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**Mercredi 11 juin 2008**

**Standing Committee on  
Public Accounts**

Special report,  
Auditor General

**Comité permanent des  
comptes publics**

Rapport spécial,  
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

## STANDING COMMITTEE ON PUBLIC ACCOUNTS

## COMITÉ PERMANENT DES COMPTES PUBLICS

Wednesday 11 June 2008

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*The committee met at 0913 in committee room 1.*

### SPECIAL REPORT, AUDITOR GENERAL

**The Chair (Mr. Norman W. Sterling):** We're calling the meeting to order. Later this morning we're going to deal in camera with two reports of the committee.

First, we wanted to consider a motion with regard to some ongoing work that the Auditor General has undertaken already, and that is relating to infectious diseases in hospitals.

There are a couple of motions in front of the committee at this time, basically with the thrust of asking the Auditor General to perhaps produce his report with regard to this matter prior to his normal release date, which would be at the end of November or early December in his annual auditor's report.

There was a motion that I circulated to all lead members of parties yesterday so they would have advance notice with regard to this kind of a motion. That motion says:

"I move that the Auditor General, under section 17 of the Auditor General Act, table his report on his assessment of whether selected hospitals follow effective policies and procedures for the prevention and control of hospital-acquired infections with the Standing Committee on Public Accounts as soon as it is completed; and

"That prior to the tabling of this report with the committee, the Auditor General may inform the Deputy Minister of Health of his opinions, observations or recommendations."

I thought that embodied the discussion that we had in camera last week, but I have an alternate motion as well, put forward by Mrs. Sandals, which reads:

"That following the Auditor General's completion of his value-for-money audit of the infection control program specifically looking at C. difficile, if in the Auditor General's opinion his recommendations could have a significant and timely impact on public health, the Standing Committee on Public Accounts of the Legislative Assembly of Ontario calls on the Auditor General to consider using the discretion outlined in section 12(1) of the Auditor General Act to release that chapter of his annual report in a special report to the Speaker.

"That prior to tabling of this report, the Auditor General may inform the Deputy Minister of Health of his opinions, observations or recommendations."

My reading of the two, if I could give my opinion first, is that the original motion is an action taken by the committee to instruct the auditor what our wishes are with regard to this matter in terms of dealing with a matter which is under his investigations, and therefore it's more at the initiative of the committee. With regard to the other motion, which was put forward by Mrs. Sandals, I would make the argument that we don't need a motion in order for the Auditor General to do what he can do under subsection 12(1) of the act.

I would prefer that the committee consider the original motion from the point of view of not putting the auditor in the difficult position, as he goes through his duties as Auditor General, of dealing with matters which may require immediate action, and therefore be put in the position of perhaps producing three, four or five reports every year as he stumbles across a matter which might, on the edge of his judgment, require "emergency reaction." So I would prefer to put the onus on the committee to be giving him more of an instruction, rather than just telling him to follow the powers that he already has under the act.

I'm sorry; perhaps I shouldn't do that. But I'll open it for discussion.

**Mrs. Liz Sandals:** Do you wish to—your motion was tabled first, so clearly, procedurally, if you wish to put your motion first, we can debate it.

*Interjection.*

**Mrs. Liz Sandals:** I would just comment that we are supportive of the Auditor General releasing the information early, if it seems helpful to do that in terms of managing C. difficile. Our concern is that the section that is cited as the authority in the opposition motion is a special audit, and that that's not technically accurate. In fact, it isn't the committee asking the auditor to do a special audit; he's already doing the audit. Whereas the section we have cited is, using the authority within his routine audit, if he runs across something that he thinks needs to be accelerated, that he do so. We are specifically citing infection control and C. difficile, so we aren't just simply parroting the act. Our concern is that this is not a special audit we are requesting; it is possible acceleration of a routine chapter. Therefore, it's more appropriate under subsection 12(1).

**Ms. Andrea Horwath:** I actually have a question of clarification—through you, Mr. Chair—for the auditor, if that's possible.

**The Chair (Mr. Norman W. Sterling):** Okay. I think that would be a good idea.

**Ms. Andrea Horwath:** Jim, could you tell us what has been the precedent in terms of the way you handled these situations in the past? I know we had a bit of a discussion about this last time, but with these issues being raised in terms of the sections of the act, as the auditor responsible for fulfilling the act, what's your perspective?

