New Nouveau Brunswick

Access to Information and Privacy Review

Final Report

September 2007

Right to Information and Protection of Personal Information Review Task Force

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Introduction

The mandate of our Task Force was to review all aspects of New Brunswick's right to information and the protection of personal information legislation and to bring forward recommendations on how it could be improved (see Appendix A). In carrying out our mandate, we decided to consult New Brunswickers, the literature, and other jurisdictions to see how they implemented their right or access to information and protection of personal information legislation.

The Task Force published a discussion paper in May 2007 to identify key issues and to outline a number of questions to which we wanted answers. It was designed to promote public participation and it served as a reference in leading our consultations with interested parties. We sought to focus the consultations on the series of questions we asked in the discussion paper (see Appendix B). Our consultations took many forms: we established a web site and 1-866 telephone line, provided a fax number, and invited New Brunswickers to voice their views. We also decided to embrace more traditional approaches to public consultation, including face-to-face contact and the solicitation of written input. The quality of the submissions and observations from those who took the time to contribute their views and suggestions was very high and made a vital contribution to the work of the Task Force.

It is important to note at the outset that the Task Force's mandate was limited to right to information and privacy issues as they relate to information held and managed by New Brunswick's public bodies. The government decided on May 23, 2007 to establish another task force to recommend new legislation to regulate accessing and protecting personal health information. It too will be tabling a report and a series of recommendations in Fall 2007.

This report is divided into three sections: *What We Heard; Issues to Consider;* and, *Recommendations.* In our discussion paper, we reported that we would make the report available to the public at the same time as we would be submitting it to the government. We are honouring this commitment by making our report available on the web site on the same day that we are submitting it to the Premier and his government. I also would like to state that at no point did the government of the day, including the Premier and Cabinet Ministers, try to influence the public consultation process, the work of the Task Force or the content of this report. As chair of the Task Force, I interviewed former Ministers from two previous governments. I did not, however, interview the Premier or current Cabinet Ministers.

The Task Force takes great pride in its ability to deliver the report on time and at a minimum cost to New Brunswick taxpayers. The total cost of the Task

Force, including all travel expenses, amounted to approximately $19,000. We are attaching to this report a detailed breakdown of the costs, including travel expenses (see Appendix C). We did not hire consultants nor did we submit any hospitality claims. Contrast this with Ottawa's Access to Information Review Task Force, which took 18 months to complete its work and generated a number of consultant reports at a substantial cost to Canadian taxpayers.

We recognize that the government of New Brunswick can accept, reject or accept only in part our findings and recommendations. We urge the government, however, to accept our report in its entirety. We are confident that our recommendations would enjoy the support of a great number of New Brunswickers, that they would lead to a more open and transparent government and strengthen the bond between government and citizens. Those who took the time to meet with us or to participate in the work of the Task Force will be able to see their contributions in both the content of this report and its recommendations.

The recommendations cover a variety of issues and are, by definition, broadly worded. It was not possible in this report to present detailed legislation for the government to consider which would cover all the finer points of an access to information and protection of personal information legislative package. We urge those responsible for drafting legislation to give life to our report and recommendations and to draft legislation that reflects the spirit of our report.

As is well known, New Brunswick became a pioneer in open government when, in 1978, it became only the second jurisdiction in Canada to introduce right to information legislation. The government of Canada, for example, only introduced similar legislation in 1983. All other provinces have since introduced right or access to information legislation. However, as the *Telegraph Journal* argued in its written submission to the Task Force, "other jurisdictions have leapt ahead of New Brunswick." The reality is that the province's right to information legislation has not seen any major reform since it was proclaimed into law nearly thirty years ago and it is now, by any standard, dated.

We hasten to add that new legislation, however well crafted, will by itself not be enough to ensure open and transparent government. The government needs to promote a strong "right to information" culture, a culture that should permeate all levels of the government. The culture must also enjoy the support of outside groups including the media. It should, in turn, promote a learning culture, one that focuses on lessons learned rather than on "gotcha journalism." We fully recognize that this is easier said than done. But we must pursue it with determination in the interest of good government and a healthy representative democracy.

Politicians, interest groups, the media and citizens should appreciate that a right to information or an open government culture will take time to fully take root. Our parliamentary system based on the Westminster model, until quite recently, placed a premium on secrecy in government operations and in keeping much of the relationships between Ministers and civil servants away from public scrutiny. Civil servants everywhere in parliamentary systems – and New Brunswick civil servants are no exception – have been hesitant to let go of a model that has worked well for them and elected politicians over the years in exchange for a new, more open model that is or has the potential of making life more difficult for those working inside government. Civil servants know that they owe their loyalty to the government of the day. They also know that they are to be non-partisan and to avoid public and political debates. The notion that political and public debates are reserved for their political masters is deeply ingrained in the civil services of Westminster-styled parliamentary systems and it has been a key part of their organizational culture for a century or more. Civil servants now know, however, that right to information legislation has the potential of drawing them into politically charged debates. Their views and their work can become accessible and quickly turn any issue into a highly charged political debate.

There is evidence in jurisdictions with right to information legislation – and again New Brunswick is no exception – that government officials are turning to any number of ways to get around right to information legislation. We know that civil servants in London, Ottawa and Fredericton are not committing their ideas and recommendations to paper to the same extent that they did in years past. It is possible to access written briefs, documents and memos, but it is, of course, quite another matter to access oral briefings. Some jurisdictions are now contemplating legislation that would force the hand of civil servants to commit their views and recommendations to paper.

All of the above to make the point that legislation can never constitute the full answer. More is required, notably a culture of openness. This means, in turn, that government officials should not ask, as a matter of fact, why citizens should have access to government information but, rather, why not. The transition to an open culture, which is now in its early phases, will take time before it is firmly in place. Thirty years in the life of a country's or a province's political and administrative institutions is a relatively brief period. The onus to make a culture of open government work does not lie solely with civil servants and politicians – it is also the responsibility of the media, associations, groups and citizens. A climate of confidence between political and administrative actors and between them and stakeholders, and the media and citizens is important to ensure that a culture of openness can fully take root.

The report that follows deals with both legislative requirements and the need to promote a culture of open government while at the same time protecting the personal information of individuals. We begin by reporting what we heard from participants in our public consultation exercise. We then explore important issues in promoting right to information legislation and a culture of open government. We conclude with a series of recommendations for the government of New Brunswick to consider as it plans to overhaul its right to information and the protection of personal information legislation.

Lastly, we want to stress that the Task Force did not look at right to information and privacy legislation in isolation of other public policy issues and the requirements of our province's political and administrative institutions. The Task Force was mindful of potential cost to taxpayers and the need to balance right to information with the protection of personal information.

What We Heard

We heard from former politicians, partisan political advisors, senior civil servants, former senior civil servants, front line civil servants, media representatives, Officers of the Legislative Assembly, citizens, representatives of municipal governments and related agencies and commissions, and universities. Some had brief not-for-attribution comments, while many others produced substantial written submissions. Though they held different views on how to go about it, all had one goal in mind: to strengthen the bond between the government and citizens and to make representative democracy work better in New Brunswick.

We heard a variety of views and suggestions and not all the views expressed in the consultation pointed in the same direction. We can report, however, that a consensus exists that New Brunswick's right to information and protection of personal information legislation is dated and that it should be overhauled. Precious few voices were heard in support of the status quo. Some retired deputy ministers argued, albeit insisting on anonymity and perhaps more to promote a debate than a suggestion to be taken as a serious possibility, that the province's right to information legislation should be scrapped. They maintained that the legislation is very costly and time consuming to implement and that there is no evidence to suggest that it has contributed to better government. However, we did not hear this message from anyone else, including currently serving deputy ministers and other civil servants.

That said, a good number of New Brunswick civil servants made a point of telling the Task Force that New Brunswickers should know that implementing right to information legislation is both time-consuming and costly. It is important to stress, however, that civil servants in other jurisdictions in Canada and abroad have the same message. For example, the federal government's 2002 task force report, *Access to Information: Making It Work for Canadians,* said that "public servants expressed concern about the time and resources required to respond to increasingly large and complex requests, about a lack of clarity in the rules, and about the way in which investigations into complaints are conducted."[1]

New Brunswick civil servants told the Task Force that there have been many instances where they have gone to great lengths to generate requested information at a substantial cost to taxpayers only to see the information left on shelves because the individual requesting the material went on to other things. They also told the Task Force that a number of information requests are now made for commercial purposes (e.g., a business or consultant searching information on a competitor's bid or information on environmentally sensitive issues or on land that has economic value). In some instances, the material

is available on a fee-for-service basis, but by going the right to information legislation route, one can obtain the same information at very little cost. The question that taxpayers may well have is whether they should continue to underwrite the costs of such requests.

This is not to suggest for a moment that New Brunswick civil servants are reluctant to support right to information legislation. To be sure, the legislation has made life more difficult for many civil servants and raised some issues about their relations with politicians and their capacity to remain anonymous as the traditional Westminster-Whitehall model requires. Still, there is a strong willingness among the great majority of New Brunswick civil servants that we met to make the legislation work better. What they told the Task Force is that the legislation needs to be updated, not that it be scrapped or even that it be made more restrictive.

We heard similar messages from other participants in the consultation process. Media representatives made the case that New Brunswick's right to information legislation no longer meets present-day requirements. In its presentation to the Task Force, the *Telegraph Journal* described the legislation as "antiquated" and argued that New Brunswickers "should have the same rights to access to information that the rest of the country grants its citizens."[2] The *Telegraph Journal* pointed to a recent study by the Canadian Newspaper Association which gave New Brunswick's right to information legislation a "failing grade receiving unsatisfactory scores across the board."[3] The study was highly critical of the fact that, unlike most provinces, New Brunswick's legislation does not include municipalities, police departments and universities.

