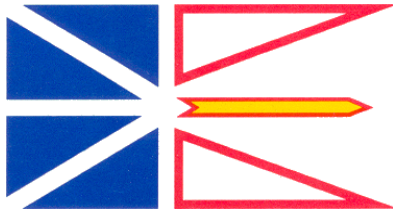


STRIKING THE BALANCE

The Right to Know & the Right to Privacy



**The Freedom
of Information
Review Committee**

Volume 1: Report • July 2001

Striking the Balance

The Right to Know & the Right to Privacy

**The Freedom of Information
Review Committee**

Volume 1: Report

St. John's, Newfoundland, July 2001

Volume 1 of the Report of the Freedom of Information Review Committee contains the Committee's findings and recommendations. Written submissions received by the Committee are contained in Volume 2.

Copies of both volumes may be obtained from

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Freedom of Information Review Committee
Province of Newfoundland and Labrador

Honourable Kelvin L. Parsons, Q.C.
Minister of Justice and Attorney General
Government of Newfoundland and Labrador

Dear Minister,

We are pleased to present the Report of the Freedom of Information Review Committee.

In appointing the Committee, Government acknowledged that, while the Act was initially considered a pioneering piece of legislation, there have been no major changes to the legislation since its enactment in 1981.

The Committee, therefore, viewed its work as an opportunity to examine possibilities to modernize access to government information in a way that promotes a balance among the public's right to know, respect for individual privacy, and the full and frank discussion needed for effective policy-making.

In fulfilling our mandate, we have reviewed similar legislation in other provinces and the Federal Government, gathered information, consulted with individuals and organizations in the province and other jurisdictions, accepted written submissions and conducted a series of public hearings across the province. We are grateful to those upon whose wisdom, thoughtfulness and expertise we have drawn.

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We commend this Report to you for your immediate attention and trust that it will assist Government in fulfilling its commitment to provide an open, transparent process for the development and implementation of public policy.

Respectfully Submitted,

Joan Dawe, Chairperson

Dennis Browne, Q.C.

Siobhan Coady

Dr. Leonard Williams

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The Freedom of Information Review Committee has drawn upon the experience and insights of many in preparing this Report.

The literature review, public consultation process, written submissions, as well as the formal and informal discussions with many individuals, assisted the Committee in formulating the conclusions and recommendations set out in this Report.

A task such as this could not have been completed without the efforts of competent, devoted staff. During the course of this comprehensive review, the Committee had the support of Dr. Melvin Regular, Executive Director; Stephen Ring, legal researcher; and Lynne Comeau, administrative assistant.

The Committee is also grateful for the competent editorial assistance provided by Robert Pitt in the completion of this Report.

The Freedom of Information Review Committee

Chairperson

Joan Dawe

Committee Members

Dennis Browne, Q.C.
Siobhan Coady
Dr. Leonard Williams

Executive Director

Dr. Melvin Regular

Legal Researcher

Stephen Ring

Administrative Assistant

Lynne Comeau

Editorial Advisor

Robert Pitt

"The Innu Nation recognizes that the rights of access to information must be balanced against the rights of personal privacy and the needs of agencies, organizations to protect personal, political, economically and culturally sensitive information. This is a balancing act, and we recognize the difficulties inherent in the exercise.

We believe that the best approach to resolving these difficulties is a commitment, in the Act, to openness and transparency in government, with specified exemptions for certain classes of information that are recognized as valid and reasonable limits on access to information."

- Submission of the Innu Nation

Summary

On December 12, 2000, the Government of Newfoundland and Labrador established the Freedom of Information Review Committee with a broad mandate to "review and make recommendations on all aspects of the *Freedom of Information Act*." This was the first review of the province's freedom of information legislation since it was enacted in 1981.

To carry out its mandate, the Committee undertook a comprehensive review of relevant literature, examined freedom of information legislation from other provinces and the federal government, and conducted a series of consultations across the province and with representatives of other Canadian jurisdictions.

Throughout its consultations and research, several common themes emerged which provided the foundation for the Committee's principles and shaped its recommendations. In particular, the Committee was guided by the principles of access, protection of privacy and essential confidences, inclusion, clarity, accountability and the right to an independent review. The Committee's overriding objectives have been to give greater control of the legislation to the people, and to foster the concept of "open government" through its recommendations.

To address these and related issues, the Freedom of Information Review Committee has proposed a number of changes, summarized below. However, as new legislation is prepared, all aspects of the current Act should be reviewed in light of the Committee's principles and recommendations.

Purpose: The Committee has concluded that the existing Act should be repealed and new legislation enacted 1. to provide specific rights of access to information, 2. to protect personal privacy, 3. to ensure access to one's personal information, and 4. to establish an independent process for reviewing decisions made by departments and agencies under the Act.

The Committee's other recommendations advocate both general and specific changes and additions, to give effect to this purpose.

Application and Coverage: The purpose of the Act is to ensure that all government departments and agencies are included. To ensure wide application and greater certainty about the agencies under the Act's jurisdiction, the Committee recommends the development of criteria for inclusion.

For a clearer understanding of the forms of material to be covered by the Act, a definition is required that includes new forms of electronic records.

The Committee also recommends removing the Newfoundland and Labrador residency requirement.

Protection of Privacy: In accordance with legislation in other Canadian jurisdictions and the advice received during consultations, the Committee advocates that a comprehensive regime for the protection of personal information and individual privacy be incorporated within the province's freedom of information legislation.

The Committee recommends that the Canadian Standards Association's International Model Code for the Protection of Personal Information, and the Newfoundland and Labrador Centre for Health Information's Privacy, Confidentiality and Access Standards, be considered as the foundation for this aspect of the new Newfoundland and Labrador legislation.

In order to protect and regulate the collection and control of personal health information, and to extend this protection to information held by private-sector agencies, separate health information legislation should be enacted to apply to all health organizations.

Confidences and Exceptions: The Committee recognizes that certain exceptions to disclosure are required to preserve confidences which are necessary for government to conduct its business effectively and in the best interests of all citizens. In general, the Committee has urged greater clarity to guide departments and agencies in applying exceptions of any kind.

In this regard, factual and background materials provided to Cabinet should be accessible under the Act, and there should be time limits for the disclosure of Cabinet documents.

The Committee advocates similar confidence and disclosure provisions for public servants or persons employed by agencies (including municipalities, school boards and health boards) when they are formulating or providing advice to decision-makers. Related recommendations

deal with the appropriate disclosure of documents which are due to be published and confidentiality requirements contained in other statutes.

Finally, a public-interest override provision should be included which would require government and agencies to release records that would otherwise be excepted, if there is an overriding need for the public to have that information.

The Information Request and Privacy Complaint Process. The Committee recognizes the need for consistent application of the legislation throughout government, and improved departmental procedures for responding to information requests and privacy matters. A lead department should be designated to oversee and coordinate the administration of the Act and to ensure that personnel within departments and agencies have the education and training they need to interpret and apply the Act correctly.

The Committee has also identified specific departmental and agency responsibilities, including the designation of personnel, to support and rationalize the process. Other specific recommendations relate to the format of requests, time limits, fees, providing the reasons for a refusal, and specific exceptions to disclosure.

There is a further requirement for the Records Management Unit of the Provincial Archives to work with all departments and agencies to ensure the development and application of system-wide records-management policies, standards and procedures to support the requirements of the freedom of information and protection of privacy process.

Review Mechanism: At present, the only option for a person who disagrees with a freedom of information decision is to launch an appeal to the Trial Division of the Newfoundland Supreme Court. Problems associated with using this process - particularly the costs and the length of time required - were frequently raised during the public consultations.

The Committee believes that the Newfoundland and Labrador legislation should provide an alternative to the courts, and recommends the establishment of the office of Information and Privacy Commissioner, with the authority to investigate and mediate complaints, and to make recommendations. In addition, the Commissioner should have the discretion to take a denied request to court at public expense.

The Committee recommends additional responsibilities for the Commissioner related to public education, to promote awareness of rights and protections under the proposed legislation.

To ensure independence, the Commissioner should be appointed by the House of Assembly and answerable only to that body, and should be provided security of tenure.

Government may also wish to consider whether the roles of the Commissioner and the office of Citizens' Representative, established by the recent *Citizens' Representative Act*, might complement each other or be combined.

Monitoring and Reporting: Monitoring and reporting are essential to ensure that the intent of the Freedom of Information and Protection of Privacy legislation is achieved and maintained, and to identify problems as they arise.

To facilitate effective monitoring, and to help identify and resolve problems within departments or agencies, the Committee recommends that all provincial departments, and other agencies under the Act's jurisdiction, collect and maintain statistics related to access and privacy requests, and prepare annual reports. The Information and Privacy Commissioner should receive these departmental summaries and report annually to the legislature on both departmental compliance and the review process.

Review of the Act: The present Newfoundland and Labrador *Freedom of Information Act* has remained virtually unchanged for two decades. During that time, there have been many changes in technology and society which have not been addressed in the legislation. To ensure that the new legislation remains current and relevant, the Committee recommends that a comprehensive review of the new Act be undertaken five years following its implementation, and periodically thereafter.

Conclusion: The changes proposed are significant, and the legislative drafting process will require sufficient time. Even after the legislation has been proclaimed, some of the recommendations - particularly those related to education, records management and the inclusion of municipalities - will take time to implement fully. This will require a phased approach. The Committee advises the establishment of an implementation timetable and an appropriate monitoring regime as the new legislation is introduced.

Foreword

Newfoundland and Labrador's freedom of information legislation was among the earliest enacted in Canada. At the time it became law in 1981, it provided greater rights to Newfoundland and Labrador citizens than were enjoyed by most other Canadians. Since that time, the other provinces and the federal government have all passed freedom of information legislation, many have updated their Acts, and several have extended them to include protection of privacy.

When the Committee began its review of legislation in other Canadian jurisdictions, it became clear that, in several important respects, the present Newfoundland and Labrador *Freedom of Information Act* does not provide rights that have now become the standard in this country.

These include rights to

1. information held by all government departments and agencies, with limited exceptions for preserving essential confidences and protecting privacy.
2. protection of individual privacy and the control of personal information entrusted to government departments and agencies.
3. an effective and efficient process for accessing information and protecting privacy.
4. an independent review of decisions about information requests and privacy complaints.
5. education about entitlements and responsibilities under freedom of information and privacy legislation.

The Committee's research and public consultations confirmed this standard, and posed additional challenges to be considered as the Committee formulated its recommendations.

The Freedom of Information Review Committee has endeavoured to reach this standard and to meet these challenges in the form of new Freedom of Information and Protection of Privacy legislation.

1. Context for Change

“Government has no intention of hiding behind legislation. We are committed to an open, transparent process in the development and implementation of public policy, and we want to ensure our legislation remains clear and relevant in this new age of information.

We understand that there must be a balance between the public's right to know, and respect for individual privacy. It is also important to promote full and frank discussions at the executive and ministerial level, which require appropriate recognition of the confidentiality of certain deliberations.”

- Minister of Justice Kelvin Parsons

In the Ministerial Statement to the House of Assembly establishing the Freedom of Information Review Committee and providing its terms of reference, Justice Minister Kelvin Parsons asserted that government is "committed to an open, transparent process in the development and implementation of public policy" and wants to ensure that legislation "remains clear and relevant in this new age of information.”

The Justice Minister also noted that "there must be a balance between the public's right to know, and respect for individual privacy. It is also important to promote full and frank discussions at the executive and ministerial level, which require appropriate recognition of the confidentiality of certain deliberations."

The Freedom of Information Review Committee heard similar comments during the course of its consultations across the province and in discussions with authorities in other parts of Canada. The Committee's research and review of other Canadian legislation also returned to the same key elements: the public's right to know; openness and transparency; clarity and relevance; appropriate recognition of confidentiality; respect for individual privacy; an independent review mechanism; and the need to address changes in information and records management.

This Report describes the steps the Committee took to achieve its mandate and address these issues, the results of its investigations, and the recommendations it believes will accomplish its purpose.

1.1 Mandate

The creation of the Freedom of Information Review Committee was announced by the Newfoundland and Labrador Minister of Justice on 12 December 2000. The Committee was mandated to review and make recommendations on all aspects of the *Freedom of Information Act* and regulations, including, but not limited to, recommendations dealing with

- (i) the need for a new review mechanism to examine decisions respecting the disclosure of information;
- (ii) the composition and powers of any recommended review mechanism;
- (iii) the appropriate exemptions from disclosure of the act;
- (iv) amendments necessary to deal properly with new forms of information such as e-mail; and
- (v) appropriate time periods for government departments and agencies to respond to requests for information.