0920

**Mr. Jim McCarter:** Our interpretation of section 17 is that the intent of the Legislature is that basically the auditor will include all his audit work for the year in one annual report and table that annual report. The part of section 17 which says that if something is of such urgency that the auditor feels it has to be tabled immediately as a special report, as far as I can recall, I think it's only been used once in the history of the office, and actually it was a special report that I did on Y2K, the year 2000 bug, where we really felt that could not wait the six months.

But I'd have to say with respect to our other audits, a good example would be the surgical facilities audit last year where a number of the issues there did affect public health. An example would be the flash sterilization, which certainly was a fairly significant item. Even with respect to that one, we felt that particular audit didn't meet the urgency requirements in section 12 basically to table immediately, and we did include it in our annual report. So even with respect to this current audit that we're doing with hospital-acquired infections, our normal practice would be to table it as part of our annual report.

Having said that, if the committee was to pass a motion asking us to really have a second look at this audit or to "decide whether in your opinion it's of such urgency and would affect public health—we'd like you to give serious consideration to tabling it earlier," but again, that would be our judgment. We would have to make the judgment call really whether we would go ahead and table it early or whether we would treat it as we would normally treat our routine audits and include it in our annual report. Does that help, Ms. Horwath?

**Ms. Andrea Horwath:** That's helpful, but if I could just finish—

**Mrs. Liz Sandals:** On a point of order, please: You started that preamble with section 17, Jim. I think you meant subsection 12(1).

**Mr. Jim McCarter:** Yes, I should have said section 12.

**Mrs. Liz Sandals:** He was talking about subsection 12(1).

**Mr. Jim McCarter:** Subsection 12(1) basically—

**Mrs. Liz Sandals:** That's why I said, "On a point of order."

**Ms. Andrea Horwath:** So when you started off your comments, you were talking about section 12(1), as opposed to—

**Mr. Jim McCarter:** Yes. Subsection 12(1) basically says the auditor will table the results of all his work in an

annual report. It does have the caveat that if a matter is of such significance or such urgency, the auditor can table a special report. Historically, the office has, to the best of my knowledge, only used that section once, and that was in the Y2K example that I mentioned. Generally, all of our audit work is included in one annual report.

**The Chair (Mr. Norman W. Sterling):** Let me ask this question of clarification. If we pass the original motion, would that be considered a special report under subsection 12(1)?

**Mr. Jim McCarter:** It would be considered a special assignment under section 17. Now, what it's basically saying is, "Auditor, we know you're doing a routine audit on this. However, under section 17, we'd like you basically to report this as a special assignment, report it as quickly as you can and report the results directly to the Standing Committee on Public Accounts." That's how I would interpret that motion, Chair.

**The Chair (Mr. Norman W. Sterling):** Okay.

**Ms. Andrea Horwath:** Then just following up on the clarification, would it then be taken out of your final report and only be dealt with through that special—

**Mr. Jim McCarter:** Yes. Then it would not be included in our annual report, although we might make brief mention of it, saying that we did—usually in our report on the Office of the Auditor General, where we have done specials, we would have a couple of paragraphs, like with the Bruce nuclear or the immigration grants. We would have a couple of paragraphs just very briefly saying that during the year we did table the following special reports, usually under section 17, but they're very brief, and we wouldn't include that as a chapter in our annual report.

**Ms. Andrea Horwath:** Just my final question of clarification: As the Auditor General, does that cause you any discomfort in the fact that you started the process as part of your annual review of the various issues, and with this motion, the first motion to be tabled, it then changes the context of it into a special audit? Is that problematic?

**Mr. Jim McCarter:** The work that we do would not basically change whether—essentially an audit is an audit is an audit. The fact that this current motion was before us saying, "We'd like you to treat this as a special assignment and table the results of the audit in a special report as soon as it's done"—we would certainly do our best to adhere to the will of the committee.

**Ms. Andrea Horwath:** Thank you very much.

**Mrs. Liz Sandals:** But if it gets taken out of the annual report, as opposed to just being part of the annual report that is released early, which is what we're proposing, then it wouldn't be part of the annual report and wouldn't really get into our normal public hearing follow-up sort of rotation.

