



**Information and Privacy  
Commissioner/Ontario**

**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER MO-2418**

## **Appeal MA08-159**

### **Cochrane and Area Community Development Corporation**



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## **NATURE OF THE APPEAL:**

The Cochrane and Area Community Development Corporation (CACDC) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for copies of:

[T]he exact names of the governmental agencies/departments that have provided public funding to (CACDC) along with the exact amounts given by each such governmental agencies/department to (CACDC) during the (CACDC's) fiscal years of 2006, 2007 and 2008.

The CACDC responded to the requester and provided a list of several website addresses that the CACDC believed contained the requested information. However, the CACDC advised the requester that the CACDC is a non-profit corporation and not subject to the *Act*.

The requester (now the appellant) appealed the CACDC's decision to this office. The matter then moved directly to the adjudication stage of the appeal process, in which an adjudicator conducts an inquiry under the *Act*.

I began the inquiry into this appeal by issuing a Notice of Inquiry to the CACDC and the Town of Cochrane (the Town), as an affected party. The CACDC provided representations. The Town did not provide representations. I then sent a Notice of Inquiry to the appellant, inviting representations. The complete representations of the CACDC were sent to the appellant along with the Notice of Inquiry. The appellant provided representations in response. I then invited the CACDC to provide supplementary representations on the issue of whether its officers are appointed under the authority of the Town council. The CACDC responded with supplementary representations.

## **DISCUSSION:**

Section 4(1) of the *Act* creates a right of access to records under the custody or control of an "institution," a term that is defined in section 2(1).

The issues in this appeal are: (1) whether the CACDC is an institution, or part of an institution, under the *Act*, and if not, (2) whether the CACDC's records are otherwise in the custody or under the control of the Town based on the relationship between the two institutions.

## **IS THE CACDC AN "INSTITUTION" UNDER THE ACT?**

### **Introduction**

"Institution" is defined in section 2(1) of the *Act* as follows:

- (a) a municipality,

- (b) a school board, municipal service board, city board, transit commission, public library board, board of health, police services board, conservation authority, district social services administration board, local services board, planning board, local roads board, police village or joint committee of management or joint board of management established under the *Municipal Act, 2001* or the *City of Toronto Act, 2006* or a predecessor of those Acts.
- (c) any agency, board, commission, corporation or other body designated as an institution in the regulations;

For the purposes of paragraph (c) of the definition of “institution” in section 2(1) of the *Act*, Ontario Regulation 372/91, made under the *Act*, lists the names of a number of bodies that are “designated as institutions.” This list does not include the CACDC. In addition, however, as explored in more detail below, section 1(1)4 of Ontario Regulation 372/91, designates bodies known as “community development corporations” as institutions, if certain conditions are met.

As well, section 20 of Ontario Regulation 599/06, made under the *Municipal Act, 2001*, deems certain corporations to be institutions under the *Act*. This section states:

A corporation that is a wholly-owned corporation or a corporation whose business or activities include the provision of administrative services to any municipality, local board, public hospital, university, college or school board is deemed to be an institution for the purposes of the [Act].

Based on the above, there are four different ways in which the CACDC could be considered an institution under the *Act*:

- (a) If it constitutes a municipality;
- (b) If it qualifies as one of the 15 entities described in paragraph (b) of the definition of “institution” under the *Act*;
- (c) If it is “designated” as an institution under Ontario Regulation 372/91, made under the *Act*; or
- (d) If it is deemed to be an institution pursuant to Ontario Regulation 599/06, made under the *Municipal Act, 2001*.

### **The CACDC’s Representations**

The CACDC provided written representations, including copies of its Letters Patent and Constitution. The following is a summary of information provided by the CACDC.

## ***Background Information***

### *Incorporation of the CACDC*

The CACDC was incorporated as a corporation without share capital, via Letters Patent, under the *Corporations Act* on March 2, 1993.

