



We speak up for fairness

Northwest Territories Ombud

MISCOMMUNICATION, MISSED OPPORTUNITIES

FAIRNESS IN BUSINESS ASSISTANCE PROGRAMS

Special Report 01-2022

From the Ombud

This report highlights the importance of thinking through communications and procedures from the perspective of clients. It is not enough for authorities to make information and processes *available*; they also need to be *accessible*.



The complainant in this case had a series of misunderstandings and miscommunications with the Department of Industry, Tourism & Investment (ITI) and Business Development and Investment Corporation (BDIC) that resulted in her missing opportunities to make applications for assistance, to appeal decisions, and to look for other sources of support. Because of those missed opportunities, she will never know for sure whether there was anything more she could have done to save her business from foreclosure.

The recommendations in this report are aimed at preventing similar outcomes by improving both the written program information ITI and BDIC provide to business assistance clients, and communications from officials.

Accessible information and clear communication are integral to fair program delivery. They should never be treated as add-ons or afterthoughts. Authorities need to provide guidance to their staff about when and how to follow up verbal discussions to document conversations and avoid misunderstandings. Clients need access to documents that are clear, understandable, and designed with their needs in mind even if the information is the same as what is available from other sources such as reports, manuals, and policies. They also need to be kept informed about the status of applications and the availability of review and appeal processes.

Public servants are paid for the time they spend getting to know their way around government forms, websites, and procedures. If they misunderstand something, or make a mistake, a colleague or manager can help. For an entrepreneur, an hour spent searching for an online document or trying to make sense of a jargon-filled policy, is an hour they could have spent growing their business. A misunderstanding or mistake could cost them thousands of dollars or more in missed opportunities.

Fair access to application and appeal processes is important regardless of whether program staff think a client will be successful. Authorities need to ensure they are offering clear information about available processes, and do not intentionally or unintentionally discourage clients from using them.

This is important for at least two reasons. First, program staff are not always right about whether an application or appeal will succeed. Across government, people can and do get approvals and win appeals on all sorts of matters that program staff might not have

expected. Second, many people want the opportunity to try every available avenue when something important to them is at stake. Even if their application is rejected or they lose their appeal, it helps people emotionally, if not financially, to know that at least they tried their best and did everything they could.

Clear and accessible information gives clients the power of choice, and a sense of control. Good communication not only contributes to procedural and decision fairness, it also empowers clients and fosters relational fairness. Relational fairness improves clients' experiences and helps build trust between clients and officials. This benefits everyone.

I am encouraged by the steps that both ITI and BDIC have committed to take in response to the recommendations in this report. We will provide an update on ITI's and BDIC's progress in a future report.

Colette Langlois
Ombud

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Introduction

This investigation came about as the result of a complaint by Ms. Smith about her dealings as a small business owner with both the Business Development and Investment Corporation (BDIC) and Department of Industry Tourism and Investment (ITI). In this report, we set out the details of Ms. Smith’s complaint, our findings about the fairness of what the BDIC and ITI did and did not do, and recommendations to both the BDIC and ITI to make their services to current and future clients fairer.

Principles of Administrative Fairness

The Ombud has a mandate to investigate complaints of “maladministration”, or “administrative unfairness”. Guidance on the principles of administrative fairness comes from the *Ombud Act*¹, administrative law, and from standards that legislative ombuds have developed together.²

Standards of administrative fairness can be grouped into three categories: fair decisions (what was decided?); fair process (how was it decided?); and fair service (how was the person treated?).³

This complaint raised issues in all three categories of fairness.

Fair process requires, among other things, that affected people have adequate information about the decision-making process and the legislation, policy and other rules being used to make a decision; that staff clearly communicate decisions and reasons to affected people; that there are adequate appeal and review mechanisms for decisions, and that people are told about those processes and how to access them; and that decisions are made within a reasonable time frame. Where unavoidable delays occur, staff should advise the individual of the reason for the delay, and approximately when they can expect to receive the decision. Fair process also requires that staff provide advice and make decisions in an impartial manner.

Fair service requires that authorities establish processes that ensure fair consideration of peoples’ needs and circumstances in the delivery of programs and services. Fair service is sometimes called “relational fairness” because it can affect the relationship between clients and authorities. For example, a lack of fair service can make clients feel disempowered or at a disadvantage.

¹ S.N.W.T. 2018, c. 19, ss. 33(1).

² See, e.g., Canadian Council of Parliamentary Ombudsman (2019). *Fairness by Design: An Administrative Fairness Self-Assessment Guide*. Available at www.nwtombud.ca.

³ For more about administrative fairness, see www.nwtombud.ca.

Fair decisions are based on complete and relevant information, and follow any legislation, policy or other rules that apply. Further, decision makers must fully consider and decide each case on its own merits.

Background

ITI and BDIC Mandates

ITI is a Department of the Government of the Northwest Territories (GNWT). BDIC is a separate entity established under its own legislation, the *Business Development and Investment Corporation Act* (the BDIC Act).⁴

ITI's mandate, as stated in its Establishment Policy⁵, is to promote economic self-sufficiency through several measures and activities, one of which is “the promotion and support of tourism, trade and investment, business, and manufacturing and secondary industries, to create a prosperous, diverse and sustainable economy for the benefit of all Northwest Territories residents.”

The purpose of the BDIC, according to s. 3 of the BDIC Act, is to support the economic objectives of the GNWT in a manner that benefits the people and the economy of the NWT by: encouraging the creation and development of business enterprises; providing financial assistance to business enterprises, either on its own or as a complement to private sector or other financing; directly investing in business enterprises; and providing information to business enterprises and members of the public respecting the establishment and operation of businesses, and other business matters.

Both ITI and BDIC provide programs for northern businesses, which are detailed in the next section.

⁴ S.N.W.T. 2005, c. 3.

