

June 13, 2007

**NEW BRUNSWICK POLICE COMMISSION**

**SUBMISSION TO THE RIGHT TO INFORMATION AND  
PROTECTION OF PERSONAL INFORMATION REVIEW TASK FORCE**

The statutory mandate of the New Brunswick Police Commission is broadly set forth in the following sections of the *Police Act*:

**20** The Commission may assess the adequacy of each police force and the Royal Canadian Mounted Police and whether each municipality and the Province is discharging its responsibility for the maintenance of an adequate level of policing.

**22(1)** Subject to subsection 26(2) where a person has a complaint relating to any aspect of the policing of any area of the Province he may state his complaint in writing to the chairman of the Commission.

**22(4)** The Commission shall, at the direction of the Minister, and may

(a) on its own motion,

(b) in response to a complaint by a person, or

(c) at the request of a board or council,

investigate any matter relating to any aspect of the policing of any area of the Province.

The Mission Statement of the Police Commission captures the thrust of the legislative intent:

“We are an independent oversight commission which investigates and resolves citizens’ complaints concerning the conduct of police officers and any other aspect of policing. We also assess the adequacy of police forces within New Brunswick.”

Although historically the Police Commission has not been included in the Schedule of departments and government agencies to which the *Right to Information Act* applies, section 2 of that *Act* still confers an overall intent to provide access to information regardless of whether the department or organization is listed as one to which the *Act* applies:

**2** Subject to this Act, every person is entitled to request and receive information relating to the public business of the Province, including, without restricting the generality of the foregoing, any activity or function carried on or performed by any department to which this Act applies.

It is an interesting question of statutory interpretation whether section 3 of Regulation 85-89 under the *Act* can override section 2 of the *Act*.

In practice, however, the present saving provisions of section 6 of the *Act* render much of the Police Commission's activities exempt from access requests. We note, in particular, the following subsections:

- 6** There is no right to information under this Act where its release
- (a) would disclose information the confidentiality of which is protected by law;
  - (b) would reveal personal information concerning another person;
  - (h.1) would reveal information gathered by police, including the Royal Canadian Mounted Police, in the course of investigating any illegal activity or suspected illegal activity, or the source of such information;
  - (i) would impede an investigation, inquiry or the administration of justice.

It can be argued that if the Police Commission has directed that certain proceedings be conducted in private under the provisions of subsections 22(6) and (12) of the *Police Act*, the confidentiality of those proceedings is "protected by law" within the meaning of section 6(a) supra:

- 22(6)** The Commission may, where it considers that there are compelling reasons in the public interest or in the interests of the witness, direct that a witness be examined in private."
- 22(12)** Where in the opinion of the Commission there are exceptional circumstances concerning public interest or in the interest of an individual, a hearing or any portion thereof under this section may be held in private.

The Police Commission agrees that every person should have the broad rights to request information conferred by section 2 of the *Act*, subject to the present provisions of the *Act*, but would prefer that it not be included in the regulatory Schedule as an agency or "department" to which the *Act* applies. To do so would subject complainants, police officers or their representatives and the Commission to reviews by the Court of Queen's Bench or the Ombudsman on a regular basis, resulting in unwarranted delay and additional expense.

It is considered essential to effective civilian oversight of law enforcement that citizens are informed of their right to review of police actions and are encouraged to address complaints regarding policing matters to the appropriate agency for review. When Bill 50, *An Act to Amend the Police Act*, is proclaimed, the Police Commission will be

responsible for handling complaints respecting service or policy and unsatisfactory work performance, as well as those involving the conduct of a police officer. To make the details of such complaints accessible to virtually anyone, including media and bloggers, could only have a chilling effect on the principal raison d'être of the Commission and result in an impediment to the surfacing and resolution of complaints.

The *Police Act* provides particular safeguards to both complainants and police officers that complaints shall be handled in an equitable fashion in accordance with established principles of administrative law and arbitration. To have this process overshadowed by media coverage or other outside interests can only be counter productive.

Bill 50 establishes an important new principle in that future discipline hearings will be open to the public, except in exceptional circumstances. In the past, hearings were only open when all parties gave their consent. The *Police Act* revisions also provide for arbitration to resolve recommendations to dismiss or demote a police officer for unsatisfactory work performance. Such allegations involving personnel matters are generally considered to warrant confidentiality.

It should also be noted that under section 38 of the amended *Police Act*, regulations may be made "respecting the confidentiality of the documents described in sections 28.2 and 31.1 and the disclosure of information contained therein". These sections pertain to investigative reports.

Bill 50 also establishes a requirement that the parties attempt a settlement through informal resolution rather than proceeding to a formal hearing in every case.

It is generally considered that dispute resolution is hindered if bound by access to information requests. Indeed, federal legislation (*Personal Information Protection and Electronic Documents Act* s. 9(3)(d)) provides that an organization may refuse to disclose personal information if it was generated in the course of a formal resolution process.

In summary, the Police Commission welcomes the upcoming revisions to the *Police Act*, which have been generated after a thorough review by all the stakeholders. In particular, the revisions will contribute to a more open process in discipline hearings and will significantly expand the oversight role of the Commission.

The Commission would not be supportive of any actions that would result in a disincentive for members of the public to launch complaints or that might inhibit police officers from fully defending their conduct. It would further hope that the right to information would not operate as a hindrance to the new dispute resolution process established by the current *Police Act* revisions.

Respectfully submitted,

Peter Scheult  
Chairman