



**OFFICE OF THE OMBUDSMAN  
Final Report**

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**Municipality of the District of Guysborough  
Department of Municipal Affairs**

**File Number: 61465**

**April 2017**

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## **I - Background**

In April 2015, an individual contacted this Office with concerns regarding the Municipality of the District of Guysborough (the Municipality). The following allegations were articulated:

- 1) Councillors and the CAO being paid in American funds for expense claims.
- 2) Cash advances being issued on municipal credit cards.
- 3) Double payments for meals, i.e., Councillors submitting claims for meal per diem and receipts for the same meal.
- 4) Councillors and the CAO being reimbursed for travel expenses, i.e., hotel, for two locations on the same date suggesting non-eligible persons staying in a hotel at municipal expense.
- 5) Councillors and the CAO using municipal credit cards for personal expenses, i.e., flights, hotels, products, taxis, restaurants.
- 6) Reckless/frivolous spending, i.e., taking entire council to out-of-province meetings when one representative would suffice, alleged trade/business consultation/research trips.

Significant documentary information was provided by the individual covering the years 2009 to 2014. The information was obtained through a Freedom of Information and Protection of Privacy request to the Municipality. It comprised records for corporate credit cards issued to the former Warden, the former Deputy Warden, Chief Administrative Officer (CAO), and individual councillors. The documents also included expense claims by all councillors, the former Warden, the former Deputy Warden, and the CAO.

In addition to contacting this Office, the individual publicized their concerns to others, including members of the Legislative Assembly (MLA's), and widely through both mainstream and social media

## **II - Consultative Process**

This Final Report follows a consultative process which invited input from the relevant parties to address potential factual errors, relevant omissions, and provide any new and substantive information prior to the issuing of a final report.

On March 13, 2017, the Office of the Ombudsman issued a Consultative Report to the Municipality of the District of Guysborough and the Department of Municipal Affairs, requesting feedback and response by April 13, 2017.

This Office received several responses which have been considered in the final disposition and reporting of this matter. No factual errors were identified and no new and substantive information was provided.

In general terms, feedback included the acknowledgement for improvements to policies and procedures with respect to the expenditure of public money, questions with respect to the content of the report, and scope of the investigation. Some suggestions were accepted and are reflected in the report, such as further underscoring that various advances on credit cards and travel advances were repaid within reasonable periods of time.

The Municipality of the District of Guysborough expressed acceptance of the recommendations from the Consultative Report, which remain unchanged in the Final Report, and have undertaken to act on them. The Department of Municipal Affairs have undertaken to review and respond to the Final Report and recommendations.

This Office has requested quarterly updates from both respondents specifically outlining the Municipality of the District of Guysborough, and the Department of Municipal Affairs' progress in implementing the recommendations, including any relevant documentation, until implementation is complete.

### **III - Investigation**

On September 30, 2015, in accordance with Section 11 of the Ombudsman Act, this Office initiated an own motion investigation. Notification was provided to the Municipality and to the Department of Municipal Affairs. The scope of the investigation was a review of the Municipal Government Act and the Municipality's administrative policies and practices, including but not limited to:

- Travel/conference/training allowances and budgets;
- Travel/conference/training expenses and claims;
- Benefits and salary (payment and remuneration);
- Municipal (corporate) credit cards.

As part of the investigation, in November 2015 this Office requested information and records for all councillors and the CAO for the period April 2012 to March 31, 2014. Specifically:

- All salary and compensation information, including salary and cash advances.
- All corporate credit card statements and documentation.
- All travel and expense claims for any type of travel, conferences, or training, including supporting documentation (receipts) and approvals.

Most of the information requested had been received by February 2016. However, significant additional information, mainly indicative of the scope and range of business

and other interests and activities by the Municipality, was provided to this Office more recently. All information submitted has been reviewed by Ombudsman Representatives.

In this instance, Ombudsman Representatives determined that two years of documents would be an adequate and representative sample of spending practices in the Municipality. Selected were the fiscal years April 1, 2012 to March 31, 2014. Spot checking of records from 2010 to 2011 was also undertaken, but mainly to confirm that familiar patterns seen in the two years under scrutiny were consistent with recent preceding years.

A core aspect of investigations of this nature is an analysis of whether the spending practices of councillors and administrators conform to the applicable administrative laws, regulations, and policies. The Office of the Ombudsman also assumes a right and a responsibility to evaluate such provisions for their clarity, consistency, and fairness. The political context and business culture in which individual municipal governments operate also may be considered, but only as factors influencing the creation of and the need for policy, and not as criteria in themselves by which the propriety of spending activities can be assessed. This distinction is important. A review by this Office focuses on the administration and effectiveness of regulation and policy, which are the means to certain ends. Those means must be evaluated independently of the value or legitimacy of a municipality's ultimate objectives.

The investigation by this Office involved a detailed review of documents including the following:

- The Municipal Government Act.
- Travel and expense policies in effect within the Municipality during the period under review, April 1, 2012 to March 31, 2014.
- Revised travel and expense policies in effect within the Municipality since November 2016.
- Corporate credit card records pertaining to the current and former Warden, Deputy Warden, CAO, and each former and current councillor, for the two-year period from April 1, 2012 to March 31, 2014, including receipts and any relevant documentation related to charges and payments.
- Travel and expense reimbursement claims, available receipts, and approvals for all types of travel including meetings, conferences, and training events.
- Compensation records, including councillor stipends and cash advances.
- Budgetary information and estimates related to travel and conferences.
- The Financial Reporting and Accounting Manual of the Department of Municipal Affairs.
- The Grant Thornton "Report to the Warden and Council - communication of audit strategy and results for the Municipality for the year ended March 31, 2016."
- Travel Policy, Section 26.1 of the Budgeting & Financial Management Manual, Government of Nova Scotia.

- Advances, Section 12.1 of the Budgeting & Financial Management Manual, Government of Nova Scotia.
- Various binders and files provided by the Municipality reflecting explanations for, and background information on, various inquiries and complaints regarding spending by the Municipality.
- Multiple reports of feasibility studies, strategy sessions, demographic trends, investment, and industrial development projects; taxation studies pertaining to mergers of Guysborough with neighboring municipalities such as Canso and, potentially, Mulgrave.
- Related CAO and Warden reports to Council, provided by the Municipality to “ensure an understanding” by this Office of the context and scope of municipal operations and business in the Municipality.

Minutes of Council meetings were reviewed, as were many related media reports, written correspondence, emails, and other records and information provided by members of the community and the Municipality. Ombudsman Representatives conducted interviews with all current Councillors, the CAO, current and outgoing Directors of Finance, and the former Warden.

### **The Municipal Government Act**

The foundation document for all municipal authority in Nova Scotia is the Municipal Government Act (MGA).

The spirit of the MGA as it stands is one of devolution of powers. The Act is deliberate and generous in its ceding and sharing of organizational, policy-making, and spending authority to the municipal level. The thrust of the MGA is reflected in the disposition of the Department of Municipal Affairs, which is one of deference to elected local councils on most municipal issues. In recent interviews by this Office with senior Municipal Affairs officials, this spirit of concession and deference was confirmed.

Several provisions of the MGA bear directly on this review and on our conclusions and recommendations.

The MGA specifically authorizes municipal councils on expenditures, including for travel and conferences. However, there is a requirement under the MGA that expenses be reasonable and permission to spend be obtained in advance.

Section 65, “The Power to Expend Money,” reads as follows:

65 The council may expend money required by the municipality for:

(r) salaries, remuneration and expenses of the mayor or warden, councillors, officers and employees of the municipality;



(s) the reasonable expenses incurred by the mayor or warden or a councillor for attendance at meetings and conferences, if the permission of the council is obtained prior to the meeting or conference or the attendance is in accordance with a policy of the council.

