



Office of the Ombudsman
Final Report

South West Shore Development Authority
File #50242

February 2010

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Nature of Complaint:

Concerned citizens of the Shelburne area, including Mr. Ed Cayers and Mr. Timothy Gillespie, approached the Office of the Ombudsman with numerous issues surrounding the regional development authority in their area, South West Shore Development Authority (SWSDA), Service Nova Scotia and Municipal Relations, the Nova Scotia Department of Economic and Rural Development, and the nine (9) municipal units who are funding partners for SWSDA. Their concerns focused on the accountability and transparency of the administration of public money provided to SWSDA.

An assessment phase was undertaken (December 2008) to determine the best approach to deal with these complaints. Some concerns were addressed administratively, and five (5) areas were identified for formal investigation. Notification was provided to SWSDA and the Nova Scotia Department of Economic and Rural Development on July 21, 2009. Other concerns surfaced which were outside the scope of this investigation, and will require subsequent review.

The five (5) areas forming the basis of this report are:

1. Incorporation status of SWSDA;
2. Sale of the former Shelburne Youth Centre;
3. Administrative accounting of the maintenance money the Province provided SWSDA to maintain the former Shelburne Youth Centre;
4. The relationship between SWSDA and the Yarmouth Area Industrial Commission; and
5. SWSDA Board's fiduciary responsibilities.

Legislation:

The Societies Act
The Regional Community Development Act
The Municipal Conflict of Interest Act
The Ombudsman Act
The Municipal Government Act

Consultative Report:

On December 8, 2009, in keeping with the requirements under Section 20(5) of the Ombudsman Act, this Office released a consultative report (hereinafter referred to as the consultative document) to the Board of Directors and Chief Executive Officer of South West Shore Development Authority and the Deputy Minister of the NS Department of Economic and Rural Development.

This consultative document outlined the evidence gathered during the investigation and provided findings based on the evidence to date with possible recommendations. The respondents were

given 30 days to review the document and provide any new information, or provide clarity around material to assist the Ombudsman in his investigation by January 8, 2010. SWSDA requested an extension to respond, and this Office extended the time line to January 15, 2010.

Both respondents agreed to the recommendations contained in the consultative document, in principle, with the exception of recommendation 9 (SWSDA). Responses from the respondents are acknowledged in this final report. In some instances, the recommendations have been clarified, but have not changed in substance from the consultative document.

Background:

South West Shore Development Authority (SWSDA) was incorporated under the Societies Act on August 11, 1995. It is recognized as the Regional Development Authority (RDA) for the Town of Shelburne, Municipality of the District of Argyle, Municipality of the District of Barrington, Town of Clark's Harbour, Town of Lockeport, Municipality of the District of Shelburne, Municipality of the District of Yarmouth, Town of Yarmouth, and the Municipality of Clare. SWSDA is a member of the Nova Scotia Association of Regional Development Authorities and receives funding as an RDA.

The Board of SWSDA is comprised of members from each municipal unit (9 members), three (3) members from the Yarmouth Area Industrial Commission, one (1) member from the business community of Shelburne County, and one (1) member from the business community of the Municipality of the District of Clare. Recently, one (1) member from the First Nations community has joined the Board, totaling 15 members. The Executive of the Board consists of Chairman, Vice-Chairman, Treasurer, Secretary, past Chairman, and two (2) Directors at large.

Regional representatives from the Department of Economic and Rural Development and Atlantic Canada Opportunities Agency (ACOA) attend SWSDA Board meetings. These representatives are non-voting members and mostly act as observers and provide advice as required. There are also a number of community members who sit on the Board as non-voting members.

RDAs are created at the request of municipalities and are the municipal agency responsible for economic development in the community. They are directed by a Board of Directors, consisting of municipal and community representatives, as outlined in the organization's bylaws. Core and project funding are provided by federal, provincial, and municipal levels of government. Each funding partner is responsible for one third of the core funding. Project funding is separate and does not necessarily have contributions from each funding partner.

There are 13 RDAs in Nova Scotia. In 1996, the Regional Community Development (RCD) Act was passed, however only six (6) RDAs became incorporated under this statute. Of the remaining, five (5) are incorporated under the Societies Act (including SWSDA), and two (2) by Private Members Bills. The Department of Economic and Rural Development has continued to fund these seven (7) entities as RDAs without bringing them under the Act for the last 13 years. For the purpose of this investigation, these 13 entities, regardless of their incorporation status,

will be referred to as RDAs.

The Deputy Minister of Economic and Rural Development issued a letter to RDAs on May 26, 2009, directing the remaining seven (7) to incorporate under the Act by the end of the 2009 – 2010 fiscal year. Failure to come under the Act will result in the Department ceasing to provide the Province’s one third contribution of core funding.

Legislatively, different requirements exist for entities incorporated under the RCD Act as compared to the Societies Act. As an example, the Department of Economic and Rural Development maintains that under the RCD Act that RDAs are not able to own land. SWSDA has owned land, and in at least one case (the former Shelburne Youth Centre) the Province transferred this property to this RDA. Under the Societies Act, this is permissible. We are aware of one other RDA, not incorporated under the RCD Act, that owns land.

Each RDA has separate signed agreements with Federal and Provincial funding partners, outlining the conditions and requirements for receiving core funding. The agreements between the RDAs and the municipal funding partners are not always as well defined. In response to the consultative document, SWSDA provided copies of letters between the municipalities and the RDA. These letters confirmed funding amounts, but did not provide a framework of accountability or requirements tied to the funding.

