it. The purpose of *LAFOIP* is to enhance transparency and accountability within local government by providing citizens with the right of access to government records and the right of privacy over their personal information". After concluding there was a deliberate attempt to thwart *LAFOIP*, Mr. Kruzeniski recommended the Minister of Government Relations direct an inspection under s. 417 of the *NMA*. The Minister accepted Mr. Kruzeniski's recommendation and ordered the inspection and subsequent inquiry.

In testimony, Mayor Natomagan and Ms. Smith responded to the findings of the OIPC and addressed the difficulty experienced in responding to the numerous access to information requests. According to the testimony of Ms. Smith, she had no experience handling access to information requests and was unsure how to proceed when she received the first access to information requests. At the outset, Ms. Smith failed to understand the importance of the access to information requests and the corresponding response obligations. Initially, she sought advice from the Village's legal counsel, but the remoteness of the Village made it difficult to engage legal counsel. Due to the nature of the information requested, Ms. Smith was often required to consult with third parties, such as PBN, to determine whether the requested information could be disclosed because in some instances the information requested would prejudice the economic interests of PBN.

The form of the access to information requests created impediments to providing a timely response, as requests were frequently vague or unclear, and often requested numerous records over an extended timeframe. For example, Ms. Smith testified that she tried to narrow the scope of the records requested

¹⁴⁶ Exhibit 48.

¹⁴⁷ Exhibit 18.

¹⁴⁸ Exhibit 24.

by Ms. Zink, who submitted two requests in 2013, but Ms. Smith's efforts were unsuccessful.¹⁴⁹ Based on his testimony, Mayor Natomagan was initially unaware of his responsibilities under *LAFOIP* and delegated the responsibility to Ms. Smith without understanding the requirements of *LAFOIP*. He advised Ms. Smith to make efforts to respond to the requests, but the requests were not high on his list of priorities, on account of the other challenges the Village faced, such as a lack of housing and addiction issues.

In a January 2019 interview with the Saskatoon StarPhoenix, Mayor Natomagan conceded he was aware Ms. Smith was not responding to access to information requests in a timely manner. The StarPhoenix reported Mayor Natomagan did not take action because he did not view responding to the requests as a priority.¹⁵⁰ According to the testimony of Mayor Natomagan, he made many other comments in the interview, including comments about the problems faced by the Village and the measures taken to combat these problems, however these comments were not reported.

Mayor Natomagan testified he did not instruct Ms. Smith to avoid responding to the access to information requests, nor intentionally delay the responses. According to his testimony, the issue of non-compliance with *LAFOIP* came down to a lack of resources to respond. Consistent with comments by NMS and the testimony of Mr. Henry, the Village was aware of its responsibility to comply with *LAFOIP* but lacked the competence to do so.¹⁵¹ The Village is now actively working to improve its response times to access to information requests.

One of the difficulties with the position taken by Mayor Natomagan and Ms. Smith relates to statements made by Mr. Kruzeniski. In particular, Mr. Kruzeniski noted that the OIPC continued to offer support to the Village, however such assistance was not utilized.

While there is overwhelming evidence demonstrating the Village failed to respond to access to information requests in a timely fashion, as required by *LAFOIP*, there is also evidence a group of individuals sought to pressure Village officials, using a "blitz" of *LAFOIP* requests as one of their tactics. Mr. Hande testified that he and several others decided they would expose what they perceived to be gaps in Village Council governance, taking action by using *LAFOIP* to bring these gaps to the attention of the public. They also hoped to make certain information available to Village residents related to candidates running in the 2018 municipal election. Opposition to the nuclear industry was a motivating factor for some of this group. I am satisfied the number of access to information requests submitted by this group was calculated to overwhelm the resources of this small community; a maneuver which was ultimately successful.

Curiously, the majority of access to information requests received by the Village were submitted by individuals who did not reside in NVP.

In addition, several of the individuals requesting information from the Village filed a lawsuit against NVP in the Court of Queen's Bench to obtain documents. The lawsuit was ultimately settled when the plaintiffs received the requested documents. These individuals were part of a larger group of plaintiffs

¹⁴⁹ Exhibit 130.

¹⁵⁰ Exhibit 9.

¹⁵¹ Exhibit 76.

who also sued the Village, Cameco, AREVA Resources, and a number of other parties, including Mayor Natomagan, demanding the Collaboration Agreement be declared void. Among other remedies, the group sought damages to support an investigation into the harm caused by the nuclear industry on the environment and community. The lawsuit was struck in its entirety, with costs, as disclosing no reasonable cause of action.¹⁵²

The inference to be drawn from the evidence is that the group of *LAFOIP* applicants initially intended to thwart or interfere with the Village's relationship with the nuclear industry and more importantly, expose the deficiencies of the Village's governance. The group's concerted effort had the effect of disrupting the operation of the Village. While this group had the right to demand information under *LAFOIP*, I am not persuaded it is an appropriate use of a public institution such as the OIPC to advance a personal agenda by intentionally overwhelming a small municipality with a "blitz" of access to information requests. Nevertheless, this concerted action does not excuse, nor relieve, NVP from its obligations under *LAFOIP*. It does, however, partly explain the response delays. The lack of competence, coupled with the lack of resources to deal with the number of access to information requests, was a major reason for the delays.

In Review Report 204-2018, Mr. Kruzeniski concluded the Village was intentionally attempting to thwart *LAFOIP*;¹⁵³ an understandable conclusion given the OIPC was not aware of all the surrounding circumstances when Mr. Kruzeniski made his recommendation that the Ministry conduct an inquiry under the *NMA*. The conclusions contained in the review reports published by Mr. Kruzeniski formed the basis for the findings of Mr. Robertson, namely that the actions of the Mayor and Administrator were an intentional attempt to obviate their obligations in relation to the access to information requests. Mr. Robertson did, however, find that the lack of resources and the lack of competence of the Administrator was a contributing factor and acknowledged the Mayor was achieving good results, albeit without attending to his statutory obligations.

During the Inquiry, I heard evidence the Village changed its policy regarding *LAFOIP* and hired an extra staff member to assist Ms. Smith in responding to requests within the legislated timelines. The most recent access to information requests received in 2019 were responded to in full and in a timely manner. Ms. Smith testified that all documents requested have been provided to the applicants.

It is understandable that Mr. Kruzeniski and Mr. Robertson were concerned that the Village may have been intentionally attempting to thwart *LAFOIP* given the multiple instances of non-compliance. In my view, Mr. Kruzeniski showed patience and forbearance in dealing with the Village. However, the evidence I have heard leads me to conclude there was no intention on the part of the Village to selectively respond to access to information requests, nor to actively attempt to obstruct or thwart the lawful operation of *LAFOIP*. While there is no doubt the Village Administrator was frustrated with the quantity of requests received from the same group of individuals, there was no evidence the Village intentionally ignored certain requests or decided which requests warranted a response. While the failure to respond to the access to information requests within the timelines set out in *LAFOIP* cannot be condoned, I am not convinced Mayor Natomagan, nor Ms. Smith, intended to obstruct the operation of *LAFOIP*. Their actions, or lack thereof, were based on a lack of experience and understanding as to the requirements of

¹⁵² Exhibit 115.

¹⁵³ Exhibit 18.

LAFOIP. The situation was further aggravated by a concerted effort to overwhelm the Village with a “blitz” of *LAFOIP* requests; information that only arose during the course of the Inquiry hearing.

At present, Mayor Natomagan and Ms. Smith are actively taking steps to correct the failures in the Village process for responding to information requests and it would appear they are now taking their responsibilities seriously. I respectfully disagree with Mr. Robertson’s conclusions on this issue.

II. CONFLICTS OF INTEREST

Prior to the Inquiry hearing, counsel for the parties served with a Notice of Potential Adverse Findings were advised of the standard of conduct for members of council governed by the *NMA*. Inquiry Counsel also provided a Notice of Potential Adverse Finding to Conrad Misponas, who was not represented by counsel. In advance of the hearing, a memorandum setting out the standard of conduct was provided to counsel representing the parties.

As noted in the Inspection Report: “The conduct of the Mayor may be reviewed not only under the conflict of interest provisions, but also under duties of councillors and mayor prescribed in sections 106 and 107 of *The Northern Municipalities Act*, the *Code of Ethics* prescribed in section 107.1 and in s. 3 and Form A of *The Northern Municipalities Regulations*, and in the oath of office, prescribed in section 108 of the Act and in s. 3.1 and Part III of the *Regulations*.”¹⁵⁴ The standard of conduct for a member of council is also informed by the common law. Conflict of interest rules are based on the principles that no person may be a judge in his or her own cause, and public decision-makers must hear and be receptive to both sides before rendering a decision.¹⁵⁵

The definition of a conflict of interest is set out in s. 159.1 of the *NMA*, which was amended by the *Municipal Conflict of Interest Amendment Act*, and reads as follows:

159.1(1) A member of council has a conflict of interest if the member makes a decision or participates in making a decision in the execution of his or her office and at the same time knows or ought reasonably to know that in the making of the decision there is the opportunity to further his or her private interests or the private interests of a closely connected person.

(2) A financial interest as described in subsection 161(1) always constitutes a conflict of interest.

The test for the existence of a conflict is whether the council member participated in decision-making while he or she knew, or ought to have known, his or her interests, or those of a closely connected person,¹⁵⁶ would be advanced. Although the interests referred to tend to be financial interests, s. 159.1(1) clarifies that a conflict of interest can also arise from a non-pecuniary interest. Under s. 161(1) of the *NMA*, a council member has a financial interest (i.e., a pecuniary interest) when he or she, or someone

¹⁵⁴ Exhibit 10 at para 141.

¹⁵⁵ *Shenker v Torginson*, 2012 BCSC 41 at para 55, rev’d 2013 BCCA 395 but not on this ground, and that no person may serve two masters *Fisher v. Moil* (1979), 96 DLR (3d) 506 at 509.

¹⁵⁶ The *NMA*, *supra* note 2, defines “closely connected person” in s. 159(a) as: “the agent, business partner, family or employer of a member of council”.

closely connected to him or her, stands to profit or be adversely affected by a decision of council or a body established by council.¹⁵⁷ Exceptions to this rule are narrow and enumerated in s. 161(2) of the *NMA*.

(i) Obligation to file a Public Disclosure Statement

Section 160 of the *NMA* requires that members of council file a Public Disclosure Statement within 30 days after being elected, containing:

...

(a) the name of:

(i) every employer, person, corporation, organization, association or other body from which the member of council or someone in the member's family receives remuneration for services performed as an employee, director, manager, operator, contractor or agent;

(ii) each corporation in which the member or someone in the member's family has a controlling interest, or of which the member or someone in the member's family is a director or a senior officer;

(iii) each partnership or firm of which the member of council or someone in the member's family is a member; and

(iv) any corporation, enterprise, firm, partnership, organization, association or body that the member of council or someone in the member's family directs, manages, operates or is otherwise involved in that:

(A) transacts business with the municipality;

(B) the council considers necessary or appropriate to disclose; or

(C) is prescribed;

(b) the municipal address or legal description of any property located in the municipality or an adjoining municipality that is owned by:

(i) the member of council or someone in the member's family; or

(ii) a corporation, incorporated or continued pursuant to The Business Corporations Act or the Canada Corporations Act, of which the member or someone in the member's family is a director or senior officer or in which the member or someone in the member's family has a controlling interest;

(c) the general nature and any material details of any contract or agreement involving the member of council or someone in the member's family that could reasonably be perceived to be affected by a decision, recommendation or action

¹⁵⁷ *NMA*, *supra* note 2, s. 161(1)(b).

of the council and to affect the member's impartiality in the exercise of his or her office; and

(d) any other prescribed information or contents.¹⁵⁸

Once a Public Disclosure Statement is filed, the council member must file an annual declaration specifying whether there are any changes to their Public Disclosure Statement.¹⁵⁹ The failure to file the required Public Disclosure Statement is important, as s. 165(1)(e)(ii) of the *NMA* provides that a member of council is disqualified if he or she fails to comply with s. 160 of the *NMA*.

(ii) Obligation to declare conflicts of interest

Section 162 of the *NMA* requires council members to disclose the existence and general nature of conflicts of interest. Section 162 provides:

162(1) If a member of council has a conflict of interest in a matter before the council, a council committee, a controlled corporation or other body, the member shall, if present:

(a) before any consideration or discussion of the matter, declare that he or she has a conflict of interest;

(b) disclose the general nature of the conflict of interest and any material details that could reasonably be perceived to affect the member's impartiality in the exercise of his or her office;

(c) abstain from voting on any question, decision, recommendation or other action to be taken relating to the matter;

(d) subject to subsection (4), refrain from participating in any discussion relating to the matter; and

(e) subject to subsections (3) and (4), leave the room in which the meeting is being held until discussion and voting on the matter are concluded.

(2) No member of a council shall attempt in any way, whether before, during or after the meeting, to influence the discussion or voting on any question, decision, recommendation or other action to be taken involving a matter in which the member of council has a conflict of interest.

The requirement to "disclose the general nature of the conflict of interest" in s. 162(1)(b) is the result of amendments introduced by s. 4-16(1) of the *Municipal Conflict of Interest Amendment Act*. Prior to this amendment, a council member with "a pecuniary interest in a matter before the council" was merely required to "declare the pecuniary interest" and to abstain from voting on, attempting to influence voting on, or otherwise discussing the matter.

¹⁵⁸ *Ibid*, s. 160(2).

¹⁵⁹ *Ibid*, s. 160(3).

Council members are subject to two primary obligations regarding conflicts of interest: (1) they must state, on the record, the existence and general nature of conflicts; and, (2) they must refrain from voting on, discussing, or attempting to influence matters before council on which they, or someone to whom they are closely connected, have a private interest.

In the Inspection Report, Mr. Robertson referred to the amendments in the *NMA* and stated such amendments were a clarification of the common law, which continues to apply. Mr. Robertson referred to *Ottawa (City) v. Letourneau*.¹⁶⁰

Letourneau owed a fiduciary duty to the municipal corporation as she was an “officer” of the municipal corporation according to Part VI of the former municipal Act. A municipal officer is one who holds a permanent position of responsibility with different rights and duties prescribed by statute or by-law. As distinguished from a servant employed by the municipality, an officer has, in the performance of his or her duties, some discretionary authority and has a responsibility to perform vital duties of the corporation; a mere servant has only a duty to obey orders.

...

There is a very high standard on public officials to conduct official business in an irreproachable manner. Conflicts of interest are serious matters of principle in the conduct of municipal affairs. Consequently, the requirements of the law must be observed both as to the particular matter and also for reasons of public confidence in the administration of municipal government. The legal standard is the objective standard of a reasonable person in the place and circumstances of the respondent.¹⁶¹

The Inquiry examined transactions relating to Mayor Natomagan, Councillor Misonas, Administrator Ms. Martine Smith, and the Village Council, in order to determine whether there was an obligation to declare conflicts of interest.

(A) Mayor Mike Natomagan

Mayor Natomagan filed a Public Disclosure Statement after he was informed of this requirement by Mr. Henry and the Inspection Report. Some of the entities in which he has been involved were declared on the Public Disclosure Statement he filed in 2018.¹⁶² There were other corporate relationships that involve PBN and PBNLP that Mayor Natomagan did not believe raised a conflict, and therefore did not disclose, because either he had no personal involvement or did not personally benefit.

To his recollection, Mayor Natomagan was not present when the Village Council voted on the housing allotment for Ms. Smith, Emil McCallum or Jeff Natomagan. Ms. Smith is the daughter of his partner, Ms. Rosalena Smith, and Emil McCallum and Jeff Natomagan are relatives of the Mayor. He did not recall the discussion regarding the housing program and subsequent allotment to his partner, Ms.

¹⁶⁰ 2005 CanLII 1407 (Ont Sup Ct).

¹⁶¹ *Ibid* at paras 160, 167.

¹⁶² Exhibit 32.

Rosalena Smith. He testified that his practice was to absent himself from Council meetings when matters touching his family members were discussed by Village Council.

Similarly, when Mayor Natomagan's remuneration as PBN President was established at a PBN meeting, he did not participate in the discussion or the ultimate decision. Mr. AJ Felix testified that the PBN Board of Directors researched the remuneration paid by other companies for similar positions and established the remuneration for Mayor Natomagan based on that research. Mayor Natomagan played no part in the decision regarding his remuneration, and as a result, there was no conflict of interest.

Ms. Smith testified that Mayor Natomagan typically left meetings when a potential conflict arose with respect to himself or his family members. Ms. Smith candidly admitted the minutes of Village Council meetings often failed to indicate when a Councillor left the room while an item affecting them was discussed.

(B) Councillor Conrad Misponas

Councillor Conrad Misponas testified about his role in PHC and his involvement with other entities, as set out in his Public Disclosure Statements of 2017 and 2018.¹⁶³ It is doubtful that all the disclosed entities were required to be disclosed. For instance, he sat on the Board of Directors for North West Communities Wood Products Ltd. as a representative of NVP, and not in his personal capacity. As such, there were no matters which were discussed by the Board that would involve him personally.

In addition, Councillor Misponas testified that when his salary was set for his position as Chairman of PHC, he left the room and did not participate in the decision-making process or the subsequent determination of the amount of his salary.

(C) Village Administrator Martine Smith

Ms. Smith, the Village Administrator, testified about two decisions Village Council made concerning her personally. First, Village Council granted her a housing allotment, and second, Council discussed her request to obtain the lease of a campground at Gordon Lake. In both instances, Ms. Smith testified that she left the room while discussions took place and took no part in the decision. She ultimately did not obtain the lease in the latter instance. The minutes of the Village Council meeting do not reflect her testimony; however, she acknowledged the minutes were in error.

(D) Village Council

Transactions relating to other Councillors were treated the same way as those previously mentioned. That is, when an item affecting a Councillor was discussed, the Councillor left the meeting room. The meeting minutes of Village Council do not indicate whether Mayor Natomagan left the meeting when discussions took place regarding a decision to appoint Ms. Rosalena Smith to the Local Government Committee¹⁶⁴ and to prepare a proposal for the Elder's Program.¹⁶⁵ There is no evidence that a benefit was conferred on

¹⁶³ Exhibit 98, Exhibit 31.

¹⁶⁴ Northern Village of Pinehouse, Minutes of Regular Council Meeting at M-065-18.

¹⁶⁵ Northern Village of Pinehouse, Minutes of Regular Council Meeting at M-058-15.

Ms. Rosalena Smith, however as previously mentioned, Ms. Smith testified that on many occasions, Mayor Natomagan left the room and did not participate in such decisions.

The practice followed by Village Council with respect to conflicts of interest did not comply with the legislative amendments to the *NMA* regarding conflicts of interest, which required a declaration that a conflict existed, along with the nature of such conflict. Village Councillors did not declare and describe the nature of conflicts when they arose; they simply absented themselves from the meeting when an item affecting them was discussed. Village Councillors have since modified their practice and now declare the conflict and its nature prior to the Council meeting. At present, when the Council meeting agenda is published by the Administrator, it highlights potential conflicts of interest for Village Councillors. Councillors are asked before each meeting to declare any conflicts, including the nature of the conflict. The Village Council meeting minutes now reflect these decisions and notes that when a matter affecting a Council member is discussed and decided, the Council member leaves the meeting.

Again, the Council of NVP did not strictly adhere to the requirements of the *NMA* when dealing with conflicts of interest, but there was no evidence that anyone benefited as a result of the failure to strictly comply with the *NMA*. To their credit, Village Council has moved to change their practice with respect to conflicts of interest to meet the requirements of the *NMA*, as amended in 2015.

(iii) Mortgages

In the Inspection Report, Mr. Robertson raised the issue of conflicts of interest regarding the Summit Housing Project, and in particular, the granting of certain mortgages. Mayor Natomagan and Councillor Misponas worked with the Saskatchewan Housing Corporation to create a program to provide affordable housing options to the residents of NVP. Mayor Natomagan had a favorable relationship with the Director of the Saskatchewan Housing Corporation and they endeavored to replicate a similar program administered by the organization with respect to granting forgivable loans. The Village provided forgivable loans of \$26,000 to qualifying residents, forgivable at the rate of 10% per year, provided the individuals remained in the property for ten years.

The Village hired Ms. Shannen Fisher as a financial advisor to advise the Village on the administration of the housing program and assist interested residents in qualifying for a mortgage. Ms. Fisher worked with Ms. Smith to disseminate information and educate Village residents about the program. Initially, Ms. Fisher encouraged approximately 50 persons to get pre-qualified for mortgages. In the end, only ten residents qualified for mortgages.

In 2018, an access to information request sought information about the housing program, raising concerns of possible conflicts of interest. In Review Report 104-2018, Mr. Kruzeniski explained the significance of the access to information request in the following terms:

In response to the release of the mortgages, the Applicant advised my office that the remaining records he requested were important because of the possibility of a conflict of interest. According to the Applicant, the Mayor's common-law wife received a mortgage from the Village. Further, the Mayor's common-law wife is also the Village Administrator's mother. In addition, the Applicant asserted that the Mayor's son and half-brother also received mortgages. Finally,

the Village Administrator also received a mortgage. The Applicant wishes to confirm that the mortgages issued by the Village administration were approved in Council and that the Mayor and Village Administrator recused themselves from the debate and vote in council.

I agree with the Applicant that in such a situation, it is extremely important that due process took place and was appropriately documented. If the mortgages were properly issued with no conflict of interest, it is not clear why the Village would not want to demonstrate that by providing the council meeting minutes and authorizations requested by the Applicant.

Subsection 111(2)(a) of The Municipalities Act provides that the Administrator shall ensure that all minutes of council meetings are recorded. Further, subsection 116(2)(b) provides that minutes must be preserved permanently. Finally, subsection 117(1)(d) provides that any person is entitled at any time during regular business hours to inspect the minutes of council after they have been approved by council.¹⁶⁶

According to the testimony of Ms. Smith, although Village Council meeting minutes were deficient in many instances and failed to provide the necessary information, all the forgivable loans were authorized by Village Council. As previously noted, Mayor Natomagan was not present when Council considered the mortgage applications of Ms. Smith, Ms. Rosalena Smith, Emil McCallum and Jeff Natomagan.

The list of mortgage recipients indicates that successful applicants were related to Village officials or were employees of the Village. This result is not surprising, given the size of the community. It is important to note that the process for qualification was developed and administered by Ms. Fisher without interference from those on Village Council. Thus, there were no conflicts of interest.

III. CONTRAVENTION OF THE STATUTORY REQUIREMENTS OF THE *NMA*

Contravention of the requirements of the *NMA* raises specific issues, including the requirement for Council to pass bylaws mandated by the *NMA* and the prohibition of Councillor employment by the Village or its controlled corporations. These issues are interrelated and, in many cases, overlapping.

(i) Bylaws mandated by the *NMA*

As referenced on p. 38, on November 30, 2017, Assistant Deputy Minister Comstock advised Mayor and Council that, as a result of a review report published by the OIPC, the Ministry of Government Relations was made aware the Village was not compliant with certain statutory requirements.

After receiving the letter from Assistant Deputy Minister Comstock, Village Council commenced the appropriate steps to pass the bylaws required by the *NMA*. Prior to this, Village Council had failed to adopt several required bylaws, including a remuneration bylaw, pursuant to s. 101 of the *NMA*, which sets the remuneration, benefits and expenses for members of Council. Soon after, the Village advised Assistant Deputy Minister Comstock that the remuneration bylaw was passed at a Council meeting on

¹⁶⁶ Exhibit 24.

May 9, 2018.¹⁶⁷ The Assistant Deputy Minister was provided finalized bylaws after the bylaws received a third reading on May 9, 2018.¹⁶⁸

On May 31, 2018, Assistant Deputy Minister Comstock requested detailed financial information regarding the financial relationship between PBN and NVP, in addition to an explanation for using different financial auditors for NVP and PBN. He also requested information concerning the Village's rationale for financing certain industrial equipment. With the assistance of NVP's financial auditors, the Village responded to the questions raised by Assistant Deputy Minister Comstock in a letter dated September 14, 2018.¹⁶⁹

While the *NMA* does not provide limits on councillor remuneration, generally, municipal councils strive to establish reasonable remuneration for council members. Mr. Robertson summarized the remuneration of Council members in the Inspection Report.¹⁷⁰ A review of the financial records of NVP revealed a significant discrepancy in the remuneration paid to Village Councillors, ranging from \$2,700 to \$124,000; the latter of which was paid to Mayor Natomagan in 2015. The explanation provided for the discrepancy in remuneration relates to the hours worked by certain members of Village Council. For instance, Mayor Natomagan, Councillor Misponas and Councillor Greg Ross worked full-time for NVP, for the benefit of NVP, PBN and PHC.

By implication, the remuneration of Council members raised the issue of whether certain Councillors were being paid as employees of the Village, which is contrary to s. 128 of the *NMA*. Receiving remuneration as employees of the Village would place a Council member in violation of s. 165 of the *NMA*; resulting in the Councillors' disqualification from office.

(ii) Employment issues

Section 128 of *NMA* provides that no member of council is eligible to be appointed as an employee of a controlled corporation of the municipality.

A review of the pertinent financial statements, tax slips and the remuneration paid to Mayor Natomagan, Councillor Misponas and Councillor Greg Ross confirmed these members of Council received employment income from the Village and/or the Village's controlled corporations while they were actively serving as members of Council. In particular, Mayor Natomagan was the President and Director of PBN, and Councillor Misponas was the Chairman/Director of PHC, while both also served on Village Council. According to the testimony of Mr. AJ Felix, the position of PBN President was not automatically awarded to the Mayor. Rather, Mayor Natomagan was hired on account of his skillset and ability to secure work for PBN, which included engaging with Cameco, the Saskatchewan Housing Corporation, and various Crown corporations.

The genesis of the controlled corporations in NVP is relevant when considering the relationship between Mayor Natomagan and PBN. In 2006, Mayor Natomagan was a resident of the Village and worked for

¹⁶⁷ Exhibit 117.

¹⁶⁸ Exhibit 117.

¹⁶⁹ Exhibit 119.

¹⁷⁰ Exhibit 10 at para 155.

Cameco as an industrial mechanic. The residents of NVP questioned why the Village could not provide contracting services to Cameco. Through Mayor Natomagan's efforts and contacts in the industry, PBN secured its first work from Cameco in 2007. Subsequently, Cameco required additional manpower and PBN supplied upwards of 100 labourers, assisting in waste management and maintenance work. PBN was eventually qualified as a preferred northern contractor with Cameco and AREVA Resources, which created significant wealth and opportunity for NVP. PBN made every effort to employ Village residents; only hiring externally if they could not find Village residents with the necessary skills or trade.

In 2009, Mayor Natomagan was asked to work as President of PBN on a full-time basis. As a result, he took a leave of absence from his full-time employment with Cameco and concentrated on the business of PBN, arranging for PBN and NVP to provide his salary. The Village agreed to pay Mayor Natomagan \$45,000 annually and PBN provided an annual salary of \$85,000, as set out in a letter dated September 7, 2017.¹⁷¹

As previously noted, following participation in the BRIDG program operated by Westcap, PBN's corporate structure was changed, integrating a Board of Directors composed of members from NVP and the Métis Local, in addition to external members.

When PBN began operations, the Village and its advisors focused on compliance with the *Business Corporations Act*, and no one considered whether the requirements of the *NMA* applied to the Village's controlled corporations. The assistance of local champions, such as Mayor Natomagan, was essential to the operational success of the Village's controlled corporations. There were no concerns expressed with the employment arrangement until this issue was raised in the Inspection Report.

Mayor Natomagan and Councillor Misponas were instrumental in spearheading the Village's efforts for economic development, education, apprenticeship training and housing. Their efforts resulted in more youth graduating from high school and more Village residents earning trades certification under the apprenticeship program.

Mayor Natomagan and Councillor Misponas' leadership with the Saskatchewan Housing Corporation prompted the Summit Housing Project, which created much-needed housing in the community. The Village Administrator worked closely with Ms. Shannen Fisher to help residents of NVP qualify for mortgages. Ms. Fisher provided the list of qualified applicants for mortgages and Village Council had no role in determining who would be granted a lot and be given a forgivable loan. Councillor Misponas oversaw the housing program and assisted Village residents in constructing the first ten houses.

After the Inspection Report raised the s. 128 employment issue, the Village had discussions with Mr. Henry regarding actions that could be taken in order to comply with the *NMA*. It was agreed the best course of action was to have Mayor Natomagan provide his services as a member of the PBN Board of Directors, rather than as an employee, with his remuneration paid by NVP and set out in the Council Remuneration Bylaw. On September 22, 2019, Mayor Natomagan advised PBN that he would no longer receive remuneration as a Director and Officer of PBN and henceforth his services related to governance,

¹⁷¹ Exhibit 99.

rather than employment.¹⁷² Similarly, Councillor Misponas advised PBN on August 19, 2019 that he would continue on as a Director of PBN but would no longer receive the remuneration set out in his letter of offer.¹⁷³ When asked about this course of action, Councillor Misponas advised he and Mayor Natomagan were “offside” the *NMA* and sought to remedy this non-compliance.

Based on the evidence, both Mayor Natomagan and Councillor Misponas were in violation of s. 128 of the *NMA* when they were employed by controlled corporations of the Village. An examination of the facts surrounding the creation of the controlled corporations and the motives for their employment confirmed they were unaware of the requirements of the *NMA*. Ignorance of the law is no excuse for non-compliance, but in this instance, the motivation of Mayor Natomagan and Councillor Misponas was the betterment of NVP, including addressing the shortage of housing, fostering economic development, supporting the employment of Village residents, promoting education, and tackling community problems caused by an increase in crystal meth addiction.

As noted in the Inspection Report: “[I]t is only fair to acknowledge that the Village has and is doing good work in addressing issues of social and economic development by promoting education and training and providing employment, including through Pinehouse Business North and Pinehouse Housing Corp. The Village and its officials, past and present, deserve credit for this good work.”¹⁷⁴ Mr. Robertson continued by stating: “The Village’s programs and development work were observed during the course of the Inspection and commented on positively by persons with knowledge of Pinehouse and other northern communities. This was also acknowledged by critics of Village officials. Indeed, the Village of Pinehouse is viewed and ranked favourably by persons knowledgeable about northern communities for its innovative efforts to improve living conditions for its residents.”¹⁷⁵

Ultimately, the employment issue may be reduced to a consideration of whether the good work of Village Council is offset by its lapses in governance and failure to strictly follow the statutory requirements of the *NMA* that could result in Mayor Natomagan and Councillor Misponas’ disqualification from Village Council. Consideration of these Council members’ meaningful work must be factored in when deciding whether Mr. Robertson’s recommendation of disqualification and removal of Mayor Natomagan and Councillor Misponas should be accepted and endorsed. For the reasons that follow, I do not agree with Mr. Robertson’s recommendation for disqualification of Mayor Natomagan and Councillor Misponas.

IV. FINANCES

The Inspection Report contained a section pertaining to the finances of the Village, in which Mr. Robertson raised concerns about a number of areas, including debt limits, mortgages, expense claims, political contributions, the controlled corporations of the Village, and the Collaboration Agreement. On the recommendation of Mr. Robertson, the Minister of Government Relations ordered the Forensic Review of the Village’s finances to investigate allegations of potential misappropriation of assets by Village officials and report on the Village’s compliance with the *NMA*.

¹⁷² Exhibit 121.

¹⁷³ Exhibit 120.

¹⁷⁴ Exhibit 10 at para 96.

¹⁷⁵ Exhibit 10 at para 97.

The Forensic Review was completed on September 13, 2019, for the purposes of:

- (a) Reconciling and revealing the true financial condition of NVP, including its controlled corporations and payments under the Collaboration Agreement;
- (b) Determining the actual compensation paid to individual members of Council; and
- (c) Completing an itemized review of past expense claims.¹⁷⁶

Due to time constraints and the large number of controlled corporations and joint ventures, and with the approval of the Government of Saskatchewan, the Auditors proposed a more limited review based on transaction sampling and targeting of specific aspects of non-compliance.¹⁷⁷ The Government of Saskatchewan approved the limited review. The Auditors sampled transactions based on their related risk. In total, they reviewed 1,098 payment transactions out of a total of approximately 4,500, representing about 24% of the payments.¹⁷⁸ There were 5,600 transactions in total, with 4,500 being payments out of the entities' bank accounts. The methodology used by the Auditors conformed to CPA Canada's "Standard Practices for Investigative and Forensic Accounting Engagements".

(i) Payments to elected officials

The Auditors began by examining expenses of NVP to determine if such expenses complied with s. 179 of the *NMA*, which states:

Expenditure of money

179(1) A municipality may only use municipal funds for municipal purposes and may only make an expenditure of that is:

- (a) included in its budget or otherwise authorized by its council;
- (b) for an emergency; or
- (c) legally required to be paid.

As part of their analysis, an expense was classified as either "Unauthorized" or "Unsupported" if the Auditors were unable to find supporting documentation to verify the expense had the municipal purpose required by s. 179 of the *NMA*.

The Auditors examined the income paid to elected officials, including: Mike Natomagan, Conrad Misponas, Betty Anne Durocher, and Walter Smith. Due to their role as members of Village Council, the Auditors concluded that many of the payments to the officials violated s. 128 of the *NMA*, which prohibits employment with the municipality or its controlled corporations while serving on council.

According to the Forensic Review, in 2017 Mayor Natomagan received a total income of \$160,900, of which \$86,499.92 was classified as employment income from PBN and \$40,933.19 was employment

¹⁷⁶ Exhibit 106 at 3.

¹⁷⁷ Exhibit 106 at 4-5.

¹⁷⁸ Exhibit 106 at 8.

income from NVP. Mayor Natomagan also received \$20,466 for expenses. The Forensic Review noted a monthly payment of \$1,000 from PBN to NVP and the Inquiry heard evidence this payment was made in order to cover expenses for the Mayor when he was working concurrently for PBN and NVP. Of the Mayor's total remuneration, the Auditors concluded \$61,400 was compliant with the *NMA*. The Auditors categorized the balance of his remuneration as income earned from PBN, making the balance non-compliant with s. 128 of *NMA*.

Councillor Conrad Misponas had an employment contract with PHC as Chairman/Director, for which he received annual compensation for Director's fees of \$80,000, plus certain expenses. He also earned \$1,800 from NVP, and \$5,750 from PBN as a member of the Board of Directors. Councillor Misponas received a total income of \$85,737, where \$2,700 was deemed compliant. The remainder of his remuneration was considered employment income from the Village's controlled corporations, which is contrary to s. 128 of the *NMA*.

