



Office of the Ombudsman Final Report

Nova Scotia Economic and Rural Development and Tourism Cumberland Regional Development Authority File #50299

August 2012

These records are excluded from the **Freedom of Information and Protection of Privacy Act** (Section 4 (2)(e)) and must not be disclosed pursuant to a request for access to a record without the express permission of the Ombudsman

Evidence of the Ombudsman inadmissible in court

(8) Except on the trial of a person for perjury, evidence given by any person in proceedings before the Ombudsman and evidence of any proceeding before the Ombudsman is not admissible against any person in any court or in any proceedings of a judicial nature.

Table of Contents

SUMMARY OF COMPLAINT.....	2
BACKGROUND	2
CONSULTATIVE REPORT.....	4
INVESTIGATION & ANALYSIS	4
1. Project Invoices.....	5
Main Street Beautification Phase II Project	6
Youth Retention Project.....	6
Pugwash Harbour – Commercial Fishing & Marina.....	6
Downtown Amherst Revitalization Society/Business ‘Centre First’	7
2. Conflict of Interest	8
3. Equipment Purchase.....	9
4. Expenditure of Public Funds.....	9
5. Hiring and Promotion Practices	9
6. Governance and Oversight.....	10
Cumberland Regional Development Authority Board.....	10
Nova Scotia Economic and Rural Development and Tourism	10
7. Audits.....	11
CONCLUSION	12
RECOMMENDATIONS	13

SUMMARY OF COMPLAINT

Two former employees of the Cumberland Regional Development Authority (CRDA) contacted the Office of the Ombudsman in October 2011 alleging wrongdoing. They claimed their employment was terminated after they had disclosed concerns about the CRDA management and financial activities to the CRDA Board Executive members, in particular the Executive Director.

Specifically, these concerns included:

- Creation of invoices to obtain project funding from Nova Scotia Economic and Rural Development and Tourism (NSERDT)
- Issuing and voiding cheques
- Conflict of interest
- Equipment purchase
- Expenditure of public funds
- Hiring and promotion practices

After conducting preliminary inquiries into the concerns noted above, it was determined an investigation under the Ombudsman Act was warranted. Although the concerns were initially submitted as an allegation of wrongdoing, the complainants did not meet the definition of an employee under the former Civil Service Disclosure of Wrongdoing Regulations.

The termination of the complainants' employment with CRDA was outside the scope of this investigation, and is included in the background portion of this report. It should be viewed from that perspective. No findings or recommendations were made in this regard. The issue of termination of employment is currently being investigated by the Labour Standards Division, Department of Labour and Advanced Education.

BACKGROUND

The Cumberland Regional Development Authority was established as a body corporate pursuant to the Regional Community Development Act on March 23, 2011, by order of the Minister of Economic and Rural Development and Tourism (NSERDT). Prior to this date, this regional development authority was registered under the Societies Act as the Cumberland Regional Economic Development Association, and continues to be listed under the Registry of Joint Stocks Companies as an active society. For purposes of this report, this authority will be referred to as CRDA.

CRDA is governed by a board of directors consisting of 15 volunteers representing the Towns of Amherst, Oxford, Parrsboro, Springhill, and the Municipality of the County of Cumberland. The Executive of the Board is comprised of a Chair, Vice Chair, Secretary,

Treasurer, and Past Chair. The CRDA Executive and the complete CRDA Board generally meet monthly, except July, August, and December. Meetings are attended by representatives from the Atlantic Canada Opportunity Agency (ACOA) and NSERDT as observers. Minutes of these meetings are recorded, approved and circulated.

Through partnerships with community groups, projects are initiated to support regional and economic growth. CRDA receives its annual core funding with approximately one third from each of the three orders of government; federal, provincial, and municipal. Funding for specific projects may come from various levels of government and community groups.