⁵ GNWT Policy 63.01. <https://www.eia.gov.nt.ca/sites/eia/files/content/63.01-industry-tourism-and-investment-establishment-policy.pdf>

Business Assistance Programs⁶

BDIC

The BDIC has five different programs for northern businesses. Four of these involve providing financial support, and the fifth provides information and materials to assist with business planning and operations.

1. Business Development Project Fund (“BDPF”)

This program offers contribution funding which does not have to be repaid. There are two kinds of BDPF:

- Core BDPF provides businesses with funds to help with start-up expenses, expansion, raw materials for arts and crafts production, and short-term projects that create employment. The maximum amount in any five-year period is \$10,000 for business in level 1 communities (Yellowknife, Hay River, Fort Smith and Inuvik) and \$20,000 for business in level 2 communities (all other NWT communities).
- BDPF Aftercare provides funds to help with purchasing accounting software or services, succession planning, and business training programs. The lifetime maximum for BDPF Aftercare funding is \$3,000 for businesses in level 1 communities, and \$5,000 for businesses in level 2 communities.

2. Credit Facilities Program

Through this program, BDIC provides loans and other investment arrangements to encourage the growth and start-up of businesses within the NWT. Financing up to a maximum of \$2 million is available for a qualifying business. Businesses can be approved for more than one loan as long as the combined balance stays within the \$2 million maximum. There are three different components to the credit facilities program:

- *Term loans.* BDIC offers a choice of fixed or variable interest rates. Rates are based on the credit risk involved.
- *Standby letters of credit.* These are used to enable clients to provide security for contract bids or to suppliers. BDIC charges a commission rather than interest on letters of credit. The commission varies from 2% to 4% depending on the credit risk involved.

⁶ Program descriptions reflect the programs as they were during 2018-2019, which is the timeframe most relevant to the complaint. Some changes have been made since, e.g., to provide relief for COVID-related expenses.

- *Working capital guarantees.* These are used to help businesses get working capital financing (e.g., operating lines of credit or overdraft allowances) from a commercial bank. BDIC provides an Irrevocable Standby Letter of Credit to guarantee the working capital arrangement. BDIC charges a commission rather than interest on working capital guarantees. The commission varies from 2% to 4% depending on the credit risk involved.

3. *Venture Investments*

Under this program, BDIC invests in businesses in return for part ownership through preferred shares that pay out annual dividends. These are long term investments to support businesses to realize their potential and eventually buy back the shares from BDIC. BDIC is not allowed to make an investment from the Venture Investment Fund unless a positive rate of return is expected within three years after the date of investment.

4. *Subsidiaries*

Through this program, BDIC owns subsidiaries. It can provide subsidies and make capital investments in order to keep them operating in communities with lower levels of economic activity. The current BDIC subsidiaries are northern companies most of which were inherited by the BDIC when it was established in 2005: Acho Dene Native Crafts, the Arctic Canada Trading Company, Dene Fur Clouds, Fort McPherson Tent and Canvas, and the Ulukhaktok Arts Centre.

5. *Business Support*

This program provides information and skill development resources to businesses through the Canada Business NWT (CBNWT) network. BDIC manages the network in partnership with the Canadian Northern Economic Development Agency (CanNor). CBNWT services are available online and provide a range of information and materials to assist with business planning and operations. There are also video and web conference sessions available for entrepreneurs, which were offered for the first time in 2016-2017. They cover various topics for small businesses such as financial planning and management, taxes, payroll, creating a website, marketing, how to understand and fix a balance sheet, cash flow forecasts, steps to incorporate, and business planning.

ITI

ITI has a Support for Entrepreneurs and Economic Development (SEED) program which provides contributions to NWT businesses and entrepreneurs.

Up to \$25,000 per year is available under this program to help entrepreneurs and small businesses with expenses such as start-up funding, buying assets, marketing and product development, and operational support. Operational support can include funding to increase business skills and capacity (e.g., training), development of a recovery or restructuring plan, emergency relief to help a business recover, and assistance with the costs of winding down a business.

In Level 2 communities, businesses must contribute 20% of the amount applied for in either cash or sweat equity. This requirement can be waived if the application is for emergency relief. Businesses must also demonstrate need and financial sustainability.

Program Delivery

In practice, ITI and BDIC work together on BDIC program delivery. Under an agreement for services between the two authorities, ITI's regional offices act on behalf of the BDIC for its regional financial credit facilities programs. This includes accepting and assessing business loan applications, and approving loans and bonds (i.e., letters of credit and guarantees) of up to \$200,000.

For loans of greater than \$200,000, ITI regional staff process the application and supporting documentation, make recommendations, and forward packages to BDIC for consideration.

Regional ITI offices consider and approve SEED contributions for businesses within their areas.

Roles and Responsibilities

ITI's regional economic or business development officers are usually the main point of contact for clients. For example, they provide advice and assistance on applications, gather supporting information from clients, prepare preliminary evaluations and recommendations on applications, and monitor whether the business is following the conditions of the loan or bond, such as providing annual financial statements, and making payments on time. Regional managers of trade and investment oversee officers' day to day work.

Panels made up of ITI regional office trade and investment staff review and discuss applications for SEED and BDIC programs. There is no published information on how the panels work, however an ITI official advised that quorum is the Regional Superintendent and at least two other staff. The final decision to approve or reject an application (or, in the case of a loan or bond of more than \$200,000, whether or not to make a positive recommendation to the BDIC), rests with the regional superintendent.

BDIC advisors are not usually directly involved with clients, however, they provide recommendations, training and support to regional ITI staff. If a loan goes to collections, BDIC takes over the file.

The BDIC's Director of Finance and Programs has the authority to approve or reject applications up to \$500,000. The BDIC's Chief Executive Officer (CEO) also has this authority. Applications for larger amounts go through an application review committee which is chaired by the CEO.

Appeals

A business can appeal if their application for financial assistance under a BDIC credit facility program or the SEED program is rejected by a regional ITI office.

For BDIC loan applications up to \$200,000, the appeal is to the Director of Finance and Programs at the BDIC. For applications between \$200,000 and \$500,000 which are rejected by the Director of Finance and Programs, there is an appeal to the CEO of the BDIC. Appeals are also available for higher amounts.