The Act authorizes councils to make policy. Section 23 of the MGA reads in part:

23(1) The council may make policies

(d) providing for and fixing

(i) the annual remuneration to be paid to the mayor or warden,

(ii) the annual remuneration to be paid to the deputy mayor or deputy warden,

(iii) the annual remuneration to be paid to councillors...

and,

(3) Where

(a) an expense by a council member is authorized by an expense policy adopted by the council; or

(b) no expense policy has been adopted by the council but the expense is supported by proof that it has actually been incurred, the expense may be reimbursed to the council member.

Section 23(3)(b) is of consequence in this review. In effect, it permits spending by councillors and recoveries based only on documentation that the expense has incurred. Such a provision is indifferent to spending rates, limitations, controls, and guidelines that policies can best provide.

The MGA provides for the employment of Chief Administrative Officers (CAOs), who derive most of their responsibilities and authority from the MGA. The CAO is an employee of the Municipality and is accountable to Council.

Section 28 of the MGA reads in part:

Chief administrative officer

28(2) The council of a regional municipality shall employ a person to be the chief administrative officer for the regional municipality.

Section 31 of the MGA reads in part:

Responsibilities of chief administrative officer

31(2) The chief administrative officer may

(d) subject to policies adopted by the council

(i) make or authorize expenditures, and enter into contracts on behalf of the municipality, for anything required for the municipality where the amount of the expenditure is budgeted or within the amount determined by the council by policy, and may delegate this authority to employees of the municipality...

This section of the MGA provides that while a CAO may spend money on behalf of the Municipality, the amounts expended must be specifically budgeted or within amounts determined by a Council policy.

During the period being reviewed, the Municipality operated under various policies designed to govern and guide travel and related expenses. Several policies directly addressed the types of spending practices complained of in this instance. The policies covered such matters as per diem rates, mileage or “kilometrage,” corporate credit card usage, and conferences.

In November 2016, the Municipality revised its policies to increase clarity and bring them closer to provincial travel policies currently in effect in Nova Scotia. For purposes of this review, the policies in force at the time of the review are the applicable policies. However, the revised policies will be reviewed as indicative of the direction the Municipality currently wishes to take on many of the issues raised. Those policies also will serve as reference points for certain policy changes recommended in this report.

#### **IV - Analysis and Findings**

Most of the issues identified required analysis of extensive data and documentation provided by the original Complainant and the Municipality. The issues are in various categories, and required different assessment approaches.

Where aspects of the complaint are amenable to objective evaluation, the process has been straightforward. For example, the suggestion that cash advances were being charged to corporate credit cards can be assessed by two objective measures. Is there evidence that such advances have taken place? Is there evidence that such advances were, or were not, authorized by policy? Similar analyses can be made regarding issues such as “double-dipping” and personal purchases with corporate credit cards.

There are other aspects of the complaint that are not amenable to objective measures or more conventional analysis. Yet those issues are significant, and possibly indicative of a different and more generic concern with municipal expenditures. One such issue is the allegation of “reckless/frivolous spending, i.e., taking entire council to out-of-province meetings when one representative would suffice - alleged trade/business (or) consultation/research trips.”

An assessment of spending practices alleged to be “reckless or frivolous” will have a subjective component. Such spending cannot be readily tested against policy. There are certain categories of spending - such as “hospitality” spending - that may be permitted by policy, or by specific motion of Council, or even by retroactive approval grounded in Section 23(3)(b) of the MGA. But there are no criteria by which they may still be evaluated as “reckless or frivolous.” A related question for this Office is whether the Office should attempt such an evaluation. Section 20(1) of the Ombudsman Act may deem such judgmental evaluations appropriate, and indeed required, in certain circumstances. Section 20(1) reads in part:

Where upon investigation the Ombudsman is of the opinion that a grievance exists, or may exist, because a department or municipal unit or officer thereof administered or is administering a law of the Province or a law of a municipal unit or a law of the Province that applies to a municipal unit

- (a) unreasonably, unjustly, oppressively or in a discriminatory manner, or pursuant to rule of law, enactment or practice that so results;
- (e) by using a discretionary power for an improper purpose, or on irrelevant grounds, or by taking irrelevant considerations into account, or by failing to give reasons for the use of a discretionary power when reasons should have been given,

and if the Ombudsman is of the opinion that

- (g) an omission should be rectified;
- (i) a practice by reason of which the grievance arose or may arise should be altered;
- (j) a law by reason of which the grievance arose or may arise should be reconsidered;
- (k) reasons should be given for the use of a discretionary power;

the Ombudsman shall report his opinion, his reasons therefor and any recommendations to the minister and the chief officer of the department or the chief officer of the municipal unit concerned.

The Section 20(1) requirement that the Ombudsman be “of the opinion that a grievance exists or may exist” is satisfied by acceptance of the allegations submitted for which an investigation was commenced by this Office, and the decision to proceed by way of an own motion investigation. Pursuant to Section 20, the Office of the Ombudsman has an obligation to evaluate and if necessary make recommendations regarding spending practices that may be considered reckless or frivolous, as alleged in the complaint.

### **Payment in US Funds**

For an extended period, reimbursement records indicated dollar amounts designated as “US”. The obvious question was whether expenses incurred in Canadian dollars were reimbursed in US dollars, which have become increasingly strong in recent years in comparison to Canadian currency.

Officials at the Municipality explained the matter as a product of a computer spreadsheet program which automatically triggered US before dollar amounts but which did not, and could not, dictate the currency being used for reimbursement payments. This Office was assured that all payouts were in Canadian currency.

The Municipality’s Chief Financial Officer subsequently provided a more specific explanation in writing:

“Some sheets were created by the former Director of Finance many years ago and they were set up on US computers. Lotus SmartSuite, our program of choice at the time defaulted the computer’s home country and set the value as a default for the whole program. Therefore if your computer was set up as a US computer, Lotus would display a currency for dollars as \$ and Canada dollars as C\$. If that sheet was emailed to a person with a setup as Canadian, that Lotus would take the spreadsheet marked, in the background as US currency and display it as US\$. In order to correct this, the individual users would have to change the cells to Canadian dollars so only the \$ would display. At no point in time were any reimbursements paid out in US\$.”

The explanation is reasonable, and no supporting evidence was found that anyone was compensated in US dollars for expenses incurred in Canadian funds.

Indeed, the possibility that the general accounting apparatus of the Municipality would be adjusted for such across-the-board currency conversion would appear to be remote. It also may be noteworthy that in 2011, when the US designations were initially in evidence, the Canadian dollar periodically was worth more than the US dollar.

### **Corporate Credit Cards - Personal Charges**

The Municipality’s Policy H-20, approved March 12, 2008, covers “Purchase/Credit Cards.” The policy governs eligibility. “Cardholders must be members of Council or permanent full-time members of the Municipality of the District of Guysborough, unless

otherwise approved by the Director of Finance.” It also provides sanctions for breaches. “Cardholders are subject to random audits of expenses and record keeping by the Department of Finance...Discovery of violation(s) of this policy may result in loss of privileges and/or other disciplinary steps as appropriate.”

The policy is clear regarding certain transactions that are not permitted with Municipal or corporate credit cards. They include:

- a) Splitting of total purchase cost, singly or between Cardholders to avoid transaction limits.
- b) Personal purchases.
- c) Non-Municipal use.
- d) Cash advances, money orders, bank drafts, etc.

The policy makes the Municipality’s Finance Department responsible for performing audits, “to detect possible violations. The audit selection criteria would include, but would not be limited to, meals over the total per diem allowance, airfare, splitting of purchases, miscellaneous/unusual/unique transactions, and random samples.” Beyond the policy requirements, corporate credit card holders were asked to sign a “Corporate Purchasing Card Agreement.” The agreement reinforced the policy and made it a personal obligation of the cardholder to use the card appropriately. Among the requirements were:

- This card is for business-related purposes only. Any use of this card for purchases of a personal nature is strictly prohibited.
- This card must be used in accordance with all municipal policies, procedures and guidelines respecting government purchasing and the use of cards as such policies, procedures and guidelines may from time to time be issued and amended.