**Mr. Jim McCarter:** It wouldn't be in the value-for-money chapter of our annual report; it would be in a different chapter in our annual report, but there would just be a reference to it. Because of the way the motion is worded, we'd basically be reporting to the Standing Committee on Public Accounts. Once we have tabled a

report with the Standing Committee on Public Accounts, I would certainly think—and you might want to check with the clerk—that a hearing could be held if the committee wants to hold a hearing on it. That would be my interpretation.

**The Chair (Mr. Norman W. Sterling):** The way I read the second motion, this does not guarantee that a report is going to be made in September. All it does is say to the Auditor General, “Have a look at this, and you decide whether you’re going to have a report in September or put it in your annual report in December.”

**Mr. Jim McCarter:** I’ll be very direct: If there were no motion, we would be including the results of this audit in our annual report. If the committee were to pass a specific motion, we would certainly give serious consideration to adhering to the motion. Notwithstanding, I wouldn’t want to guarantee that we would table it early and not in our annual report, as is our normal practice. But a motion by the committee would be taken seriously by my office.

**The Chair (Mr. Norman W. Sterling):** Let me get that straight, Mr. McCarter: If motion 2 is put forward, under subsection 12(1), do you interpret that as still having the discretion to do or not do a special report?

**Mr. Jim McCarter:** The answer to that is yes.

**The Chair (Mr. Norman W. Sterling):** You have those powers now without our moving this motion?

**Mr. Jim McCarter:** I have those powers now, and it would be at my discretion whether I feel it’s of such—I’m just look up the wording here—“significant and timely impact on public health” that it would warrant my treating it as a special audit under section 12. I would interpret that as being at my discretion. As I indicated, without the motion we would be including this in our annual report; with the motion, we would give this consideration because it was a motion by the committee. But I wouldn’t want you to assume this would guarantee that we would treat it as a special report. We would need to assess it carefully.

**The Chair (Mr. Norman W. Sterling):** Is that true in the case of both motions? That’s what I’m having difficulty with. That’s what I’m trying to get from you.

**Mr. Jim McCarter:** No. The first motion is very clear. It’s basically directing the auditor to report the results of this audit to the Standing Committee on Public Accounts as soon as it is completed.

**The Chair (Mr. Norman W. Sterling):** Okay. So with the first one there is no discretion and the results will likely come forward in September, and with the second, there is discretion as to whether you report or don’t report.

**Mr. David Zimmer:** I understand the distinction the Chair has just made, and I agree with that. But as a matter of administrative law, what is the position of a civil servant who has discretion, such as you have here, if the oversight committee—this committee, if you will—passes a motion that, on the face of it, is suggesting to you how you should exercise that discretion and is not fettering your discretion?

**Mr. Jim McCarter:** I would interpret this motion as saying that if, in the auditor’s opinion, the recommendations are so significant and of such a time-sensitive nature on public health, the committee is saying to the auditor, “If, in your opinion, that is the case, we would like you to table that report as soon as possible.” That would be my interpretation of the motion.

**The Chair (Mr. Norman W. Sterling):** Which motion are you referring to?

**Mr. Jim McCarter:** The second one.

**Mr. David Zimmer:** So the follow-up question is, irrespective of any motion that emanates from this committee, can you say that’s not an undue fettering of your discretion?

**Mr. Jim McCarter:** I probably wouldn’t consider either motion a fettering of my discretion. I think there’s a clear difference between these two motions, and I think I understand the difference between the two motions. There is a clear difference between them.

**0930**

**Mr. David Zimmer:** But on the second motion, where you say you’ve got discretion and it’s sort of implied in the motion that maybe we think you should exercise that discretion, you’re satisfied that is not fettering your discretion?

**Mr. Jim McCarter:** It’s basically saying to me, “Auditor, in this case, if in your opinion this is so significant and so time-sensitive, we don’t want you to follow the normal practice of tabling the results of your audit in an annual report, as indicated in the Audit Act; we would like you to move it up. But it’s at your discretion.” That would be my interpretation of this motion.

**The Chair (Mr. Norman W. Sterling):** Any further discussion before we put forward the motion?

**Mr. Ernie Hardeman:** I’m sorry, Mr. Chairman, I missed the initial discussion. Were we discussing both motions at the same time?

