

**Supplementary Submissions
on behalf of the Counsel of Nova Scotia University Presidents**

Thank you for the opportunity to make further submissions in relation to the issue of expansion of the Review Officer's powers.

Maintaining privacy of personal information is not a new concept to universities. Long before privacy legislation was enacted universities treated personal information, particularly student information, with sensitivity and confidentiality, and, to this end, developed policies and practices designed to limit access to information to those within the university who needed it for legitimate university purposes. When the *Freedom of Information and Protection of Privacy Act* was amended to extend its applicability to universities in 1999, universities, for the most part, merely had to "tweak" policies and practices already in existence to ensure compliance with the protection of privacy provisions.

As new technologies emerge that facilitate processes that have historically been executed manually, new challenges are created for protection of privacy, and accordingly, new policies, practices and procedures are being developed which are mindful of privacy issues as well as other internal and external regulatory requirements. The universities' legal relationship with its students, in particular, can sometimes be quite complex and is governed variously by contract (the university calendar and the various regulations, policies and procedures incorporated by reference), and a wide range of common law and statutory obligations and principles in such areas as administrative law, employment law, human rights law, and intellectual property law, to name a few. As pointed out in our earlier submission, universities are unique, complex organizations, in which decision-making and policy-making are frequently undertaken in a collegial environment with open discussion and debate.

The universities' fundamental concern with expanding the Review Officer's powers to include investigative and auditing powers is the potential impact of a regulatory body interposing itself in internal university processes. Any assessment of the propriety of the collection, use and disclosure of personal information must be premised on an understanding of the context in which the information was provided and the regulatory environment and culture in which it is used. The university is concerned that sufficient efforts to understand the university context will not be undertaken in the context of an investigation, ultimately resulting in poor information management policies that are not sensitive to the multitude of university obligations. Accordingly, CONSUP seeks the retention of the status quo in terms of the Review Officer's power.

In the event that the legislature disagrees and seeks to expand the Review Officer's role, CONSUP asks that the structure include the following elements:

- that the Review Officer's power following investigation be a power of recommendation, consistent with the Review Officer's power in reviewing a denied request for access to information
- that any investigation or audit only be permitted after all internal university processes have been exhausted
- that there be some mechanism to recoup some of the costs associated with responding to an investigation

Thank you again for the opportunity to make further representations. Please contact us if you have any further questions.