The two former CRDA employees were requested by the Chair of the CRDA Board, to meet and discuss issues involving management of CRDA. Management concerns involving CRDA were originally brought to the attention of the Chair by local community officials. The complainants were interviewed separately on December 15, 2010, by a panel of five people. The panel was comprised of the CRDA Board Chair, Vice Chair, Past Chair, and two Chief Administrative Officers (CAOs). Both former employees indicated they were supported by the panel for disclosing their concerns in this regard, and assured there would be no repercussions. The management accountability and financial irregularities identified by the complainants were communicated to the CRDA Board by their Board Executive.

Although the CRDA Board advised the complainants they found no financial wrongdoing, they recognized a need for improvement of CRDA's human resources policies, including conflict resolution. The complainants further advised they experienced retaliation in the workplace and portions of their duties were reassigned to other staff. A conflict resolution process was undertaken between the complainants and the Executive Director. The conflict resolution process was unsuccessful. This Office requested a copy of the conflict resolution report. The CRDA Board and the Executive Director refused to provide the report to this Office citing solicitor client privilege.

A Human Resource Strategic study was undertaken. This project was cost shared between CRDA and NSERDT. A Human Resource Strategic Plan was developed by an external agency and included a number of recommendations involving both Board governance and restructuring within CRDA. The CRDA Board approved the implementation of the strategic plan. Five positions within CRDA were affected. The positions occupied by the two complainants were eliminated, and their employment with CRDA terminated effective immediately, as outlined in a letter dated September 29, 2011. The three other affected employees received written working notice of termination of their employment, however, as of the writing of this report, they remained employed with CRDA in varying capacities.

CONSULTATIVE REPORT

On July 5, 2012 in keeping with the Ombudsman Act this Office provided a consultative report to the complainants, the CRDA Board Chair, and the Deputy Minister of NSERDT. The consultative report outlined information gathered during the investigation, including findings and recommendations. The complainants and respondents were provided the opportunity to review the document and provide any new and substantive information, or provide clarification to the Ombudsman, by July 19, 2012.

The complainants responded indicating their general agreement with the findings and recommendations contained in the Consultative Report. Both CRDA and NSERDT requested various time extensions.

A time extension for submission of new and substantive information was granted to July 31, 2012. Responses were received and considered from CRDA and NSERDT, and where appropriate are reflected in this report.

INVESTIGATION & ANALYSIS

Issues identified for investigation included governance and accountability of CRDA, administrative accounting of core and project funding, and responsibilities of the CRDA Board. The specific projects referred to in this report occurred from 2007-2011. NSERDT reports policy and accountability adjustments stemming from the implementation of the February 2010 South West Shore Development Authority report and recommendations.

The scope of this investigation and analysis focused on seven key areas:

1. project invoices
2. conflict of interest
3. equipment purchase
4. expenditure of public funds
5. hiring and promotion practices
6. governance and oversight – CRDA & NSERDT
7. audits

Interviews were conducted with the complainants, CRDA's Executive Director, the 15 members of the CRDA Board, the five CAOs of the Municipal units, accountants retained by CRDA, current and former staff of CRDA and NSERDT, the Director of

Parks and Recreation, Department of Natural Resources (DNR), as well as community members involved in various projects. In total forty-two individuals were interviewed, including a number of follow-up interviews.

Information reviewed included:

- Five CRDA project files from NSERDT, 2007–2011
- DNR project information, 2010
- Five CRDA project files, 2007–2011
- NSERDT procedure manual - Community and Rural Development
- CRDA Board of Director Minutes, 2010 and 2011
- CRDA Board Executive Minutes, 2010 and 2011
- CRDA mid-year evaluation, 2011
- CRDA Human Resources Strategic Plan, August 2011
- CRDA's personnel and policy guidelines
- South West Shore Development Agency (SWSDA) Ombudsman Report, February 2010
- Ernst & Young Governance, Compliance and Financial Review – SWSDA
- NSERDT, May 2012 update of the implementation of the SWSDA recommendations
- Financial details from the Municipality of the County of Cumberland on CRDA projects
- Correspondence between CRDA, the CRDA Board, and complainants
- Correspondence between the Municipality of the County of Cumberland and the CRDA Board
- Correspondence from the complainants, CRDA, NSERDT, and the Municipality of the County of Cumberland to this Office
- Additional information and research through a variety of sources

Copies of documents and related material gathered in this investigation have been catalogued and retained in eight volumes.

