

Presentation to the Nova Scotia
Freedom of Information and Protection of Privacy Review Committee

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Check Against Delivery

OPENING

First, given my unexpected delay in being unable to attend in February, I thank you for allowing me to reschedule so that I might attend here today to speak on this important public issue.

In a press release issued in December the government urged everyone to make submissions to its newly appointed review committee with recommendations that would improve the Freedom of Information and Protection of Privacy Act.

Today, on behalf of the Liberal Caucus, I take up that opportunity to speak to the five of you appointed to this review committee with our recommendations that, we believe, will not only greatly enhance the accessibility of this Act.

But more important, it will go a long way in helping to restore the public's confidence in the accountability of its government.

STATEMENTS

The importance of accessibility of government documents and reports cannot be underscored, especially now at a time when the present government looks for ways to implement policy changes, cut programs, increase revenues, through taxes and user fees, ignore polite requests to produce documents.

But then hides behind onerous application fees to prevent Nova Scotians from obtaining information used to support those decisions which greatly affect them.

Reasonable accessibility, then, becomes all the more important today when Nova Scotians look to those they elected for reassurances that they are willing to be open and accountable and won't purposely hide embarrassing information by putting that information out of reach with onerous fees.

The Liberal Caucus made the issue of application fees an issue in the legislature last November when we introduced a private member's Bill to put the fees in the act and not in regulations.

We followed up with another amendment a few weeks ago - this time to greater ensure that an applicant's privacy is maintained by cabinet ministers and employees when dealing with a request for a record.

In both instances we were serving notice to the present government and to Nova Scotians - the most frequent users of the act - that we will and we do take the accessibility, accountability, confidentiality and responsibility provisions of the FOIPOP Act seriously.

The fees increases by the present government severely damage the accessibility and accountability provisions of the act.

And the recent media stories and the questions raised in the legislature with respect to the conduct of the cabinet members of the present government in knowing who was making applications to the government prove that the present government is intent to damage the confidentiality and responsibility provisions.

Without presenting too much on the government's approach, I will state that there appears to be a problem with the current system when a cabinet minister knows of three specific FOIPOP application requests from the Liberal Caucus made not to that cabinet minister's department but to another cabinet minister's department.

What's troubling is that the cabinet minister's response was to refused to answer the questions about the incident.

We asked: Why did he have the information? And where did he receive the information?

He didn't answer the question.

Simply put, this incident should not have taken place in the first place.

Mr. Chair, cabinet members and employees, because of the position they occupy in government in dealing with applications, must treat responsibly the applications that come before their departments. That is why they should be prohibited from disclosing the identity of an applicant, except where necessary, when dealing with a request for access to a record.

To do otherwise is to violate the intent of the Act's privacy provisions.

Unless there is some legitimate reason in processing an application, there is no reason why a cabinet minister should know about another cabinet minister receiving a request for information.

The Liberal Caucus hasn't forgotten about the need for more openness by the government. That is why we are here today calling on this committee to recommend in its final report that fees be roll back fees and that those fees be legislated.

And we haven't forgotten about the need for more protections for an applicant. That is why we are calling on this committee to recommend changes to protect the name of an applicant.

These are ideas that are fully supported by the province's own independent Freedom of Information Review Officer. Indeed, he is concerned that the names of applicants are too widely distributed within public bodies and the fees too high.

These changes must occur if our FOIPOP Act is to mean anything substantial.

Besides these improvements to the act that we are making here today, we are committed to improving how Nova Scotians' view their government.

For us, then, one key recommendation to ensuring an open and accountable government is through legislative changes that would take away the government's right to arbitrarily increase fees without first defending it.

We recommend this, not because simply because it sounds good, but because it is the right thing to do and because it is central to improving the perception of democracy and accountability in this province.

Mr. Chair, while I spoke broadly about changes we would like to see in your committee's final report, what we are concerned here with essentially is that the application fees that are charged to average Nova Scotians, which according to the FOIPOP review officer's own documents are the ones who most typically use the act for accessing information, are too onerous.

Such fees leave many, we believe, to forsake filing applications.

We know this: Nova Scotians have been filing less freedom of information requests since the provincial government introduced higher fees in April 2002.

In fact, according to the Review Officer's Annual Report there has been a decrease of about 26 per cent. We can only wonder aloud how many more thinking about filing an application in light of the current government's policy changes, decided against filing an application because of these dramatically higher fees.

To be truly accountable and open and sincere in governing, governments - present and future - must be prevented from arbitrarily changing the fees that it charges to applicants without first holding a meaningful debate in the legislature to explain beyond the rhetoric why the fees are needed, why the fees are justified, what the outcome of an increase in fees will mean.

These are important questions that need to be addressed before we shut Nova Scotians out of the process.

Mr. Chair, numerous academic studies, statistics, and common sense make it clear that imposing dramatic fee increases - such as we have seen - to access public information has put that information well beyond the reach of average citizens, journalists, and organizations.