The *Telegraph Journal* argued that the right to information legislation is not well understood by citizens and that there is some confusion among civil servants in dealing with information requests. For this reason, it suggests that new legislation should contain a preamble, which would outline its purpose and scope. The submission also urged the government to establish concrete deadlines to respond to requests for information and to impose penalties for those that do not respect the deadlines. The submission also recommended that the legislation should describe information that cannot be disclosed, provide a definition between legal advice and information and clearly delineate what constitutes documents containing non-legal opinions or recommendations for Cabinet. It argued that there should not be a prohibition on disclosing opinions or recommendations to a Minister, that there should be no restriction on disclosing information pertaining to school boards, community boards and board of directors of regional health authorities, that information pertaining to police investigations need not be automatically exempted from disclosure and that the role of the Ombudsman with respect to right to information should be changed. The *Telegraph Journal* argued in favour of establishing an Access

to Information Commissioner's office. It also urged new rules for third-party notification and a reasonable fee structure, and stated that applicants must be made aware if portions of records have been omitted. It called on departments to be proactive about records disclosure and recommended that the legislation, in future, apply to "municipalities, Crown corporations, government agencies and other publicly funded institutions."

The Moncton *Times and Transcript* argued that the government should simply make information public and not require citizens to "seek access to it through legislation." The submission argued that the legislation should also apply to universities and municipalities and called for an independent commission to be established under the legislation, though it made a point of stating that the "Ombudsman … has shown leadership on the issue." It recommended an end to the "advice to Minister" restriction because it lacks "any defined perimeters, appears to be used as a reason to exclude all sorts of information from being released and only perpetuates the perception of a veil of secrecy surrounding government departments."

The Fredericton *Daily Gleaner* argued that the legislation should apply to municipalities and to bodies or institutions that operate wholly or in part with taxpayer funding. The written submission made the point that the number of information requests would drop if the government made more information available as a matter of course. It argued that "information about the operations of government, its policies and programs, departmental budgets and expenditures, audits, reviews, and particularly records of political decisions and background papers that explain the rationale for them, should be available to the public."

Timothy Jaques wrote in his capacity as a New Brunswick citizen rather than as the editor of the Campbellton *Tribune.* He focussed his submission on municipal governments and agencies, boards and commissions. He reminded the Task Force that right to information legislation should be and is of strong interest both to the media and citizens. He reports that citizens and associations have in the past made full use of the legislation. He pointed to a number of instances where groups or associations were able to secure information under the legislation that shed new light on a number of issues, notably the environment.

Mr. Jaques was also able to draw on his media experience to focus on the workings of municipal governments in several municipalities in northern New Brunswick. He provided a comparative perspective and concluded that municipal level governments have a long way to go to ensure transparent administration. He offered the following observations and recommendations:

1. The existing rights granted by the *Municipalities Act* should be enforced by government and not be flouted with impunity;

2. There should be a clearer statutory definition of the permissible in camera subjects listed in the *Municipalities Act,* so that councils do not get to decide the scope of these subjects by themselves;

3. Access to information legislation should be extended to apply to municipalities, with some provision made for the cost and personnel burden that it will impose on municipalities;

4. Access to information legislation and "open meeting legislation" should be extended to apply to boards and organizations which conduct municipal business (such as arena boards), to prevent municipalities from contracting out their policy of secrecy;

5. Openness in democratic affairs should always trump privacy concerns – supposed fear of breaching privacy legislation is often cited so that "privacy" has become another cover for secrecy, to the detriment of democracy.

The Legislative Assembly's Press Gallery provided the Task Force a series of recommendations designed to strengthen the province's right to information and privacy legislation. It also made reference to the "culture of secrecy" found in government and the "common knowledge that not only do bureaucrats commit fewer decisions to paper, but civil servants, given the unsuitable task of gathering RTI responses, have been asked to limit disclosure by finding creative ways to interpret the *Act* to avoid releasing information." The Press Gallery argues that there are many reasons why civil servants are "thrust into political debates" other than right to information legislation. It makes it clear that it is prepared to work with "any interested party to make the province's legislation a world leader."

The Press Gallery makes a number of recommendations. It also calls for a preamble to the legislation and looks to Nova Scotia for inspiration. It recommends the inclusion of municipalities, universities and other organizations like the Atlantic Lottery Corporation. Among other measures, it called for some kind of "impetus" for the bureaucracy to respect the legislated time limit (penalties), an independent office of the Information Commissioner, no increase to the $5 fee, penalties for civil servants destroying records, proactive disclosure (e.g., expense accounts), identification of departments that routinely abuse the legislation, and no inclusion of a "frivolous or vexatious" exclusion.

A town councillor wrote to the Task Force to make the case that municipal governments do not operate in an open and transparent fashion for members of council, let alone citizens. He recognized that some information should not be made public, but reports that he is not able to access basic information on public spending, notably expense accounts. He urged the provincial

government to include municipalities in its right to information legislation. Several citizens also wrote to the Task Force with a single, straightforward message – recommend to the government that municipalities be included in the province's right to information legislation.

One citizen wrote insisting that the Department of Education is holding back information that would help parents plan for their children's future, particularly those with disabilities. The argument is that, in some instances, decisions need to be made quickly and any delay, including 30 days of delay, followed by a possible application either to the Ombudsman or the court can have important consequences. Another citizen wrote to argue that no information in the hands of government officials should be "held back" that would prove "that children are being sexually abused."

Two civil servants wrote to voice their opposition to seeing their salaries made public. They argued that the salaries associated with their positions could be made public, but not their names and salaries.

A member of a local police force wrote to make the case that it is not "in the public's interest that all information from all [police] activities [be] subject to right to information legislation." He asked, "Would an officer be less inquisitive and less critical if it was possible that the information may be released in the future and that release of information may lead to civil litigation?" Several representatives of police departments and the RCMP also expressed concerns in a conference call with the taskforce that right to information legislation could inhibit their work. We discussed with them Ontario's *Freedom of Information and Protection of Privacy Act* and its provisions designed to protect the work of the province's police forces. The legislation reads:

> 8. (1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,
>
> (a) interfere with a law enforcement matter;
>
> (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
>
> (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;
>
> (d) disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;
>
> (e) endanger the life or physical safety of a law enforcement officer or any other person;

(f) deprive a person of the right to a fair trial or impartial adjudication;

(g) interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons;

(h) reveal a record which has been confiscated from a person by a peace officer in accordance with an *Act* or regulation;

(i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;

(j) facilitate the escape from custody of a person who is under lawful detention;

(k) jeopardize the security of a centre for lawful detention; or

(l) facilitate the commission of an unlawful act or hamper the control of crime. R.S.O. 1990, c. M.56, s.8(1); 2002, c.18, Sched. K., s. 14(1).

(2) A head may refuse to disclose a record,

(a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

(b) that a law enforcement record if the disclosure would constitute an offence under an *Act* of Parliament;

(c) that is a law enforcement record if the disclosure could reasonably be expected to expose the author of the record or any person who has been quoted or paraphrased in the record to civil liability; or

(d) that contains information about the history, supervision or release of a person under the control or supervision of a correctional authority.

Police representatives also made the case that implementing right to information legislation would be an added administrative burden to an already full agenda. They argued that if new resources are not made available for this purpose, other parts of their workload would suffer. They also called for training sessions to ensure that staff will be able to deal with information requests in a professional manner, while respecting the legislation's spirit and intent. This is a theme that came up time and again in our consultations with provincial and municipal civil servants, associations and citizens.

One citizen wrote to urge the government to make information readily available without citizens having to turn to right to information legislation. She suggested that the government make greater use of the Internet to make all types of its information public.

The Task Force also met with a number of civil servants, including deputy ministers and front line workers. As already noted, there is a strong willingness to make the right to information legislation work better for New Brunswickers. The great majority of civil servants also recognize and support the need to update the legislation. That said, they acknowledge that the legislation has made life more difficult for them in that much of their work is now an open book, or at least has the potential to be an open book. This, in turn, can cause problems particularly for their Ministers, given the highly charged political atmosphere of the Legislative Assembly.

In addition, civil servants report a number of administrative challenges associated with the legislation. For one thing, at the risk of sounding repetitive, civil servants made the point that implementing the legislation can be time-consuming and costly. The great majority of right to information coordinators have other responsibilities so that they cannot give the legislation their full attention. In addition, many of them report that there is often a lack of understanding outside of government of the work involved in gathering the requested information and making it available. Some report that they have had to deal with a number of frivolous requests and, as already noted, others reveal that material they had assembled in response to an information request had been left unclaimed and gathering dust. Still others maintain that some private sector representatives have turned to right to information legislation for material at little cost when they should have rather turned to a fee-for-service process.

Two former Cabinet Ministers and some political staffers also voiced their support for right to information legislation. Political staffers report that they often turn to the legislation to secure information from the government because it holds more promise than other means. Questions can be avoided in Question Period by skilful Ministers – as one political staffer observed: "it is called Question Period, not Answer Period and for good reason." It is much more difficult to sidestep or manipulate right to information requests. In 2005-06, for example, Members of the Legislative Assembly or their staff submitted 127 requests under the right to information legislation, which represented 32 percent of the total. This compares with 16 percent for consultants, 16 percent for the general public, 13 percent for the media, 14 percent for lawyers, and 9 percent for organizations and interest groups.[4]

A former Cabinet Minister from a previous government urged the Task Force to strike a proper balance between making information public and ensuring

a level of confidence between Ministers and civil servants. He urged the Task Force to recommend that the legislation continue to exclude "advice to Ministers". Another former Minister, from a different previous government, also argued in favour of retaining the "advice to Ministers" restriction. He added, however, that the government had in the past "abused" the restriction and that a time limit (he suggested 8 to 10 years) be imposed on the restriction.