### *Powers and scope of business*

As noted in its Constitution, the CACDC's objectives are to:

- Plan, coordinate, implement and communicate community advancement and development;
- Promote tourism;
- Support existing businesses and assist new ventures in product, service and market development;
- Engage in environmental stewardship in the Cochrane area;
- Develop community infrastructure, including major capital projects and to coordinate community fund raising; and
- Accept grants, donations, gifts, legacies and bequests in order to carry out its objects.

According to the original Letters Patent, the CACDC can purchase, lease, and sell real estate properties, and enter into contracts with public or private authorities.

The CACDC also provided specific information about two of its projects. The CACDC wholly owns a property known as the "Business Incubator," which, at present, holds two primary long-term lease tenants. This building is independent of the Town and is controlled and run by the CACDC.

In addition, the CACDC has assumed responsibility for the management and operation of the Polar Bear Habitat and Heritage Village (Habitat) in Cochrane under an operating agreement with the Town. Although the CACDC manages this facility wholly independently of the Town, the operating agreement was entered into because the facility is located on municipal lands.

### *Relationship between the CACDC and the Town*

The CACDC indicates that it is accountable to the Town through control mechanisms and admits that it has some "connections" to the Town. Specifically, the CACDC receives financial assistance from the Town. For example, in 2007, the Town made a contribution to the CACDC in the amount of \$125,000. The CACDC submits that this represents a minor contribution to its operating budgets.

All financial decision making and budget deliberations are completed by, and approved by, the CACDC's Board. Although the CACDC's operating budgets are not subject to approval or

endorsement by the Town, the operating budgets of the Habitat operations in particular, are reviewed regularly by the Town.

According to the CACDC's Constitution, the CACDC requires the specific direction of the Town Council in order to "invest in other corporations, make land transactions, or provide incentives to industry."

The CACDC provides regular information to the Town in order to be transparent and accountable to one of its funding sources.

### *Directors*

The CACDC's Constitution states that its Board of Directors shall consist of nine members who have been appointed by the Board, or duly elected at the Annual General Meeting, or whose nominations have been approved by the Town Council.

The Town Council is responsible for appointing one Director to the CACDC's Board, for a three year term.

The CACDC's Letters Patent state:

No person shall be elected or appointed as a director unless his/her election or appointment has been confirmed, by resolution, of the Municipal Councils of the [Town] and the Township of Glackmeyer.

The CACDC advises that the Town and the Township of Glackmeyer amalgamated a number of years ago.

### *Officers*

The Board of Directors elect and/or appoint the officers, which include a President, and may include a Vice-President, a Treasurer, a Secretary and a Community Development Manager. Other than the President, who must be a Board member, the other officers, may, but need not be, members of the Board.

### *Members*

Members of the corporation consist of individuals, organizations and "ad hoc" members. Individuals must be 18 years of age or older to qualify. Organizational members are required to have objects consistent with those of the CACDC. Ad hoc membership includes members of specific interest groups to address concerns within their expertise as directed by the Board of Directors.

### ***The CACDC's Position***

The CACDC submits that it is not a municipality, nor is it one of the enumerated groups defined in paragraph (b) of the definition of "institution" in section 2(1) of the *Act*. With respect to paragraph (c) of the definition of "institution" in section 2(1), and Regulation 372/91, the CACDC states:

In the case of the CACDC, without question, the Corporation receives assistance from the Municipality and one or more of the Corporation's directors are nominated by the Council. However, the CACDC is not a Community Development Corporation "incorporated under section 109 of the *Municipal Act, 2001*" because it was incorporated as a non-share capital non-profit corporation before the *Municipal Act, 2001* came into force and effect.

The *Act* does not provide any definition broadening references to "*Municipal Act, 2001*" to any predecessor legislation...Utilizing the strict wording of the definitions under the *Act*, the CACDC is not an institution.

The CACDC further submits that:

Although there are some "connective elements" between the CACDC and the Municipality, these exist simply by virtue of the reality that the CACDC promotes economic development in the municipal community. However, it does so as an autonomous independent and separate entity which is very much driven, controlled and operated by its members, independent business interests, community residents, and parties who are separate and apart from the Municipality.