1. Project Invoices

As a result of the complainants' allegations of financial irregularities and our preliminary assessment, several project files from both NSERDT and CRDA were examined. These specific projects were initiated in the fiscal years from 2007-2011.

Project applications submitted to NSERDT must include the objective, impact and scope of the work, funding partners' contributions, and costs. Letters of offer from NSERDT set out the terms and conditions in accordance with each approval. Any changes to the project agreements require NSERDT approval. These agreements state projects must be completed before the end of the fiscal year. Projects approved for provincial funding are claim-based for reimbursement on a fixed amount or percentage

basis. Re-submissions are required should a project not be completed within the fiscal year. Claims for reimbursement are submitted to NSERDT with statement of work, summary of expenses and completed claim forms, including details of payments, and copies of invoices.

The following projects were examined in this investigation and are examples of instances of irregularities in reporting.

Main Street Beautification Phase II Project

In the NSERDT Main Street Beautification, Phase II file, the specified project dates are December 15, 2007 to March 31, 2008. This file contained invoices from three different municipal units. One invoice was dated March 28, 2008, in the amount of \$15,000.00, to CRDA from a municipal unit. The explanation provided by the CAO of the municipal unit was that this represented their funding commitment. He indicated this was provided for reporting purposes to meet the March 31 deadline. The second invoice from another municipal unit could not be verified. The CAO could not confirm any record of expenses of \$15,000.00 or payment of this invoice. The third invoice for \$20,000.00 also could not be verified. The CAO from a municipal unit confirmed invoices for projects were requested from funding partners by the Executive Director of CRDA and explained it as an accepted practice in order to secure fiscal year end funding. CRDA submitted these invoices to NSERDT as expenditures for reimbursement. On April 15, 2008, NSERDT issued a payment of \$32,000.00 to CRDA on this project. This represented their funding portion toward the costs on the project. The specific basis for these invoices could not be determined.

Youth Retention Project

The NSERDT and CRDA Youth Retention Project, 2007-2008 files were reviewed. In the NSERDT file, it included an invoice from the Municipality of the County of Cumberland to CRDA in the amount of \$121,000.00 dated March 31, 2008. NSERDT's payment on this project to CRDA was \$27,200.00. In reviewing this invoice with the CAO of the Municipality of the County of Cumberland, concerns were raised regarding the invoice template and also the sequential invoice numbering.

A review of CRDA's file provided additional information, including a photocopy of a cheque, issued and voided. Attached was a general ledger accounting adjustment form relating to this transaction.

Pugwash Harbour – Commercial Fishing & Marina

In discussion of the 2007-2008, Pugwash Harbour – Commercial Fishing & Marina Development project file, the Executive Director of CRDA confirmed this project has not been completed. The invoice for the total cost of Phase I,

in the amount of \$130,000.00 was submitted to NSERDT. Payment in the amount of \$30,000.00 representing NSERDT's funding portion was then issued to CRDA. The Executive Director stated that CRDA retains \$60,000.00 awaiting completion of this project, or these monies would be returned to the proponents.

Downtown Amherst Revitalization Society/Business 'Centre First'

Another project file reviewed was Downtown Amherst Revitalization Society (DARS)/Business 'Centre First', 2010-2011. An invoice in the amount of \$34,680.00 was issued by DARS to CRDA on March 31, 2011. This invoice was then submitted to NSERDT for reimbursement toward costs of the project. The Executive Director of CRDA stated this is another example where year-end funding was expensed out. A portion of this invoice, \$20,000.00 for downtown wireless in the Town of Amherst, represents work activity yet to be completed. This was confirmed through interviews with the Executive Director, the CAO and the accountants retained by CRDA. In addition, a newspaper article in the Chronicle Herald on February 12, 2012, announced the installation of wireless internet is scheduled for the summer of 2012. A subsequent article on July 19, 2012, reported the Amherst downtown core is providing wireless internet service.