The Task Force met with representatives of municipal governments and municipal boards and agencies. New Brunswickers and media representatives would be wrong to assume that municipal governments and associated agencies and boards are opposed to right to information legislation. They are not. Indeed, we can report that they support the application of the right to information legislation to the municipalities. Lorne Mitton, the mayor of Moncton, wrote to the Task Force to say that the city is "of the opinion that a modernized version of the government's right to information and protection of personal information legislation should apply to municipalities as well as agencies, boards and commissions that are directly accountable to them." He added: "the revised legislation should attempt to strike a balance between the public's right to know, the individual's right to privacy, and the need for local government to provide services and undertake their other functions effectively and efficiently."

There are several reasons that explain why municipalities support their participation in the province's right to information and privacy legislation. For one thing, they recognize full well that New Brunswick's legislation needs to be updated and that New Brunswick is one of only two provinces that do not include municipalities. For another, they would welcome some uniform practices throughout the province rather than have ad hoc practices with one municipality responding to a request for information in one fashion while the next municipality responds in another. Precedents, they reported, are being created and no one has a proper sense of how municipalities have or should respond to right to information requests. Some representatives also reported that they already operate as if right to information legislation applied in that they make all kinds of information available to the public on a regular basis.

Municipal representatives did, however, voice some concerns. They would like to see the legislation provide a capacity to deal with frivolous requests. The mayor of Moncton suggested a "modest application fee" and recommended that legislation allow "the head of an institution to reject a request, under reasonable grounds, if it is judged to be frivolous or vexatious." He added that the individual making the request should have access to an appeal process. He also recommended a "fair fee structure based on time spent locating the requested records and preparing the information." All municipalities, but particularly smaller ones with only part time staff, asked where they would get the resources

to manage new demands on their time. Many municipal representatives picked up on a theme that we heard time and again from provincial civil servants – the need for training to ensure that the legislation is properly understood and implemented.

The Task Force also met with representatives from the district planning, solid waste, water, and wastewater commissions. They, too, report that they have no objection to being included in the province's right to information and privacy legislation. Much like municipal representatives, they would like to see greater coherence among the commissions in their dealings with right to information practices. They also share some of the same concerns – having the resources and the necessary training to make the process work. Some representatives argued that the commissions have operations distinct from traditional government departments and the legislation should recognize this fact.

We met with representatives of the Greater Moncton Sewage Commission. As is well known, the Commission is widely recognized as a world leader in its field. The representatives of the Commission do not object to the Commission being included in right to information legislation. However, they point out that they are a "one of a kind" commission, that they have "commercial interests" to protect on behalf of Moncton taxpayers, and that the legislation should provide for rejecting applications if they are judged to be "frivolous or vexatious."

The Task Force met with several representatives of the Department of Education as well as English- and French-speaking representatives of the District Education Councils and school district superintendents. They "all" expressed a willingness to work under the province's right to information and privacy legislation. We were informed that it is not at all clear if the current legislation applies to District Education Councils. In reporting their willingness to participate in the right to information legislation, they too talked about the need for new resources and for training. They also stressed the need to clarify what the privacy legislation requires, given the nature of information held on students by schools and school districts. A good number of the representatives recommended that right to information legislation should also apply to the universities.

Some private firms urged the Task Force to stress the importance of being "more restrictive when it comes to releasing information about companies that do business with the government." One firm suggested that the provincial legislation borrow a page from the federal *Access to Information Act,* which has a broader guideline with regards to third-party information. It reads:

> 20.(1) Subject to this section, the head of a government institution shall refuse to disclose any record requested under this *Act* that contains
>
> (a) trade secrets of a third party;

(b) financial, commercial, scientific or technical information that is confidential information supplied to a government institution by a third party and is treated consistently in a confidential manner by the third party;

(c) information the disclosure of which could reasonably be expected to result in material financial loss or gain to, or could reasonably be expected to prejudice the competitive position of, a third party; or

(d) information the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of a third party.

The firm also argued that the provincial government should have to contact individuals, organizations or businesses when it is considering the release of corporate information. It, again, pointed to federal legislation for the solution. The *Access to Information Act* is prescriptive in defining what constitutes a confidential document and how a third party should be informed about the release of information involving his or her organization.

Another private firm suggested to the Task Force that a new exemption be added to the *Protection of Personal Information Act* along the following lines: "The disclosure to an agency licensed under the *Private Investigators and Security Services Act,* of the names, addresses, and postal codes of registered owners of motor vehicles licensed under the *Motor Vehicle Act* is exempt from the *Act.*" It is important to underline the point that the exemption would only apply to security and other firms licensed under the *Private Investigators and Security Services Act.* The firm argues that the exemption is required due to the numerous situations where the firm and its employees see motor vehicles trespassing, seriously damaging roads (i.e., bogging), and illegally dumping garbage. Without being able to identify the owners of the vehicles, the landowner or firm is not able to proceed with civil action against the violators.

The New Brunswick Advisory Council on the Status of Women wrote to report that some women who are attempting to keep a former partner from contacting them or knowing their whereabouts have reported that their partner was able to obtain information from a government service. Conversely, some women who are attempting to remain safe after having left an abusive partner report having difficulty obtaining information about when the partner will be back in circulation, for example, when he will be discharged from a detox or treatment centre.

The Premier's Council on the Status of Disabled Persons applauded the government's decision to launch a review of its right to information and privacy

legislation and prepared a detailed written submission. It reported a concern with the cost of responding to information requests as well as costs imposed on citizens to get copies of their own personal information and medical records. It recommended more use of electronic formats to make information available, but suggested that there should be some reasonable "limits on requests for information made by the media or political parties." It maintained that fees should go up after the first few pages of information. It argued that fees for personal use and for non-profit organizations should be free or have a lower cost and that MLAs should enjoy special access. It also argued that "professional or commercial users should be charged more to avoid abuse and fishing expeditions." It called on the governments to impose a modest application fee to discourage people from making frivolous requests for information. The submission recommended that municipal governments and publicly funded institutions be subject to the legislation. It also recommended that "third parties be copied with the same information provided to the applicant or at least notified that a request has been made and a response provided."

David Coon, from the Conservation Council of New Brunswick, and Andrew Secord reminded the Task Force that the right to information legislation plays an important role in slowing the growth of the "democratic deficit." They reported that on several occasions, the only way the Council was able to secure information was through the legislation. Looking to the future, they suggested better training for civil servants, having in place a more efficient record management system, taking steps to ensure that electronic documentation and communication are not destroyed, and creating a context where public employees are not fearful of providing information to the public. They are opposed to any extension to the 30-day limit to produce the requested information, insist that user fees should not "be used as a rationing device for public information" and recommend that the government should "work towards developing a culture of openness within the provincial civil service."

Professor David Townsend and Kevin Motley prepared an insightful submission for the Task Force, arguing that one must strike a proper balance releasing information controlled by democratic government and safeguarding information about individuals that may be regarded as "private." They reminded the Task Force that democratic government is "a messy thing" and that challenges and criticism by the media and citizens cannot be avoided. They went to the heart of good public policy and program implementation when they observed that a key inhibiting factor in "the functioning of both privacy and access statutes is that we have failed from the outset of each statutory regime to provide the appropriate training, staffing and other resources that were necessary."

They also lament the lack of adequate resources made available to the Ombudsman, given his wide-ranging responsibilities. They argue that the

government must "commit itself to a radical attitudinal adjustment if it is to transition to a culture of openness where public access to government information is viewed as a right rather than a privilege." They go on to make the case that education on open government must "occur at two levels – within government departments, and toward the public at large." They recommend that it would be "appropriate to include within a new legislative regime for access and privacy, provisions similar to those in Ontario that give to the head of a government department the authority to deny an information request if, upon reasonable grounds, it was regarded as 'frivolous or vexatious.' Our proviso is that the total number of all such denials should be reported annually to the Legislative Assembly."

The Task Force met with the Officers of the Legislative Assembly. As is well known, these Officers are independent of the government and report directly to the Legislative Assembly. They include the Auditor General, the Chief Electoral Officer, the Commissioner of Official Languages, the Conflict of Interest Commissioner, the Consumer Advocate for Insurance, the Ombudsman, the Supervisor of Political Financing and the Clerk of the Legislative Assembly. All participants expressed a strong desire to live by the requirements of the right to information and privacy legislation. That said, they stressed the independent nature of the Legislative Assembly and that the Assembly, not the government, should establish the rules and processes that should apply to their work.

The Clerk of the Legislative Assembly reminded the Task Force of the independent nature of the Legislative Assembly and that laws passed generally do not apply to the Legislature. The Clerk informed the Task Force that ten out of thirteen jurisdictions in Canada do not subject their parliaments or legislatures to right to information legislation. In the three cases where the legislation does apply, it is qualified in various fashions (in Quebec, for example, "parliamentary privilege of the Assembly to govern its internal affairs without external interference"). The Clerk also reminded the Task Force that the Legislative Assembly makes all manner of information available to citizens, including MLA expenses and constituency office expenses.

Le Comité des 12 forwarded to the Task Force correspondence it has had with several provincial government departments. The correspondence raises a number of important issues and concerns relating to both right to information and privacy legislation. *Le Comité des 12* speaks for the less fortunate in society and points to a number of deficiencies in sharing information between government departments and with citizens.