The Committee was given the authority to determine the best process for conducting its review.

1.2 Consultations and Research

To fulfil its mandate, the Freedom of Information Review Committee completed a comprehensive review of the relevant literature, examined freedom of information legislation from other provinces and the federal government, and conducted a series of consultations across the province and with representatives of other Canadian jurisdictions.

The literature reviewed by the Committee is from a variety of sources, including academic studies, media reports and law journals. In particular, the Committee found the reports of

provincial and federal information and privacy commissioners to be informative and relevant, since they address issues on a practical level.¹

The consultation process consisted of a series of public hearings in Newfoundland and Labrador; direct consultations with provincial and federal information and privacy commissioners; meetings with community stakeholders, municipal and provincial governments, and representatives of all parties in the House of Assembly; and an invitation for written submissions and comments from all interested groups or individuals.²

1.3 Historical Context

On June 16, 1981 Newfoundland and Labrador's *Freedom of Information Act* became law. Both government and opposition members of the Assembly noted at the time that this legislation created an important right for the people of the province. It established a statutory regime for citizens to access information in the records of government departments and scheduled agencies, subject to limited exceptions. By this Act, citizens of the province gained the opportunity for informed participation in the democratic process and the assurance of greater accountability on the part of government.

The Act also provided the right to appeal decisions to the provincial Ombudsman or to the Trial Division of the province's Supreme Court. However, in 1991, the position of Ombudsman was abolished, which left the courts as the only venue for appeals.

At the time the Newfoundland and Labrador *Freedom of Information Act* was passed, many other jurisdictions were contemplating extending the right to access information held by public institutions to their citizens, but few had done so. In Canada, only two other provinces - Nova Scotia (1977) and New Brunswick (1978) - had adopted similar legislation by the time Newfoundland and Labrador enacted its own. It was not until 2001 that all provinces had enacted freedom of information legislation.

The first federal *Access to Information Act* was proclaimed on July 1, 1983.

¹ Appendix 5 contains a bibliography of relevant studies and reports, and legislation in other jurisdictions.

² Appendix 4 enumerates the Committee's consultations and meetings, and provides examples of the public invitations to participate in the review process.

1.4 Current Practices

Under the Federal *Access to Information Act*, citizens are entitled to request access to records held by the Government of Canada. This Act also establishes the office of information commissioner to investigate complaints from people who believe they have been denied rights under the Act. If refused, the applicant may appeal the decision to the federal court.

Similar rights and coverage are provided today in the freedom of information legislation of most provinces and territories. These various Acts define the departments and agencies to which they apply, and specify exceptions designed to protect privacy and essential confidences. Most legislation also provides for an override to these exceptions, if the release of the information is essential to the public interest.³

Government at the municipal level is included within the freedom of information provisions of most provinces. At present, only Newfoundland and Labrador,⁴ Prince Edward Island and New Brunswick do not include municipalities. Ontario and Saskatchewan have separate access legislation for municipal or local governance.

In all provinces but Newfoundland and Labrador, the relevant legislation establishes a commissioner, review officer or ombudsman to assist with, or resolve, complaints about decisions made under the Act. In most provinces, an appeal to the courts is also allowed.

In Canada today, most freedom of information and privacy laws are integrated within a single Act: only the federal government and New Brunswick have separate freedom of information and privacy legislation. The privacy provisions typically serve to protect recorded information about an identifiable individual. This includes such information as a person's name, ethnic identity, political beliefs, and fingerprints. In general, privacy legislation reflects a set of basic principles known as "fair information practices" which set guidelines for the collection, use and release of personal information.

³Appendix 3 to this Report provides, in tabular form, a comparison of various features of current freedom of information and protection of privacy legislation in Canada.

⁴ In Newfoundland and Labrador, provisions of the *Municipalities Act* require disclosure of certain documents. However, unlike the *Freedom of Information Act*, it does not give a citizen the right to access all municipal information, subject to limited exceptions.

2. Priorities and Principles

"Whereas, previously a citizen had to justify a request for information in government hands, this bill requires government to justify any refusal to provide such information... We want to create a 'culture of openness' within government so that public information is routinely released. If we are successful, the public will not even need to use the legislation."

- British Columbia Attorney General Colin Gabelman. 1992⁵

2.1 Priorities

Right of Access. In 1822, American President James Madison asserted the importance of information within a democracy: "Knowledge will forever govern ignorance; and a people who mean to be their own governors must arm themselves with the power which knowledge gives."⁶ The Ontario Assistant Information and Privacy Commissioner, citing a Supreme Court decision by Justice LaForest concerning the federal *Access to Information Act*, writes:

"The overarching purpose of access to information legislation, then, is to facilitate democracy. It does so in two related ways. It helps to ensure first, that citizens have the information required to participate meaningfully in the democratic process, and secondly, that politicians and bureaucrats remain accountable to the citizenry.

Parliament and the public cannot hope to call the government to account without an adequate knowledge of what is going on; nor can they hope to participate in the decision-making process and contribute their talents to the formation of policy and legislation if that process is hidden from view. Access laws operated on the premise that politically relevant information should be distributed as widely as possible.

⁵ Cited in R. Botterell, 1995.

⁶ Cited in D. Loukidelis, 2000.

Rights to state-held information are designed to improve the workings of government: to make it more effective, responsive and accountable."⁷

Public presentations and written submissions to the Freedom of Information Review Committee identified similar priorities and expressed forceful support for the right to access information held by government departments and agencies.⁸ They noted that the politicians - who govern only by the peoples' consent - are the custodians of the information in their care, and not its owners: the owners are the citizens of this province.

Appropriate Exceptions. While there is a strong consensus about citizens' rights to access information, there is also a clear recognition in legislation and the literature that there are legitimate exceptions to these rights. Alasdair Roberts⁹ of Queen's University observed that no government recognizes an unqualified right to inspect information within public institutions. He noted further that limited and specific exemptions can be in the broader public interest.

Similar views were expressed to the Committee during the consultations. The presenter for the Innu Nation, for example, stated:

"The Innu Nation recognizes that the rights of access to information must be balanced against the rights of personal privacy and the needs of agencies, organizations to protect personal, political, economically and culturally sensitive information. This is a balancing act, and we recognize the difficulties inherent in the exercise.

We believe that the best approach to resolving these difficulties is a commitment, in the Act, to openness and transparency in government, with specified exemptions for certain classes of information that are recognized as valid and reasonable limits on access to information."¹⁰

⁷ T. Mitchinson, 2000, referencing *Dagg v. Canada (Minister of Finance)* 1997.

⁸ In this Report, "department" means a department of the provincial government, and "agency" includes any board, commission, institution or other public body or entity, which is not a government department, to which the freedom of information legislation may apply.

⁹ A. Roberts, 1999c.

¹⁰ The full text of this presentation is in Volume 2 of this Report.

Protecting Privacy. In addition to the right to access information held by government and other public agencies, many citizens who spoke to the Committee requested better safeguards to protect privacy and control access to their personal records. Most called for the incorporation of privacy protection within the freedom of information regime.

The privacy of personal information, the Committee was told, is increasingly under siege because of new information technologies, and the ease with which computers can assemble and retrieve data about individuals. Some presenters were concerned about protecting health information, and about ensuring the right to access and to correct personal records held by government departments and other agencies.

Canada's Privacy Commissioner, George Radwanski, writes that "there is no freedom without privacy. In fact, ...privacy is the right from which all others flow, freedom of speech, freedom of association, freedom of choice, and any freedom you can name."¹¹ Justice LaForest also speaks to the issue, observing that "It has long been recognized that this freedom not to be compelled to share our confidence with others is the very hallmark of a free society."¹²

Process. In discussions with the Committee, Ontario's Information and Privacy Commissioner, Dr. Ann Cavoukian, confirmed the importance of the *process* for ensuring access rights. She spoke of the need for an efficient and well-publicized mechanism for receiving and responding to requests. She stressed the importance of competent and experienced personnel to coordinate this work in each department and agency.

The Information Commissioner for Canada, discussing the culture of large bureaucracies such as the federal government, noted that several factors often work against openness, including a long history of confidentiality in decision-making, and the tendency of public servants to show deference to superiors, not wanting to object to a refusal, even when the information could have been released.¹³

Presenters also reminded the Committee of the possible pressures on those responsible for administering the Act, especially if the information is to be disclosed at a politically inopportune time. They advised that a central government agency should be charged with the

¹¹ G. Radwanski, 2001.

¹² Cited by B. Phillips, 2000.

¹³ J. Reid, 2001.

responsibility of coordinating and championing the implementation of the Act across government departments and agencies, providing education, encouragement and support.

Records Management. During the consultations, the Committee heard concerns about the adequacy of the records management systems in government departments and agencies. Presenters noted that good records management is essential, since even the most open access legislation will be frustrated if the information cannot be found.

Review Mechanism. A further priority - required to give effect to the other elements - is an approachable and efficient independent review mechanism. Rights, the Committee was told, are of little consequence without the means to enforce them.

The present Newfoundland and Labrador *Freedom of Information Act* allows appeals only to the Trial Division of the Newfoundland Supreme Court. Problems associated with using this process - particularly the costs and the length of time required - were frequently raised during the public consultations. Without an accessible alternative to the courts, any freedom of information and protection of privacy legislation will be ineffectual and have no real force.

Education. Knowledge about rights is an essential prerequisite to enfranchisement. Presenters to the Committee emphasized the need to inform the public about their rights and how to use them. They stressed, as well, the need for education programs aimed at government and agency personnel. They underscored the need for a "cultural shift" towards more open, accountable and responsive government, and argued that education and training related to new access and privacy legislation is a necessary catalyst for such reform.

According to the 1987 Standing Committee on the Federal *Access to Information Act*, the most basic reason for providing education is that "Most people remain unaware of the Act. Many users, as well as those providing services under the Act, do not understand the purpose of the legislation, the need for access rights to be balanced with the respect for privacy and the needs of third parties and the government."¹⁴

¹⁴ Canada, Standing Committee on the Review of the *Access to Information Act* and the *Privacy Act*, 1987.

Uniform Rights. The Committee's examination of other freedom of information legislation has indicated that Newfoundland and Labrador's current Act is out of date and lacks provisions that are now common and accepted components of such legislation. At the very least, the Committee believes, the rights of the citizens of this province should be equivalent to those enjoyed by other Canadians.

2.2 Principles

The common themes and priorities that emerged from the consultations and research provided a foundation for the Committee's principles and shaped its recommendations. In particular, striking the appropriate "balance" between access and exceptions, between the right to know and the right to privacy, became a central focus of the Committee's work.

The following represent the underlying principles upon which the Committee has based its advice to government. It should be noted that these are not the Committee's principles alone. They are the principles articulated by the people of this province and other Canadians who have considered the issues and shared their thoughts:

- 1. The public has a right of access to information and protection of privacy.*
- 2. Freedom of information and protection of privacy regimes should be integrated within a single Act.*
- 3. Privacy provisions of the Act should ensure that individuals have the right to access their own personal information and to have it protected from inappropriate use.*
- 4. All agencies should be held to the same standard of accountability as government departments and be subject to the Act.*
- 5. The criteria for including agencies should be defined within the legislation.*
- 6. Government and agencies should provide ready and open access to records under their control, with limited, specific and clear exceptions to preserve privacy and essential confidences.*
- 7. There should be consistent and coordinated application of the legislation among departments and agencies.*
- 8. An independent review mechanism is required to review complaints, assist citizens and serve as an efficient alternative to the courts.*

9. *The request and the review processes should be simple and efficient to ensure timely responses and resolution of complaints.*
10. *Up-to-date and consistent records management is essential to ensure that records are retained and can be retrieved when required.*
11. *Both the public and the public service should be well informed about the principles and application of the Act.*
12. *The legislation should be monitored and reviewed to ensure that it is implemented effectively, and remains relevant and true to its original spirit and intent.*

3. Findings and Recommendations

"... access rights are not absolute. They are subject to specific and limited exemptions, balancing freedom of information against individual privacy, commercial confidentiality, national security and the frank communications needed for effective policy-making."

- Hon. John M. Reid, Information Commissioner of Canada¹⁵

This chapter presents the Freedom of Information Review Committee's findings and recommended changes to Newfoundland and Labrador's *Freedom of Information Act*.

Some of these recommendations deal with the issues specifically referenced in the Committee's mandate from government. Many address concerns raised by participants during the public consultation process. Others involve matters that arose from the Committee's research, and review of other freedom of information legislation across Canada.

Several of the Committee's recommendations will require significant changes in the way government deals with information and how it treats the information request process. Others will entail adjustments to provisions within the existing legislation.

