



NOVA SCOTIA BARRISTERS' SOCIETY

March 24, 2003

PERSONAL AND CONFIDENTIAL

Peter O'Brien, Chair
FOIPOP Review Committee
c/o Nova Scotia Department of Justice
5151 Terminal Road
PO Box 7
Halifax, NS B3J 2L6

Dear Mr O'Brien:

Re: Freedom of Information & Protection of Privacy Review Committee

This letter is being submitted by a number of the self-governing professions in Nova Scotia in response to the correspondence directed to us by you on February 11th, 2003. From the letter it is clear the present Advisory Committee is aware of the common submissions made by our professional bodies during the last review of FOIPOP in 1996. Since our common position has not changed, we wish to reiterate, without repetition, the positions asserted in that earlier review.

Our common position remains that FOIPOP ought not to apply to the self-governing professions. In addition to the reasons set out in 1996, there have been developments which we draw to the Review Committee's attention. They strengthen our position which favours the status quo as far as we, as a group, are concerned.

In 2000, the Supreme Court of Nova Scotia ruled on the applicability of FOIPOP to the Cosmetology Association of Nova Scotia. In *Iannetti v. Cosmetology Association of Nova Scotia*, Justice MacAdam ruled that the Cosmetology Association is not a public body. His reasoning addresses

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both the language of the FOIPOP *Act* as well as the practical implications that might flow from a different conclusion. In paragraphs 26 and 27 Justice MacAdam stated his conclusions as follows:

[26] Present here, however, is not the question of the application of the *Act* in the context of what may and may not be disclosed, but rather whether in fact the *Act* applies. As such, it is necessary to examine the role and purposes of self-governing professions and occupations in the context of the present wording in the *Act* and to determine whether the wording is now broad enough to encompass such bodies. Clearly, the Legislature could have amended the act to use words, such as were implemented in British Columbia, that would clearly encompass self-governing professions and occupations, if indeed that was the intention. Although not satisfied the present wording in the *Act*, nor the financial implications of the Act would preclude its extension to these bodies, I am also mindful of the comments of Justice Smith in *Greater Vancouver Mental Health Service Society v. British Columbia (Information and Privacy Commissioner)*, *supra*, that the *Act* imposes serious obligations on public bodies and that a blurring of the distinction between inclusion and exclusion is undesirable and in fact, inconsistent with the scheme of the *Act*.

[27] I am not satisfied it was the intention of the Legislature to expand the application of the *Act* to the Association and this conclusion is notwithstanding the statutory instrument creating the Association contains a number of provisions detailing authority in a number of areas of public concern and public interest, namely, the qualifying, licensing and disciplining of those practicing cosmetology and more particularly, the provisions providing for ministerial supervision and permitting the minister, presumably at the minister's discretion, to require from time to time the transmittal of a certified copy of the affairs of the Association.

In the 6 years since the last review of the *Act*, technology has had a significant impact on the openness that is exhibited by the self-governing professions. The establishment of websites¹ on the internet which provide a means for significant public access to information about both the governing processes of our organizations as well as specific activities being undertaken, has greatly enhanced the transparency and public accountability of the professional governing bodies. That transparency and the information about process that is available to both members and the public clearly demonstrates why the *Act* should not be extended to the self-governing professions. As was pointed out in 1996, we govern our members in the public interest and are accountable for that in a variety

¹
<http://www.cpsns.ns.ca/> College of Physicians & Surgeons
<http://www.crnns.ca/> College of Registered Nurses of Nova Scotia
http://www.cica.ca/index.cfm/ci_id/2145/la_id/1.htm Institute of Chartered Accountants of Nova Scotia

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of ways.²

The scope of our accountability has been enhanced significantly by our openness with regard to information which we make available.

That public information must be considered in the context of the private information which is available to both members of our profession and individual members of the public with whom we deal on matters affecting them. Specifically in the area of complaints, each of our professions provides full information to complainants when they are dealing with us regarding alleged misconduct by one of our members.

The combination of this private information and the vast amount of material we now make available to the public, demonstrates clearly that FOIPOP need not be amended to increase its reach into the jurisdiction of the self-governing bodies.

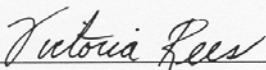
There are many other reasons why FOIPOP is not an appropriate vehicle for bodies like ours. These were outlined in our earlier submissions. It is noteworthy that at present only British Columbia has seen fit to statutorily extend freedom of information legislation to professional bodies. From discussions with our colleagues in that province, we know that compliance with the *Act* is very expensive. The costs of this compliance are borne exclusively by members of the profession. However, it is our perception that by having this legislation there is no more accountability or openness in British Columbia than exists in comparable bodies in Nova Scotia. In other words, it is our view that extension of the *Act* in British Columbia has probably not accomplished what the legislature there might have intended it to do.

²See paragraph 10 in *Iannetti v. Cosmetology Association of Nova Scotia*

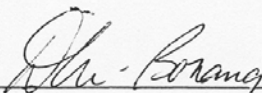
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We are available to meet with the Review Committee to discuss these matters at any time. If further clarification is required, you may communicate directly with any of the bodies who are jointly making this submission.

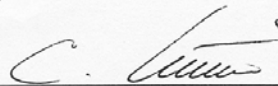
Yours truly,



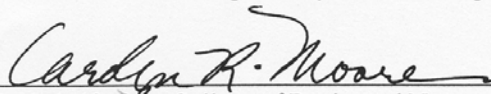
On behalf of the Nova Scotia Barristers'
Society



On behalf of the Provincial
Dental Board of Nova Scotia



On behalf of the College of Physicians & Surgeons



On behalf of the College of Registered Nurses
of Nova Scotia



On behalf of the Institute of Chartered Accountants of
Nova Scotia

DIP/krh