A number of citizens and associations urged the Task Force to recommend to the government that it follow the lead of other provinces and include universities in its right to information and privacy legislation. Three universities wrote to the Task Force to express concerns with one of them making the case that the

legislation should not apply to universities. Mount Allison University argued that universities are not like government departments in that a significant portion of their revenues are not from governments and that there is a need to be "very careful to protect the personal information of students, faculty, staff and donors." The University also pointed out that "it regularly receives anonymous gifts." The Université de Moncton echoed some of the points made by Mount Allison, also insisting that great care must be made to ensure the privacy of students and faculty.

The University of New Brunswick (UNB) went further. It responded to the question – should the *Act* include universities – with the answer, a qualified NO. Like Mount Allison, it argued that universities are not government institutions and that "universities are unique organizations within Canadian society." UNB asked what public interest or public good would be served by subjecting universities to right to information legislation, given that such legislation can fuel "partisan politics," "gotcha journalism," and "frivolous and vexatious requests." It made the point that the legislation would add an administrative burden to the universities and to "already limited resources available to students and faculty."

The Canadian Bar Association gave the Task Force a detailed brief and made a number of recommendations. It noted, however, that the group was not able to reach "a consensus in terms of comments that have been provided by its members." Still, the brief did outline a series of suggestions. Some of them included the need to broaden the definition of what constitutes a government department, to add municipalities and universities (with the accompanying recommendation that efforts be made to protect academic freedom and that "a carefully tailored provision" is required), and that a centralized agency be designed to receive and direct information requests. The brief supports application fees and the establishment of management protocol guiding the sharing of information between government departments.

The Law Society of New Brunswick, in its brief, argued that "frivolous or vexatious" applications do "consume scarce human resources" and "must be kept to a minimum." The Society supports application fees as a means to deter "frivolous or vexatious" applications but adds that "access to information must not be open only to those with the means to pay." The Society supports the "establishment of a single option for appeal" and that the appeal should be to the "Ombudsman as opposed to the court system." It recommends the creation of a Privacy Commissioner's Office to provide "oversight of matters concerning the protection of personal information."

The New Brunswick Police Commission wrote to inform the Task Force that the *Police Act* requires the Commission to provide access to information regardless of whether it is included in the province's right to information legislation. The

Commission recommends that it be excluded from the province's legislation. It points out that to have the legislation apply could "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 goes on to report that it could 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."

A number of provincial government departments, agencies and crown corporations presented briefs to the Task Force. All were supportive of the right to information and the protection of personal information legislation and the need to update many of its provisions. Some stressed the need to respect the privacy of individuals; others made specific suggestions on how to streamline administrative processes, and still others made suggestions on how to improve the government's records management system. Some departments also wrote to underline the high cost to taxpayers of implementing right to information legislation.

The Provincial Archives made a number of specific recommendations in its written brief, including the need to make right to information an "operative culture" inside the government. It also called for a new clause in the legislation that would clearly establish "all records as being public records" and that "all employees be required to be knowledgeable of a records and information handling protocol, the *Right to Information Act,* the *Protection of Personal Information Act,* the *Archives Act*, the Records Management Policy, the E-Mail Policy, and other relevant documents." It also recommended that the right to information legislation should "clearly prohibit the destruction of records – including electronic records" except according to rules established by the provincial archivist in accordance with *Archives Act.* The brief also recommended that funding be made available to implement a "corporate system of electronic records and information management." It added that "unstructured electronic information such as email is not being managed adequately" and, as a result, "requests for information cannot be responded to in the fullest and most timely manner."

The Department of Family and Community Services argued in a written brief that "while open and transparent government is a laudable goal, the taxpayers of the province would recoil at the actual costs associated with the provision of free research to media outlets such as newspapers, press agencies and broadcasters." This is a theme we also heard time and again in our consultations with civil servants. The Department of Family and Community Services brief goes on to suggest that the legislation "should contain a provision whereby [Right to Information] Coordinators have the legislated authority to contact requestors – by the most efficient means – to discuss the scope of their request to determine if it can be narrowed to provide the specific information they are

seeking." The brief makes the point that "few requestors are seeking information for their own personal use. Nearly all are seeking it for commercial, advocacy or punitive reasons."

The Department of Public Safety urged the Task Force to recommend that the right to information legislation should apply to all provincial government organizations and agencies. It argued that "exemptions tend to raise suspicion." It went on to make the case that some information should be protected "if government is to be able to function effectively." It supports a fee structure to deter "frivolous requests" and recommends a $25 "initial fee." It called for a process to notify a third party that a right of information request "has been made to a government department/agency that may contain identifying information about the third party."

The New Brunswick Government Records Management Network, established in 1988 to lead on records management issues inside the New Brunswick government, prepared a written brief. The network called for "open government" where information should be made readily available and the legislation should provide for the applicant and the respondent to work together to define what the applicant is requesting. It points out, however, that "most departments do not manage their information as effectively as they could." The network makes a series of suggestions and recommendations to strengthen records management practices.

The New Brunswick Liquor Commission wrote to make the case that it continually strives to strike the right balance between transparency and the need to protect certain information given their dealings with many commercial firms. Looking to the future, it calls for "a uniform application system to streamline requests."

NB Power reports that it receives an average of 15 to 20 requests a year under the province's right to information legislation but that it regularly makes available a variety of information to interested parties. It offers a number of recommendations, including: designating NB Power's Chief Executive officer as the "head" for the purpose of the legislation, refusing to entertain "frivolous and vexatious requests," a fee structure that balances the need for the applicant to access information with the need to recover costs, that a mechanism be put in place for third-party notification, and that salary information should not include the individual's name.

The New Brunswick Securities Commission wrote to the Task Force with a number of suggestions and recommendations. It argued in favour of a fee structure to discourage frivolous requests. It called for a search fee of $50 per hour for requests that take longer than two or three hours to process. It recommended a standard application process and an ability to extend the 30-day deadline.

The provincial Department of Justice and Consumer Affairs outlined a number of suggestions in a written submission. Among others, it argued that it is "inappropriate that a person seeking a copy of a transcript should be able to circumvent required fees under another Act, by requesting information" under right to information legislation. It called for departments and agencies to develop solid records management systems to enable efficient responses to right to information requests. It recommended a "true application fee." The Department also suggested that a "routine access" category be established so that information can be obtained without having to submit a request under the right to information legislation. Included under the routine heading would be "statistics, easily generated data and routine reports." The Department also recommended that the legislation be amended to provide for an extension of "30 to 45 days" to put together the requested information given that in some instances "it takes a great deal of time to assemble information from various divisions/branches especially where requests are broad or under a long time period."

The Office of the Attorney General made a number of specific suggestions in its written brief designed to strengthen and clarify the right to information and privacy legislation. The Office reports that a majority of *Right to Information Act* requests to the Office "are denied on the basis of relevant exemptions in section 6 of the Act." Section 6 (h.1, h.2 and i) deals with an investigation, inquiry or the administration of justice. The brief reminds New Brunswickers that the Attorney General is "bound by the laws of disclosure concerning what information can or cannot be released pertaining to both criminal and quasi-criminal issues." The Office also recommends "a higher fee" under the legislation and the department "requested to provide the information should do a pre-assessment prior to obtaining releasable information and advise the applicant if it appears that there is going to be excessive expense."

The Ombudsman submitted a detailed written submission that addressed all major issues dealing with right to information and protection of personal information legislation. The submission provided a historical perspective of New Brunswick's legislation and outlined a series of recommendations. The submission stressed the importance of strong training efforts for both right to information and privacy legislation. Among other things, it recommended that right to information and privacy legislation should have precedence over other statutory provisions; that the "existing fee and copying charge structure" be maintained; that the legislation should have a very broad definition of "public body" or "department"; that the existing list of exemptions under the right to information legislation be carried over to a new information and privacy code; and, that "universities, municipalities or other such public authorities" be included in the legislation. The submission recommends the establishment of an independent Information and Privacy Commissioner's Office with a "broad

mandate including authority to conduct audits and investigations of public authorities on his own motion, authority to report to the Legislative Assembly and advise government in privacy and information rights matters, authority to conduct research and issue reports, authority to review and comment on bills and legislative proposals before the Assembly that may have information or privacy impacts, authority to mediate information and privacy disputes and to intervene before the courts in appropriate cases, and also a broad mandate to promote Information and Privacy Rights and to inform the public with respect to such matters." Regarding third party notification, the Ombudsman recommends that the onus of proving exemptions to the information rights guaranteed by the Code be squarely placed upon the Minister invoking the exemption and that any exemptions that inure to the benefit of third parties must be advanced upon satisfactory proof to the third parties' overriding interest after consideration of the public interest issues at stake."

On privacy, the Ombudsman points out that New Brunswickers "enjoy lesser legal protections in the area of privacy, than most American or European citizens." Among other recommendations, the Ombudsman recommends that privacy legislation be strengthened with the addition of new provisions to make the Code current with best legislative practices elsewhere in the areas of outsourcing, information sharing between and within governments, trans-border data-flows, data-matching and data-mining, disclosure notification procedures and publication of lists of personal information banks, including the nature of information contained therein."

The Issues

The public consultations served to confirm a number of things. First, there is support for revising the province's right to information legislation. This is true for both stakeholders outside of government as well as for civil servants. Second, the concerns we heard are no different from the ones voiced by civil servants and stakeholders in other jurisdictions. Third, based on the level of interest in our public consultations from individual New Brunswickers, we would not wish to give the impression that right to information legislation is a "major" preoccupation of New Brunswickers. However, it may well be that, as in other jurisdictions, and as one journalist told the Task Force, citizens will invariably rely on the media and the government to make right to information work. Fourth, there are a number of important issues that need to be addressed in any attempt to update the legislation. Fifth, there is a lack of understanding, on the one hand, on the part of civil servants for those outside of government trying to access government information without an understanding of how government operates and decides and, on the other, on the part of those outside of government for the difficult and politically volatile work environment

in which Ministers and civil servants must operate. In one sense, there are two solitudes at play.