For SEED applications, the appeal is to the Assistant Deputy Minister, Economic Development.

Timelines

The BDIC has the following standards for approving or rejecting loan applications according to its program activity reports:

Consideration of loan applications for financial assistance up to \$200,000 – within 10 working days of receipt of completed application

Consideration of loan applications for financial assistance between \$200,000 and \$500,000 – within 15 working days of receipt of completed application

Consideration of loan applications for financial assistance between \$500,000 and \$1,000,000 – within 20 working days of receipt of completed application.

Although we did not find a published standard for SEED, ITI officials advised that there is an internal standard to review complete applications within 10 working days.

The Complaint

Ms. Smith was the owner of a small business in a Level 2 community, which she purchased in 2014 with a combination of her own funds and a loan from the BDIC. She also received assistance from both SEED and BDPF to help with start-up expenses, and a working capital guarantee from BDIC to support her to get a line of credit from a bank.

Ms. Smith's business ran into a number of unexpected difficulties, including discovery of major issues with a building she needed to renovate to be able to operate a part of the business, and a flood which destroyed both inventory and a computer that held financial records.

As a result of these difficulties, Ms. Smith was not always able to make her loan payments on time and began to build up arrears with BDIC. She was in contact with ITI and BDIC officials, and actively looking for options to make her business successful. In late 2018, she requested a further loan from BDIC to make building and equipment upgrades which she thought would get her business back on track, as well as further SEED funding. BDIC deemed her loan application withdrawn in January 2019, although Ms. Smith says she never withdrew her application, and believed it was still under consideration. ITI denied her requests for SEED assistance in March 2019.

BDIC began foreclosure proceedings in 2019. The property was sold later that year for less than the amount owing to BDIC, which left Ms. Smith with a significant remaining debt.

The Investigation

What we investigated

We investigated the fairness of:

- The overall advice and assistance ITI and BDIC provided to Ms. Smith from 2016 to 2019;
- ITI's decisions on SEED applications Ms. Smith made in 2017 and 2018;
- BDIC's decision to consider Ms. Smith's 2018 loan application withdrawn;
- BDIC's decision to go ahead with foreclosure proceedings.

What we did not investigate

We did not investigate:

- Ms. Smith's dealings with ITI and BDIC in 2014 and 2015, as the *Ombud Act* restricts the Ombud from investigating matters that took place before January 1, 2016;
- Court proceedings, including affidavits, service of documents and the foreclosure process, which were supervised by the court and are outside of the Ombud's mandate;
- Matters between Ms. Smith and third parties who were interested in buying her business.

Investigation Process

We had several interviews and email exchanges with the complainant and with ITI and BDIC officials. We also reviewed the applicable legislation and policies, the authorities' websites, job descriptions, annual reports, the most recent 5-year review of the BDIC (carried out by Hicks & Associates, 2019), documents provided by the complainant, and approximately 700 documents provided by ITI and BDIC, including emails, letters, memorandums, briefing notes, reports, court pleadings, contribution and loan documentation, and financial documentation.

Analysis and Findings

Timeline

The following timeline summarizes Ms. Smith's interactions with ITI and BDIC from 2016 to the completion of the sale of her business through a foreclosure process in January 2020:

April – May 2016	<p>BDIC sent Ms. Smith a 30 days arrears notice for her loan, which asked her to contact ITI to discuss her financial situation if she could not make the payment.</p> <p>Ms. Smith asked ITI about emergency assistance to deal with an asbestos problem, and says the official she spoke to told her an application would not be supported because she had not provided accountant-prepared financial statements, which was a condition of her loan. Ms. Smith said her inability to provide statements was due to difficulties with an accountant she had hired, and a flood destroying the computer which held her financial records. She did not make an application for the emergency assistance.</p>
July 2016	<p>BDIC sent Ms. Smith a further arrears notice for four missed loan payments. The notice stated that BDIC would start legal action if she did not pay the amount owing. She asked ITI about the possibility of funding to buy a piece of equipment that would have allowed her to add a new service and increase her business. She says the official she spoke to told her an application would not be supported. She did not make an application. The official suggested she restructure her loan payments with BDIC to make them more manageable in line with the business' cash flow, and BDIC agreed to the restructuring.</p>
October 2016	<p>Ms. Smith's Standby Letter of Credit from BDIC expired. She did not reapply due to the cost of the annual commission fees to BDIC.</p>
December 2016	<p>BDIC sent Ms. Smith a 30 days arrears notice.</p>
May 2017	<p>Ms. Smith made an application for SEED Entrepreneur funding to hire an accountant to complete her financial statements going back to 2014. ITI denied her application.</p>
July 2017	<p>BDIC sent Ms. Smith a 60 days arrears notice.</p>
June 2018	<p>BDIC sent Ms. Smith a 90 days arrears notice.</p>

September 2018	ITI delivered a letter to Ms. Smith from BDIC demanding payment of arrears for over 90 days. Ms. Smith met with a BDIC official to discuss her plans to get the business back on track, which would require another loan. She also provided him with her accountant-prepared financial statements for 2014, 2015, and 2016. The BDIC official followed up with an email saying he had spoken with ITI and it sounded like they were willing to consider a loan application.
November 2018	Ms. Smith sent ITI a loan application for BDIC's Credit Facilities Program for an amount over \$200,000, and a SEED application for truck repairs. Ms. Smith says she also verbally requested SEED funding for accounting fees at that time, however she did not apply in writing.
January 2019	BDIC received new information about the business' financial and operational difficulties. On January 11, BDIC approved immediate payments for fuel and propane to protect the property, and decided to send the existing loan file to their lawyer to seek a preservation order from the court to allow them to winterize the property, and to start the collections process. The BDIC's lawyer followed up with a demand letter and notices to Ms. Smith. Ms. Smith gave ITI her consent for them to forward her contact information to potential buyers of the business.
February 2019	BDIC filed a statement of claim with the court against Ms. Smith's business and against her personally for the amount owing on the loan.
March 2019	Ms. Smith emailed ITI to ask for emergency assistance to pay her accountant. ITI sent Ms. Smith letters rejecting that request as well as her November 2018 SEED application for vehicle repairs.
May 2019	Ms. Smith learned for the first time that BDIC considered her November 2018 loan application withdrawn. Ms. Smith and BDIC had an email exchange in which she identified a number of concerns with the history of her file, asked BDIC to consider other options to keep her business open, and denied that she had withdrawn her November 2018 loan application. The court gave BDIC a foreclosure order on the property.
July – Oct. 2019	BDIC received offers on the property. The court approved one of the offers in October.
January 2020	The sale of the property closed.