Whatever the subject matter or implications, all of the recommendations which follow have been proposed in light of the Committee's principles articulated in Chapter 2, and its fundamental belief that an effective freedom of information process must enhance and expedite public access to information, while ensuring that individual privacy and confidentiality are protected.

¹⁵ J. Reid, 1999.

3.1 Purpose of the Act

The purpose of Newfoundland and Labrador's current *Freedom of Information Act* (1981) is

“... to provide a right of access by the public to information in records of departments and to subject that right only to specific and limited exceptions necessary for the operation of the departments and for the protection of personal privacy” (Section 3).

Written submissions and public presentations to the Committee spoke of the need to expand the purpose and scope of the present Act. In particular, presenters called for legislation that provides broader access to information, streamlines the access process, clarifies issues of inclusion and exclusion, and incorporates an independent review process.

Many submissions also advocated the introduction of a regime to protect personal information held by the government. Several urged that freedom of information and protection of privacy be integrated within a single Act, as is the case in most provinces.

Although Newfoundland and Labrador's *Privacy Act* (1990) provides Newfoundland and Labrador residents civil protection against violations of their territorial and personal privacy, it does not protect against disclosure of personal information held by the government. Today, Newfoundland and Labrador is the only Canadian province that does not have a legislated protection regime for personal information held by government.

Most jurisdictions incorporate both freedom of information and protection of privacy within the same legislation. Ontario's *Freedom of Access and Protection of Privacy Act*, for example, aims

"(a) to provide a right of access to information under the control of institutions in accordance with the principles that,

- (i) information should be available to the public,
- (ii) necessary exemptions from the right of access should be limited and specific, and
- (iii) decisions on the disclosure of government information should be reviewed independently of government; and

(b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information."

The Committee agrees that the concepts of freedom of information and protection of privacy are inextricably linked, and that this close connection should be reflected in common legislation.

Based on the Committee's review of relevant legislation, its research and consultations, it recommends the following:

Recommendation:

- 1. That the current Act be repealed and new legislation enacted, which includes**
 - a. a right of access to the information within the control of all departments and agencies, with limited and specific exceptions to preserve privacy and essential confidences;**
 - b. protection of personal information, including its collection, use and disclosure by departments and agencies;**
 - c. a right of access by individuals to their own personal information held by departments or agencies; and**
 - d. an independent review process for decisions made by departments and agencies under the Act.**

3.2 Application and Coverage

Application and coverage issues define the scope of the Act. These include the *departments and agencies* that should be subject to the freedom of information and protection of privacy legislation, the *type of materials* that may be accessed under the Act, and *who* is eligible to use the Act.

Departments and Agencies

Under the present Newfoundland and Labrador *Freedom of Information Act*, a person may request access to information in the records of any government department or of any board, commission or other body specifically listed in a Schedule to the Act (Section 2(a)).¹⁶ The Schedule is published by the Lieutenant-Governor in Council and agencies may be added as the Lieutenant-Governor in Council orders (*Freedom of Information Act* Section 16(a)).

¹⁶ Throughout the current Act, the term *department* also includes the institutions listed in the Schedule. The Schedule is reproduced in Appendix 2 of this Report.

Agencies which are not specifically named on this list do not fall under the jurisdiction of the current Act.

During the consultations, many presenters stressed the need for broader application of the Act to include all public agencies. Some observed that the present Act does not list, in the Schedule, institutions which are usually understood to be part of the public governance system. The province's Auditor General, for example, observed that under present legislation, only 26 of the province's 144 Crown agencies and other agencies - just 18% - fall within the purview of the Act.

Presenters sought greater clarity about why some institutions are placed on the Schedule for inclusion, while others are not. Several asked for the formulation of a procedure to ensure that agencies are not inappropriately removed from the Schedule, and suggested that changes should only occur with the consent of the House of Assembly.

The Committee agrees that agencies should be held to the same standard of accountability as government departments, and therefore be under the Act's jurisdiction. The legislation should be founded on the assumption that all government departments and agencies are subject to the Act unless specifically excepted for good cause.

A clear definition should be included in the Act which will automatically encompass any newly-created body, without need for amending the legislation. The Committee also believes that a schedule of included agencies would be useful for greater clarity; the authority for removing an agency from the schedule should reside with the Legislature of the province.

Recommendation:

- 2. That agencies covered by the new freedom of information and protection of privacy legislation be identified by a definition; a schedule of agencies should also be included within the Act, to provide greater certainty.**
- 3. That the approval of the House of Assembly be required to remove any agency from the jurisdiction of the Act.**
- 4. That, when the Legislature is not in session, the Lieutenant-Governor in Council may authorize the removal of an agency from the Act, subject to ratification by the House of Assembly at its next sitting.**

Specific Inclusions. The approach which the Committee has recommended is intended to ensure that the new Act applies to all public institutions, unless specifically excepted. However, the Committee wishes to address separately the status of three specific entities, because of the attention they received during the public consultations.

At present, Newfoundland and Labrador's *Freedom of Information Act* does not apply to municipalities, school boards or regional health and community service boards.¹⁷ As Table 1 in Appendix 3 indicates, freedom of information Acts, in most Canadian jurisdictions, include these bodies.

The Committee heard differing opinions on these issues during the consultations. Some participants representing municipalities stated that municipal governments should be exempt from the Act, citing what they considered to be the adequacy of existing municipal legislation and the need for private discussion of sensitive issues during meetings. Some spokespeople were concerned that an increase in information requests would create an unmanageable administrative burden and result in increased personnel and infrastructure costs, particularly for smaller municipalities.

While some municipal representatives argued that their councils' operations were open and transparent, other presenters held different views. They stated that municipal councils often conduct their business in privileged meetings and bring decisions to public meetings only for ratification.

The Newfoundland and Labrador School Boards Association was concerned that the application of the Act to school boards would impose a considerable administrative burden and generate significant legal costs.

Most presenters, however, believed that municipalities, school boards and all health and community services boards should stand the same level of scrutiny as other levels of government or public agencies, and be equally accountable to the citizens of the province.

The Committee has concluded that the need for greater openness, transparency and accountability on the part of agencies mandated to serve the public and to spend public monies outweighs the arguments for exclusion. This view is supported by the majority of the

¹⁷ Although the Act has always included institutional health boards, the newly-formed Health and Community Services Boards have not been added to the Schedule.

submissions and by the trend, across Canada, to extend coverage to school boards, health boards and municipalities.

At the same time, some protection is necessary for the advice and deliberations of these agencies, similar to that afforded advice from officials¹⁸ These exceptions should be designed to protect essential confidences, while allowing appropriate access to information.

Recommendation:

- 5. That municipalities, school boards, and all health and community services boards be subject to the provisions of freedom of information and protection of privacy legislation, with appropriate and specific exceptions.**

Forms of Information

The Committee was mandated to review and make recommendations on all aspects of the *Freedom of Information Act*, but the Terms of Reference also specified a number of areas for specific consideration, including "amendments necessary to deal properly with new forms of information such as e-mail."

The types of materials, or forms of information which may be disclosed under the existing Newfoundland and Labrador *Freedom of Information Act* are defined as "information in any form including information that is written, photographed, recorded or stored by other means and on file or in the possession or under the control of a department" (Section 2.c).

The trend in other Canadian jurisdictions has been to articulate a more detailed definition of information that includes new forms. Within the Ontario *Freedom of Information and Protection of Privacy Act*, records include

"... any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, and includes,

(a) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof... ." (Section 2)

¹⁸ See Section 3.4 of this Report.

The Committee finds that a more detailed definition of information would provide greater certainty of coverage, easily encompass new media forms and simplify the Act's administration. The Act should recognize that a record is *stored information*, regardless of the medium on which it is recorded, and that new media and new technologies are to be included under the Act.

Recommendation:

- 6. That the current definitions of *information* and *record* be broadened to include all recorded information, regardless of form or the medium on which it is recorded, with the aim of ensuring that new technologies are included as they enter into use.**

Residency Requirements

To use the province's current *Freedom of Information Act*, an applicant must be either a resident of Newfoundland and Labrador, or an incorporated entity carrying on business in the province. Newfoundland and Labrador's Act is the only Canadian law of its kind that imposes such restrictions. Most Canadian statutes grant every Canadian citizen the right to access government records, and any individual or corporate body can request information.

Removing the Newfoundland and Labrador residency requirement would eliminate an unreasonable barrier to accessing information. It would also bring Newfoundland and Labrador's Act in line with other jurisdictions in Canada.

Recommendation:

- 7. That the Newfoundland and Labrador residency requirement be removed, and that access be provided to all Canadian citizens and Canadian corporations.**

3.3 Protecting Privacy

The protection of individual privacy was a central issue for many who spoke to the Committee or provided submissions. The Committee was told that the province's freedom of information legislation should be revised in conjunction with the introduction of full and comprehensive privacy legislation. Presenters asserted that people should have the right to access their own

personal information - including health information - held by government and agencies, to ensure that it is accurate and up-to-date, and to have it protected against unauthorized use.

The current Newfoundland and Labrador *Freedom of Information Act* deals with access to information about identifiable individuals (Section 10, Personal Information). This part of the Act prohibits disclosure, under the Act, of such information as a person's address, race, religion, age or marital status. It also protects the personal opinions or views of an individual, and correspondence that is implicitly or explicitly private or confidential (10.1).

The Act lists certain instances where information about individuals may be made public (Section 10.2). These include, for example, information about a government employee relating to the individual's job, or information relating to a benefit conferred. It allows government to release information about a person's criminal record, if it is in the public interest to do so.

However, the current Act does not contain a comprehensive privacy regime which addresses the way in which public bodies collect, use and disclose personal information. As well, the Act does not address the rights of individuals to have access to their personal information and to have it corrected, if necessary.

The privacy provisions of most freedom of information Acts contain provisions similar to Canadian Standards Association's (CSA) International Model Code for the Protection of Personal Information, which has come to be recognized as a national standard.¹⁹

The Code's Principles address such issues as an organization's responsibility for the personal information under its control, the purposes for which the information may be used, consent requirements, access issues and means of ensuring accuracy of the information.

The Committee agrees that there is a need for a comprehensive regime for the protection of personal information and individual privacy to be incorporated within the province's freedom of information legislation. The benefits, flowing from privacy provisions integrated with freedom of information legislation, will include enhanced protection of personal privacy, a consistent approach to the collection, retention and disclosure of personal records, better management of personal information, and greater openness to individuals seeking their own personal information.

¹⁹ New Brunswick's Statutory Code of Practice attached to its *Protection of Personal Information Act* (2001), for instance, closely resembles CSA International Model Code. The full code can be found via the internet at <http://www.csa.ca/standards/privacy/code> .

Recommendation:

- 8. That the regime to protect personal information within the new Act be based on the Canadian Standards Association's International Model Code for the Protection of Personal Information.**

Personal Health Information

The collection and control of personal health information was the subject of several representations made to the Committee, and it was clear that this is an important and sensitive matter.

Although public institutions will be subject to the legislation proposed by the Committee, the Act will not apply to health information collected by the private sector. A number of health services are now being delivered by private health agencies. Several presenters advocated a consistent policy for both the public and private sectors, respecting the treatment of personal health information.

The issues related to personal health information are often unique, and may give rise to conflicting perspectives. One view, for instance, holds that an individual's right to privacy is paramount and must take precedence over any competing demand for information. Another perspective would hold that the broader needs of society may sometimes outweigh that right to privacy. For example, the present health system depends on access to patient records for research, public health information and accountability.

The Committee believes that an appropriate balance must be struck between an individual's right to privacy and society's needs, and that this should be dealt with in legislation specifically designed for the purpose.

The Standards developed by the Newfoundland and Labrador Centre for Health Information,²⁰ which are based on the CSA's Model Code, provide an appropriate starting point for discussions on the development of health information legislation in this province.

²⁰ The Standards are included in the Newfoundland and Labrador Centre for Health Information's submission, reproduced in Volume 2 of this Report.

Recommendation:

- 9. That government enact separate health information legislation to apply to all health organizations; and until that time, personal health information remain subject to the jurisdiction of the proposed *Freedom of Information and Protection of Privacy Act*.**

Third-Party Information

The current *Freedom of Information Act* requires that a third party be notified of an intention to disclose information if it includes trade secrets or financial, commercial, scientific or technical information, the disclosure of which would harm the interests of the third party (Section 13). In these circumstances, the third party is given the opportunity to make representations to the head of the department or agency to explain why the requested record should not be disclosed. The third party is also given notice of the right to appeal any decision to disclose the information.