Similar analyses were completed with respect to Councillors Walter Smith and Betty Anne Durocher. The majority of their income was deemed non-compliant with s. 128 of the *NMA*.

The Auditors examined a sample of expense reimbursement claims for elected officials of NVP and categorized these payments as "Undeterminable", in so far as compliance with s. 128 of *NMA*. They noted a number of transactions (e.g. credit card expenses) in which it was not possible to determine whether the person using the credit card was properly authorized to do so. The Auditors were unable to determine if many of the expenses had the requisite "municipal purpose", pursuant to s. 179 of the *NMA*. The adequacy of supporting expense documentation was previously brought to the Village's attention by the Village's auditors (Davies & Drury Chartered Professional Accountants) in 2018.¹⁷⁹ The Forensic Review further solidified that expense documentation was an issue for the Village, however the Village Administrator testified that the Village has since taken steps to improve its expense reimbursement documentation. Notably, Ms. Hillyard testified that based on the sampling, the Forensic Review found no evidence of fraudulent expense reimbursements during the 2018 tax year.

(ii) Payments to appointed officials

The issue of inadequate expense documentation described above applied equally to the expense reimbursement of appointed Village officials.

The Forensic Review referred to two houses owned by Ms. Smith in NVP, one of which Ms. Smith rents to PBN as an accommodation for contractors working in the Village. According to the testimony of Ms. Hillyard, Ms. Smith's rental property was cited in the Forensic Review because the requisite "municipal purpose" was unclear.

The Auditors identified other minor amounts that did not appear to fit neatly within the remuneration policies of the Village (e.g. Christmas bonuses for staff).

¹⁷⁹ Exhibit 21.

(iii) Mortgages

In the Inspection Report, Mr. Robertson raised concerns regarding mortgages granted to Village residents. In particular, Mr. Robertson questioned whether granting mortgages offended the provisions of the *NMA* that restrict municipal lending and guarantees. There also appeared to have been some confusion in other circles about whether the Village had guaranteed the personal bank loans of these residents.

The Auditors examined the \$26,000 forgivable loans, which were provided to ten Village residents to assist these residents in securing their own home, pursuant to an innovative affordable housing program designed to enable residents to qualify for mortgages from commercial lenders. With the assistance of Ms. Shannen Fisher, the Village attempted to model the program on other affordable housing programs in northern communities administered by the Saskatchewan Housing Corporation. The Auditors concluded there was no evidence the Village guaranteed any mortgages obtained by Village residents pursuant to the housing program.

The Village did, however, gift land to each of the ten residents as a forgivable loan, structured to provide equity as the land value to help residents obtain mortgages from financial institutions. The forgivable loans have a ten-year term with 0% interest, so long as the resident remains in the property. Based on their review, the Auditors reached a different conclusion than Mr. Robertson regarding the nature of the transactions. Mr. Robertson questioned whether these transactions amounted to lending that was offside restrictions within the *NMA* and, thus, beyond the jurisdiction of the Village. In contrast, the Auditors suggested the transactions could be considered grants by the Village, which would be within the jurisdiction of the Village, subject to compliance with disclosure requirements in the *NMA*. In particular, s. 179(3) of the *NMA* provides: "A council shall ensure that public notice is given of any grant that is expended by the municipality."

Section 146 of the *NMA* describes the steps that must be taken when a municipality is required to provide public notice. It does not appear the required public notice steps were taken with the housing program mortgages, but assuming these notice requirements apply, I would consider this to be a technical breach. The evidence before the Inquiry, particularly the testimony of Ms. Fisher, demonstrated that the community was fully informed of the housing program and that all residents who could financially qualify would receive a lot for nominal consideration. The Auditors' interviews also suggested that the housing program qualification process was fair and fully disclosed to all NVP residents. In the end, the forgivable loans were granted only to residents who were able to qualify for mortgages from financial institutions. While the Council minutes reflecting the grants were less than perfect, these minutes, which are public documents, certainly disclosed the granting of lots to the Village residents for nominal consideration.

The Auditors also noted that non-arm's length residents were among those receiving forgivable loans. The Auditors questioned whether there was appropriate Council approval and whether the individuals in these non-arms-length transactions were part of the approval process. The evidence of Ms. Smith was that Councillors did not participate in matters which came before Council affecting close relatives and noted there were proper motions of Council approving the transactions. Further, Ms. Smith frankly conceded that her meeting minutes were imperfect and did not consistently reflect when Councillors were absent. She testified that at present, the minutes properly reflect such matters.

In terms of the conflict of interest concern, it is also important to note the nature of the housing program did not truly allow for abuse of any non-arm's length relationships. The evidence undoubtedly established that the program was available to any resident who was able to qualify for a loan from a third-party financial institution. In other words, Village Council and the Village Administrator did not selectively choose who received the grant; if a resident was able to qualify for the bank loan, they received the grant.

(iv) Debt limit

The Auditors examined the long-term debt limit of NVP over the period from 2015 to 2018, based on the 2017 financial statements of NVP. In determining NVP had exceeded its long-term debt limit, the Auditors included in the calculation the long-term debt of NVP and the forgivable loans, in addition to the long-term debt of PBN and PHC. They confirmed that if NVP had exceeded its debt limit, it had not received proper authorization from the Saskatchewan Municipal Board to do so.¹⁸⁰

There was considerable disagreement among the Chartered Accountants involved in the Inquiry as to how to calculate the long-term debt, and in particular, which figures were to be included in the calculation. The debt limit of a municipality is calculated by looking at the municipality's total own-source revenue from the previous year.¹⁸¹ The disagreement arose when controlled corporations were added to the equation; namely, whether the revenue *and* debts of the Village's controlled corporations should be included in the debt-limit, or strictly the debts. The Village's auditor appeared to have only looked at the revenues and debts of the Village, and not the controlled corporations, when addressing the debt limit in the Financial Statements.¹⁸² The Auditors, on the other hand, concluded in the Forensic Review that the debts of the controlled corporations should be included in the debt limit analysis. Yet, the Auditors did not consider the controlled corporations' revenues when determining whether the Village exceeded the debt limit. When Ms. Hillyard was asked during her testimony why the controlled corporations' revenue was not considered, she indicated that such revenue should only be considered when the municipality has sufficient control over such revenues. The evidence, however, suggests to me that NVP's controlled corporations are ultimately controlled by the Village.

It is also noteworthy that the Government of Saskatchewan publishes a financial information webpage that informs the public: "SMB (the Saskatchewan Municipal Board) considers own source revenue to include those revenues which can be considered both controllable by the municipality and sustainable for long periods of time."¹⁸³ Inquiry Counsel attempted to obtain guidance from the Saskatchewan Municipal Board on the appropriate method for determining municipal source revenue in light of controlled corporation revenue and debt, but were unable to obtain a definitive answer, which is troubling, as this

¹⁸⁰ See *NMA*, *supra* note 2, s. 184.

¹⁸¹ *Ibid*, s. 183(1).

¹⁸² Exhibit 22.

¹⁸³ Government of Saskatchewan, "Funding, Finances and Asset Management: Financial", online: <<https://www.saskatchewan.ca/government/municipal-administration/funding-finances-and-asset-management/financial>>.

appears to be an area of confusion for municipalities¹⁸⁴ and one would expect the Saskatchewan Municipal Board would offer guidance to municipalities.

In any event, in light of the confusion that exists regarding debt limits and controlled corporations, it is not clear to me that the Village exceeded its debt limits as a result of the controlled corporations' debt.

(v) Disclosure of long-term debt

At the time the Auditors examined the records of NVP, they did not have the 2018 audited financial statements, as the financial statements were not completed at the time of the Forensic Review.

The Auditors found that the Village accountant's approach in preparing the audited financial statements based on a "Modified Equity" method of consolidation was acceptable, as PBN and PHC could appropriately have "Government Business Enterprise" status. Under the "Modified Equity" method, the value of investments in subsidiaries is included as adjustments to investment values, rather than through disclosure of the specific account balances as long-term debt.¹⁸⁵

Most significantly, the Forensic Review found no evidence of an intent to mislead any reader of the financial statements regarding the long-term debt of the Village. The Forensic Review states:

... [B]ased on issued financial statements made available to us (for the year ending 2017 and prior years), we have not identified any inappropriate disclosures relating to long-term debt that would lead us to believe there was any intent to purposely mislead readers of those financial statements. Specifically, we did not identify any long-term debt that was undertaken by the various controlled entities of NVP that was not consolidated within the Audited Financial Statements of NVP for 2017 or prior years.¹⁸⁶

In testimony, Ms. Hillyard confirmed the Forensic Review did not find any fraud or misappropriation of assets by any member of the Village Council, including Mayor Natomagan and Councillor Misonas, in the sampling of transactions they reviewed.

(vi) Collaboration Agreement

Mr. Hande questioned the use of the funds received by NVP under the Collaboration Agreement and stated questions arose in 2012 about NVP's dealings with the nuclear industry and how those dealings might negatively impact residents of NVP. Mr. Robertson noted, however, that it is not unusual for resource companies to support community development. Mr. Robertson also described evidence that the community development funds arising from the Collaboration Agreement were put to good use. The evidence heard by the Inquiry about the funding arising from the Collaboration Agreement, and the financial information received by the Inquiry, including the Forensic Review, has confirmed Mr.

¹⁸⁴ See e.g. Kristopher Schmaltz *et al*, *Long-term Debt Limits in Saskatchewan: Challenges and Opportunities*, (Saskatoon: University of Saskatchewan, The Policy Shop), online: SUMA < <https://suma.org/img/uploads/documents/SUMA%20Report%20v2.pdf> >.

¹⁸⁵ Exhibit 106 at 40.

¹⁸⁶ Exhibit 106.

Robertson's conclusions. I have seen no basis to conclude that the Collaboration Agreement has done anything other than benefit the community of NVP.

Mr. Robertson flagged a concern that the Collaboration Agreement requires the Village to support the operations of mining companies. In general terms, I agree that a municipality should not unqualifiedly commit to support a third-party organization's activities. That being said, the covenants in Article 5 of the Collaboration Agreement do not provide for such a sweeping commitment. Under Article 5, the Village "acknowledges in general": it is well-informed about the existing operations of the mining companies; the Village residents have been given opportunities to learn and express concerns about the existing operations; and, the Village fully supports the existing operations.¹⁸⁷ Article 5 merely requires the Village to agree that it supports "in principle" the known proposed projects and plans, which are outlined in the Schedule to the Collaboration Agreement and expressly states the Agreement creates no obligations for future operations without further agreement and that, in fact, there is a duty to consult in good faith concerning future operations. Finally, Article 5.1(f) specifically provides that:

...for the avoidance of doubt, nothing in this Article, or in any other term of this Agreement, shall prevent Pinehouse or any of its Residents from raising any concerns of any kind in respect of the Operations or Future Operations in any forum or to any entity whatsoever;¹⁸⁸

The Mayor testified that the mining companies have never attempted to impose any restrictions or requirements on the Village's governance or operations.

A concern was also expressed about the confidentiality article in the Collaboration Agreement and the possible appearance of vote buying. Article 11 includes a confidentiality provision, though it cannot be said the provision prohibited the Village from sharing the Collaboration Agreement with Village residents.¹⁸⁹ Article 11.6(a) provides: "Pinehouse may, for the purposes of informing Residents...disclose this Agreement to Residents".¹⁹⁰ Mr. Robertson's concern around vote buying related to provisions in the Collaboration Agreement that allowed for per diems for members of the Joint Implementation Committee (\$250 per Community Meeting) and reimbursement of actual invoiced costs of up to \$2,000 for one Village member of the Joint Implementation Committee to attend professional training. I do not consider such a small honorarium to raise concerns of influence peddling or vote buying; nor do I consider reimbursement of actual costs to be a concern.

(vii) Political contributions

The Inspection Report referenced contributions made to the Saskatchewan Party Youth and to the Village paying for expenses relating to a visit of Minister Harpauer. I agree with Mr. Robertson that the Village should abstain from providing support to politicians and political parties. However, I accept the evidence of the Mayor that the true motivation behind such expenses was to engage politicians to encourage them to appreciate the unique issues facing the Village. As such, the evidence does not indicate a corrupt intent behind the expenses.

¹⁸⁷ Exhibit 108.

¹⁸⁸ Exhibit 108.

¹⁸⁹ Exhibit 108.

¹⁹⁰ Exhibit 108.

The report of the Honourable Ronald Barclay, Q.C., Saskatchewan Conflict of Interest Commissioner, thoroughly reviewed the trip involving Minister Harpauer from 2016.¹⁹¹ The Inquiry, however, called Mr. Wildeman, the fiancée of Minister Harpauer, in order to better understand the circumstances relating to the 2018 trip to Pinehouse. Mr. Wildeman confirmed that he attended the Village without Minister Harpauer in 2018. The trip was social in nature, and politics were not discussed. Mr. Wildeman paid for what he understood to be his own expenses, including meals and fishing supplies, and paid for breakfasts for the fishing trip attendees. He was not aware that any other expenses were incurred. In light of this evidence, I do not find any basis to conclude that any Village officials were attempting to use Mr. Wildeman's trip to the Village for any inappropriate political purpose. The concerns raised by MLA Forbes have no basis in fact.

¹⁹¹ Exhibit 101.

PART V: SUMMARY OF FINDINGS

The following provides a brief summary of the findings with respect to the Inquiry conducted into the appropriateness of the conduct of the Mayor and Deputy Mayor of the Northern Village of Pinehouse, pursuant to the directive I received under the Ministerial Order dated June 5, 2019.

LAFOIP

The evidence confirmed violations of ss. 7 and 45 of *LAFOIP*, with respect to responding to access to information requests within the legislated time limits. The evidence established Mayor Natomagan and the Village Administrator, Ms. Smith, did not willfully obstruct the lawful operation of *LAFOIP*. The Village lacked the knowledge and resources to handle the volume of access to information requests and review reports received. Due to other pressing community challenges and limited resources, the Village did not allocate sufficient resources to respond to the requests and review reports. I am satisfied the Village has developed a plan to ensure adequate resources are assigned to this important responsibility of municipal governance.

NMA: Mandatory bylaws

The Village failed to pass mandatory bylaws, as required by the *NMA*, which were listed in the letter from Assistant Deputy Minister Comstock, dated November 30, 2017. Upon receiving the letter, NVP took immediate steps to remedy the situation and pass the requisite bylaws. Once again, the failure to comply with the *NMA* was the result of ignorance of the requirements of the *NMA*, and not an intentional obstruction of the operation of the *NMA*.

NMA: Public Disclosure Statements

Mayor Mike Natomagan was unaware of his statutory obligation to file a Public Disclosure Statement until advised of this requirement by the letter from Assistant Deputy Minister Keith Comstock. I did not find any intent by the Mayor to hide his affiliations. The evidence established that he has filed the required Public Disclosure Statement, placing him in compliance with the *NMA*.

Deputy Mayor Conrad Misonas filed the required Public Disclosure Statement on September 4, 2017 and February 27, 2018. As such, he fulfilled this statutory requirement under the *NMA*.

NMA: Conflicts of interest

As a practice, Village Councillors absented themselves from meetings if they had an interest in a matter being discussed and did not take part in the discussion or decision-making. Village Council did not follow the requirements of s. 159.1 of the *NMA*, as amended, which requires the councillor declare the conflict of interest and describe the nature of it. Village Council has since modified its practice to comply with the *NMA*, as amended.

Ultimately, there was a violation of the appropriate practice for declaring conflicts of interest, however there was no evidence that any Council member obtained an improper benefit as a result.

NMA: Employment

Mayor Natomagan was employed by PBN, while also serving as a member of Village Council, placing him in direct contravention of s. 128 of the *NMA*.

Councillor Misponas is employed by PHC, while also serving as a member of Village Council, placing him in direct violation of s. 128 of the *NMA*.

I found on the evidence that none of the parties, including the Village's legal and financial advisors, were aware of the requirements of s. 128 of the *NMA* when the controlled corporations were formed. Once the Mayor and Deputy Mayor were advised that they were contravening the *NMA*, they consulted with the Executive Director of NMS to determine how to rectify the situation.

The Mayor has since acted to correct the employment situation with respect to PBN. He resigned as an employee of PBN and no longer receives remuneration from PBN. At present, he provides his services as a member of the Board of Directors. The Deputy Mayor took a similar step with regard to PBN. I did not hear any evidence that the Deputy Mayor withdrew from his employment relationship with PHC. As such, if the Deputy Mayor has not done so, he should take the appropriate steps to address non-compliance with s. 128 of the *NMA*.

Village finances

The Auditors were engaged to examine the financial condition of NVP. As a result of time constraints and the transaction quantity, the Auditors used a sampling method to evaluate the finances of NVP to determine if there was misappropriation of the Village's assets or evidence of fraud.

The Auditors revealed a number of non-compliant items, including non-compliance with s. 128 of the *NMA* by members of Council and non-compliance with respect to certain expense payments. The Auditors found no evidence of fraudulent expense reimbursement for the 2018 taxation year. They were concerned about the lack of supporting documentation for some expense claims, and they were critical of the Village's failure to follow what the Auditors considered to be best practices for accounting.

The Forensic Review examined the Village's housing program and the granting of forgivable loans to Village residents. They concluded the forgivable loans were grants made to residents, and as such, Village Council should have provided public notice of the grants, in accordance with s. 179 of the *NMA*. Given that the housing program was well-publicized in the community, the failure to give public notice was, in my opinion, merely a technical breach.

The Forensic Review concluded the Village had exceeded its long-term debt limit. There was considerable disagreement among the Chartered Accountants involved regarding the method of calculation for the debt limit. I was unable to obtain information from the Saskatchewan Municipal Board as to how to resolve this disagreement. As a result, I am unable to conclude the Village exceeded its long-term debt limit.

On the whole, the most significant findings were that there was no evidence of fraud or misappropriation of Village assets.

Political contributions

MLA David Forbes, the Opposition Ethics and Democracy Critic, wrote to the Conflict of Interest Commissioner on July 17, 2019, requesting a review of the circumstances surrounding the provision of guiding services by the Village for Minister Harpauer's spouse in August of 2018. The Conflict of Interest Commissioner forwarded me the correspondence as part of my inquiry into the financial affairs of the Village. I found there was no evidence, and no basis in fact for a claim, of a conflict of interest.

PART VI: CONCLUSIONS

LAFOIP

The mandate I received from the Minister necessitated that I consider the actions, or inactions, of Mayor Natomagan, in connection with his responsibilities as the “head” of the Village for the purposes of *LAFOIP*. Section 7 of *LAFOIP* provides that as the “head”, Mayor Natomagan is responsible for ensuring access to information requests receive timely responses. Undoubtedly, he did not fulfill those responsibilities, as required by *LAFOIP*. He did, however, delegate responsibility to respond to access to information requests to the Village Administrator, Ms. Smith. Mayor Natomagan testified he was aware of the delays in responding to the various access to information requests and did nothing to remedy the delay. Ms. Smith was overwhelmed by the quantity of requests and the Village had inadequate resources to assist her in responding. Responding to the access to information requests was not high on Mayor Natomagan’s list of priorities, as he had other pressing concerns to address in his capacity as Mayor, such as housing shortages, employment opportunities, education for Village youth, and drug addiction in the community.

There is uncontradicted evidence that Mayor Natomagan did not willfully obstruct the operation of *LAFOIP*, he did not instruct the Village Administrator to delay responding to access to information requests, and he did not take any other overt actions to obstruct the operation of *LAFOIP*. While Mayor Natomagan did not take any actions to facilitate the timely response to information requests, he did entrust the Village Administrator with that responsibility.¹⁹²

In the end, on the evidence, Mayor Natomagan failed to discharge his obligations under *LAFOIP*, but there was no evidence he intended to obstruct the lawful operation of *LAFOIP*. Again, I respectfully disagree with Mr. Robertson’s conclusions on this point.

NMA: Mandatory bylaws

The *NMA* sets out several requirements for municipalities and members of council, including:

- (a) Establish a general procedure bylaw for conducting business at council meetings: s. 100.1;
- (b) Adopt a code of ethics by bylaw: s. 107.1;
- (c) Establish a code of employee conduct for employees of the municipality: s. 127.1;
- (d) Maintain a council remuneration bylaw.

There is no dispute that Village Council failed to pass the bylaws mandated by the *NMA* and did not take steps to establish the mandatory bylaws prior to receiving correspondence from Assistant Deputy Minister Comstock, as discussed in the foregoing sections. After receiving such correspondence, NVP prepared and passed all necessary bylaws.

¹⁹² Exhibit 113.

Summary of conclusions

The purposes of the *NMA* are set out in s. 3(2), namely:

- (a) to provide the legal structure and framework within which municipalities must govern themselves and make the decisions that they consider appropriate and in the best interests of their residents, and within which municipalities can provide for the fair and equitable treatment of their residents;
- (b) to provide municipalities with the powers, duties and functions necessary to fulfil their purposes;
- (c) to provide municipalities with the flexibility to respond to the existing and future needs of their residents in creative and innovative ways, including in particular ways that recognize the cultural context of northern Saskatchewan and promote collaboration;
- (d) to ensure that, in achieving these objectives, municipalities are accountable to the people who elect them and are responsible for encouraging and enabling public participation in the governance process.¹⁹³

In addition, one must consider the provisions of *LAFOIP*, which ensure public access to municipal records and protect the confidentiality of personal information.

The jurisprudence clarifies that the right to remove an elected official from office is a very powerful tool and must be used responsibly. In *R. v. Robinson*,¹⁹⁴ Justice Urquhart cited the following statement of Justice Riddell in *R. v. Robb*¹⁹⁵ with approval:

In my view, the right of being chosen to represent his fellows in a representative body, Parliament, Legislature, municipal council is one of the dearest possessions of a freeman, and it should not be taken away without clear statutory direction.¹⁹⁶

In *Sherwood (Rural Municipality) No. 159 v. Probe*,¹⁹⁷ Chief Justice Popescul stated the following:

[I]t should be recognized, as pointed out by Currie J. in *Shellbrook No. 493 (Rural Municipality) v. Muller*, 2015 SKQB 346 (Sask QB) that a finding of a conflict of interest and the disqualification that follows as a consequence, does not automatically result in a judicial pronouncement that the subject of the application be declared disqualified and removed from council. At paras 35-36, Currie J. makes the following comments, with which I am in full agreement:

35 ... the Legislature has given the court not only the power to make the declarations but also the discretion to do otherwise. The Legislature must have contemplated that there could be a circumstance in which, although a councilor had contravened s. 144, and although the contravention was

¹⁹³ *NMA*, *supra* note 2, s. 3(2).

¹⁹⁴ [1939] 2 DLR 801, 1939 CanLII 70 (Ont H Ct J) [*Robinson*].

¹⁹⁵ (1925), 57 OLR 20 (Ont H Ct J) at 25.

¹⁹⁶ *Robinson*, *supra* note 194.

¹⁹⁷ 2018 SKQB 24.

not through inadvertence or honest mistake, it would be appropriate to do something short of removing that councilor from council.¹⁹⁸

In this matter, there is uncontradicted evidence that violations of the *NMA* and *LAFOIP* were not intentional and were the result of ignorance of the relevant statutory provisions. There is also evidence the violations were remedied when the contraventions were brought to the attention of the Mayor, Deputy Mayor and Village Council. Further, it has not been demonstrated that the Mayor or Deputy Mayor engaged in an abuse of their offices or that they violated the law in an attempt to further their own interests. I agree with the comments of Justice Curry in *Shellbrook No. 493 (Rural Municipality) v. Muller*¹⁹⁹ where he concluded that a duly elected council member should not be removed from council for a relatively minor infraction that has had almost no consequences.²⁰⁰ In the present instance, the infractions were more serious in nature, but produced almost no consequences.

DISPOSITION

Notwithstanding the violations and contraventions of the *NMA* by the Mayor and the Deputy Mayor, I found their acts were not intentional and there was no intent to obstruct *LAFOIP* or the *NMA*. Further, when the non-compliance was brought to the attention of the Mayor and the Deputy Mayor, they made efforts to remedy the non-compliance. There was no evidence that the Mayor and Deputy Mayor engaged in abuse of their offices, nor that they violated the law in an improper attempt to further their personal or familial interests. The jurisprudence makes it clear that in such circumstances, these Councillors should not be removed from office for actions that have almost no consequence.

¹⁹⁸ *Ibid* at para 51 [emphasis added]. See also *Streliaff v Serhienko*, 2019 SKQB 79 at paras 40-45.

¹⁹⁹ 2015 SKQB 346.

²⁰⁰ *Ibid* at para 41.

PART VII: RECOMMENDATIONS

(i) *LAFOIP*

Based on the evidence heard at the Inquiry, there are circumstances when the mandatory 30-day limit contained in ss. 7 and 45 of *LAFOIP* should, in the interest of the parties, be extended at the discretion of the OIPC. For example, in this case there were 24 access to information requests in a five-year period that overwhelmed the resources of the Village to respond in a timely fashion.

I would recommend that s. 7 of *LAFOIP* be amended to provide a new subsection 6 as follows:

The Commissioner may, in his or her sole discretion, upon receipt of an application from the “head” or his/her delegate, extend the 30 days within which to reply for a period not exceeding 30 days.

I also recommend the time limit set out in s. 45 grant the OIPC discretion to extend the obligation to reply for a period of time not exceeding 30 days.

The Inquiry also heard evidence of a concerted effort on the part of a group of individuals to “blitz” this small northern community with access to information requests. The purpose was to use access to information requests as a means to overwhelm the Village and expose governance issues. Under s. 43.1 of *LAFOIP*, the head may apply to the OIPC to disregard one or more information requests. When determining whether to grant the application to disregard the request, the OIPC will consider whether the request:

- (a) would unreasonably interfere with the operations of the local authority because of the repetitious or systematic nature of the application or request;
- (b) would amount to an abuse of the right of access or right of correction because of the repetitious or systematic nature of the application or request; or
- (c) is frivolous or vexatious, not in good faith or concerns a trivial matter.²⁰¹

When determining whether access to information requests are repetitious or systematic, the OIPC considers the following factors:

Does the applicant ask more than once for the same records or information?

Are the requests similar in nature or do they stand alone as being different?

Do previous requests overlap to some extent?

Are the requests close in their filing time?

²⁰¹ *NMA*, *supra* note 2, s. 43.1(2).

Does the applicant continue to engage in a determined effort to request the same information (an important factor in finding whether requests are systematic, is to determine whether they are repetitious)?

Is there a pattern of conduct on the part of the applicant in making the repeated requests that is regular or deliberate?

Does the applicant methodically request records or information in many areas of interest over extended time periods, rather than focusing on accessing specific records or information of identified events or matters?

Has the applicant requested records or information of various aspects of the same issue?

Has the applicant made a number of requests related to matters referred to in records already received?

Does the applicant follow up on responses received by making further requests?

Does the applicant question the content of records received by making further access requests?

Does the applicant question whether records or information exist when told they do not?

Can the requests be seen as a continuum of previous requests rather than in isolation?²⁰²

The OIPC has recognized that not all access to information requests are appropriate.²⁰³ Mr. David Loukidelis, the former Information and Privacy Commissioner of British Columbia, stated the following regarding the equivalent provision in British Columbia's legislation:

...Access to information legislation confers on individuals such as the respondent a significant statutory right, i.e., the right of access to information (including one's own personal information). All rights come with responsibilities. The right of access should only be used in good faith. It must not be abused. By overburdening a public body, misuse by one person of the right of access can threaten or diminish a legitimate exercise of that same right by others, including as regards their own personal information. Such abuse also harms the public interest, since it unnecessarily adds to public bodies' costs of complying with the Act. Section 43 exists, of course, to guard against abuse of the right of access....²⁰⁴

I recommend s. 43.1 of *LAFOIP* be amended to address the following:

²⁰² Saskatchewan OIPC, Review Report 343-2019, "Application to Disregard an Access to Information Request Decision".

²⁰³ *Ibid.*

²⁰⁴ Office of the Information and Privacy Commissioner for British Columbia, Order 99-01 (December 22, 1999) at 7 [emphasis added].

- (a) At present, the head must apply to the OIPC in order to trigger the provisions to disregard information requests. Section 43.1 should be amended such that the Information and Privacy Commissioner may inquire into the frivolous or vexatious nature of access to information requests on their own accord; and
- (b) Section 43.1 contemplates the potential repetitious or systemic nature of requests, however does not address concerted efforts of several applicants. As such, I recommend s. 43.1 be amended such that the OIPC may also consider the concerted efforts of more than one applicant, coupled with the existing provisions, when determining whether the information requests may be disregarded.

(ii) *NMA*: Conflicts of interest

Section 159.1 of the *NMA* defines conflict of interest. In my opinion, this section could be amended to include a provision to clarify the status of the common law on conflicts of interest. For example:

Common law preserved subject to Act

- (1) The common law as it relates to conflict of interest continues to apply and run concurrent to this Act except insofar as it is inconsistent with the express provision herein.

In my opinion an amendment to the definition for conflicts of interest would be beneficial for two reasons. First, it would remove any uncertainty about whether the common law applies. Second, it would provide indirect notice to council members and others of a set of legal standards upon which conflicts of interest are governed.²⁰⁵

(iii) *NMA*: Councillor employment

The Inquiry underscored the difficulty caused by s. 128 of the *NMA*. Section 128 prohibits any member of council to be eligible to be appointed as an employee of a committee or a controlled corporation of the municipality. The provision is logical in the context of a large municipality or city, however it causes considerable difficulty in northern Saskatchewan, where there are small municipalities with limited staff and a finite number of qualified people who are relied on to complete the required work. This is precisely the situation in the Village, where Mr. Henry describes these individuals as local “champions” of the community. In addition, Mr. Henry also testified that in northern communities, the municipality is often the largest employer in the community.

I would recommend s. 128 of the *NMA* be amended to read as follows:

No member of council is eligible to be appointed as an employee of the municipality or of any committee or controlled corporation of the municipality in which he or she serves as a member of the council unless his or her

²⁰⁵ I am aware of Bill No. 194 (*An Act to amend The Cities Act, The Municipalities Act and The Northern Municipalities Act and to make consequential amendments to other Acts*) recently introduced to the Legislative Assembly concerning amendments to Saskatchewan municipal statutes. It appears that some of the changes to the *NMA* are intended to align the conflict of interest provisions more closely with the common law. My recommendation would further serve this legislative policy goal.

appointment to a committee or controlled corporation is approved by resolution of council and confirmed by the Ministry.

In the absence of legislative amendment, I recommend that the Village follow the advice already provided by Mr. Henry, the Executive Director of NMS. In particular, Mr. Henry recommended the Village officials be declared members of the Board of Directors of the controlled corporations and their remuneration be paid by the Village, pursuant to the Village's Council Remuneration Bylaw.

(iv) Finances

The Forensic Review covered the period of January 1 through December 31, 2018. During the Inquiry, I heard references to alleged malfeasance that occurred in prior years. In light of this, the Ministry of Government Relations may consider extending the forensic audit to include the period of 2013 to 2017.

(v) Governance resources

The evidence I heard during the Inquiry established that most, if not all, of the failures to comply with the *NMA* were the result of a lack of knowledge on the part of Village Council and the Administrator. It remains unclear whether programs exist at the level of NMS to provide information to municipal administrators and councils regarding their statutory responsibilities, as we heard no evidence on this point. To the extent such information is lacking or inadequate, I recommend NMS ensure that all northern municipalities are fully informed of their responsibilities and obligations under the *NMA*.

(vi) Village Administrator

The Village Administrator, Ms. Smith, is a member of UMAAS, however she is not certified as a Registered Municipal Administrator. She has completed the educational requirements of the program but has not completed the office inspection portion so as to be fully qualified. I recommend Ms. Smith complete the remaining office inspection portion of the program in order to be fully certified as a municipal administrator. I recommend Village Council take the necessary steps to assist her in that regard.

TABLE OF AUTHORITIES

Cases

<i>Baker v. Canada (Minister of Citizenship and Immigration)</i> , [1999] 2 SCR 817, 174 DLR (4th) 193.....	11
<i>Blass v. University of Regina Faculty Association</i> , 2007 SKQB 470, 76 Admin LR (4th) 262	10
<i>Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System)</i> , [1997] 3 SCR 440, 151 DLR (4th) 1.....	10
<i>Catalyst Paper Corp. v North Cowichan (District)</i> , 2012 SCC 2, [2012] 1 SCR 5.....	13
<i>Fisher v. Moil</i> (1979), 96 DLR (3d).....	59
<i>General Motors Acceptance Corp. of Canada v. Saskatchewan Government Insurance</i> (1993), 109 DLR (4th) 129, 1993 CanLII 9128	14
<i>Hudson Bay Mining and Smelting Company Limited v. Cummings</i> , 2006 MBCA 98, 272 DLR (4th) 419. 8	
<i>Ottawa (City) v. Letourneau</i> , 2005 CanLII 1407 (Ont SC).	62
<i>R v. Robinson</i> , [1939] 2 DLR 801, 1939 CanLII 70 (Ont SC).....	81
<i>R. v. Robb</i> (1925), 57 OLR 20 (Ont HC)	81
<i>Shenker v Torgrinson</i> , 2012 BCSC 41, rev'd 2013 BCCA 395	59
<i>Sherwood (Rural Municipality) No. 159 v. Probe</i> , 2018 SKQB 24.....	81
<i>Strelloff v. Serhienko</i> , 2019 SKQB 79.....	82

Statutes

<i>The Business Corporations Act</i> , RSS 1978, c B-10	16
<i>The Local Authority Freedom of Information and Protection of Privacy Act</i> , SS 1990-91, c L-27.1.	13
<i>The Municipal Conflict of Interest Amendment Act, 2015</i> , SS 2015, c 30	13
<i>The Northern Municipalities Act, 2010</i> , SS 2010, c N-5.2.....	13

Other Authorities

Ed Ratushny, <i>The Conduct of Public Inquiries, Law, Policy and Practice</i> (Toronto: Irwin Law Inc., 2009)	8
Justice Dennis O'Connor, "The role of commission counsel in a public inquiry" (2003) 22:1 Advocates' Soc J 9 (QL).....	9
Kristopher Schmaltz <i>et al</i> , <i>Long-term Debt Limits in Saskatchewan: Challenges and Opportunities</i> , (Saskatoon: University of Saskatchewan, The Policy Shop).....	73
The Honourable Madam Justice Denise E. Bellamy, Commissioner, <i>Toronto Computer Leasing Inquiry: Toronto External Contracts Inquiry Report, Volume 3: Inquiry Process</i> (Toronto: 2005)	9

The Honourable Roger E. Salhany, Q.C. Commissioner, <i>Report of the Taman Inquiry</i> (Winnipeg: 2008), vol A	8
---	---

APPENDICES

	TAB
Inspection Order dated December 7, 2018 and Terms of Reference	A
Report of an Inspection of the Northern Village of Pinehouse under section 417 of <i>The Northern Municipalities Act</i> by Mr. Neil Robertson, Q.C.	B
Rules of Procedure and Practice	C
Role of Inquiry Counsel Memorandum	D
Standard of Conduct Memorandum	E
Undertaking to Treat Documents, Information and Evidence as Confidential	F
Notice of Potential Adverse Findings	G
Witness Immunity Statement	H
Summary of Recommendations Received by the Inquiry	I
Inquiry Hearing Opening Statement by Honourable William Vancise, Q.C.	J
List of Exhibits	K

Appendix A



Government
— of —
Saskatchewan

Minister of
Government Relations
Legislative Building
Regina, SK Canada S4S 0B3

MINISTER'S ORDER

Section 417 of *The Northern Municipalities Act, 2010* provides as follows:

417(1) The minister may require any matter connected with the management, administration or operation of any municipality, any committee or other body established by a council or any controlled corporation, municipal development corporation, public utility board or service to be inspected:

- (a) if the minister considers the inspection to be necessary; or*
- (b) on the request of the council.*

(2) The minister may appoint one or more persons as inspectors or the Saskatchewan Municipal Board as an inspector for the purposes of carrying out inspections pursuant to this section.