Findings

Overall advice and assistance to Ms. Smith from ITI and BDIC

Ms. Smith complained that both BDIC and ITI failed to give her enough support with her business over the years it was struggling. In particular, she said they did not do enough to suggest other programs or assistance she might have been able to access. She also complained that ITI did not do enough to help her frame her applications in a way that would make them more likely to be accepted, and in some cases refused to allow her to make applications that they did not think would be supported.

Limitations of investigation

It is important here to explain more about the limits of what the Ombud was able to consider. First, one of Ms. Smith's main concerns, which she believes led directly to her business' later difficulties, was that the original financing BDIC provided to her was not adequate, and that she felt pressured into applying for a lower amount than she believed she needed at the time. The Ombud was unable to investigate this part of her complaint because it happened before 2016.

Second, the Ombud's role in this complaint is to consider the fairness of how BDIC and ITI delivered their existing programs and services. It is not the role of the Ombud to consider whether the programs and services were adequate to meet client needs, or to meet organizational goals and objectives. These are questions for auditors, policymakers, and, ultimately, legislators, who must balance resource demands from many different areas. Some of Ms. Smith's concerns related to program criteria and limitations. While we acknowledge that these are important concerns for Ms. Smith, we do not address them in this report because they are outside of the Ombud's mandate to consider complaints about administrative fairness, which is only one of many kinds of fairness.

Impartial service

We did not find any evidence that ITI or BDIC officials were biased against Ms. Smith or unsupportive of her business. There was evidence that the ITI official who was Ms. Smith's primary contact between 2016 and 2019 offered advice and suggestions on a number of occasions on things she could do to help her business, including restructuring her loan payments with BDIC, which she did in 2016 with BDIC's agreement. Other suggestions did not always work for Ms. Smith for various reasons, but they were well-intended and reasonable.

Assistance with applications

There were some occasions, such as those noted in the timeline in June and July of 2016 and November of 2018, when Ms. Smith discussed requests for funding with an ITI official but did not follow up with a formal application. She also said that she asked each year for her standby letter of credit to be converted to a loan, which would have avoided the BDIC's commission charges and would have been more affordable for the business. She did not follow up with formal applications to do this either.

On some of those occasions, Ms. Smith believed that her verbal request was enough to make an application and that the ITI official would take it forward for consideration from there. On other occasions, her belief was that the ITI official refused to take an application and was dismissive. The ITI official advised us that their intention was not to refuse applications from Ms. Smith or to be dismissive, but to advise her, based on their knowledge of the program criteria and decision-making processes, that her request would probably not be accepted so that she would not waste her time preparing applications that had little chance of success and could explore other options. There was no written follow-up to these conversations.

Both versions of what happened on those occasions are credible: it seems that two people walked away from conversations with different understandings of what they had discussed. These misunderstandings might have been avoided with better communication, for example, if ITI had followed up with a brief email that made it clear that while they advised she probably would not be successful, Ms. Smith was still welcome to submit an application and have the benefit of a full evaluation and review process, and/or that if she wanted to go ahead with an application, she would need to do that in writing.

Ms. Smith also complained that ITI did not provide enough assistance with framing her applications to make them more likely to succeed. However, the problems ITI identified with her requests had to do with considerations such as the types of expenses that were and were not allowed under program criteria, the business' ability to make its loan payments, and requirements for accountant-prepared financial statements. These are not problems that reframing could have helped with as the applications still would have needed to meet program criteria and conditions.

Assistance with finding programs

We noted that it was difficult to find clear and detailed descriptions for both SEED and BDIC programs.

ITI's SEED policy outlines the process and criteria to access funding for that program, but it is not written for a public audience, and a client would need to know to look for it in order to find it. ITI has a new brochure on the SEED program which provides a client-friendly introduction to the program, however it does not include details about program eligibility and criteria or processes.

We did not identify any publicly available client-friendly information for BDIC programs other than brief descriptions on the BDIC's website. We found other information in different places, such as program activity reports, different sections of the website, and unpublished documents like BDIC's memorandum of understanding with ITI, however it would be challenging for a client to put all of the pieces together from the available sources.

An example of a document which brings together the information a client might need to know and is tailored to clients' needs is the program guidelines for ITI's Pandemic Expansion and Relief Program (PREP).⁷ We could find no similar document for either SEED or for the BDIC's programs.

Both authorities rely on ITI officers to explain to clients what programs are available and how they work. While ITI officers can provide advice, clients should also have direct access to program information, including detailed eligibility criteria, so they can participate meaningfully in their own applications and ask appropriate questions. Without this direct access, clients may feel disempowered and at a disadvantage because they have to rely on the ITI officer to think of all the possible options that might apply to their business and to guide them through the process.

Transparent and accessible information contributes to both procedural and relational fairness. In this case client-friendly information would have provided Ms. Smith with a fairer process and might also have helped her have more trust in and a better working relationship with officials from both authorities.

Part of providing client-friendly information is how information is delivered. For example, sometimes, especially if a client is upset, they might not take in everything that a staff member tells them, and it might be helpful to follow up with an email the client can go over when they feel calmer. ITI advised that in late 2018 or early 2019 they suggested verbally to Ms. Smith that she could apply for a business mentor program and/or funding to assist with winding up her business. Ms. Smith did not recall this. Both parties remember heated discussions around this time, which could have contributed to either or both of them not taking in all of each others' points. In that case it would have been helpful for ITI to follow up in writing with information about the programs, which Ms. Smith could have reviewed herself at a better time.