There have also been a number of lessons learned on right to information legislation since New Brunswick became only the second jurisdiction in Canada to enact relevant legislation nearly thirty years ago. The legislation has served New Brunswick well. It has made information and material available to New Brunswickers that in years past would have been inaccessible. It has sent an important message to New Brunswickers that at least some information held inside government belongs to them as much as it belongs to the government. The legislation has had an impact on the relationship between politicians and civil servants. Government officials had little in the way of guidance and precedents to work with, as they went about implementing the legislation, given that New Brunswick was one of the first jurisdictions to introduce right to information legislation.

What have we learned? We have learned that New Brunswick is not much different from other jurisdictions. Like elsewhere, it is very difficult to implement right to information legislation without an appreciation of the adversarial nature of our political system. Those who advocated right to information legislation underestimated the extent to which we would see conflict over government records. There is evidence in New Brunswick, as there is elsewhere, that government officials and non-government actors have become adroit in developing strategies that, in the words of Alasdair Roberts, "exploit or blunt the opportunities created" by the legislation.[5] Government officials will at times try as best they can to hold on to information that may cast their Ministers and departments in a bad light while those on the outside will try as best they can to identify information and then access it to support their position or views or to publicly exploit weaknesses in the government's policies and operations.

Looking back, one can also see that insufficient time, resources and efforts were introduced to assist in the implementation of right to information legislation in jurisdictions with parliamentary systems and, again, New Brunswick is no exception. Civil servants everywhere came to regard right to information legislation as something that was brought in by politicians like a baby on a doorstep from election campaigns without thinking through the full implications. Civil servants were told to make the legislation work without changing fundamental accountability requirements or altering in any meaningful way their working relationships with politicians. Moreover, civil servants were expected to continue to avoid getting their Ministers involved in political controversies as they went about implementing right to information legislation.

The federal government task force on access to information summed up the problem well when it observed: "Public servants do not have the training, tools and support they need. Access work has to be juggled with other operational

priorities. It is often not perceived as "valued" work or part of their "real" job. The principles of access have not yet been successfully integrated into the core values of the public service and embedded in its routines."[6] If the Government of Canada, with its vast resources, did not provide for adequate training, tools and support, then one can only imagine what it has been like for the Government of New Brunswick and its employees.

Right to information legislation also exposed in many jurisdictions important weaknesses in information management systems. Our consultations revealed that this is also true for New Brunswick. It takes only a moment's reflection to appreciate that right to information requires a number of things to work properly: a system that can process requests effectively, qualified personnel, senior officials that are supportive, solid information systems, adequate resources and an appreciation of the principles and requirements by all parties guiding the legislation.

Quite apart from processes and information management systems, senior civil servants in Westminster-style parliamentary systems have become concerned about the "decline of governability." They point to several reasons for this decline – tighter fiscal constraints, globalization, a growing number of interest groups, the rise of external checks on their work ranging from auditors and ombudsmen to commissions of inquiry, all with the authority to review the work of government. Civil servants will also point to the changing nature of the media and right to information legislation.

A leading academic authority on access to information legislation, Alasdair Roberts, writes that a "culture of secrecy" still exists in parliamentary systems, including Canada.[7] He has doubts that a "culture of openness" is attainable, given the adversarial nature of our parliamentary system.

Our consultations also revealed a deep preoccupation inside government over the cost of implementing the province's right to information legislation. The topic came up in "all" of our meetings with civil servants. The issue, however, was hardly ever raised by those outside of government. Indeed, many of the recommendations from outside government would entail new costs (among many others, the call to establish a new Officer of the Legislative Assembly position to oversee implementation of the right to information legislation). Those inside government stressed the importance of having in place a process to deal with what is labelled as "frivolous" or "vexatious" requests. Many outside government did not see it as an important concern. Those on the inside called for a new higher fee structure while many on the outside are not convinced. The list goes on.

Those inside government can point to a number of areas where confidentiality is an important means of promoting good government. Those outside insist

that good government depends on having access to information and insist that government has information that is vital to effective public participation.

Cabinet confidences and advice to Ministers have traditionally been protected from right to information legislation in Westminster-style parliamentary systems. Some have attempted to define what is meant by "Cabinet confidences" and "advice to Ministers". Governments maintain that protecting Cabinet confidences is basic to collective ministerial responsibility. Jurisdictions in Anglo democracies have also protected some elements of the internal decision-making processes of government, notably advice or recommendations to Ministers. Those on the outside argue, with justification, that many governments have abused both Cabinet confidences and advice to Ministers to withhold information that should have been made public. Some civil servants in New Brunswick readily admit that the "advice to Ministers" label has been used too often in the past.

That said, it is important to strike a proper balance so that the right to information legislation does not make it difficult for civil servants to offer frank advice to Ministers. Historians, senior officials and managers asked to lead government departments and agencies requiring access to institutional memory would likely be very harsh in their assessment of those charged with drafting right to information legislation if it encouraged officials to keep their advice off paper in favour of informal discussions and oral briefings. Nothing would be gained and much would be lost if right to information legislation would serve to push civil servants into avoiding putting things on paper. It would defeat the very purpose that the legislation is trying to accomplish.

Application fees are a feature of right or access to information legislation in most jurisdictions. Some, such as New Zealand, the United States and British Columbia, have a fee structure that differentiates between categories of requests. In some jurisdictions, fees are higher for requests made to further commercial interests and lower for those designed to further the public interest or to provide information to individual citizens. A number of jurisdictions (e.g., Newfoundland and Labrador, Nova Scotia, Ontario, Manitoba and Alberta) also charge preparation and search fees, ranging from $10 per half hour in Prince Edward Island to $15 per half hour in excess of two hours in Manitoba and Saskatchewan.

The New Brunswick *Right to Information Act* designates the responsible Minister as the point of decision and responsibility for both departments and crown corporations. In most other jurisdictions, the CEO of crown corporations assumes this responsibility. In its written submission to the Task Force, NB Power suggested that its CEO rather than the Minister should, in future, assume this responsibility.

We asked senior civil servants and two former Ministers where that responsibility should rest in traditional government departments. Senior civil servants, including deputy ministers, argued that it should continue to rest with the Minister. They pointed out that Ministers are ultimately responsible for the department before the Legislative Assembly. In any event, they argue, they would brief their Ministers on all sensitive right to information requests so that making deputy ministers responsible would not change the process in any substantial fashion. The two former Ministers, meanwhile, reported that they would have no problem with turning the responsibility over to deputy ministers. They reported that there was never a shortage of paper on their desk requiring their attention and that the deputy ministers would invariably review sensitive issues with them.

Virtually all jurisdictions in Canada allow "30 days" for departments and agencies to produce information under access to information legislation (Quebec is the exception, with only 20 days). All jurisdictions, with the exception of New Brunswick, allow for an extension (most up to another 30 days) to produce the information because the material may not be easily assembled.

A number of jurisdictions have also given the Ombudsman or their Information and Privacy Commissioner the ability to issue a binding order to produce the requested information subject only to judicial review (e.g., Prince Edward Island, Quebec, Ontario, Alberta and British Columbia). In New Brunswick, the Ombudsman makes recommendations to the relevant Ministers and his or her decisions are not binding.

Most jurisdictions have established separate offices to oversee information and privacy legislation. Two provinces, New Brunswick and Manitoba, have turned to the Ombudsman to assume this responsibility. The issue is whether New Brunswick should continue to look to the Ombudsman to perform this function or create a new commissioner position attached to the Legislative Assembly.

Both offer advantages. Having a position exclusively dedicated to right to information and privacy issues holds obvious merits. This, however, would mean adding yet another new officer position attached to the Legislative Assembly. The number of Officers of Parliament or the Legislative Assembly has grown substantially in all jurisdictions in recent years and, here too, New Brunswick is no exception. Informed observers of our political-administrative institutions have in turn expressed concern over the proliferation of these positions. Their cost is one thing. Accountability issues are another with some insisting that Parliaments and Legislative Assemblies have not properly established how these new positions should be held to account.[8]

In the case of New Brunswick, at least, the Office of the Ombudsman is, by all accounts, performing very well its right to information and privacy roles. We heard only positive comments about the Ombudsman and his office in

our consultations. This is true notwithstanding limited resources allocated to the Office over the years and the fact that the Ombudsman's role is severely restricted under current legislation, including the fact that he can only make recommendations to the relevant Minister.

Recommendations

The Task Force does not hesitate to recommend to the government that it should overhaul its right to information and protection of personal information legislation. As we already reported, the one message heard from all quarters in our consultation exercise is that the legislation is hopelessly dated. The Task Force wishes to stress, however, that new legislation can never constitute the complete answer, and that any new legislation must be supplemented with education and training as well as attitudinal change.

In our discussion paper and in this report, we made references to the importance of promoting open and transparent government and the need for government officials at all levels not to ask, as a matter of fact, why should citizens have access to government information, but, rather, why not. The Task Force recognizes that there are, in New Brunswick as elsewhere, deeply ingrained attitudes that place a premium on secrecy in government. The Task Force also recognizes that promoting a culture of open and transparent government will take time. It notes, however, that progress has been made and that there is a willingness inside government and in other public institutions, notably the municipalities and school districts, to expand right to information practices.

In the spirit of promoting open government, and in light of the issues and challenges identified previously in this report, the Task Force makes the following recommendations.

The Context - Towards Open Government

1. Governments do not need legislation to make information available to the public, and should make information available more readily, without having information-seekers resort to right to information legislation. Modern means of communications, notably the Internet, provide excellent opportunities for public bodies to make information available to the public, at little cost to taxpayers. Frequently sought information, such as expense accounts and hospitality claims of Ministers and senior civil servants, as well as the guest list for Larry's Gulch and logs for the government airplane, should be posted on departmental web sites on a regular basis.