RDAs undergo a performance-based funding review that links funding amounts to their performance. This review looks for a connection to the strategic plan, staff and Board development, and measurable performance outcomes. Once the funding partners are satisfied conditions are met, the funding contracts are finalized and signed. This funding review assesses and focuses on performance outcomes and does not specifically evaluate the management or administration of RDAs.

Oversight responsibilities for RDAs from a funding partner perspective is not consistent. A number of SWSDA Board members believe that the Province should have a greater role. The Province believes the Municipalities have more ownership, as they are funding partners who sit on the board as voting members. ACOA does not consider the notion of ownership.

The Department of Economic and Rural development has made a commitment to have an external review of this model which will guide the implementation of some of the recommendations in this report. We understand that this will help determine what steps need to be taken to evaluate the administration and management of RDAs from a funding partner perspective.

Issues:

(1) Incorporation status of SWSDA

Bylaw Amendment

The complainants expressed concern regarding the change in SWSDA bylaws related to membership composition of the Board. The bylaw in question altered the way Board members are brought forward for consideration. The municipalities' authority to appoint members was removed and replaced by a nomination process in which final approval is by the Board (see Appendix A - bylaw change). Our review of documentation filed with Registry of Joint Stocks demonstrates the Board approved this amendment. When questioned about this, SWSDA Board members were not able to provide a consistent rationale or understanding of the amendment. Being incorporated under the Societies Act, SWSDA would be within their right to change their bylaws to this effect. The Department of Economic and Rural Development has stated this bylaw will need to be amended to adhere to the provisions of the statute if SWSDA becomes incorporated under the RCD Act.

I am of the opinion this amendment limits the role of the municipalities. Municipalities have a responsibility to ensure they appoint qualified individuals to these positions, which strengthens the framework for an accountable body. This amendment compromises such a framework.

The complainants also believed SWSDA was in violation of Section 3(2) of the Societies Act, which states: "*Where any Act, other than the Companies Act, provides for the incorporation of a society for a particular object, no society shall be incorporated under this Act for the object*". They believed this section required SWSDA to be incorporated under the RCD Act, which in effect raised questions about the above-mentioned bylaw change. This section is intended at time of incorporation. Given the non-existence of the RCD Act at time of incorporation under the Societies Act of SWSDA, and the absence of specific statutory migration requirements nullifying previous incorporations, I believe SWSDA was not in violation of this section of the Societies Act.

Issues surrounding RDAs not being incorporated under the RCD Act are being addressed by the Department of Economic and Rural Development. The Deputy Minister has advised RDAs they are required to incorporate under the Act by the end of this fiscal year in order to continue to receive provincial funding. While I am troubled that the Department has allowed several of these agencies to continue to be funded and regarded as RDAs without incorporation under the Act for over a decade, I believe it is necessary to take a forward looking position on the matter. Concerns regarding ownership of property, and compliance with the RCD Act will need to be addressed prior to these incorporations.

Public Body

SWSDA adopts the position that they are not considered a municipal body as contemplated in the Municipal Government Act, other than for matters pertaining to Freedom of Information requests, (see Appendix B - letter to Service NS) and maintain they are a not-for-profit organization under the Societies Act. SWSDA also maintains it is an RDA by holding title of regional development authority, receiving funding as an RDA, having signed agreements with Federal and Provincial funding partners identifying them as RDAs, and being a member of the Nova Scotia Association of Regional Development Authorities.

There are 13 entities in Nova Scotia recognized as RDAs receiving public money, with officers who hold positions of trust and have a duty to the municipalities that have requested their incorporation, and have a public responsibility to facilitate economic growth in their communities. There is a corresponding public expectation that such entities, and officers thereof, conduct themselves in an acceptable, transparent manner, upholding reasonable standards of ethics and conduct. I am of the position that the creation of these organizations, their actions, core purpose, and funding arrangements make them a public body. I do not accept that SWSDA is both an RDA and an entity that is not open to public scrutiny or the laws and expectations governing such agencies.

(2) Sale of the former Shelburne Youth Centre

The issue of the sale of the former Shelburne Youth Centre was reviewed by this Office. We determined the Office of the Ombudsman was not the most appropriate authority to examine the matter. The matter was referred to the RCMP for consideration as per Section 20 of the Ombudsman Act. Subsequent to the release of the consultative document, this Office was advised by the RCMP, in the absence of new information, there was insufficient grounds to proceed.

(3) Administrative accounting of the maintenance money the Province provided SWSDA to maintain the former Shelburne Youth Centre

In 2004, Executive Council made a decision to transfer the former Shelburne Youth Centre to the municipalities of Shelburne County. These municipalities formed Team Shelburne to represent their interests either through the sale of the property or the reintegration of the property into the community for economic purposes. Team Shelburne was not a recognized legal entity and therefore was not in a position to hold title to the property. Team Shelburne and the Province decided to transfer the former Shelburne Youth Centre, plus a \$600,000.00 maintenance fund, in trust, to SWSDA on behalf of Team Shelburne. SWSDA was to maintain the property with the maintenance fund and actively market the property for sale.

Documentation provided to this Office regarding provincial parameters or controls for the use of this money consisted of four (4) letters (see Appendix C - letters) from previous Ministers of Economic Development and the former Premier of Nova Scotia. On October 20, 2005, the

Minister of Economic Development, Honourable Ernest Fage, provided correspondence and a cheque for the full amount of the maintenance fund to the Chair of SWSDA. The letter stipulates the transfer of the former youth centre and the maintenance money, "*completes the province's obligation as directed by Executive Council on March 22, 2005*". It also states "*any amount remaining at the time of sale plus the proceeds from the sale are to be retained for economic development activity in Shelburne as directed by Team Shelburne*".