Those connections, however, do not cause the CACDC to become an institution under the legislation.

With respect to Regulation 599/06, the CACDC submits that it is not a municipal services corporation as defined in this regulation, as it is not owned by the municipality, and its structure and mandate is not to provide management services or administrative services to the municipality with respect to a branch of its operations. The majority of its services are not provided to the municipality, but to third parties, or for its own purposes.

However, as previously indicated, the CACDC does assume responsibility for management of the Polar Bear Habitat and the Heritage Village, and the municipality makes an additional contribution to those operating budgets. The CACDC describes the financial contribution as "minor."

### **The Appellant's Representations**

The appellant submits that Ontario Regulation 372/91 applies to the CACDC irrespective of whether the CACDC was incorporated under section 109 of the *Municipal Act, 2001* because it

meets the criteria set out in the regulation. Specifically, the CACDC receives financial assistance from the municipality, and the municipality has the authority to appoint one member of the CACDC's board of directors. The appellant also submits that the financial contribution by the municipality to the CACDC is not minor, but is rather substantial and has included the purchase of vehicles for the CACDC, and payment for insurance and legal fees.

Further, the appellant submits that many of the CACDC's decision-making powers derive from Town Council. For example, the appellant states that the purchase of a building in Cochrane by the CACDC required the Town Council's ratification. The appellant cites another example in which an accord entered into between the Town and a local First Nation includes a clause whereby the Town will request that the CACDC provide a member of the First Nation a seat on its board of directors.

### **Analysis**

**(a) *Is the CACDC a municipality?***

It is clear that the CACDC is not a municipality in its own right. Therefore, the CACDC cannot be considered an "institution" under paragraph (a) of the definition of "institution" in section 2(1).

**(b) *Is the CACDC one of the 15 entities described in paragraph (b) of the definition of "institution" under the Act?***

It is clear that the CACDC does not qualify as a school board, municipal service board, city board, transit commission, public library board, board of health, police services board, conservation authority, district social services administration board, local services board, planning board, local roads board, police village or joint committee of management or joint board of management established under the *Municipal Act, 2001* or a predecessor of that Act. It is also abundantly clear that the CACDC was not established under the *City of Toronto Act, 2006* or its predecessors. Accordingly, paragraph (b) of the definition provides no basis for finding that the CACDC is an institution.

**(c) *Is the CACDC designated as an institution under Ontario Regulation 372/91 (made under the Act)?***

As already noted, section 1 of Ontario Regulation 372/91 lists bodies that are "institutions" under the Act, and the CACDC is not listed by name as a body designated as an institution. The only way in which the CACDC could be considered an institution under Ontario Regulation 372/91 is if it falls within the scope of a "community development corporation" under section 1(1)4 of the regulation, which states:

The following bodies are designated as institutions:

Each community development corporation incorporated under section 109 of the *Municipal Act, 2001* if,

- i. the corporation receives assistance from a municipality under subsection 109(4) of that Act, or
- ii. one or more of the corporation's directors are nominated by the council of a municipality as provided for in subsection 109 (10) of that Act.

Therefore, the CACDC would qualify as an institution under section 1(1)4 of Regulation 372/91 if it meets the following requirements:

1. It is a community development corporation incorporated under section 109 of the *Municipal Act, 2001*; and
2. (a) it receives assistance from a municipality under subsection 109(4) of the *Municipal Act, 2001*; or  
(b) one or more of the corporation's directors are nominated by the council of a municipality as provided for in subsection 109(10) of the *Municipal Act, 2001*.