2. Similarly, public bodies should make every effort to make agreements and consulting reports readily available, preferably on the Web. In some instances, it may be appropriate to delay the release of a consulting report to consider the findings and to brief the Minister or Ministers, but this timeframe should be kept to a minimum.

3. The government should devote the necessary resources to improve staffing, training and ongoing support for the civil servants who are working to implement its right to information and protection of personal information legislation. Such training should take place on a continuing basis, and should reach out, at least occasionally, to non-government public bodies that may be covered by the right to information and protection of personal information legislation.

4. Government should conduct a comprehensive review of its records management system to ensure that its information management practices, that appear to be lacking on several fronts, do not inhibit good management practices or its ability to meet its obligations under the right to information and protection of personal information legislation.

The Legislation

General

5. The right to information and protection of personal information legislation should be combined into a single statute. Although right to information and protection of personal information objectives are not the same and are, in fact, often diametrically opposed, it is important that there be an understanding among information-providers and information-seekers alike as to how the legislative requirements for each are to be harmonized.

6. The legislation should include a preamble or purpose statement to outline, in broad terms, its scope and objectives. This would serve as a guide for civil servants as well as an instrument to promote the legislation with New Brunswickers.

7. Breaches of the right to information and protection of personal information laws should result in concrete consequences. As such, penalty provisions should be included in the legislation in relation to, at least, the most serious of breaches like the destruction or withholding of documents contrary to the law, or gross negligence in releasing personal information. Consideration should also be given to providing for remedies to individuals who have been the victims of privacy breaches.

8. Government should be required to report annually to the Legislative Assembly on its performance under the right to information and protection of personal information legislation.

9. The past 30 years have provided important lessons respecting the access to information legislation, but 30 years is too long to wait to review and update such legislation. Accordingly, the Task Force recommends that the legislation provide explicitly for its review within eight years, thus ensuring that it squares with the most current accountability and transparency principles. A number of issues that should be included in this review are mentioned throughout the Recommendations section of this report.

Scope of the Legislation – Institutions

10. The Task Force recommends that municipalities, municipal bodies including water, waste and sewage commissions, district planning commissions, school districts, universities and policing agencies be included under the legislation. Application of the legislation should not take effect until a transition period of two years from the day the legislation is proclaimed has elapsed. This transition period should be granted to allow these institutions the time to put in place the capacity to meet the legislated obligations.

11. In addition, the government should work closely with these institutions to determine how the legislation would apply. The Task Force was reminded time and again that these institutions are not government departments and agencies and the legislation needs to accommodate this reality. This report identifies some elements that need to be protected (see, for example, the discussion on anonymous gifts to universities and Ontario's approach to right to information and policing agencies), but much more work and reflection is required.

12. The government should review, in consultation with the relevant institutions, new resource requirements to implement the legislation.

13. Cabinet should have the authority to add to the list of institutions to be covered under the right to information and protection of personal information legislation. However, the authority to remove institutions should rest with the Legislative Assembly.

14. The Task Force recommends that the officers and institutions of the Legislative Assembly remain outside the right to information and protection of personal information legislation. The Legislative

Assembly operates based on principles and privileges that are very different from those that apply to the executive arm of government. In light of these differences, the Task Force is not convinced that the public interest would be better served by applying the right to information and protection of personal information legislation. However, it is recommended that the various Officers of the Legislative Assembly work with the Legislative Administration Committee to establish rules and regulations to govern right to information and protection of personal information issues as they apply to the Legislative Assembly and its Officers. It is recommended that the performance of the Legislative Assembly in this regard be reviewed as part of the eight-year review.

15. Regulated professions that are statute-created bodies are holders of important and often sensitive information. They are not currently subject to the provincial right to information and protection of personal information legislation. The Task Force is not recommending that they be at this time, but believes that the question as to whether they should be subject to provincial or federal right to information and protection of personal information legislation merits further study as part of the eight-year review.

Access Process

16. The legislation should provide that public bodies have a duty to assist information-seekers in identifying and securing desired information and in overcoming technical interpretations of the legislation.

17. The legislation should provide that any request for information that is submitted to the wrong department should be redirected to the relevant department or departments within a short and specified time period.

18. The Task Force recommends that either the Minister of Justice/ Attorney General or the Minister of Supply and Services (as Minister responsible for Archives and Records Management) be made responsible for both right to information and protection of personal information legislation. Unlike other jurisdictions, the responsibility in New Brunswick is currently shared between the Premier (for the *Right to Information Act*) and the Minister of Supply and Services (for the Protection of Personal Information Act).

19. The Task Force recommends that the Minister remain the point of responsibility for the legislation in departments and agencies, and that responsibility not be assigned, in the legislation, to

deputy ministers. This is consistent with the doctrine of ministerial responsibility, a key constitutional provision in Westminster-style parliamentary systems.

20. Although each Minister will continue to answer, on the floor of the Legislative Assembly, on behalf of those agencies, boards, commissions and crown corporations for which he or she has responsibility, the organization's Board Chair or Chief Executive Officer (depending on who within the organization holds signing authority) should be the point of responsibility for the right to information and protection of personal information legislation. The specific point of responsibility should be identified in legislation in relation to each agency, board, commission, and crown corporation, and in relation to those categories of public bodies that are covered by the legislation.

21. Given the central importance of the principle of Cabinet confidentiality to the Westminster style of parliamentary government, the Task Force recommends that "Cabinet confidences" and "advice to Ministers" continue to be exempted, but that steps be taken to ensure that these exemptions are not overused in an attempt to shield information from release. Staff must be better trained and supported by guidelines to ensure that these exemptions are properly applied. Consideration must be given to shortening the time period within which Cabinet materials are held confidential from 20 to 10 or 15 years, as has been done in other jurisdictions. And, it is important to review government's progress in properly applying these exemptions as part of the eight-year review.

22. Further to ensuring prudent use of Cabinet confidentiality provisions, it is recommended that this exemption be more clearly defined to protect only deliberations between or among Ministers and the substance of matters before Cabinet. Accordingly, background material, factual information and data, and analyses of issues provided to Ministers should be accessible. It is expected that this, in turn, will require a new format for the preparation of Cabinet documents that will allow for the identification of background explanations separate and apart from options for consideration and recommendations. The legislation should allow for the release of the background material after the relevant Cabinet decision is announced.

23. Documentation that is already made available to the public for an established fee should not be accessible under the right to information legislation.

24. Subject to the specific exemptions set out in the legislation, there should be no limitations on who has a right to information or how often information is sought, as long as the requests are not "frivolous or vexatious". There should, however, be a mechanism established to provide that requests for information that are deemed to be "frivolous or vexatious" may be denied. This recommendation is made with strict qualifications to protect against overuse: the information-seeker should have the right to appeal such denials to the Ombudsman, whose decision in this regard should be final (subject only to judicial review), and the government should be required to report the number of denials made on such grounds annually to the Legislative Assembly. This exemption should also be carefully reviewed as part of the eight-year review as to the appropriateness of its use.

25. The Task Force recommends that a new fee structure be put in place for the purpose of encouraging efficient use of the right to information process. It is recommended that fee levels be set not to realize full cost recovery, as this is not the goal or the practice in other jurisdictions. However, information-seekers should be expected to defray the costs associated with their requests, rather than having the full burden borne by taxpayers. Accordingly, the Task Force proposes the following:

    a. Retention of a low application fee of approximately $10.

    b. The establishment of search and preparation fees - $15 per half hour in excess of two hours. Two hours of search and preparation fees would be free to ensure that well-defined requests are available at a very low cost.

    c. Personal information on oneself should not be subject to search and preparation fees.

    d. In cases of hardship, the relevant Minister should have the right to waive fees.

26. The 30-day limit to retrieve the requested information should be maintained, and provisions to extend for a period of up to an additional 30 days should be established for specified circumstances: when the request calls for a large number of records to be produced, when consultations are required, or when notice is to be given to third parties. The Task Force proposes to borrow a page from the federal government's review of its access to information legislation to recommend that the legislation should

provide for an additional extension of time for responding to a request if "meeting the original time limit would unreasonably interfere with the operations of the government institution." In such instances, however, the public body would be required to seek the permission of the Ombudsman. For all extensions, the public body would be required to inform the information-seeker of the need for an extension. Information on the extent to which extensions are being used by government should be included in an annual report to the Legislative Assembly.

Protection of Personal Information

The Task Force confirms that the principles set out in the current legislation – the *Protection of Personal Information Act* – remain valid and well accepted among the public and public servants alike. The recommendations in relation to the protection of personal information focus on how the principles are understood and applied.

27. The Task Force recommends that the legislative provisions relating to the protection of personal information be set out so as to be more descriptive, concrete and clear as to application. Reworked provisions will also have to be supported by written guidelines and training to ensure that there is better understanding of the obligations held by public bodies under the legislation. In the consultations, government was criticized for relying excessively on the "personal information" exemption; a problem that, the Task Force submits, comes from a lack of understanding as to how the *Act* should be applied.

28. Provisions providing for the disclosure of personal information for reasons of public good or open government should be retained. It should be clear in the provision that, unless there is express or implied consent to release such information, the public body is required to give notice of the release to the individual and that the release be subject to appeal prior to its release.

29. The Task Force recommends that government should not be permitted to share personal information for a purpose unrelated to the function of government except in the most exceptional of circumstances. Government should be permitted to share personal information for non-government purposes only when the arrangements are set out in regulation, as is now the case in relation to the release of personal information to the War Amps for fundraising purposes. In circumstances where government chooses to make exceptions, an individual should have the right to insist that his or her personal information be withheld through an established process.