Ms. Smith also complained that BDIC and ITI did not suggest other programs that might have helped her business at critical times. We reviewed the program criteria for BDIC's other programs, including the subsidiaries program and venture capital program. We did not find it unreasonable of ITI and BDIC not to consider her business for those programs as it would not have fit the criteria.

⁷ https://www.iti.gov.nt.ca/sites/iti/files/15948_ITI_PREP_Guidelines_EN_8.5x11in_WEB.PDF

Summary

The lack of written follow-up to conversations between Ms. Smith and ITI, and the lack of written information about SEED and BDIC programs and in particular the rules the authorities use to make their decisions, impacted Ms. Smith's opportunity for meaningful participation in her application processes, and her working relationship with and trust in officials. The content of the advice and assistance ITI provided to her between 2016 and 2019 was reasonable and consistent with program criteria, and there is no evidence that officials were biased against her.

Finding #1

ITI's failure to clearly communicate to Ms. Smith that regardless of staff advice, she was entitled to submit applications and have the benefit of a full review process, was unfair.

Finding #2

ITI's failure to make available written client-friendly information on the SEED program was unfair.

Finding #3

BDIC's failure to make available written client-friendly information on its programs to Ms. Smith was unfair.

Finding #4

There is no evidence that ITI or BDIC or their officials were biased against Ms. Smith or her business.

Finding #5

The advice ITI provided to Ms. Smith on her applications and possible sources of funding was consistent with ITI and BDIC program criteria and was not unreasonable or unfair.

Applications for SEED Funding

Between 2016 and 2019, Ms. Smith made three SEED applications in writing, all of which ITI refused. The ITI regional office responded to her first application, made in May 2017, in under two weeks. Her second application was made in November 2018, and she made a third by email in March 2019. ITI responded to her second and third applications in March 2019.

These SEED applications were rejected at critical times for Ms. Smith's business, and she would have wanted to use every possible procedural avenue to try to have them approved. Two of the three were requests for funding she would have used to pay an accountant to get caught up on her books. Ms. Smith believes that not having up to date accountant-prepared financial statements affected her ability to get additional loans from BDIC in 2017 and 2018 that might in turn have helped her to expand her business and make it more sustainable. She also believes it affected her ability to successfully negotiate a sale of her business in 2019, when she might have been able to get a higher price than BDIC eventually did through the foreclosure process.

Timeliness of decisions

ITI officials told us that the reason the decision on Ms. Smith's November 2018 application was delayed is that the application was not complete. We were however unable to establish a date when ITI did consider it complete, or to find any evidence of follow up with Ms. Smith to request additional documents. ITI advised that they told Ms. Smith at the time of her application that the BDIC loan arrears would need to be addressed before they considered the SEED applications. If this is why ITI delayed its decision on her application, it would have been fairer for ITI to follow up in writing to ensure Ms. Smith understood the status of her requests.

Notification of appeal process

The SEED policy includes an appeal process to an Assistant Deputy Minister for applications that are rejected by a regional office. Ms. Smith said she was unaware that she could have appealed the decisions on her applications. The decision letters Ms. Smith received from the regional office included the following statement: "If you are not satisfied with the Panel's decision, you may contact [name and title of ITI regional office employee and phone number] for a further review of your application." Ms. Smith did not understand this to mean that there was an appeal to a headquarters official. She says she did not bother asking for a review because the official she was told to contact had advised her against making her application in the first place.

Decision letters should give upfront information about available appeal processes and how to access them. The wording of the letters on Ms. Smith's SEED applications did not make clear that an appeal was available. Ms. Smith's interpretation of the letters to

mean that she could ask the same official who recommended against her applications to review them again, was reasonable.

Although the appeal process is outlined in the SEED policy, which is available on ITI's website, the public is not necessarily familiar with where to find government policies and how to interpret them. Policies typically begin with pages of definitions and the roles and responsibilities of different officials, and contain detailed information that is relevant to staff, but not to clients. Public servants know how to find and navigate these documents as part of their day to day work, but that is not necessarily true of the public. It is not reasonable to expect clients to know the policy exists and to think to find and review it all the way to the end, where the appeal process is outlined, to see what procedural options they might have if their application is rejected. This is information that ITI could easily include in its application denial letters.

Reasons for decisions

The decision on Ms. Smith's 2017 application stated that it was denied in part because the costs (for accounting services) were considered recurring operational expenses. This may have caused some confusion for Ms. Smith as she had previously received SEED funding for "accounting fees" when she started the business. However, ITI's decision on her 2017 application was reasonable and consistent with the program requirements at the time.

The decisions on Ms. Smith's 2018 and 2019 applications state that they were denied in part because the projects were not viable, which was reasonable given program criteria, but also because the business had unresolved financial business with the GNWT.

Fair process includes ensuring that people know the rules that apply to decisions that affect them. The SEED policy does not mention unresolved financial issues with the GNWT as a reason for rejecting applications. However, ITI officials advised that they do not approve applications in these circumstances because when the GNWT has a vendor hold on a person's or business' account, the funds from ITI would be intercepted by Department of Finance and would not get to the client. While this is a reasonable position for ITI to take, ITI should be more transparent with clients about how it applies this practice and when. For example, it is not clear why ITI would have offered to help Ms. Smith with an application for winding down funding if it would have run into the same problem as her other SEED applications.

Summary

Lack of timely status updates or decisions on Ms. Smith's November 2018 SEED application, inadequate notice about the appeals process and how to access it, and lack of specific information about the effect of having other debts to the GNWT, took away Ms. Smith's opportunity to use all of her procedural avenues, and impacted her ability to pursue alternatives while she still thought there was a possibility that her applications

might be approved. There is no guarantee that Ms. Smith's appeals would have been successful, but she should have had the opportunity to make her case. The decisions on the SEED applications were reasonable and consistent with program criteria.