All transactions related to the maintenance fund were to be approved by Team Shelburne. SWSDA had no authority to access or make decisions related to this money without the prior approval of Team Shelburne.

Further correspondence was provided October 4, 2007 by the Minister of Economic Development, Honourable Richard Hurlburt, to the Chief Executive Officer (CEO) of SWSDA clarifying the ownership of the proceeds from the sale of the former youth centre and remaining monies from the maintenance fund. The letter outlines Team Shelburne's control of the funds, and that the RDA was the vehicle to administer the funds as directed by Team Shelburne. The Minister also stated that the "*funds must be applied to further incremental economic growth and development within the five municipal units comprising Shelburne County*".

The Minister of Economic Development, Honourable Angus MacIsaac, provided further clarification to the Municipality of the District of Barrington, November 15, 2007, reiterating the use of the money was for economic growth. It is this letter which first states that any specific requests for the money had to go through the RDA to determine compliance for release of the funds. This statement appears to put the RDA in a decision-making position regarding the use of the funds contrary to the original parameters of the agreed involvement. SWSDA's CEO has stated that the RDA is not comfortable with this responsibility. The CEO advised any requests for the use of the funds, are forwarded by him to the Department of Economic and Rural Development for determination.

Former Premier MacDonald reiterated the expectations of Team Shelburne to direct the expenditure of this fund in a letter dated January 29, 2008 to the Municipality of the District of Barrington. Former Premier MacDonald concludes the letter; "*I am confident that you would agree that these requirements are within the ability of the municipal units to comply with and are well within any reasonable accountability framework guiding the expenditure of public funds*". The Department of Economic and Rural Development has stated once the \$600,000.00 was released to SWSDA, there were no provincial controls put in place for any administrative accounting of these public monies. The Department has also stated that while this was a decision of the Minister in consultation with Treasury and Policy Board, it was not standard practice to have this amount of money released without controls, or requirements for either Team Shelburne or SWSDA.

SWSDA maintains that it treated this money as another project of the RDA. Ombudsman Representatives were told by SWSDA Board members, the SWSDA CEO, Team Shelburne members, and the Department of Economic and Rural Development, the money went into the

general operating account of SWSDA. The monies became subject to a court matter between SWSDA and complainant Mr. Ed Cayer. The Court directed the money be held in a separate fund in the event Mr. Cayer's law suit is successful. There is over \$700,000.00 in GICs, gaining interest, being held until the above noted legal case is resolved. SWSDA CEO told this Office that legal expenses associated with this matter are being paid through this fund, namely from the interest accumulating from the investment (see Appendix D - financial statement). Both the former and current chair of Team Shelburne have confirmed that Team Shelburne has not consented to these monies being used for this legal matter. When asked who authorized the payment of these professional services to be paid from this money, this Office was told the SWSDA Board provided approval. As per the terms of the expenditure of this money, this is outside the authority of the RDA. SWSDA CEO advised this Office in the RDA's response to the consultative document that the fund and sale of the property became related to the court matter, thereby justifying expenses being paid from these monies.

Nova Scotians have the expectation that government officials and institutions act in the public interest with the expenditure of public dollars. In my opinion, this transaction highlighted an absence of a reasonable standard of accountability for the expenditure and administration of public funds by the Province and the Department of Economic and Rural Development. The spending of any monies associated with the maintenance fund without prior direction and approval from Team Shelburne by SWSDA is outside the established agreement. I find SWSDA has overstepped its authority in directing this spending.

The Department of Economic and Rural Development adopts the position that the RCD Act does not allow RDAs to own property. This raises the question as to why SWSDA was allowed to own property (which the Province facilitated the transfer) if this is not in keeping with the Department's interpretation of the Act. SWSDA is recognized as a society under the Societies Act, and as such is able to hold title. The Province and SWSDA however, enter a yearly agreement, which mirrors most of the provisions within the RCD Act. If the Province and SWSDA both recognized this entity in substance as an RDA, then it would have been more appropriate for the Province to examine its interpretation of RDAs not owning land prior to the transfer of title. The Department of Economic and Rural Development has acknowledged to this Office, if SWSDA had been incorporated under the RCD Act at the time of disposing of the former Shelburne Youth Centre, it would not have been able to transfer the land to SWSDA and would have had to consider other options. The Department has demonstrated a non-consistent application of the governing philosophies of RDAs when it facilitated this land transfer to SWSDA.

(4) The relationship between SWSDA and the Yarmouth Area Industrial Commission

Under the Industrial Commission Act, the Town of Yarmouth, the Municipality of the District of Argyle, and the Municipality of the District of Yarmouth formed the Yarmouth Area Industrial Commission (YAIC) in 1984. In 1999, the Industrial Commission Act was repealed and the YAIC incorporated under the Societies Act.

Mr. Frank Anderson was hired to be the Executive Director of this organization and was paid for his duties. In 1995, SWSDA was formed and Mr. Anderson was employed by, and subsequently became CEO of the RDA. Mr. Anderson maintained his duties to the YAIC and assumed new responsibilities for SWSDA. He currently holds both positions.