This Office examined four corporate credit cards in use during the period under review. The cards were issued individually to the former Warden, the former Deputy Warden, to an individual councillor for a brief period, and to the CAO. The card issued temporarily to a councillor was used for two business trips outside of Canada. Personal purchases were made on three of the four cards during the review period. However, in only one case, that of the former Warden, were such purchases common, frequent, and routine. Most charges were relatively small. A few were significant. All were identified as personal or recoverable either by the former Warden or by the Municipality’s administrative officials. Examples, from the former Warden’s corporate credit card account, include:

- April 5, 2012 – \$3.39, Earphones on board Air Canada flight.
- April 15, 2012 - \$19.54, In-Room Movie, Westin Hotel, Halifax, NS.
- April 28, 2012 - \$12.00, Wine on Air Canada flight.
- May 11, 2012 - \$24.97, In-Room Movie & Bistro at Holiday Inn, Truro, NS.
- May 16, 2012 - \$64.00, Superstore Gas, Antigonish, NS.
- May 17, 2012 - \$74.75, MacKenzie’s Towing and Service, Truro, NS.

- May 21, 2012 - \$26.19, Freeman's Little New York, Halifax, NS.
- May 21, 2012 - \$63.00, Superstore Gas, Halifax, NS.
- May 22, 2012 - \$18.39, Sobey's, Halifax, NS.
- May 22, 2012 - \$9.65, Richtree Market, Ottawa, ON
- May 23, 2012 - \$9.95, Liquor Store, LCBO, Ottawa, ON.
- May 23, 2012 - \$24.97, In-Room Movie & Coffee Bar, Westin Hotel, Ottawa, ON.
- May 30, 2012 - \$16.16, Brewsters Brewing Company, Calgary, AB.
- June 2, 2012 - \$21.85, TJ Pizza, Saskatoon, SK.
- June 8, 2012 - \$60.01, Superstore Gas, Halifax, NS
- June 19, 2012 - \$31.34, Sears, St. John's, NL.
- July 8, 2012 - \$19.54, In-Room Movie, Westin Hotel, Halifax, NS.
- July 22, 2012 - \$38.00, Bluenose Restaurant, Halifax, NS.
- July 22, 2012 - \$38.62, Phone calls and In-Room Movie, Westin Hotel, Halifax, NS.
- July 24, 2012 - \$365.76, Air Canada ticket return from Halifax to Montreal for the former Warden's spouse.
- In September, 2012 - \$315.16 in total. Expenses incurred included \$34.21, GoDaddy.com; \$55.49, Bishop's Cellar, Halifax; \$18.50, Bishop's Cellar, Halifax; \$22.94, Tomavino's Restaurant, Halifax; \$57.30, Westin Hotel, Halifax; \$30.09, Westin Hotel Halifax; \$21.19, Park Place Ramada Plaza, Dartmouth; \$14.50, Casino New Brunswick; \$18.95, Liquor Store, Ottawa; \$41.99, Petrocan, Halifax.
- In November, 2012 - \$120.23 in total, including \$31.63, Ottawa Airport; \$19.20, Westin, Ottawa in-room movie; and \$57.50 for Air Canada lounge access; \$11.90, Salty's Restaurant, alcohol.
- In February, 2013 - \$68.90 in total, \$35.00 February 13 at Market Buffet, Windsor, Ontario, and \$33.90 February 15 at the Plaza Premium Lounge in Mississauga, Ontario.
- April 23, 2013 - \$10.93 for snacks at Westin Hotel, Halifax
- In May, 2013 - \$87.72 in total, including \$14.94, \$18.39, and \$19.55 for in-room movies, Westin Hotel, Halifax, NS; \$27.49, duty-free sunglasses, Halifax; \$7.35, wine on flight.
- In June, 2013 - \$275.20 in total, including \$78.00 to refuel at Superstore, Halifax; \$19.42 for mini-bar foods at Pan Pacific Hotel; \$22.94, Tomavino Restaurant, Halifax; \$154.84, Westin Hotel, Halifax.

It must be underscored that in every case of identified personal corporate credit card purchases by the former Warden, there is documentary evidence of recovery within the same month or in the following month. Recovery was facilitated by the fact that at the end of most months the former Warden, who travelled extensively, would be owed travel reimbursements from which personal purchases would be deducted. And if necessary monthly remuneration could be, and occasionally was, reduced by any amounts still owing.

### **Corporate Credit Cards - Cash Advances**

Policy H-20, as noted, prohibits the use of corporate credit cards for cash advances. During the period under review, only the former Warden appeared to have obtained cash advances on a corporate credit card. Among them:

- May 23, 2012 - \$200 using an ATM machine;
- September 9, 2012 - \$200, using an ATM machine;
- September 10, 2012 - \$100, using an ATM machine;
- September 14, 2012 - \$201.75, using an ATM machine.

Each advance incurred a service charge of \$3.50. The total for those advances was \$715.75. These advances also were recovered in the same or subsequent month.

### **Travel Advances**

The former Warden used corporate credit card advances sporadically. However, advances in the form of payments directly from the Municipality were used more frequently and in larger amounts. Those advances were cheques or cash issued prior to travel, and recovered from the former Warden's monthly remuneration or as deductions from travel reimbursements. There was no policy specific to the use of such advances during the period under review. However, there is a reference to advances in a more general policy, sufficient to indicate that such advances were contemplated and considered normal. As with other advances, the travel advances were recovered.

Policy C-10, entitled "Remuneration and Benefits Policy," mentions travel advances, with the caveats that such advances "will be submitted to the Finance Department subject to the approval of the CAO or in his/her absence, the Director of Finance, at least five working days prior to the required date." Advances taken by the former Warden against future reimbursements or remuneration included the following:

- April 11, 2012 - \$800
- April 25, 2012 - \$400
- May 14, 2012 - \$800
- June 10, 2012 - \$500
- July 18, 2012 - \$500
- January 15, 2013 - \$250
- February 4, 2013 - \$300
- April 28, 2013 - \$300
- May 22, 2013 - \$500

In the absence of comprehensive records regarding the travel advances, it has not been possible to determine whether they conformed to the caveats of Policy C-10. It is difficult to identify specific authority for their use, beyond the Policy C-10 reference itself.

No records were provided of requests or authorizations for those advances, whether five days prior to the “required date” or not. Further, the term “required date” itself is not defined.

In each case of travel advances by the former Warden, there is evidence of recovery within the same month or in the following month. It is equally relevant to note, however, that the former Warden had been entrusted with a corporate credit card with a \$10,000 credit limit. Corporate credit cards are designed in part to preclude situations where a corporate traveler might be personally out of pocket while in travel status. They are often designed to enable advanced purchases of airline tickets and guaranteed hotel rooms without using personal credit cards or other personal resources.

As documented above, the former Warden’s use of advances was coupled with significant use of the corporate credit card for personal purchases. This meant that from time to time the former Warden had access to the full spending scope of the corporate credit card, on which personal expenses and cash advances were commonly incurred, augmented by cash advances from the Municipality. In effect, the former Warden benefited from a form of short-term loans from the Municipality to cover expenses that certainly would have included business expenses, but often included personal expenses as well.

### **Conference Expenses**

Policy C-7, approved May 12, 1999 and amended March 21, 2012, addressed “Conference Expenses.” Its salient provision was as follows:

“The Municipality agrees to pay the cost of registration, accommodations, meals and travel expenses for Council representatives in attendance at out-of-town conferences, with prior approval by Council. The meal rate shall be equivalent to the federal government’s meal rate in effect at the time. Spouses may be included in the cost of accommodations only. Mileage will be paid at the federal rate in effect at the time of the conference.”