The Committee is of the opinion that the scope of the current third-party intervention section is too narrow and should be extended to situations where the disclosure of information may be an unreasonable invasion of a third party's personal privacy. This would be consistent with the Committee's recommendations related to the protection of privacy under the Act, and with similar legislation in other Canadian jurisdictions.

Recommendation:

- 10. That third-party intervention be extended to situations where the disclosure of information may be an unreasonable invasion of a third party's personal privacy.**

3.4 Confidences and Exceptions

In addition to exceptions intended to protect privacy, certain exceptions are required to preserve confidences necessary for government to conduct its business effectively and in the best interests of all the citizens it represents.

As one public submission to the Committee stated, "the rights of access to information must be balanced against the rights of personal privacy and the needs of agencies, organizations to

protect personal, political, economically and culturally sensitive information. ... the best approach to resolving these difficulties is a commitment, in the Act, to openness and transparency in government, with specified exemptions for certain classes of information that are recognized as valid and reasonable limits on access to information.”

Other than certain personal information (discussed in Section 3.3 of this Report), the current Newfoundland and Labrador legislation describes two classes or categories of information exempted from disclosure under the Act. They are defined as "non-discretionary exceptions" (Section 9) and "discretionary exceptions" (Section 11).

The current Act describes in its list of *non-discretionary exceptions* the types of information and classes of documents which may not be disclosed. These include such information as records obtained in confidence from the Government of Canada or another province, matters discussed in Cabinet, including government policy, minutes of meetings and briefing materials, and information designated as confidential by another Act.

Discretionary exceptions from disclosure include such matters as information which could "reasonably be expected" to harm federal-provincial negotiations, could hinder law enforcement or investigations, affect the economic interests of the province, or indicate proposed legislation.

While the Committee recognizes that exceptions are necessary, the application of any exception must be considered in light of the fundamental principle of the public's right to access information collected or generated at public expense.

In general, Newfoundland and Labrador's freedom of information and protection of privacy legislation should provide greater clarity to guide departments and agencies in applying exceptions. In other jurisdictions, lists of exempt information are more comprehensive and specific than in the current Newfoundland and Labrador *Freedom of Information Act*.

A similar level of guidance is required within the Newfoundland and Labrador legislation so that both requesters and officials will have a clearer and better harmonized sense of what material is accessible.

For example, more guidance is needed when dealing with issues related to law enforcement, the economic interests of the province and commercial information. The Act should clarify the circumstances under which such information should be excepted from disclosure.

In addition to the general need for clarity, the Committee has identified several areas that require specific recommendations related to exceptions:

- Cabinet Confidences
- Advice from Officials
- Published Documents
- Confidentiality Requirements in Other Statutes
- Public-Interest Override.

Cabinet Confidences

Cabinet confidence exceptions protect documents that, if released, would reveal the substance of deliberations of the Executive Council. As specified in Section 9(1) of the current Act, these include such documents as proposals or recommendations prepared for submission to Cabinet, Cabinet agendas and minutes, briefings to ministers on issues before the Cabinet, and background analyses of problems or policy options submitted to Cabinet for their consideration before decisions are made.

Most jurisdictions in Canada with freedom of information legislation allow exceptions for Cabinet confidentiality. This is based on the concept that, at the Cabinet table, all ministers must be free to exchange frank views with their colleagues, and to have those views and exchanges protected. However, the current Newfoundland and Labrador *Freedom of Information Act* is the most sweeping, allowing no access except "where disclosure of the information is authorized by the Premier of the province" (Section 9(2)).

In other Canadian jurisdictions there are several circumstances where Cabinet confidentiality ceases to apply. These circumstances include (a) the release of Cabinet documents after a specified time has passed, (b) the release of background or factual information once a decision has been implemented, or after a specified number of years, if the document has not been made public; and (c) a "public-interest" override, where the release of protected material is in the public interest, such as protecting public safety.²¹

The issue of exceptions for Cabinet documents was the subject of much discussion and advice during the public consultations.

²¹ See Table 2, Appendix 3.

Some presenters were concerned that information is unnecessarily exempted from disclosure, simply because it has been attached to Cabinet submissions. Others believed that reports are sometimes deliberately framed to attract protection under the Cabinet Confidences section of the Act, to keep secret information that would otherwise be disclosed.

The Committee heard during its consultations that there is no justification for restricting factual information or background material that does not disclose the substance of Cabinet deliberations. The Committee was also told that an exception time limit should be established in legislation for releasing documents protected by Cabinet confidence, as is the norm in other Canadian jurisdictions (see Table 2, Appendix 3).

The Committee agrees that a distinction should be drawn between advice and factual background material, and that the latter should be made available to the public once the relevant decision has been implemented, or after a specified time. Provisions for Cabinet confidences should be reviewed and made more explicit, to ensure that information is not inappropriately kept from the public.

Although Cabinet confidences are integral to good and efficient governance, a confidentiality time limit is needed.

Such changes would bring Newfoundland and Labrador's Act in line with those of other jurisdictions, provide access to a wider range of records, discourage arbitrary non-disclosure, and increase public confidence in government.

Recommendation:

- 11. That factual information, background material and documentation that does not disclose the substance of Cabinet deliberations be made available to the public once the relevant decision has been implemented, or five years from the date of submission if no decision has been made public by that time.**
- 12. That Cabinet Confidence exceptions be subject to a maximum fifteen-year time limit.**

Advice from Officials

Currently, there is no provision in the Newfoundland and Labrador *Freedom of Information Act* to protect from disclosure documents that reveal the advice to government or other agencies provided by a public servant or a person employed by the agency.

The Committee believes that exceptions are sometimes necessary to ensure that persons acting in an official capacity (including those representing municipalities and school boards) are not hindered from giving advice candidly. These exceptions would include records of deliberations formulating that advice.

Such exceptions are needed to ensure effective governance, for reasons similar to those which justify Cabinet confidences. However, just as certain background information provided to Cabinet should not be restricted, the same must be true under provisions protecting advice from officials. This exception should apply to policy advice and minutes pertaining to decision-making, but not to factual information used in the process. For example, statistical surveys, public opinion polls and environmental impact statements should be subject to disclosure provisions under the Act.

These exceptions from disclosure would enhance the ability of officials to perform their work in the interests of the citizens of the province, and would bring Newfoundland and Labrador's legislation in line with legislation in other Canadian jurisdictions.

Recommendation:

- 13. That the Act provide protection against disclosure of certain kinds of information which would reveal advice or recommendations of a public servant to government, or of other persons employed by agencies under the jurisdiction of the Act.**
- 14. That similar disclosure provisions and time limits be applied to these materials as are recommended for Cabinet confidences.**
- 15. That this exception not apply to factual information, including the results of statistical surveys, public opinion polls and environmental impact statements.**

Published Documents

The current Act states that applicants seeking information which has been published should be referred to the appropriate publication. Section 8(1)(c) provides that applicants requesting information which is intended for publication will be informed of that fact, and of the approximate date of publication.

However, nothing in the current legislation indicates when, in the future, the requested information must be published, if this exception is invoked. This creates a *de facto* exception from disclosure, providing an institution the ability to refuse a request if the information is to be published at any time in the future. To prevent this from happening, the Committee believes that this exception should apply only if the information will be published within 90 days of the date of the request.

The addition of a specific limitation would ensure that only published or soon to be published documents would be subject to the exception and prevent the clause from being abused. It would also help the administration of the Act since the head of a department would know when the exception applies.

Recommendation:

16. That information due to be published be made available within 90 days of a request.

Confidentiality Requirements in Other Statutes

At present, the Newfoundland and Labrador *Freedom of Information Act* is subordinate to any confidentiality provisions of other statutes. Section 9(1)(g), on non-discretionary exceptions, states that a person is not permitted access to information in records "that are, subject to an Act of the province, required to be kept confidential."

Most other jurisdictions in Canada take the opposite approach. In these jurisdictions, access legislation takes precedence over all other statutes, with such modifications as are necessary to preserve the confidentiality of information protected by other legislation. Alberta's *Freedom of Information and Protection of Privacy Act*, for instance, provides for the specific listing of sections of other acts which are to prevail over the information act.

Establishing a similar regime within the Newfoundland and Labrador legislation would provide for ease of administration and create certainty of interpretation. It would be necessary to refer to just one Act (the *Freedom of Information and Protection of Privacy Act*) to determine if a particular item could be disclosed. New legislation with provisions to override the Act would also receive more scrutiny.

Recommendation:

- 17. That the province's freedom of information and protection of privacy legislation take precedence over all other Acts.**
- 18. That the freedom of information and protection of privacy regulations contain a specific schedule of provisions in other statutes which restrict disclosure under the Act.**

Public-Interest Override

Situations arise where it is in the public interest to disclose information which would otherwise be protected by an exception from disclosure under the Act. Issues of public health, safety, and environmental protection, for instance, may arise where there is an overriding need for the public to have certain information.

Under these circumstances it seems clear that the public's right to be informed should outweigh Cabinet confidences and other exceptions, including an individual's right to privacy.

A public-interest override of disclosure exceptions is a common feature of access legislation. However, there is no such override in the present Newfoundland and Labrador *Freedom of Information Act*, except that under Section 9(2) the Premier may authorize disclosure of exempted information for reasons that are not specified.

The Committee has concluded that specific provisions for a public-interest override of exceptions should be an integral component of Newfoundland and Labrador's freedom of information and protection of privacy legislation.

Recommendation:

- 19. That the Newfoundland and Labrador freedom of information and protection of privacy legislation provide for a public-interest override.**

3.5 The Information Request and Privacy Complaint Process

Applications under the present *Freedom of Information Act* are initially directed to the Minister of the government department, or to the head of the agency, which maintains the relevant documents. In most government departments, an individual is designated to respond

to requests and complaints, and to report to the Minister about the status and availability of the requested information.

After an assessment has been completed within the department, access to the information is either granted or denied, and the applicant is notified of the decision in writing. If the request is denied, the applicant may appeal the decision by starting proceedings in the Trial Division of the Supreme Court of Newfoundland.²²

During the consultations, presenters focused on two principal areas related to supporting and strengthening the current freedom of information process within government: the need for consistent application of the legislation throughout government, and improved departmental procedures for dealing with information requests and privacy issues.

Presenters noted that the current *Freedom of Information Act* does not provide for a central authority to guide and educate departments and other agencies about the Act's application. The Committee was also told that there is insufficient direction in the Act for administering the legislation at the departmental and agency level.

Consequently, within some departments and agencies, there is a lack of familiarity with proper response procedures, and interpretation of the Act varies from agency to agency.

The Committee believes that the public must be confident that appropriate and consistent decisions are made across all departments and agencies, in keeping with the intent of the Act.

In other jurisdictions, these concerns have been addressed by the designation of a lead department or agency to oversee the administration of the Act and by defining specific departmental responsibilities, including the designation of departmental coordinators.

The Lead Department

The Committee has concluded that a department or other entity within government should be assigned responsibility for the overall administration and coordination of the Act. This lead department should be mandated to support all other departments and agencies by providing leadership in interpreting and applying the Act, and fostering common standards and monitoring.

²² An alternative review process is addressed in Section 3.6.

Specific responsibilities of the lead department should include

- developing policy and procedures for the effective administration of the Act;
- providing on-going education, related to the Act, to the public service;
- providing advice to departmental officials responsible for requests; and
- communicating with the Information and Privacy Commissioner.²³

The lead department will also need to work closely with the Records Management Unit of the Provincial Archives of Newfoundland and Labrador to ensure the development of system-wide records management policies, standards and procedures to support and complement the requirements of the freedom of information and protection of privacy process.

Recommendation:

- 20. That a lead department be mandated the responsibility to oversee and coordinate the administration of the Act throughout all government departments and other agencies under the Act's jurisdiction.**

Departmental and Agency Responsibilities

The Committee believes that the Minister of each government department and the head of each agency under the jurisdiction of the Act, must have direct responsibility for its administration of the Act.

Within each department and agency, an individual with the appropriate education, training and skills should be designated with responsibility for responding to requests and maintaining departmental statistics related to them.

Recommendation:

- 21. That the Minister of each department, or head of each agency, be responsible for applying the Act within the department or agency.**

²³ The roles and responsibilities of the Information and Privacy Commissioner are described in Section 3.6 of this Report.

- 22. That each department or agency designate an individual to**
- a. receive and process requests;**
 - b. coordinate responses for approval by the minister or head;**
 - c. ensure that the provisions of the Act are understood and implemented at the departmental level;**
 - d. maintain a registry of all requests; and**
 - e. prepare annual statistical reports on requests received.**

Request Administration

The following recommendations are intended to provide guidance and greater clarity for several issues related to the conduct and administration of the request process at the departmental or agency level.