Invoices from the projects outlined above were stamped with approval of payment by CRDA. Cheques under CRDA's name were made payable to a particular project or funding partner, appeared to be signed by the appropriate officials within CRDA, and then marked void. Claim forms were then completed by CRDA using the information from the created invoices and void cheques. These claims for reimbursement were then submitted to NSERDT, along with a statement of work, summary of expenses, and copies of invoices. These submissions were approved by NSERDT's Planning & Development Officer, Regional Manager and the Executive Director. Payments were then issued from NSERDT to CRDA accordingly. Additionally, our investigation found on a number of other projects similar activity of created invoices and voided cheques.

CRDA's Executive Director and Board Secretary confirmed to this Office, CRDA's practice was to expense out project funding at fiscal year-end with NSERDT. The Executive Director stated this is due to the nature of dealing with multiple funding partners and a variety of completion dates on projects. The Executive Director stated that with the possibility of losing funding, funds are expensed from NSERDT based on invoices. The Executive Director further stated that funding partners are cognizant of this and "the bottom line is that the project gets done" and that this was accepted by staff of NSERDT. Senior management of NSERDT advised they were not aware of this type of activity and it is not an acceptable practice. Subsequent to the Consultative Report, NSERDT senior management confirmed "this practice of payment to comply to end of fiscal period requirements does not occur, nor did NSERDT ever see it as an acceptable practice."

A review of the project files from CRDA revealed invoices relating to some projects supported there was work activity, albeit, in some cases a number of years past the end of the project date with NSERDT. In other cases it could not be verified that specific project work was undertaken. During the investigation, a CAO also expressed concerns with the activities of CRDA based on a discussion the CAO had with an auditor retained by CRDA, who is also the auditor for the Municipality of the County of Cumberland. Specifically, concerns in relation to questionable financial practices “designed to deceive the provincial government.” The justification for creating invoices and voiding cheques to obtain funds without direct expenditures is unsupportable and raises questions of accountability and propriety.

2. Conflict of Interest

Conflict of interest was also identified by the complainants as a concern in relation to CRDA and DARS, given the Executive Director of CRDA's dual role. DARS is established as a society under the Societies Act, with a Board of Directors. The Town of Amherst levies an area rate on downtown businesses; this area rate is forwarded annually to DARS. The Society has been a yearly funding partner with CRDA on projects for Downtown Amherst.

The Executive Director of CRDA is also identified as the recognized agent for DARS. DARS and CRDA although registered separately share the same civic address, telephone, and fax numbers.

During our investigation, the Chair of DARS advised that the Executive Director of CRDA manages DARS finances and record books. Although the Executive Director advised that there have been financial statements prepared each year, the last DARS financial statements filed with the Registry of Joint Stocks Companies was in August 2008. The document recorded was prepared by CRDA. According to the Executive Director, the area rate is forwarded to CRDA. During interviews with CRDA accountants, they advised there were unsupported financial transactions between CRDA and DARS in 2010-2011.

DARS publicly announced on April 10, 2012, it had fulfilled its mandate and was “winding up.” However, CRDA advertised and hired a summer student for a 14 week period for DARS in May 2012.

The common control and relationship between DARS and CRDA, their joint involvement on projects, and the intertwining of finances is concerning. Based on the above and information obtained during our investigation, including discussions with accountants retained by CRDA, further independent examination of the financial activities between DARS and CRDA is warranted.

3. Equipment Purchase

The purchase of an all-terrain vehicle (ATV) through project funds involving DNR and the Cape Chignecto Provincial Park (CCPP) was identified as a subsequent issue by the complainants.

CRDA manages the provincial park for DNR through a management agreement. DNR was a funding partner with CRDA in administering improvements to CCPP. These park improvements were carried out through a number of projects.