In addition to C-7, Policy C-10 speaks to “Conference/Municipal Related Activities Expenses.” Policy C-10 refers to compensating councillors and Municipal employees for “reasonable expenses” incurred for business, “provided that appropriate prior authority is obtained in accordance with this policy.” C-10 repeats certain provisions of C-7 in slightly different language. Under C-10, reasonable expenses include registration, accommodations, “meals not covered by registration,” and direct travel expenses.

However, Policies C-7 and C-10 appear to collide on one key provision. C-7 states “the meal rate shall be equivalent to the federal government’s meal rate in effect at the time.” C-10 does not specify a meal rate, referring only to “reasonable expenses” incurred for business, with the caveat, as noted, that “appropriate prior authority is obtained in accordance with this policy.”



## Meals and Per Diem Rates

During the period under review, travelling members of Council and the Chief Administrative Officer sporadically spent amounts on meals that exceeded authorized per diem rates. Those costs were mainly charged to corporate credit cards. All such costs observed were paid by the Finance Department, always with at least one, and usually with two, approval signatures from officials. The practice was common, well understood, and routine.

Based on the documentation reviewed, it appears that spending in excess of per diem rates was carried out primarily by the former Warden, the former Deputy Warden, and the Chief Administrative Officer. Unless otherwise noted, the charges listed are reflected on the CAO's corporate credit card statements. The following instances were typical:

- April 17, 2012 - Il Mercato Restaurant, Halifax, \$129.61. The receipt was noted as "CAO and Investment trader/Adviser."
- April 28, 2012 - Truluck's, Houston, Texas, \$108.75, noted as "OTC delegation pre-dinner," and on the same evening at the same restaurant, \$370.18, noted on the receipt as "MoDG delegation" and two guests, one noted as a deputy minister.
- May 2, 2012 - Trulucks, Houston, Texas, \$56.72 noted as "pre-dinner" and \$595.10 later the same evening at the same establishment. Both receipts are noted as "OTC delegation." The latter meal included \$166.50 in charges for alcohol. The combined costs for those two evenings was \$1,131.75.
- June 1, 2012 - Saskatoon Station Place, Saskatoon, \$394.36, dinner for five, \$106.25 as alcohol. The receipt is noted as "four councillors and one guest," not identified. (\$79 each. Per Diem = \$54.00).
- June 18, 2012 - Sundance Saloon, St. John's, NL, \$126.46. Lunch. Attendees listed as Warden, Deputy Warden, and CAO. (Average \$42.15 each. Per Diem = \$18.00).
- June 19, 2012 - Bianca's Restaurant, St. John's, June 18, \$213.05. No information provided as to attendees or purpose. Several Guysborough delegates, including the CAO and the former Warden, were attending an Atlantic Petroleum Show in St. John's.
- September 19, 2012 - McKelvie's Restaurant, \$260, of which \$71.05 was alcohol. Attending were the CAO, the Warden, and one councillor. (\$86.00 each. Per Diem = \$54.00).
- October 13, 2012 - The Keg, Toronto, \$150.42. Receipt notes Warden and CAO. (Combined Per Diems would total \$108.00).
- January 21, 2013 - Vic & Anthony's, Houston, \$315.75. Receipt notes Warden, CAO, and two representatives from the Department of Environment. (\$79.00 each. Per Diem \$54.00).
- January 21, 2013 - Tejas, Houston, \$45.46. (Per Diem = \$18.00).
- January 28, 2013 - Café Chianti, Halifax, \$430.07. Receipt noted as CAO, Warden, Director of Economic Development, and two named representatives of Pieridae. (Average \$86.00. Per Diems = \$54.00).

- February 14, 2013 - Nero's Restaurant, Halifax, \$210.45, charged to the former Warden's corporate credit card. Guests noted as Deputy Warden and CAO. (Combined dinner Per Diems = \$168.00)
- May 24, 2013 - Westin Hotel, Halifax \$56.19. No information noted. The Keg, Halifax, \$65.29. No information noted. (Same day charges of \$56.19 + 65.29 = \$121.48. Per Diem = \$84.00).
- May 31, 2013 - Lift Bar Grill View, Vancouver, \$582.86. No receipt or list of attendees accompanied this charge.
- November 17, 2013 - Carnegie Club, New York City, \$383.13. On a councillor's corporate credit card, noted on receipt as "Minister (by name) and others."
- November 18, 2013 - Rosie O'Grady's in New York City, \$300.71 on the CAO's corporate credit card. No indication of who or how many attended the dinner.
- December 9, 2013 - McKelvie's, Halifax, \$287.65. No information provided.
- December 18, 2013 - Waterfront Warehouse, Halifax, \$78.65. No information provided.
- January 14, 2014 - Café Chianti, \$141.44. No Information provided.

Beyond the stipulation of Policy C-7, meal rate limits also were rooted in a resolution passed by the Council on July 20, 2011, with one dissenting vote. The resolution asked Council to authorize staff "to update meal rates for travel reimbursement purposes on a go forward basis allowing for automatic adjustments that will bring the Municipality's rates in line with Federal Government rates." The resolution was further reflected in an amended Policy C-8 of March 21, 2012. This policy states that its application is to "members of Council and Municipal employees." It reaffirms meal rates as "equivalent to the federal government's rates at the time..." During the period under review, the per diem rate commonly used by councillors and employees totaled \$84. It was broken down as \$12 for breakfast, \$18 for lunch, and \$54 for dinner. The set daily per diem rate was therefore established and predictable. No travel policy in effect within the Municipality during the period under review specifically or directly authorized per diem costs beyond those limits.

It is possible, presumably, that Policy C-10 (reasonable business expenses) incurred for business could be interpreted as superseding Policies C-7 and C-8 (which stipulated the federal government meal rate). However, such policy conflicts only create confusion and ultimately are dysfunctional.

In many instances where costs exceeded per diems, alcohol was included in the final bill. The Municipality had no policy at the time regarding reimbursements for alcohol. A policy to justify spending under headings such as promotion or hospitality might be grounded in a perceived obligation to extend hospitality in the form of a meal or a drink to business clients or individuals. It might even be extended in return for hospitality experienced in the opposite direction. In this instance, spending beyond levels prescribed by policy often was rationalized that way by those interviewed. In such circumstances a minimum expectation would be that the purpose of such a dinner meeting be noted, along with numbers of guests, and, ideally, their identities.

In the documentation at hand, such information was sporadic and often incomplete. Of particular concern was a practice where meal per diem rates exceeded the prescribed limits when the only persons listed as attending the meal were members of the Council or its administrators.

In the absence of unambiguous policy authorization, councillors and administrators interviewed by Ombudsman Representatives explained the expenditures as being authorized by officials duly mandated to sign travel and expense claims.

A written statement on the matter was provided by the Municipality's current Director of Finance:

"The policies referenced (C-7 and C-8) are the policies related to meal allowances that were in effect from 2012 to 2014. The Municipality has, on rare occasions, allowed meal expenses related to Municipal business exceed the per diem rates provided the circumstances warranted that payment. These payments were authorized in accordance with the approval and cheque signing processes in place for all eligible expenses. This approval process includes review by the Warden or Deputy Warden, CAO or Deputy CAO, Director of Finance and other Finance personnel. As noted in policy any claim for reimbursement must be a "reasonable expense" in order to qualify for payment.

"As you are aware the Municipality of the District of Guysborough is involved in numerous economic development activities, therefore, from time to time resulting in expense and costs not contemplated in Municipal policies. A recent effort has been made to update expense related policies to better reflect the activities of the Municipality."

It is important to emphasize that in allowing the practice to evolve, councillors and administrators were not in breach of the Municipal Government Act. Under the MGA there is no explicit requirement for policy governing such spending. This is an undesirable situation exacerbated by Section 23(3)(b) of the MGA, cited earlier, which in fact creates a low bar for executive approval in the absence of policy. The relevant section reads:

23(3) Where

(a) an expense by a council member is authorized by an expense policy adopted by the council; or

(b) no expense policy has been adopted by the council but the expense is supported by proof that it has actually been incurred, the expense may be reimbursed to the council member.