Section 109 of the *Municipal Act, 2001* was repealed by S.O. 2006, c. 32, Schedule A, section 50. Nevertheless, as explained below, I consider its contents to be relevant to a determination of whether Regulation 372/91 supports a finding that the CACDC is an institution. Section 109 states (in part):

- (1) The council of a municipality, either alone or with one or more persons or municipalities, may incorporate a corporation under Part III of the *Corporations Act* as a community development corporation.
- (2) The community development corporation must be incorporated,
  - (a) with the sole object of promoting community economic development with the participation of the community by facilitating and supporting community strategic planning and increasing self-reliance, investment and job creation within the community; or
  - (b) with objects substantially similar to those described in clause (a).
- (3) A municipality shall appoint one or more persons to apply on the municipality's behalf for incorporation under subsection (1).



(4) Despite section 106, a municipality may, except as may be restricted or prohibited by regulation, provide financial or other assistance at less than fair market value or at no cost to a community development corporation, and such assistance may include,

- (a) giving or lending money and charging interest;
- (b) lending or leasing land;
- (c) giving, lending or leasing personal property; and
- (d) providing the services of municipal employees.

(6) If a municipality has assisted a community development corporation in a manner permitted by subsection (4) or has nominated a person who has become a director of a community development corporation, the board of directors of the community development corporation shall,

- (a) make an annual financial report, and additional financial reports as requested, to the municipality at the time, in the manner and with the information specified by the municipality; and
- (b) upon the request of the municipality, permit the municipal auditor to conduct an audit of the corporation, including an examination of the corporation's assets.

(7) In conducting an audit, the municipal auditor may inspect all records of the community development corporation.

(9) The Minister may by regulation deem community development corporations to be local boards for the purposes of specified provisions of this Act and the *Municipal Affairs Act*, and may prescribe the extent and manner of application of those provisions to corporations deemed as local boards.

(10) Community development corporations that receive municipal assistance in a manner permitted by subsection (4) or that have one or more directors nominated by the council of a municipality may be designated under the *Municipal Freedom of Information and Protection of Privacy Act* as a class of institution to which that Act applies.

*Requirement 1: Is the CACDC a community development corporation incorporated under section 109 of the Municipal Act, 2001?*

The CACDC was incorporated under the *Corporations Act* as a corporation without share capital under Part III of the *Corporations Act*, meeting the requirement in section 109(1) of the

*Municipal Act, 2001*. One of the incorporators was the Chief Administrative Officer and Clerk of the Town. It is inconceivable that he proceeded with the incorporation without being authorized to do so by the Town, and I find that this meets the requirements of section 109(3).

Under section 109(2), I conclude that the CACDC's economic development purposes fall within the scope of the objects of a community development corporation under section 109(2)(a). Section 109(2)(a) indicates that a corporation whose objects are to "promote community economic development with the participation of the community by facilitating and supporting community strategic planning and increasing self-reliance, investment and job creation within the community" is a community development corporation. In CACDC's words, its primary purpose is to undertake "the promotion of economic development in the community, and, in doing so, is constantly pursuing various projects from time to time," including with private sector businesses in the community.

As noted above, the CACDC's objectives include: the planning and co-ordination of community development; assisting new ventures in product, service and market development; and developing community infrastructure. In my view, these objects and the others articulated by the CACDC and referred to earlier in this order are consistent with the objects identified in section 109(2)(a). In that regard, although not determinative of the issue, I also note that, by virtue of part of its name, the CACDC is in fact called a "Community Development Corporation."

Under its letters patent, the CACDC is empowered to invest in other ventures, including providing incentives to industry. In addition, the CACDC can acquire, lease and sell land, presumably in pursuance of the other identified objects. In my view, therefore, these powers are ancillary to, and can be described as "substantially similar" to those described in section 109(2)(a), and therefore the CACDC qualifies as a "community development corporation" under section 109(2)(b).

Having found that the CACDC qualifies as a "community development corporation," I must now consider the meaning of the phrase, "incorporated *under* section 109 of the *Municipal Act, 2001*" (emphasis added). In the foregoing analysis, I have already concluded that it meets all the substantive requirements imposed by that section, but the meaning of incorporation "under" it needs to be considered further.