Format of Requests. At present, a request for information under the *Freedom of Information Act* must be made in writing. The Act does not address situations where a person is unable to comply with this requirement.

The Committee believes that the proposed freedom of information and protection of privacy legislation should permit an oral request if a person has a limited ability to make a written request. This option is now available in other Canadian jurisdictions.

Recommendation:

- 23. That a person who is unable to prepare a request in writing have the option to submit an oral request.**

Time Limits for Initial Response. The Committee's Terms of Reference specifically mandated consideration of "appropriatetimes periods for government departments and agencies to respond to requests for information."

The present Newfoundland and Labrador *Freedom of Information Act* (Section 7) requires that, within 30 days of the receipt of a request, the Minister or head respond in writing to grant or deny the request, or to refer it to another department or agency which has the information.

The current legislation does not specifically provide for extensions to the time limit for responses.

While a 30-day initial response time is common throughout Canada, in most other jurisdictions, this limit may be extended, for good reason, up to a maximum of another 30 days.

Grounds for an extension usually include one or more of the following reasons:

- the large number of records that have to be examined cannot be assessed within 30 days, without unreasonable interference with normal operations;
- the individual or organization has made a large number of requests at the same time;
- consultations are necessary before a response can be made, and they cannot reasonably be completed within 30 days;
- the request is not sufficiently detailed to enable the institution to identify the requested record.

Most Acts require that the applicant be informed of any time extension, and told when a response can be expected. Typically, the applicant also has the right to make a complaint, to an independent review officer, about the extension.

Recommendation:

24. That the legislation provide for a 30-day extension to the existing time limit for responses, and that criteria for extensions be specified in the Act.

25. That, when extensions are granted, the applicant be notified and provided with the reasons for the extension, the date it is expected the response will be issued, and information about the applicant's right to appeal the extension.

Fees. The fees currently charged under Newfoundland and Labrador *Freedom of Information Act* are \$5.00 for the application fee, a \$15.00 per hour service fee (after the initial two hours) and \$0.25 per page for photocopying.

During the consultations, some presenters told the Committee that fees should be kept to a minimum - a nominal application fee and a photocopying fee aimed at cost-recovery. Others asked that all fees associated with a request be abolished, and argued that the fees collected

add little to government revenues, while sometimes playing a significant role in deterring requests.

Fees charged in other jurisdictions that the Committee examined tend to be similar to, or higher than, Newfoundland and Labrador's. The application fee in Alberta, for instance is \$25, though most are the same as in this province (\$5.00). At \$15.00 an hour, Newfoundland's service fees are the lowest, with \$30.00 an hour being the typical fee charged in other provinces. The \$0.25 per page fee charged in Newfoundland and Labrador is the amount charged in most other provinces.

The Committee is of the opinion that fees should be held to reasonable levels which do not act as a barrier to access. However, situations will arise where an applicant does not have the ability to pay for a request. In other jurisdictions, under such circumstances, the government institution involved can waive the applicable fees.

Use of the access legislation should not be restricted to those who have the ability to pay and provisions should be made to waive fees under appropriate circumstances.

Recommendation:

26. That the fee structure be maintained at reasonable levels and a waiver policy be included in the legislation.

Disclosure Injurious to Health or Welfare. Situations sometimes arise where disclosure of information may be reasonably expected to threaten the health or safety of the applicant or other person, or interfere with public safety. The Committee believes that, in such situations, departments and agencies should be able to refuse access to the requested information. This is common in other Canadian jurisdictions.

In order to refuse access to information about an applicant on these grounds, the department or agency would need to seek the opinion of a physician, a chartered psychologist, a psychiatrist or any other appropriate expert who would certify that disclosure could be expected to result in immediate and serious harm to the applicant or another person.

The addition of a right to refuse access where disclosure is injurious to health or welfare of an individual would provide added protection for individual health and safety.

Recommendation:

- 27. That an institution be able to refuse access to information where disclosure of the information could reasonably be expected to interfere with the health or safety of the applicant or any other individual.**

Providing Reasons for Refusal. Under current legislation the responding department or agency is not required to provide the reason it has refused access. In all other Canadian freedom of information legislation, a notice of refusal must cite the section of the Act being relied upon to refuse the request, and provide information about the right to appeal the decision.

It is the Committee's opinion that reasons for refusal should be provided if access has been denied. This would encourage better-reasoned decisions and would enable an applicant to make an informed choice about appealing the decision. The release of the name and position of the person who can answer questions about a refusal would also encourage informal resolution of disputes, without resorting to a formal review or appeal.

Refusals should also inform applicants of their right to appeal the decision or have it reviewed by the Commissioner.

Recommendation:

- 28. That refusals specify**

- a. the Section(s) of the Act being relied upon to refuse the request;**
- b. the name of the person who can be contacted regarding the reply; and**
- c. information about the applicant's right to appeal the decision to the court or have it reviewed by the Information and Privacy Commissioner.**

Ability neither to Confirm nor Deny. Although the Committee recommends that reasons be provided for the denial of all information requests, there are some circumstances where providing the reasons for refusal, or even a statement that a requested record does not exist, is not an appropriate response to an applicant's request.

For example, a person may request information about police surveillance. This is clearly law enforcement information that should not be disclosed. If, in fact, the surveillance is being performed, it would be inappropriate to deny the existence of the information. On the other hand, a response that access to the information was denied based upon a law enforcement exception might imply that surveillance has occurred.

The Committee believes that granting a department or institution the ability to respond to a request by neither confirming nor denying the existence of the information should be an option within Newfoundland and Labrador's freedom of information and protection of privacy legislation, under special circumstances. These circumstances should only be considered where the confirmation or denial of information could be expected to interfere with personal privacy or law enforcement, or threaten the health or safety of an individual.

The addition of this provision provides government institutions the ability to respond to a request in a way that would preserve essential confidences and prevent harm. It would also bring Newfoundland and Labrador's legislation in line with that in other jurisdictions.

Recommendation:

- 29. That agencies under the jurisdiction of the Act be allowed to respond to a requester by neither confirming nor denying the existence of information where the confirmation or denial could be expected to interfere with personal privacy, law enforcement or threaten the health or safety of an individual.**

Records Management

Proper records and information management are essential prerequisites for an effective freedom of information process. Without well-organized and readily accessible records, no freedom of information process will be open or accessible.

The Committee was told during its consultations that records management systems are inadequate within many departments and agencies, and this frequently hinders the identification and retrieval of information related to requests. The nature of records has changed drastically over the past decade, and information management practices have not kept pace. This results in delays and additional research time, which adds to the applicant's costs.

The Committee believes that records and information management must be improved and standardized, as a priority, throughout all government departments and agencies. Records

management staff in departments and agencies should be provided with the necessary training to meet the challenges of modern records management, and to take full advantage of the new information management technologies available. This will require resources and a realistic strategy and time line for full implementation.

Recommendation:

- 30. That government ensure the implementation of standards and procedures for the retention, organization, retrieval and disposal of paper, electronic and other records across all departments and agencies.**
- 31. That government provide for adequate education, training and monitoring of staff responsible for implementing the standards across government, and for other resources necessary to establish an effective and efficient records management regime.**

3.6 Review Mechanism

The Terms of Reference require the Committee to "review and make recommendations regarding ... the need for a new review mechanism to examine decisions respecting the disclosure of information" and "the composition and powers of any recommended review mechanism."

At present, the only option under the *Freedom of Information Act*, for a person who wishes a decision reviewed, is to launch an appeal to the Trial Division of the Newfoundland Supreme Court. Indeed, the concern most frequently voiced to the Committee during the public consultations was the difficulty of using the appeal process under current legislation.

The Committee heard that the costs of a court appeal are high and very often prohibitive. Others noted that, by the time the court hears and decides on an appeal, the information may no longer be of use because of the time that has elapsed. In general, the Committee was told, the existing appeal process precludes any opportunity for the parties to reach an understanding or achieve a mutually acceptable resolution.

Consistently, presenters called for the creation of a review mechanism, independent of government, which provides an alternative to the courts, and an alternative to the adversarial approach.

The Committee agrees that the high costs, the time involved in a court appeal and the confrontational nature of the current process are significant limitations and deterrents. If the Newfoundland and Labrador *Freedom of Access and Protection of Privacy Act* is to be accessible to all citizens, the legislation must provide for a review process which is a practical and more efficient alternative to litigation.

The Committee believes that the best alternative is an independent Commissioner with the authority to assist citizens by investigating information refusals and privacy complaints.²⁴

Recommendation:

32. That the position of an independent Information and Privacy Commissioner be established under the *Freedom of Information and Protection of Privacy Act*.

Appointment of the Commissioner

Throughout the consultations, the Committee was told that to ensure credibility and acceptance as an alternative to the courts, the Commissioner's appointment and tenure will have to be independent and clearly non-partisan, as is the case in other jurisdictions. The Committee agrees that the appointment of the Information and Privacy Commissioner must be free of political influence, and that the Commissioner should not be in a position to be swayed by any agency or interest group during his or her tenure.

To ensure independence, the Commissioner should be appointed by the House of Assembly and answerable only to that body. To ensure security of tenure, the appointment should be for a fixed period of seven years with an option for one additional term. In addition, the salary of the Commissioner should be tied to an appropriate salary scale that is independently set.

²⁴ Within Canada, Newfoundland and Labrador is the only province without an independent commissioner or ombudsman to assist people with appeals under freedom of information legislation (see Table 3, Appendix 3). In 2001, the Newfoundland and Labrador legislature passed the *Citizens' Representative Act* (included in Appendix 2) which established the position of Citizens' Representative to investigate grievances about the actions of any government departments or agencies. Government may wish to consider whether the roles of the Commissioner and the Citizens' Representative might complement each other or be combined.

Recommendation:

- 33. That the appointment of the Information and Privacy Commissioner be made by the House of Assembly upon the recommendation of the Lieutenant-Governor in Council.**
- 34. That the Information and Privacy Commissioner's term of office be seven years, with the possibility of renewal for one further term.**
- 35. That the Information and Privacy Commissioner report to the House of Assembly.**
- 36. That the Information and Privacy Commissioner's salary be tied to an external salary scale.**

Powers

To function effectively, the Information and Privacy Commissioner must have certain special powers and authority. The Commissioner must have the power to investigate requests for review and complaints under the Act, and these powers should be specified in the legislation. To conduct an effective investigation, the Information and Privacy Commissioner must be able to examine the information in question to determine if disclosure has been appropriately denied, or if personal privacy is threatened. Without such power, the Commissioner will be unable to make well-informed and considered decisions.

This power of review should operate notwithstanding any law or privilege that may be claimed for the information in question, such as Cabinet confidences. The Commissioner should be able to examine any requested record within a reasonable period of time, so that the time limits can be met.

Recommendation:

- 37. That the Information and Privacy Commissioner have investigative powers and the right to examine, during an investigation, any record that is the subject of a review request or complaint.**

The Review and Appeal Process

Under the review process proposed by the Committee, applicants whose requests for information have been refused, or who have a complaint related to the privacy provisions of the Act, would have the right to request that the Information and Privacy Commissioner investigate the matter.²⁵

An investigation of an information refusal would involve an examination of the original information request, the information in question and the reasons for refusal. For a privacy complaint, the Commissioner would review how the department or agency was dealing with the information in question.

During the investigation, the Commissioner should also attempt to mediate between the parties in order to reach a mutually acceptable resolution. If a resolution was reached, the process would end with the withdrawal of the action by the applicant or complainant.

If mediation cannot resolve the issue, the Commissioner would prepare a written report and recommendation concerning the review request and submit it to the applicant and to the relevant department or agency. This report would either support the department or agency's decision, or support the original application or complaint, and recommend that the department or agency reverse its decision.

If the Commissioner's recommendation is not acted upon by the department or agency after a specified time, the Commissioner should have the right in legislation (with the original applicant's or complainant's permission) to appeal the decision to the Trial Division of the Supreme Court.

The court costs for the appeal would be borne by the Information and Privacy Commissioner's Office.

The Committee recognizes that not every review request or complaint will have merit. The information might not exist. It might be clearly exempt. The Committee therefore advocates a statutory discretion to allow the Commissioner to determine which requests, upon investigation, merit further review or the Commissioner's support in an appeal to the courts.

²⁵ Some applicants may prefer to go to court without pursuing a mediated settlement through the Information and Privacy Commissioner; the Committee believes that this option should be preserved, though it would be at the applicant's expense.

If the Commissioner does not support an appeal to the Supreme Court, applicants or complainants would have the right to do so on their own behalf and at their own expense.