Mr. Chair, we should not be surprised by the connection between dramatic fee increases and the subsequent decrease in applications. The connect between these two is evident; and that connection is real.

Consider, Ontario's Information and Privacy Commissioner's 1998 Annual Report that information was clearly available three years before the current government made their changes. It was there for anyone willing to look at it.

If we don't have the experience with fee increases, we must look elsewhere to see the effect of such fee increases. When Ontario imposed new fee there was a dramatic impact on the public's use of accessing information.

From 1995 - the last year before the new fees were introduced - to 1998, the number of requests declined by 25 per cent. In the same period, appeals declined by 56 per cent.

Mr. Chair, in the same Ontario report came these conclusions from the review commissioner: "The sheer size of the decrease in the number of requests and appeals

compels us to question whether the new fees have gone too far, particularly the appeal filing fee.”

That point is interesting - the new fees have gone to far. It’s interesting because when the current government brought in its fee increases they actually exceeded Ontario’s.

The Ontario Commissioner also stated: “The right of access to government information is an important accountability mechanism, and it is unfortunate that use of this avenue appears to have declined, at least in part, as a result of the new fee structure.”

The current government in bringing in the changes knew what the effect would be - less accountability.

And for the government to claim otherwise would be to claim ignorance.

The current approach to the Act has fostered government secrecy and undermined public scrutiny, which are greatly needed when policy changes are being made, when program funding is being cut entirely or reduced.

Without the veil of secrecy removed, the public’s trust of those they have chosen to elect is eroded.

This government has put in place a fee structure that limits requests. Indeed, how could it not given that fees for a request increased from \$5 to \$25, appeals, once free, now cost \$25, and the search time fee has increased from \$20 to \$30 an hour.

Despite claims to the contrary, by imposing these onerous fees, the government has effectively locked away vital information about how Nova Scotians are governed.

Members of the committee, simply put, without being able to adequately and sufficiently access their government or appreciate the reasons why their government undertakes one action over another, Nova Scotians may only come to view that government with disdain or cynicism or worse yet turn their backs and view it with distrust.

For that reason, Nova Scotians need to believe that their government is not purposely hiding embarrassing information by putting that information out of reach with these onerous fees.

What we are recommending is that the application fees that are charged to Nova Scotians for accessing information under the Freedom of Information and Protection of Privacy Act shall be nothing less than a reasonable fees.

And we firmly believe that at the rate they stand today, they do not come within to the definition of being reasonable and may ultimately, if remain unchecked, prove to be prohibitive and democratically unfair.

I would like to add that the government's attitude to the knowledge it shares with citizens says a great deal about how it stands on different public policy issues.

By enshrining the principle of reasonable access to information with reasonable fees, it demonstrates a commitment by legislators that the principle of openness, accountability and transparency will not ring hollow.

We realize that to govern better we have to be open to individuals in our society who seek to hold us to a higher standard by asking for documents and government information that show where we stand on issues and why we did what we did.

As an elected official, I not only owe governing better and providing more effective representation to those that elected me, but I owe it those future generations in whose name I, along with the other 51 elected members, make decisions.

There is more that can be done with improving the FOIPOP Act's purpose. And there is more that this committee can do to bring that about.

Simply put, the purpose and intent of our recommendations are to make the government more accountable in how it conducts its business with access to information.

That is why we would recommend that the application fees be returned to their pre-April 2002 rate and made part of the legislation;

We would recommend that the processing fee be set back to its previous rate and made part of the legislation;

We would recommend that the review fee be removed and made part of the legislation;

and finally, we would recommend that the two free hours of search time be reintroduced and made part of the legislation.

Mr. Chair, I leave the power to change the current fee structure in your final report.

We hope that the recommendations we are proposing, namely legislating the fees at reasonable levels and prohibiting cabinet members and employees from disclosing applicant's names, you will be able to demonstrate to the government - and what political party may be in power when you render your report - that there is a need to ensure greater openness about decision-making which can be of benefit to government itself and to all Nova Scotians.

The need to access government records is necessary, but it must also come without the fear of having your name revealed.

CONCLUSION

Under Section 50 of the Freedom of Information and Protection of Privacy Act, you have a mandate to undertake a comprehensive review of the act.

I hope as each of you reviews the submissions on the adequacy of the legislation, you will provide the government with meaningful recommendations that will go to greatly ensuring that Nova Scotians are again entrusted with that most cherished of principles in a democracy - being able to hold the government accountable.

That, I do not need to impress upon you too much, will only come when reasonable accessibility, confidence and trust are maintained in the absence of onerous application fees.

More succinctly: The decrease in the number of requests for information and appeals underscores the need to review and revise the fee structure.

Despite outcries of many groups and individuals for the need to reduce application fees, Nova Scotia continues to carry the distinction of the having the highest FOIPOP fees in Canada.

That must change; and that can change with the recommendations here today, which we hope you will include in your report to the government.

I wish you well as you listen to further submissions from average Nova Scotians and organizations and in the subsequent deliberations you make on your recommendations.

I thank you for your time.