As noted above, section 109 has now been repealed (although most of the statute remains in force). However, despite the repeal of section 109, Regulation 372/91 remains in force and continues to include this reference. In my view, the continued existence of this provision in the regulation signals a legislative intent that corporations meeting the requirements enunciated in that section, and in the regulation itself, would be considered to be "community development corporations" and would therefore qualify as institutions under the *Act*.

As proven by the existence of the CACDC, there clearly are corporations that meet the requirements of that section, and of Regulation 372/91, but were not incorporated with any direct reference to section 109. This, and the repeal of section 109, raises the question of what is required in order to be incorporated "under" that section. In and of itself, section 109 provides no express power to incorporate; this must still be accomplished under Part III of the

*Corporations Act*, as was done in this case. The existence of the CACDC also demonstrates that the ability of municipalities to provide for incorporation in the manner contemplated by section 109 clearly predates the enactment of that section. What, then, is the effect of the reference to section 109 in Regulation 372/91?

In my view, section 1(1)4 of Regulation 372/91 should be taken as an indication of legislative intention that corporations of the nature described in section 109 are institutions under the *Act*, whenever they were incorporated, as long as they meet the requirements of these provisions. As already noted, the CACDC does meet these requirements, and accordingly, I find that it qualifies as an institution under the *Act* in accordance with Regulation 372/91.

This conclusion is reinforced by the decision of the Ontario Court of Appeal in *City of Toronto Economic Development Corporation v. Information and Privacy Commissioner/Ontario*, [2008] O.J. No. 1799 (Ont. C.A.) (*TEDCO*). In that case, the Court counseled against a technical interpretation of the *Act* in considering whether the City of Toronto Economic Development Corporation (TEDCO) was part of the City under section 2(3) of the *Act*. The Court stated (at para. 39) that "... a formal and technical interpretation runs contrary to the purpose of the *Act*," and noted, among other things, that the sole purpose of TEDCO was to "advance the economic development of the City." The Court also observed (at para. 32) that:

When one considers that the object or purpose of the *Act* is to provide a right of access to information under the control of municipalities and related municipal institutions, it would appear reasonable to conclude that TEDCO should be subject to the *Act*.

In view of the funding arrangements and objectives of the CACDC, the same sentiments apply here. Accordingly, because it was incorporated under Part III of the *Corporations Act* and meets the substantive requirements set out in section 109 of the *Municipal Act, 2001*, I am satisfied that the CACDC meets requirement 1.

*Requirement 2 : Does the CACDC (a) receive assistance from the Town under subsection 109(4) of the Municipal Act, 2001; or (b) are one or more of the CACDC's directors nominated by Town Council as provided for in subsection 109(10) of the Municipal Act, 2001?*

The second requirement under section 1(1)4 of Regulation 372/91 sets out two alternative ways it can be met, as noted above. Either the CACDC must "receive assistance" from the Town under section 109(4) of the *Municipal Act, 2001*, or at least one of its directors must be nominated by the Town Council. In my view, both of these are true of the CACDC. As noted above, the Town makes financial contributions to the CACDC, as contemplated in section 109(4)(a). In addition, under paragraph 10 of the CACDC's constitution (sometimes referred to as its "by-laws"), Town Council appoints a member of the CACDC's Board of Directors. I note, as well, that the Letters Patent also require Council approval for all appointments to the CACDC Board.

In my view, therefore, requirement 2 under section 1(1)4 of the Regulation is met in both of the ways enunciated there (in subclauses (a) and (b)) because the Town provides financial assistance

*and* nominates a member of the Board of Directors. On this basis, I find that the second requirement is met.

Accordingly, the CACDC meets the requirements to be considered an “institution” set out in Regulation 372/91, and I therefore find it to be an institution under the *Act*. Accordingly, I will order it to make an access decision in response to the appellant’s request. I will, however, also consider whether it meets the requirements to be an institution under Regulation 599/06.

**(d) *Is the CACDC deemed to be an institution pursuant to Ontario Regulation 599/06, made under the Municipal Act, 2001?***

As noted above, section 20 of Regulation 599/06 indicates that “[a] corporation that is a wholly-owned corporation or a corporation whose business or activities include the provision of administrative services to any municipality, local board, public hospital, university, college or school board” is deemed to be an institution under the *Act*.