Finding #6

ITI's failure to make a timely decision on Ms. Smith's 2018 SEED application, or to provide information in writing on the status of her application if it was incomplete for some reason, was unfair.

Finding #7

ITI's failure to tell Ms. Smith about the SEED appeal process and how to access it in its letters denying her applications, was unfair.

Finding #8

ITI's decisions on Ms. Smith's SEED applications were reasonable and consistent with program criteria.

Finding #9

ITI's lack of transparency about how it applies the criteria of "unresolved financial business with the GNWT" to SEED applications was unfair.

November 2018 Loan Application to BDIC

In November 2018, Ms. Smith submitted a loan application under BDIC's Credit Facility Program. Because the amount was over \$200,000, ITI's role would have been to forward the completed application to BDIC with a recommendation to either accept or reject it. The decision on the application would have been with a BDIC official. According to the agreement of service between ITI and BDIC, if that official rejected the application, Ms. Smith would have had an appeal to the CEO of BDIC.

In January 2019, BDIC deemed the loan application withdrawn. As a result, it never fully considered the application or made a decision on it.

Discussions between Ms. Smith and ITI

Ms. Smith and her ITI contact spoke several times in January 2019. Ms. Smith admits that she sometimes expressed frustration and made statements such as “If you won’t give me any help then I might as well give up on this!” and “You want my business so bad, you can have it!”. Her belief was that she also made it clear to the ITI official that she wanted to continue with the loan application as it was her only hope of saving her business. She also says that any comments she may have made about closing the business were said in frustration and in the context of emphasizing her need for help.

During that time, she also advised the ITI official that she was exploring job opportunities in other communities, but says that she also made it clear she intended to make arrangements to have someone else run the business during the week and run it herself on weekends. She also let him know about a trip south, which was partly to meet with another financial institution, and to try to negotiate better terms with one of her suppliers.

From these same conversations, the ITI official believed that Ms. Smith was looking for a permanent job, was done with the business, and looking to leave permanently. He advised BDIC officials of this, and passed on information about the business’ mounting debts for taxes, fuel and power bills, and suppliers. The ITI official also advised BDIC that the business was operating on reduced hours, was unable to get more inventory, and that Ms. Smith had begun looking for a buyer. He followed up with an email to BDIC dated January 11, 2019, in which he stated, “... the owner [Ms. Smith] has said several times in January that she is done and has indicated that she is closing the business. Before Christmas she also mentioned withdrawing her loan application. At this point please consider her loan application withdrawn.”

Deemed withdrawal of loan application

We did not find any evidence that anyone at ITI or BDIC attempted to confirm with Ms. Smith that she intended to withdraw her application, or even to notify her that BDIC considered it withdrawn. Ms. Smith did not learn that BDIC considered the loan application withdrawn until May 2019, when it was mentioned in a letter from BDIC’s CEO.

In August 2020, Ms. Smith’s ITI contact confirmed to her that her loan application was withdrawn based on comments she made to him before Christmas 2018 about withdrawing it, and based on comments made in early January 2019 about the business being done. Once again, it seems that two people walked away from conversations with different understandings of what had been discussed. Better communication, such as follow up email exchanges, might have avoided any misunderstandings.

Given the consequences of deeming the loan application withdrawn, it would have been fairer for both ITI and BDIC to ask Ms. Smith to confirm her intentions, or to at least tell

her that they were considering deeming her loan application withdrawn based on her comments. A brief email from either BDIC or ITI asking her to confirm the ITI officer's understanding of her plans and warning her that they might consider her loan application withdrawn if they did not hear from her within a specified time, would have been enough. Alternatively, BDIC could have made a decision on the loan application. Either of these courses of action would have given Ms. Smith a chance to use all the appeal processes available to her.

Ms. Smith made this loan application at a critical time, and believes that had it been successful, it could have saved her business. Up until May 2019, when she discovered that BDIC had deemed her application withdrawn the previous January, Ms. Smith had a hope that she might be able to save her business. She thought there could still be a possibility that BDIC would stop the foreclosure proceedings that were underway and that she would be able to get her business back on track.

Ms. Smith had a significant emotional, as well as labour and financial, investment in her business, and in her identity as an indigenous female business owner. The news that she never had a chance was not only a financial and professional blow, but also personally devastating. As Ms. Smith said to us, "I was invested in that business, I worked so hard at it, it was my identity. I would never abandon it because abandoning my business would have meant abandoning me."

In the end, Ms. Smith's loan application might have been turned down, and any appeals she made might have been unsuccessful. However, she should have had the opportunity to make the best case she could using all available processes, which is a cornerstone of administrative fairness. She did not get this opportunity.

Summary

The lack of communication with Ms. Smith about the withdrawal of her loan application took away Ms. Smith's opportunity to use all of her procedural avenues and impacted her ability to pursue alternatives as long as she still thought there was a possibility that her application might be approved. It also caused her significant emotional distress. Although there is no guarantee that Ms. Smith's loan application would have been successful either at the first level or on appeal, Ms. Smith should have had a chance to make her case and to be heard.

Finding #10

ITI's failure to seek confirmation in writing from Ms. Smith of her intention to withdraw her loan application, or to notify her that they intended to advise BDIC to consider her application withdrawn, was unfair.

Finding #11

BDIC's failure, either directly or through ITI, to seek written confirmation from Ms. Smith of her intention to withdraw her loan application, or to notify her that it would consider her application withdrawn if it did not hear anything further from her, was unfair.

Finding #12

BDIC's failure to notify Ms. Smith in writing that it considered her application withdrawn, was unfair.

Timing of Decision to Start Foreclosure Proceedings

Ms. Smith complained that BDIC proceeded to foreclosure more quickly than with other businesses which were also in debt. Had BDIC waited longer before starting foreclosure proceedings, Ms. Smith thought the additional time might have allowed her to save the business.