**The Chair (Mr. Norman W. Sterling):** Yes. Basically, what I’m trying to do is reach a compromise in terms of what the committee wants to go forward with, and understand the legal implications or the fallout of our doing this, not only in terms of this immediate situation, but looking forward to how the Auditor General functions in general. I guess part of the argument put forward is that should we accept the second motion, that he might choose to do a special report under section 12(1)—which he can do—we don’t need the motion. Mr. McCarter has that power now.

**Mr. Ernie Hardeman:** I would just like to get clarification on which is motion 1 and which is motion 2.

**The Chair (Mr. Norman W. Sterling):** Motion 1 is under section 17.

**Mr. David Zimmer:** It’s the short one.

**The Chair (Mr. Norman W. Sterling):** It’s the short one, which the clerk put together with me and Mr. McCarter out of our discussions last week. Motion 2 is Ms. Sandals’s motion under subsection 12(1).

The difference in the outcome might be that under motion 1, the Auditor General would come out in

September and say, “I’m doing this early because the public accounts committee understood I was looking into infectious diseases in hospitals. This really comprises part of my report in December, but I’m doing this earlier,” and then go through it as part of his annual report. The other would be a special report of the Auditor General, who was alarmed enough to take this issue to the public early; in other words, it puts the onus on the Auditor General to make that decision, and it’s not as much a committee decision as in motion 1. Is that a fair distinction between the two?

**Mr. Ernie Hardeman:** I think the auditor said he didn’t feel constrained by either one to make a decision on whether it should be pre-reported or not, because he feels that he still has the discretion of saying whether it’s a special report.

**Mr. Jim McCarter:** My interpretation is that the first one is very specific. It’s saying to the auditor: “The committee would like you to table this report as soon as you’ve completed the work, as soon as you finish this audit.” Motion 2, in my interpretation, is saying to the auditor: “It’s your call, Auditor. If, in your opinion, it’s so significant and your recommendations are of such a time-sensitive nature, the committee is saying that we would like you to table it early. If, in your opinion, it is not so significant or of a time-sensitive nature, then it’s your call whether you’d like to follow your normal procedure of including the results of this audit in your annual report, as is your normal practice.” That would be my interpretation of the two motions, Mr. Hardeman.

**Mr. Ernie Hardeman:** Thank you.

**The Chair (Mr. Norman W. Sterling):** Part of the reluctance of the Auditor General to do it, under the section motion, might be that he doesn’t like to do this very often, because there’s probably a sense of urgency with every section of his report. Therefore, the more often he does that, the more expectation there will be, under the Auditor General’s act, for him to publish reports all year long. That affects processes to go forward.

**Mr. Ernie Hardeman:** Thank you.

**Ms. Andrea Horwath:** Mr. Chairman, in the second motion, can I just ask the significance, if there is any, of tabling the report with the Speaker, and, if it comes before the House is sitting, what that means? If it’s tabled with the Speaker, is it public or does it have to go through being tabled in the House by the Speaker?

**The Clerk of the Committee (Mr. Katch Koch):** No. When a report is tabled with the Speaker it becomes public, but the Speaker will, when the House comes back into session, lay the report on the table formally.

**Mr. Jim McCarter:** Our normal practice would be that if the House isn’t sitting—our interpretation is that once we table it with the Speaker, we can make it public and put it on our website. If we wanted to hold a press conference or do a press release, we could, as long as it is tabled with the Speaker.

**Mrs. Liz Sandals:** That would be our intent as well, that whether the House is sitting or not, once it’s tabled

with the Speaker, if there’s urgent information there, we should go forward. I’ll repeat for those of you who have come in more recently, our concern is that section 17 is a special report. We don’t consider this to be a special report. This is routine. This is a chapter on which the auditor was working anyway. He has the authority, under the act, to release chapters early, if it’s timely to do so.

I have no idea what’s going to be in the report, nor do any of us. So we think it’s reasonable to rely on the discretion of the Speaker, who knows what’s in the report, rather than setting the precedent that the committee is going to turn things into special reports, absent any knowledge of the content of the report. I guess I would argue it the other way, that, in fact, it is appropriate to rely on the discretion of the auditor in just the way that the legislation envisions, and we are specifically citing infection control in hospitals, we are explicitly citing *C. difficile*.