The DNR Director of Parks and Recreation stated he was unaware of a purchase of an ATV and an attachment for a Kubota tractor using project funds. He further indicated that purchasing this equipment was excluded by the Canada Nova Scotia Infrastructure Stimulus Program Agreement.

Our investigation determined an ATV and an attachment for a Kubota tractor for approximately \$25,000.00 was purchased using project funds. The Executive Director stated that although CRDA was not permitted to purchase this equipment, the project contractor would be permitted to do so. According to the project contractor, the purchase of the ATV resulted from discussions with CRDA's Executive Director. The equipment was not specifically identified as an ATV and an attachment for a Kubota tractor on the invoices submitted. DNR reimbursed CRDA for the project costs of these invoices. The ATV is currently registered to CRDA.

Given the circumstances around the purchase of equipment, NSERDT is to provide a copy of this report to DNR for review.

4. Expenditure of Public Funds

Issues concerning the expenditure of public funds by CRDA in their general administration, specifically discretionary spending, surfaced throughout this investigation. Examples involve gifts to various individuals. These include but are not limited to crystal, watches, flowers, Christmas bonuses, gift cards and certificates, and the use of promotional merchandise (wine, fleece wear). There is a lack of, and a need for, guidelines, policy and direction in the use of discretionary spending.

5. Hiring and Promotion Practices

Throughout our investigation, interviews with staff of CRDA highlighted the need to address human resource management concerns. In discussing hiring and promotion practices, staff and the Executive Director stated these practices have not been consistent and promotion has occurred without competition. The Executive Director acknowledged the area of human resource management practices could be improved and indicated changes are starting to occur. This area needs on-going attention.

6. Governance and Oversight

Cumberland Regional Development Authority Board

The complainants indicated that after having raised concerns over financial irregularities, they were advised by two CRDA Board members there were no financial problems. The complainants stated they questioned how such a determination could be made when no one came to review the records.

Our investigation found the CRDA Board met on a number of occasions in response to these allegations of financial irregularities and improprieties. The CRDA Board developed a course of action to address the allegations, this included seeking legal advice, conducting interviews with the complainants and the Executive Director; and also meeting with the accountants retained by CRDA.

Throughout our investigation the CRDA Board provided varying interpretations of the complainant's allegations, and differing understandings of the Board's follow-up action. Board members advised they do not approve projects but receive updates and limited financial information on projects. The CRDA Board would have known or ought to have known that projects were not audited. Based on numerous interviews, this Office confirmed no detailed financial review or audit was conducted with respect to projects.

It is recognized that CRDA Board is proceeding with the implementation of a number of the recommendations from the human resource strategic plan which includes governance. Board Committees are being formulated in policy, personnel, audit, and governance.

The effectiveness of the CRDA Board from an oversight perspective needs to be improved. Although some training has been provided, issues continue to remain in the operation of CRDA.

Nova Scotia Economic and Rural Development and Tourism

NSERDT under the Regional Community Development Act requires annual audit statements of CRDA. Audits are conducted on annual core funding. There is no audit protocol on project funding.

Letters of offer from NSERDT set out the terms and conditions in accordance with approval for projects and funding. NSERDT states the conditions for payment of their contribution shall be based on a reimbursement for expenditures. Also, the applicant (CRDA) agrees NSERDT may inspect and examine the applicants accounting records, books or files, cancelled cheques, and paid invoices. Our investigation did not find such inspections and/or examinations had occurred on these projects. The result is that large sums of money contributed by NSERDT to projects were not audited.

The accountability and auditing of regional development authorities was highlighted in a previous report by this Office in February 2010, involving SWSDA. Many of the findings and conclusions from the SWSDA investigation could be re-stated in this report. It is recognized the projects referred to in this report occurred from 2007-2011, and NSERDT reports progress on the implementation of the SWSDA recommendations.