Under the Societies Act, these two organizations are seen as distinct and separate entities, each with their respective bylaws and Boards of Directors. Upon further examination, the Executive of YAIC and SWSDA share a number of the same members, with the Chairs sitting as part of the Executive for both Boards. Both entities are committed to enhancing economic development within their respective geographical areas. The three (3) municipalities comprising of the YAIC are also represented in the RDA, thus having two vehicles of economic/industrial development.

When Board members, funding partners, and the CEO were asked to explain the relationship between the two organizations, varying, and often contradictory explanations were provided. When asked for clarification of the relationship between YAIC and SWSDA, the CEO and Chair of SWSDA stated that the YAIC was a project of SWSDA, and the industrial commission provided the land and industrial development for the Yarmouth area because RDAs are not allowed to own land. Board members, however, were not able to explain the relationship between the two entities, but the overall consensus from the Board was that the two entities are separate incorporated bodies, and the YAIC is not a project of the RDA. The response from the RDA to the consultative document stated SWSDA and the YAIC were two separate, incorporated bodies. During the investigation, a number of Board members and funding partners expressed concerns regarding how intertwined the two organizations are, no clear boundaries between the two, the CEO's dual role, perceived conflicts of interest, and the financial transactions between the two.

When asked for clarification surrounding how he was compensated for working for both entities, the CEO told Ombudsman Representatives that he only received one salary from SWSDA. He stated that he did work for the YAIC as Executive Director, and the industrial commission in turn contributed towards the core funding of the RDA in lieu of his services. This Office requested further documentation and clarification.

Correspondence from SWSDA CEO and Chair of the YAIC indicated that the arrangement is a verbal agreement that started a number of years ago (no date specified), and is done on a year to year basis. This Office was told the agreement has the YAIC provide funds annually to SWSDA to pay for the management services of SWSDA's CEO.

This Office understands that the CEO negotiates the amount the YAIC contributes, however, no other names were provided, or documentation from the industrial commission as to the approval of this agreement. SWSDA Board members, when interviewed, were under the impression and understanding that the CEO was paid by both organizations, but were not aware of the agreement or any particulars of the arrangement.

In response to the consultative document, minutes from a May 2003 SWSDA Board meeting and personnel committee report indicate the RDA requested the YAIC to contribute funds towards the CEO's salary and for the YAIC to contribute to RRSPs to compensate the CEO for past work. No further documentation has been provided to support decisions made previous to 2003 or after.

The SWSDA Executive's lack of knowledge surrounding this agreement raises concerns regarding the transparency of decisions and accountability at the senior level of the organization. It is not clear who continues to negotiate this agreement or its parameters. The matter of the relationship between the two entities, YAIC's contribution, and how the CEO is compensated has not been explained to our satisfaction.

The CEO and Board members were questioned about a loan transaction reported on the 2007 annual financial statement from the YAIC to SWSDA in 2007. The YAIC provided SWSDA a loan in the amount of \$150,000.00 which was subsequently paid. When asked about this transaction, this Office was advised by the SWSDA CEO that the RDA had a cash flow issue, and required emergency funds. The CEO made arrangements for a transfer of funds from the YAIC to SWSDA. Board members advised that they approved this transfer after the fact, when they approved the financial statement, but no prior approval was given by the Board. When asked if the CEO had a limit on what he was allowed to approve prior to going to the Board, he verbally told Ombudsman Representatives he had no limit. Further clarification and documentation was requested surrounding the transaction, Board approval from the industrial commission and the RDA, and the CEO's authority regarding financial transactions. This information has not been provided.

In reviewing annual financial statements, several loan amounts appear from the YAIC to SWSDA. In 2004 \$200,000.00; 2005 \$300,000.00; 2006 \$300,000.00; and in 2007 \$150,000.00.

Financial transactions from the YAIC to SWSDA without clear, prior Board approval or documented authorization is troublesome. This Office has not been provided with any documentation to verify the authority to make such decisions and transactions at the CEO level, or evidence of Board governance or direction in such matters. No further information was provided in response to the consultative document to explain these transactions.

Common Board members on the Executive, a shared CEO, shared facilities, and financial transactions between the two organizations demonstrate that a reasonable, arm's length relationship does not exist. Boundaries between the two appear non-existent, and sufficient financial and administrative controls have not been provided.

Examination of the Municipal Conflict of Interest Act would suggest there is a potential or real conflict of interest arising from the relationship between the YAIC and SWSDA, in particular, the SWSDA CEO's position within both organizations. I am of the opinion that Mr. Anderson's dual role places him in a perceived conflict of interest, and that this conflict extends beyond the Municipal Conflict of Interest Act and needs to be examined more closely.

SWSDA also has a Conflict of Interest and Commitment policy which states:

A conflict of commitment is an activity that interferes with an employee's ability to carry out his/her duties effectively. External employment, or self-employment is acceptable where there is not a conflict of interest or commitment. Employees on full-time appointment are compensated for full-time employment and outside or dual employment or other activity, whether compensated or not, that in any way interferes with the performance of an employee's duties and responsibilities of SWSDA is a conflict of commitment and as such is not permitted.

The dual role of the CEO appears to be a breach of the organization's own policy, and requires further examination from a conflict perspective. SWSDA has stated to this Office in response to the consultative document, that they have requested the Department of Economic and Rural Development engage an external body to examine any matters related to perceived or real conflicts of interest.

(5) SWSDA Board's fiduciary responsibilities

Today, boards are realizing they have a greater responsibility in the effective operations of organizations, financial accountability and fiduciary responsibilities. Boards of Directors have a duty of care, due diligence, and need to possess the necessary skills of a reasonably prudent person when exercising his/her authority in the performance of his/her duties.