In the context of per diems, allegations of possible “double-dipping” were made by an individual. This is the practice of charging meals to corporate credit cards and simultaneously claiming per diem recoveries for the same meals. Councillors and administrators interviewed all denied that the Municipality either practices or condones double-dipping, whether inadvertent or otherwise, and there is no convincing evidence to the contrary.

Our review identified isolated incidents where the dates of either the meals taken, or the claims made, were unclear, and where the possibility of double claims at least existed. This imprecision in the dating of some expense claims, coupled with retroactive approval for claims in excess of the standard per diem rates, made it difficult to determine the matter definitively. However, there was no evidence of a common practice of double-dipping.

### **Mileage Rates**

Policy C-2, “Travel Fees,” established the rate paid per kilometer for travel by councillors using their personal vehicles. Policy C-7, 2012 revision, also established the rate which, like the per diem rates, was set to track the federal rates applied in Nova Scotia. During the period under review, the federal rate remained at or very near \$.50 per kilometer. Approved on May 12, 1999 and amended on September 14, 2005, C-2 also allowed for travel fees to be paid to the Warden and councillors for “actual kilometers travelled to and from the municipal related meetings from place of residence - once per day.” And it provided “the travel fees shall be consistent with the Federal Mileage Rate for Nova Scotia as adjusted from time to time.”

Those “federal rates” for kilometrage refer to federal rates for only Nova Scotia. Such rates vary slightly from province to province, and change periodically, reflecting variables such as fuel costs. Policy C-2 also required travel claims to be submitted to the office before the end of each month.

### **Hotel Expenses**

Policy C-7, “Conference Expenses,” specifies that “spouses may be included in the cost of accommodations only.” While a more nuanced policy on this subject would be beneficial, this reference at least makes it clear that the Municipality has no issue with spouses accompanying its “authorized representatives” to conferences, and, by implication, on other Municipal travel if no additional costs are incurred. In the documentation provided, there was evidence of municipal officials being accompanied on trips by spouses, but no evidence of additional costs specifically related to the fact that a spouse had shared a hotel room.

### **“Reckless/Frivolous” Spending**

As noted earlier, allegations in this case raised certain questions that are important, but to which the answers require more subjective considerations. The main example is as follows:

“Reckless/frivolous spending, i.e., taking entire council to out-of-province meetings when one rep would suffice – alleged trade/business consultation/research trips.”

The Municipality by resolution of Council adopted the position that all councillors should have the right to attend certain meetings and conferences of general municipal interest. Included among these meetings is the annual convention of the Union of Nova Scotia Municipalities, meetings of the Federation of Canadian Municipalities, and an annual Recreation Nova Scotia Conference. Councillors and officials advised this Office that while the policy is to include all interested councillors, usually delegations are smaller than that, with two to four attendees closer to the norm.

With respect to the Nova Scotia meetings noted, this would not appear to be an unreasonable approach, subject to budgetary considerations. However, costs of attending national conferences can be high if not responsibly controlled. In 2014, the Municipality sent six delegates to the annual FCM conference in Niagara Falls. There were 30 delegations from Nova Scotia. The Municipality’s costs were the highest of all the delegations at \$24,580.15. The average cost for the other municipalities was half that amount, with the exception of one municipality whose costs were \$24,053.74. By comparison, the largest municipality in the Province sent three delegates at a cost of \$7,615.00.

Leading up to and including the years under review, there were significant increases in the amount of travel and related expenses incurred by both the former Warden and the CAO. In 2009-2010, “mileage, meals and accommodation” costs for the former Warden were \$9,946 and corporate credit card charges were \$6,448, totaling \$16,394. By 2011-2012, the costs were \$19,720 and \$24,684 respectively, totaling \$44,404.

In 2009-2010, “mileage, meals and accommodation” costs for the CAO were \$10,352 and corporate credit card charges were \$2,888, totaling \$13,240. In 2012-2013, the costs were \$17,211 and \$22,535 respectively, totaling \$39,746. The Municipality stated that the \$17,211 amount represented costs associated with the Municipality’s Sable Wind development.

Generally, in interviews and materials supplied to this Office, both the CAO and the former Warden advanced confident explanations for the increased amount of travel. One explanation relating only to the former Warden focused on that individual’s extensive involvement in municipal affairs at several levels - the Municipality of Guysborough itself, province-wide municipal activities, and national activities through various FCM-related boards and committees.

The former Warden is well known and served for 25 years on council and as Warden from 1997 to 2013. Materials supplied to this Office by Municipality officials included numerous resolutions of Council over the years approving the former Warden’s involvement in external municipal activities, and frequently committing to pay all associated costs from

Municipality resources. As an example, in 2003 the then Warden was approved to join the FCM's national board of directors. In January of 2004, the former Warden was approved by Council to attend a meeting in Guyana for 10 to 14 days "to talk about solid waste." That trip, however, was to be funded by the FCM. In April 2004, Council "authorized" the former Warden to run for the FCM executive for that year. In 2005, Council again approved the former Warden's candidacy for the FCM board. Membership of the former Warden on the UNSM board was approved, as was the former Warden's subsequent membership, in 2009, on the Green Municipal Fund Council, which would meet four times a year in Ottawa, but at that organization's expense. In 2013, Council approved costs to enable the former Warden to continue as an FCM director. In a list of the former Warden's activities, it also was noted that the individual was for some time chair of the Province's Property Valuation Services Board.

The extensive activities that took the former Warden beyond their normal duties on behalf of the Municipality were formally supported by the Municipality, even if at some cost to the municipal taxpayer. While it is possible that the former Warden's various activities at times may have overlapped or collided with their municipal duties, there is a value reflected in council documents that there would be potential benefits to the Municipality in having a high-profiled and engaged Warden.

It is not the role of this Office to quantify or assess the value of such activities. We find the approach to this matter taken by Council to have been reasonable in the circumstances. However, this Office believes there are more general areas of concern that should be considered under the broad topic of "reckless or frivolous spending." One relates to the actual process of setting per diem and kilometrage rates at levels to match federal levels.

It is essential to underline that, for this Office, this is not a question of whether a given per diem rate - such as the current Nova Scotia Government rate of \$43 a day - is too low, or whether another rate - such as the current federal rate for Nova Scotia which is at least twice that amount - is too high. Nor is it about the Municipality's right under the MGA to do so. Rather, it is about the appropriateness of such decisions. In popular terminology, it is about optics. The federal-rate policy instituted by Council's initiative is not one that benefits the Municipality generally, nor does it in any way address taxpayers' needs. Indeed, it could be described as adverse to taxpayers' interests, and one that benefits only councillors and certain administrators.

When considering the matters on which local councils should make independent policy, it may be worth noting that local governments are designed, and uniquely positioned, to deal with fundamentally local matters. On such matters they can harness local knowledge and bring accountability closer to ratepayers.

It is debatable whether issues such as kilometer and per diem rates - even remuneration of councillors - are fundamentally local matters. Municipal councillors and administrators have essentially the same responsibilities all over Nova Scotia.

There has been no obvious rationale put forward as to why there should be significant differences in rates of remuneration, travel fees, or kilometrage across the province. The need for more travel in more remote locations, which has been raised by some municipal officials as a justification for higher rates, is not itself a legitimate variable. The farther one drives on municipal business, the more kilometrage is paid, regardless of where the rate per kilometer is set.

In isolation, such decisions by the Municipality as applying the federal rates may not seem egregious. In a pattern of expense activity that has included corporate credit card policy violations and incomplete accounting for spending beyond per diem levels, they become more conspicuous and more troubling.