As previously noted, the CACDC’s constitution outlines its functions and objectives, which include:

- Planning, coordinating, implementing and communicating community advancement and development;
- Promoting tourism;
- Supporting existing businesses and assisting new ventures in product, service and market development;
- Engaging in environmental stewardship in the Cochrane area;
- Developing community infrastructure, including major capital projects and coordinating community fund raising; and
- Accepting grants, donations, gifts, legacies and bequests in order to carry out its objects.

In addition, the CACDC assumes the responsibility for management of the Habitat, and the Town makes a contribution to the Habitat’s budget. The CACDC also wholly owns a property known as the “Business Incubator,” which, at present, holds two primary long-term lease tenants.

Furthermore, the CACDC requires the specific direction of the Town Council in order to “invest in other corporations, make land transactions or provide incentives to industry.”

As it is a corporation without share capital, I find that the CACDC is not a wholly owned corporation of the Town.

The next question is whether it provides “administrative services” to the Town. “Administration” means “Management (*of* business); management of public affairs, government; ...,” and “administrative” means “[p]ertaining to management of affairs” (*Concise Oxford Dictionary*, 6<sup>th</sup> ed., Oxford: Clarendon Press, 1976, at p. 14).

I note that the CACDC does not appear to have its own website. However, its mission statement and objectives, noted above, are posted on the Town's website.

The Habitat has a website that includes a list of its financial sponsors. The Town, listed as one of the sponsors, provided the Habitat with \$275,000. In addition, as previously noted, the Town regularly reviews the Habitat's operating budgets. The Habitat generates approximately \$650,000 in annual revenue.

Based on the CACDC's representations and information obtained from the Town's website and the Habitat's website, it is evident that the CACDC provides the following services to or on behalf of the Town:

- it promotes tourism by managing the operations of the Habitat;
- it invests in other corporations, makes land transfers and provides incentives to industry;
- it plans, coordinates, implements and communicates community advancement and development; and
- it supports existing businesses and assists new ventures in product, service and market development.

In my view, by providing the services that it does, including tourism and business development services, the CACDC does provide management of public affairs, and in fact provides services to members of the public that the Town itself could provide. The Town funds the CACDC, which can therefore be seen as doing this work, which promotes the Town's interests, on the Town's behalf. In my view, although it could be said that the services provided by the CACDC are provided to its clients, it also provides management of public affairs, which is an administrative service, "to" the Town. I therefore find that the CACDC provides administrative services to the Town, meeting the substantive requirement of section 20 of Regulation 599/06.

Before concluding this discussion, it is also necessary to consider the meaning of the word, "corporation" as it is used in this section. It is not defined in Regulation 599/06, which is itself entitled, "Municipal Services Corporations". Nor does the *Municipal Act, 2001* define the term "corporation." But section 203(1) of that statute provides municipalities with the power to establish corporations, and section 203(4) refers to the power to make regulations "governing the corporations made under this section." Section 203(5) provides that in the event of conflict, the provisions of the regulation would prevail.

Section 2(3) of Regulation 599/06 limits the application of section 20 of that regulation, which is under consideration here as the possible basis for finding that the CACDC is "deemed" to be an institution under the *Act*. Section 2(3) of the Regulation states:

Sections 17 to 22 apply only if a municipality uses or expects to use a power referred to in section 3 or subsection 4(2), (3) or 5(1) in relation to the corporation.

Based on the wording of section 2(3), I conclude that section 20 would apply to deem a corporation an institution under the *Act* if its terms are met, *and* if the municipality uses or expects to use one of the powers enumerated in section 2 in relation to the corporation. I have already found, above, that the CACDC provides administrative services to the Town, and on this basis, the substantive requirement set out in section 20 is met. The remaining question is whether the Town has used or expects to use one of the powers enumerated in section 2, and I will now consider that issue.