When asked how Board members believed the SWSDA Board functioned, a range of responses were provided from working very well and effectively, to acting as a "rubber stamp" for the CEO. Board members were not clear on their role, and many expressed concern in understanding the financial information that was presented to them for approval.

Board members were not able to provide a consistent or clear explanation as to their role in determining the organization's strategic plan. Some Board members discussed participating in sessions aimed at fostering community input, while others were not aware of how the strategic plan was developed. Board members also commented that they only were aware of the plan after it was presented to the funding partners for consideration.

The CEO of SWSDA is responsible to assess the performance of staff, and the Board of Directors are responsible to assess the performance targets of the CEO. Some Board members stated that the Board of Directors could improve in the area of assessing performance of senior positions within the organization. In response to the consultative document, the CEO provided the last two (2) years of performance appraisals completed for his position. After a review of these documents, I am still of the opinion that there appears to be no link to meeting targets set out in the organization's strategic plan to the performance appraisal of the CEO.

The issue of board training came up several times in our discussions with Board members. It is our understanding from several Board members that they requested and require board training. In

discussions with the SWSDA Chair and CEO, it is their belief that these members should already come with significant understanding of their responsibilities as board members due to the fact that many serve on councils. In response to the consultative document, the RDA advised that board training was provided in 2004 and future training would take place once the new RDA incorporates under the Act.

As discussed previously, Board members were not able to provide an explanation or understanding of the change in the organization's bylaw related to how members are selected, ratification of financial transactions, and a lack of documentation surrounding significant decisions. No one from the Board was able to explain how the CEO is compensated, or the details of the financial transactions from the YAIC. With respect to the maintenance fund provided by the Department of Economic and Rural Development, the Board has overstepped its authority by approving spending of this money without prior approval from Team Shelburne. The Department has agreed to the recommendation of an audit of the proceeds of the sale of the former Shelburne Youth Centre, the maintenance fund provided by the Province, and associated interest.

There was not a consistent knowledge among Board members of the standing committees of the Board. This Office understands besides the Executive committee, there is a Personnel committee which also serves as the nomination committee of potential Board members. The Department has agreed to make it a requirement of funding that RDAs have a separate audit and finance committee. In response to the consultative document, SWSDA agreed to the recommendation that it have a separate committee to oversee financial and auditing functions of the organization.

I find the SWSDA Board is not fulfilling its governance responsibilities in an adequate manner which extends beyond training. Greater direction and controls need to come from this Board and not the CEO. Board development appears not to have been addressed as contemplated in the performance based funding review of funding partners. There is also a need for greater oversight of administrative and management operations by all funding partners. The external review the Department of Economic and Rural Development has committed to undertake should examine this need.

Conclusion:

This investigation is not intended to evaluate or make comment on SWSDA's performance in the communities it services. This Office has heard many positive remarks surrounding SWSDA's dedicated staff and commitment to the varying communities. Issues surrounding transparency and governance by SWSDA and the Nova Scotia Department of Economic and Rural Development were the central focus by this Office.

Our intent and purpose was to examine the administration of this body given it is provided significant public monies. RDAs are the custodians of public funds and as such should be able to withstand public scrutiny. The public has the right to expect these organizations have adequate controls in place, proper oversight, and are transparent in their decisions and accountable for their actions.

There have been considerable concerns raised regarding the effective management and administration of this organization, specifically surrounding financial and risk management. The public and funding partners have expressed the need for an external review of the finances of SWSDA. The examples of lack of Board governance and certain financial transactions affects SWSDA's credibility in the public eye. This is damaging for any organization and has a negative ripple effect on similar organizations and all provincial RDAs. Both the Department of Economic and Rural Development and SWSDA have agreed to the recommendation from this Office to undertake three (3) audits examining governance and compliance, value for money, and the funds attached to the former youth centre.

Greater oversight and administrative/management review of these organizations by all funding partners is required. That does not remove RDA boards, and in this case the SWSDA Board, of its obligations and responsibilities. Without clear understanding of responsibility and accountability of these entities, it makes it difficult for clear authority to be established in trying to reconcile any problems that may surface. I take the position an independent body should have the legislated authority to complete full and comprehensive audits of all aspects of the RDAs. These types of reviews need to be broader than annual financial statement reviews. The Department of Economic and Rural Development has indicated in its response they have the ability to do this. Further discussions will need to occur to ensure this is correct and how to implement the recommendation.

The role of the Province and the Department of Economic and Rural Development have compounded some of the issues that have affected SWSDA. Specifically, by requesting and allowing SWSDA to own land, neglecting to have RDAs comply with legislation many years after it has come into effect, and providing public funds with limited controls. The Province of Nova Scotia needs to ensure there is a reasonable standard of accountability adhered to in the expenditure of public funds.

As mentioned in the beginning of this report, there are outstanding issues that have been brought to my attention that fall outside the scope of this investigation. These concern municipal loan guarantees, sole source tendering, and a land transaction in the Municipality of the District of Barrington. These matters will be subject to separate reviews.