Council's setting of the higher federal reimbursement rates for kilometers and per diems lacked an empirical rationale and a clear principle to underpin the policy. This Office does not support the characterization of certain spending as "reckless and frivolous." However, we would characterize the federal rates, combined with other practices such as personal use of corporate credit cards, advances, and certain conference costs, as inappropriate or opportunistic. Practices in some areas appear indulgent, such as the choices of restaurants and purchases of alcohol for meals attended only by Municipality officials. The question of whether all such decisions should be made at the municipal level merits attention, as part of an ongoing review of the MGA.

As for remuneration of councillors, in February of 2016 the Municipality commissioned a consultant to offer advice. The consultant recommended that remuneration for Guysborough councillors be 40 per cent above the provincial average. The main rationalization was that the Municipality "is unique in Nova Scotia in that there are several initiatives and projects, within the economic development, waste management and government areas, that are in progress or under consideration by Council..." The report listed the various projects.

This process appears to hold that legislators have a right to benefit in salary terms from the economic success of the governments they run. Moreover, it potentially disregards consideration of the actual role most councillors play in such projects, which appears to be relatively minor. The consultant's report was accepted, but it should be noted that it had a small impact on remuneration levels in the Municipality, which already were above the provincial average. Councillors are paid \$21,536 a year, the Deputy Warden \$25,209, and the Warden \$38,782, amounts which are in line with those of larger Nova Scotia municipalities.

One alternative approach to local remuneration decisions would be uniform rates on a province-wide basis, established with the UNSM input. Uniform income levels apply provincially for MLAs and federally for MPs.

One issue with the kind of workload or merit system proposed by the consultant is that municipal councillors are, in effect, their own supervisors for purposes such as assessing and rewarding merit. These issues are process issues. It is not the role of this Office to

make findings or recommendations regarding the actual amounts of remuneration for public servants.

### **Code of Ethics**

Beyond its policy prescriptions, the Municipality approved a Code of Ethics on November 9, 2011. The Code requires that public officials and employees:

- 1) be independent of any external influences or pressures;
- 2) be impartial and responsible to the citizens of the Municipality;
- 3) should not use their position for personal advantage...

No allegations of “external influences or pressures” were made or evidenced in this case. Nor was there any indication that officials or employees were not impartial or responsible to citizens. The issue of personal advantage is more challenging. Access to a form of short term loan, indiscriminate purchasing on a corporate credit card, including alcohol and various meals at restaurants at the Municipality’s expense, are all conveniences at very least, and personal privileges by some measures.

### **Accountability**

The Municipality’s leadership core group during the review period consisted of the former Warden, the former Deputy Warden (now Warden) and the Chief Administrative Officer. All readily accepted responsibility and accountability for all practices identified. Collectively, they advanced an assertive defense, while acknowledging only a few minor defects.

The review process revealed a concerning dynamic regarding overall responsibility and accountability among councillors for travel and expense spending. Apart from the current Warden, councillors overall exhibited only limited knowledge about routine travel spending practices or amounts, while at the same time they generally expressed deference to, and strong support for, spending decisions made by the leadership group.

As revealed in interviews, councillors, with only one tentative exception, expressed complete trust in the leadership. This was combined with a common view that once macro budgetary objects had been approved and a direction set for the Municipality’s business endeavors, it was no longer the role of councillors to examine the detail of spending practices of the former Warden, the former Deputy Warden, or the CAO. This may be testimony to the leadership skills of the senior group. It is, however, disconcerting, reflecting councillors’ apparent reluctance, as elected representatives, to oversee spending practices in a more vigilant and questioning way. One councillor stated that all spending was approved through the budget. “Council decides on all. It’s in the budget in some way or another. Don’t know exactly.”

Senior administrators also were supportive of the CAO and the senior elected officials. The former Director of Finance took the position that if meal expenses larger than per diems were authorized by the former Warden and the CAO, it was not the place of the



DOF to question those expenses:

“If signed off by CAO or Warden. That would be their decision to do that. That was approval. Bigger expenses would have occurred at conferences in Houston. Not sure who they’d meet with. If the Warden and CAO were in attendance and signed off on it, I didn’t feel it was my position to question that. I’m not a micromanager. Warden elected by his peers. Have to put trust in Warden and CAO.”

The current DOF, as noted earlier, echoed the position:

“The Municipality has, on rare occasions, allowed meal expenses related to Municipal business exceed the per diem rates provided the circumstances warranted that payment. These payments were authorized in accordance with the approval and cheque signing processes in place for all eligible expenses.”

The CAO offered similar explanations for all spending decisions:

“Motions in council will support all travel, and only exceptions are two or three conferences that all hands go to. Every year they have a debate about the numbers and then they pass a motion and we put it in the budget at budget time. Tendency has been that about half go, but open for all.”

The CAO acknowledged the personal expenses on the former Warden’s corporate credit card, and offered context:

“Number one there was no intent. (The Warden) put personal expenses on it. (The Warden) did a lot of travel. Here’s what I think (the Warden) was thinking. At the end of every month (the Warden would) have a remuneration of \$3,000. And (the Warden) knew that (the Warden) had two or three trips and (the Warden would) get another thousand or \$1,200. So in (the Warden’s) mind, there’ll be 3 or 4 K at the end of the month, so all I’m going to do is use this card and get them to subtract it off my remuneration at the end of the month. He didn’t think he was doing anything wrong.”

However, the CAO also recalled taking measures to reduce or eliminate the practice:

“I will tell you we had a couple of chats to (the former Warden). Myself and the DOF. It never got to the Council table. But we talked to (the former Warden) a couple of times, and said, it’s not a good practice. Shouldn’t be doing it.”

The CAO acknowledged the dinners where per diems were exceeded and that were attended only by the Municipality's representatives. However, the CAO described them as "a major exception to the rule. Normally when it happens there are other people. But I can't say - there might be circumstances - someone had been in meetings all day or it might be the end of an event." The CAO also stated that such activities have been significantly reduced:

"For the whole calendar year so far (the interview was conducted on November 25, 2016): 2 business dinners with alcohol and two receptions with alcohol. One (was) at strategic planning which won't happen anymore under policy, and one at "Port Days" July Dundee two-day event. (It's) on a downward decline. I'm not going to get into reasons why it's on a downward decline. Not for me to say."

The former Warden observed that often a meal could be a meeting as well.

"(You) might find yourself in company of others who have specific ideas on where they want to go. I mean, that's what keeps those high-end places going. Drives me crazy to spend the kind of money some of these places charge for a meal. Comes with the territory. If a guest, sometimes you paid. It's a general rule. Depending on circumstances (it's) generally up to discretion of individual. In circumstances where you are trying to invest, improve long-term future for communities, these are the techniques and devices that are age-old in the system. Alcohol is a process, an accepted process for the way society works as a general rule... To me (it's) all part of devices and tools that will get you where you need to be in terms of the objectives for the municipality."

The former Warden could not recall which policy, if any, applied to those forms of duty entertainment.

"I thought we had a policy that covered that kind of purchase and also dealt with alcohol. No idea if that exists. Thought it did. But if it didn't that may be an oversight in the process. I think you have to apply your own sense of reason in the process. If you are being excessive, depending on the venue, obviously not acceptable."

The corporate credit card, the former Warden said, could be used in certain circumstances for personal expenses.

"You wouldn't go out a buy yourself a new Honda on it! But if you were at an airport and you were running through and you had a six-hour flight to Calgary and you wanted to buy a book, then at end of a period you pay for

that book...my understanding was that anything I purchased that was of a personal nature was clawed back at the end of the period.”

The former Warden added there could be situation(s) where cash advances may be necessary.

“I don’t think that was something that was encouraged as I recall. It may have happened occasionally but again that was recovered.”

The former Warden acknowledged buying an airline ticket for a spouse on the corporate credit card.

“That could happen. (It was) understood to be OK. If my spouse was accompanying me on trip, when you booked a ticket, have to book two at same time. The credit card was used, but the Municipality was fully aware and that was paid for. No family member ever travelled on municipality money. They never got anything out of it except grief.”