Recommendation:

- 38. That the Information and Privacy Commissioner have authority to mediate between the parties to seek a mutually acceptable resolution of the issue.**
- 39. That, if mediation is unsuccessful, the Commissioner submit a report and recommendation to the applicant and the department concerning the review request or complaint.**
- 40. That, where the recommendation of the Commissioner supports the review request or complaint and the department or agency does not comply, the Commissioner should have a discretion to appeal the department or agency's decision to the Supreme Court Trial Division with the Applicant's or Complainant's permission.**
- 41. That the costs of appeals to court initiated by the Information and Privacy Commissioner be borne by the Office of the Information and Privacy Commissioner.**

The following Table summarizes the process for information requests, reviews and appeals recommended by the Committee. Privacy complaints would follow a similar process.

Proposed Information Request, Review and Appeal Process

A. Information Request Application	
1. Applicant submits request for information to Department or Agency	
2. Department/Agency reviews request and decides on disclosure (time limit extension may be applied)	
3. Applicant is informed in writing that	
	a. the requested information is to be provided, <i>or</i>
	b. the information request is refused and reasons are provided
4. If refused, the Applicant may choose to	
	a. do nothing further,
	b. have the refusal reviewed by the Commissioner, <i>or</i>
	c. appeal the refusal directly to the Supreme Court, at own cost
B. Review by Commissioner	
1. The Commissioner investigates, reviews information	
2. The Commissioner may mediate between the Department/Agency and applicant to resolve the issue informally	
3. The Commissioner submits a written report and recommendation to Applicant and Department/Agency head	
	a. to disclose information, <i>or</i>
	b. that information should not be disclosed
<i>If the Commissioner recommends disclosure, the Department or Agency may</i>	
	a. produce the information, <i>or</i>
	b. refuse to provide access
<i>If the Commissioner recommends disclosure, and the Department or Agency refuses, the Commissioner may</i>	
	a. do nothing further <i>or</i>
	b. initiate an appeal to the Supreme Court on the Applicant's behalf
<i>If the Commissioner recommends no disclosure, the Applicant may</i>	
	a. do nothing further, <i>or</i>
	b. appeal the refusal to the Supreme Court at own cost
C. Appeal to Supreme Court	
1. Supreme Court Trial Division hears appeal of information request refusal and makes decision.	

Time Limits

The limits recommended for the review and appeal process are designed to allow enough time to complete an adequate investigation and ensure timeliness.

Initiating a Review Request. At present, an applicant has 30 days to appeal, to the Supreme Court Trial Division, a decision to deny an access request. Under the new process recommended by the Committee, an applicant would have the right to have the matter reviewed first by the Information and Privacy Commissioner.

The Committee believes that the 30-day time limit is also appropriate for initiating a review by the Information and Privacy Commissioner.

If the applicant wishes to initiate an appeal to the court after a written response has been provided by the Information and Privacy Commissioner, the applicant should be allowed an additional 30 days to do so, from the date of the Commissioner's report.

Recommendation

- 42. That the time limit for initiating a review by the Information and Privacy Commissioner be 30 days from the date of receiving the written response from the department or agency.**
- 43. That the time limit for initiating an appeal to the Supreme Court Trial Division be 30 days from the date of receiving the written response from the department or agency, or 30 days from the date of receiving the written report of the Information and Privacy Commissioner, if the applicant has applied first to the Commissioner.**

Commissioner's Response. The time allowed to investigate a review request should be balanced with the applicant's right to receive a timely response. For this reason, the Committee believes that it is appropriate to require that the Commissioner respond in writing within 60 days of receiving the review request.

Recommendation:

- 44. That the Information and Privacy Commissioner complete the investigation and file a report within 60 days of receiving the review request.**

Response to the Information and Privacy Commissioner. A time limit should be established within which the relevant department or other agency must respond once the Commissioner has made a recommendation. Based on the practice in other Canadian jurisdictions, a 15-day time limit is appropriate.

Recommendation:

45. That the time limit for a department or other agency to respond to the recommendation of the Information and Privacy Commissioner be 15 days.

Other Roles and Responsibilities

Public Education. Public education is an integral part of an effective freedom of information and protection of privacy regime and review process. As one presenter noted to the Committee, implementing a new or revised Act will require a public relations and education program aimed at the general public as well as education and training for the public service.

The Committee agrees that the public should be informed about their rights of access to information and privacy protection under the Act. Without knowledge of their rights, citizens will not be able to exercise them effectively.

In many jurisdictions, the information commissioner publishes brochures or establishes public web sites containing information on access, reviews and privacy, and is active in making public presentations concerning the legislation.

Recommendation:

46. That the Information and Privacy Commissioner have the responsibility to provide education to the public about the Act.

Liaison with Government and Agencies. Another important function of the Commissioner should be continuing communication with government departments and other agencies covered by the Act. Liaison should include discussions related to the Act's administration, advising government on public representations that the Commissioner has received, and reporting to the Legislature.²⁶

²⁶ The annual report to the legislature is described in Section 3.7 of this Report.

Recommendation:

- 47. That there be continuing liaison between the Information and Privacy Commissioner and government departments and other agencies concerning the administration of the Act.**

Complaints about Extensions and Fees. Many jurisdictions permit an applicant to complain to the Information and Privacy Commissioner about extensions of time periods and about fees charged by government institutions, related to an information request or privacy issue. The Committee believes that allowing the Information and Privacy Commissioner to review extensions and the level of fees charged would help to rationalize the process and prevent misuse.

Recommendation:

- 48. That the Information and Privacy Commissioner be given the authority to receive and investigate complaints about time-limit extensions and the fees charged under the Act by departments or other agencies.**

3.7 Monitoring and Reporting

Monitoring and reporting are necessary to ensure that the spirit and intent of the Freedom of Information and Protection of Privacy legislation is achieved and maintained.

Departmental Reporting

As noted in Section 3.5 of this Report, departments and agencies are not now obliged to maintain a record of the requests received under the *Freedom of Information Act*, and there is no requirement for a central registry of requests within government as a whole. Because there is no easy way to assess the number and fate of requests received under the current *Freedom of Information Act*, or to document the length of response times, it is difficult to monitor the Act so that appropriate adjustments can be made.

This difficulty was noted by several presenters during the consultations and a number of remedies were proposed, including the establishment of a central agency within government

(discussed in Section 3.5) and the requirement of record keeping and reporting by all departments and agencies, detailing requests and responses under the Act.

The Committee believes that all provincial departments and other agencies under the Act's jurisdiction should collect and maintain statistics related to access and privacy requests. Collecting these statistics and reporting the results would encourage more timely compliance, and help to identify and resolve systemic problems within departments or agencies.

Recommendation:

- 49. That all departments and other agencies under the Act be required to collect statistics related to information and privacy requests and to prepare annual reports on the administration of the Act. The reports should contain such statistical information as the number and type of requests received, access granted, refusals, fees and response times.**

Information and Privacy Commissioner's Report

As the independent agent mandated to oversee the appropriate application of the Act, the Information and Privacy Commissioner should have the authority to assess and report on compliance with the Act by the agencies it covers.

The reports compiled by each department and agency should be submitted to the Information and Privacy Commissioner, who in turn should report annually to the House of Assembly on both departmental compliance and the review process.

Commenting on the situation in Ontario, that province's Assistant Information and Privacy Commissioner stated:

"Having public bodies report to us, and us in turn report to the Legislature, ... provided an opportunity for the Legislature to have the benefit of an evaluative assessment of the operation of the FOI system on an annual basis. We try our best to add value in this way, and I think we've been increasingly more effective over the course of the past few years."²⁷

²⁷ Correspondence with Freedom of Access Review Committee, June 2001.

Recommendation:

- 50. That all departments and other agencies covered by the Act be required to submit annual reports to the Information and Privacy Commissioner.**
- 51. That the Information and Privacy Commissioner report annually to the House of Assembly summarizing**
- a. the number and disposition of information requests and privacy complaints received by departments and other agencies under the jurisdiction of the Act;**
 - b. the commissioner's recommendations and whether departments and agencies have complied with them; and**
 - c. an assessment of the extent to which departments and agencies are complying with the Act.**

3.8 Review of the Act

Except for the removal of provisions relating to an ombudsman, the Newfoundland and Labrador *Freedom of Information Act* has remained virtually unchanged since its enactment in 1981. Since that time, there have been many changes in technology and society which have not been addressed in the legislation.

The Committee believes that a comprehensive review of the new Act should be undertaken five years following its implementation. Following this initial review, there should be regular reviews to ensure that the legislation

- continues to reflect societal values;
- is able to accommodate technological changes;
- preserves its original spirit and intent; and
- remains efficient in administration.

Recommendation:

- 52. That a review of the legislation be conducted five years following the implementation of the new Act, and every five years thereafter.**

4. Conclusion

“The purpose of this Act is to extend the present laws of Canada to provide a right of access to information in records under the control of a government institution in accordance with the principles that government information should be available to the public, that necessary exceptions to the right of access should be limited and specific and that decisions on the disclosure of government information should be reviewed independently of government.”

- Canadian Access to Information Act, Section 2.(1)

The objective of the Freedom of Information Review Committee's work has been to strengthen the statutory rights of citizens to access information held by government departments and agencies, and to ensure that privacy is protected.

The Committee has described this as a "balancing act" - attempting to strike, in its recommendations, a fair and effective equilibrium between the right to know and the right to privacy .

To accomplish its purpose, the Committee has advocated open government, which it believes can be achieved by adopting the assumption of a right of access limited only by specific and defined exceptions. Public representation also strongly endorsed enhanced access to information, but recognized that access must be subject to certain exemptions if government decision-making is to be effective and efficient, and privacy is to be preserved.

Education - about the legislation, and about the concepts of access and privacy rights - is a fundamental requirement of an open process and a government open to change.

The changes the Committee has proposed are significant, and the legislative drafting process will require careful attention and adequate time. In addition to the specific changes recommended in this Report, all aspects of the Act will need to be reviewed in light of the Committee's principles and directions as new legislation is prepared.

Even after the new legislation has been proclaimed, some of the recommendations, particularly those related to records management, municipalities and education, will take time to implement fully. This will require a phased approach.

The Committee advises the establishment at the outset of an implementation timetable and a monitoring regime that will ensure the new legislation continues to belong to all the citizens of this province.

Appendices

1. Glossary of Terms
2. Newfoundland and Labrador Legislation
 - Freedom of Information Act (1981)*
 - Privacy Act (1990)*
 - Citizens' Representative Act (2001)*
3. Legislation (Comparison Tables)
4. Consultations
5. Bibliography and Sources

1. Glossary of Terms

Glossary

These definitions are drafted for the sole purpose of helping the reader understand this Report. They are not intended to be definitions incorporated into the new statute.

Agency: a person, board, commission, association, corporation or other body which is subject to the legislation.

Appeal: a proceeding undertaken to have a decision reconsidered.

Applicant: a person who makes a request for information held by a department or agency, or a person who is affected by a department or agency's release of that information. Synonymous with *requester*.

Application Fee: the amount required to be paid at the time a request is made.

Canadian Standards Association's International Model Code: the model code for the protection of personal privacy developed by the Canadian Standards Association, which has become recognized as a model standard. The reader may view this document on the internet at the following address: <http://www.csa.ca/standards/privacy/code>.

Complainant: the person who makes a complaint.

Coverage: the departments and agencies to which the Act applies, and the information that may be accessed by an applicant.

De Facto: actual; existing in fact; having effect even though not formally or legally recognized.

Discretionary Exception: information which may be disclosed at the discretion of a head.

Department: a department of the government of Newfoundland and Labrador.

Exception: information that does not have to be disclosed under the Act. *Exception* can be used synonymously with the word *exemption*.

Head: (i) in the case of a department of the government of the province, the minister responsible for the administration of the department; (ii) in the case of an agency, its head.

Information: documents held by government departments or agencies which are the subject matter of a request.

Information and Privacy Commissioner: the person appointed under the proposed legislation to review complaints about information request decisions and privacy matters.

Investigative Model / Approach: an approach or model in which the information commissioner investigates a complaint, and 1. recommends that certain action be taken to correct a denial of access or a violation of a privacy provision, or 2. confirms the decision of the department or agency.

Lead Department: the department charged with the administration of the Act. Its responsibilities include:

- (a) developing policy and procedures for the effective administration of the Act;
- (b) providing to the public service on-going education related to the Act;
- (c) providing advice to departmental officials responsible for requests; and
- (d) communicating with the Information and Privacy Commissioner.

The lead department is not a central clearing house for receiving requests.

Personal Health Information: includes information

- (a) concerning the physical or mental health of an individual;
- (b) concerning any health service provided to an individual;
- (c) concerning the donation by an individual of any body part or any bodily substance;
- (d) collected in the course of providing health services to an individual;
- (e) collected incidentally to the provision of health services to an individual.