Recommendations:

In keeping with Section 20 of the Ombudsman Act I recommend the following:

1. The RDA(s) Board(s) for the South West Shore area develop and practice appropriate governance and accountability;
2. Funding partners examine their relationships and accountability with RDAs;
3. A provincial body be given the legislated authority to complete full and comprehensive audits of RDAs including forensic examinations;

4. The Minister of the Nova Scotia Department of Economic and Rural Development engage an external audit of South West Shore Development Authority to examine a minimum of the previous two (2) years, to provide a level of assurance in the areas of:

Governance and Compliance: examine transactions (including financial transactions) or activities within the context of legal or policy requirements including mandate, Acts and Legislation, Board structure, organizational structures, accountabilities, reporting relationships, administrative policies, procedures and controls, budgeting, business planning, record keeping and reports, minutes and other documentation, for example, contracts with service providers;

Value-For-Money (Operational): examine broader performance issues, focusing on whether public funds and resources have been economically, efficiently and effectively managed as intended; and

Conduct an audit of the proceeds of the sale of the former Shelburne Youth Centre, the maintenance fund provided by the Province, and associated interest;

5. Municipalities served by the RDA(s) in the South West Shore area appoint voting Board members to the RDA(s) with an accountable reporting structure;
6. The RCD Act be amended to allow the Minister to appoint voting Board members to RDAs, with an accountable reporting structure;
7. Remaining funding partners consider the merit of appointing voting Board members to RDAs, with an accountable reporting structure;
8. All RDAs incorporate under the RCD Act by the end of the fiscal year;
9. The South West Shore Development Authority return any monies spent, without prior approval from Team Shelburne, from the maintenance fund and proceeds of the sale of the former youth centre;
10. The Minister of the Nova Scotia Department of Economic and Rural Development ensure all RDAs in the Province have a standing committee of the Board oversee financial and auditing functions of the organizations;
11. The RDA(s) Board(s) for the South West Shore area establish an arm's length relationship between the RDA(s) and the Yarmouth Area Industrial Commission; and
12. The RDA(s) Board(s) for the South West Shore area appoint an external body to examine the matters highlighted in this report identifying perceived or real conflicts of interest.

The Department of Economic and Rural Development, and the South West Shore Development Authority, in accordance with Section 20(2) of the Ombudsman Act, are to provide this Office with an update regarding the implementation of these recommendations within 30 days of the issuance of this report.

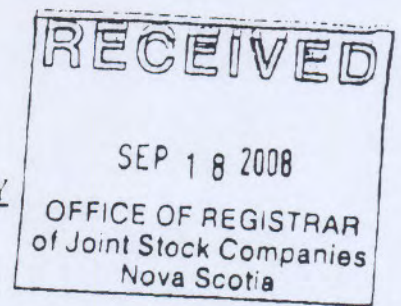
Respectfully,

Dwight Bishop
Ombudsman

Appendix A

11339520

SOUTH WEST SHORE DEVELOPMENT AUTHORITY
SPECIAL RESOLUTION



"**BE IT RESOLVED** as a Special Resolution that the Bylaws of the South West Shore Development Authority ("the Society") be and are hereby amended by:

(I) Replacing the Special Resolution dated December 12th, 2002 which reads: Membership in the Society shall consist of Twelve (12) members appointed by the membership on an annual basis and selected by the membership as follows:

- i. one person approved by the Municipality of the District of Yarmouth;
- ii. one person approved by the Municipality of the District of Argyle;
- iii. one person approved by the Municipality of the District of Shelburne;
- iv. one person approved by the Municipality of the District of Barrington;
- v. one person approved by the Town of Yarmouth;
- vi. one person approved by the Town of Shelburne;
- vii. one person approved by the Town of Lockeport;
- viii. one person approved by the Town of Clarks Harbour;
- ix. three persons approved by the Yarmouth Area Industrial Commission;
- x. one person from the business community of Shelburne County approved by the five Shelburne County Municipal Councils.

so that Section 2 of the Bylaws now reads:

2. (a) Membership in the Society shall consist of fourteen (14) Members appointed by the membership on an annual basis and selected by the membership as follows:
- i) one person nominated by the Municipality of the District of Yarmouth from the municipality at large and approved by the Society's Board of Directors;
 - ii) one person nominated by the Municipality of the District of Argyle from the municipality at large and approved by the Society's Board of Directors;
 - iii) one person nominated by the Municipality of the District of Shelburne from the municipality at large and approved by the Society's Board of Directors;
 - iv) one person nominated by the Municipality of the District of Barrington from the municipality at large and approved by the Society's Board of Directors;
 - v) one person nominated by the Town of Yarmouth from the town at large and approved by the Society's Board of Directors;

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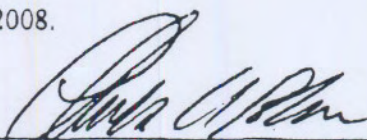
SEP 18 2008

OFFICE OF REGISTRAR
of Joint Stock Companies
Nova Scotia

CERTIFICATE

I, CHARLES LEBLANC, the undersigned Secretary of South West Shore Development Authority, certify the foregoing is a true copy of a Special Resolution of South West Shore Development Authority duly signed by all the directors in writing pursuant to the *Societies Act* of Nova Scotia and that this Special Resolution is now in full force and effect.

DATED at Yarmouth, Nova Scotia this 13 day of ^{AUG 4} ~~July~~, 2008.


CHARLES LEBLANC - Secretary

APPROVAL

Aug 13/08
EFFECTIVE DATE

REGISTRAR OF JOINT STOCK CO.