There is evidence in the documentation of some concern expressed by either councillors or administrators regarding spending practices. As noted above, the CAO did recall advisory discussions with the former Warden regarding practices such as corporate credit card advances. During interviews, another administrator mentioned cautions or warnings made to the former Warden regarding inadequately documented travel claims. In an email to the former Warden, the former Director of Finance spoke of the need for prior approval of “hospitality expenses.” The email reads:

“One thing that I forgot to mention on a go-forward basis is that on top of the (corporate credit card) slip, I need all supporting documentation to back up the (corporate credit card) charge, especially for meals that are being charged to (corporate credit card)...Also on a go-forward basis anything charged for “hospitality expense” should have prior approval of Council.”

### **Policy Revisions**

The Municipality amended or rewrote its travel and expense policies in November of 2016, and it was observed by Municipal officials that certain practices of the past are no longer to be encouraged.

The current Warden pointed out that a previous practice of providing alcohol at the Municipality’s expense for annual strategy meetings has been abandoned. A new and more specific “hospitality” policy, while not forbidding spending above per diem rates, clearly demands prior approval for such spending.

To the extent that the revised policies provide greater clarity and guidance for the categories of spending under review, the changes are positive and commendable. To the extent that they also provide authorization and general approval for certain practices that

in the past were not always appropriate or necessary, the new policies require cautious application.

In its policy revision process, the Municipality researched models from other jurisdictions, including the Province of Alberta, and, most appropriately, the current policies of the Nova Scotia Provincial Government.

The Municipality has created a new policy, Policy C-12, that requires the CAO to “ensure that detailed reports of the travel expenses of all Municipal Elected Officials are publicly accessible online on a monthly basis.”

The online reports are required to provide names, dates of spending, purpose of expenses, and amounts broken down by such categories as travel, including transportation, accommodations, per diems, registration and related expenses, and the total expenses per trip. This information currently appears on the Municipality’s website.

This Office finds that the online disclosure policy is a useful step towards improved public accountability for municipal expenditures. However, we would encourage inclusion of the CAO and administrative department heads in the disclosure policy, as those officials incur significant travel on behalf of the Municipality. This policy has received public criticism for not requiring online disclosure of spending on alcohol. Our view is that the policy also would be improved by such a requirement.

Several other new or revised policies speak to travel expenses, including conference travel and travel for training and development.

The old Policy C-10, in effect during the period of the review, referred to compensation for councillors and municipal employees “for reasonable expenses” incurred with prior authority on council and municipal business.

The new Policy, C-11, entitled “Travel & Expenses,” is an omnibus policy replacing several separate documents, but covering similar headings. The new policy document uses a similar preamble but inserts an important new word. The reference is to reimbursement of “reasonable expenses *necessarily* incurred” while travelling on council or municipal business. [emphasis added]

The word “necessarily” does not create an objective test. While no such test may be possible, it does provide a logical consideration against which Council might pre-authorize expenses, and to help evaluate claims requiring retroactive approval.

One of the objectives of Policy C-11 is “to ensure taxpayers’ dollars are used prudently and responsibly with a focus on accountability and transparency.”

It is an important goal. Unfortunately, the same policy contains language that may make its objectives more difficult to realize. It also imports certain controversial provisions from the previous policy regime, notably the federal per diem and kilometrage rates, that may

chip at the value and integrity of the reforms.

Item 6 in Policy C-11 covers meals. The general policy reads:

For each day or part day in travel status a councillor or employee shall be paid a meal allowance for each breakfast, lunch and dinner, when applicable, if the meal was not provided free of cost to the individual. When this allowance is paid, no additional amount may be claimed for meals, or for gratuities associated with meals. Meal allowances will be equivalent to the federal government rate in effect at the time of travel.

The daily amounts authorized for meal allowances while travelling on the Municipality's business inside the province provide an adequate allowance.

If this component of the policy had ended there it might have been more effective. However, it continues:

Only where a councillor or employee is exposed to unusually high costs within the province will the individual be reimbursed his/her actual receipted costs per individual meal that exceed the per diem to the extent that the expenses claimed are reasonable and justifiable in the circumstances.

Councillors and administrators interviewed provided various reasons for their decision to use federal rates for travel. One individual said his view was that his time and abilities are as valuable as those of any federal public servant. Others stated the federal mileage rate is more nuanced because it fluctuates with certain variables such as the price of gas. As indicated earlier in this report, the Municipality's explanations for adopting the federal levels of reimbursements for travel expenses are not convincing.

The final section of the revised policy deals with advances. Unfortunately, it too preserves the status quo ante. Advances must be accounted for, of course, but "the amount provided shall be determined by the CAO or designate and will be based on a reasonable estimate of the total anticipated reimbursable expenses."

The policy provides that the advances may be repaid by deductions from an expense claim being processed for payment, or by cash or cheque.

In revising its policies, the Municipality reviewed those of the Nova Scotia Government, including Part 12.1 entitled "Advances." That section of the Province's policies provides a useful definition of an advance as "an asset;" and, in turn, of an asset as "an item that has future benefit that can be controlled by the province and is derived from past transactions."

The Province allows travel advances, but with an important caveat that is absent in the Municipality's policy: "An advance should be issued only if the employee does not hold a

corporate travel card. If an employee travels frequently, advances should not be requested, but a corporate travel card should be obtained for use by the employee while in travel status.”

With its revised/new travel policies, this Office acknowledges the Municipality of the District of Guysborough has attempted to bring certain travel and expense policies closer to the more restrictive Provincial policies and more rooted in principle. However, this Office also finds that the policies perpetuate unnecessary discretionary authority in individuals, potentially compromising the policies and rendering them less functional.

### **Guysborough Business Context**

In interviews with this Office, councillors and administrators all contended that certain of the spending practices at issue in this review are necessary and inevitable in a modern business and corporate culture, where they feel Guysborough must have a presence and be a player. Municipality leaders alluded to a kind of high-flying international milieu where municipal business often is done in locations far from Guysborough, at restaurant dinner tables and hotel bars where some degree of hospitality towards business and corporate clients has become, in effect, the price of admission to the club. The current Warden stated that the Municipality operates on a “corporate business model.” Within such a model, it was frequently suggested, such expenses “are the cost to doing business.”

Councillors and the CAO were insistent that the review of the Municipality’s travel spending practices acknowledge and reflect the larger context of Municipal Government in Guysborough. All interviewees expressed pride in their achievements and a sense of the ongoing success of the Municipality. This Office acknowledges the Municipality in fact does stand out in its aggressive pursuit of big-scale revenue-generating and investment opportunities.

Guysborough is a large, rural, and somewhat remote county with traditional but declining economic drivers such as fishing, mining and agriculture and an aging and declining population and tax base. Until recently the Municipality comprised about half the territory of Guysborough County. Its recent inclusion of the Town of Canso has expanded it significantly. Canso - as well as Mulgrave which may become part of Guysborough in the future - in effect lost viability due to declining population, income, and diminishing tax bases; precisely the fate that Guysborough wishes to avoid. As a strategy, Guysborough has pursued industrial development based on natural resources, including readily available land. It has assembled and in numerous cases profitably leased and taxed large tracts of land for industrial parks and specific types of development such as quarries and wind-farms.

The Municipality has leveraged one notable industrial success to create other projects to generate sustaining tax income and employment. Since 2000, that success has been the Sable Offshore Energy Project land-base, located in the Goldboro Industrial Park, in the south of the District. The original Sable Gas project is declining, but revenues from it have enabled the Municipality to invest in other businesses. With that gas-driven supply

of investment capital, the Municipality has partnered with Nova Scotia Power to develop a 13.8 MW wind farm - Sable Wind - at the east end of the Municipality near Canso. The Municipality also realizes revenues from a so-called “second generation” landfill site, which takes waste from 16 other municipalities including all of Cape Breton, Antigonish, Pictou and Guysborough counties.