(3) An inspector:

- (a) may require the attendance of any officer of the municipality or of any other person whose presence the inspector considers necessary during the course of the inspection; and*
- (b) has the same powers, privileges and immunities conferred on a commission by sections 11, 15, 25 and 26 of The Public Inquiries Act, 2013.*

(4) When required to do so by an inspector, the administrator, committee or other body established by a council or the controlled corporation, municipal development corporation, public utility board or service district being inspected shall produce for examination and inspection all books and records of the municipality, committee, other body, controlled corporation, municipal development corporation, public utility board or service district.

(5) The results of the inspection must be reported to:

- (a) the minister;*
- (b) the council;*
- (c) if the inspection is with respect to a committee or other body established by the council, the committee or other body; and*
- (d) if the inspection is with respect to a controlled corporation, the controlled corporation.*

Section 423 of *The Northern Municipalities Act, 2010* provides the minister may require the municipality to pay the remuneration and expenses of the person appointed as the inspector, in the amounts set by the minister.

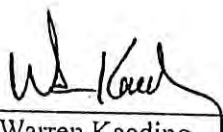
Due to the level of non-compliance in the Northern Village of Pinehouse (village) with its obligations under *The Local Authority Freedom of Information and Protection of Privacy Act*, I consider it necessary to appoint Neil Robertson as an inspector pursuant to subsection 417(2) of *The Northern Municipalities Act, 2010* to inspect and report on the matters connected with the management, administration or operation of the village identified in the terms of reference set out in Schedule "A" attached hereto.

The inspector shall carry out the inspection in accordance with the attached Schedule "A". The Inspector, in exercising his duties under this Order, may engage the services of an assistant with municipal experience to assist him with his duties.

The total remuneration of the inspector shall not exceed \$25,000. The remuneration of the inspector shall be set at \$400.00 per hour and any expenses of the inspector, including reasonable travelling and sustenance expenses incurred by the inspector in the performance of his duties. These expenses shall be reimbursed by the Northern Municipal Trust Account at the same rates approved by the Saskatchewan Public Service Commission. The village shall pay the inspector's remuneration pursuant to section 423 of *The Northern Municipalities Act, 2010*.

This order shall take effect on the date of signing and shall terminate two weeks following receipt of the inspector's written report and not later than March 15, 2019, unless otherwise extended by the Minister.

Dated at Regina, Saskatchewan this 1st day of December, 2018.



Warren Kaeding
Minister of Government Relations and
Minister Responsible for First Nations, Métis and Northern Affairs

Attachment: Schedule "A"

Schedule "A"

Terms of Reference:

1. The inspector will inspect the following matters connected with the management, administration or operation of the Northern Village of Pinehouse (village) or any controlled corporation (corporation):
 - a) the key village and corporation documents and files from 2013 to present, relating to:
 - a. Requests for information received by the village under *The Local Authority Freedom of Information and Protection of Privacy Act* for which the Commissioner has reported that responses were either not provided or deemed inadequate;
 - b) the appropriateness of the directions, actions or inactions of any employee or agent of the village, corporation or member of council for the village, relating to the above listed matters; and
 - c) other substantive administrative and council deficiencies of the village in relation to the legislative responsibilities that may be identified through the course of the inspection.
2. The inspector shall prepare a written report in relation to the matters under their inspection outlining findings of fact, conclusions and any recommendations.
3. The inspector may determine the rules of, as well as the process and procedures for, the inspection as he sees fit.
4. To conduct the inspection the inspector shall have the power, privileges and immunities provided for in section 417 of *The Northern Municipalities Act, 2010* which includes:
 - (a) the same powers, privileges and immunities conferred on a commission by sections 11, 15, 25 and 26 of *The Public Inquiries Act, 2013*;
 - (b) the power to require the attendance of any officer of the village or of any other person whose presence the inspector considers necessary during the course of the inspection; and
 - (c) the power to require a person to produce to the inspector all books and records of the village, committee, other body, controlled corporation, municipal development corporation, public utility board or service district.
5. The inspector may consider any document, including electronic record, or any other evidence, verbal or written, that he considers relevant and reliable.
6. The inspector may enter the village premises at any time for the purpose of accessing any records and any computer system or data storage system in order to carry out the inspector's duties.
7. The inspector will provide a final report as soon as reasonably possible the village council at the same time as it is provided to the Minister of Government Relations. The report shall not be disclosed publically by the village council without the Minister's approval.

Appendix B

**REPORT OF AN INSPECTION OF THE
NORTHERN VILLAGE OF PINEHOUSE**
under section 417 of *The Northern Municipalities Act*

Submitted to the Honourable Warren Kaeding, MLA
Minister of Government Relations of Saskatchewan

March 7, 2019

By Neil Robertson, Q.C., S.V.M.

Contents

SUMMARY OF REPORT.....	4
INTRODUCTION	5
BACKGROUND	5
Minister's Order and Terms of Reference	5
Relevant Legislation	6
<i>The Northern Municipalities Act</i>	6
<i>The Local Authority Freedom of Information and Protection of Privacy Act</i>	8
Facts	11
Saskatchewan's municipalities	11
Northern Village of Pinehouse.....	11
Freedom of Information Requests and Reports	12
Minister's Order	15
ISSUES	16
ANALYSIS	16
Pinehouse response to FOI Requests	16
Pinehouse response to Office of the Information and Privacy Commissioner ("OIPC").....	18
Prosecution of Provincial Offences.....	19
Other Issues of Concern	20
Village Administration.....	20
Legislative Compliance.....	20
Office Inspection.....	21
Administrator	21
Council	24
Mayor	25
Council Remuneration	26
Council Employment	30
Finances	35
Debt Limits	36
Mortgages.....	37
Questionable Payments	39
Political Contributions	41

Harpauer Accommodation Payments.....	41
Collaboration Agreement.....	43
Controlled Corporations.....	47
Pinehouse Business North.....	47
Incorporation under other Statute	49
CONCLUSIONS & RECOMMENDATIONS.....	50
Public Access to Information.....	50
Village Website.....	50
Public Accounts	50
Prosecutions	50
Administration of the Village	51
Supervision of Village	51
Administrator	51
Removal from Office	51
Financial Audit of Village.....	52
APPENDICES – Financial Statement Information	53
Northern Village of Pinehouse 2013 - 2017	53
Pinehouse Business North Development Inc. – 2013 - 2016.....	54
Pinehouse Business North Limited Partnership – 2013 - 2016	54
Pinehouse Business Corporation – 2015 - 2016	54

SUMMARY OF REPORT

1. This Report is submitted to the Minister of Government Relations in response to the Minister's Order for an Inspection of the Northern Village of Pinehouse. The authority for this Inspection is section 417 of *The Northern Municipalities Act, 2010*, S.S. 2010, c. N-5.2.
2. The primary focus of this Inspection was the alleged failure of the Village and its officials to fulfil their duties under *The Local Government and Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. L-27.1 (LAFOIP), including responding to requests for access to information and cooperating with the Office of the Information and Privacy Commissioner (OIPC).
3. I find that the Village failed to fulfil its duties under LAFOIP. The pattern of repeated failure to provide access and to cooperate with the OIPC supports my conclusion that this failure was deliberate, in part motivated by antipathy towards the applicants who submitted freedom of information requests. This was contrary to the public service ethic of impartiality.
4. The Mayor, who is responsible for administration of LAFOIP in the Village, had delegated his duties to the Village Administrator. Regardless, he remained responsible. Rather than intervene when it became apparent that the Administrator was not fulfilling this delegated duty, he instead supported the continued lack of cooperation by communicating his view that this work was not a priority.
5. The Administrator is also to be faulted for failing to perform her duty under *The Northern Municipalities Act, 2010*, independent of LAFOIP, to provide access to public documents required to be made available.
6. The Inspection also reviewed some of the concerns related to the freedom of information requests. This review found support for those concerns.
7. This Report reviews these concerns under five subjects: Village Administration; Council; Village Finances; Collaboration Agreement; and Controlled Corporations. The concerns reviewed under those headings are inter-related. The common themes are failure to comply with the governing legislation and an apparent undue regard for private interest rather than the public interest in which self-dealing and self-interest are evident by some, but not all, Council members.
8. Finally, as contemplated by the Terms of Reference, I have made recommendations for consideration by the Minister and his officials. Some relate specifically to the Village and some to municipal legislation, since some of the issues identified may arise in other municipalities.

INTRODUCTION

9. In my first meeting with Ministry officials after the Inspection was ordered, I was properly reminded that this was an Inspection, not an investigation. I in turn cautioned some of those I interviewed that they should not expect me to get to the bottom of all of the issues raised in the freedom of information requests.
10. The Inspection was made more challenging by difficulty in obtaining municipal records. I had expected these documents would be available for early review, but was still receiving documents requested in December into March. I am inclined to believe the difficulty in obtaining documents from the Village resulted from a lack of organization in the Village administration, rather than any deliberate attempt to defeat or delay the Inspection.
11. While I did not obtain all of the documents requested, I am satisfied that I was able to determine facts on which to base my findings.

BACKGROUND

Minister's Order and Terms of Reference

12. This Inspection was conducted under the authority of a Minister's Order issued on December 7, 2018 under section 417 of *The Northern Municipalities Act, 2010*, S.S. 2010, c. N-5.2.
13. The reason stated for the appointment of an Inspector is "Due to the level of non-compliance in the Northern Village of Pinehouse (village) with its obligations under The Local Authority Freedom of Information and Protection of Privacy Act".
14. The Terms of Reference direct and confine the Inspection:
 1. The Inspector will inspect the following matters connected with the management, administration or operation of the Northern Village of Pinehouse (village) or any controlled corporation (corporation):
 - a) the key village and corporation documents and files from 2013 to present, relating to:
 - a. Requests for information received by the village under *The Local Authority Freedom of Information and Protection of Privacy Act* for which the Commissioner has reported that responses were either not provided or deemed inadequate;
 - b) the appropriateness of the directions, actions or inactions of any employee or agent of the village, corporation or member of council for the village, relating to the above listed matters; and
 - c) other substantive administrative and council deficiencies of the village in relation to the legislative responsibilities that may be identified through the course of the inspection.

2. The inspector shall prepare a written report in relation to the matters under their inspection outlining findings of fact, conclusions and any recommendations.
15. The Minister's Order directed that the Inspection be completed and Inspector's Report submitted by March 15, 2019.
16. The Ministry agreed to provide support to the Inspector, asking that requests for information from the Village of Pinehouse be made through the Ministry. Brad Henry, Executive Director of Northern Municipal Advisory Services, was assigned to assist with the Inspection.

Relevant Legislation

17. The provisions of *The Northern Municipalities Act, 2010*, S.S. 2005, c. M-36.1, and *The Local Authority Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. L-27.1, were relevant to and were considered in this Inspection.

The Northern Municipalities Act

18. *The Constitution Act, 1867* divided jurisdiction between the Parliament of Canada and Legislatures of the provinces. Clause 92.8 of the Constitution gave the Legislatures of the provinces exclusive legislative jurisdiction over "Municipal institutions in the Province".
19. *The Northern Municipalities Act, 2010* ("NMA") is the main statute for northern municipalities, constituting those municipalities, authorizing municipal activities and setting rules for their governance and administration.
20. Saskatchewan's municipalities are creatures of statute, created to fulfil legislative policy. While provided considerable autonomy and discretion, they remain subordinate to the Legislature which created them and the Minister who is responsible for their oversight.
21. Three principles which underpin municipal government are relevant to this Inspection: responsible government; subsidiarity; and open government. These principles are reflected in the provisions of *The Northern Municipalities Act*.
22. The principle of responsible government is inherent in democracy where the legislators are elected by and accountable to the community. The elected representatives have a duty to ensure the municipality is operated lawfully and prudently and are responsible for their own conduct as municipal officials. These goals are expressly stated in *The Northern Municipalities Act*:

Principles and purposes of Act

- 3(1) This Act recognizes that municipalities, as local governments:
 - (a) are a responsible and accountable level of government within their jurisdictions, being created and empowered by the Province of Saskatchewan; and

- (b) are subject to provincial laws and to certain limits and restrictions in the provincial interest as set out in this and other Acts.
- (2) Having regard to the principles mentioned in subsection (1), the purposes of this Act are the following:
 - (a) to provide the legal structure and framework within which municipalities must govern themselves and make the decisions that they consider appropriate and in the best interests of their residents, and within which municipalities can provide for the fair and equitable treatment of their residents;
 - (b) to provide municipalities with the powers, duties and functions necessary to fulfil their purposes;
 - (c) to provide municipalities with the flexibility to respond to the existing and future needs of their residents in creative and innovative ways, including in particular ways that recognize the cultural context of northern Saskatchewan and promote collaboration;
 - (d) to ensure that, in achieving these objectives, municipalities are accountable to the people who elect them and are responsible for encouraging and enabling public participation in the governance process.

...

Legal Status and Capacity

- 4(2) The purposes of municipalities are the following:
 - (a) to provide good government;
 - ... and
 - (e) to foster wise stewardship of public assets.
- 23. The members of Council are trustees holding temporary office as representatives of their fellow citizens, entrusted to make decisions in the public interest. As trustees, those holding public office must keep the public interest as their paramount concern and ensure there is no conflict with their private interests.
- 24. There is a rule that public powers may not be used for an improper purpose. In other words, the application of the law should be informed by and accord with the spirit and purpose of the law.

Catalyst Paper Corp. v. North Cowichan (District), 2012 SCC 2, [2012] 1 S.C.R. 5, at paragraphs 10-12

[12] A municipality's decisions and bylaws, like all administrative acts, may be reviewed in two ways. First, the requirements of procedural fairness and legislative scheme governing a municipality may require that the municipality comply with certain procedural requirements, such as notice or voting requirements. If a municipality fails to abide by these procedures, a decision or bylaw may be invalid. But in addition to meeting these bare legal requirements, municipal acts may be set aside because they fall outside the scope of what the empowering legislative scheme contemplated. This substantive review is premised on the fundamental assumption derived from the rule of law that a

legislature does not intend the power it delegates to be exercised unreasonably, or in some cases, incorrectly.

(per: McLachlin, C.J. for the Court)

25. The principle of subsidiarity accepts that local governments may be best positioned to provide local services and deal with local issues.

114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town), [2001] 2 S.C.R. 241, 2001 SCC 40

3. The case arises in an era in which matters of governance are often examined through the lens of the principle of subsidiarity. This is the proposition that law-making and implementation are often best achieved at a level of government that is not only effective, but also closest to the citizens affected and thus most responsive to their needs, to local distinctiveness, and to population diversity.
(per: L'Heureux-Dube, J. for the majority)

26. The principle of open government requires transparency in the operation of government. Open government is necessary for effective accountability.
27. Municipal government is one of the most open forms of government, reflecting its close relationship to the local community. This is not a matter of chance or choice, but is required by the legislation governing municipal government.
28. NMA 138 requires Council and its committees to hold meetings in public. While there is provision for discussion of certain matters in private session, NMA 137 requires that all decisions be made in public. NMA 127(a) requires the municipal administrator to record minutes of council meetings and NMA 132 requires that these minutes and other records, including bylaws and annual financial statements, be preserved permanently.
29. NMA s. 133 entitles any person to inspect and obtain copies of specified records, including any contract, bylaw, resolution, any account paid, annual financial statements and minutes of meetings of Council and its committees.
30. These or similar provisions have long existed in Saskatchewan's municipal statutes and pre-date *The Local Authority Freedom of Information and Protection of Privacy Act* ("LAFOIP"). It is important to understand that these pre-existing rights of public access to information continued and were not diminished by LAFOIP.

The Local Authority Freedom of Information and Protection of Privacy Act

31. *The Local Authority Freedom of Information and Protection of Privacy Act* ("LAFOIP") has a dual purpose: both to foster and grant public access to government records; and to protect the confidentiality of personal information, limiting its use and access for proper public purposes.
32. Reflecting the importance of this legislation, the Information and Privacy Commissioner is appointed under *The Freedom of Information and Protection of Privacy Act* as an Officer

of the Legislative Assembly, one of only six such Independent Offices. Ronald Kruzeniski, Q.C. is the current Commissioner.

33. LAFOIP, in s. 2(f) defines “local authority” to mean: (i) a municipality; and (v) any body which is appointed pursuant to *The Northern Municipalities Act, 2010* and is prescribed in the regulations. *The Local Authority Freedom of Information and Protection of Privacy Regulations*, c. L-27.1, Reg 1, in the Appendix at Part 1 prescribes as local authorities “A board, association, commission or other organization appointed pursuant to *The Northern Municipalities Act*”.
34. LAFOIP s. 2(e)(i) provides that the mayor of a municipality is the “head” for the purposes of local administration of the Act. Subsection 10(1) provides that “If an applicant is entitled to access ..., a head shall provide the applicant with access in accordance with this section.”
35. LAFOIP section 5 provides a general right of public access to records of local authorities, while Part III of the Act provides exemptions to this right of access. Applicants for information may appeal to the Information and Privacy Commissioner from the response or lack of response of a local authority to the request for information.
36. While this statute and its provincial counterpart were adopted in the early 1990s, the requirements for and practice of open government and access to public records already existed in municipalities under the municipal statutes. Since LAFOIP both grants and restricts access to records, it is important to take note of section 4 of LAFOIP which recognized and preserved pre-existing rights of access to public records.

General Motors Acceptance Corporation of Canada, Limited v. Saskatchewan Government Insurance [1993] S.J. 6655, 1993 CanLII 9128, 109 DLR (4th) 129; [1994] 2 WWR 320; 116 Sask R 36 (SKCA): affirming [1993] S.J. No. 601, 1993 CanLII 8794, 111 Sask. R. 229 (SKQB)

[10] The FOIA was proclaimed in force effective April 1, 1992. It was enacted to facilitate public access to “Government” documents. It is broadly conceived and like similar legislation in other jurisdictions, it seeks to permit access to official information shielded unnecessarily from public view and attempts to create a judicially enforceable public right to secure such information from reluctant or unwilling officials. The Act does not limit or reduce the rights of access existing at the time of proclamation. . . .

[11] The Act’s basic purpose reflects a general philosophy of full disclosure unless information is exempted under clearly delineated statutory language.
(per: Tallis, JA, for the Court)

37. While that judicial statement was in relation to *The Freedom of Information and Protection of Privacy Act* (“FOIA”), the same sentiment is expressed in a *Postscript* comment to Report LA-2011-004, involving the City of Saskatoon, by Garry Dickson, Q.C., then Saskatchewan Information and Privacy Commissioner:

The point is that the primary purpose of LA FOIP is to make local authorities more accountable to citizens and the default position is that documents in the possession or under the control of a local authority should be released to an applicant requesting access. This right of access is subject to **limited and specific exemptions** defined in the legislation. To ensure that those limited and specific exemptions are applied appropriately and consistent with the primary purpose of increased transparency, our office has been statutorily mandated to oversee the actions of local authorities in responding to citizen requests for access.
[emphasis in original]

38. The Commissioner in Review Report 036-2017 considered the application of LAFOIP to controlled corporations of a City, involving the City of Saskatoon and the Rема Modern Art Gallery. The applicant had requested travel expenses of the Art Gallery Director. The City had taken the position that it did not have custody or control over the requested records. The Commissioner found that: the City did have sufficient control of the records to require it to respond to the FOI request; and, further, the Art Gallery was a controlled corporation of the City and therefore subject to LAFOIP.
39. The Report found that the Art Gallery was a controlled corporation since 12 of the 14 directors of its board were appointed by the City. The Report then noted that the City's Public Accounts should include the expenditures for travel and expenses of all employees of the City and of a controlled corporation. Since the City was required to report this information in its Public Accounts, it must be considered to have "control", even if it did not have "possession", of the requested records. Either control or possession was sufficient to trigger the duty to provide access to records under section 5 of LAFOIP.

[14] I note that subsection 4(a) of LA FOIP provides that LA FOIP complements and does not replace existing procedures for access to information or records in the possession or under the control of a local authority. The Applicant should have been able to gain access to information about the expenditures for travel and other expenses incurred by the Art Gallery's Executive Director and CEO pursuant to subsection 156(3) of *The Cities Act*.
40. I would agree with this analysis.
41. Municipalities should not be allowed to use controlled corporations to evade their duty to provide access to information or to otherwise undermine the public's right to know. Just as a municipal corporation cannot contract out of the law, it should not be allowed to incorporate out of the legislation which governs municipalities and protects public rights.

Facts

42. The following facts are set out to provide a context for later discussion.

Saskatchewan's municipalities

- 43. There are 773 municipalities in Saskatchewan. This number is greater than any other province, reflecting the history of settlement of the province, its geography and early agrarian economy.
- 44. Saskatchewan's municipalities are governed by three principal statutes: *The Cities Act*; *The Municipalities Act*; and *The Northern Municipalities Act, 2010*.
- 45. The Honourable Warren Kaeding, MLA, as Minister of Government Relations and Minister responsible for First Nations, Metis and Northern Affairs, is responsible for these statutes.
- 46. The Saskatchewan Municipal Directory lists 35 northern communities: 2 northern towns; 11 northern villages; 11 northern hamlets; and 11 northern settlements. These northern communities are governed by *The Northern Municipalities Act, 2010*.

Northern Village of Pinehouse

- 47. According to the Saskatchewan Municipal Directory, the Northern Village of Pinehouse (hereafter referred to as "Pinehouse" or "the Village") has a population of 1,074 and an assessment of \$37,355,600.
- 48. Pinehouse is located on the western shores of Pinehouse Lake in northern Saskatchewan. It is relatively remote, accessible by air and by Highway 914, a gravel road.
- 49. The Village Council describes Pinehouse as a Metis Community: Council motion M-022-15.
- 50. The Mayor of Pinehouse is Mike Natomagan. He was elected as Mayor in 2005 and was re-elected in 2005, 2006, 2009, 2012 and 2016. As Mayor, he is also the "head" responsible for administration of LAPOIP within the Village.
- 51. This Inspection was concerned with 2013 – 2018. The other members of Council who have held office over that period and who continue in office are Conrad Misponas, who also served as Deputy Mayor, and Betty Ann Durocher.
- 52. Caroline Rait-Misponas and Greg Ross served as members of Council from 2013 to 2016. There was a general election on September 28, 2016. Leona Lariviere and Vince Natomagan were elected at that time, replacing Caroline Rait-Misponas and Greg Ross.
- 53. Vince Natomagan resigned as a member of Council on March 22, 2017. Walter Smith was elected in a by-election, taking office on June 1, 2017.

54. Walter Smith resigned on July 14, 2018. Pam Wood was elected in a by-election, taking office in November 2018.
55. Martine Smith is the Administrator of Pinehouse and has held that position since 2011.
56. The Village is, relative to most municipalities, unusually dependent upon external funding. The Government of Saskatchewan provides significant funding to the Village.

Freedom of Information Requests and Reports

57. The Village has been the subject of a relatively high number of Reports from the Office of the Information and Privacy Commissioner ("OIPC"). Over 2013 – 2018, the Village of Pinehouse was the subject of thirteen Reports from that Office. Given its size, this number accounted for a significant number of the Reports from this Office concerning municipalities: 1 of 2 for 2013; 0 of 8 for 2014; 1 of 21 for 2015; 9 of 30 for 2016; 0 of 28 for 2017; and 2 of 20 for 2018.
58. What is perhaps more striking, however, is the multiple findings in these Reports of a failure by the Village to respond to access requests in a timely manner and to comply with the law.
59. The thirteen reports were all Review Reports, responding to a request from a dissatisfied applicant to the Commissioner to review the lack or adequacy of response to their request for access to Village records. The following table summarizes these Reports.

REVIEW REPORT	APPLICANT'S COMPLAINT	COMMISSIONER'S FINDINGS
LA-2013-0004 November 18, 2013	<ul style="list-style-type: none"> - No adequate response to requests - First response from Village received 65 days after first application and 51 days after second application, referring Applicant to websites which did not provide all of the records requested 	<p>Village "failed to provide proper section 7 responses to the Applicant": paragraphs 20, 31 & 35</p> <p>Village "failed to ensure an appropriate delegation of authority to the Administrator to deal with access requests": para 34</p> <p>Village failed to respond appropriately" to the OIPC: para 36</p> <p>Recommend Minister of Justice consider prosecution: para 40</p>
141-2015 November 14, 2015	<ul style="list-style-type: none"> - Inadequate response to request for records about CRA action against Pinehouse Business North Development Inc. - First response 60 days after date of request, denying access on basis of solicitor-client privilege 	<p>Village provided records after OIPC Office contacted it: paras. 5 - 10</p> <p>Village made a reasonable search: para 24</p> <p>Recommend Village determine which records of controlled corporation it should have in its physical possession to respond to future access requests: para 25</p>

036-2016 June 3, 2016	- Failure to respond to access request for records of remuneration and expenses paid to Board members of Pinehouse Business North Development Ltd. (PBN)	Failure of Village to respond to multiple emails and telephone calls from Office: para 3 – 14 Failure of Village to collect registered letter mailed to it by OIPC: para 16 “I find that the Village did not comply with section 7 of LA FOIP and there has been a refusal to provide the records requested.”: para. 21
037-2016 June 3, 2016	- Failure to respond to access request for copy of Village’s Records Retention and Disposal Schedule	Failure of Village to respond to multiple emails and telephone calls from OICP: para 3 – 14 Failure of Village to collect registered letter mailed to it by OIPC: para 16 “It has not yet cooperated with my office by providing responses to our requests. I find this to be a deemed refusal to provide access to the requested record.”: para. 20 “I find that the Village did not comply with section 7 of LA FOIP.”: para. 21
039- 2016 June 3, 2016	- Failure to respond to access request for Council minutes to dispense with financial statements for PBN	Village told OIPC records did not exist: para 4 “Village did not provide our office with any information about its search” so concluded “Village has not performed a reasonable search for records”: para 12 & 18 “Village did not respond within to the access to information requests within the legislated timelines: para 19 “Recommend that the Village examine its process for responding to access to information requests and look for ways to improve its response times.”: para 21
040-2016 June 3, 2016	- Failure to respond to access request and to provide records of PBN sponsorship of Saskatchewan Party Youth Convention	Village failed to respond to emails and telephone calls from OIPC: para 3 – 13 Village failed to pick up registered letter from OIPC: para 15 Failure by Village to cooperate with SIPC OIPC: para 19 “the Village did not comply with section 7 of LA FOIP and there has been a refusal to provide access to the records requested.”: para 20

056-2016 June 3, 2016	- Failure to respond to access request about total revenue for 2012 of PBN	<p>“the Village did not properly apply subsection 17(1)(f) of LA FOIP [claim of prejudice to economic interests] to the record.”: para 15</p> <p>“the Village did not respond to the access to information request within the legislated timelines.”: para 16</p> <p>“recommend the Village release the responsive records to the Applicant.”: para 17</p>
098-2016 June 3, 2016	<p>- Failure to adequately respond to access request for records verifying remuneration and expenses paid to Village Councillor and Council minutes approving payment</p> <p>- Request for review of amount of fees charged for search of \$270.75</p>	<p>“the Ministry’s extension of 30 days was not in accordance with subsection 12(1)(c) of LA FOIP.”: para 14 & 28</p> <p>“the Village refused to provide the Applicant access to minutes of its council meetings.”: para 29</p> <p>“I find that reasonable fees would total \$30.75.”: para 30</p>
106-2016 June 3, 2016	- Failure to respond to access request for salary and bonuses paid and expenses reimbursed in 2014 and 2015 to Corporate Engagement Officer and Social Development Officer	<p>“the Village did not comply with section 7 of LA FOIP and there has been a refusal to provide access to the records requested.”: para 8</p> <p>“I recommend the Village release responsive records to the Applicant.”: para 9</p>
110-2016 June 3, 2016	- Failure to respond to access request for PBN Financial Statements for 2013 and 2014	<p>The Village “did not properly apply subsection 17(1)(f) of LA FOIP [exemption for prejudice to economic interests] to the record.”: para 15</p> <p>“the Village did not respond to the access to information request within the legislated timelines.”: para 16</p> <p>“I recommend that the Village develop a policy that, when a review is conducted by my office, it provides my office with a copy of the responsive record and a submission giving the reasons why it is claiming an exemption.”: para 19</p>
171-2016 August 2, 2016	- Failure to respond to access request for Village’s Financial Statement for 2014	<p>“the Village did not comply with section 7 of LA FOIP and there has been a refusal to provide access to the records requested.”: para 10</p>

		"I recommend the Village release responsive records to the Applicant.": para 11
104-2018 September 13, 2018	- Failure to respond to access request for copies of mortgages issued in 2013 by Village and Council minutes and SMB approval for mortgages	"It is the position of my office that information delayed is information denied.": para 12 "the Village is deemed to have refused access to the remaining records as a result of failing to provide a section 7 response to the Applicant.": para 22 "the Village has not identified any exemptions in Part II of LA FOIP that it can rely on to withhold the remaining records.": para 23 "I recommend the Village release the remaining records to the Applicant.": para 24
204-2018 November 19, 2018	- Failure to respond to access request for salary and expense claims of 3 Village officials from 2014 - 2018	"To be clear, the 30 days does not begin when the right person in the Village receives the request. It begins when the request arrives at the Village. It is up to the Village to make sure it has appropriate processes in place to streamline requests coming in so it can meet its 30-day obligations under LA FOIP.": para 22 "the Village is deemed to have refused access to all or part of the records as a result of failing to provide a section 7 response to the Applicant.": para 46 "the Village has not identified any exemptions in Part II of LA FOIP that it can rely on to withhold the remaining records.": para 47 "I recommend the Village release the remaining records to the Applicant.": para 49

60. The Commissioner, in Review Report 204-2018 at paragraphs 38 and 53, recommended "that the Minister of Government Relations direct an inspection or inquiry under sections 396 and 397 of *The Municipalities Act*."

Minister's Order

61. In accordance with the request of the Information and Privacy Commissioner, the Minister of Government Relations ordered this Inspection on 7 December 2018.

ISSUES

62. This Report will address three questions:

1. Did the Village satisfy its duties under LAFOIP?
2. If not, why not?
3. Are there other areas of concern with the governance and administration of the Village that came to light in the Inspection?

ANALYSIS

Pinehouse response to FOI Requests

63. A review of the thirteen Reports of the Saskatchewan Information and Privacy Commissioner (SIPC) shows a consistent disregard for the access requests, both in failing to respond within the statutory time period and in many cases in failing to provide the requested records.
64. My interviews with two of the applicants confirmed that the applicants rarely received the records they requested, even after the intervention of the OIPC.
65. Mayor Natomagan, in his interview with the Inspector on February 4, 2019, said he had delegated responsibility for responding to freedom of information requests to the Village Administrator, Martine Smith.
66. Ms. Smith, in her interview with the Inspector on February 4, 2019, said that at first freedom of information requests would go directly to the Village lawyer to prepare a response. After several requests were handled in this manner, the Village lawyer suggested that her services were not required and recommended that Ms. Smith prepare the response herself. Ms. Smith said she would then prepare a “section 7 response”, referring to section 7 of LAFOIP. Ms. Smith’s explanation for the repeated failure to respond within the thirty day deadline was that she didn’t know where to start and may not have known the answer or was waiting for some outcome before responding. She added that she felt stressed and intimidated by the process.
67. This explanation may be accepted in part. But is not a full answer to or excuse for the consistent failure to respond in a timely information and to provide public information to the public, especially since the Village had engaged legal assistance early on.
68. In many cases, the information sought in the access requests was public information and should have been available without a freedom of information request. For the most part, the information sought should, in a properly run municipal office, have been easily accessible to the Administrator.
69. It is also significant that the OIPC attempted to assist the Village. Rather than take advantage of this assistance, the Village ignored and rebuffed the OIPC.