Appendix B

SOUTH WEST SHORE DEVELOPMENT AUTHORITY

P.O. Box 131
Yarmouth, Nova Scotia
Canada B5A 4B1
Ph.: (902) 742-3210
Fax: (902) 742-3107
yarmouthinfo@swsda.com

P.O. Box 237
Barrington, Nova Scotia
Canada B0W 1E0
Ph.: (902) 637-2847
Fax: (902) 637-1954
barringtoninfo@swsda.com

September 23, 2009

Service Nova Scotia and Municipal Relations
14th Floor Maritime Centre
1505 Barrington Street, PO Box 216
Halifax, NS, B3J 2M4



Dear Mr. Wills CMA;

Further to your letter dated August 17, 2009 concerning Resolution #14A Amendment to the Municipal Government Act to Enable Municipalities to Guarantee the Borrowings of a Corporation we comment as follows.

Your letter stated SWSDA would be considered a "Municipal Body" and we wonder how this determination was reached. SWSDA is a registered not for profit society and has been so since 1995. Our solicitors have advised us that your organization was considered to be a municipal body as it relates to FOIPOP legislation but still remains a not for profit society in all other matters.

The resolution we requested was to allow the municipal units (9) in our region to provide us with guarantees in order for the SWSDA to obtain operating loans from our bankers. These operating loans are required for us to carry out projects for community groups and our municipal partners.

Your letter also states that the Community Development Act does not allow RDA's to buy, sell and own property.

In our opinion the act is silent when it comes to this matter and in the past we have been asked by the Province of Nova Scotia to actually take ownership of lands and buildings in an effort to assist our communities.

We trust our comments will further our discussions and inevitably allow our municipal partners to provide us with the tools to carry out the activities they have approved.

Yours truly,

A handwritten signature in black ink that reads "Frank Anderson".

Frank Anderson
Chief Executive Officer

Neal Conrad, Department of Economic and Rural Development
Lyle Goldberg, Union of NS Municipalities
Nathan Gorall, Service NS and Municipal Relations
Holly Boston, NSARDA

Appendix C

**Economic Development
Office of the Minister**

Maritime Centre, 14th Floor South, 1505 Barrington Street, P.O. Box 2311, Halifax, Nova Scotia, Canada B3J 3C8
Telephone 902-424-5790 Fax 902-424-0514 • www.gov.ns.ca/edcm/

October 20, 2005

Mr. Gerry Boudreau
Chairperson
South West Shore Development Authority
PO Box 131, 233 Water Street
Yarmouth, NS B5A 1M1

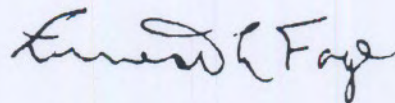
Dear Mr. Boudreau:

Enclosed please find a cheque in the amount of six hundred thousand dollars (\$600,000.00). These funds and the earlier transfer of the former Shelburne Youth Facility to your organization, completes the provinces obligation as directed by Executive Council on March 22, 2005.

These funds are to be used for the benefit of the five municipal units in Shelburne County, as represented by Team Shelburne, to facilitate the best use of the former Youth Centre for economic development in the area.

It is understood that these moneys will be used to maintain the facilities in preparation for possible future sale. Any amount remaining at the time of sale plus the proceeds from the sale are to be retained for economic development activity in Shelburne as directed by Team Shelburne.

Sincerely,



Ernest L. Fage
Minister
Economic Development

c: Paul LaFleche
Secretary/Clerk of Executive Council

Encl.



**Economic Development
Office of the Minister**

1660 Hollis Street, Suite 600, Centennial Building, PO Box 2311, Halifax, Nova Scotia, Canada B3J 3C8
Telephone 902 424-3790 Fax 902 424-0514 - www.gov.ns.ca/edev/

October 4, 2007

Mr. Frank Anderson
Executive Director
South West Shore Development Authority
PO Box 131
Yarmouth, NS B5A 4B1

Dear Mr. Anderson:

Following recent discussions with staff of my department, I am pleased to offer the following clarification regarding the use and ownership of the proceeds from the sale of the former Shelburne Youth Centre.

The correspondence of October 20, 2005 to Mr. Garry Boudreau, as Chairperson of the South West Shore Development Authority, from the Minister of Economic Development, outlines in general terms both the intent and method by which any surplus funds were to be used.

As stated, "any money remaining (in the Maintenance Fund), at the time of sale, plus the proceeds from the sale, are to be retained for economic development activity in Shelburne as directed by Team Shelburne." In my view, this clearly places the control of the funds in question with Team Shelburne and its municipal units and not with the South West Shore Development Authority and its Board of Directors. The South West Shore Development Authority is the vehicle to administer the funds as directed by Team Shelburne.

It is also my view that these funds must be applied to further incremental economic growth and development within the five municipal units comprising Shelburne County. Ineligible activities for the application of these funds would be deemed as any activity or undertaking that would be considered the normal responsibility of the municipal unit, in which it would be intended that the funds be applied. For example, application of funds for municipal and infrastructure upgrades or expansions, would not be considered eligible for access to the Shelburne County Development Fund.

I trust this clarifies the position of Nova Scotia Economic Development on the matter.

Yours sincerely,

Richard Hurlburt



Economic Development
Office of the Minister

*Team
Shelburne
file*

1660 Hollis Street, Suite 600, Centennial Building, PO Box 2311, Halifax, Nova Scotia, Canada B3J 3C8
Telephone 902 424-5790 Fax 902 424-0514 • www.gov.ns.ca/econ/

November 15, 2007

Ref: #11126

Mr. Brian Holland
Clerk Treasurer
Municipality of the District
of Barrington
PO Box 100
Barrington, NS B0W 1E0

Dear Mr. Holland:

Thank you for your letter of November 2, 2007, seeking clarification on the disbursement of funds remaining from the maintenance fund and the proceeds from the sale of the former Shelburne Youth Centre.

