NDP Caucus Office

March 21, 2003

Dear Members of the Freedom of Information Review Committee:

Thank you for the opportunity to deliver this report to your committee.

The Nova Scotia NDP Caucus is a frequent user of the Freedom of Information and Protection of Privacy Act. As Nova Scotia's Official Opposition it is our duty to act as a firm check on government decisions and activities. Our system of governance was established with the belief that good opposition begets good government.

Information is the most important tool for an informed and effective opposition. This is no secret. Governments have long recognized this fact. And so, there are endless examples of governments trying to limit information, without being seen to be doing so, as a way to weaken opposition.

The Freedom of Information Act in Nova Scotia sets out to make the arbitrary denial of information more difficult.

Our office has safely filed about a thousand freedom of information requests. We have probably used the Freedom of Information Act more than any other group. I think it's important therefore that this committee, which consists of just one member who has made significant use of the act, should give careful consideration to the following comments. The act as it now stands leaves freedom of information administrators, communications staff, deputy ministers, political appointments such as executive assistants to cabinet ministers and cabinet ministers themselves in a position to control the flow of information.

We are not speaking lightly when we say the abuse of the act inside government is widespread. Administrators sometimes serve as road blocks. Often administrators allow their judgement to be directed or overruled by political or communications staff whose sole purpose is to protect the image of departments and their elected

officials.

Let me give you just a few examples from the past few years:

> A foipop administrator called on the day documents were due and reported there would be a delay because the department's director of communications, who had no business viewing the file, did not want all the identified documents released.
>
> Following the defeat of the previous government a former executive assistant informed our staff he routinely reviewed foipop responses and removed politically sensitive documents.
>
> Letters from one department's foipop administrator are written using the letterhead of the acting director of communications for the department.
>
> Our staff is often informed "off the record" that the administrator did not agree with a decision to withhold documents but that the decision was made by people senior to them including Deputy Ministers.

Many departments and administrators are honest interpreters of the act. In fact, I would like to point out that the Nova Scotia Liquor Corporation, the Department of Education, the Valley Region District Health Authority, the Department of Community Services and more recently the Department of the Environment and Labour consistently, in our view, try to apply the act honestly. That's not to say we always agree and never appeal their decisions. It is to say that their administrators' interpretation of the act guides their decisions.

This committee is fooling itself if it believes that is the case across government. In fact, if this committee believes this is the case, then its report will surely fail to address the political and bureaucratic abuse that goes on today.

The range of abuse runs from those mentioned above to those much more subtle and difficult to regulate. These include instances of fee estimates designed to discourage applicants. Failure to conduct thorough searches. Denying that

documents exist. Exempting documents from release despite clear precedent decisions by the Review Office that the information should be made public.

There is nothing this review committee can do to address many of these more subtle abuses. Because this system requires trust, any department or administrator bent on foiling the act will always find ways to delay, overcharge or otherwise avoid the intent of the act.

But this committee can make those abuses more difficult. Let me be specific. Our office gave careful consideration to this matter last fall when we introduced Bill number 157. That Bill would have improved the act for applicants, the Review Office and also for administrators.
the Nova Scotia legislature gives teeth to the province''s Freedom on Information Office by making it truly independent, changing its review decisions to orders not recommendations, ensuring any future FOIPOP fee increases to the public are debated in the Legislature and not simply enacted by Cabinet.

Our legislation would have ensured Nova Scotians had a more independent Review Office looking out for them. No longer would the Review Officer's decisions be ignored by government. No longer could the government of the day simply price freedom of information out of the reach of Nova Scotians without having to answer for that in a very public way.

The Legislation would have rolled back the access and review fee increases imposed by the Hamm government and places them in the Act so government cannot simply change them in the future through an Order in Council.

It would have made the Review Officer fully independent of government by requiring all-party agreement on the appointment and making the removal from office a two-thirds, as opposed to as simple, majority of the House.

The Bill was also aimed at strengthening access provisions in the Act by changing Review Officer''s decisions on reviews from recommendations to orders and compelling heads of public bodies to comply with the orders or appeal to the courts. Currently the applicant must appeal if the public body will not comply with

a Review Officer''s recommendation.
It would have empowered the Review Officer to investigate privacy complaints and enable the Review Officer to initiate investigations without having received a specific complaint.

The Bill would have mandated the Review Officer to monitor, research and report on privacy and access issues. And it would have added offenses, increased the fine and changed the standard of certain offences from "malicious" to "knowingly"in cases of privacy protection.

We invite your committee to give the Bill consideration when writing its report. I have attached it for you convenience and will highlight a few sections below.

Subclause 1(1) provides that an applicant who requests information pursuant to the Freedom of Information and Protection of Privacy Act shall pay a *fee in the amount of five dollars.*

Subclause 1(2)

(a) sets out the maximum fees that may be charged for the services referred to in subsection 11(2) of the Freedom of Information and Protection of Privacy Act*;* and

(b) provides that an *applicant is not required to pay a fee for the first two hours spent locating and retrieving a record.*

Subclause 1(3) adds additional provisions to the Freedom of Information and Protection of Privacy Act dealing with estimated fees and the waiving of fees.

Subclause 2(1) enables a person who believes their right of protection of personal privacy has been violated to request a review.

Subclause 2(2) *removes the provisions in the Freedom on Information and Protection of Privacy Act that require a person to pay a fee for a review of a decision under the Act*.

Subclauses 3(1) and (2) provide that the appointment of the Review Officer must be by unanimous consent of all parties in the House of Assembly.

Subclause 3(3) provides that the Review Officer cannot be removed from office unless at least two thirds of the members of the House of Assembly vote in favour of the removal.

Subclause 3(4) *adds new provisions dealing with the powers and duties of the Review Officer*.

Clause 4 broadens the role of the Review Officer.

Clause 5

(a) amends the powers of the Review Officer by *requiring the Review Officer to issue orders* rather than make recommendations respecting the disposition of matters under review;

(b) requires the head of a *public body to comply with an order of the Review Officer or appeal the order to the Supreme Court*; and

(c) makes certain necessary changes arising from the issuance of orders by the Review Officer.

Clause 6 makes certain necessary changes arising from the issuance of orders by the Review Officer.

Clause 7 changes the standard for an offence under the Freedom of Information and Protection of Privacy Act, adds new offences to the Act and *increases the fine from a maximum of $2,000 to a maximum of $5,000*.

Clause 8 removes the authority of the Governor in Council to make regulations prescribing or limiting the fees to be paid pursuant to the Freedom of Information and Protection of Privacy Act.

We would like to close this submission by focusing on what is the most problematic aspect of the current government's fee increases. Our office objects to the $25 application fee. We object to the idea of having to pay $25 for a review,

particularly in cases when an administrator's decision is clearly against review and court precedents and seems to be designed to further delay the release of information. But the elimination of the two-hour free search time causes our office and other applicants the most financial hardship. *It is the single most effective impediment the current government has placed in the way of free flow of information*.

In the past the free search time was a negotiation tool used by coordinators to force applicants to focus their search. I have spoken to coordinators today who would like that option back. If your committee is able to achieve just one amendment to the act and regulations we believe you should recommend the reinstatement of the two-hour free search time.

Thank you for attention and your efforts on this committee,

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