70. The Ministry had, from at least 2013, offered assistance to the Administrator on providing compliant responses to freedom of information requests. The Ministry has also offered training on freedom of information laws and process to northern municipalities. The Village Administrator attended one of these sessions.
71. The Ministry's municipal advisors are available to assist municipal administrators and do so routinely, including on how to respond to freedom of information requests.
72. Most municipalities routinely publish public documents on their websites to provide public access to those records. This can reduce individual requests for public records. The Village removed its website during the period under review and has not restored it.
73. The consistent response to freedom of information requests was first to delay and then to look for reasons not to provide the information requested. There seemed to be no recognition of the legal reality in municipal government that all information is public unless it falls within a category of information that must be kept confidential, rather than the reverse view.
74. It is clear that the Village found the access requests to be annoying. But personal opinion should not have affected the duty to comply with the law.
75. Based on the difficulty encountered gathering records from the Village for this Inspection, which was done through the Ministry, it is also likely that some of the failures to provide complete responses to the freedom of information requests were also partly attributable to simple carelessness and disorganization. But that was not the only reason.
76. I am satisfied that the response of the Village was affected by the opinion of Village officials of the persons requesting records. But public rights are not dependent on how the public authority views the member of the public.
77. While one might excuse an isolated omission to receive correspondence or to provide a public record in response to a freedom of information request as an oversight, the cumulative record shows a pattern of disregard for both the access requests and for the OIPC which I find to be deliberate and intentional.
78. This was confirmed in the interview Mayor Natomagan gave to the *Saskatoon Star Phoenix* while the Inspection was underway, which was summarized in an article by Andrea Hill and Thia James published on January 22, 2019:

Natomagan, who was elected mayor of Pinehouse in 2005, said he's known "right from the beginning" that his office wasn't responding to freedom of information requests in a timely manner, but he didn't do anything about it because he doesn't believe responding to the requests is a priority.

...

"We'll continue with what we're doing and how we're doing things."
79. The Mayor, in his interview with the Inspector, confirmed these responses as accurate, attributing the failure to both a lack of administrative capacity and question of priorities.

80. It is not much to ask that public authorities, which make and enforce laws, also obey the law. The Village of Pinehouse and the responsible Village officials failed to satisfy their duties under LAFOIP in relation to the freedom of information requests which were the subject of this Inspection. These contraventions of the law were repeated and deliberate.

Pinehouse response to Office of the Information and Privacy Commissioner ("OIPC")

81. This lawless behavior was aggravated by the failure of the Village to cooperate with the OIPC, including failing to respond to its communications.
82. In several cases, the Village simply failed to provide any response to the Office, leaving the Commissioner to draw his own conclusions without the benefit of any Village submission.
83. The OIPC initially offered assistance to the Village, as is its practice, recognizing that some municipalities may be unfamiliar with legislation and its requirements. Later, the Commissioner asked the Ministry of Government Relations and the Saskatchewan Urban Municipalities Association, of which the Village is a member, to consider providing assistance to the Village.
84. In the thirteenth Report, the Commissioner notes the excuse proffered by the Village for failing to pick up a registered letter, suggesting that registered letter may have been mislaid at the Village post office. While possible, that excuse is undermined by the fact that similar letters had been left uncollected in the past: OIPC Review Report 037-2016, para 16; and 040-2016, para 15.
85. That 13th Report reviews the history of that Office's dealings with the Village, concluding that its failure to respond and cooperate were deliberate.

[32] Despite efforts by my office to connect with the Village, it continues to be difficult to get responses to emails and telephone messages. There appears to be a complete disregard by the Village for what LA FOIP requires of it. The purpose of LA FOIP is to enhance transparency and accountability within local government by providing citizens with the rights of access to government records and the right of privacy over their personal information.

...

[36] With the first and second review of the Village by my office, my office tended to believe that the Village just did not understand the legislation or the process. It was assumed that the Village just did not know LA FOIP applied to it in all respects and there was a need for the Village to take it seriously. By the 13th Review Report, it is becoming very clear with the Village that the Mayor and the Village Administrator are attempting to obstruct the lawful operation of LA FOIP. It appears deliberate and aimed at frustrating any applicant who requests information.

...

[38] My office is concerned that the Mayor and the Village Administrator are obstructing application of LA FOIP and believe that no town or village should be

able to flagrantly disregard or obstruct the operation of a provincial statute. My office believes this matter should be reviewed.

...

[40] There comes a time in society when an organization created by government that flagrantly disregards the rules set out by the Legislative Assembly [requires] that all necessary actions be taken to convince that organization that it is essential that it follows the laws of the Province of Saskatchewan.

86. Based on the record, these criticisms and conclusions were warranted.
87. It is understandable that the OIPC, which had tried to assist the Village, lost trust in the Village. This was more than a failure to cooperate. It was a failure to respect the law and the Legislature. This misconduct was an affront to the Legislature, since it was dealing with one of the Legislature's Officers.
88. I find the Commissioner was justified in asking the Minister of Government Relations to order an Inspection and asking the Minister of Justice to consider prosecution.

Prosecution of Provincial Offences

89. One would hope that prosecutions of public authorities would not be required. But LAFOIP does create an offence punishable by summary conviction proceedings.
90. The former Commissioner, in Review Report LA 2013-004 at paragraph 40, recommended prosecution of the Village. The current Commissioner, in Review Reports 104-2018 at paragraph 16 and 204-2018 at paragraph 35, again raised the question of prosecuting the Village under s. 56(3) of LAFOIPA.
91. To date, there has never been a prosecution under *The Freedom of Information and Protection of Privacy Act* nor under LAFOIPA. These laws have been in place since the early 1990s. If it is never to be applied, then lawbreakers may come to doubt there are consequences to their offences.
92. While restraint is a virtue in enforcement, at some point the absence of any enforcement may create sense of impunity and diminish respect for the law.

Other Issues of Concern

93. While the primary purpose of this Inspection was to review the alleged failure of the Village to comply with LAFOIP, the Terms of Reference also invited identification and observations on other issues of concern that came to my attention in the course of the Inspection. Such concerns were identified and are summarized below.
94. Some of the concerns reviewed are related, so may be mentioned under more than one heading.
95. The limitations on this Inspection did not permit more, but some concerns appear serious enough to warrant further review or intervention.
96. Before reviewing the areas of concern, it is only fair to acknowledge that the Village has and is doing good work in addressing issues of social and economic development by promoting education and training and providing employment, including through Pinehouse Business North and Pinehouse Housing Corp. The Village and its officials, past and present, deserve credit for this good work.
97. The Village's programs and development work were observed during the course of the Inspection and commented on positively by persons with knowledge of Pinehouse and other northern communities. This was also acknowledged by critics of Village officials. Indeed, the Village of Pinehouse is viewed and ranked favourably by persons knowledgeable about northern communities for its innovative efforts to improve living conditions for its residents.
98. At the same time, there should not be a trade-off between this good work and lapses in other areas. All citizens are entitled to good government and the rule of law.

Village Administration

Legislative Compliance

99. The Ministry had received other complaints about the Village of Pinehouse and had identified failure to comply with basic requirements of *The Northern Municipalities Act*.
100. After earlier attempts by government officials failed to gain compliance, Keith Comstock, Assistant Deputy Minister of Government Relations, wrote to the Mayor and Council on November 30, 2017 requesting the following documents to show compliance with statutory requirements:
 1. the council procedure bylaw;
 2. the council remuneration bylaw;
 3. the records and retention and disposal bylaw;
 4. the council code of conduct;

5. the code of employee conduct; the minutes of the meeting wherein the aforementioned codes and bylaws were approved by council resolution;
 6. the audited financial reports of all controlled corporations of the Village from 2014 to 2016;
 7. the public disclosure statements for each councillor; and
 8. written confirmation that the employment situation with the village controlled corporation has been resolved.
101. The Village replied in a letter from the Administrator dated February 27, 2018 attaching the requested documents. The bylaws for items 2 – 5 had received first reading only on February 27, 2018. The Public Disclosure Statements were similarly dated February 27, 2018, except for two dated July 5, 2017. The response to item #8 referred to the Public Disclosure Statements.
 102. From this response, one may infer that none of the mandatory bylaws were in place and that members of Council had not previously completed and filed Public Disclosure Statements.
 103. Mr. Comstock wrote to the Village again on May 31, 2018 requesting further information, including the final bylaws and missing Financial Statements.
 104. The Minister of Government Relations emphasized the importance of legislative compliance when he met with Village officials on October 5, 2018 during his northern tour.
 105. In gathering documents for this Inspection, I found similar omissions with the statutory requirements. My conclusion is that the Village did not follow some basic procedures and failed to comply with mandatory requirements of *The Northern Municipalities Act* over a prolonged period.

Office Inspection

106. As part of this Inspection, I asked Brad Henry, Executive Director of Northern Municipal Services with the Ministry of Government Relations, to arrange for a person with experience as a municipal administrator to conduct an office inspection of the Pinehouse municipal office, based upon the *Office Inspection Checklist* used by the Board of Examiners, and provide a report on their findings.
107. This Office Inspection was conducted by experienced municipal advisors on February 19 and 20, 2019.
108. The Office Inspection examined numerous areas for legislative and procedural compliance. The report found 61 compliant, 33 non-compliant and 1 undetermined.

Administrator

109. The Administrator plays a key role in municipal government.

110. Municipal administrators are subject to duties set out in the municipal statutes and other statutes. In the case of northern municipalities, those duties are primarily found in the NMA, in particular s. 127 (Duties of administrator), 127.1 (Employee code of conduct) and 133 (Inspection of municipal documents).
111. Municipal administrators are appointed by Council and enjoy a degree of protection against dismissal, having regard to s. 130 of *The Northern Municipalities Act*. This protection is intended to promote adherence to professional standards in their work as municipal officials.
112. Municipal administrators must be certified by a board of examiners. Certified administrators have the designation Registered Municipal Administrator or “R.M.A”. In the case of northern municipalities, the board of examiners is established under an agreement between the Urban Municipal Administrators Association and the Rural Municipal Administrators Association which are constituted respectively under *The Urban Municipal Administrators Act (UMAA)* and *The Rural Municipal Administrators Act (RMAA)*.
113. It is an offence under those statutes for a person to hold themselves out as or to call themselves an administrator of a municipality without the required certification. (*UMAA* s. 18; *RMAA* s. 13)
114. These Associations may inquire into and discipline, including expelling or suspending, any member whom it finds guilty of misconduct, default or conduct unbecoming to a member in the performance of his professional duties. (*UMAA* s. 25; *RMAA* s. 18)
115. It is an unfortunate reality that administrators sometimes encounter improper pressures from their Councils or individual members of Council to act contrary to their duty. But it is no excuse for a municipal administrator to act contrary to their lawful duty because the Mayor or Council asked them to do so.
116. Ms. Smith’s performance as Administrator is of concern for a number of reasons.
117. The Administrator failed to provide access to public records. As noted above, many of the records requested under LAFOIP access requests were already available to the public under *The Northern Municipalities Act*. It was her duty to provide those records under the municipal statute, quite apart from LAFOIP. She failed to do so.
118. The Administrator repeatedly failed to return or take calls from the OIPC.
119. Although she has been employed as Village Administrator since 2011 and is a member of the Urban Municipal Administrators Association (UMAA), Martine Smith is not certified as a Register Municipal Administrator. She did make application on May 2, 2011 and appears to have completed the educational requirements, but not the office inspection component. It is the responsibility of the applicant to arrange that through UMAA.
120. Ms. Smith, when interviewed, said she was being mentored by an employee of the Ministry, but that employee had left. While Ms. Smith was under the impression someone

else in the Ministry might arrange for the office inspection to complete her certification, she took no steps to initiate that process herself.

121. As stated above, the Office Inspection conducted for this Inspection (not for UMAA) found numerous deficiencies in administrative practices tied to legislative requirements.
122. My review of the minutes of Council meetings showed that routine practices, such as preparation of minutes of meetings and monthly accounts for review and approval by Council at its next meeting, did not occur regularly. On a number of occasions, several months of minutes or accounts were approved at a meeting, indicating the Administration was catching up on a backlog. This is not a good practice, especially for approval of minutes, since any review by members will be impaired by faded memory of those past meeting.
123. The Commissioner, in Review Report 204-2018 at paragraph 26, raised the issue of conflict of interest on the part of the Administrator:

I also note that the access request involved documents related to the Administrator herself and thus, she was in a conflict of interest position when it came to this access request.
124. As will be discussed further below under the heading “Mortgages”, the documents involved in that access request were “mortgages” approved by the Village Council to residents for the purchase of ten residential properties. Under the terms of these “mortgages”, the owner was given \$26,000 as a forgivable loan, intended to provide the down-payment required by the commercial lender.
125. One of the mortgages was issued to the Administrator herself and another to the Administrator’s mother. As such, she was in a conflict of interest, having regard to NMA s. 127(2), and should have recused herself from any involvement in the approval of this mortgage. There is nothing in the Council minutes provided to me to show this occurred.
126. The Council minutes for April 4, 2017 also record that Council approved a lease at Gordon Lake for Martine Smith, who was present at the meeting: M-044-17. Again, there is nothing in the minutes to show any declaration of conflict of interest.
127. As will be discussed further under the heading “Questionable Payments”, the Administrator approved payment of questionable expense claims and other payments from Village accounts.
128. It is axiomatic that public funds may only be used for public purposes. The Administrator had express duties, under NMA clause 127(2)(k) to ensure that municipal funds were disbursed only in the manner and to those persons entitled to payment.
129. It is difficult to reconcile this clear duty with her approval of payment of Council expenses without proper explanation, the mortgages issued to individuals, [REDACTED], and the payments to the Saskatchewan [REDACTED]

party, for sponsorship of the Saskatchewan Party Youth Convention and for the holiday accommodation for Minister Harpauer and her partner.

130. The matters reviewed above raise a question about Ms. Smith's qualification to serve as municipal Administrator. This question arises both from the lack of required accreditation for and her performance in the position of Administrator.

Administrative & Financial Capacity

131. Mayor Natomagan referred to the lack of administrative capacity in explaining the failure to respond to freedom of information requests. This should be considered as explaining other administrative lapses.
132. But even if one accepts a lack of internal capacity, the Village has access to external resources to compensate. The Village has significant financial capacity and has expended substantial funds for professional services, as shown in the data from Financial Statements reproduced in an appendix to this Report. It is difficult, therefore, to excuse the failure to observe basic principles and practices of municipal administration.

Council

133. The Inspection revealed failures by Council to comply with laws regulating municipal governance, in addition to those identified above under the heading "Legislative Compliance". These other contraventions are reviewed below.
134. As set out below, some, but not all, members of Council enjoy high levels of remuneration. The actual total remuneration received by some members is difficult to determine, since some receive remuneration from different sources, all of which are related to their position on Council.
135. While the level of remuneration would normally be a matter for the electors, the disparity in pay between members of Council raised the question whether some are being paid for Council duties or other work.
136. There appear to be contraventions of the rules governing conflict of interest and municipal employment by the Mayor and other, but not all, members of Council. These contraventions can result in disqualification from office.
137. It may be observed that these rules are generally known and the members of this Council should have been aware of them. The Village Council authorized attendance at the annual conference of the Saskatchewan Urban Municipalities Association (SUMA) for all members of Council and the Administrator: November 21, 2013, M-176-13; October 30, 2015, M-085-15; and November 14, 2018, M-078-18. The Council also authorized similar attendance at the SUMA Municipal Leadership and Development workshop in 2017: August 24, 2017, M-125-17 (MLDP workshop). These SUMA conferences and workshops regularly feature sessions on municipal governance, including conflict of interest rules.

Mayor

138. Mike Natomagan was elected as Mayor in 2005 and has continued to hold office since then, being re-elected in 2006, 2009, 2012 and 2016.
139. As discussed above, the Mayor, designated as “head” under LAFOIP, is personally responsible for the Village’s compliance with the statute. For the reasons set out in this Report and the Review Reports of the SIPC, he repeatedly failed to perform that duty.
140. Further, Review Report 204-2018, raises the question of whether the Mayor complied with the conflict of interest provisions of *The Northern Municipalities Act*, having regard to the [REDACTED]
141. The conduct of the Mayor may be reviewed not only under the conflict of interest provisions, but also under duties of councillors and mayor prescribed in sections 106 and 107 of *The Northern Municipalities Act*, the *Code of Ethics* prescribed in section 107.1 and in s. 3 and Form A of *The Northern Municipalities Regulations*, and in the oath of office, prescribed in section 108 of the Act and in s. 3.1 and Part III of the *Regulations*.
142. As discussed below, the Mayor has and is receiving remuneration from both the Village and separately from its controlled corporations. The remuneration takes the form of a salary apparently based on working full-time, yet he has also claimed per diems for days working outside the Village. The total remuneration may be viewed as excessive, in that he may be the best paid Mayor in Saskatchewan.
143. The Mayor has made many claims for travel and expenses while travelling, ostensibly on Village business. In many cases, the expense claim lacked details. Some of the claims appear questionable.
144. NMA s. 162 requires members of Council to declare a conflict of interest, including disclosing the general nature of the conflict of interest, leaving the Council Chamber and taking no part in the decision-making process. These laws were amended in 2015, before which only the declaration and departure were required.
145. The Mayor would have been in a conflict of interest, [REDACTED] when a number of the mortgages were approved by Council in 2013 and 2014, [REDACTED]
[REDACTED]
146. NMA s. 160 requires members of council to file a Public Disclosure Statement within thirty days of election and before taking office and thereafter to update this Statement. It appears the Mayor did not file the required Public Disclosure Statement until February 27, 2018.
147. NMA s. 165(1)(e)(ii) provides that a member of council is disqualified from council if the member fails to comply with NMA s. 160 or 162, being the laws requiring Public Disclosure Statements and providing the conflict of interest rules.

148. Mayor Natomagan, when interviewed, did accept that some mistakes may have been made, saying “We may not be doing it the way things should be done.”

Council Remuneration

149. NMA s. 101 and 145(o) authorize Council to fix remuneration, benefits and reimbursement or allowance for expenses for members of Council.
150. NMA s.106 sets out general duties of councillors, including: “(a) to represent the public and to consider the well-being and interests of the municipality;” and “(e) to maintain the financial integrity of the municipality”. In deciding upon appropriate remuneration, members of Council will be guided by their sense of service and duty to the community.
151. The municipal statutes do not place any limit on remuneration for members of council and most councils are careful in deciding what is reasonable. Indeed, most councils likely err on the side of frugality.
152. It does not appear that the Village had adopted a remuneration bylaw before the adoption of Bylaw No. 01-2018, “*Council Remuneration Bylaw*”, on May 9, 2018, apparently prompted by Mr. Comstock’s letters about legislative compliance.
153. The *Council Remuneration Bylaw* references the *Village Policy and Procedure Manual* No. 05-2018. (The copy of the *Manual* provided shows first reading only on February 27, 2018, however, the Council minutes for May 9, 2018 record second and third readings for the Bylaw adopting the *Manual*: M-070-18 & M-071-18.)
154. The *Council Remuneration Bylaw* includes the following provisions:
3. The mayor shall be paid an annual remuneration in the following amount in the year indicated: up to and including \$150,000 for 2018.
 4. Each councillor shall be paid an annual remuneration for attending meetings as indicated in the **policy and procedural manual**:
 - 4.02.01 Regular and Special Meetings**
The mayor shall be paid \$150.00 and \$100.00 for each Councilor that attends a regular or special meeting of Council.
These figures are based on a 3 hour meeting with the amounts being prorated to the nearest half hour.
 - 4.02.01.1 Out of Town Meetings**
Council approval is required to attend any out of town meetings if any remuneration will be claimed.
Traveling time will also be considered and can be claimed at a rate of \$20.00 per hour to a maximum of \$200.00 per day including remuneration. \$100.00 will be allowed for travel days if traveling the day before or after the meeting date.
 - 4.02.02 Committees and Portfolios**
A written report on all committee meetings attended and portfolio work done along with the number of hours being

claimed at \$15.00 per hour, must be presented to Council at a regular or special meeting before any payments will be made.

5. One third of the remuneration established by this bylaw shall be deemed to be an allowance for expenses incidental to the discharge of the duties of the office.

155. The payments to members of Council for the years 2013 - 2018 are shown in the table below.

Year	Mayor Mike Natomagan	Conrad Misponas	Betty Ann [REDACTED] (Durocher)	Caroline Ratt-Misponas	Greg Ross
2013	\$113,160 - \$87,100 pay - \$26,060 reimbursed costs	\$2,700	\$32,186	\$4,200	\$71,100
2014	\$110,627 - \$82,377 pay - \$28,250 reimbursed costs	\$86,962 - \$65,049 pay - 21,913 reimbursed costs	\$2,515 - \$2,300 pay - \$215 reimbursed costs	\$600 - \$600 pay	\$89,718 - \$75,750 pay - \$13,968 reimbursed costs
2015	\$124,082 - \$90,670 pay - \$33,412 reimbursed costs	\$75,779 - \$60,700 pay - \$15,079 reimbursed costs	\$4,428 - \$2,400 pay - \$2,028 reimbursed costs	\$700 - \$700 pay	\$43,487 - \$36,600 pay - \$6,887 reimbursed costs
2016*	\$123,965 - \$91,000 pay - \$32,965 reimbursed costs	\$99,562 - \$67,300 pay - \$32,262 reimbursed costs	\$9,384 - \$2,800 pay - \$6,584 reimbursed costs	\$0	\$23,911 - \$17,900 pay - \$6,011 reimbursed costs
	Mayor Mike Natomagan	Conrad Misponas	Betty Ann [REDACTED] (Durocher)	Leona Lariviere	Vince Natomagan
2017	\$94,633 - \$76,900 pay - \$17,733 reimbursed costs	\$99,904 - \$66,100 pay - \$33,804 reimbursed costs	\$4,075 - \$2,500 pay - \$1,575 reimbursed costs	\$2,662 - \$2,400 pay - \$262 reimbursed costs	\$9,755 - \$3,400 pay - \$6,355 reimbursed costs
	Mayor Mike Natomagan	Conrad Misponas	Betty Ann Durocher	Leona Lariviere	Walter Smith
2018	\$ - \$61,399.84 pay - \$418.93 reimbursed receipts	\$ - \$2,700 pay - \$8,311.00 travel - \$121.45 reimbursed receipts	\$ - \$3,400 pay - \$2,327.45 travel	\$ - \$2,700 pay - \$356.90 travel	\$ - \$0.00 pay - \$10,324.40 travel - \$1,038.98 reimbursed receipts

156. There are a few cautions that should be made about the figures shown in the table.
157. The name of [REDACTED] appears in the Financial Statements, while the name of [REDACTED] appears in the Payroll records. This is the same person.
158. With the general election in 2016, Councillors Caroline Ratt-Misponas and Greg Ross were replaced by Leona Lariviere and Vince Natomagan. For 2016, Councillor Lariviere received \$4,023 (\$1,500 pay + \$2,523 reimbursed costs), while Councillor Natomagan received \$23,911 (\$17,900 + \$6,011).
159. The “remuneration” (pay) and “reimbursed costs” paid to members of Council is taken from the annual Financial Statements for 2013 - 2017.
160. Because there was no Financial Statement for 2018, I used the amounts found in the 2018 Payroll documents for 2018. I have not stated a total for 2018, because of concerns about the reliability of the data.
161. The amounts shown in the Payroll records do not always match those in the Financial Statements.
162. The payments stated in the Financial Reports and Payroll records does not seem to accord scale of payment approved in the 2018 Council Remuneration Bylaw and Policy and Procedure Manual, which appears to have been based on past practice, or at least not for all members of Council.
163. In this regard, the amount shown in the 2018 Payroll records for Mayor Natamogan, which is stated in the table above, is much lower than the “annual remuneration” of \$150,000 authorized by the *Council Remuneration Bylaw*.
164. Leaving those cautions aside, two things may be observed of the recorded remuneration as stated in the table above. First, there has been a large disparity in the amounts paid to different councillors. Second, the amounts paid to the Mayor and some of the councillors are high compared to other municipalities.
165. By comparison, the 2017 Public Accounts for the City of Regina (accessible online), Saskatchewan’s capital city, record the annual remuneration paid to the Mayor as \$111,739 and to members of Council as \$37,401 (not including additional salary for service as Deputy Mayor and per diems, none of which exceeded two thousand dollars). The expenses paid for the Mayor were under twenty thousand, while expenses for individual members of Council were all under ten thousand dollars. These expenses pay for travel and communications for the members.
166. The 2017 Public Accounts for the City of Saskatoon (also accessible online), Saskatchewan’s largest city by population, record the annual remuneration of the Mayor as \$123,379 and to members of Council as \$56,754 or \$56,994. The Mayor’s expenses were

just over ten thousand dollars, while the expense paid for members of Council ranged from \$4,099 to \$22, 685, with most under ten thousand dollars.

167. The Public Accounts for Regina and Saskatoon also show members of Council receiving uniform remuneration, as is the norm for Saskatchewan municipalities. The Village Financial Statements summarized above show a very different picture, with great variance in Council remuneration both amongst members of Council and from year to year. This calls into question the basis on which payment was made and the nature of the work actually performed.
168. The Financial Statements summarized above also record significant “reimbursed costs”.
169. The Payroll Statement summaries provided by the Village for this Inspection record as “Per Diems” the amounts shown in the Financial Statements as “Reimbursed Costs”. There is, of course, a considerable difference between actual reimbursement of expenses incurred and payment of a per diem stipend for working days.
170. The Payroll records show that members of Council receive both a Christmas bonus of \$200 and a Birthday gift of \$100, similar to Village employees.
171. The remuneration paid to some members of the Village Council has been generous, relative to that paid in most municipalities. The amounts paid raise the question of whether the members are being paid for their duties as members of Council or for work performed as Village employees, which is prohibited.
172. An article published in the *Saskatoon Star-Phoenix* on January 22, 2019 reported “Natomagan said he worked as an industrial mechanic in the mining industry prior to being elected mayor and ‘to match my dollar, what I was making at the mine site, that’s what I’ve been making.’” [as Mayor]. In his interview with the Inspector on February 4, 2019, Mayor Natomagan verified this report as accurate.
173. It appears that the Mayor and some members of Council thought they should be paid the equivalent of full-time employment. This is difficult to reconcile with the proper duties of a member of Council, which are primarily representative and legislative.
174. Members of municipal council usually take their responsibilities seriously and put in more hours than members of the public may realize or appreciate. But excepting the Mayors of the major cities, it is not considered a full-time job and is paid accordingly. Even in the case of the City Mayors, most Mayors are careful to keep their role separate from that of the City Manager who heads the administration.
175. In the case of Mayor Natomagan, there appear to have been many claims of per diems of \$200 for out of town travel, in addition to the remuneration: 99 in 2014; 152 in 2015; 139 in 2016; and 77 for an eight month period in 2017. If so, that would account for most of the amounts of “reimbursed costs”. But the payment of per diems then calls into question the rationale for such a high set remuneration. If it is intended to represent full-time pay,

why then pay additional per diems? From interviews with the Administrator and Mayor, the payment of per diems may have since been discontinued.

Council Employment

176. It appears that some members of the Village Council receive additional income, directly or indirectly, as compensation for work for the Village or related entities. In some cases, this is likely contrary to law.
177. NMA s. 128 provides that “No member of council is eligible to be appointed as an employee of the municipality or of any committee or controlled corporation of the municipality in which he or she serves as a member of council.”
178. NMA 165(1)(b) provides that “A member of council is disqualified from council if the member ... ceases to be eligible ... to hold office pursuant to ... any ... Act.”
179. This bar against municipal employment serves a number of purposes, including promoting professional administration by keeping the elected officials separate from the staff. The elected officials are intended to be governors, as members of a legislative council, not managers. This distinction appears to be compromised in the case of this Village.
180. One principle of municipal law is that where a Council or municipality cannot do something directly, then it cannot do it by indirect means. The law cannot be applied to thwart the law.
181. This principle would be relevant if the Village is using its ostensible authority to pay remuneration for service as a member of Council to actually pay for work which is properly that of an employee. That would be improper and a contravention of the clear bar in NMA s. 128.
182. It does appear that the Village, under the pretext of assigning Council duties, employed members of Council who then received additional compensation for that separate employment.
183. One Councillor apparently raised concerns about this practice in 2012. (The specific date of the Council meeting is unknown, since I was only provided with what appears to be the second page of the Council minutes.) That minute records the following:

M-35-12	i) Resource Person
HR	Conrad Misponas: That the Northern Village of Pinehouse will assign Greg Ross the duties of government relations officer as duty of council. CARRIED
	Notes: Caroline Ratt-Misponas expressed concern of conflict
	Reasons for the decision made:
	1) History of Work
	2) Connections

3) Arena/Housing/training

184. The employment of Council members in staff positions is confirmed by Payroll records, which appear to show payment for services normally provided by employees.
185. While some records may be open to debate as to the nature of the duties, others are explicit. For example, the 2013 Payroll records has separate listings for Conrad Misponas. One states gross pay of \$31,220, with multiple listings. Some of these listing would be for Council meetings, however, some are for “housing” including “Housing Project Supervisor”. Another 2013 Payroll record, titled “2013 Housing Project Labour”, states “wages” of \$20,185 for Conrad Misponas.
186. The Financial Statements for 2013 state Councillor Misponas’ remuneration as a Council member as only \$2,700. The reasonable conclusion is that he was both serving as a member of Council and working as a Village employee, something forbidden by law.
187. In the case of Councillor Misponas, the employment status is confirmed in the minutes of Council for August 21, 2014, which record the following:
- M-133-13 f. Grader Purchase
HR Greg Ross: That NVP hire Conrad Misponas as a Project Manager for Housing at a remuneration of \$27 per hour. CARRIED
188. The Council minutes for January 12, 2015 refer to a change in role for then Councillor Vince Natomagan.
- M-006-15 Vince Natomagan’s Roles & Responsibilities
HR Greg Ross: That the Northern Village of Pinehouse will change Vince Natomagan’s role to Collaboration Agreement Liaison. Rate of pay will stay the same with \$15,000 travel allowance. CARRIED
189. The Council minutes use the same designation for these motions as it does for other human resource matters – “HR”, presumably referring to Human Resources.
190. The Ministry, in a letter from the Assistant Deputy Minister dated November 30, 2017, asked for written confirmation that no member of Council was employed by any controlled corporation. The Village, in a letter signed by the Mayor and Administrator dated February 27, 2018, appears to have responded with the statement “Resolved as declared in the public disclosure statements attached.”
191. Councillor Walter Smith resigned on July 14, 2018, reportedly to maintain his employment with Pinehouse Business North. If so, this should have reminded other members of Council of the bar against such dual employment.
192. Councillor Misponas, in his Public Disclosure Statement dated February 27, 2018, lists as employers Pinehouse Housing Corp., through his position as Chairman, and Pinehouse Business North, through his position as Director.

193. Conrad Misponas has been on the Village Council since 2010 and also serves as Deputy Mayor. The Village records show him paid for working as “Housing Project Supervisor” in 2013 and since May 2014 as General Manager of Pinehouse Housing Corporation.
194. Conrad Misponas shows up on three separate sheets in the 2018 Payroll records: “Per Diems” with gross pay of \$14,100, additional travel of \$33,295.91, and reimbursement of \$507.68; “Housing Payroll” with gross pay of \$52,000, reimbursement of \$507.68 and travel of \$33,295.91; and “Council Member” with gross pay of \$2,700, travel of \$8,190.13 and receipts of \$121.45. The “Description” on the “Per Diem” sheet states the reason for many of the per diem payments involving travel as “picking up supplies”.
195. All of this would indicate that Councillor Misponas is paid both for serving as a member of Council and working as an employee of the Village and Pinehouse Housing Corp. If so, that would contravene the statutory bar against employment.
196. Pinehouse Housing Corporation on December 8, 2017 approved “annual remuneration at \$80,000 as well as travel and meals” for Councillor Misponas in his position as Chair of the Board of that corporation: M-174-17 & M-175-17. This annual remuneration would be in addition to his Council remuneration.
197. Neither the 2016 Financial Statements nor the 2017 Annual Report for Pinehouse Housing Corp. provide any information on Board or staff compensation.
198. Mike Natomagan, in his Public Disclosure Statement, lists as employers Pinehouse Business North in his position as Chairman and the Northern Village of Pinehouse in his position as Mayor.
199. Mike Natomagan appears to receive compensation from Pinehouse Business North (PBN) for his position as “President”, in addition to compensation as a Board member.
200. PBN directors are paid a per diem for attending Board meetings. The Financial Statements for 2014 – 2016 show the following amount for total “Board Remuneration and Travel” (This item appears in two places in the Financial Statements, under “Expenses” and under “Related Party Transactions”. The numbers are different in these two places, so each is shown in that order.)

PBNLP Financial Statements	2013	2014	2015	2016
Board Remuneration and Travel	\$39,052	\$58,499	\$35,596	\$51,897
		\$53,647	\$34,769	\$49,966

201. Whichever is correct, these amounts are too low to include the remuneration paid to Mike Natomagan as “President”.
202. The remuneration paid to Mike Natomagan as President is presumably included in the amounts shown for “Management salaries and benefits”. If so, this would again support the conclusion that Mayor Natomagan is an employee of a controlled corporation of the Village, in contravention of NMA s. 128.

203. A PBN document dated August 27, 2017 titled “President’s Compensation” states that Mike Natomagan was paid \$63,000 in 2017, comprising \$50,000 salary, \$6,000 vacation pay and \$7,000 directors fees. He had received an additional \$10,000 bonus in 2016, “a similar amount paid to other members of the senior management team.”
204. Pinehouse Business North on August 27, 2017 approved compensation for Mike Natomagan as President of \$86,500 effective October 1, 2017. This compensation is in addition to the benefits package and a monthly allowance for travel expenses. The report proposing this compensation package expressly recognized that the \$86,500 was based on working half-time, stating: “Mike spends approximately 50% of his time in his role as Mayor of the Village with the balance on PBN matters.”; and “It is expected that the President will expend approximately 20 hours per week on PBN matters.”
205. Again, this remuneration from Pinehouse Business North is in addition to the remuneration paid by the Village.

Conflicts of Interest

206. Part VII “Conflict of Interest of Members of Council” further prohibits members of Council from involvement in decisions in which they or a closely connected person has a private interest. NMA s. 159(a) defines a “closely connected person” to include “family or employer of a member of council”. NMA 159.1(s) provides that “A financial interest ... always constitutes a conflict of interest.”
207. *The Northern Municipalities Act* was amended in 2015 to add section 127.1, which expressly applies conflict of interest rules to municipal employees. While new to the Act, this provision is a codification of the common law, which continues to apply.

Ottawa (City) v. Letourneau, 2005 CanLII 1407, at paragraphs 160 – 167 (ON SC).

Fiduciary Duty:

[160] Letourneau owed a fiduciary duty to the municipal corporation as he was an “officer” of the municipal corporation according to Part VI of the former *Municipal Act*. A municipal officer is one who holds a permanent position of responsibility with definite rights and duties prescribed by statute or by-law. As distinguished from a servant employed by a municipality, an officer has, in the performance of his or her duties, some discretionary authority and has a responsibility to perform vital duties of the corporation; a mere servant has only a duty to obey orders.