Guysborough’s various industrial developments have had a considerable impact on the financial structure and the economic stability of the Municipality. With a population of fewer than 5,000 – and with almost half of those 50 years old or older - the Municipality collects about seven per cent of its revenue from residential taxation. It collects 64 per cent from business investments. The Municipality is the biggest employer in the County.

### **Municipal Context**

The significance of the above contextual data is that it does reflect the Guysborough Municipal management culture, which is entrepreneurial and assertive.

In the longer run, this approach is commendable. In the shorter run, it may require more careful reconciliation with the imperatives of municipal governance, municipal culture, and local needs.

A crucial and distinguishing fact about democratic governments is that their executives and managers do not own the assets and resources they are asked to use and manage. The relationship between a municipal councillor and a taxpayer is fundamentally different from that of a private company’s management and that company’s assets and means. A private company can manage its resources with thrift or carelessness or anything in between. A public servant must manage public resources not only with circumspection but with uniform checks and balances rooted in policy.

The spirit of devolution in the Municipal Government Act, coupled with the deference to Municipalities traditionally displayed by the Province, may have created certain stresses or even confusion in municipal governance at ground level, and reasonable questions may be asked. Are the prerogatives of Municipalities under the MGA meant to enable policy-making that may benefit only the individuals who make the policies? And, equally important, are they sufficiently flexible to enable Municipalities that are entrepreneurial and business-oriented to succeed in a “corporate business model?”

### **Provincial Context**

The Municipal Government Act is a provincial statute. Municipalities are creatures of the Province.

The MGA currently is under review. The Executive Director of Policy, Planning and Advisory Services for the Department of Municipal Affairs was quoted publicly on January 12, 2017 as saying that around 500 suggestions have been made for changes in the Act. Parties to the review include the Department, the Union of Nova Scotia Municipalities, the Association of Municipal Administrators of Nova Scotia, and members of the public

through online input. The Executive Director has informed this Office that the suggestions have been reduced to a list of around 130 that have been prioritized. The Executive Director indicated that the process of completely revising the MGA still could take years.

However, there could be earlier reforms. Currently there are six working groups examining the MGA, under headings that include protection services, finance, planning, economic development, and general governance.

As part of the initiative, there also exists a new group called the Nova Scotia Joint Municipal Accountability and Transparency Committee. It was established in November of 2016 by the Department, the Union of Nova Scotia Municipalities (UNSM), and the Association of Municipal Administrators of Nova Scotia (AMANS). It reports to the Deputy Minister.

Background information on this committee indicates its origins and its purpose:

In light of the recent forensic investigation of a municipal unit and the Ombudsman Report of October 28, 2016, the AMANS and the UNSM were approached by the Minister of the Department of Municipal Affairs to assist the Province in developing improved accountability regarding staff and council expenses, as well as other legislature changes to improve monitoring controls on municipalities.

The mandate of the Committee is as follows:

- To ensure that mechanisms are in place to support the requirement of transparency and accountability to the public with respect to expense management;
- To strengthen local government expense policies;
- Increased transparency of local government staff and elected officials' expenses to the public;
- Improve the audit function on staff and elected officials' expenses;
- Recommend MGA amendments where applicable.

The Executive Director speculated that the powers that have devolved to municipal governments in Nova Scotia likely will remain as they are. The position of the Province remains that the municipalities are an order of government responsible to their electorates.

One Provincial concern is that curtailing such powers, including discretionary spending powers, could have a negative impact on the autonomy of the municipalities. The Municipal Affairs official indicated that elsewhere in Canada increasing responsibility is being given to municipal governments.



## **V – Conclusion**

It is beyond the scope of this investigation and this report to address many of the macro issues surrounding municipal governance. It is acknowledged that the Municipal Government Act is currently under review. Naturally, this Office encourages focus by review participants on the types of issues raised during this investigation.

While rooted in Guysborough, the findings of this review highlight certain potential weaknesses more generally in municipal administration. Those include inadequate legislative separation between matters that municipalities are best suited to address, and those which they are not. They also include inconsistency and lack of clarity in policies devised at the municipal level, resulting in gaps between policy and practice. Such gaps widen when practices which not driven by clear policies evolve into presumptions, habits, and, at times, entitlements.

## **VI – Recommendations**

The following recommendations are intended to influence a level of expenditure checks and balances in the interests of consistency, transparency, and accountability. They are not intended to encroach on the important democratic principle that elected local governments require a measure of autonomy and independence. However, it is submitted that greater universality of spending standards and practices is in the public interest, and within the purview of the Department of Municipal Affairs to achieve.

The following is recommended:

### **Department of Municipal Affairs**

- 1) That the initiative to update the Municipal Government Act seek to identify certain municipal spending activities, such travel and other discretionary spending, that may benefit from universal, province-wide policies across the municipal government system.
- 2) That as a partner in the Joint Municipal Accountability and Transparency Committee, the Department of Municipal Affairs ensure that certain specific objectives set by the Committee are fully met. Those objectives include:
  - Review the current mechanisms that are in place to support the requirement of transparency and accountability to the public with respect to expense management and give consideration to enhancements which will ensure a standardized level of transparency and accountability.
  - Researching and recommending best practices for Municipal/Village expense policies.
  - Develop specified audit procedures on staff and elected officials' expenses that could be executed by municipal auditors annually.

- Recommend standard practice for the public disclosure of such expenses and the clarification of the role of the Department of Municipal Affairs in such matters.
  - Examine the current Municipal Government Act Financial Reporting and Accounting Manual (FRAM) surrounding audit committees, and recommend improved language to strengthen the role of the audit committees.
- 3) As part of the review of the Municipal Government Act, and in consultation with the Union of Nova Scotia Municipalities (UNSM), the Department of Municipal Affairs promote and establish certain standardized travel and expense authorization and accountability policies and practices at the municipal level.
  - 4) As part of the review of the Municipal Government Act, and in consultation with the Union of Nova Scotia Municipalities (UNSM), the Department of Municipal Affairs establish legislatively the office a Municipal Auditor General and devise a funding formula to enable it.
  - 5) The Department of Municipal Affairs, in co-operation with its municipal partners consider establishing a high-level training program for councillors and municipal administrators with a focus on the principles of public service and leadership, the principles of fiduciary responsibility, and public interest stewardship of public assets, including money.

### **Municipality of the District of Guysborough**

- 1) As a partner through the Association of Municipal Administrators of Nova Scotia (AMANS) and the Union of Nova Scotia Municipalities (UNSM) in the Joint Municipal Accountability and Transparency Committee, the Municipality of the District of Guysborough ensure that certain objectives set by the Committee and noted in Recommendation #3 above are fully met.
- 2) The Municipality of the District of Guysborough review its current travel and related expense policies and, as far as possible, remove or reduce individual discretionary powers that may neutralize or undermine the policies.
- 3) The Municipality of the District of Guysborough, review existing policy and, where appropriate, amend policy to ensure hospitality spending is clearly defined to reflect that such spending be preauthorized, and claims include names and positions of guests, and the business objective of the spending. Further, instances of retroactive approval of hospitality spending be defined as exceptional and approved by Council.
- 4) The Municipality of the District of Guysborough review the use of travel advances to ensure that, except for extraordinary circumstances approved on a case by case basis by Council, travel advances to all councillors or administrators who have been issued corporate credit cards be prohibited; and that the Municipality

examine the feasibility of issuing corporate credit cards to all councillors and employees who incur hotel, transportation or other regular travel expenses.

- 5) Policies related to travel, such as those forbidding advances or personal charges on corporate credit cards, be monitored by a designated administrator such as the Director or Deputy Director of Finance, and sanctions be specified and imposed for breaches. Further, consideration be given that such form of monitoring not be undertaken by the same individuals who travel most extensively for the Municipality.