Personal Information: information about an identifiable individual, including

- (a) information relating to race, national or ethnic origin, colour, religion, age or marital status;
- (b) information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;
- (c) an identifying number, symbol or other particular assigned to the individual;
- (d) address, fingerprints or blood type;
- (e) the personal opinions or views of the individual;
- (f) correspondence sent to a department by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the content of the original correspondence; or
- (g) the views or opinions of another person in respect of the individual.

Review Request: a request by an applicant to the Information and Privacy Commissioner for a review of a department's or agency's refusal to disclose information, or a breach of the privacy provisions of the Act.

Third-Party Information: information about a group of persons, or an organization or a person, other than the applicant.

2. Newfoundland and Labrador Legislation

Freedom of Information Act (1981) - www.gov.nf.ca/hoa/statutes/f25.htm

Privacy Act (1990) - www.gov.nf.ca/hoa/statutes/p22.htm

Citizens' Representative Act (2001) - www.gov.nf.ca/hoa/statutes/c14-1.htm

3. Legislation (Comparison Tables)

Table 1: Coverage

Jurisdiction	Prov. Gov't Departments	Municipalities	School Boards	Health Care Institutions	Colleges and Universities	Self-governing professions
Newfoundland	Yes	No	No	Yes	Yes	No
Nova Scotia	Yes	Yes	Yes	Yes	Yes	No
Prince Edward Island	Yes*	No*	No*	No*	No*	No*
New Brunswick	Yes	No	Yes	Yes	No	No
Quebec	Yes	Yes	Yes	Yes	Yes	No
Ontario	Yes	Yes	Yes	No	No	No
Manitoba	Yes	Yes	Yes	Yes	Yes	No
Saskatchewan	Yes	Yes	Yes	Yes	Yes	No
Alberta	Yes	Yes	Yes	Yes	Yes	No
British Columbia	Yes	Yes	Yes	Yes	Yes	Yes

*The Prince Edward Island Act was assented to on May 15, 2001 but has not yet been proclaimed. When proclaimed, the Act will initially apply only to line departments.

This table was adapted from: Alasdair Roberts, *School of Policy Studies Queen's University, Assessing the Health of Canada's Freedom of Information Laws*, April 1998, page 69.

Table 2: Cabinet Confidences

Law					
	Federal	Newfoundland	Nova Scotia	Prince Edward Island	Ontario
<i>Exceptions to Protection:</i>					
Time limit	yes, 20 years	no	yes, 10 years	yes, 15 years	yes, 20 years
Background and analysis	no	no	yes, after decision made public, implemented or after five years	yes, after decision made public, implemented or after five years	yes, after decision made and implemented
Cabinet decision as appeal body	no	no	yes	yes	no
Cabinet consent for specific disclosure	yes	no, but premier may disclose	no	no	yes
Public interest override	no	no	yes, general public interest (significant and clearly)	yes, general public interest (significant and clearly)	yes grave harm to environment, public health and safety

Law				
	Manitoba	Saskatchewan	Alberta	British Columbia
<i>Exceptions to Protection:</i>				
Time limit	yes, 30 years	yes, 25 years	yes, 15 years	yes, 15 years
Background and analysis	no	no	yes, after decision made public, implemented or after five years	yes, after decision made public, implemented or after five years
Cabinet decision as appeal body	no	no	yes	yes
Cabinet consent for specific disclosure	yes	yes	no	no
Public interest override	no	no	yes, general public interest (significant and clearly)	yes, general public interest (significant and clearly)

Adapted from: "Appendix A," *The Access to Information Act and Cabinet Confidences: A Discussion of New Approaches*, RPG Information Services Inc. for the Information Commissioner of Canada, Ottawa, 1996.

Table 3: Review Mechanism

Jurisdiction	Review Officer*	Order Power**	Appeal to court provided in law	Basis of court appeal, if any
Newfoundland	No	N/A	Yes. Appeal to Trial Division (s.12)	The trial division shall determine the matter anew. S.12(2)
Nova Scotia	Yes	No	Yes. Appeal to the Supreme Court: s.32(3), 41(1)	No authority to reverse discretionary exemptions: s. 42(6)
Prince Edward Island	Yes	Yes	No	Judicial Review
New Brunswick	Yes	No	Yes. Appeal to Court of Queen's Bench: s(7), (8), (11)	Facts and law (s.8)
Quebec	Yes	Yes	yes appeal to court of Quebec. S.147-154	Questions of law or jurisdiction; s.149
Ontario	Yes	Yes	No	Judicial Review
Manitoba	Yes	No	Yes: s.67	S.69: court shall consider appeal under s.67 or s.68 as a new matter and may hear evidence by affidavit.
Saskatchewan	Yes	No	Yes: s. 57, FOIA.	De Novo review, although the court may not reverse discretionary exemptions: s.58(6)
Alberta	Yes	Yes	No	Judicial Review
British Columbia	Yes	Yes	No	Judicial Review

* Review Officer: refers to the person appointed under the Act to review decisions respecting disclosure of information and protection of privacy.

** Order Power: provides review officers the authority to resolve complaints and order disclosure of documents. The other system is an investigative model, in which a review officer has the power to investigate, mediate and recommend. The latter is an ombudsman-like role, where the officer does not have the power to order disclosure of documents.

Table 4: Freedom of Information Laws in Canada

Jurisdiction	Title
Canada	<i>Privacy Act</i>
Canada	<i>Access to Information Act</i>
Newfoundland	<i>Freedom of Information Act</i>
Nova Scotia	<i>Freedom of Information and Protection of Privacy Act</i>
Prince Edward Island	<i>Freedom of Information and Protection of Privacy Act</i>
New Brunswick	<i>Right to Information Act</i>
New Brunswick	<i>Protection of Personal Information Act</i>
Quebec	<i>An Act Respecting Access to Documents Held by Public Bodies and the Protection of Personal Information</i>
Ontario	<i>Freedom of Information and Protection of Privacy Act</i>
Ontario	<i>Municipal Freedom of Information and Protection of Privacy Act</i>
Manitoba	<i>The Freedom of Information and Protection of Privacy Act</i>
Saskatchewan	<i>Freedom of Information and Protection of Privacy Act</i>
Saskatchewan	<i>Local Authority Freedom of Information and Protection of Privacy Act</i>
Alberta	<i>Freedom of Information and Protection of Privacy Act</i>
British Columbia	<i>Freedom of Information and Protection of Privacy Act</i>
Nunavut	<i>Access to Information and Protection of Privacy Act</i>
Northwest Territories	<i>Access to Information and Protection of Privacy Act</i>
Yukon	<i>Access to Information and Protection of Privacy Act</i>

*Assented to on May 15, 2001 but not proclaimed.

Adapted from Alasdair Roberts, School of Policy Studies Queen's University, *Assessing the Health of Canada's Freedom of Information Laws*, April 1998, p. 68.

Table 5: Fees

Jurisdiction	Application Fee	Search Fee	Copying Fee
Federal	\$5.00	\$2.50/quarter hr. In excess of 5 hrs.	\$0.20 per page
Newfoundland	\$5.00	\$15.00/hr in excess of 2 hrs.	\$0.25 per page
Nova Scotia	\$5.00	\$10.00/half hr. in excess of 2 hrs.	\$0.20 per page
New Brunswick	\$5.00		\$0.10 per page
Quebec			\$0.25 per page
Ontario	\$5.00	\$7.50/quarter hr.	\$0.20 per page
Manitoba		\$15.00/half hr. in excess of 2 hrs.	\$0.20 per page
Saskatchewan		\$15.00/half hr. in excess of 2 hrs.	\$0.25 per page
Alberta	\$25.00	\$6.75/quarter hr.	\$0.25 per page
British Columbia		\$7.50/quarter hr. in excess of 3 hrs.	\$0.25 per page

This is not intended to be an all-inclusive table of fees charged in each jurisdiction. However, it does present a good indication of the variance of fees charged across jurisdictions.

4. Consultations

Freedom of Information Review Committee Public Consultations

Public Presentations to the Committee (in order of presentation)

Dave Barker, Grand Falls -Windsor
Newfoundland - Labrador Human Rights Association
Brent Rockwood, St. John's
Russell Wangersky, *The Telegram*
City of St. John's
Newfoundland & Labrador Centre for Health Information
Peter Gullage, CBC Radio
City of Mount Pearl
Institute for the Advancement of Public Policy
Newfoundland and Labrador Health Boards Association
St. John's Junior Chamber of Commerce
Town of Happy Valley - Goose Bay
Humber Environmental Action Group
Main River Coalition
City of Corner Brook
Community Recycling and Waste Management
Jack Kennedy, Corner Brook

Written Submissions to the Committee (reproduced in Volume 2)

Innu Nation
Newfoundland & Labrador Centre for Health Information
Newfoundland and Labrador Health Boards Association
Newfoundland - Labrador Human Rights Association
Newfoundland and Labrador Federation of Municipalities
City of Mount Pearl
City of St. John's
Office of the Auditor General
The Institute for the Advancement of Public Policy
The Telegram

Other Consultations

Federal Access to Information Review Task Force, Ottawa
Hon. John M. Reid, Information Commissioner of Canada, Ottawa
Staff, Privacy Commissioner of Canada, Ottawa
Darce Fardy, Nova Scotia Review Officer
Dr. Ann Cavoukian, Information and Privacy Commissioner, Ontario
Government Caucus representatives
Progressive Conservative Opposition Caucus representatives
Jack Harris, Leader of the New Democratic Party
Ambrose Peddle, Former Ombudsman for Newfoundland and Labrador
Town of Happy Valley-Goose Bay
Town of Grand Falls - Windsor
Newfoundland and Labrador School Boards Association
School District #2 - Northern Peninsula/Labrador South
Fonse Faour, Chair, Public Service Commission, Newfoundland and Labrador
Deputy Minister representatives
Government Records Management and Information Technology representatives

Call for Submissions

REVIEW OF FREEDOM OF INFORMATION ACT AND REGULATIONS

The Freedom of Information Review Committee is soliciting submissions from interested groups and individuals wishing to make representation on any aspect of the *Freedom of Information Act and Regulations*. Written submissions are encouraged and will be accepted up to March 16, 2001. The Committee also plans to schedule a number of public meetings across the province to provide an opportunity for interested parties to make oral presentations.

The Review Committee was appointed by the provincial government to review and make recommendations (by July, 2001) on all aspects of the *Freedom of Information* legislation, including but not limited to recommendations dealing with the following:

- the need for a new review mechanism to examine decisions respecting the disclosure of information;
- the composition and powers of any recommended review mechanism;
- the appropriate exemptions from disclosure of the Act;
- amendments necessary to deal properly with new forms of information such as e-mail; and
- appropriate time periods for government departments and agencies to respond to requests for information.

Those requiring further information or wishing to make a submission, oral or written, should contact the Committee by:

calling.... (709)729-1622
faxing..... (709)729-0478
e-mailing..foirc@mail.gov.nf.ca
writing.....Freedom of Information Review Committee
2nd floor, Beothuck Building
20 Crosbie Place
St. John's, NF
A1B 3Y8

Freedom of Information Review Committee
Province of Newfoundland and Labrador

Public Meetings

The Review Committee examining the Province's Freedom of Information Act will hold a series of public meetings across the province during the last two weeks of March, 2001.

These meetings are intended to provide an opportunity for interested individuals and groups to make oral presentations on any aspect of access to information legislation and regulations.

The Committee was appointed by Government to review the current Freedom of Information Act and Regulations. The Committee's report will be presented to the Minister of Justice by July, 2001.

The dates and locations of the public meetings are as follows:

DATE	COMMUNITY	LOCATION
Tuesday, March 20, 2001	Grand Falls-Windsor	Mt. Peyton Hotel
Thursday, March 22, 2001	St. John's	Fairmont Hotel
Monday, March 26, 2001	Happy Valley, Goose Bay	Aurora Hotel
Thursday, March 29, 2001	Corner Brook	Holiday Inn

Individuals and groups who wish to make an oral presentation are asked to contact the Freedom of Information Committee Office at least 24 hours prior to the date of the public meeting.

To reach the Freedom of Information Committee Office:

Telephone: 709-729-1622
Fax: 709-729-0478
E-mail: foirc@mail.gov.nf.ca

6. Bibliography and Sources

Bibliography and Sources

Alberta. *Freedom of Information and Protection of Privacy Act*, S.A. 1994, Chapter F-18.5, as amended.

Botterell, Rob. "New Openness: Freedom of Information in British Columbia." *Appeal: Review of Current Law and Law Reform*. 1995, 1 50 -55.