So it’s not simply parroting the act. We’re saying there is a specific issue here that you’re looking at, Auditor, and if, on this specific issue, when you’ve finished the chapter you think you need to get it out there early, we accept your judgment. But we’re very nervous about setting the precedent that the committee start cherry-picking chapters on which we really don’t have any knowledge and turning them into special reports, and telling the auditor what to do with them, absent any knowledge that we have, other than that you’re doing it. We think that it is more appropriate to rely on—we’ve flagged the chapter that we all agree is a concern. We agree that if there are recommendations there that would help us to manage *C. difficile*, MRSA, VRE, or the other one—it’s not that we’re saying publish three recommendations, we’re saying publish the whole chapter. If it would help us solve the problem to get that information out there early, by all means do so by tabling it with the Speaker. If the auditor wants to have a press conference, that’s fine with us. It will become public as soon as he’s got the information available and we’re quite comfortable with that. We’re just very nervous about taking work that is already in progress and arbitrarily turning it into a special report, absent the knowledge of what might be in it.

**The Chair (Mr. Norman W. Sterling):** The auditor would like to make a comment with regard to part of the second motion regarding the sentence “infection control program specifically looking at *C. difficile*.” I don’t believe that’s what the auditor was doing.

**Mr. Jim McCarter:** A point of clarification on the wording of the motion: The audit wasn’t specifically looking at *C. difficile*. Actually, our audit was looking at the whole area of hospital-acquired infections. The *C. difficile* issue actually came up and received a fair bit of media attention several months after we started the audit. We were actually looking at hospital-acquired infections, which are, as you mentioned, MRSA, VRE—I can tell you, there are four or five very significant ones, of which *C. difficile* was one.

The other thing is we were only looking at this in selected hospitals. We weren’t looking at this in all hospitals in Ontario. That’s just a point of clarification.

**Mrs. Liz Sandals:** Would you feel more comfortable if that were to say, “including looking at C. difficile,” instead of “specifically looking at C. difficile?” Or if you have another name you want to give to the chapter, we’re certainly—

0940

**The Chair (Mr. Norman W. Sterling):** That would be the second motion. Maybe the first motion will carry.

**Mrs. Liz Sandals:** Yes.

**The Chair (Mr. Norman W. Sterling):** We’ll talk about the massaging of it, if it comes to that. Andrea, you had—

**Ms. Andrea Horwath:** I have just another couple of things that I need to get clear in my mind. The Auditor General doesn’t generally tell the committee in advance what pieces of work he’s doing during the year that are likely to come up in the report. Is that correct?

**Mr. Jim McCarter:** Right.

**Ms. Andrea Horwath:** Generally, we don’t know until it’s tabled, like everything else. Is that the case generally?

**Mr. Jim McCarter:** Yes.

**Ms. Andrea Horwath:** But in this specific case, because of what was happening, we have quite a serious context, I think, with the C. difficile issue. If I recall the conversation of the committee when this idea was first brought forward around being seen to be proactive and being proactive as a committee, I think the Auditor General was indicating that for our information it’s something we should probably know because of the context, because of the serious nature of the issue.

It seems to me that the whole situation that we have in front of us is not normal. It’s quite abnormal and not something that this committee or the Auditor General would take lightly in regard to bringing things forward out of the normal process, which would be the tabling of the report at the end of the year.

With all of those things in mind, it seems to me that motion number one is the one that makes more sense because it does exactly all of those things. It acknowledges the context. It says that the Auditor General has already flagged for the committee that this is out there. Then in the conversation that we had last week, it also says that we think strongly enough about this, regardless of what the recommendations are, that we want to treat it with particular interest or differently.

I don’t think any of those things are problematic, and the way motion number one is written takes the onus to the committee, which I think is appropriate; I think the committee wouldn’t do that lightly. So at this point, with most of the arguments in—I’m sure there are more—I’m leaning toward the first motion. I think you can’t take away the circumstances that are before us, and I don’t think you can take away the fact that the Auditor General did share with us the fact that this piece was being looked at in the annual audit. I think those things are significant and important and I think we need to weigh them in our decision.

**Mr. Ernie Hardeman:** I guess in understanding the difference between the two, the very reason that we’re here discussing this obviously is because of events of the last number of weeks; there’s a concern in the public. To me, what really becomes important is not what the Auditor General has a right to make a decision on. It’s to bring the information that he gathers to the public as expediently as possible.