BDIC advised us that each situation has unique considerations. For example, if a business has large debts to priority creditors like the Canada Revenue Agency (CRA), it might not make sense for BDIC to proceed to foreclosure because there might be little or no money left after a sale to recover its own debt. If a business is no longer operating and there are assets at risk, BDIC might intervene more quickly.

From internal emails, it appears that BDIC believed in January 2019, based on advice from ITI, that Ms. Smith had left town and was closing the business, and that this contributed to their decision to start legal proceedings. Ms. Smith did not have an opportunity to correct misunderstandings about her intentions. It is a principle of administrative fairness that decisions are based on complete and relevant information. It would have been fairer for BDIC to make more efforts to ensure they had all the relevant information before making their decision, by either contacting Ms. Smith directly, or through ITI. As noted in the previous section on the deemed withdrawal of her loan application, a brief email from BDIC or ITI requesting a response within a specified time, would have been enough.

However, the evidence shows that BDIC's beliefs about Ms. Smith's plans were not the only reason that BDIC moved to foreclosure proceedings when it did. BDIC was concerned that the insurance had lapsed because the premiums were not paid, and that the business was no longer getting deliveries from suppliers because of outstanding debts. BDIC was also paying heating fuel, propane, power and emergency repair costs to

prevent damage to the assets during the winter months and was not certain of being able to recover those payments. BDIC hoped to have a sale completed before the following winter so that it would not have to continue making those payments through another season. Although it is unfortunate that BDIC did not take steps to make sure it had all the relevant information about Ms. Smith's intentions before making its decision to proceed to foreclosure, the decision itself was reasonable given these other considerations.

Summary

Ms. Smith did not have an adequate opportunity to correct misunderstandings about her intentions for her business. However, BDIC's decision to start the proceedings when it did was not unreasonable because of considerations about the immediate need to protect the business' assets during the winter months.

Finding #13

BDIC's failure to make efforts to ensure it had all relevant information about Ms. Smith's intentions before making its decision to start foreclosure proceedings, was unfair.

Finding #14

BDIC's decision to move ahead with foreclosure proceedings in January 2019 was not unreasonable.

Recommendations

ITI

It is recommended that by the end of 2022, ITI:

1. Put in place a practice of following up in writing with business assistance clients after significant conversations to document key discussion points for both parties.
2. Produce and make publicly available client-friendly information on the details of the SEED application process and requirements, appeal process, program criteria and eligibility, similar to what is already available for PREP.
3. Include specific information about the appeal process in decision letters on SEED applications.
4. Put in place a practice of following up in writing with clients if initial business assistance applications are incomplete to advise them of what additional information or documents are needed.
5. Put in place a practice of advising clients in writing if it is unable to meet its own standard of 10 days to review an application, and why, if the reason is something other than an incomplete application.
6. Document its practice for handling applications from clients subject to a GNWT vendor hold, and make that information available to clients.
7. Put in place a practice of notifying clients in writing if they are considering deeming an application withdrawn or recommending to BDIC that an application be deemed withdrawn, to give clients an opportunity to correct any misunderstandings.

BDIC

It is recommended that by March 31, 2023, BDIC:

8. Produce and make publicly available consolidated, client-friendly information on its programs, application processes and requirements, appeal processes, and program criteria and eligibility.
9. Ensure clients are given written notice and an opportunity to respond, either directly from BDIC or through ITI, before BDIC deems an application withdrawn.
10. Put in place a practice of notifying clients directly if they consider an application withdrawn.
11. Develop a standard practice to ensure clients have an opportunity to clarify information before BDIC decides to start foreclosure proceedings, if the decision involves any assumptions about the client's intentions based only on verbal discussions or reports of verbal discussions from ITI.

Conclusion

ITI and BDIC provide programs that help businesses get established and become successful. For many businesses, these programs are essential. The processes, decisions, and services that determine which businesses can access funding, and how much, need to be fair.

It is our belief that by making the recommended improvements to communications and accessibility to information and processes, the authorities can create better client experiences, foster stronger working relationships between clients and staff, and prevent future misunderstandings. These changes, aimed at increasing administrative fairness, can benefit everyone involved.

Appendix A

Responses from Industry, Tourism and Investment and Northwest Territories Business Development and Investment Corporation



March 16, 2022

Ms. Colette Langlois
Ombud
#5-6 Courtoreille Street
P.O. BOX 4297
HAY RIVER NT X0E 1G5
info@nwtombud.ca

Dear Ms. Langlois:

Response to Report #2027 – Fairness in Business Assistance Programs

Thank you for your letter of February 22, 2022, providing the Department of Industry, Tourism and Investment (ITI) with a copy of the Ombud's report entitled "Fairness in Business Assistance Programs."

I would like to take this opportunity to pass along ITI's appreciation to the Ombud's office for the collaborative approach taken throughout this review process. As ITI works to meet its mandate to promote economic self-sufficiency through funding, support, and marketing initiatives, it must evaluate the effectiveness of those supports and seek continuous improvement. The balance between providing support while also fostering the principles of good business, self-sufficiency, and viability are key to building a robust economic environment. ITI sees the Ombud's report and review process as part of this work.

In your letter, you request that ITI notify you of steps that have been taken or that ITI proposes to take to give effect to the recommendations contained in the report, or, in the event that ITI does not propose to take any steps with respect to one or more recommendations, the reasons for not following the recommendations, in accordance with section 34 of the *Ombud Act*.

A response to the recommendations contained in the Ombud's report follows:

1. Put in place a practice of following up in writing with business assistance clients after significant conversations to document key discussion points for both parties.

ITI will continue to actively encourage existing staff responsible for administering business assistance programs to follow up in writing with clients to document key discussions. This practice will also be included in training for new staff responsible for administering such programs. In addition, ITI is investigating options for adding a function to its client management system that will allow the system to maintain records of client interactions.