30. It must be made clear that personal information transferred to a third party for the purposes of conducting government business is subject to the same strict standards as are held for government. Not only should these standards be spelled out in agreements between public bodies and the third party before information is transferred, but the requirement to follow the provisions of the privacy law should also be encoded in the statute.

31. Service New Brunswick is in possession of a considerable amount of personal information such as wills, mortgages, powers of attorney, land title information, etc. Much of this information is accessible to the public at little or no cost. Given public concerns over identity theft, Service New Brunswick should carefully and continually consider its practices and balance the legitimate need to know against the privacy hazards associated with the release of this detailed information. This issue should be revisited in the eight-year review.

32. The Task Force recommends that government establish clear guidelines respecting the accessibility of workplace grievance reports, harassment reports and other human resource-related investigative reports. Information contained in such reports is extremely sensitive and investigators rely on the candour of "witnesses" to properly complete their work.

33. Government should establish a legislative regime that would allow for the release of information in circumstances where it is deemed appropriate in the interests of justice. Feedback received during the consultation indicates that there may exist legitimate reasons for releasing contact information of individuals engaged in apparently illegal activity. Such an approach must respect the general principles of privacy protection and due process.

34. Government must continue to balance the privacy rights of its employees with the "right to know" in the interests of open government. With this objective in mind, the Task Force recommends that, as is the case for the federal *Personal Information Protection and Electronic Documents Act* legislation, the definition of "personal information" exclude name, title, business address, and telephone number of employees in an organization (public and private sector alike). As such, this information would be accessible by the public unless there is a health or safety-related reason for holding it confidential. The Task Force also recommends that the practice of releasing the precise salaries of individual employees be altered

such that only pay ranges and bonuses are made public. This would satisfy the public good goal while better protecting the privacy of individuals.

35. The Task Force's mandate was restricted to a review of information held by public bodies. There is, however, a segment of the population that is not protected by either federal or provincial privacy legislation, the most notable of which are employees working in the provincially-regulated private sector. These employees are not afforded the same protections as their federally-regulated private sector or civil service counterparts. This is a matter that requires further review as part of a separate exercise.

Review Process

While there is no question that the establishment of an Officer of the Legislative Assembly dedicated to right to information and protection of personal information would intensify the focus on these issues, the same could be said of any issue for which a Legislative Officer is appointed. This reasoning has led, in recent years, to a proliferation of Legislative Officers across the country, including New Brunswick. The Task Force thus hesitates to rush forward with such a recommendation without paying any mind to its implications and opportunity costs. The Office of the Ombudsman has a good track record in relation to its review and oversight work, notwithstanding a serious, if not a flagrant, lack of resources over the years and outdated legislation that has served to inhibit the work of the office. The review process, while in need of repair, does not appear to be the area requiring greatest attention. The Office of the Ombudsman could, if properly resourced, bring the same level of expertise to a broadened mandate as could an independent Officer, albeit without the benefit of the narrower focus.

36. The Task Force recommends that the Ombudsman retain oversight responsibility for the right to information and protection of personal information legislation for now, but that the option of establishing an independent Right to Information and Protection of Personal Information Commissioner be reconsidered as part of the eight-year review.

37. The Task Force recommends that the ombudsman-style of review (i.e., investigation and recommendation-making authority as opposed to binding order authority) should be retained. An ombudsman-style review provides a quick, simple and low cost option for applicants, and is an option distinct from that of going to court. If the Ombudsman was to be granted binding decision-making powers, the process would likely become more expensive, slower

and generally less accessible, thus providing a less distinct review option relative to court action.

38. The Task Force recommends that the Ombudsman's role be extended and that an adequate level of resources be made available to the Office to assume new responsibilities. The government and Legislative Assembly should look to outside independent advice to establish an acceptable level of funding to set an initial budget for the Office as it assumes any new responsibilities that may be set out by new legislation.

39. The Task Force recommends that the Ombudsman have the authority to mediate disputes between public bodies and information-seekers, in addition to the powers to review and recommend.

40. The Ombudsman should have the authority and resources to conduct audits and investigations of public bodies, on its own motion, to determine whether there are appropriate safeguards and practices in place to protect personal information.

41. The Ombudsman's expanded mandate should include an education and advocacy role. In this role, the Ombudsman should launch an ambitious education program to encourage a greater understanding among New Brunswickers of their access to information and protection of personal information rights. Consideration should also be given to occasionally sponsoring conferences or seminars that would bring together interested parties (including civil servants, media representatives and associations) to discuss right to information and protection of personal information issues, and to help everyone gain a better appreciation of each other's challenges and work environment, thus breaking down the solitudes.

42. The legislative provisions regarding the timeframes within which the Ombudsman must operate should be revisited, allowing for some flexibility when there are circumstances present that prevent the completion of a review within 30 days. Also, there should be a specified timeframe within which a public body must respond to a recommendation of the Ombudsman so that information-seekers can proceed with court action if required.

43. The Task Force recommends that a time period within which an appeal for review to the Ombudsman or the courts must be made be specified in the legislation.

Notes

1. Canada, *Access to Information: Making it Work for Canadians,* Report of the Access to Information Review Task Force (Ottawa: Her Majesty the Queen, 2002).

2. "A Brief to the Right to Information and Protection of Personal Information Review Task Force", *Telegraph Journal,* (Saint John, NB, 15 June 2007), p. 1.

3. *Ibid.*

4. Government of New Brunswick, Right to Information 2005-2006, *Annual Report,* Executive Council Office, p. 5.

5. Alasdair Roberts makes this observation in his "Two Challenges in Administration of the *Access to Information Act,*" Commission of Inquiry into the Sponsorship Program and Advertising Activities, *Restoring Accountability,* Research Studies vol. 2, Ottawa, 2006, p. 117.

6. Canada, *Access to Information: Making It Work for Canadians,* Report of the Access to Information Review Task Force (Ottawa: Her Majesty the Queen, 2002), p. 5.

7. Alasdair Roberts in his "Two Challenges in Administration of the *Access to Information Act,*" Commission of Inquiry into the Sponsorship Program and Advertising Activities, *Restoring Accountability,* Research Studies vol. 2, Ottawa, 2006, p. 136.

8. See, among others, Commission of Inquiry into the Sponsorship Program and Advertising Activities, *Restoring Accountability – Recommendations,* Ottawa, 2006.

Appendix A

Press Release

Right to Information, Protection of Personal Information Acts to be reviewed (07/02/13)

NB 179

Feb. 13, 2007

FREDERICTON (CNB) - A committee headed by Université de Moncton professor Donald Savoie has been formed to examine the Province's *Right to Information and Protection of Personal Information Acts* and make recommendations to enhance public access to government information while improving protections for personal information.

"We committed in our *Charter for Change* to bring an unprecedented level of financial openness and public accountability to the workings of government," Premier Shawn Graham said. "Dr. Savoie's committee will help us to fulfill our commitment to modernize privacy and right-to-information laws in New Brunswick and further protect personal information from misuse."

In addition to Savoie, the committee will include Judy Wagner and Erik Denis from the Executive Council Office and Joanne Fletcher of the Department of Health. The committee will be tasked with undertaking a comparative assessment of access and privacy legislation in other jurisdictions, including privacy legislation as it relates to health issues. The committee will produce a discussion paper which will identify key issues and propose a series of recommendations.

The discussion paper will form the basis for broad consultations to be held throughout the province with key stakeholders and New Brunswick residents. A website and toll-free number will be established as part of the consultation process to enable all New Brunswickers to submit their views.

"A review of access-to-information legislation cannot be undertaken in isolation from privacy laws - indeed, the two go hand in hand," Savoie said. "My committee is undertaking a significant task in reviewing this legislation, and we will conduct extensive consultations with New Brunswickers and concerned institutions and agencies as part of the review process."

The current *Right to Information Act* was proclaimed on Jan. 1, 1980 and the *Protection of Personal Information Act* assented to on Feb. 26, 1998.

"I want to clearly state that we have the utmost confidence in the dedication, competence and integrity of our public service who work each and every day for the people of this province," Graham said. "Dr. Savoie and his committee will thoroughly study how we as public servants can best balance the need for openness to government information and operations with the need to protect personal financial, health and other information."

After conducting consultations, the committee will produce a final report which will summarize the views expressed by stakeholders and residents on the discussion paper, and recommend a course of action to government for updating access and privacy legislation.

07/02/13

MEDIA CONTACT: Marie-Andrée Bolduc, communications, Office of the Premier, 506-444-2286.

07/02/13

Appendix B

The Questions

1. The Context

1.1 What type of information does the government hold that would be of interest to you/your organization/your business in the future? What method would you prefer to use to access this information?

1.2 What type of information do you think should be routinely available from the government without a request under the *Right to Information Act*?

1.3 A request under the *Right to Information Act* can be for one page of records or over a million pages. The access to information legislation in many countries provides for practical limits on a citizen's right of access, such as excessive costs to the taxpayers of providing the information, the undue disruption of governmental operations or repetitive requests. In your experience, has the lack of similar limitation in the New Brunswick legislation been problematic? Would you favour legislature amendments in support of such limitations? If so, which ones? In your view, what should be the criteria?

2. Scope of the *Right to Information Act* – Institutions

The list of government institutions covered by the *Right to Information Act* is attached.

2.1 In your view, is the current coverage of institutions under the *Right to Information Act* adequate?

2.2 What criteria should be used to determine whether or not an institution would be subject to the *Act*?

2.3 By what mechanism should institutions be added or removed from the list of those subject to the *Act*? (For example, legislation would require approval from the Legislative Assembly, while regulations would require only Cabinet approval.)