If you look at resolution number two, it means that if he thinks that there’s nothing to really get concerned about, that time is not of the essence, then he has no way of allaying the public’s fears, shall we say, because it’s going to wait until the annual report. With motion number one, the results are exactly the same, only he has to report right away that everything’s fine.

I think in both ways motion number one does a better job of serving the public’s needs in terms of what the auditor finds the public will know, rather than having to wait another six months before the annual report comes out to find out that everything is fine.

As Ms. Horwath mentioned, this is not a normal course of events to start with. So I don’t think that one needs to worry about following the normal course of events in case everything’s okay. I think we should get on with getting the report, getting the information and then reporting to the public as to what the auditor found.

**The Chair (Mr. Norman W. Sterling):** The odd part of the second motion is that if the auditor chooses, the guise that it will be under at that point in time will be a special report. The guise it will be under in motion one will be part of his general report. I would suggest that motion two will alarm the public to a greater extent than motion one in terms of the outcome. If the Auditor General—

*Interjection.*

**The Chair (Mr. Norman W. Sterling):** Well, if the Auditor General has to make a decision that the information is urgently out there and he issues a special report, then someone knowing the process will say, “Hey, he’s only done this once before, in the Y2K case, where he had to get the information out in terms of what he was doing in that regard. This is only the second time in recent history that this has been done. But if it’s under motion number 1, “It’s part of his general report, but he though he should get the information out earlier.” I’m just saying that in terms of what you’re asking for in the second motion.

Okay. We have the first motion. Would somebody put the motion forward, please? Mr. Hardeman.

**Mr. Ernie Hardeman:** I move that the Auditor General, under section 17 of the Auditor General Act, table his report on his assessment of whether selected hospitals follow effective policies and procedures for the prevention and control of hospital-acquired infections with the Standing Committee on Public Accounts as soon as it is completed; and

That prior to the tabling of this report with the committee, the Auditor General may inform the Deputy

Minister of Health of his opinions, observations or recommendations.

**The Chair (Mr. Norman W. Sterling):** Any further discussion on the motion? Do we want a recorded decision on that?

**Interjection:** Recorded vote.

#### Ayes

Hardeman, Horwath, Ouellette.

#### Nays

Albanese, McNeely, Sandals, Van Bommel, Zimmer.

**The Chair (Mr. Norman W. Sterling):** That motion failed. We have a second motion.

**Mrs. Liz Sandals:** Just before I place that, if I may, you are looking at infection control programs. If we put “including C. difficile in selected hospitals,” would that be reasonably accurate?

**Mr. Jim McCarter:** Yes, that would be more accurate, Mrs. Sandals.

**Mrs. Liz Sandals:** Okay. So, “value for money audits of infection control programs—

**Mr. Jim McCarter:** —“in selected hospitals”—

**Mrs. Liz Sandals:** I’ll put in “infection control program, including C. difficile, in selected hospitals.” We want to accurately describe what you’re doing.

**Mr. Jim McCarter:** “Hospital-acquired infections,” as opposed to “infection control program,” might be closer but it’s—

**Mrs. Liz Sandals:** Okay: “hospital-acquired infections”—

**Mr. Jim McCarter:** —“including C. difficile.”

**Mrs. Liz Sandals:** I agree with you that that’s probably how they’re normally referred to, as “hospital-acquired infections.” Okay.

That following the Auditor General’s completion of his value for money audit of hospital—I guess we want “control of hospital-acquired infections, including C. difficile, in selected hospitals.”

**Mr. Jim McCarter:** “... prevention and control of hospital-acquired infections, including C. difficile, in selected hospitals.”

**Mrs. Liz Sandals:** Okay: “prevention and control of hospital-acquired infections, including C. difficile, in selected hospitals.” We’ve got that sorted out? Okay: ... if in the Auditor General’s opinion his recommendations could have a significant and timely impact on public health, the Standing Committee on Public Accounts of the Legislative Assembly of Ontario calls on the Auditor General to consider using the discretion outlined in section 12(1) of the Auditor General Act to release that chapter of his annual report in a special report to the Speaker.

That prior to the tabling of this report, the Auditor General may inform the Deputy Minister of Health of his opinions, observations or recommendations.