2. *Produce and make publicly available client-friendly information on the details of the SEED application process and requirements, appeal process, program criteria and eligibility, similar to what is already available for PREP.*

Similar information to that provided for the Pandemic Relief Extension Program (PREP) concerning the Support for Entrepreneurs and Economic Development (SEED) application process and requirements exist on ITI's website, including a SEED Policy that includes information on the process for appeals, a brochure and FAQ on the types of support available, details on eligibility, and policy directives on how applications are evaluated. Contact information for Economic Development Officers as well as ITI's Regional Offices are also provided so that applicants can set up appointments to discuss their applications in person or over the phone if needed. ITI has been reviewing the SEED Policy, including feedback received through a survey targeted at formal SEED applicants, and has plans to continue reviewing publicly available information about SEED as restrictions around Covid-19 ease and more businesses are able to focus on regular operations and provide additional feedback.

3. *Include specific information about the appeal process in decision letters on SEED applications.*

ITI agrees and currently meets the requirement of this recommendation by including specific information about the SEED appeal process in decision letters on a regular basis since 2020.

4. *Put in place a practice of following up in writing with clients if initial business assistance applications are incomplete to advise them of what additional information or documents are needed.*

ITI will continue to actively encourage existing staff responsible for administering business assistance programs to follow up in writing with clients advising them of the requirements for completing funding applications. This practice will also be included in training for new staff responsible for administering such programs.

5. *Put in place a practice of advising clients in writing if it is unable to meet its own standard of 10 days to review an application, and why, if the reason is something other than an incomplete application.*

ITI will begin notifying clients in writing when it is unable to meet the standard of 10 days to review an application along with specific reasoning. ITI is currently looking at options for formalizing this notification.

6. Document its practice for handling applications from clients subject to a GNWT vendor hold, and make that information available to clients.

ITI agrees with the intention of this recommendation. Options are currently being explored to implement it.

7. Put in place a practice of notifying clients in writing if they are considering deeming an application withdrawn or recommending to BDIC that an application be deemed withdrawn, to give clients an opportunity to correct any misunderstandings.

ITI will continue to actively encourage existing staff responsible for administering business assistance programs to follow up in writing with clients if they are considering an application withdrawn or recommending to BDIC that an application be withdrawn. This practice will also be included in training for new staff responsible for administering such programs.

Where ITI has deemed an application withdrawn or recommended an application be deemed withdrawn, it will continue to support clients in finding alternative sources of support through key business support partners.

Sincerely,

A handwritten signature in black ink, appearing to read 'Caroline Wawzonek', with a stylized, flowing script.

Caroline Wawzonek
Minister
Industry, Tourism and Investment

c. Pamela Strand
Deputy Minister
Industry, Tourism and Investment

Joyce Taylor
Chief Executive Officer
Business Development and Investment Corporation



March 17, 2022

Ms. Colette Langlois
Ombud
#5-6 Courtoreille Street
P.O. BOX 4297
HAY RIVER NT X0E 1G5
info@nwtombud.ca

Dear Ms. Langlois:

Response to Report #2027 – Fairness in Business Assistance Programs

Thank you for your letter of February 22, 2022, providing the Business Development and Investment Corporation (BDIC) with a copy of the Ombud's report entitled "Fairness in Business Assistance Programs."

I would like to take this opportunity to extend BDIC's appreciation to the Ombud's office for the collaborative approach taken throughout this process. As BDIC works to fulfil its mandate to support the economic objectives of the Government of the Northwest Territories in a manner that benefits the people and the economy of the Northwest Territories, it must be an engaged and continuous learning organization. The balance between providing support while ensuring sound business practices and appropriate risk assessments are made will foster sustainable economic development programs. The BDIC sees the Ombud's report and review process as part of this work.

In accordance with section 34 of the *Ombud Act*, you requested in your letter that the BDIC notify you of steps that have been taken or that BDIC proposes to take to give effect to the recommendations contained in the report, or, in the event that BDIC does not propose to take any steps with respect to one or more recommendations, the reasons for not following the recommendations.

BDIC intends to take steps with respect to all recommendations outlined in your report as follows (BDIC Recommendations 8 to 11):

8. Produce and make publicly available consolidated, client-friendly information on its programs, application processes and requirements, appeal processes, and program criteria and eligibility.

BDIC management agrees with this recommendation and is committed to continuous improvement and has therefore updated its 2022-23 corporate plan to include:

- creating and making publicly available program information that is consolidated, client-friendly/accessible and fully transparent with respect to BDIC application and appeal processes and requirements, and program criteria and eligibility; and
- providing programs and supports that are equitable, fair and fully transparent.

9. Ensure clients are given written notice and an opportunity to respond, either directly from BDIC or through ITI, before BDIC deems an application withdrawn.

BDIC management will work with staff and front-line ITI delivery agents to design and implement an internal process for providing clients with written notice and an opportunity to respond before BDIC deems an application withdrawn.

10. Put in place a practice of notifying clients directly if they consider an application withdrawn.

BDIC management will continue to actively encourage staff, and front-line ITI delivery agents responsible for administering BDIC's financial assistance programs, to follow up jointly in writing when determining the status of an application as being withdrawn. This practice will be reviewed with existing staff and included in future training offered to new staff.

11. Develop a standard practice to ensure clients have an opportunity to clarify information before BDIC decides to start foreclosure proceedings, if the decision involves any assumptions about the client's intentions based only on verbal discussions or reports of verbal discussions from ITI

BDIC management will work with staff and front-line ITI delivery agents to continuously improve and communicate existing internal standard practices to:

- Ensure clients are provided with an opportunity to clarify information before foreclosure proceedings are commenced; and
- Ensure decisions involving any information regarding verbally communicated client intentions are fully documented through written correspondence with both the client and the ITI representative involved.

I would like to thank you again for your inputs and recommendations during the review of BDIC's fairness in business assistance programs.

Sincerely,



Caroline Wawzonek
Minister
Responsible for the Business Development and
Investment Corporation

c. Joyce Taylor
Chief Executive Officer
Business Development and Investment Corporation

Pamela Strand
Deputy Minister
Industry, Tourism and Investment