Section 3 of Regulation 599/06 refers to the power of municipalities to establish corporations under section 203(1) of the *Municipal Act, 2001*. Section 4(2) of Regulation 599/06 involves use of the power referred to in section 203(1)2 to nominate or authorize a person to act as an incorporator. Section 4(3) refers to the power in section 203(1)3 to nominate or appoint a person as a member of the corporation, “only if the corporation is established by a public sector entity...” Section 5(1) refers to the powers in sections 203(1)4 and 5 to deal with securities of the corporation “established by a public sector entity.”

In view of its incorporation in 1993, CACDC was clearly not incorporated pursuant to the power given in section 203(1) of the *Municipal Act, 2001*, which did not exist at that time. Accordingly, the power in section 203(1)1 of that statute was not used in the incorporation of the CACDC. The power referred to in section 3 of Regulation 599/06 was therefore not used, nor can its use be expected. As well, section 203(1)3 was also not used to nominate or appoint a person as a member of a corporation, and the Town does not have that power, as is evident from the CACDC’s letters patent and constitution, and accordingly, section 4(3) of the Regulation was also not used, nor can it be expected to be used. Nor was the CACDC “established by a public sector entity,” and the section 5(1) of the Regulation was not used, and cannot be expected to be used.

However, only one of the powers listed in section 2(3) need be exercised in order to meet its requirements, and I find that the power referred to in section 203(1)2 to “nominate or authorize a person to act as an incorporator” has been exercised. As noted above in the discussion of Regulation 371/92, one of the incorporators was the Chief Administrative Officer and Clerk of the Town, and as it is inconceivable that he acted without authority, I conclude that he qualifies as having been “nominated” by the Town to do so, as contemplated in section 203(1)3.

In this regard, it might be objected that this section did not exist when the CACDC was incorporated in 1993. However, I note that the statute contemplates that corporations which came into being prior to the *Municipal Act, 2001* may be covered. Section 203(3) specifically excludes corporations established under several pre-existing statutes from qualifying.

Accordingly, I conclude that section 2(3) of Regulation 599/06 does not preclude the operation of section 20, which, but for such a preclusion, would deem the CACDC to be an institution under the *Act* because it provides administrative services to the Town. On this basis, I find that the CACDC is deemed to be an institution under this provision.

In reaching this conclusion, I note that the web of legislative and regulatory provisions that must be considered in making the determination under Regulation 599/06 is confusing, and at times

contradictory. For example, the effect of the statement in section 203(3) of the *Municipal Act, 2001* that section 203 does not apply to “any other corporation that a municipality is expressly authorized to establish or control” is not clear. However, the Court of Appeal in *TEDCO* has provided clear guidance in terms of relying on a technicality to exclude such bodies from the scope of the *Act*. In this regard, as noted above, the Court counseled against a technical interpretation of the *Act* in considering whether the TEDCO was part of the City under section 2(3) of the *Act*. The Court stated (at para. 39) that “... a formal and technical interpretation runs contrary to the purpose of the Act,” and noted, among other things, that the sole purpose of TEDCO was to “advance the economic development of the City.”

For all these reasons, I find that the CACDC is deemed to be an institution under section 20 of Regulation 599/06, and as already noted, will order it to make an access decision under the *Act*.

**CONCLUSION**

I have found that the CACDC is an institution under the *Act* on the basis of section 1(1)4 of Regulation 372/91, and is also deemed to be an institution under section 20 of Regulation 599/06.

As a consequence, it is not necessary for me to consider whether the CACDC is “part of” the Town pursuant to section 2(3) of the *Act*, nor whether its records are in the Town’s custody or control.

**ORDER:**

I find that the CACDC is an institution under the *Act*, and I order it to respond to the appellant’s request, treating the date of this order as the date of the request, in accordance with sections 19, 21, 22 and/or 23 of the *Act*, as applicable.

Original signed by: \_\_\_\_\_  
John Higgins  
Senior Adjudicator

\_\_\_\_\_ May 15, 2009