Just to repeat what I said earlier, we are quite comfortable that if there’s information that would be useful in managing C. difficile, to get that out early, we are quite happy with it being tabled with the Speaker, the normal process, including posting on websites, press conferences and media releases. We are quite comfortable with the information being made available, not just to the Legislature and the committee but also to the public, because we agree that this is a serious issue. But we do have faith in the discretion of the auditor. If this is information that needs to get out in a timely fashion, we’re quite prepared to have it out there.

**0950**

**Ms. Andrea Horwath:** I just have a question of clarification now that we’re focusing on the second motion, and that is the extent to which this motion is even necessary. Does the auditor not have these powers already? Is this something the auditor cannot already do? This is something the auditor is already seized with in terms of obligations under the act.

**Mr. Jim McCarter:** I have that authority all the time to do it but, as I indicated, our normal practice, our interpretation of the Audit Act, is the intent is that the auditor will table an annual report every year, and the results of all your audits will go in that annual report unless something is of such urgency. The office has only used that once, in my recollection. So, yes, I always have that discretion.

Having said that, I wouldn’t disregard lightly a motion passed by the public accounts committee saying, “In this case, Auditor, we would like you to pay special attention to this particular audit,” but it would be at my discretion.

**Ms. Andrea Horwath:** Can I ask, then: In your recollection of the work of the committee, has there been a similar motion put that asks you to seriously consider your role?

**Mr. Jim McCarter:** Not that I can recollect.

**Ms. Andrea Horwath:** So, then how did you make the determination on the Y2K issue?

**Mr. Jim McCarter:** We basically felt that the Y2K issue was something that, once the year 2000 passes, it really is too late. We felt that it was of such urgency that on that particular audit we decided to issue a report. I actually did that audit. We decided to issue it in June instead of waiting until November of that year because we needed the extra six or seven months before December 31, 1999. That’s the only time, in my recollection, that we have used that section of the act.

**Ms. Andrea Horwath:** So you used that section under your own discretion. There was no direction from the committee to have you undertake that early report.

**Mr. Jim McCarter:** That’s correct. I always have that discretion, but I was indicating the historical practice of the office. Having said that, if the public accounts committee were to pass a motion, I would still have the discretion. It would still be my decision, but I would take that motion into consideration in making that decision.

**Ms. Andrea Horwath:** Then my next question flows from all of that: By creating a precedent of putting this on

record, the committee asking you to use your discretion, does that in any way constrain you in the future? Would you hesitate in the future without having committee direction, or no, you have that right under the act regardless?

**Mr. Jim McCarter:** I think Mr. Zimmer asked a similar question. I don't think either motion would fetter my discretion.

**Ms. Andrea Horwath:** In the future.

**Mr. Jim McCarter:** In the future.

**Ms. Andrea Horwath:** Thank you.

**Mr. Ernie Hardeman:** I think I have similar concerns and questions. Obviously this motion really does absolutely nothing except give you our opinion that, if you find something so urgent in the report that says time is critical, you have the ability to do that. It doesn't say that you should do it with any less direction or any less concern than the law previously gave you. It just says you should consider that, and I have every confidence in your ability, that you would give that due consideration at any time without this motion, that if life and limb depended on it, you would release the report early.

I find that this doesn't do anything that requires doing. It seems to me that if there's a public concern—and there is about C. difficile—regardless of whether your audit is positive or negative, as soon as we could let the public know that, the better off we would all be. This is what I think they call dragging the pocket down. It makes it sound like we're doing something, but we're in fact doing absolutely nothing. When this motion passes, the circumstances will be exactly the same walking out of this room as when we walked in. It changes absolutely nothing, and I think we spent a lot of time counter-productively.

**The Chair (Mr. Norman W. Sterling):** Mr. Zimmer.

**Mr. David Zimmer:** My question was answered, thank you.

**The Chair (Mr. Norman W. Sterling):** I just have to express this: Having practised law and looking at subsection 12(1), I find that the motion is more limiting than subsection 12(1). It's a limiting motion in terms of what the auditor can do in terms of issuing a special report, as opposed to subsection 12(1), which just states, "in the opinion of the Auditor General should not be deferred until the annual report, and the Speaker shall lay each such report before the assembly." In other words, it doesn't have to be anything to deal with timely impact on public health at all. In other words, under subsection 12(1), he could release it because C. difficile is an important thing.