As stated in correspondence to the Southwest Shore Development Authority on October 4, 2007, from the Minister of Economic Development, "these funds must be applied to further incremental economic development within the five municipal units comprising Shelburne County. Ineligible activities for the application of these funds would be deemed to be any activity or undertaking that would be considered the normal responsibility of the municipal unit..."

In the absence of any knowledge as to what specific activities are being proposed to be undertaken once funds are transferred to the municipal units in the amounts requested through Team Shelburne, it is impossible to determine if those activities would be in accordance with the October 4, 2007 letter. I suggest that it would be beneficial, as soon as possible, to present any specific requests to the Development Authority to determine compliance for the release of the funds.

Sincerely,

Angus MacIsaac
Minister

c: Neal Conrad, Director, Community and Rural Development, NSED



THE PREMIER
 HALIFAX, NOVA SCOTIA
 B3J 2T2

January 29, 2008

Mr. Brian Holland
 Clerk Treasurer
 Municipality of the District
 of Barrington
 PO Box 100
 Barrington, NS B0W 1E0

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Dear Mr. Holland:

Thank you for your earlier correspondence requesting a meeting to clarify access by Team Shelburne to funds associated with the maintenance and sale of the former Youth Centre property in Shelburne.

The Minister responsible for this matter is the Minister of Economic Development and, as such, his office has offered clarification to both Team Shelburne and the Southwest Shore Development Authority (SWSDA) on this matter in the recent past. In both cases, it was stated that the funds in question are to be administered by the Authority as directed by members of Team Shelburne. Further clarification was provided to direct that these funds were to be used to undertake economic development projects that would not be the normal responsibility of the municipal unit in which the activity would occur.

I would offer the support of the staff of the Economic Development Department to work with the Regional Development Authority and Team Shelburne to identify the activities you would wish to undertake to support the growth of the local economy through use of the available funds. Your access to these funds is, in fact, a requirement of the fund administrators, the Southwest Shore Development Authority. It is similarly a requirement of SWSDA that these funds be applied as per the clarification.

I am confident that you would agree that these requirements are within the ability of the municipal units to comply with and are well within any reasonable accountability framework guiding the expenditure of public funds.

Your understanding in this matter is appreciated.

Sincerely,

Rodney J. MacDonald

copy: Honourable Angus MacIsaac, Minister of Economic Development

Appendix D

SHELBURNE BOYS SCHOOL
 Summary of Expenditures
 South West Shore Development Authority

	Year Ended				Total
	31-Mar-06	31-Mar-07	31-Mar-08	31-Mar-09	
REVENUE					
Province of NS	600,000.00				600,000.00
Province of NS	25,000.00	-	-	-	25,000.00
Proceeds form sale			550,000.00		550,000.00
Interest income	-	12,343.60	14,238.37	24,476.36	51,058.33
Office expense transfers	-	200.00	-	-	200.00
Other income	825.00	1,671.50	-	-	2,496.50
	<u>625,825.00</u>	<u>14,215.10</u>	<u>564,238.37</u>	<u>24,476.36</u>	<u>1,228,754.83</u>
EXPENDITURES					
Travel/conferences/meetings	3,357.96	2,921.29	2,364.79	-	8,644.04
Marketing projects	-	12,631.26	-	-	12,631.26
Office expense/maintenance	1,133.03	1,214.16	679.51	-	3,026.70
Professional services	-	749.00	85,683.28	23,420.00	109,852.28
Advertising & promotion	1,730.00	2,532.11	365.97	-	4,628.08
Telephone/fax/internet	1,693.58	1,659.71	483.47	-	3,836.76
Utilities	16,222.46	14,116.80	10,480.27	-	40,819.53
Insurance	2,500.00	-	-	-	2,500.00
Shipping & courier services	-	-	13.72	-	13.72
Contract wages	-	762.92	32,055.77	-	32,818.69
Wages	53,525.54	71,398.04	-	-	124,923.58
EI expense	1,409.05	1,868.85	-	-	3,277.90
CPP expense	1,882.98	2,969.44	-	-	4,852.42
Group insurance	694.68	2,271.87	-	-	2,966.55
WCB expense	545.58	618.31	-	-	1,163.89
Cash (short) over	(0.01)	-	-	-	-0.01
Consultants	-	13,829.74	-	-	13,829.74
Training	960.50	-	-	-	960.50
Bank charges	-	-	82.31	-	82.31
Security service	4,402.08	41,003.53	21,494.18	-	66,899.79
Training materials	217.48	-	-	-	217.48
Repairs/maitenance	1,657.62	6,667.68	4,866.79	-	13,192.09
Vehicle expense	18.26	36.44	-	-	54.70
Fuel expense	94.41	209.60	9.39	-	313.40
Equipment	2,095.18	-	-	-	2,095.18
Professional marketing fees	11,287.50	-	-	-	11,287.50
Municipal taxes	-	35,714.96	(14,654.96)	-	21,060.00
Property Survey	-	-	14,500.00	-	14,500.00
	<u>105,427.88</u>	<u>213,175.71</u>	<u>158,424.49</u>	<u>23,420.00</u>	<u>500,448.08</u>
Deferred Revenue	<u>520,397.12</u>	<u>321,436.51</u>	<u>727,250.39</u>	<u>728,306.75</u>	<u>728,306.75</u>