...

[167] There is a very high standard on public officials to conduct official business in an irreproachable manner. Conflicts of interest are serious matters of principle in the conduct of municipal affairs. Consequently, the requirements of the law must be observed both as to the particular matter and also for reasons of public confidence in the administration of municipal government. The legal standard is the objective standard of a reasonable person in the place and circumstances of the respondent.

(Caputo, J.)

208. It should be emphasized that it is not wrong for a person who is a municipal official or is closely related to a member of Council to benefit from a decision of Council. The relationship to a member of Council does not disentitle anyone from the same opportunities and consideration as any other citizen. What the law requires is that the municipal official or member of Council involved in that relationship take no part in the decision and publicly disclose the conflict of interest to the members of Council who will make the decision.
209. A declaration of a conflict of interest is not an admission of wrongdoing. Rather, it is doing the right thing and protects everyone's reputation.
210. The Public Disclosure Statement for Mayor Natomagan lists Lot 14, Block 13 as property he owns with "Rose Smith". [REDACTED]
211. Rosalena (Rose) Smith is the principal of the Minahik Elementary School in Pinehouse and a member of the Board of the Saskatchewan Health Authority. She is also the domestic partner of Mike Natomagan and mother of Martine Smith. [REDACTED]
212. [REDACTED]
213. There may be other times when a conflict of interest should have been declared.
214. The Council minutes for April 1, 2015 show that Mayor Natomagan was present when Council appointed Rosalena Smith to do a proposal for the Elders' Program: M-058-15. The Mayor was also present when Council appointed Rosalena Smith to the Local Government Committee: M-065-18. It is not known whether the nature of these decisions conferred any benefit which would constitute a conflict of interest, but the minutes record that no conflict was declared.
215. The Council minutes for April 4, 2017 record approval for Martine Smith to acquire a lease at Gordon Lake: M-044-17. Again, there is no declaration of any conflict in the minutes.
216. I conclude from the record reviewed that Mayor Natomagan failed to declare conflicts of interests as was required by the legislation.
217. *The Northern Municipalities Act* also requires members of Council to file and maintain a current Public Disclosure Statement, showing their employment and potential conflicts of interest. The January 17, 2018 covering letter for the 2016 Financial Statement from Davies & Drury included the following comment:

We also noted that not all members of Council had signed their Public Disclosure Statement. This is required by the Government of Saskatchewan, so all Council members should have this form signed as soon as possible.

218. I was provided with Public Disclosure Statements for the current members of Council. It appears that most of these Statements were provided after Assistant Deputy Minister Keith Comstock wrote a letter dated November 30, 2017 to the Mayor and Council pointing out several failures of the Council to comply with requirements of *The Northern Municipalities Act*, including failure to file public disclosure statements.
219. The Public Disclosure Statement for Betty Ann Durocher and Leona M. Lariviere are dated July 5, 2017. Ms. Durocher's Statement is signed, but is otherwise blank. The Statements for Conrad Misponas, Mike Natomagan and Walter Smith are dated February 27, 2018.
220. I would conclude from this that the members of this Council had not previously filed the required Public Disclosure Statements after their election nor updated them periodically.
221. NMA s. 165(1)(e)(ii) provides that a members of council who contravenes the provisions requiring public disclosure statements or conflict of interest declarations are disqualified from council. NMA 166 requires the resignation of members disqualified from council.

Finances

222. This Inspection was not a financial audit. Even so, a review of the subject matter of the FOI requests identified questionable payments, including Council expense claims, political donations and mortgages. Before reviewing those questionable payments, I will review the financial position of the Village, as shown in the Financial Statements I reviewed.

Village Finances

223. NMA s. 207 requires municipalities to prepare financial statements for the preceding year by June 15 of each year. These Financial Statements are public documents and must be submitted to the Minister by July 1. I was provided with Financial Statements for the Village for 2013 – 2017 and have summarized some of the information in an appendix to this Report.
224. The Financial Statements show that while the Village has relatively low revenues in the form of property taxes, it has significant other revenues and is financially well positioned.
225. The Government of Saskatchewan provides significant funding to the Village in various forms. As such, the provincial government has a compelling interest in financial accountability over Village expenditures, in addition to its constitutional authority and statutory responsibility.

Debt Limits

226. NMA s. 207(2) requires that the Financial Statements include the debt limit of the municipality and the amount of the debt of the municipality.
227. NMA s. 183-186 limit municipal borrowing, requiring approval of the Saskatchewan Municipal Board for any borrowing beyond the debt limit. The debt limit is set at the amount of total annual revenues for the preceding year.
228. The requirement for Municipal Board approval is of long-standing and arose out of municipal bankruptcies which occurred during the Great Depression in the 1930s. This financial supervision has helped to maintain the financial integrity and credit-worthiness of Saskatchewan municipal corporations.
229. The Saskatchewan Municipal Board reported that it had not received any application for borrowing from the Village of Pinehouse since April 8, 2015, when it approved borrowing of \$615,754 repayable over 7 years for construction of the Village arena. The Village's debt limit stated in the Financial Statements for 2014 was \$631,531
230. The Financial Statements record the debt limits and reported debt obligations. These appear to show that the Village exceeded its debt limit in 2015, based on principal owed only and excluding interest.

	2013	2014	2015	2016	2017
Debt Limit	\$631,531	\$631,531	\$565,339	\$655,469	\$655,361
Reported Long-term Debt (principal without interest)	\$164,764 Note 9	\$249,511 Note 9	\$568,108 Note 12	\$539,480 Note 10	\$445,978 Note 9

231. At the same time, other documents indicate significant debt held by controlled corporations of the Village.
232. The 2015 Financial Statements for Pinehouse Business North LP, in note 14 "Subsequent event", states "The Partnership obtained \$2,689,805 of long-term debt to support the purchase" of automotive and heavy equipment. The 2016 Financial Statements, at note 6, show \$1,776,020 in long-term debt.
233. The 2016 Financial Statement for Pinehouse Housing Corp., at note 6, shows long-term debt of \$721,982 in a loan payable to Saskatchewan Housing Corporation. The 2017 Annual Report refers to other loans from Saskatchewan Housing Corporation: \$1,510,600 as a 10-year forgivable loan for construction of Judille's Place; \$1,101,500 forgivable loan for Hilltop Triplexes; and \$380,000 from Clarence Campeau Development Fund for Rental Triplex.

Financial Statements

234. Financial Statements were obtained from: the Village for 2013 – 2017; Pinehouse Business North LP for 2014 – 2016; and Pinehouse Housing Corp. for 2016 only.
235. Leaving aside the absence of Financial Statements for some years for the controlled corporations, the separate Financial Statements make it difficult to get a clear picture of the Village's financial position.
236. The Village Council appointed different auditors for the Village and its controlled corporations: Davies & Drury CPA for the Village; and Virtus Group LLP for the controlled corporations. The Ministry of Government Relations, in correspondence to the Village dated 31 May 2018, raised this as a concern since the auditor should be fully aware of all of the financial dealings of the Village and its controlled corporations, noting a number of apparent discrepancies between the financial reports of the Village and its controlled corporations. AJ Felix of PBN argued in response that the use of the two independent auditor may provide better scrutiny by having a second set of eyes on common aspects.

Mortgages

237. The Commissioner, in his Review Report 104-2018 at paragraphs 19 and 20, explained the significance of the access request about mortgages issued by the Village:

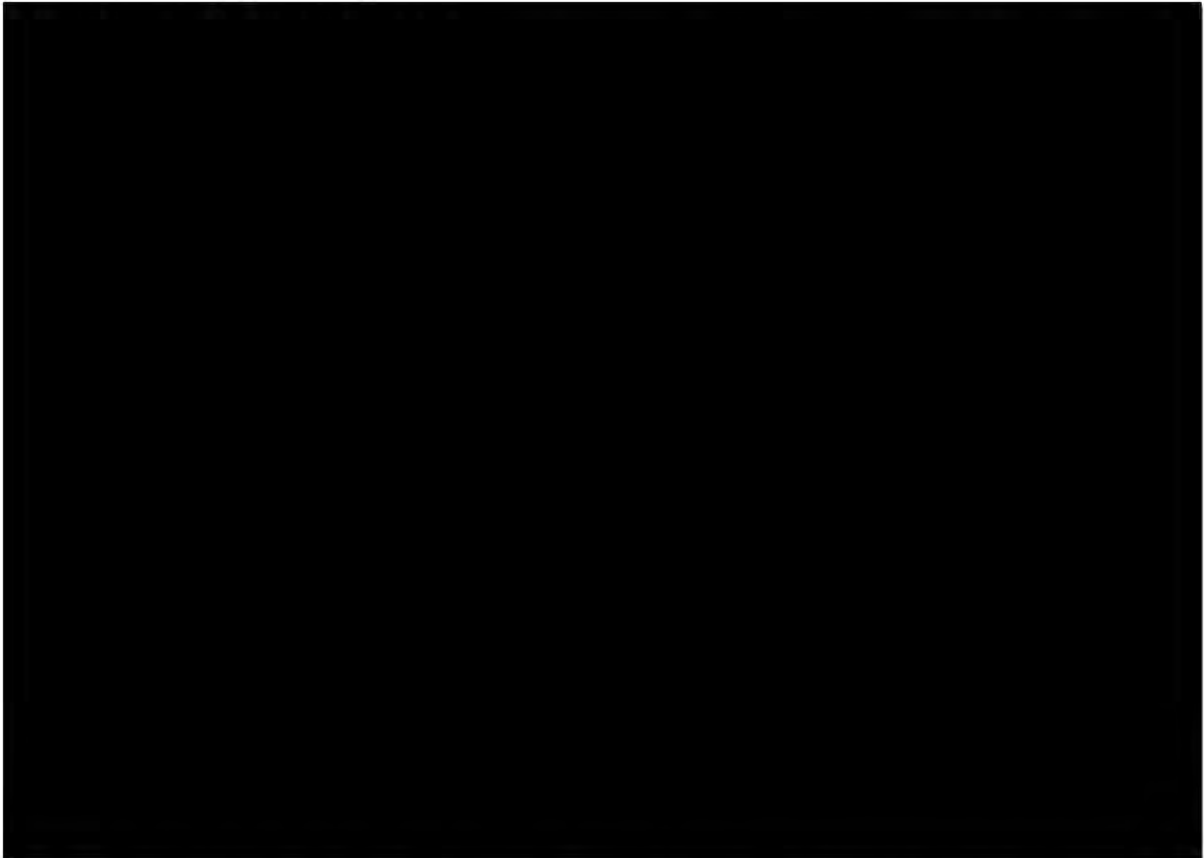
[19] In response to the release of the mortgages, the Applicant advised my office that the remaining records he requested were important because of the possibility of a conflict of interest. According to the Applicant, the Mayor's common-law wife received a mortgage from the Village. Further, the Mayor's common-law wife is also the Village Administrator's mother. In addition, the Applicant asserted that the Mayor's son and half-brother also received mortgages. Finally, the Village Administrator also received a mortgage. The Applicant wishes to confirm that the mortgages issued by the Village administration were approved in Council and that the Mayor and the Village Administrator recused themselves from the debate and vote in council.

[20] I agree with the Applicant that in such a situation, it is extremely important that due process took place and was appropriately documented. If the mortgages were properly issued with no conflict of interest, it is not clear why the Village would not want to demonstrate that by providing the council minutes and authorizations requested by the Applicant.

[21] Subsection 111(2)(a) of The Municipalities Act provides that the Administrator shall ensure that all minutes of council meetings are recorded. Further, subsection 116(2)(b) provides that minutes must be preserved permanently. Finally, subsection 117(1)(d) provides that any person is entitled at any time during regular business hours to inspect the minutes of council after they have been approved by council.

238. The Village granted ten mortgages over 2013, 2104 and 2015.

239. While I was unable to find specific Council approval for the mortgages, the Administrator directed me to the following Council motions related to the properties which for which mortgages were granted.



240. The Council motions on May 16, 2012 approved the sale of those lots "for \$1". The Council, at its meeting of October 10, 2012, "amended M94-M98 to read \$10,000 per lot instead of \$1."
241. The Council motions on September 18, 2013 provided "that NVP will build on" the referenced lot.
242. The mortgages provided forgivable loans of \$26,000, intended to cover the 20% down payment required by the commercial lender for the purchase of residential properties. The loans were interest-free and would be forgiven at a rate of 10%/year provided the recipient continued to reside in the new home for which the mortgage was granted.
243. The basis for providing assistance to new home buyers lies in an economic reality that the cost of building a new home in a northern community may be more than its market value. In other words, it may cost more to build than could be obtained in the sale of the completed building and land.
244. The concept of forgivable loans for purchase of housing does find precedent in earlier programs of the Saskatchewan Housing Corporation. The forgivable loan, with a portion written off for each year of ownership, may both encourage home purchases and

discourage short-term speculators. It can also provide the down-payment which a prudent mortgage lender (mortgagee) will require of the home buyer-borrower (mortgagor).

245. NMA 204 and 205 restrict municipal lending and guarantees. Loans and guarantees may only be made to a controlled corporation and must be authorized by bylaw.

246. NMA s. 145(e) bars Council from delegating its power to lend money or guarantee the repayment of a loan pursuant to sections 183 – 205.

247. On the face of it then, the issuance of mortgages would appear to be beyond the jurisdiction of Council.

248. Administrator Martine Smith said the Village had relied upon outside financial and legal advisors. This would be relevant to the issue of whether Council had acted inadvertently in good faith reliance on those advisors, but would not be relevant to the jurisdiction of Council, which must find foundation in the legislation. It should also be observed that the Ministry, through its municipal advisors, provides free and easy access to reliable advice from experienced municipal practitioners.

249. There is also an issue with some of the recipients of these “mortgages”.

250. [REDACTED]

251. [REDACTED]

252. [REDACTED]

253. I was unable to find any declaration of any conflict of interest made by Mayor Natomagan or Martine Smith in the approval of the sale or mortgage.

254. [REDACTED]

Questionable Payments

255. It is axiomatic that public funds may only be used for public purposes. Municipal councils do not have free rein over municipal spending and may only authorize the expenditure of municipal funds for proper municipal purposes.

256. NMA s. 179 provides that “A municipality may only use municipal funds for municipal purposes and may only make an expenditure that is included in its budget or otherwise authorized by council, for an emergency, or legally required to be paid.”

257. Section 214 of *The Northern Municipalities Act, 2010* makes members of Council personally liable if they knowingly make an expenditure which is not authorized by sections 179.
258. NMA s. 127(2)(k) requires the Administrator to “ensure the funds of the municipality are disbursed only in the manner and to those persons that are directed by law or by the bylaws or resolutions of the council.”
259. NMA s. 127(2)(f) requires the Administrator to advise Council of its legislative responsibilities, which would include these financial rules.
260. There appear to be significant concerns with the financial administration of the Village.
261. The January 17, 2018 covering letter for the 2016 Financial Statement from Davies & Drury included the following comment:
- During our audit we noted that there were a couple of bills that were paid that did not have an invoice or other support. These matters were discussed with Martine. Council should ensure that no amounts are paid without a proper invoice or support being written approval by Council for the expenditure.
262. The September 28, 2018 covering letter for the 2017 Financial Statement from Davies & Drury included the following comment:
- During our audit, we noted several items that were discussed with members of Council during field work in July that we are including in this letter. There needs to be better support and approval from Council and the office for payment of bills and invoices. We noted several invoices and other payments that were paid that did not have an invoice or other support. Also, a list of payments to be paid should be submitted to Council for their regular meetings, the list should be approved at the meeting with a description and a signed copy of the list attached to the minutes. Council should ensure that no amounts, other than “legislated” payments such as payroll, utilities, etc., are paid without a proper invoice or support and approval by Council for the expenditure.
263. As noted above, some members of Council receive significant payment of “reimbursed costs”. From my admittedly cursory scan of expense claim forms submitted by Mayor Natomagan, those with supporting details seemed to be the exception to the rule.
264. In an interview, Ms. Smith said that while she did review expense claims submitted by other members of Council, she did not do so for the Mayor’s claims which were processed as submitted. She said this had been a long-standing practice and did not know the reason, suggesting it might be because the Mayor’s travel was approved by Council. Mayor Natomagan, who was separately interviewed, when asked about this lack of review, appeared surprised and said he was not aware his claims were treated differently from other members of Council.

Political Contributions

265. Review Report 040-2016 concerned alleged payment of municipal funds to sponsor the Saskatchewan Party Youth Convention in November 2015. This would be an inherently partisan gathering.
266. One may reasonably presume that the citizens of any municipality include a range of political opinion. It is not a proper purpose of municipal Council to use municipal funds to support any political party.
267. There were other direct and indirect payments which appear to be attempts to gain political influence and perhaps protection from the governing party.
268. The Saskatchewan Party recorded contributions from the Northern Village of Pinehouse of \$384 in 2013, \$320 in 2014, \$495.84 in 2015, \$1,600 in 2016 (two contributions of \$800 each from the Northern Village of Pinehouse and Pinehouse Lake Northern Village Council) and \$800 in 2017: www.elections.sk.ca/candidates-political-parties/electoral-finance/registered-political-partys.
269. The Mayor and Administrator were unsure as to why these payments were made. They thought some payments may have been for the purchase of a table at fund-raising dinners for Regina MLA Laura Ross, who is the sister-in-law of former Councillor Greg Ross. They recalled attending such dinners.
270. At the time these political contributions were made, the Village had been subject to critical reports by the OIPC and was the subject of further reviews.
271. It is, in my view, entirely improper for a municipality to provide financial support to any political party. What makes this even more objectionable is that this municipality receives substantial funds from and is subject to oversight by the Government of Saskatchewan.
272. Municipalities can and do lobby the provincial government, both directly and through municipal associations. The Village is a member of New North and SUMA (Saskatchewan Urban Municipality Association), which both lobby and are consulted by and work with the Government to support municipalities. These methods are open, legitimate and effective.

Harpauer Accommodation Payments

273. Thia James, a reporter with Post Media, reported in December 2018 that the Village paid for the cost of hotel accommodation on 12 – 13 August 2016 and again in August 2018 at Pinehouse. The 2016 accommodation was occupied by then Minister Donna Harpauer and her partner with payment of \$319. The 2018 accommodation was for her partner only with payment of \$449.50.
274. The bill was reportedly tendered by Councillor Conrad Misponas, who Ms. Harpauer identified as a personal friend, and paid by the Village. Ms. Harpauer reportedly said she was not aware that Mr. Misponas was a Village Councillor.

275. The owner of the accommodation property told me that the booking was made by the Village and the bill submitted to and paid by the Village.
276. Minister Harpauer was Minister of Social Services and Minister responsible for Saskatchewan Housing Corporation and Status of Women until 23 August 2016, when she became Minister of Government Relations. She continued in that role until another cabinet shuffle announced on 30 August 2017 when she became Minister of Finance in which role she continues.
277. Ms. Harpauer was, at the time of the 2016 visit to Pinehouse, Minister responsible for Saskatchewan Housing Corporation.
278. Conrad Misponas would at the relevant times have been both a member of Council and Deputy Mayor. He was also actively involved in Village housing, which would involve dealing with Saskatchewan Housing Corporation. He was hired by Council on August 21, 2012 as Project Manager for Housing: M-133-13. Council appointed him on September 28, 2016 as a Director of Pinehouse Housing Corp.: M-139-16. The Board of Directors of Pinehouse Business Corporation appointed him as Chair on December 8, 2017: M-174-17.
279. The Council minutes for March 5, 2015, with the heading “SHC Support Letter”, records that the Village “requests 15 homes be transferred to Pinehouse from Saskatchewan Housing Corporation.”
280. The Financial Statements for Pinehouse Housing Corporation, a controlled corporation of the Village, for the year ending December 31, 2016, at page 10, show a loan of \$721,982 payable to Saskatchewan Housing Corporation. These Financial Statements include Conrad Misponas’ signature as “Management representative” under “Management’s Responsibility For Financial Statements”.
281. Administrator Martine Smith defended the payment of the accommodation expenses as “relationship building”. She also confirmed that Minister Harpauer repaid the Village for the cost of the accommodation.
282. Mayor Natomagan also defended these payments, saying the Village welcomed visits from government officials and had invited other MLAs to visit “to see how we’re living and what we’re doing and the condition of our community”. He also said the Village Housing was working with Minister Harpauer and Saskatchewan Housing Corporation, which provided funding for housing projects.
283. Hon. Ronald Barclay, Q.C., Saskatchewan Conflict of Interest Commissioner, accepted Minister Harpauer’s explanation that she did not know the Village paid the hotel bills, but added that “the actions of the village in paying your accommodation expenses and those of your partner was highly inappropriate.” (*Regina Leader Post*, 18 December 2018 at A-4 and 19 December 2018 at A-8.) I agree with this characterization.

284. Leaving aside the question of its authority to do so, I was unable to find any motion in the Council minutes authorizing the political contributions or payment of accommodation for Ms. Harpauer and her partner.
285. The political contributions and payment of a Minister's personal expenses may reasonably be viewed as improper attempts by those in control of the Village to ingratiate themselves with the Saskatchewan Party and through it the Government of Saskatchewan. It is my opinion that these payments were unlawful payments of public funds for an improper purpose.
286. While beyond the scope of this Inspection, I have no reason to believe that these payments did influence the Government or its officials. On the contrary, the Minister's Order of this Inspection would suggest the payments had no such effect.

Collaboration Agreement

287. Cameco (Canadian Mining and Energy Company) is the world's largest publicly traded uranium mining company and the second largest producer of uranium. Cameco operates the Cigar Lake mine in northern Saskatchewan. The highway to its former Key Lake mine passes through Pinehouse (233 km. north).
288. Orano Canada Ltd. (formerly Areva) operates the McLean Lake Mill which processes uranium from the Cigar Lake mine and is a partner in the McArthur Lake mine and Key Lake mill.
289. It is not unusual for resource companies to support community development in northern communities. These companies may employ many of the residents, so have an interest in promoting the health of these communities.
290. The Village and Cameco and Orano entered into the Pinehouse Collaboration Agreement in 2012 under which the Village receives significant funding from Cameco and Orano. Mayor Mike Natomagan is a member of the Joint Implementation Committee which directs the use of those funds.
291. This Collaboration Agreement is not unique to the Village of Pinehouse. Similar agreements have been made with other northern communities, including Athabaska, English River and Lac La Ronge.
292. Under the terms of the Collaboration Agreement, the Village Council committed to support and not oppose Cameco and Areva in their business ventures, including exploration projects. In return, Cameco and Areva agreed to provide significant funding for community projects, administered through a Joint Implementation Committee, and provide business and training opportunities to the Village.
293. The amount of funding is dependent upon production, so will vary from year to year.
294. While the Collaboration Agreement provides that members of the Joint Implementation Committee are unpaid volunteers, they do receive payment of per diems and expenses are

paid for attending meeting. They are also occasionally invited to conferences with expenses paid by the sponsoring companies. This can raise questions about influencing public officials, similar to other commercially sponsored trips.

295. The use of these funds has been questioned. In a statement released on February 3, 2019, D'Arcy Hande wrote "Many questions have arisen since 2010 about the secret dealings the Village Council has had with the nuclear and uranium industry, and how those deals might negatively impact the residents there. Millions of dollars of industry money have flowed into Village coffers. Where has it gone? From the very beginning, the Mayor and other Village officials have refused to be transparent. That secrecy raises our suspicions even more."
296. There is a dis-connect between these suspicions and the stated intent of the Collaboration Agreement.

Community Investment

The community investment pillar commits Cameco and AREVA to make regular contributions to Pinehouse. ...

Payments made under this pillar will be made directly to a community trust which is to be established by Pinehouse shortly after signing. The trust will be administered by a professional and independent trustee and administered in a fully transparent manner. ...

No Pinehouse residents (including any Village or Kineepik government officials) will receive any remuneration for services provided in support of the trust. Pinehouse residents will serve on the trust administration board in a voluntary basis to ensure that funds go directly towards community development projects and initiatives designed to improve the quality of life in Pinehouse.

(Collaboration Agreement, at page 4 of Schedule G "Executive Summary")

297. This Inspection saw evidence of the good use of these funds for the benefit of the community, such as the multi-plex Arena building and employment and training opportunities for residents. Some of the suspicion may result from the failure of the Village to respond to requests for information.
298. The Collaboration Agreement, in Schedule E "Business Development Pillar", expressly recognizes Pinehouse Business North Limited Partnership as an "Eligible Business in connection with contracting opportunities with Cameco" and as a "Northern Preferred Supplier". This appears to have been very beneficial to Pinehouse Business North.
299. The 2017 Report of the Pinehouse Collaboration Agreement Joint Implementation Committee, titled "Partnering for Prosperity", under the heading "2017 Financial Highlights", states there was \$18.1 million provided under the Agreement in 2017: \$9.6 million in Business Development, with \$4 million to PBN (Pinehouse Business North) and \$5.6 to PBN-EMW (EMW Industrial); \$0.6 million in Community Investment; and \$7.9 million in Workforce Development.

300. There are, however, provisions of this Agreement that are legally objectionable.
301. Article 5, titled “Explicit Support for Operations”, requires the Village to support and precludes it opposing projects of Cameco and Areva, including public projects which would benefit those businesses.
302. This is likely objectionable on two grounds: the rule against fettering discretion; and laws against buying votes.
303. One of the tenets of municipal law is that Council cannot fetter its own discretion, which is codified in NMA s. 7. In other words, it cannot agree to limit its legislative discretion.

Pacific National Investments v. Victoria (City) [#1], (2000) SCC 64, [2000] 2 S.C.R. 919

[56] ... Municipal legislative powers are an integral part of governance that municipalities cannot give up. Municipal councils cannot fetter the discretion of successor councils to engage in the legislative process without undue influences.

(per: LeBel, J. for the majority)

304. This also comports with the democratic obligation and duty of procedural fairness on the part of municipal council to decide issues that come before it on the basis of its judgment of the public interest, usually after hearing from affected parties and debating the issue in public session. In other words, it is improper for members of Council to make up their mind or decide before the issue comes before Council for consideration and debate.
305. Individual members of Council have a common law duty to keep an open mind on issues that come before Council, with the test being “amenable to persuasion”.
306. Both provincial and federal laws are concerned with preserving the integrity of public decision-making. The *Criminal Code* of Canada, in section 123, provides the offence of “municipal corruption” for anyone who offers or gives a benefit to a municipal official or for a municipal official who seeks or accepts a benefit in exchange for their vote or support.
307. This agreement could be viewed as buying support from elected officials, who may be dissuaded from taking any contrary position for fear of losing the promised funding for their communities.
308. It does appear that the two members of Council appointed to the Joint Implementation Committee (JIC) would receive some remuneration and benefits from Cameco for that work.
309. The 2017 Report of the Pinehouse Collaboration Agreement Committee, titled “Partnering for Prosperity”, showed Mike Natomagan as a member of the JIC and Vince Natomagan as a member of the Joint Implementation Engagement Sub-Committee (JIES). The Council minutes of September 19, 2017 record the appointment of Walter Smith, elected in the by-election required after Vince Natomagan’s resignation, as “EQC rep”, likely referring to the “Environmental Quality Committee”: M-138-17

310. Article 4.1(f) of the Collaboration Agreement provides that “Cameco will be responsible for the reasonable costs associated with Pinehouse’s participation in the JIC.” Schedule F, “Community Engagement and Environmental Stewardship Pillar”, has several provisions referring to payments by Cameco:

10. Cameco will continue to invite and cover the reasonable costs of a minimum of three Residents to attend the Cameco Leaders’ Roundtable.

...

15. The sitting Pinehouse representative on the Northern Saskatchewan Environmental Quality Committee will always be one of the two (2) Pinehouse members of the JIES.

...

Costs

25. Cameco will pay an honorarium to JIES members in an amount of \$250 per JIES meeting, as adjusted in accordance with CPI (and \$250 per Community Meeting, as adjusted in accordance with CPI.)

...

Capacity Building

28. Once each year, during the term of this Agreement, Cameco will cover actual invoiced costs up to \$2,000, as adjusted in accordance with CPI, of one (1) Pinehouse member of JIES attending a professional development training initiative, ...

311. These provisions seem to contradict the statement in the Executive Summary that “No Pinehouse residents (including any Village or Kineepik government officials) will receive any remuneration for services provided in support of the trust.”

312. Article 11.6 of the Collaboration Agreement, titled “Confidentiality”, provides that the parties will keep the terms of the Agreement confidential “Unless required by any laws”.

313. NMA s. 133(1)(a) provides that “Any person is entitled at any time during regular business hours to inspect and obtain copies of any contract approved by the council”. This public right pre-dates LAFOIP, so the question of exemptions from rights of access are inapplicable.

314. It is a principle of public law that a municipality cannot contract out of the governing statute law.

315. Those who do contract with municipalities are presumed to know that municipal corporations are bound by certain rules, which include the right of public access to municipal contracts.

1298417 Ontario Ltd. v. Lakeshore (Town), 2014 ONCA 802, at paragraph 88

A person contracting with a municipality is bound at its peril to take notice of the limits within which the council has the power to contract.

(per: Epstein, J.A. in a concurring judgment)

Pacific National Investments v. Victoria (City) [#1], (2000) SCC 64, [2000] 2 S.C.R. 919, at 958

[68] First, the result is not as harsh as it might initially seem because those in the business know that dealing with a municipal government is different from dealing with a purely private corporation. ... Developers choose to undertake those risks.

(per: LeBel, J. for the majority)

...

[89] It is accepted that the City cannot be held liable for breaching a term that is *ultra vires*. An *ultra vires* term can be defined as a term entered into by statutory bodies outside the limits of authority granted or established by statute.

(per: Bastrache, J., dissenting)

316. While the statute would override the contractual term, municipal corporations should take care not to enter into contracts containing provisions that conflict with the public law.
317. Finally, in making these observations, I again recognize that funding from the Collaboration Agreement has been put to good use for the benefit of the community.

Controlled Corporations

318. The municipal statutes allow municipalities to establish controlled corporations, either individually or with other municipalities. These statutory corporations may be useful in focusing efforts on matters of municipal jurisdiction.
319. NMA 56 authorizes the creation of “municipal development corporations”. NMA 56(3) prescribes the objects and purposes for which a municipal development corporation may be established, including promoting economic and social development.
320. The municipality is the owner of the controlled corporation and ultimately responsible for its debts and other obligations and assets. (I will use the term “controlled corporation” which is found in the definition provisions of the Act at NMA s. 2(1)(i). In doing so, I recognize that RMA s. 56 provides for a specific form of a controlled corporation.)
321. NMA s. 204 and 205 allow the municipality to lend or guarantee loans to its controlled corporations, an exception to the general rule against lending municipal funds.
322. NMA s. 209 and 210 require controlled corporations to prepare annual financial statements. NMA 210 requires Council to appoint an auditor for any controlled corporation, which audit must be reported to Council and the Minister.

Pinehouse Business North

323. The Village established Pinehouse Business North Development Corporation in 1994 under *The Business Corporations Act*. It was later struck off the Corporate Registry and is inactive.

324. The Village established Pinehouse Business North Development Inc. (“PBN”) in 1998 which continues as a business corporation under *The Business Corporations Act*. It is described as “created to provide economic development activities in the Village and surrounding area. In 2012 the operations were transferred to a limited partnership, with the corporation only holding an interest in the partnership.” It is essentially a shell company.
325. A search of the Corporate Registry on February 7, 2019 showed Northern Village of Pinehouse as the only shareholder of Pinehouse Business North Development Inc., which is the owner of the business name “Pinehouse Business North Limited Partnership”. The Directors are Mike Natomagan, Conrad Misponas, Leon Botham, Joey McCallum, Vern Bachiu, Caroline Inglis-McQuay and Chris Hansen. Mike Natomagan and Joey McCallum are also listed as officers.
326. PBN and the Village registered Pinehouse Business North Limited Partnership (PBNLP) as a partnership under *The Business Names Registration Act*. It is described in its financial statements as “created to provide economic development activities in the Village of Pinehouse and surrounding area.”
327. A search of the Corporate Registry on February 7, 2019 shows Pinehouse Business North Development Inc. as the only “Proprietor/Partners/General Partner(s)”.
328. The reason given for this corporate relationship was that while the business corporation is taxable, the Village and Limited Partnership are not subject to income tax, so it is preferable to generate income through the non-taxable entities.
329. PBNLP is primarily in the business of labour service, construction and earth moving. Many of its contracts are with the Village and Pinehouse Housing Corp. and with Cameco under the Collaboration Agreement.
330. PBNLP has partnered with EMW Industrial Ltd., a Saskatchewan business corporation established in 1971 by Ewen Morrison of Saltcoats, to gain greater industrial capacity. A chart of the business and corporate relationships is found as an appendix to this Report.
331. The 2017 Annual Report states that Pinehouse Business North completed 30 projects that year and employed 16 managers and administrators and 5 – 120 employees, with the number actually working depending on the time of year.
332. AJ Felix, a consultant to PBN, said the corporation has 5-7 Board meetings each year and 2 – 4 Committee meetings.
333. Mike Natomagan is the Chair of the Board and President. The Board, at its meeting of December 8, 2017, approved annual remuneration for the Chair of \$86,500, an increase from his previous remuneration of \$63,000.

Pinehouse Housing Corp.

334. The Council minutes for April 2, 2014 record a motion to “establish a Pinehouse Housing Corp.”: M-16-14. The Village established Pinehouse Housing Corp. under *The Business*

Corporations Act. It is described in its financial statements as being “in the property management business in the Northern Village of Pinehouse.”

335. A search of the Corporate Registry on February 7, 2019 shows the Northern Village of Pinehouse as the sole shareholder. The Directors of Pinehouse Housing Corp. are Conrad Joe Misponas, Mike Natomagan, Betty Ann Durocher, and Leona Lariviere, being the current members of the Village Council.
336. Pinehouse Business Corporation, at a meeting held December 8, 2017, elected Conrad Misponas as Chair of the Board and approved annual remuneration of \$80,000 as well as travel and expenses. Again, this remuneration would be in addition to his remuneration from the Village.

Financial Statements

337. I was provided with Financial Statements for: Pinehouse Business North Development Inc. for 2014, 2016 and 2017; Pinehouse Business North LP for 2014 – 2017; and Pinehouse Housing Corp. for 2016. A summary of data from those Financial Statements is found as an appendix to this Report.