Under this motion, it's limiting our Auditor General to a much finer standard of measure with regard to releasing this information. I think it's confining it, rather than opening it. I interpret the motion as such, that you are trying to confine him from issuing a special report in September because he has more powers under 12(1) than this motion contains. I put that forward in terms of—as soon as you start putting conditions on any specific decisions, you take away from his general power.

**Mrs. Liz Sandals:** I don't think that a motion from the public accounts committee overrides the legislation, so what the legislation says, the legislation says. We are not restricting his power. We are simply noting why the committee is concerned about this issue, which is that the work the Auditor General is currently doing may have a significant impact on public health issues. Because we are concerned the work he is currently doing may have a significant impact on public health issues, that is why we want the auditor to have a look at this. However, there is no way that a motion from this committee overrides legislation, so he has the full discretion that is laid out in the legislation.

I think what is unique about this motion is that the previous case, where something was reported early, if you had left it to December it was quite frankly an irrelevant report, given the Y2K issue. The only way in which a Y2K report had any relevance to anything was if you got it out six months to a year before the clock tripped over. In that case, the criteria were clearly timely or irrelevant.

In this case, this is an unprecedented direction, I think, we are hearing from the committee that says, "We are concerned about C. difficile, we're concerned about the impact on public health and, therefore, Auditor, we'd like you to take a special look at whether the circumstances warrant releasing the report early." I think this is an unusual motion, which gives the Auditor General an indication that the committee thinks this is a serious problem, and we trust his judgment about whether it's necessary to release the information early.

**The Chair (Mr. Norman W. Sterling):** So your view is that "have a significant and timely impact on public health" is not directing him to the standard or test he should put this to?

**Mrs. Liz Sandals:** I think he works within the legislation, and this is the committee saying, "This is why we're interested," but obviously his statutory powers the committee has no authority to fetter.

**The Chair (Mr. Norman W. Sterling):** Mr. Hardeman made the argument that this should be out there for information purposes, whether it was positive or negative. I assume that this motion would not call on the Auditor General to produce his report if it was a positive report. Is that correct?

**Mrs. Liz Sandals:** Quite frankly, the discussion that we've had previously has not been around "What if the auditor finds everything's working well?" The discussion has been, "What if the auditor finds some things that are quite concerning and has some recommendations about how those concerns have been addressed?" That's what the whole discussion is about: How do we address a concern? It's not about getting a nice report that says everything is going well. If we have a report that says, "Everything's going well," he wouldn't release it early.

**Mr. David Zimmer:** Mr. Chair, may I address a question to the Auditor General?

**The Chair (Mr. Norman W. Sterling):** Sure.

**Mr. David Zimmer:** Mr. Auditor General, do you feel there's anything in the motion under discussion now,

that is, motion number 2, that in any way fetters your discretion of any of the authorities that you hold?

**Mr. Jim McCarter:** I think where the Chair may be coming from is—basically, under section 12, I have total discretion to decide when I want to issue a special report. It's my call. The motion says if it's significant and timely—does that start to narrow it somewhat? Having said that, I think I would interpret this motion as just the will of the public accounts committee saying that in this particular case, if it's so significant and so timely, "We're just saying to you, Auditor, a special heads-up. We would support you tabling this earlier. Having said that, Auditor, it's your call."

As I said before, it would be my call. Passing this motion wouldn't necessarily guarantee that I would not treat this audit in my normal routine manner and table my annual report. Notwithstanding, a motion passed by the

public accounts committee is taken very seriously by my office, so we would look at this very seriously and make a decision about whether we would table it as soon as completed, under section 12. I would have to say that, as I indicated before, I wouldn't consider that motion as fettering my decision, under section 12.

**Mr. David Zimmer:** Thank you, Mr. Auditor.

**The Chair (Mr. Norman W. Sterling):** Okay. There's no further discussion. I don't know how long Ms. Horwath—she may be going to debate, I'm not certain. I guess I'll call a vote. Do you want a recorded vote? Okay. All those in favour? All those against? Carried.

I think we'll adjourn the public portion of the meeting and we'll go into camera at this stage to consider the reports.

*The committee continued in closed session at 1003.*



## CONTENTS

Wednesday 11 June 2008

Special report, Auditor General..... P-185

### STANDING COMMITTEE ON PUBLIC ACCOUNTS

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