2.4 Should the *Act* include municipalities?

2.5 Should the *Act* include universities?

2.6 Should the *Act* include policing agencies (the federal law already applies to the RCMP)?

2.7 Should the *Act* include other government agencies, boards and commissions? Please identify.

3. Access Process

3.1 Do you think the processes for making and responding to requests under the *Act* could be made easier and more effective? How?

3.2 Are there ways to reduce the costs of processing access to information requests? Are there ways to make the process more efficient?

3.3 Currently all requests are treated the same, whether the results are for personal use, commercial use or a public interest use. Should different categories of requests or requesters be treated differently under the *Act*? (For example: general public/ MLAs/commercial/users/media/non-profit/associations/ professional requesters who sell the information.) If so, what criteria should be used to distinguish between requesters? And what different treatment should they receive?

3.4 Currently there are no limits on the number of requests that one person or organization can make to any institution at any time. Should the *Act* limit the number of requests from a single requester to be processed at one time? By one institution? Within a year?

3.5 Most jurisdictions charge application fees ($5 to $15 - $5 in the case of New Brunswick) are charged to discourage people from making frivolous requests for information. If someone is willing to pay even a small application fee, they tend to be serious about it. Do you think government should continue to charge an application fee for each information request?

3.6 Do you think that there should be a fee structure? Do you think that fees should be established on a cost recovery basis or should the costs of administering the right to information legislation be drawn out of the consolidated revenue fund? In other provinces, applicants are charged an hourly fee for the amount of time it takes to search and prepare the requested documents, in addition to any copying fees. In some cases, people are only charged preparation fees if their request takes longer than 2 or 3 hours to get ready. And, sometimes, fees can be waived under certain conditions. What features do you think a fee structure should have to make sure that it is fair to everyone?

4. Review Process

In New Brunswick, government officials report that fewer than 2 percent of the requests for information result in complaints. Even so, processes are set out in the law so that if people have complaints about their ability to access government information or about the government's treatment of their personal information, they can choose to have their concerns reviewed.

Any person who is dissatisfied with how government has handled an access or personal information matter has the right to take it before the Court of Queen's Bench. The Court will hear the matter and make a decision that everyone must follow. However, for those who wish to have the matter heard in a fast and less costly way, both the *Right to Information Act* and the *Protection of Personal Information Act* allow for dissatisfied persons to refer their complaint to the Ombudsman for review. Because the Ombudsman provides an informed and objective review of the matter without the cost and complexity of full legal proceedings, most complainants choose this method of review. Almost all complaints referred to the Ombudsman are resolved as a result of the Ombudsman's review and hardly anyone has had to proceed to Court afterward.

4.1 Does having the choice of these two review options (i.e., the Court of Queen's Bench and the Ombudsman) provide people with reasonable access to fair and independent review of their access and privacy concerns? Please explain.

4.2 What changes, if any, do you think could be made to improve the review processes? A number of provinces have an independent Access and Privacy Commission. Do you believe that New Brunswick would benefit from such a model or is compliance through the ombudsman office sufficient?

5. Administration

There are currently certain features of the *Right to Information Act* that are making it more awkward and costly than necessary to administer.

There is not, for example, a uniform way – such as a form or an internet site – that people can use to make a request for information. As such, there is nothing to guide applicants in terms of what information to include when making a written request.

There are also difficulties being encountered with the strict 30-day deadline for providing a response. Under the current *Act,* there is

absolutely no flexibility to extend the deadline beyond 30 days; not even with the consent of the applicant. While it must continue to be government's goal to respond to requests as quickly as possible, there are certain complex or large volume requests for information that simply cannot reasonably be fully responded to within 30 days. New Brunswick is the only province in Canada where there is no formal way to extend the deadline beyond 30 days.

Neither does the *Act* allow for requests to be transferred from one department to another if a person inadvertently sends a request to the wrong place. Because the 30-day deadline cannot be temporarily suspended in order to accommodate the time it would take to transfer the request to the correct department, the only option is to return the request to the applicant with notification as to where the request should have been sent.

As part of this reform, government would like to identify the best way to address these and other minor administrative difficulties while at the same time ensuring that the goals of openness and transparency continue to be honoured. Most provinces have a separate ATIPP office as a central government agency. Should New Brunswick adopt this model?

5.1 What do you think could be done to improve the application process that would be simpler for applicants to make clear and complete requests for information?

5.2 If some kind of flexibility is built into the legislation that would allow the time for responding to an information request to go beyond 30 days, what kinds of limits should be put in place to make sure that responses continue to be provided in a timely fashion?

5.3 Are there other specific improvements to the process for accessing information that you would suggest?

6. Privacy

Although personal information about individuals is treated confidentially, the public is able to access much of the information held by government regarding businesses and other organizations that deal with government. There are only very specific circumstances under which information about a business can be kept confidential (see paragraphs 6(c) and 6(c.1) of the *Right to Information Act*). Furthermore, when government releases corporate information, there is no requirement that the company or organization be

informed about its release. Laws in other parts of Canada are slightly more restrictive when it comes to releasing information about the companies that do business with the government. In the case of Manitoba, unless one of the exceptions applies, or unless it is considered to be in the public interest, information is not released publicly. However, if government believes that the release of such information is in the public interest, government must let the third party know that it is thinking of releasing the information. This gives the third party the chance to voice its views about whether or not the information should be released. If government decides to go ahead with the release of the information despite the concerns of the third party, the third party can choose to make a complaint to the Ombudsman and the information will not be released until the Ombudsman can review it.

6.1 Should government be required to consult with third parties before they release information even if it could delay the release of the requested information by at least a month?

6.2 Do the restrictions set out in the Manitoba legislation provide a reasonable balance between the expectation of confidentiality by business and the need for government to remain open and transparent about its business dealings? If New Brunswick were to adopt this type of legislation, what concerns or improvements, if any, would you have to the approach that Manitoba has taken?

7. Limitations On Access

Even in the most open of governments, it is necessary to put in place restrictions to certain types of information. These restrictions are intended to protect information from release when its release is not in the public interest. If our goal is to have an open, yet functional, government, it is important to strike the right balance between openness and confidentiality.

In almost all modern access legislation, the limitations are focussed on ensuring the following objectives: maintaining individual or public health, safety and security; avoiding harm to law enforcement or legal proceedings; protecting solicitor/client privilege; maintaining relationships with other governments; protecting personal information about individuals; ensuring functionality of the government decision-making process; protecting negotiation processes; and avoiding harm to government business or the interests of third party individuals and businesses.

The current *Act's* limitations are somewhat vague and often difficult to interpret. It is intended that the existing limitations be better defined in the legislation so they can be more consistently understood and applied.

7.1 Are there existing limitations that you think have been interpreted too broadly or too narrowly? Are there limitations that you think are unreasonable? Are there any types of information that should be more or less restricted? Please explain why.

8. Protection of Personal Information

The *Protection of Personal Information Act* is based on a model that was developed by the Canadian Standards Association and widely adopted across Canada. It sets standards that the provincial government must follow when it handles information about individuals. It is intended to be a framework for decision-making regarding the handling of personal information to ensure that it is handled in a conscious, consistent manner.

The *Act* applies to all "personal information." It defines this as any "information about an identifiable individual, recorded in any form." There are 10 principles – the *Statutory Code of Practice* – that the government must follow in regard to the personal information it has in its possession. These principles deal with issues relating to the proper collection, use and disclosure of personal information. The principles also state that you are entitled to find out what information government has about you, and to correct this information if it is wrong. More information about the *Protection of Personal Information Act* can be found in the pamphlet at http://archives.gnb.ca/documents/POPI.pdf.

8.1 Are you satisfied that the information that government collects about you is being handled in such a way that your privacy is protected? If not, what concerns do you have? What more should be done to protect your personal information?

9. Protection of Personal Information Exemptions

Pursuant to paragraph 7 f) the *Protection of Personal Information Act,* the government may allow for the disclosure to a third party of protected personal information. For example, Regulation 2001-14 (http://www.gnb.ca/0062/regs/2001-14.htm) creates an exemption where government can disclose the names, addresses, and postal codes of the holders of driver's licences issued under the

Motor Vehicle Act, as well as the numbers of those licences, to the War Amputations of Canada to facilitate fundraising.

9.1 Do you believe that government should be allowed to create such an exemption?

9.2 If such exemptions exist, should there be safeguards to ensure that the third party does not improperly disclose the protected personal information?

9.3 If such exemptions exist, should there be a mechanism where you can have your personal information removed from the third party's control?

9.4 If such exemptions exist, what personal information should and should not be disclosed?

10. Purpose of Collected Information

According to the principles set out in the *Protection of Personal Information Act,* government departments should only collect, use or disclose information about you with your consent. While consent is sometimes given (or refused) by you directly, there are other situations in which consent can be "implied". Consent is considered to be "implied" as long as: a) a person would be unlikely to disapprove of the way in which the information is being used; or, b) government is using the information in a way that would be expected. Decisions about whether or not personal information should be shared between government departments are or should be made based on these principles.

10.1 Do you have any concerns about the sharing of personal information between government departments? What types of restrictions, if any, should be in place to ensure that information is not used inappropriately? In your opinion, what rules or protections can be put in place that would allow government departmentsto share information between departments in the interests of good service delivery and reduced administrative burden, while ensuring that personal information is properly protected?

Appendix C

Task Force Expenses

Travel	$1,365.05
Advertisements	$3,618.36
Printing and Design*	$6,553.19
Translation	$6,556.63
Toll-Free Telephone Line	$65.41
Mail	$600.00
Total	**$18,758.64**

*Portions of these totals are estimates since the final costs were not available at the time of printing.