In response to the Consultative Report, NSERDT noted that the “projects under consideration were prior to fiscal year 2011-2012” and the “projects and reporting mentioned in the [Consultative] report were prior to the full suite of governance, auditing and financial improvements NSERDT and ACOA required RDAs to undertake in fiscal years 2011-2012.” Additionally, NSERDT stated “the activities and projects in question were when CRDA was under the Societies Act and prior to the governance improvements.”

NSERDT announced on July 19, 2012 an independent review of the regional development authority model. A four member panel will conduct consultations and submit a written report and recommendations to the Minister of NSERDT by October 5, 2012.

In discussion with NSERDT, they acknowledge there is no protocol in place for auditing of project funding, and they do not conduct random audits on project funding. Absent an established audit protocol which we believe is an ongoing requirement, this Office believes there were numerous opportunities for NSERDT to have questioned the payment of invoices based on:

- the co-location of NSERDT and CRDA in Amherst
- NSERDT’s attendance at Board meetings
- review of scope and summary of work
- feasibility of work completion within set time frames to complete projects
- reimbursement of invoices from project partners
- in some cases where invoices were in the entire amount of project cost

A copy of this report is to be provided by NSERDT to the four member panel.

7. Audits

At the conclusion of this investigation, the Municipality of the County of Cumberland advised the CRDA Chair and Executive Director, in a letter dated May 30, 2012, they requested an independent audit of CRDA projects. This correspondence advised they requested the Minister of NSERDT initiate and manage the audit. A copy of this letter was provided to this Office. On June 14, 2012, the CRDA Chair and the Executive Director responded to the Municipality of the County of Cumberland, stating that CRDA initiated an audit of all projects and initiatives, dating back to 2007-2008.

In response to the Consultative Report, the CRDA Board Chair provided a copy of an audit letter prepared by accountants retained by CRDA, along with supporting documents for DARS Business 'Centre First' Implementation. After reviewing the information, and in light of the accountants' previous audit responsibilities with CRDA, and the audit request of the Municipality of the County of Cumberland, as well as our findings in this report; a more indepth independent audit/forensic examination is necessary.

CONCLUSION

The financial concerns identified by the complainants were substantiated through our investigation. Based on information made available during this investigation, the complainants' initial concerns were not adequately addressed by the CRDA Board. In this regard an acknowledgement to the complainants is warranted.

CRDA's financial practices revealed in this investigation are not acceptable. There is insufficient financial detail on projects to allow for effective financial oversight and governance of CRDA.

The current level of oversight by NSERDT does not bring integrity to the accountability process in monitoring projects and expenditure of public funds. NSEDRT indicates governance, auditing, and financial improvements were implemented in 2011-2012, however a more meaningful oversight is required. The administrative practices and project auditing involving NSERDT and regional development authorities warrants review.

Invoices have been created and used to obtain funds from NSERDT without direct expenditures. These actions undermine the accountability process and brings into question matters of credibility and integrity. The activities revealed during this investigation go beyond maladministration in the expenditure of public funds. The fiduciary responsibilities of CRDA, the Board of CRDA, funding partners, and NSERDT have been undermined.

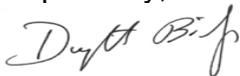
A forensic examination is required under the guidance of the Provincial Auditor General. If project results are consistent with our findings, relevant material should be provided to the police.

RECOMMENDATIONS

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

1. NSERDT develop an accountability and audit process to ensure all regional development authorities are in compliance with the terms and conditions of approvals on projects.
2. NSERDT in consultation with regional development authorities develop policy and guidelines to govern expenditure of public money in the general administration of discretionary expenditures.
3. CRDA Board acknowledge to the complainants that they did not adequately address the concerns identified by the complainants.
4. NSERDT provide a copy of this report to the Department of Natural Resources.
5. NSERDT provide a copy of this report to the Provincial Auditor General.
6. NSERDT provide a copy of this report to the recently appointed Independent Review Panel assessing the Regional Development Authority Model.
7. NSERDT engage an independent forensic examination of CRDA projects for the fiscal years 2007 to 2012 through the Office of the Provincial Auditor General.

Respectfully,



Dwight Bishop
Ombudsman