

**LAW SOCIETY OF NEW BRUNSWICK  
BARREAU DU NOUVEAU-BRUNSWICK**

July 11, 2007

Donald J. Savoie  
Chairperson  
Right to Information and Protection  
of Personal Information Review Task Force  
Sartain Macdonald Building, Suite 103  
P.O. Box 6000  
Fredericton, NB  
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**RE: Submission to the New Brunswick Right to Information  
and Protection of Personal Information Task Force**

Dear Mr. Savoie:

The following is presented to the Task Force for its consideration on behalf of the Law Society of New Brunswick. The comments contained herein have been drafted following our review of the brief submitted to the Task Force by Professor John Townsend (Student Kevin Motley) and the brief prepared by the Privacy Law Section of the New Brunswick Branch of the Canadian Bar Association. Both are excellent contributions to the work of the Task Force and, as a result, the Law Society's submissions within will be limited to emphasizing our support for their submissions on several key points noted in the briefs.

We wish to note that our submission is made within the context of fulfilling our obligations as set out in our originating statute. It is the Law Society's statutory mandate to protect the interests of the public in the administration of justice. The matters that are before the Task Force for review go to the heart of a democratic system of which the justice system is a fundamental pillar.

Fees as a Deterrent to Frivolous or Vexatious Applications for Information

There is little doubt that the potential exists for applications under the *Right to Information Act* (RIA) to be frivolous or vexatious. Complying with applications pursuant to the RIA consumes scarce human resources and this point must be acknowledged. Frivolous or vexatious applications must be kept to a minimum. Setting fees that must accompany applications for information is one way to limit frivolous or vexatious requests. For that reason the present fee structure that applies to requests for information appears reasonable and the Law Society does not object to the imposition of

fees to accompany a request under the RIA. However, the fee structure must never be a deterrent to those who cannot afford the application fee. Therefore a process must be established to assist such applicants if they are unable to pay the set fee. After all, access to information must not be open only to those with the means to pay.

### Appeal Process

Of course not all requests for information are granted by the Minister to whom the request was made. A review of the briefs noted in our opening paragraph indicates that the authors consider the present system of dual appeal options to be a serious weakness in the present system. We support the establishment of a single option for appeal. However, the single appeal option must not be procedurally complex thereby inhibiting an applicant from having a meaningful option at their disposal. In our view, it would fit more within the intent of the RIA that the appeal be by way of the Ombudsman as opposed to the Court system. The latter may not be a viable option for lay people who lack the legal insight or resources to navigate through a judicial process. Any appeal process that is more 'user friendly' would better fit the intent of the *Act*.

Under the present structure, it can be convincingly argued that the existing legislative framework and other resources allocated to the office of the Ombudsman is insufficiently robust to fulfill its mandate as effectively as it should. Recognizing that the RIA provides for a thirty-day timeline for complying with a request for information any appeal process must follow a similar time frame for determination. As a result, sufficient resources must be made available to ensure the appeal process is able to meet similar time limits as are in place for responding to the initial request and the legislation must provide for a final and binding determination at that level.

### Independent Privacy Commissioner

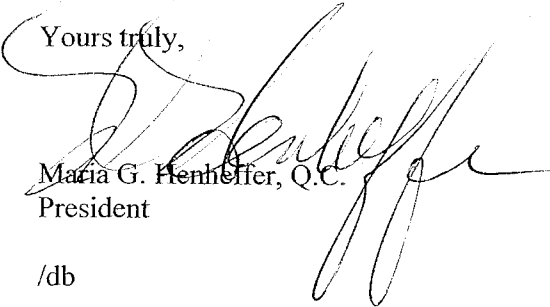
The creation of a Privacy Commissioner's Office, whose authorities would centre on the oversight of matters concerning the protection of personal information, would be an important safeguard to the growing concern over the gathering and distribution of personal information. With the expansion of the means by which personal information is gathered it will be imperative that the legislative framework encompass the public and private sectors and be broad enough to require safeguards against unauthorized use of this information and a means of prosecuting those responsible for breaching such protections. This will be particularly true as the Government of New Brunswick moves to create a system of health information and records management. Information gathered through this process will be at constant risk of misuse and require strong oversight by a dedicated office such as a Privacy Commissioner. As access to various personal information becomes more widespread, it will be imperative that the means at the disposal of the

Privacy Commissioner be broad enough in scope to provide the protection the information deserves.

Conclusion

On behalf of the 1500 members of the Law Society of New Brunswick, I want to express our appreciation to the members of the Task Force for their commitment to the review process concerning these matters of importance for all New Brunswickers. Access to information and the protection of an individual's privacy are central elements to achieving a healthy democracy. The work of the Task Force in this regard is an important contribution to that goal. Please accept my thanks, on behalf of our membership for reviewing our submission and best wishes for a successful conclusion of your work.

Yours truly,



Maria G. Henneffer, Q.C.  
President

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