Incorporation under other Statute

338. NMA s. 56 authorizes a council, by bylaw, to direct that articles of incorporation be drafted “for the purpose of securing incorporation under of a municipal development corporation pursuant to *The Business Corporations Act*, *The Non-Profit Corporations Act*, 1995, *The New Generations Co-operative Act* or *The Co-operatives Act*.”
339. This provision may be contrasted with the other municipal statutes which make no reference to incorporation under another statute.
340. The practice of incorporating controlled corporations under another statute is neither required nor desirable. At best there are duplicate provisions and at worst provisions which conflict with the governing municipal statute. As this Inspection shows, this may result in a diminishment of transparency and public accountability and a tendency to prefer private interest over public interest.
341. As noted above, a municipal corporation cannot contract out of the governing municipal statute. Should it be able to incorporate out of the governing municipal statute? The incorporation under these other statutes appears to have encouraged the Village of Pinehouse and its controlled corporations to act as if it had.
342. It is, in my opinion, a misuse and abuse of the power to create these controlled corporations if that incorporation is then used to defeat governance controls, including the principle of open government and the requirements for transparency and accountability, including financial accountability. Controlled corporations should generally be subject to the same governance rules as the municipality.

343. It is suggested a better practice would be for controlled corporations to be incorporated by bylaw approved by the Minister, just as municipal corporations are created under NMA s. 82(2)(a) by Minister's Order. Whatever perceived benefit may result from incorporation under these other statutes is likely outweighed by the potential for confusion and mischief.

CONCLUSIONS & RECOMMENDATIONS

344. In my experience, from over 36 years working in and for municipal governments, Saskatchewan is well-served by most municipal councils, whose elected members serve selflessly in the interest of their communities. Similarly, most municipal administrators provide competent and professional administration for their councils and communities.
345. At the same time, it would be a mistake to dismiss this case as an isolated aberration. The issues revealed in this Inspection may and likely do occur in other municipalities. I encourage the Minister to consider steps to address and prevent similar misgovernment in other municipalities.
346. For that reason, I have set out recommendations below for the Minister to consider. These recommendations concern both the Northern Village of Pinehouse and municipalities in general.

Public Access to Information

Village Website

347. That the Village of Pinehouse reinstate its website and publish public information on that site, including notice of Council and committee meetings, minutes of those meetings, common bylaws and annual financial statements.

Public Accounts

348. That the Minister consider extending requirement to publish annual Public Accounts to all municipalities.
349. Public accounts provides easy reference to and a record of annual municipal spending, including a list of individual recipients. The requirement for Public Accounts is currently limited to cities, under s. 156 of *The Cities Act*. Most other municipalities submit monthly accounts at Council meeting for approval, so it should not be not difficult to compile lists at year-end to publish in the form of Public Accounts.

Prosecutions

350. That the Minister consider asking the Attorney General to review the process by which requests for prosecution of provincial offences are reviewed.

Administration of the Village

Supervision of Village

351. That the Minister consider appointing a person to supervise the Village and its council and controlled corporations, pursuant to section 422 of *The Northern Municipalities Act*.

Administrator

352. That the question of Ms. Martine's certification and performance of duties as Administrator be referred to the Urban Municipal Administrator's Association for further inquiry, along with a copy of this Report.

Removal from Office

353. That the Minister consider whether it is in the public interest to recommend to the Lieutenant Governor in Council that it remove Mike Natomagan and Conrad Misponas from the Village Council, pursuant to NMA s. 424.
354. The Mayor's failure to perform duties under LAFOIP and apparent contraventions of the NMA support his disqualification from office under NMA s. 165(1)(a) and (e): NMA s. 160 failure to file a Public Disclosure Statement within thirty days of election and thereafter update it; NMA s. 162 failure to declare conflicts of interest; and NMA 128 employment by a controlled corporation.
355. Councillor Misponas' similar failure to file a Public Disclosure Statement and employment by the Village and a controlled corporation support his disqualification from office.
356. In considering this recommendation, the Minister will understand that the findings in this Report are the result of an Inspection under NMA 417, not an Inquiry under NMA 218. As such, the primary purpose was fact-finding, not fault-finding. The Inspection was conducted in a far less formal manner than an Inquiry. Given the mandate and the constraints of time and cost established by the Terms of Reference, it would not have been possible to do otherwise.
357. The evidence of contraventions of the law emerged as the Inspection progressed. While Mike Natomagan was interviewed, Conrad Misponas was not. The evidence of Councillor Misponas' employment emerged as documents were obtained in the later stages of the Inspection. No one was given notice of potential adverse finding, as occurred in the 2014 Inquiry into the R.M. of Sherwood No. 159, which followed an Inspection that revealed possible wrongdoing that was then established through the Inquiry.

Financial Audit of Village

358. That the Minister consider directing an audit of the Village and its controlled corporations, pursuant to section 416 of *The Northern Municipalities Act*. This audit should:
- (a) try to reconcile and reveal the full financial position of the Village, including its controlled corporations and funding from the Collaboration Agreement;
 - (b) try to determine the actual compensation of individual members of Council over the past five years, including identifying all sources from or related to the Village;
 - (c) include an itemized review of past expense claims.

Controlled corporations

359. That the Minister consider asking the Ministry to:
- (a) reconsider the legislation allowing incorporation of controlled corporations under other statutes;
 - (b) provide guidance to municipalities, through its advisory services, on the manner of creation, public accountability and appropriate use of controlled corporations.
 - (c) if there is any doubt about it, take steps to express prescribe municipal controlled corporations as local authorities for the purposes of LAFOIP.
360. It is hoped that this Inspection will have shed some light on the Northern Village of Pinehouse and may serve to help other municipalities to avoid similar problems.
361. Finally, I wish to thank those who helped me throughout this Inspection, especially Brad Henry, Executive Director, Northern Municipal Services, Ministry of Government Relations, and his staff. Saskatchewan is very fortunate to have such dedicated and capable public servants.

All of which is submitted this 7th day of March 2019

Neil Robertson, Q.C., S.V.M.

APPENDICES – Financial Statement Information**Northern Village of Pinehouse 2013 - 2017**

	2012	2013	2014	2015	2016	2017
Operating Expenses	\$2,358,219	\$3,557,050	\$4,063,261	\$3,429,954	\$3,094,758	\$3,098,267
General Government Expenses	\$837,197	\$911,524	\$898,753	\$836,652	\$883,630	\$812,630
GG Wages & Benefits	\$204,400	\$227,436	\$254,463	\$252,298	\$251,535	\$230,487
GG Professional & Contractual Services	\$274,982	\$188,727	\$116,305	\$129,149	\$172,681	\$119,248
Council Expenses	\$189,280	\$290,558	\$309,932	\$262,965	\$262,799	\$119,248
Municipal Tax Levy	\$143,222	\$171,792	\$186,429	\$192,313	\$193,906	\$194,904
Unconditional Grants	\$732,892	\$849,072	\$852,695	\$857,564	\$880,722	\$888,376
Prov/Fed Capital Grants	\$5,275,020	\$2,855,633	\$184,809	\$3,949,204	\$5,535,295	\$1,164,875
Income (Loss) from PBN	\$3,163,079	\$237,839	(\$1,083,777)	\$3,211,825	\$4,514,923	(\$1,096,656) Note 6
Income from PHC						\$1,117,346 Note 6
Debt issued	\$0	\$0	\$84,747	\$318,595	\$0	\$0
Net Financial Assets	\$3,516,986	\$3,318,323	\$2,694,057	\$5,748,938	\$10,223,075	\$10,723,915
Accumulated Surplus	\$14,360,455	\$15,860,727	\$15,253,197	\$18,623,463	\$22,990,205	\$23,007,098

DATA FROM FINANCIAL STATEMENTS FOR CONTROLLED CORPORATIONS

Pinehouse Business North Development Inc. – 2013 - 2016

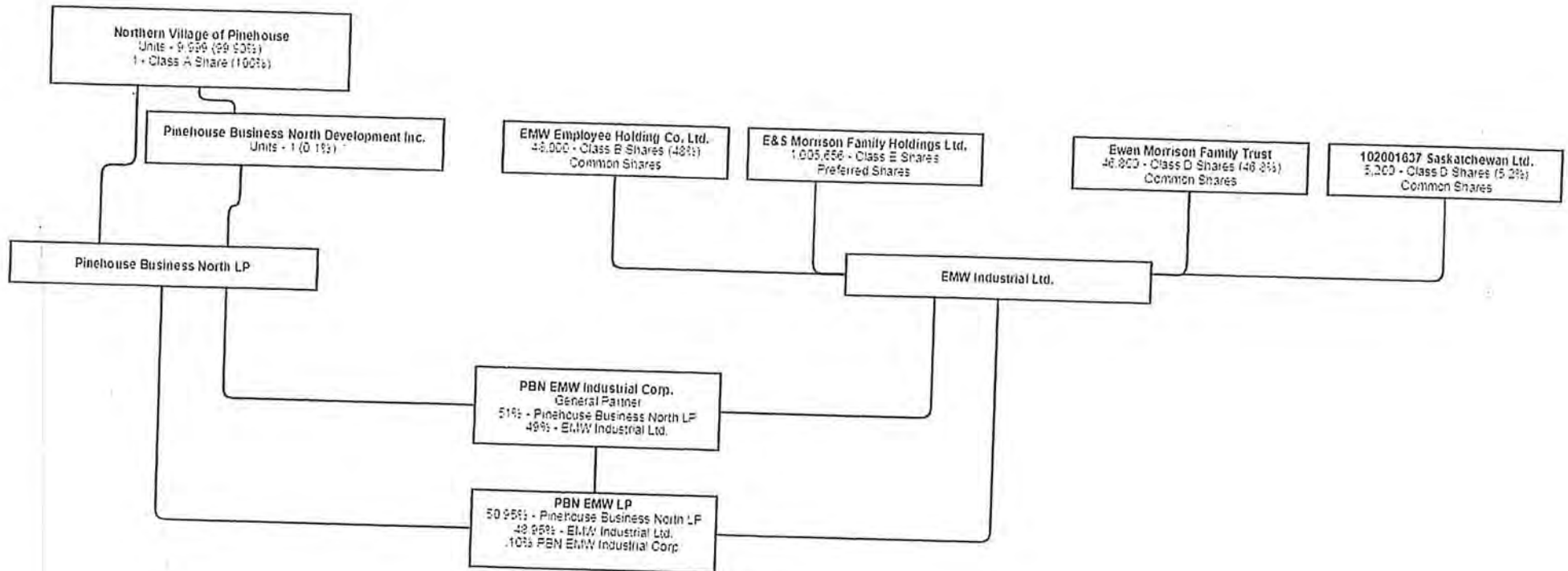
	2013	2014	2015	2016	2017
Shareholders Equity	\$10,759	\$5,283	\$63	\$63	\$63

Pinehouse Business North Limited Partnership – 2013 - 2016

	2013	2014	2015	2016
Partner's Capital	\$3,920,610	\$2,836,851	\$6,048,613	\$10,563,599
Revenue	\$4,037,958	\$2,519,772	\$7,905,162	\$13,927,289
Earnings from Collaboration Agreement	\$750,000	\$422,881	\$971,251	\$1,304,766
Income (Loss)	\$657,839	(\$622,458)	\$3,395,864	\$4,980,406
Wages and Benefits	\$593,895	\$522,361	\$391,919	\$589,989
Management Salaries and Benefits	\$191,077	\$222,571	\$135,625	\$221,020
Professional Fees	\$162,327	\$329,918	\$501,312	\$588,036
Board Remuneration and Travel	\$39,052	\$58,499	\$35,596	\$51,897
Long-Term Debt	\$71,498	\$157,635	\$191,174 + \$2,689,805 as Subsequent Event	\$1,776,020
Obligations under Capital Leases	\$326,954	\$326,954	\$161,520	\$414,556

Pinehouse Business Corporation – 2015 - 2016

	2015	2016
Total Equity	\$312,380	\$636,497
Total Comprehensive Income	\$312,380	\$324,117
Expenses	\$312,380	\$320,994
Cash Position	\$227,059	\$531,732
Grants	\$312,400	\$321,500
Trust Advisory Panel Donation	\$309,000	\$179,000
Debt	\$0	\$721,982 SHC loan



Appendix C

CANADA)
SASKATCHEWAN)

IN THE MATTER OF AN INQUIRY BY THE HONOURABLE WILLIAM
VANCISE, Q.C. INTO THE APPROPRIATENESS OF CONDUCT OF
CERTAIN MEMBERS OF COUNCIL OF THE NORTHERN VILLAGE OF
PINEHOUSE ORDERED UNDER *THE NORTHERN MUNICIPALITIES*
ACT, 2010, S.S. 2010, c. N-5.2

RULES OF PROCEDURE AND PRACTICE

Contents

I GENERAL.....2

II STANDING.....2

III EVIDENCE.....3

IV NOTICE OF POTENTIAL ADVERSE FINDINGS.....5

V AMENDMENT.....5

I GENERAL

1. This is an Inquiry into the appropriateness of the conduct of Mayor Mike Natomagan and Councillor Conrad Misponas as members of the Northern Village of Pinehouse Council.
2. The Honourable William Vancise, Q.C. has been appointed to conduct the Inquiry (hereafter "the Inquiry Officer").
3. The Inquiry Officer will prepare a report for the Minister of Government Relations at the conclusion of the Inquiry.
4. The Inquiry Officer has, pursuant to subsection 418(4) the same powers, privileges and immunities conferred on a commission by sections 11, 15, 25 and 26 of *The Public Inquiries Act, 2013*. David Stack, Q.C. of McKercher LLP has been appointed as counsel to the Inquiry (hereafter "Inquiry Counsel").
5. Any Inquiry hearings will be closed to the public, as directed by paragraph 6 of the Terms of Reference.

II STANDING

6. Inquiry Counsel will have standing throughout all aspects of the Inquiry.
7. Persons who have been granted standing shall be entitled to attend any hearings and may be represented by counsel at any hearings.
8. Persons who have been asked or subpoenaed to attend as witnesses may attend with counsel for the portion of the hearing during which they are being questioned.
9. The Inquiry Officer has no authority to grant funding for counsel or any other expenses incurred by persons attending at a hearing.
10. Those granted standing are deemed to undertake to respect these Rules of Procedure and Practice and will have the responsibilities and privileges outlined in these Rules.

III EVIDENCE

General

11. The Inquiry Officer may receive and consider any evidence he finds to be relevant and reliable, even though it might be inadmissible in a court of law.
12. The Inquiry Officer may give such weight as he finds appropriate to any evidence received.
13. The Inquiry Officer will, in consultation with Inquiry Counsel, determine what witnesses, if any, will be called.
14. In advance of the hearing, Inquiry Counsel will make best efforts to provide counsel for parties granted standing with:
 - (a) a summary of anticipated evidence of witnesses;
 - (b) identification or copies of documents that will be referred to during a witness' testimony.
15. Any party granted standing may apply to have any other person appear as a witness, by providing Inquiry Counsel with a brief summary of anticipated evidence of the witness, including identifying any documents that will be referred to during the witness' testimony. This application shall be brought prior to the hearing. An application to call a witness during the course of the hearing will only be considered if the proposed evidence could not reasonably have been identified prior to the hearing through the due diligence of the party seeking to adduce the evidence.

Documents

16. The Inspection Report, together with documents obtained during the Inspection, will be received into evidence.
17. In advance of the hearing, Inquiry Counsel will make best efforts to provide counsel for parties granted standing with:
 - (a) a summary of anticipated evidence of witnesses;
 - (b) the witness summary as required in this Article shall be provided at least three (3) days before the witness is scheduled to be heard; and

- (c) identification or copies of documents that will be referred to during a witness' testimony.
18. It is anticipated that the proceedings will be recorded and may be transcribed, with transcripts obtainable to counsel for parties granted standing on an undertaking:
- (a) to promptly pay for the cost of the transcript; and
 - (b) to keep the contents confidential.
19. If a party wishes to enter other records into evidence, they or their counsel must provide copies of such records in a timely manner to Inquiry Counsel with an explanation of their relevance to the matters which are the subject of the Inquiry.
20. No document or other record may be used by a party granted standing or their counsel in the questioning of any witness unless that document or other record has been previously provided to Inquiry Counsel well before the questioning and identifying the document as one which is intended to be put to the witness.
21. Parties with standing and their counsel who receive information and documents pursuant to these Rules shall be deemed to undertake that they will use the information and documents solely for the purposes of the Inquiry and that they will not disclose any such information, documents or evidence to any other person.

Witnesses

22. Witnesses shall give their evidence under oath or affirmation. Witnesses may be recalled.
23. Inquiry Counsel may subpoena witnesses.
24. The Inquiry Officer may limit the testimony of any witness, including setting time limits for their questioning by all or any counsel.
25. The order of questioning shall be as follows:

- (a) Inquiry Counsel, except where a party is given leave to call their own witness in which case the counsel calling the witness may go first followed by Inquiry Counsel;
- (b) Counsel to or individuals with standing, to the extent of their interest (These counsel may agree to the order of questioning amongst themselves);
- (c) Counsel to the person being examined;
- (d) A right of final questioning by Inquiry Counsel;
- (e) Inquiry Officer.

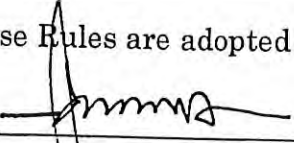
IV NOTICE OF POTENTIAL ADVERSE FINDINGS

- 26. Those persons whose conduct is under review shall be notified of potential adverse findings.
- 27. Those persons who have received notice of potential adverse findings should understand that the Inquiry is intended to provide them with an opportunity to respond to any allegations, including the issues identified in the Minister's Order and Inspection Report. They may do so by appearing in person or by counsel at a hearing for that purpose or by submitting written submissions to the Inquiry Officer for his consideration.
- 28. All contemplated Notices of Potential Adverse Findings ("Notices") be provided to those affected fourteen (14) days before the witness is called to testify. These Notices, as the Rules contemplate, may be the subject of Supplementary Notices. In addition, there may be parties that receive such Notice for the first time during the course of the hearings, as the information and evidence unfolds.

V AMENDMENT

- 29. The Inquiry Officer may amend these Rules or deviate from the Rules if he finds it helpful to do so to fulfil his mandate and to ensure the process is fair, efficient and effective.

These Rules are adopted for the purpose of the Inquiry this 28 day of August, 2019.


Honourable William Vancise, Q.C., Inquiry Officer

Appendix D

MEMORANDUM

To: Judge William Vancise
From: McKercher LLP
Date: September 9, 2019
File No: 122798.1
Subject: Role of Inquiry / Commission Counsel

We were asked to summarize the role of commission counsel¹ in a commission of inquiry.

The role was described succinctly by Professor David Paciocco, now Justice Paciocco of the Ontario Court of Appeal, during his opening statement during the Taman Inquiry:

My role as Commission counsel, as you are well aware, Mr. Commissioner, is to assist you. I am not to be partisan. I am to provide a neutral and dispassionate presentation of the evidence. And the overriding obligation that I have is to assist you in uncovering the relative truth about the facts that have occurred and to marshal [sic] the evidence that is required in order for you to discharge this Commission. It is not an adversarial proceeding from this particular seat... It is [my] function to ultimately contribute to a truthful and complete record so that you can make appropriate recommendations.²

Few statements on the role of commission counsel have been so concise.³ To be significantly more verbose, and metaphorical, the commission counsel is the "operational control centre" for the substantive work of the commission,⁴ standing at "the very forefront of the conduct of a commission".⁵ The commission counsel is the commissioner's counsel (and *alter ego*), and is hence at the commissioner's direction.⁶ The commission counsel may be authorized to carry out any duties within the commission's terms of reference.⁷ The principal duty of commission

¹ "Commission counsel" rather than "inquiry counsel" seems to be the more common term.

² Taman Inquiry Transcript (4 February 2008), cited in Ed Ratushny, *The Conduct of Public Inquiries* (Toronto: Irwin, 2009) at 224. The Taman Inquiry was an inquiry "into the investigation, prosecution and justice services provided to the families in relation to the death of Crystal Taman", who was killed by an off-duty police named Derek Harvey-Zenk when he drunkenly crashed his truck "at highway speed" into her convertible, which was stopped at a traffic light. The inquiry was conducted due to concerns that Harvey-Zenk received partial treatment due to his status as a police officer. See Roger E. Salhany, *Report of the Taman Inquiry* (Winnipeg: 2008), vol A at 7, online: <http://www.tamaninquiry.ca/pdf/taman_inquiry_A.pdf> (6 September 2019).

³ Although at the risk of being reductive, a more compact summary is possible: the commission counsel's main duties are to marshal the evidence and ensure the inquiry is procedurally fair.

⁴ Ratushny, *supra* note 2 at 215.

⁵ John Sopinka, "The Role of Commission Counsel" (1989) 12:3 Dal LJ 75 at 77.

⁶ *Ibid.*

⁷ *Ibid.*

counsel is to elicit and present evidence.⁸ Other duties normally assigned the commission counsel include developing the inquiry's procedure, conducting preliminary investigations, communicating with the parties, advising the commissioner on legal issues that arise during the inquiry, fielding legal questions raised by the media, and, in some cases, albeit contentiously, assisting the commissioner write his or her final report.⁹

Put broadly, the commission counsel's role is to "assure the credibility, integrity, impartiality and efficiency of the inquiry process".¹⁰ This means the commission counsel is ultimately responsible for ensuring that the inquiry is procedurally fair, and just as importantly, appears fair to the public. Although the role of commission counsel has been compared to the role of a prosecutor,¹¹ the comparison is only partially on point.¹² Like a prosecutor, the commission counsel has a public duty to present all the evidence, "pro and con".¹³ But the similarity ends there. Unlike commission counsel,

a prosecutor is not the agent of the judge. His acts are not attributable to the judge. He does not confer with the judge to determine what evidence to call nor does he participate in the preparation of the report. These and other factors demand more impartiality from commission counsel than is required of a prosecutor.¹⁴

In contrast, the commission counsel is the commissioner's agent, and therefore the acts of commission counsel are attributable to the commission. Commission counsel also confers regularly with the commissioner during the inquiry and, as mentioned, may be involved in the preparation of the commissioner's report. Accordingly, if commission counsel were to appear impartial, it could jeopardize one of the primary goals of an inquiry, which is to restore public confidence.¹⁵

The remainder of this memo summarizes the specific duties often assigned to commission counsel during an inquiry,¹⁶ and highlights some areas where commission counsel must be particularly careful to ensure that he or she is and appears to be "neutral and dispassionate". Otherwise, "the credibility of the whole exercise," and confidence in the impartiality of the commissioner, may be disturbed, threatened, or lost",¹⁷ seriously undermining the utility of the inquiry.

⁸ *Ibid.* While the commissioner may adduce or elicit evidence directly, some have suggested the practice could give rise to an apprehension of bias. See *ibid.*, citing LA Hallett, *Royal Commissions and Boards of Inquiry: Some Legal and Procedural Aspects* (Sydney: Law Book Co., 1982) at 216-17.

⁹ See Ratushny, *supra* note 4 at 219.

¹⁰ Simon Ruel, *The Law of Public Inquiries in Canada* (Toronto: Thompson Reuters, 2010) at 48.

¹¹ Sopinka, *supra* note 5 at 77.

¹² See Ratushny, *supra* note 4 at 219; Sopinka, *supra* note 5 at 77-78.

¹³ Sopinka, *supra* note 5 at 78.

¹⁴ *Ibid.*

¹⁵ Ruel, *supra* note 10 at 48.

¹⁶ As outlined by former Commissioner Dennis O'Connor in "The Role of Commission Counsel in a Public Inquiry" (2003) *Advocates' Soc J* 9, cited in Ruel, *supra* note 10 at 51.

¹⁷ Ratushny, *supra* note 4 at 220.

1. To provide advice and guidance to the commissioner throughout the process.

Commission counsel are commonly responsible for advising commissioners on their roles and responsibilities; the scope of the terms of reference; on the inquiry process, including procedure and rulings; on evidentiary issues; and on what measures or procedures are necessary to ensure the impartiality and fairness of the inquiry.¹⁸ They might also draft rules of procedure or prepare documents such as notices of misconduct.¹⁹

2. To supervise and conduct the investigation into all of the information relevant to the terms of reference including gathering documentation and interviewing witnesses.

Commission counsel are typically responsible for preliminary investigations, e.g. the production of documents; the preparation of summonses; the review and organization of documents; interviewing witnesses; preparing will-says or summaries of evidence, and so on.²⁰

3. To develop and maintain open communication with all parties and to encourage cooperation in facilitating disclosure and presentation of evidence.

Commission counsel is typically responsible for communicating the parties with standing and their counsel.²¹ Counsel will generally be tasked with informing the parties about how the inquiry will proceed, and ensuring parties have full disclosure of the relevant evidence.²²

4. To call evidence at the hearings, including witnesses the parties seek to call. Cross-examination by the parties is likely to be limited if the prior examination by commission counsel has been thorough and fair.

As noted above, this is probably the principal function of commission counsel, and is certainly the most visible.²³ While a commissioner could lead evidence him- or herself, this is not the typical practice. Leading evidence may give rise to "skirmishes" that might threaten (or cause the public to question) the commissioner's impartiality.²⁴ Accordingly, adducing and eliciting evidence is normally the duty of commission counsel.

Generally, commission counsel will examine witnesses in chief and may re-examine witnesses after they have been cross-examined by counsel for other parties with standing and examined by their own counsel.²⁵ According to former Commissioner Dennis O'Connor, while presenting evidence, commission counsel "is not to advance any particular point of view, but rather to

¹⁸ Ruel, *supra* note 10 at 50.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

²² Ratushny, *supra* note 2 at 239.

²³ Ruel, *supra* note 10 at 51.

²⁴ *Ibid.*

²⁵ *Ibid.*

investigate and lead evidence in a thorough, but also completely impartial and balanced, manner".²⁶

Owing to the obligation to be thorough in the presentation of the evidence, commission counsel may be required to seek clarification, test evidence through cross-examination, or challenge witnesses.²⁷ As explained by Commissioner Bellamy in her Report of the Toronto Computer Leasing Inquiry/Toronto External Contracts inquiry,

While it is not the role of commission counsel to advance any particular point of view, it does not follow that they should not be vigorous and thorough in their investigation, which includes the examination of witnesses. Commission counsel assist the commissioner in trying to discover the truth. They must be prepared to ask probing questions, especially when a witness's evidence is inconsistent and evasive. Commission counsel cannot accept each statement of explanation at face value. When there is no party adverse in interest to the witness, commission counsel have a special duty to examine the witness particularly thoroughly. They are not advocates for a party, but they are advocates for the truth. They must investigate, test, and verify.²⁸

Commission counsel may be required to cross-examine witnesses when there is lack of representation for a particular point of view before the inquiry.²⁹ This can lead to accusations against commission counsel of being overly adversarial.³⁰ As Professor Ed Ratushny notes in *The Conduct of Public Inquiries*, "the reality is that cross-examination can be rough business... The reality is also that rigorous cross-examination cannot be impartial. It is adverse in interest to the witness. It is adversarial".³¹

When such "rigorous" cross-examination is required, commission counsel's role in other respects may be limited.³² For example, counsel might summarize the evidence but not express his or her view as to what findings or recommendations the commissioner should make. If there is more than one commission counsel, the advocacy and advisory roles of commission counsel may be "bifurcated" so the counsel who examines witnesses will not be the same counsel who assists in drafting the final report.³³ It is important to avoid the "strong perception of unfairness [when] commission counsel participates in the deliberative process after taking adversarial positions against parties during the hearings".³⁴ If commission counsel takes on the role of a partisan advocate against a party during the hearings and then assists the commissioner in preparing a report that makes adverse findings against that party, there might be "a reasonable

²⁶ O'Connor, *supra* note 16 at 51.

²⁷ *Ibid* at 52.

²⁸ Denise E. Bellamy, "Report of the Toronto Computer Leasing Inquiry/Toronto External Contracts Inquiry, Volume 3, Inquiry Process", at 43, cited in Ruel, *supra* note 10 at 52.

²⁹ Ruel, *supra* note 10 at 52.

³⁰ Ratushny, *supra* note 2 at 220-230.

³¹ *Ibid* at 222.

³² *Ibid*.

³³ *Ibid* at 230. This was done during the Lamer Inquiry into three discredited murder convictions in Newfoundland: *ibid* at 234; *The Lamer Commission of Inquiry Pertaining to the Cases of: Ronald Dalton, Gregory Parsons, Randy Druken* at 13.

³⁴ *Ibid* at 226.

apprehension of bias sufficient to strike down such findings",³⁵ essentially due to the risk that the *nemo iudex in causa sua* principle may appear to have been violated

5. To assist the commissioner in writing the report.

Whether commission counsel should be involved in preparing the final report is a "delicate question".³⁶ According to Professor Ratushny, "This role varies with different commissioners but is easier to accept when commission counsel has acted in an 'impartial and even-handed way' throughout the inquiry".³⁷ As noted above, if the commission counsel has been required to take an adversarial position during the inquiry to ensure all of the evidence is presented and tested, it may not be appropriate for the commission counsel to be overly involved in the preparation of the final report.

There is a division of opinion on this point, with others arguing that "inquiry counsel, as a professional, should be able to disabuse himself of any perceived position of advocacy and provide neutral and independent advice to the commissioner with respect to report preparation".³⁸ But this ignores the legal aphorism that "that it is not merely of some importance, but of fundamental importance, that justice should both be done and be manifestly seen to be done",³⁹ a rule that has significant importance in the context of a public inquiry.

Nevertheless, courts have, "with some caution", accepted that commission counsel may be involved in preparing the report.⁴⁰ For example, the Federal Court of Appeal has held that:

What is important is that the findings [the commissioner] makes in his report be his own. If, in order to make those findings, he considers it advisable to seek the assistance of one or more of his counsel, including those who conducted the examination of witnesses, in relation to questions of fact, evidence and law, he must have broad latitude to do so.⁴¹

Commission counsel may be asked to provide advice on the admissibility and weight of evidence; to summarize and analyze the evidence; and to review the draft report. This assistance "may be easier to justify if counsel has maintained an irreproachable impartiality and fairness throughout the inquiry".⁴²

³⁵ *Ibid* at 227.

³⁶ Ruel, *supra* note 10 at 53.

³⁷ Ratushny, *supra* note 2 at 219.

³⁸ Ruel, *supra* note 10 at 54.

³⁹ *Re Sussex Justices, ex parte McCarthy*, [1923] All ER Rep 233 at 234 (per Lord Hewart CJ).

⁴⁰ Ruel, *supra* note 10 at 54.

⁴¹ *Canada (Attorney General) v Canada (Commissioner of the Inquiry on the Blood System)* 142 DLR (4th) 237, [1997] FCJ No 17 (QL) at para 100.

⁴² Ruel, *supra* note 10 at 55.

6. To serve as media spokesperson for the commission.

Public inquiries generate a lot of media attention,⁴³ and commission counsel are regularly given the role of media relations officer. According to former Commissioner O'Connor, "it is necessary to have someone familiar with the inquiry process and the evidence who can handle the reasonable inquiries that regularly arise. Commission counsel are the logical choice to assume this role".⁴⁴

SUMMARY

In this memorandum, we have described the role and typical responsibilities of commission counsel. In general, commission counsel is to marshal the evidence and ensure that the inquiry is conducted in a procedurally fair manner, but also expeditiously. The commission counsel must be impartial. The commission counsel's main responsibilities are to marshal the evidence and ensure procedural fairness. If commission counsel must take an adversarial role to ensure that all of the evidence is presented to the commission and properly tested, then the advisory role of commission counsel, particularly with respect to the final report, should be carefully circumscribed to avoid reasonable apprehension of bias allegations that could frustrate or tarnish the work of the commission.

⁴³ Ratushny, *supra* note 2 at 240.

⁴⁴ O'Connor, *supra* note 16 at 11.

OTHER AUTHORITIES

Bellamy, Denise E. "Report of the Toronto Computer Leasing Inquiry/Toronto External Contacts Inquiry, Volume 3, Inquiry Process".

Hallett, LA. *Royal Commissions and Boards of Inquiry: Some Legal and Procedural Aspects* (Sydney: Law Book Co., 1982).

O'Connor, Dennis. "The Role of Commission Counsel in a Public Inquiry" (2003) *Advocates' Soc J* 9.

Ratushny, Ed. *The Conduct of Public Inquiries* (Toronto: Irwin, 2009).

Ruel, Simon. *The Law of Public Inquiries in Canada* (Toronto: Thompson Reuters, 2010).

Salhany, Roger E. *Report of the Taman Inquiry* (Winnipeg: 2008), vol A at 7, online: <http://www.tamaninquiry.ca/pdf/taman_inquiry_A.pdf> (6 September 2019).

Sopinka, John. "The Role of Commission Counsel" (1989) 12:3 *Dal LJ* 75.

CASE LAW

Canada (Attorney General) v Canada (Commissioner of the Inquiry on the Blood System) (1997), 142 DLR (4th) 237 (Fed CA).

Re Sussex Justices, ex parte McCarthy, [1923] All ER Rep 233 (HL).

Appendix E

IN THE MATTER OF AN INQUIRY INTO THE
NORTHERN VILLAGE OF PINEHOUSE
ORDERED UNDER *THE NORTHERN
MUNICIPALITIES ACT, 2010*, SS 2010, C N-5.2

BRIEF OF LAW

Re: Standard of Conduct of Councilors



BARRISTERS & SOLICITORS
SASKATOON OFFICE:
374 Third Avenue South
Saskatoon, SK S7K 1M5
(306) 653-2000 F (306) 653-2669
mckercher.ca

Lawyer in Charge: David M.A. Stack, Q.C.

A. SUMMARY

1. The following is an outline of the standard of conduct by which members of council governed by *The Northern Municipalities Act, 2010*, SS 2010, c N-5.2 ("Council Members") are measured, particularly with respect to conflicts of interest.

