CANADIAN ASSOCIATION OF JOURNALISTS
SUBMISSION TO NOVA SCOTIA
FREEDOM OF INFORMATION REVIEW COMMITTEE
May 14, 2003

In a democracy, by definition, the power to govern ultimately resides with the citizens of the nation. The people confer this power to govern to elected representatives, chosen in fair, open elections. This means government, also by definition, is accountable to the electorate for its actions.

The right of citizens to ask their government what it is doing, either directly or through the media, is thus, fundamentally, one of the principles of democracy.

To protect these fundamental rights, our political system is subject to the rule of law. Laws are, in essence, a statement of principles or an expression of values. That is why the Freedom of Information and Privacy Act of Nova Scotia is so important in this – the information age. The Canadian Association of Journalists believes this Act, and other like it across the country, speak to our collective desire to see the actions of government conducted in an open and forthright manner. It reflects society's demand that those who make decisions on our behalf be held accountable for their actions.

Access to information is as important a right in this country as health-care and education. Without information, voters are unable to gauge whether their government is fulfilling its obligations, or simply serving its own interests and the interests of a select, powerful few.

Some would argue that democracy did all right before freedom of information laws came along. Indeed, it did; however, FOI has strengthened democracy, by giving people the tools to search for what they want to know.

In the 21st Century, government-held information has become a commodity, something to be bought and sold. Nowhere has this been more apparent than in the Province of Nova Scotia, where the Conservative government's massive, unwarranted increase in fees a year ago has crippled the public's ability to access government-held information. Testimony already placed before this committee has shown that since the fees were introduced, the number of applications coming into the system has dropped by 20.3 per cent; with most of the decrease happening in the fourth quarter. Those are important statistics. They provide a snapshot of a system that is in the process of shutting down people's fundamental right to access the information they need to hold government accountable for its actions. The fact that the biggest decline happened in the fourth quarter is an indication that, for many citizens, government accountability has become a concept that's simply too expensive to afford.

The majority of applications come, not from media or political opposition parties, but from ordinary citizens. Our organization is aware of at least three community groups which have stopped filing requests because they are too expensive. These are people who are concerned about our education system, our environment and our hospitals. When the application fee and search time is taken into account, the average information request now costs between $65 and $85 to complete. Nowhere in Canada is information more expensive than right here in Nova Scotia. Other governments

have similar fees placed on individual components of their systems, but taken as a whole, our freedom of information process now set the highest financial barriers to government information in the country.

The government's argument for introducing higher fees was that it was facing a rising tide of applications and that the system was becoming too costly. Those excuses are no longer valid, as we can see by the statistics.

While both the former and the current justice minister have not said it directly, the sub-text of their public statements suggests the fees were hiked, in part, to stem the flow of nuisance requests, or to prevent fishing expeditions by journalists. Last summer, when asked about the decline in requests, former Justice Minister Michael Baker said:

"**People are making a decision about whether the information is important to them. Clearly some people have made a decision that certain kinds of information aren't important, or they may have made a decision to pick the information they want more carefully than they have in the past.**"

Translation: People are being forced to choose what they can afford to know about government actions.

That, in our opinion, violates the spirit of the Act. It is economic discrimination. It is undemocratic.

We urgently appeal to this committee to recommend to the Conservative government that the fee increases introduced in the April 2002 budget be eliminated.

Specifically, we propose that the $25 basic application fee be rolled back; the $25 appeal fee be scrapped; and that at least an hour of free search time be given.

While we believe that in a perfect society all information should be free, we understand the practical need for assessing some kind of levy to offset the cost of operating the system. However, those fees should never be used as a political deterrent.

Last year, the CAJ did a freedom of information request looking for the justification for the fee increases. The response provided some, but not all, of the answers to our questions. However, the document did allude to a suggestion that the government was searching for a way to make more information available without people having to use the Act. Our organization has even had informal talks with the government's FOI coordinator. But nothing has come of it.

Our group believes this idea has merit. If the government is truly interested in openness and accountability, it will make this a priority. We are willing to participate in discussions and even recommend what classes of documents should be handled outside of the system. Hopefully, this committee will choose to support the idea as well.

In the fall of 2001, the CAJ's executive committee met with senior Justice Department officials about what it felt was the uneven application of the existing legislation. It was a very frank and enlightening discussion. Without getting into the details, or naming names, our members left with the impression that the senior echelons of government have a very jaded and cynical view of the media, and its interest in the Act. To be blunt, the message to us was: All the media is interested in is muck-raking and a big headline.

Unfortunately, our members have found that this attitude is reflected down the line, by the FOI coordinators who handle the applications. Our

executive has received complaints that coordinators are often unhelpful and sometimes dismissive. There is at least one instance that we know of where a coordinator was bluntly rude and suggested to the reporter that the application be dropped. The job of FOI coordinators is not to run interference for the government. But it does happen, especially when the FOI position is lumped in with the junior communications officer's position, as has been the case. That is a huge conflict of interest.

The government should not only mandate better training for FOI coordinators, but develop clear performance standards for them. Those standards should be enshrined in regulation.

Our organization is deeply concerned about the suggestion that a rewrite of the FOIPOP Act could include a clause that would allow some applicants or applications to be considered frivolous or vexacious. In our opinion, freedom of information is already under attack in this province. We are concerned that such a clause would be abused -- used as a convenient excuse to deny rightful applicants information that might be politically embarrassing to the government. Being persistent should not be considered an offense. We understand there are people who abuse the system, however their numbers are small; putting up with them is the price we pay for being a democracy. We are aware that the FOI review officer is in favour of such a clause, as long as he gets the final say when such a declaration is issued. While that may be considered a middle ground, the CAJ still opposes the idea, because the review process in declaring an applicant frivolous would be just another way for government to stall the release of information.

Finally, we would like to add our voice to those who have called for the review officer to be

given more power. The decisions coming from his office should be binding. It makes no sense to have a review officer say documents should be released, when the government can simply ignore him. The government, in many cases, is flouting its own law; daring people to take it to court – and in effect setting up another economic barrier to information.

The premier has said the government has the right to keep some secrets. We can understand and respect that position. However, what we have found is that the exercise of denying access to information is often more about stifling dissenting opinions or politically damaging facts than it is about protecting legitimate secrets.

As *J. W. Fulbright, the* United States politician and architect of what was to become the United Nations, *once said:* "In a democracy, dissent is an act of faith. And like medicine, the test of its value is not in the taste, but in its effects."

Governments would not charge its citizens for the right to vote. They should not be charging – beyond a nominal amount – its citizens for the right to the information they need to hold their government accountable.

Presented by Paul Schneidereit, national vice-president, Canadian Association of Journalists