2. As set out at paragraph 141 of the Inspection Report:

The conduct of the Mayor [or of a Council Member] may be reviewed not only under the conflict of interest provisions [of *The Northern Municipalities Act*], but also under duties of councillors and mayor prescribed in sections 106 and 107 ... , the *Code of Ethics* prescribed in section 107.1 and in s. 3 [sic – 3.1] and Form A [sic – Part III, Schedule 1] of *The Northern Municipalities Regulations*, and in the oath of office, prescribed in section 108 of the Act and in s. 3.1 [sic – s.3] and Part III [sic – Part I] of the *Regulations*.¹

3. In addition, the standard of conduct for a Council Member is informed by the common law.²
4. Conflict of interest rules are founded on the ancient principles, fundamental to our law, that no person may be a judge in his or her own cause,³ that public decision makers must hear, and be receptive to, both sides of an issue before deciding,⁴ and that no person "may serve two masters".⁵
5. While the sources of Council Members duties are varied, the obligations imposed are overlapping and connected. Council Members are subject to two primary obligations. First, Council Members must state, on the record, the existence and general nature of conflicts of interest. Full disclosure is achieved by mandatory annual statements. Second, Council Members must refrain from voting on, discussing, or attempting to influence matters before council in relation to which they, or someone to whom they are closely connected, have a private interest. Either failure to declare a conflict or failure to recuse oneself when required would constitute a failure to meet the required standard of conduct of a Council Member.
6. This Brief reviews the relevant legislation, the Pinehouse Council Members' Oath of Office, its Code of Ethics; and the common law, and explains how each of these contribute to the standard of conduct governing Pinehouse Council Members.

¹ Neil Robertson, QC, *Inspection Report* at para 141. See also the Terms of Reference, clause 2.

² Terms of Reference, clause 2.

³ *Nemo iudex non causa sua*. See *Schlenker v Torgimson*, 2012 BCSC 41 at para 55, rev'd 2013 BCCA 395 (but that is not material to the validity of MacKenzie J.'s observation on this point).

⁴ *Audi alteram partem*. See *ibid* at para 56.

⁵ Moll, *supra* note Error! Bookmark not defined. at 509.

B. LEGISLATION

a. *Legislative Definition of Conflict of Interest*

7. *The Northern Municipalities Act, supra*, s 159.1(1) provides the following definition of a conflict of interest, which was added in 2015 by *The Municipal Conflict of Interest Amendment Act, 2015*, SS 2015, c 30, s 4-13 [MCIAA].

159.1(1) A member of council has a conflict of interest if the member makes a decision or participates in making a decision in the execution of his or her office and at the same time knows or ought reasonably to know that in the making of the decision there is the opportunity to further his or her private interests or the private interests of a closely connected person.

(2) A financial interest as described in subsection 161(1) always constitutes a conflict of interest. ...

8. The test for the existence of a conflict is whether the council member participated in decision making while he or she knew or ought to have known his or her interests, or those of a closely connected person, would be advanced. Although the private interests tend to be financial interests, s. 159.1(1) makes it clear that a conflict of interest can arise even from a non-pecuniary interest. Under s. 161(1), a Council Member has a financial interest (i.e., a pecuniary interest) when he or she, or a somebody closely connected to him or her, stands to profit or be adversely affected by a decision of council or a body established by council: s. 161(1)(b). Exceptions to this rule are narrow and enumerated in s. 161(2).

b. *Obligation to Declare Conflicts of Interest*

9. Section 162 requires Council Members to disclose the existence and general nature of conflicts of interest. It provides:

162(1) If a member of council has a conflict of interest in a matter before the council, a council committee, a controlled corporation or other body, the member shall, if present:

(a) before any consideration or discussion of the matter, declare that he or she has a conflict of interest;

(b) disclose the general nature of the conflict of interest and any material details that could reasonably be perceived to affect the member's impartiality in the exercise of his or her office;

(c) abstain from voting on any question, decision, recommendation or other action to be taken relating to the matter;

(d) subject to subsection (4), refrain from participating in any discussion relating to the matter; and

(e) subject to subsections (3) and (4), leave the room in which the meeting is being held until discussion and voting on the matter are concluded.

(2) No member of a council shall attempt in any way, whether before, during or after the meeting, to influence the discussion or voting on any question, decision, recommendation or other action to be taken involving a matter in which the member of council has a conflict of interest.

...

10. It must be noted that the requirement to "disclose the general nature of the conflict of interest" in s. 162(1)(b) is the result of a 2015 amendment in the *MCIAA*, *supra*, c 30, s 4-16(1). Prior to this amendment, a Council Member with "a pecuniary interest in a matter before the council" was merely required to "declare the pecuniary interest" and to abstain from voting on, attempting to influence voting on, or otherwise discussing the matter.
11. During the Sherwood Inquiry,⁶ there was an issue regarding the interpretation of the requirement to "declare the pecuniary interest" in what was then s. 144(1) of *The Municipalities Act*, SS 2005, c M-36.1, a provision identical to the *NMA* s. 162(1) both now and at the time. Specifically, it was argued (and ultimately accepted by Inquiry Officer R.L. Barclay) that "declare" meant merely to disclose the existence, but not the general nature, of a pecuniary interest.⁷ The report ultimately recommended that the disclosure requirement should be made more expansive, and suggested the re-wording of s. 161(1)(b) ultimately adopted by the provincial legislature in response.

c. Public Disclosure Statements

12. Council Members are also required to file public disclosure statements within 30 days of election: *NMA*, *supra*, s. 160. Subsection 160(2) provides that the public disclosure statements must contain:

(a) the name of:

(i) every employer, person, corporation, organization, association or other body from which the member of council or someone in the member's family receives remuneration for services performed as an employee, director, manager, operator, contractor or agent;

⁶ Hon RL Barclay, *Inquiry Report into the RM of Sherwood #159* (30 December 2014), online: <<https://publications.saskatchewan.ca/api/v1/products/79357/formats/89689/download>> (11 September 2019).

⁷ *Ibid* at 70-71.

(ii) each corporation in which the member or someone in the member's family has a controlling interest, or of which the member or someone in the member's family is a director or a senior officer;

(iii) each partnership or firm of which the member of council or someone in the member's family is a member; and

(iv) any corporation, enterprise, firm, partnership, organization, association or body that the member of council or someone in the member's family directs, manages, operates or is otherwise involved in that:

(A) transacts business with the municipality;

(B) the council considers necessary or appropriate to disclose; or

(C) is prescribed; ...

(c) the general nature and any material details of any contract or agreement involving the member of council or someone in the member's family that could reasonably be perceived to be affected by a decision, recommendation or action of the council and to affect the member's impartiality in the exercise of his or her office...

d. Ongoing Duty of Disclosure

13. Subsections 160(3) and (6) impose on Council Members an ongoing duty of disclosure. In addition to the public disclosure statement made upon election, Council Members are also obligated to file annual public disclosure statements, and to promptly inform the administrator when conflicts of interest arise or become known.

(3) Every member of council who has previously filed a public disclosure statement pursuant to subsection (1) shall annually submit a declaration that:

(a) declares that no material change has occurred since the last public disclosure statement was filed pursuant to this section; or

(b) details the material changes that have occurred since the last public disclosure statement was filed pursuant to this section.

...

(6) Notwithstanding subsection (3), a member of council is subject to an ongoing duty of disclosure and is, in any of the following circumstances, required to submit to the administrator within the stated period a written amendment to the member's public disclosure statement:

(a) if the member declares a conflict of interest, as soon as is practicable after the declaration;

- (b) if there is a material change to the information detailed in the disclosure statement, within 30 days after the material change;
- (c) if there is a recognition by the member or another person of an error or omission, as soon as is practicable after the error or omission is recognized.

e. Summary of the NMA Conflict of Interest Rules

- 14. The foregoing provisions can be distilled to the simple rule that Council Members are required to disclose the existence and general nature of any conflict of interest, financial or otherwise, and of the details that might reasonably be apprehended as affecting the Council Member's impartiality in the exercise of his or her public duties. The public disclosure statements are primarily a means of ensuring compliance with this rule. The disclosure requirement is imposed upon election and is ongoing as long as the Council Member holds his or her office.
- 15. However, as discussed earlier, prior to the 2015 MCIAA, *supra* amendments, this disclosure requirement was likely restricted to declaring the existence of a conflict.

f. Additional Obligations of Council Members and the Mayor

- 16. Section 106 sets out a list of assorted duties of Council Members toward the municipalities they serve. These duties are related, but varied enough to resist summary. These obligations are as follows:
 - (a) to represent the public and to consider the well-being and interests of the municipality;
 - (b) to participate in developing and evaluating the policies, services and programs of the municipality;
 - (c) to participate in council meetings and council committee meetings and meetings of other bodies to which they are appointed by the council;
 - (d) to ensure that administrative practices and procedures are in place to implement the decisions of council;
 - (e) subject to the bylaws made pursuant to section 100.1, to keep in confidence matters discussed in private or to be discussed in private at a council or council committee meeting until discussed at a meeting held in public;
 - (f) to maintain the financial integrity of the municipality;
 - (g) to perform any other duty or function imposed on councillors by this or any other Act or by the council.

17. The Mayor has the following additional duties:

107(1) In addition to performing the duties of a councillor, a mayor has the following duties:

- (a) to preside when in attendance at a council meeting unless this Act or another Act or a bylaw of council provides that another councillor is to preside;
- (b) to perform any other duty imposed on a mayor by this or any other Act or by bylaw or resolution.

g. *Mandatory Code of Ethics*

18. Section 107.1 requires each council to adopt a code of ethics, failing which, the prescribed model code of ethics will be "deemed to have been adopted" by the council: s. 107.2. This requirement, and the consequence of the deemed adoption of the model code of ethics upon failure to develop one, was added to the *NMA*, *supra* in 2015, by the *MCIAA*, *supra*, s. 4-5.

C. THE OATH OF OFFICE

19. The requirement to take an official oath or affirmation, in the prescribed form, is set out in s. 108 of the *NMA*. Presently, s. 108 reads:

108(1) Every member of council shall, before carrying out any power, duty or function of his or her office, take an official oath or affirmation in the prescribed form.

(2) The oath or affirmation mentioned in subsection (1) must include statements declaring that the member of council:

- (a) is qualified to hold the office to which he or she has been elected;
- (b) has not received and will not receive any payment or reward or promise of payment or reward for the exercise of any corrupt practice or other undue execution or influence of his or her office;
- (c) has read and understands the code of ethics, rules of conduct and procedures applicable to the member's office imposed by this and any other Act and by the council; and
- (d) promises to:
 - (i) perform the duties of office imposed by this and any other Act or law and by the council;

(ii) disclose any conflict of interest within the meaning of Part VII in accordance with this Act; and (iii) comply with the code of ethics, rules of conduct and procedures applicable to the member's office imposed by this and any other Act and by the council.

20. Prior to the *MCIAA*, *supra*, s. 4-6 amendment to the *NMA*, *supra*, which introduced this requirement, s. 108 merely read:

108 A member of council shall not carry out any power, duty or function until that person has taken an official oath in the prescribed form.

21. The form of the official oath is prescribed in the *The Northern Municipality Regulations*, RSS c N-5.2 Reg 1. Each Council Member is obligated to recite the following:

I, _____, having been elected to the office of
_____ in the _____ of
_____.

DO SOLEMNLY PROMISE AND DECLARE THAT:

- 1 I will truly, faithfully and impartially, to the best of my knowledge and ability, perform the duties of this office;
- 2 I am qualified to hold the office to which I have been elected;
- 3 I have not received and will not receive any payment or reward, or promise of payment or reward, for the exercise of any corrupt practice or other undue execution or influence of this office;
- 4 I have read, understand and agree to abide by the code of ethics, rules of conduct and procedures applicable to my position as a member of council required of me by The Northern Municipalities Act, 2010 and any other Act and by the council;
- 5 I will:
 - (a) perform the duties of office imposed by The Northern Municipalities Act, 2010 and any other Act or law and by the council;
 - (b) disclose any conflict of interest within the meaning of Part VII of The Northern Municipalities Act, 2010; and
 - (c) comply with the code of ethics, rules of conduct and procedures applicable to the office I now hold that are imposed by *The Northern Municipalities Act, 2010* and any other Act and by the council.

See *Regulations, supra*, Appendix, Part I, Form A.

22. In the *Sherwood Report*, Inquiry Officer Barclay referred to the report of Justice Cunningham *qua* Commissioner of Inquiry over the Mississauga Inquiry into Mayor McCallion's son's involvement in a proposed land development.⁸ In the Mississauga Inquiry report, Commissioner Cunningham noted that:

When Mayor McCallion swore her oath or declaration of office yet again on December 4, 2006, she agreed *inter alia* to " ... truthfully, faithfully and impartially exercise this office ... " She did not simply say she would abide by the *Municipal Conflict of Interest Act*.⁹

23. Inquiry Officer Barclay noted that municipal council members in Saskatchewan are similarly required to swear that they will "truly, faithfully and impartially... perform the duties of this office",¹⁰ suggesting that this constitutes a duty independent of and broader than the conflict of interest rules in *The Municipalities Act* and the *NMA*.

D. THE CODE OF ETHICS

24. As noted above, s. 107.1 requires each council to adopt a code of ethics. If a council fails to adopt or develop a code of ethics, the prescribed model code of ethics will be "deemed to have been adopted" by the council: s. 107.2. Thus, the following model code would apply to the conduct of Council Members.

a. *Code of Ethics for Members of Council*

Preamble

As members of council, we recognize that our actions have an impact on the lives of all residents and property owners in the community. Fulfilling our obligations and discharging our duties responsibly requires a commitment to the highest ethical standards.

The quality of the public administration and governance of the municipality of _____, as well as its reputation and integrity, depends on our conduct as elected officials.

Purpose and Interpretation

The purpose of this code is to outline basic ethical standards and values for members of council. It is to be used to guide members of council respecting what their obligations are when fulfilling their duties and responsibilities as elected officials.

⁸ *Supra* note 6 at 72.

⁹ Hon J Douglas Cunningham, *Commissioner's Ruling on "Conflict of Interest"* (8 July 2010), online: <http://mississaugainquiry.ca/li/pdf/Ruling_Conflict_of_Interest.pdf> (11 September 2019).

¹⁰ *Supra* note 6 at 73.

This code is to be interpreted in accordance with the legislation applicable to the municipality, the common law and the policies and bylaws of the municipality.

Neither the law nor this code is to be interpreted as exhaustive, and there will be occasions on which a council will find it necessary to adopt additional rules of conduct in order to protect the public interest and to enhance the public confidence and trust in local government.

It is the responsibility of each member of council to uphold the standards and values set out in this code.

b. *Standards and Values*

a. *Honesty*

Members of council shall be truthful and open in their roles as council members and as members of the communities they serve.

b. *Objectivity*

Members of council shall make decisions carefully, fairly and impartially.

c. *Respect*

Members of council shall treat every person, including other members of council, municipal employees and the public, with dignity, understanding and respect.

Members of council shall not engage in discrimination, bullying or harassment in their roles as members of council. They shall not use derogatory language towards others, shall respect the rights of other people and groups, shall treat people with courtesy and shall recognize the importance of the different roles others play in local government decision making.

d. *Transparency and Accountability*

Members of council shall endeavour to conduct and convey council business and all their duties in an open and transparent manner, other than those discussions that are authorized to be dealt with in a confidential manner in closed session, so that stakeholders can view the process and rationale used to reach decisions and the reasons for taking certain actions.

Members of council are responsible for the decisions that they make. This responsibility includes acts of commission and acts of omission.

e. Confidentiality

Members of council shall refrain from disclosing or releasing any confidential information acquired by virtue of their office except when required by law or authorized by council to do so. Members shall not take advantage of or obtain private benefit from information that is obtained in the course of or as a result of their official duties or position and that is not in the public domain. This includes complying with *The Local Authority Freedom of Information and Protection of Privacy Act* in their capacity as members of council of a local authority.

f. Leadership and the Public Interest

Members of council shall serve their constituents in a conscientious and diligent manner and act in the best interests of the municipality. A member shall strive, by focussing on issues important to the community and demonstrating leadership, to build and inspire the public's trust and confidence in local government.

Members of council are expected to perform their duties in a manner that will bear close public scrutiny and shall not provide the potential or opportunity for personal benefit, wrongdoing or unethical conduct.

g. Responsibility

Members of council shall act responsibly and in accordance with the Acts of the Parliament of Canada and the Legislature of Saskatchewan, including *The Northern Municipalities Act, 2010*.

This duty includes disclosing actual or potential conflicts of interest, either financial or otherwise relating to their responsibilities as members of council, following policies and procedures of the municipality, and exercising all conferred powers strictly for the purpose for which the powers have been conferred. Every member of council is individually responsible for preventing potential and actual conflicts of interest.

E. THE COMMON LAW

a. Applicability of the Common Law Conflict of Interest Rules

25. In the *Sherwood Report*, Inquiry Officer Barclay noted, as a preliminary point in his discussion of the applicability of common law conflict of interest rules to municipal council members, that "[t]he common law still applies after the enactment of the Act".¹¹ What that means is that in the absence of clear language ousting the common law, or a conclusion that the common law has been ousted by necessary implication, the common law

¹¹ Barclay, *supra* note 6 at 73.

continues to apply even after legislation is enacted.¹² This view was confirmed by Justice L'Heureux-Dubé in *Gendron v Supply and Services Union of the Public Service Alliance of Canada, Local 50057*:

38 Although in a different context, this Court has had recent occasion to consider the effect of statutory codification upon a pre-existing common law duty or remedy in the case of *Rawluk v. Rawluk*, [1990] 1 S.C.R. 70. Many of the considerations that occupied the Court in that case are relevant here. Our analysis in this area must be guided by the rule that unless the statute contains words that expressly or by necessary implication oust the common law duty or remedy, one has a choice of [page1316] ¹³remedies. As Cory J., albeit in different terms, stated for the majority in *Rawluk*, *supra*, at p. 90:

It is trite but true to state that as a general rule a legislature is presumed not to depart from prevailing law "without expressing its intentions to do so with irresistible clearness" (*Goodyear Tire & Rubber Co. of Canada v. T. Eaton Co.*, [1956] S.C.R. 610, at p. 614).¹⁴

26. Inquiry Officer Barclay found that "In Saskatchewan, conflicts of interest for municipal members of council continue to be governed by the concurrent application of both [*The Municipalities Act*, SS 2005, c M-36.1] and the common law".¹⁵ Similarly, due to the absence of express language ousting the common law in the *NMA*, Council Members governed by that statute are subject to the same concurrent application of legislated and common law conflict of interest rules.

b. Content of the Common Law Conflict of Interest Rules

27. When conflict of interest rules were first put into statutes governing municipal council members, legislatures tended to focus on proscribing pecuniary (i.e. financial) conflicts of interest.¹⁶ Accordingly, the recent cases dealing with the common law conflict of interest rules tend to involve non-pecuniary interests. The common law was relied on as the source of an additional duty to avoid non-pecuniary conflicts of interest. However, due to the recent amendments made under the *MCIAA*, *supra*, Saskatchewan municipality statutes have broadened conflict of interest rules such that "the interest or bias which disqualifies"¹⁷ a Council Member may be a non-pecuniary interest. Accordingly, as the following review will illustrate, it is not clear that the common law any longer adds much to a Council Member's obligations, although that was at one time the case and remained so until recently.

¹² *Ibid* at 73-74.

¹³ *Watson v Burnaby (City)*.

¹⁴ [1990] 1 SCR 1298 at 1315-16.

¹⁵ *Ibid* at 74.

¹⁶ For example, in the version of the *NMA* operative during X, Part VII, ss. 141-146, referred solely to the "pecuniary" interests of Council Members.

¹⁷ *Re L'Abbe and the Corporation of Blind River* (1904), 7 OLR 230 [L'Abbé].

28. *Re L'Abbe and the Corporation of Blind River* has been cited as a leading case on common law conflict of interest rules.¹⁸ In *L'Abbe*, Chancellor Boyd reviewed the law of conflict of interest, and then stated at 233-234:

Now, the interest or bias which disqualifies is one which exists separate and distinct as to the individual in the particular case--not merely some interest possessed in common with his fellows or the public generally... This may be a direct monetary interest, or an interest capable of being measured pecuniarily, and in such case that a bias exists is presumed. But there may be also substantial interest other than pecuniary, and then the question arises, on all the circumstances, as to whether there is a real likelihood of bias- -a reasonable probability that the interested person is likely to be biased with regard to the matter in hand.

...

In brief, it appears to be a question of fact in each instance of the administration of public trusts to say whether the person voting in the exercise of the trust has such a disqualifying interest as should estop him from taking part and as should nullify his vote [*my emphasis*].

29. More recently, in the Supreme Court of Canada decision of *Old St Boniface Residents Association v Winnipeg*, Justice Sopinka wrote:

It is not part of the job description that municipal councillors be personally interested in matters that come before them beyond the interest that they have in common with the other citizens in the municipality. Where such an interest is found, both at common law and by statute, a member of Council is disqualified if the interest is so related to the exercise of public duty that a reasonably well-informed person would conclude that the interest might influence the exercise of that duty. That is commonly referred to as a conflict of interest.¹⁹

30. In *Watson v Burnaby (City)*, Justice Shaw considered the combined effect of *L'Abbé* and *St Boniface*.

I return therefore to make some observations on the *L'Abbé* and *Old St. Boniface* cases. I draw from *L'Abbé* that the non-pecuniary interest required to warrant disqualification from voting must be a "substantial interest". This, I note, would eliminate interests that are remote or of little consequence. I draw from both *L'Abbé* and *Old St. Boniface* that the councillor's interest in the subject matter of the vote must go beyond that which he or she may have in common with other members of the community; it must be an interest which is peculiar to the councillor, in effect, something that will serve

¹⁸ See *Watson*, *supra* note 13 at.

¹⁹ [1990] 3 SCR 1170 at 1196 [*St Boniface*].

his or her own personal ends. Finally, I draw from *Old St. Boniface* that where there is such an interest it must be so related to the subject matter of the vote that a reasonably well-informed person would conclude that the interest may well influence the councillor's vote.²⁰

31. More recently, a summary of the common law conflict of interest rules was given in *Calgary Roman Catholic Separate School District No 1 v O'Malley*, a case dealing with the disqualification of an elected school board trustee. While this decision was reversed for being decided the case solely on affidavit evidence, Justice McMahon discussed the common law conflict of interest rules and came to the following conclusions:
 1. The *Act* is not a complete codification of the common law as to disqualification of a trustee. There is nothing in the *Act* that purports to preclude the operation of long-established common law principles. It is inconceivable that the Legislature intended ... to preclude the common law rule that a reasonable apprehension of bias arising from a personal interest could disqualify an elected official who voted.
 2. At common law disqualification may occur for both pecuniary and non-pecuniary reasons.
 3. To disqualify at common law an interest must be more than some interest held in common with other persons of like opinion.
 4. To disqualify at common law an interest must be personal and substantial such that a reasonably well-informed person would conclude that it might influence the exercise of the public duty owed by that person.²¹
32. Justice McMahon likely provides the most concise summary of the common law rules, above. As noted earlier, however, the 2015 amendments to the *NMA* largely make the scope and applicability of the common law rules moot.
33. First, the statutory conflict of interest rules already address reasonable apprehensions of bias. When a conflict exists, a Council Member may indeed properly subordinate his or her own private interest and fulfil his or her public duty faithfully. But it is impossible to know whether his or her own interest was really properly subordinated. Thus, the statutory rules, like the common law rules, prevent Council Members from making or influencing decisions when there exist circumstances which will almost invariably give rise to reasonable apprehensions of bias, rather than attempting to proscribe only actual biased decision making.
34. Second, Saskatchewan recently enacted a comprehensive definition of "conflict of interest" broader than the definition in the legislation considered in the bulk of recent cases on the common law rules. In those cases, as mentioned above, the legislation tended to

²⁰ [1994] BCJ No 1413 (QL) at para 50 (BC SC),

²¹ 2006 ABQB 364 at para 36.

deal with pecuniary interests solely; the common law rules relating to non-pecuniary interests were applied, in essence, due to a legislative lacuna which no longer exists. Notably, unlike older statutes, the amended *NMA* defines a conflict of interest with reference to *private* interests, and not *pecuniary* interests. This is a broader category that likely contains both pecuniary and non-pecuniary interests.

35. Thirdly, and fourthly, both the "community of interest" and *de minimis* exceptions noted by McMahon J. in points 3 and 4 of his summary has been codified into the *NMA* as well: ss. 161(2)(i), (j).
36. Consequently, in Saskatchewan, owing to the *MCIAA*, *supra* amendments in 2015, the common law duty and the statutory duty imposed upon Council Members are in many respects practically the same.

F. SUMMARY: THE APPLICABLE STANDARD OF CONDUCT

37. This Brief provides an overview of the statutory and common law conflict of interest rules. As the foregoing survey of the law illustrates, while the sources of a Council Member's obligations in relation to a conflict of interest are sundry, the obligations imposed largely overlap and may thus be reduced to a few general propositions. A concise summary will also serve the collateral purpose of this memo, which is to provide proper notice of the standard by which certain Council Members will be measured.
 1. Council Members must state, on the record, the existence and general nature of conflicts of interest. Prior to 2015, Council Members were only required to declare the existence of conflicts of interest.
 2. Council Members must file public disclosure statements upon election, annually thereafter, and whenever a new conflict of interest arises or becomes known to them.
 3. Council Members must refrain from voting on or discussing matters before council in relation to which they, or someone to whom they are closely connected, have a private interest. The Council Member must either know, or reasonably ought to know, of the private interest.
 4. Failure to declare a conflict, failure to file a public disclosure statement, and failure to recuse oneself when required would constitute a failure to meet the required standard of conduct of a Council Member.
 5. Council Members are subject to the overarching duty to "truly, faithfully and impartially, to the best of [their] knowledge and ability, perform the duties of [their] office".

38. Failure to meet the above-noted requirements would constitute a failure to conduct oneself according to the standard required by Council Members.

G. CONCLUSION

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at the City of Saskatoon, in the Province of Saskatchewan, this ____ day of September, 2018.

McKERCHER LLP

Per: _____
Inquiry Counsel

CONTACT INFORMATION AND ADDRESS FOR SERVICE

Name of firm:	McKERCHER LLP
Name of lawyer in charge of file:	David M.A. Stack Q.C.
Address of legal firm:	374 – 3 rd Avenue South Saskatoon SK S7K 1M5
Telephone number:	(306) 653-2000
Fax number:	(306) 653-2669
E-mail address:	d.stack@mckercher.ca
File number:	122798.1

Appendix F

**IN THE MATTER OF AN INQUIRY
INTO THE NORTHERN VILLAGE OF PINEHOUSE
ORDERED UNDER *THE NORTHERN MUNICIPALITIES ACT, 2010*, SS 2010, C N-5.2**

Undertaking to Treat Documents, Information and Evidence as Confidential

I, _____, hereby undertake that I will treat as confidential all documents, information and evidence disclosed to me by the Inquiry Officer or his counsel, and I will undertake to only use such documents, information and evidence for the purposes only of the current Inquiry unless: _____

- (a) The Inquiry Officer orders otherwise; and
- (b) It is otherwise required or permitted by law.

Signature

Date

PLEASE REPLY TO:

MCKERCHER LLP BARRISTERS & SOLICITORS
374 Third Avenue South Saskatoon, SK S7K 1M5 Canada
(306) 653-2000 F(306) 653-2669

Appendix G

**IN THE MATTER OF AN INQUIRY
INTO THE NORTHERN VILLAGE OF PINEHOUSE
ORDERED UNDER *THE NORTHERN MUNICIPALITIES ACT, 2010*, SS 2010, C N-5.2**

NOTICE OF POTENTIAL ADVERSE FINDINGS

To: _____

You are receiving notice of potential adverse findings that may be made against you in this Inquiry. The Inspection Report of Neil Robertson, Q.C. made adverse findings in relation to your alleged conduct, and in particular that:

1. _____
2. _____

You are hereby notified that some or all of these adverse findings may be made against you in this Inquiry. This does not necessarily mean that these potential adverse findings will be made against you. You will be provided with an opportunity to respond to these allegations in accordance with the Rules of Procedure and Practice. You may do so by appearing in person or by counsel at a hearing for that purpose or by submitting written submissions to the Inquiry Officer for consideration. A copy of the Rules of Procedure and Practice for the Inquiry are attached to this Notice.

Dated this _____ day of September, 2019.

Honourable William Vancise, Q.C.
Inquiry Officer

Appendix H

WITNESS IMMUNITY STATEMENT

The Northern Municipalities Act, 2010 ("NMA"), incorporates specific sections of *The Public Inquiries Act, 2013*, however s. 10 of the *Public Inquiries Act* is not applicable to the Inquiry. Section 10, which relates to witness immunity, reads as follows:

Witnesses

10(1) A person who appears before a commission to give evidence has the same immunities as a witness who appears before the court.

(2) An answer given by a witness before a commission shall not be used or be receivable in evidence against him or her in any trial or other proceedings against him or her, other than a prosecution for perjury in giving that answer.

(3) A person who is summoned to appear before a commission shall be paid for his or her appearance, and for any travel and other expenses reasonably incurred with respect to that appearance, out of the general revenue fund in accordance with rules established pursuant to section 30.

As counsel to the Inquiry Officer _____, and with a view to protect those individuals who appear before him, I intend to ensure that all legally available immunities are provided to the witnesses participating in the Inquiry.

All witnesses will be afforded those protections afforded by s. 13 of the *Canadian Charter of Rights and Freedoms*, which provides:

Self-crimination

13. A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.

In an abundance of caution, in order to avoid any gaps in protection that would have been afforded under s. 10 of the *Public Inquiries Act*, I will be confirming with every witness appearing before the Inquiry Officer that they are also claiming the protections afforded to them by s. 5 of the *Canada Evidence Act*, and s. 9 of the *Saskatchewan Evidence Act*.

Incriminating questions

5 (1) No witness shall be excused from answering any question on the ground that the answer to the question may tend to criminate him, or may tend to establish his liability to a civil proceeding at the instance of the Crown or of any person.

Answer not admissible against witness

(2) Where with respect to any question a witness objects to answer on the ground that his answer may tend to criminate him, or may tend to establish his liability to a civil proceeding at the instance of the Crown or of any person, and if

but for this Act, or the Act of any provincial legislature, the witness would therefore have been excused from answering the question, then although the witness is by reason of this Act or the provincial Act compelled to answer, the answer so given shall not be used or admissible in evidence against him in any criminal trial or other criminal proceeding against him thereafter taking place, other than a prosecution for perjury in the giving of that evidence or for the giving of contradictory evidence.

Incriminating answers

9(1) No witness shall be excused from answering any question on the ground that the answer to the question may tend to incriminate the witness or may tend to establish the witness's liability in a proceeding.

(2) If a witness objects to answer a question on the ground that his or her answer may tend to incriminate him or her or may tend to establish his or her liability in a proceeding:

(a) the witness must answer the question; but

(b) the answer given by the witness must not be used, and is not receivable in evidence against the witness, in any other proceeding.

(3) If, pursuant to any statute of Canada or any other province or territory of Canada, a witness has been required to answer a question after objecting to answer the question on the ground that his or her answer may tend to incriminate him or her or may tend to establish his or her liability in a proceeding, the answer given by the witness must not be used, and is not receivable in evidence against the witness, in any proceeding to which this Act applies.

To ensure the protected of these sections is preserved, I will pose the following question to each witness after they are sworn and identify themselves:

Is it correct that you object to answering the questions posed to you here today on the basis outlined in s. 5 of the *Canada Evidence Act* and s. 9 of the *Evidence Act* and claim the protections afforded to you by that legislation?

Appendix I

SUMMARY OF RECOMMENDATIONS RECEIVED BY THE INQUIRY

Recommendations of Grant Thornton LLP

The Auditors made a number of recommendations in the Forensic Review, including:

- (a) A full forensic compliance review of expenses to identify other potential non-compliant items;
- (b) Examine the current and prior organizational structure of NVP;
- (c) Examine the mortgages for compliance and determine whether there were any guarantees provided by NVP;
- (d) Examine expenditures to determine whether they comply with s. 214 of the *NMA*;
- (e) Examine intercompany balances and related party transactions from January 1, 2014 to December 31, 2017, in accordance with the recommendations set out in the Forensic Review; and
- (f) Review the restated 2017 financials in the 2018 audited financial statements of PBNLP.

Recommendations of Mr. Ron Kruzeniski, Q.C., Saskatchewan Information and Privacy Commissioner

Mr. Kruzeniski made several recommendations as a result of the OIPC's dealings with the Village, including:

- (a) Delegate the authority to respond to *LAFOIP* access to information requests to the Village Administrator;
- (b) Establish a policy pertaining to responding to access to information requests, and in his opinion, this policy should be a legislated requirement;
- (c) The provincial government and SUMA should create a central point of contact for providing advice to municipalities;
- (d) The provincial government should make the payment of funds and grants to municipalities conditional on their compliance with *LAFOIP*; and
- (e) Legislation should require transparency and accountability.

Appendix J

Pinehouse Opening Statement

INTRODUCTIONS

My name is WJ Vancise and I have been appointed by the Minister of Government Relations and Minister Responsible for First Nations, Métis and Northern Affairs to conduct this inquiry. Mr. David Stack has been appointed Inquiry Counsel.

As will be noted, this inquiry is to investigate certain actions of the Mayor Mike Natomagan and Councilman Conrad Misponas of the Village of Pinehouse.

Identification of Counsel

Mr. Nolan Dooley has been retained by the Mayor of the Village of Pinehouse, and Ms. Candace Grant has been retained to represent the Village of Pinehouse. Councilman Misponas is unrepresented by counsel.

I propose to outline the underlying Ministerial Orders and facts what bring us here today. On December 7, 2018, The Honourable Warren Kaeding, Minister of Government Relations and Minister Responsible for First Nations, Métis and Northern Affairs, issued an inspection Order pursuant to Section 417 of the Northern Municipality Act regarding noncompliance with obligations required by the Act by the Village of Pine House pursuant to the Local Authority Freedom of Information and Protection of Privacy Act (LAFOIP).

The basis for the Order for an Investigation was the failure by the Village of Pinehouse to respond to requests for information and the report of the Privacy Commissioner's Review Report 204-2018 that recommended the Minister direct an inspection under the Municipalities Act. The Minister issued Order for the investigation and appointed Mr. Neil Robertson QC as the inspector.

Mr. Neil Robertson QC, was to inspect all matters involved with the management and administration or operation of the Northern Village of Pine House relating to requests for information from the Village under the Local Authority Freedom of Information and Protection of Privacy Act (LAFOIP) as well as the appropriateness of actions of any employee or agent of the Village in connection with those matters. In addition to the above, he was directed to look at other administrative and Council deficiencies of the Village in relation to the legislative responsibilities that may be identified in the course of his investigation.

The Inspector conducted the inspection regarding the obligations of Municipal Officials pursuant to the relevant provisions of the Northern municipalities Act and the LAFOIP. He detailed the failure of the Village of Pine House to re respond to the requests for information and he reviewed the reports prepared by the Office of the Information and Privacy Commissioner (the Commissioner), some 13 reports in all.

The Inspector investigated whether the Village of Pine House complied with its duties under LAFOIP and also investigated the governance of the Village of Pine House by the Mayor and a Councilmen including compliance with basic requirements of the NMA (which will be examined in detail by this

Inquiry) including conflicts of interest and municipal employment by some members of council as well as the duties of members of council to act in the best interests of the Village of Pine House.

He also investigated the level of remuneration of council members and examined minutes of council authorizing the salaries of the Mayor and Councilors. The Inspector examined whether council followed and made proper Public Disclosure Statements as required by the MNA.

He also investigated the finances of the Village of Pine House and examined the debt limits established by the MNA.

In addition, he reviewed certain mortgages granted by the Village of Pinehouse to certain individuals and residents of the Village and the authority of the Village to grant them. He also investigated the issue of conflict of interest by certain Village officials.

He also reviewed and examined the controlled corporations created by the Village of Pine House and the employment relationship with them by members of council.

In the result, he made a number of recommendations the most important of which were the removal of the Mayor Mike Natomagan and Councilman Misponas from office.

As a result of those findings, and because the two individuals named did not have an opportunity to respond to those findings or recommendations

Minister Kaeding ordered pursuant to section 418 of the MNA an Inquiry of the two named individuals to determine whether they should be removed from office.

He appointed Mr. Neil Robertson QC as Inquiry Officer on April 2, 2019. Subsequent to that date, Mr. Robertson was appointed to the Court of Queen's Bench and the Hon. William J. Vancise QC was appointed pursuant to section 418 on the MNA to continue the Inquiry into the conduct of the named members of council by the Ministers Order dated June 5, 2019.

That Ministerial Order forms part of the documents which are set out in the document book that will be filed as an Exhibit in this Inquiry.

The direction that I have received as Inquiry Officer is contained in the Book of Documents that will also be filed as an Exhibit of this Inquiry. Without going into excessive detail, it sets out that I was appointed to continue the mandate that had been given to Mr. Robertson pursuant to the initial Ministerial Order.

The Terms of Reference set out in the that Ministers Order require an inquiry into the appropriateness of conduct of Mayor Natomagan and Councilor Misponas, both members of the Council of the Northern Village of Pinehouse.

Paragraph (a) of the terms of Reference requires an inquiry into the conduct of the Mayor for his failure to comply with the duties of LAFOIP and NMA including: failure to respond to requests for information, failure to file Public

Disclosure Statements, failure to declare conflicts of interest and his employment a controlled Corporation of the Village.

Paragraph (b) requires an inquiry into the appropriateness of the conduct of counselor Misponas in failing to file a Public Disclosure Statement, failing to declare conflicts of interest and his employment with a controlled Corporation of the Village.

After my appointment, I immediately contacted Mr. David. Stack QC who had been appointed Inquiry Counsel to coordinate and continue the preparation for this hearing. I was advised that Mr. Robertson QC had completed certain preliminary steps such as compiling documents including his inspection report and arranging with Inquiry Counsel to set out the procedure to follow on the Inquiry. Inquiry Counsel and I established lines of communication to review the procedure to follow so to enable us to establish early dates for the Inquiry having regard to the exigencies and needs of all counsel representing the parties.

I reviewed and revised the Rules of Procedure and Practice. Those Rules have been provided to all counsel and provide, in relevant part, provisions for granting standing before this Inquiry. To date, standing has only been requested and granted to the Village of Pine House and to Mayor Mike Natagoman.

Inquiry Council and I visited the Village of Pinehouse on August 28, 2019 where we met the Mayor and were driven around the community in the company of Mr. Brad Henry. We looked at some of the facilities including the

Elders home, the Town Hall and the Rink. The purpose of the visit was simply too become acquainted with the Village. It was completely informal and not part of this investigation

Inquiry counsel has conducted a number of interviews with persons having information concerning the subject matter of the Inquiry and to date, in addition to the persons to who have been granted standing, Mayor Natagoman, Martine Smith on behalf of the Village of Pinehouse the following persons have been interviewed and will be called to testify:

- Mr. Ronald Kruzeniski QC Privacy Commissioner;
- Mr. Brad Henry, Executive Director, Northern Municipal Services;
- Mr. Darcy Hande;
- Conrad Misponas, Councilman
- Auditor from Grant Thornton;
- Thomas Wildeman;
- A.J. Felix, JEI Jasper Enterprises
- Ms. Shannen Fisher, Thierman Financial.

We are still interviewing individuals from Pinehouse who may have information on the issues that are the subject of this Inquiry that we haven't already received. If anyone is identified as a witness we will advise.

Will say statements have or will be provided to all counsel at least three days prior to when a witness is scheduled to testify.

Notice of Adverse Interest have been served on Mayor Mike Natogaman and Conrad Misponas. Inquiry Counsel has also contacted Conrad Misponas and advised that he should retain counsel but to date he has not done so.

Inquiry Counsel will outline, in due course, the Inquiry schedule as well as the dates on which we anticipate the witnesses already identified will be called upon to testify. In an effort to permit counsel to the parties affected to have ample opportunity to review the documents and in particular the audit, the commencement of this inquiry has been delayed by one day.

We anticipate re-commencing of the Inquiry on Tuesday of next week. We will not finish by 5 October if our assessment of the length of time it will take to hear all the witnesses that we are aware of at the present time is accurate.

We will therefore reconvene the hearing on the 21th of October, 2019. This venue is not available at that time so I have made arrangements to continue the inquiry at the Court of Appeal Court Room in the Saskatoon Courthouse.

As you are all aware, this Inquiry will not be open to the public. That is specifically provided for in paragraph 6 of the Terms of Reference attached to the Ministerial Order.

The Terms of Reference specifically provide that the Inquiry Officer is to consider the relevant standards applicable to members of the municipal accounts all of the Village of Pine House. Paragraph 2 on the Terms of Reference read as follows:

"In conducting the Inquiry into the appropriateness of conduct and affairs, the Inquiry Officer shall consider the relevant standards applicable to members of municipal council by virtue of the Act, the Official Oath prescribed in Form A of the *Northern Municipalities Regulations*, the municipalities Code of Conduct and the common-law in relation to conflicts of interest as it relates to the duties of members of council to the municipality and the public."

I asked Inquiry Counsel to prepare a memorandum as to the scope and content of the standards to which I, as Inquiry Officer, shall consider in conducting the Inquiry into the appropriateness of the conduct of council members of the Village of Pinehouse. That memorandum will be provided to counsel in due course.

Before turning this matter over to Inquiry Counsel, I want to draw your attention to an anomaly that exists when dealing with an Inquiry under the MNA. The Act incorporates certain sections of the Public inquiries Act, but specifically does not incorporate section 10 of the Act which grants immunity to persons who testify as witnesses before a court against self-incrimination.

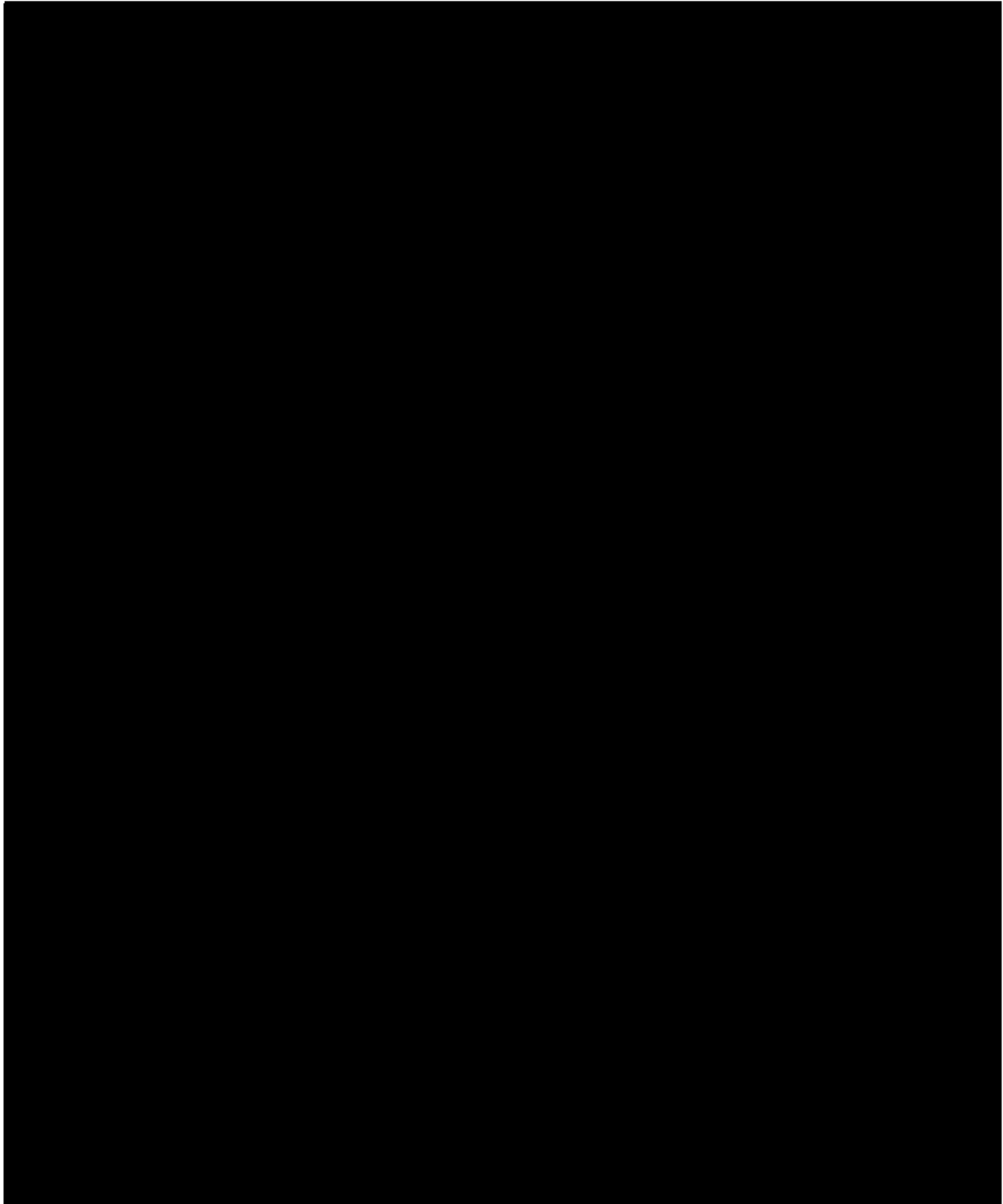
As Inquiry Council will advise, all those persons who testify before this Inquiry will be afforded the protections provided by section 13 of the Canadian Charter of Rights and Freedoms to protect against self-incrimination. He will deal with this matter at greater length but suffice it to say he will determine whether or not the witness objects to answering any questions on the basis

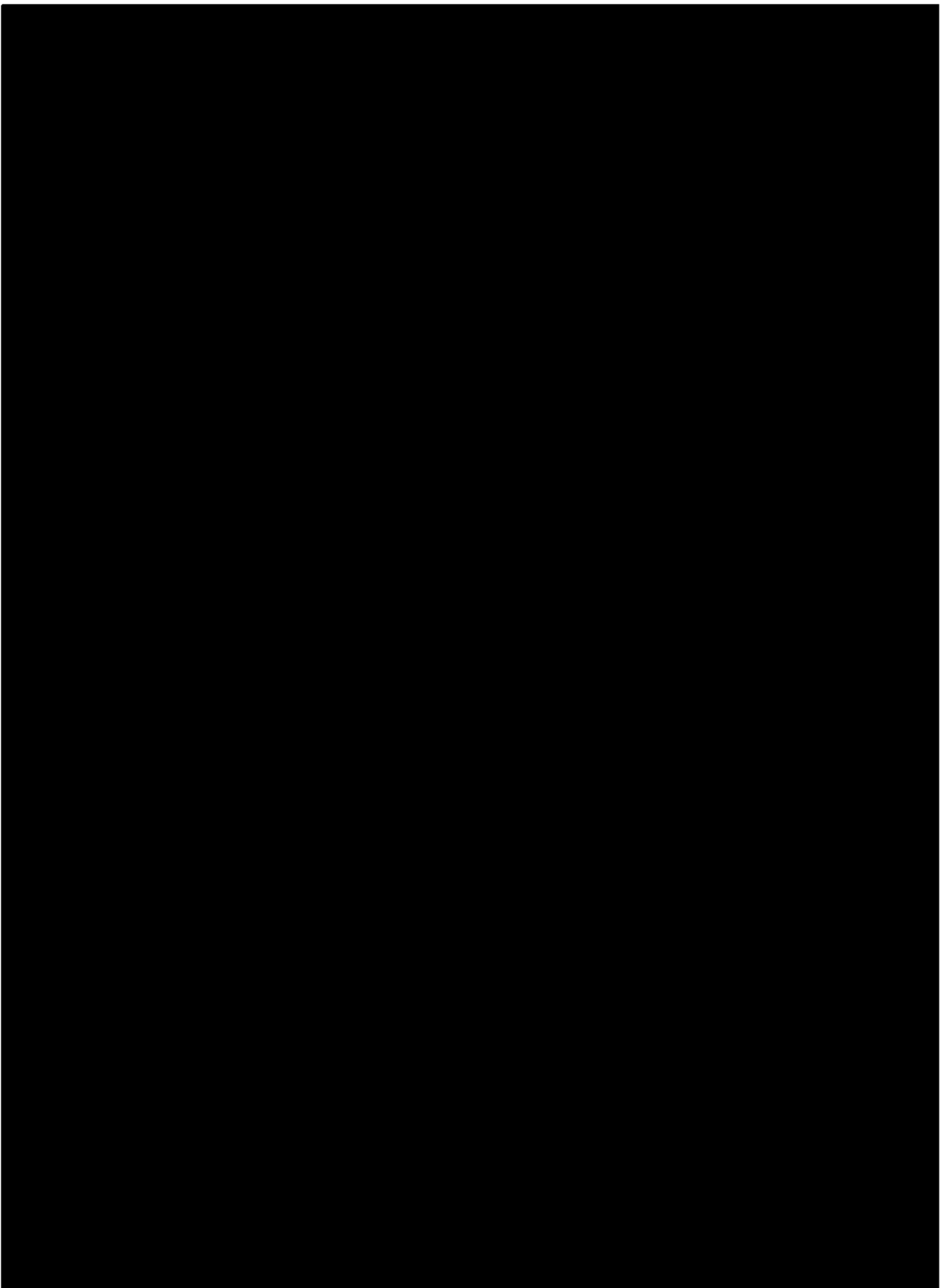
outlined in section 5 of the Canada Evidence Act and section 9 of the Evidence Act and claim the protection afforded by that legislation.

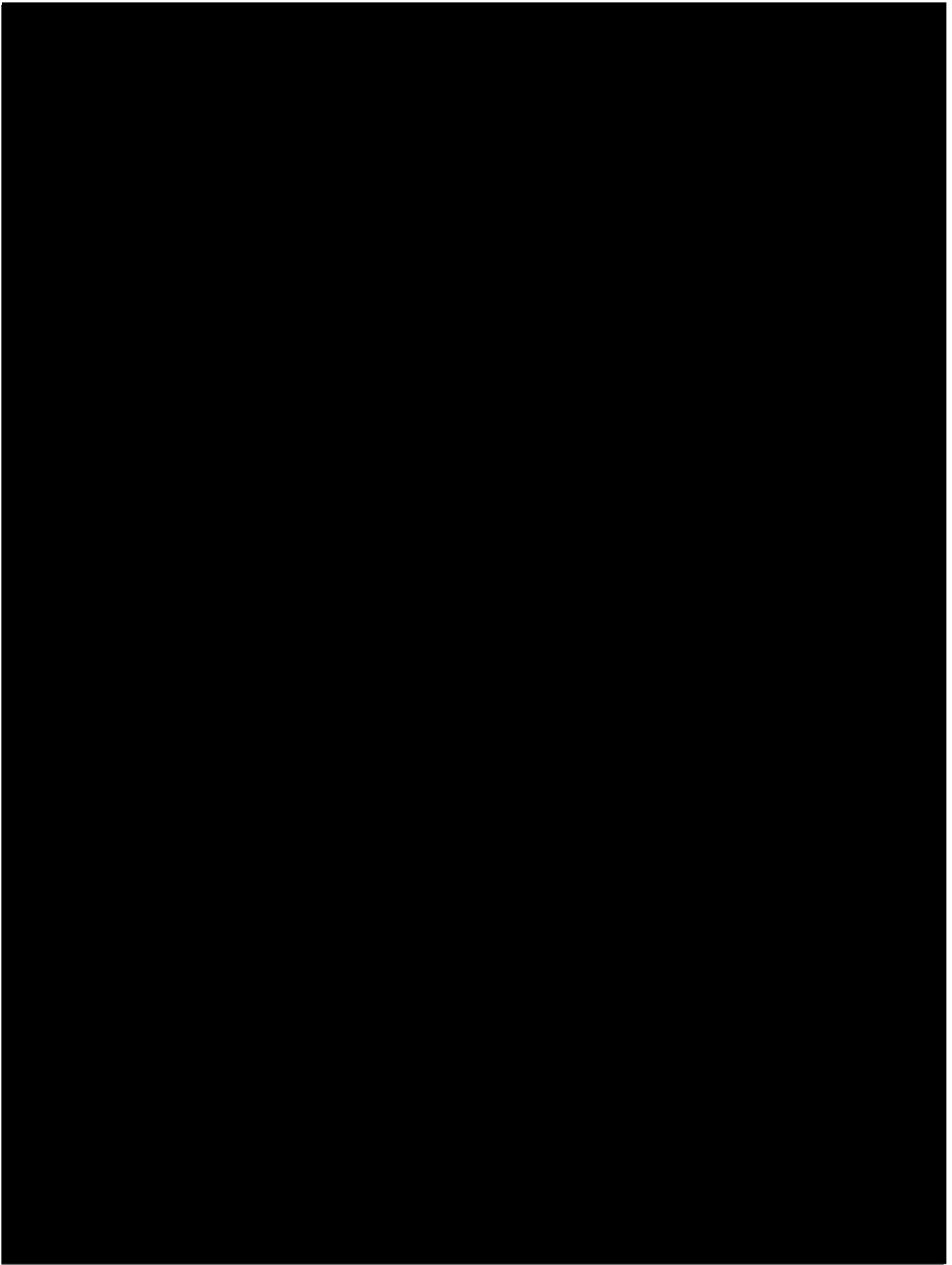
Appendix K

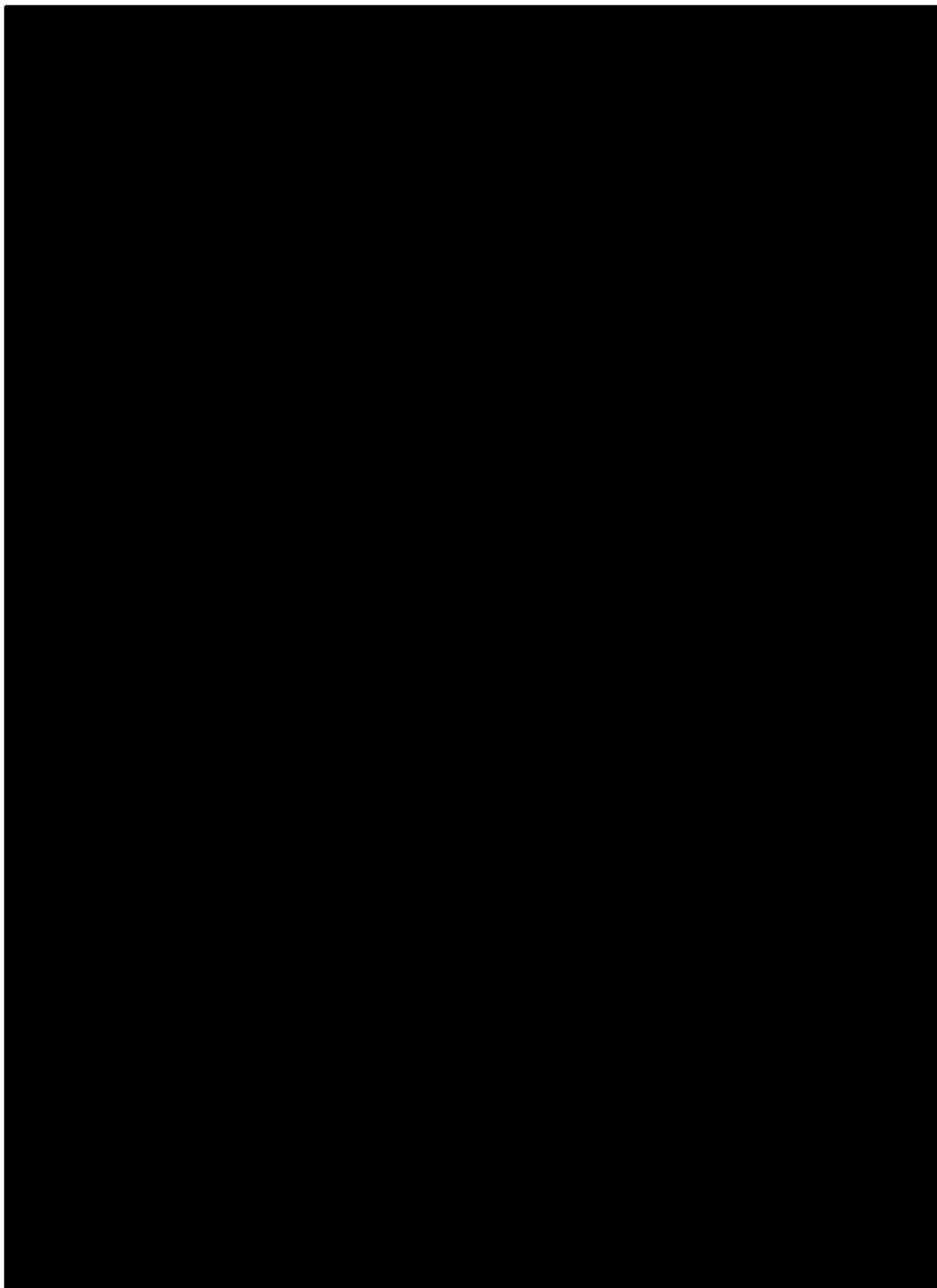
**IN THE MATTER OF AN INQUIRY
INTO THE NORTHERN VILLAGE OF PINEHOUSE
ORDERED UNDER *THE NORTHERN MUNICIPALITIES ACT, 2010*, SS 2010, C N-5.2**

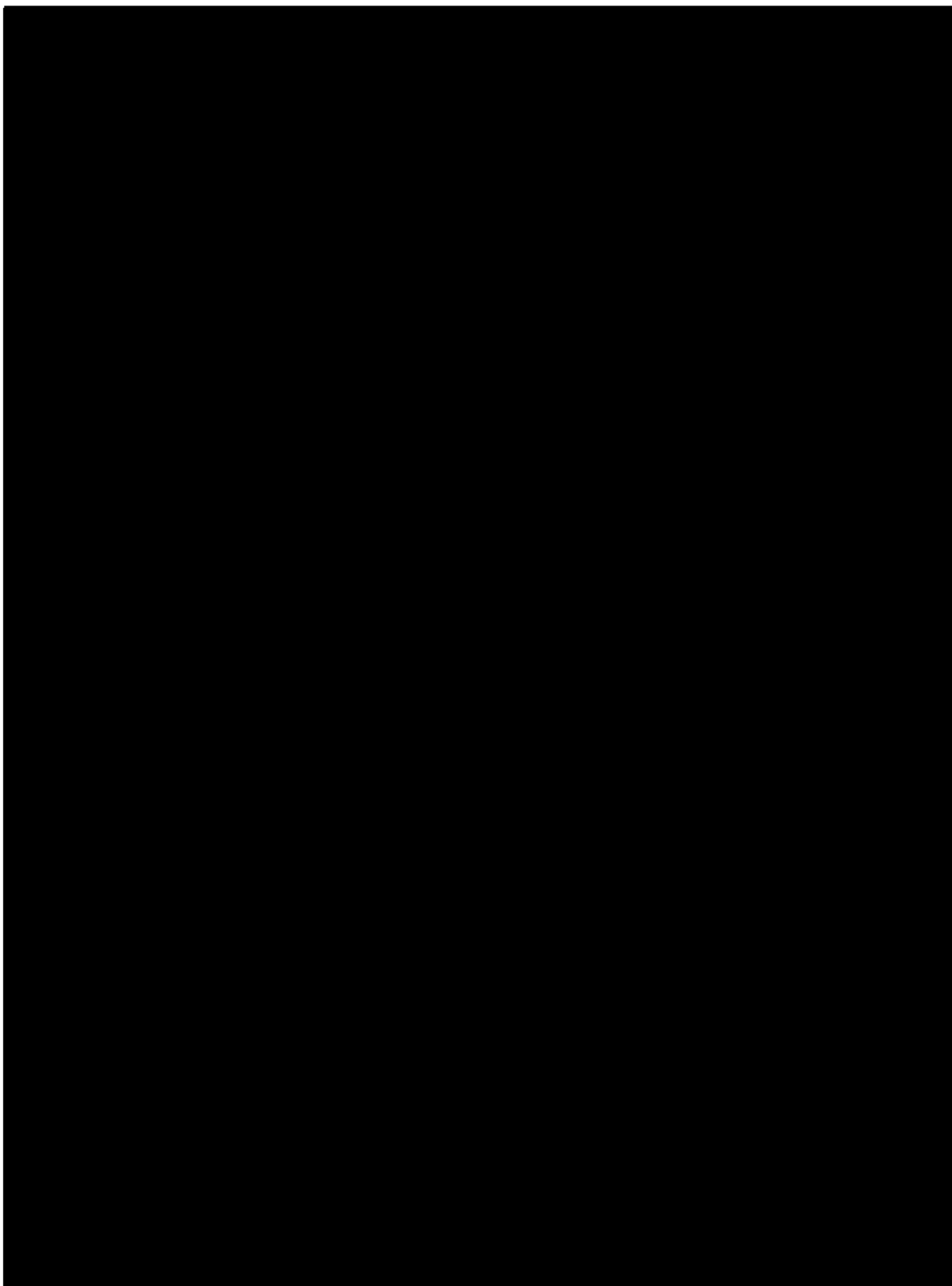
DOCUMENT LIST

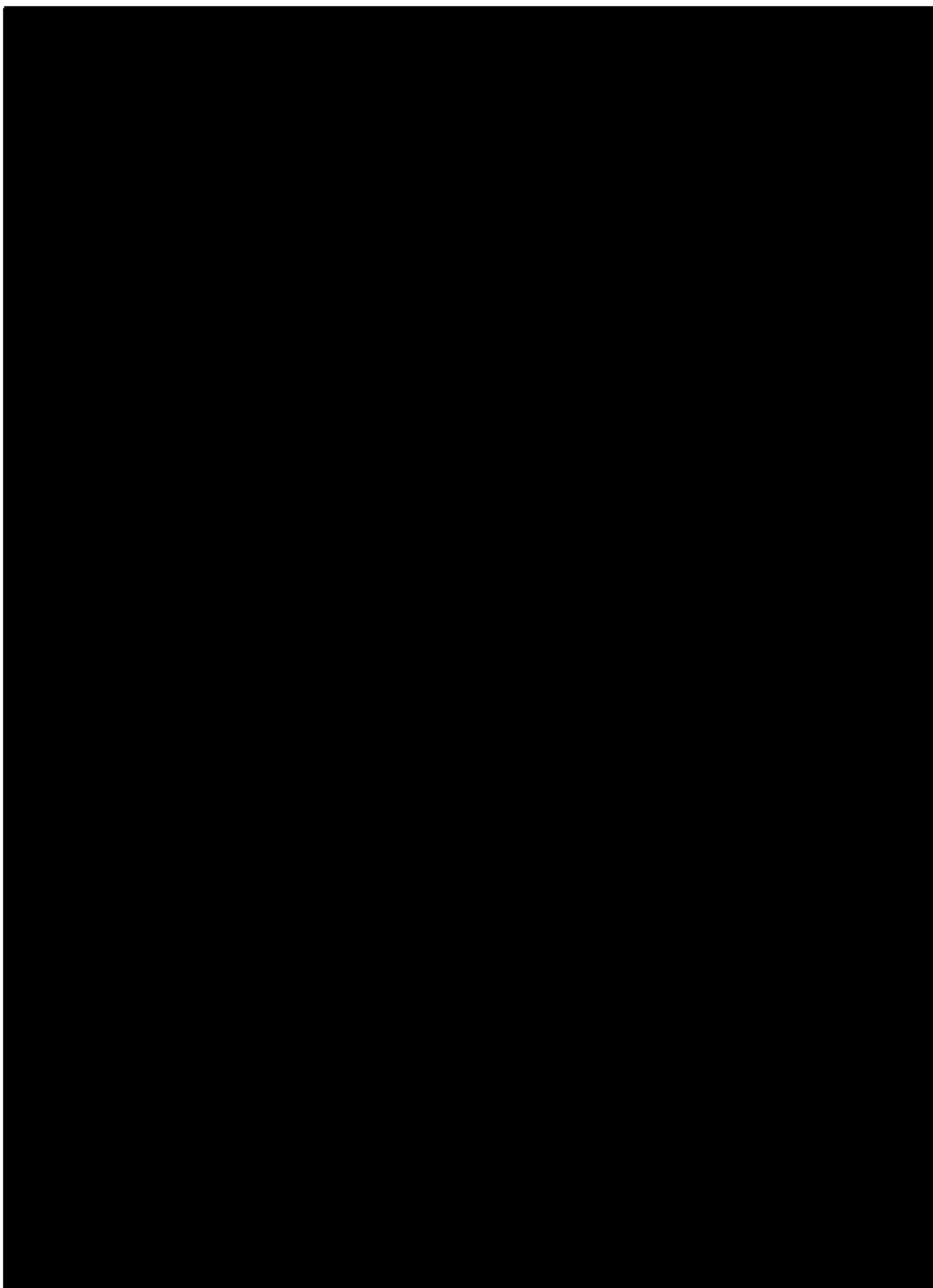


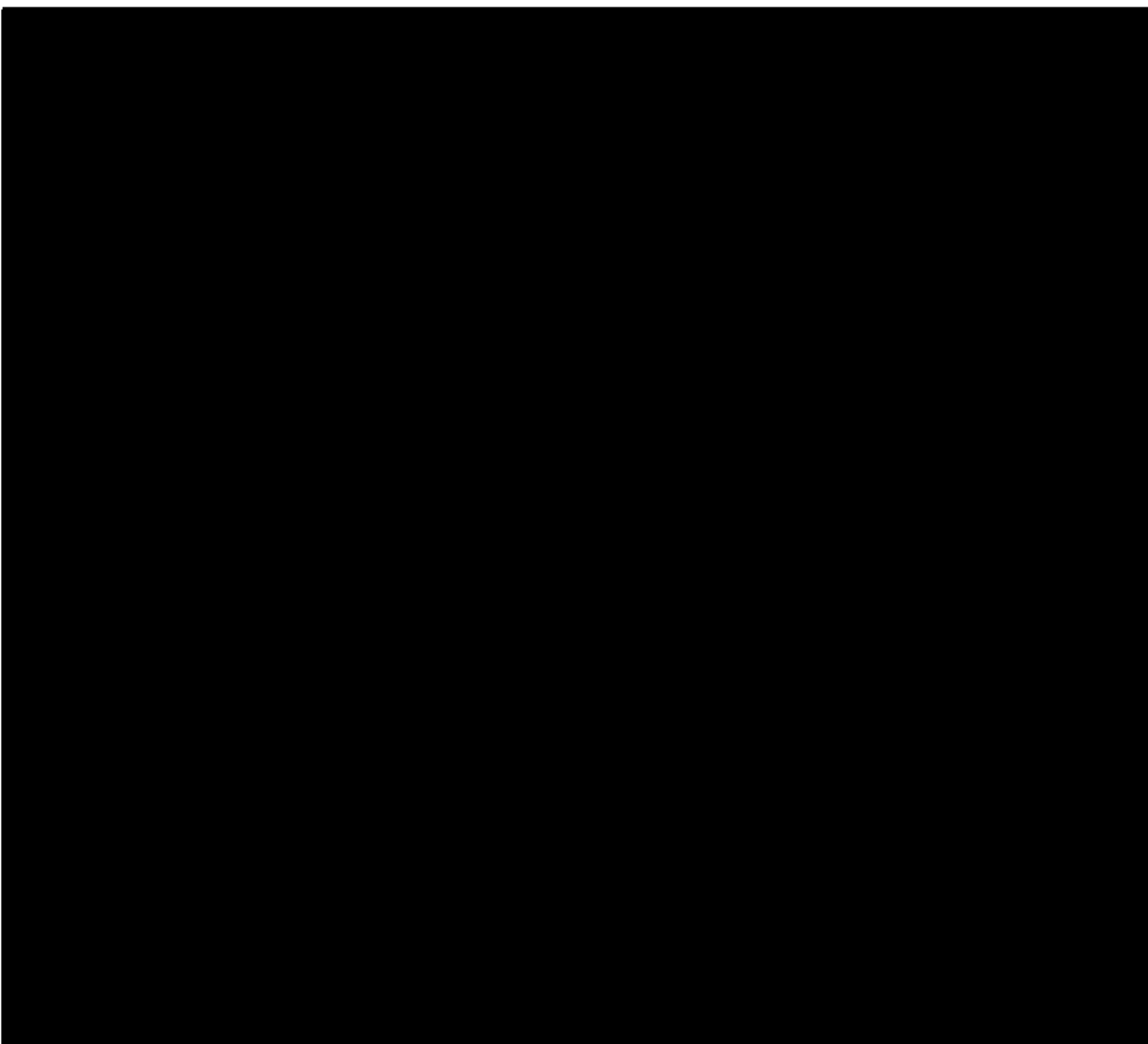












SUPPLEMENTAL DOCUMENTS