British Columbia. *Freedom of Information and Protection of Privacy Act*. RSBC 1996, Chapter 165, as amended.

———. *Policy on the Confidentiality of E-mail at the Office of the Information and Privacy Commissioner*. British Columbia, 1997.

———. Information and Privacy Commissioner. *Four Year Review of the Freedom of Information and Protection of Privacy Act*. 1998

———. *Policy and Procedures Manual: The Freedom of Information and Protection of Privacy Act*. British Columbia, 2001.

Canada. *Access to Information Act*. R.S. 1985, C. A-1, as amended.

———. *Privacy Act*, R.S. 1985, C. P-21, as amended.

———. House of Commons. *Open and Shut: Enhancing the Right to Know and the Right to Privacy*. Report of the Standing Committee on Justice and Solicitor General. Ottawa, 1987.

———. Minister of Supply and Services. *Access and Privacy "The Steps Ahead."* Ottawa, 1987.

———. Information Commissioner of Canada. *The Access to Information Act: A Critical Review*. Ottawa, 1994.

———. Information Commissioner of Canada. *The Access to Information Act and Cabinet Confidences A Discussion of New Approaches*. Ottawa, 1996.

———. *Dagg v. Canada (Minister of Finance)*. 2 S.C.R., 1997.

———. Privacy Commissioner of Canada. *Annual Report 1998-1999*. Ottawa, 1999.

———. Information Commissioner of Canada. *Remarks to Conference on Access to Information Reform*. Ottawa, May 1, 2000.

———. Information Commissioner of Canada. *Special Report to Parliament*. Ottawa, 2000.

———. National Archives of Canada. *Information Management in the Government of Canada- A Situation Analysis*. June, 2000.

———. Privacy Commissioner of Canada. *Annual Report 1999 - 2000*. Ottawa, 2000.

———. Public Works and Government Services Canada. *Statutes of Canada 2000*. Ottawa, 2000.

———. Treasury Board of Canada Secretariat. The Chief Information Officer, Treasury Board Secretariat and the National Archivist. *Information Management in the Government of Canada - A Situation Analysis*. Ottawa, 2000.

———. Information Commissioner of Canada. *Notes for Speech to ADM Advisory Committee*. Access to Information Review Task Force. Ottawa, February 23, 2001.

- . Privacy Commissioner of Canada. *Address to the Canadian Club of Toronto*. Toronto, 2001.
- . Privacy Commissioner of Canada. *Your Privacy Responsibilities: Canada's Personal Information Protection and Electronic Documents Act*. Ottawa, 2001.
- Canadian Institute of Chartered Accountants. *Public Sector Accounting Recommendations Section PS 1300*. 2000.
- Canadian Institute of Health Research (CIHR). *Personal Information Protection and Electronic Documents Act: Questions and Answers for Health Researchers*. Ottawa, 2001
- Health Canada. *Privacy Protection and Health Information: Understanding the Implementation Issues*. Report of the Privacy Working Group to Health Canada. March, 2000.
- Loukidelis, David. Information and Privacy Commissioner, British Columbia. *Is the Door Opening or Closing? Assessing the State of Access to information in Canada*. FOIP Conference, Edmonton, May 29, 2000.
- Manitoba. *The Freedom of Information and Protection of Privacy Act*. Manitoba, 2000.
- Manji, Shenmin N. *Recent Developments in Canadian Freedom of Information Law Survey of Canadian Jurisdictions (1993)*. Office of the Information and Privacy Commissioner of Ontario. Toronto, 1993.
- McDonald, John. National Archives of Canada. *Information Management in the Government of Canada. A Situation Analysis*. Ottawa, June, 2000.
- McIsaac, Barbara, et al. *The Law of Privacy in Canada*. Scarborough, 2000.
- McNaim, Colin and C.D. Woodbury. *Government Information Access and Privacy*. Scarborough, 2000.
- Mitchinson, Tom. Assistant Commissioner, Information and Privacy Commission, Ontario. *Balancing Public Access and Accountability with the Right of Privacy*. Presentation to the New Directions in Professional Regulations Conference. Toronto, May 30, 2000.
- Newfoundland and Labrador. *Freedom of Information Act*. RSN 1990, C. 25, as amended.
- . *Achieving Excellence 2000. A Handbook for the Improved Governance of Public Bodies*. Newfoundland and Labrador, 2000.
- . Auditor General. *Report of the Auditor General (Summary) - for the Year Ended 31 March 2000*. Newfoundland and Labrador, 2000.
- . *Statutes of Newfoundland 2001*. Chapter C-14.1. *An Act Respecting the Appointment of a Citizens' Representative For The Province Who Shall Have the Powers Traditionally Conferred On An Ombudsman*. Newfoundland, 2001.
- . Treasury Board. *Achieving Excellence 2000. A Guidebook for the Improved Accountability of Public Bodies*. Newfoundland and Labrador, 2000.
- Nilsen, Kristie. "Public Access to Government Information in Canada in an Electronic Environment." *Government Information in Canada/Information gouvernementale au Canada*. No. 17, March, 1999.
- Nova Scotia. *Freedom of Information and Protection of Privacy Act (1993). An Act Respecting the Right of Access to Documents of Public Bodies in Nova Scotia and a Right of Privacy with*

Respect to Personal Information Held by Public Bodies in Nova Scotia. Nova Scotia, as amended, 1999.

———. *Nova Scotia Freedom of Information and Protection of Privacy Review Office Annual Report*. Nova Scotia, 2000.

Ontario. Information and Privacy Commissioner. *Government Accountability and the Public Interest under the Freedom of Information and Protection of Privacy Act*. Toronto, 1999.

———. Information and Privacy Commissioner. *Information and Privacy Commissioner/Ontario School Program. Instilling the Values of Open Government and Personal Privacy in Students*. Toronto, 1999.

———. Information and Privacy Commissioner. *Opening the Window to Government: Public Access to Government Information and the Role of the IPC*. Toronto, 1999.

———. Information and Privacy Commissioner. *Balancing Public Access and Accountability with the Right of Privacy*. Toronto, 2000.

———. Information and Privacy Commissioner. *Routine Disclosure/Active Dissemination. A Best Practice in the City of Mississauga*. Toronto, 2000.

———. Information and Privacy Commissioner. *What Students Need to Know about Freedom of Information and Protection of Privacy. A Study Guide for Secondary Schools Grade 10 Teachers Guide*. Toronto, 2000.

———. *Freedom of Information and Protection of Privacy Act*. Ontario, 2001.

———. Information and Privacy Commissioner. *Enhancing Access to Information: RD/AC Success Stories*. Toronto, 2001.

———. Information and Privacy Commissioner. *Routine Disclosure/Active Dissemination (RD/AD)*. Toronto, 2001.

———. Information and Privacy Commissioner. *The Municipal Freedom of Information and Protection of Privacy Act*. Toronto, 2001

Phillips, Bruce. Privacy Commissioner of Canada. *Annual Report, 1999-2000*. Ottawa, 2000

Prince Edward Island. *Freedom of Information and Protection of Privacy Act (2001)*. Prince Edward Island, 2001.

Radwanski, George. Privacy Commissioner of Canada. "Address to the Canadian Club of Toronto." March 26, 2001.

Reid, John. Information Commissioner of Canada. *Annual Report 1999-2000*. Ottawa, 2000.

———. Information Commissioner of Canada. *Annual Report, 2000-2001*. Ottawa, 2001.

Roberts, Alasdair. *Limited Access: Assessing the Health of Canada's Freedom of Information Laws*. Queen's University, Kingston, 1998.

———. "Closing the Window: Public sector restructuring and the weakening of freedom of information law." *Government Information in Canada/Information gouvernementale au Canada*. No. 17, March 1999a.

———. *Monitoring performance by federal agencies: A tool for enforcement of the Access to Information Act*. Queen's University, Kingston, April 1999b.

———. *Access to Government Information: An Overview of Issues*. Prepared for the Conference on Transparency for Growth in the Americas. The Carter Center, Atlanta, May 1999c.

———. *Ontario's Freedom of Information Law: Assessing the Impact of the Harris Government Reform*. Working paper. Queen's University, Kingston, May 1999d.

———. "Retrenchment and Freedom of Information: Recent Experience Under Federal, Ontario, and British Columbia Law." *Canadian Public Administration*, 42.4 Winter 1999, December 23, 1999e (PDF format draft).

———. "Information please, Mr. Chretien." *Ottawa Citizen*. December 13, 2000, p. A19.

———. "Structural pluralism and the right to information." *University of Toronto Law Journal*. 51.3. July 2001.

The Telegram, St. John's, Newfoundland. "Access Denied. Freedom of Information Requests, at a glance." October 26, 2000.

———. "Anatomy of a request: Lost, late and partly filled." October 26, 2000.

———. "Freedom isn't just another word." October 26, 2000.

———. "Freedom train off track." October 26, 2000.

———. "Ask and it shall be given? Think Again." October 27, 2000.

———. "A tale of two requests for information." October 27, 2000.

———. "Flawed from the Start." October 27, 2000.

———. "Toothless Freedom of Information leaves taxpayers hungry for details." October 27, 2000.

———. "Freedom of Information Act needs new teeth." October 28, 2000.

———. "Freedom of Information Requests, at a glance - day two." October 28, 2000.

———. "Freedom of Information Requests, at a glance - day three." October 28, 2000.

———. "Information comes at a price." October 28, 2000.

———. "Newfoundland's act described as worst in country." October 28, 2000.

———. "PC's say their job hindered." October 28, 2000.

———. "Government Shines a Black Light on its doings." October 30, 2000.

Wright, Tom. Information and Privacy Commissioner of Ontario. *Electronic Records: Maximizing Best Practices*. Toronto, March, 1997.

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Important Information

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SN2001 CHAPTER C-14.1

CITIZENS' REPRESENTATIVE ACT [To be Proclaimed]

Amended:

CHAPTER C-14.1

AN ACT RESPECTING THE APPOINTMENT OF A CITIZENS' REPRESENTATIVE FOR THE PROVINCE WHO SHALL HAVE THE POWERS TRADITIONALLY CONFERRED ON AN OMBUDSMAN

(Assented to May 24, 2001)

Analysis

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Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

Short title

1. This Act may be cited as the *Citizens' Representative Act*.

2001 cC-14.1 s1

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Definitions

2. In this Act

(a) "agency of the government" means a person, board, commission, association, or other body, included in the Schedule;

(b) "Citizens' Representative" means the person appointed under this Act to perform the duties and exercise the powers traditionally conferred on an ombudsman;

(c) "Commission of Internal Economy" means the commission established under the *Internal Economy Commission Act*; and

(d) "department" means a department created under the *Executive Council Act*, or a branch of the executive government of the province.

2001 cC-14.1 s2

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Appointment of the Citizens' Representative

3. (1) There is established the office of the Citizens' Representative to be filled by the Lieutenant-Governor in Council on a resolution of the House of Assembly.

(2) Where

(a) the Citizens' Representative is unable to perform his or her duties of office;

(b) the office of the Citizens' Representative is vacant; or

(c) the Citizens' Representative is suspended under section 6,

the Lieutenant-Governor in Council shall appoint a person to act as the Citizens' Representative in a temporary capacity.

2001 cC-14.1 s3

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Officer of House of Assembly

4. (1) The Citizens' Representative is an officer of the House of Assembly and is not eligible to be nominated for

election as, elected as, or sit as, a member of the House of Assembly.

(2) The Citizens' Representative shall not hold another public office or carry on a trade, business or profession.

2001 cC-14.1 s4

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Term of office

5. (1) Unless he or she sooner resigns, dies or is removed from office, the Citizens' Representative shall hold office for 6 years from the date of his or her appointment, and he or she may be re-appointed for a second term of 6 years, but shall not hold office for more than 2 terms.

(2) The Citizens' Representative may resign his or her office in writing addressed to the Speaker of the House of Assembly, or, where there is no Speaker or the Speaker is absent, to the Clerk of the House of Assembly.

2001 cC-14.1 s5

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Removal or suspension

6. The Lieutenant-Governor in Council, on a resolution of the House of Assembly carried by a majority vote of the members of the House of Assembly actually voting, may, for cause, remove the Citizens' Representative from office or suspend him or her.

2001 cC-14.1 s6

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Suspension when House of Assembly not sitting

7. (1) Where the House of Assembly is not in session, the Lieutenant-Governor in Council on the recommendation of the Internal Economy Commission may suspend the Citizens' Representative for incapacity, neglect of duty or misconduct, but the suspension shall not continue in force beyond the end of the next ensuing session of the House of Assembly.

(2) Where the Citizens' Representative is suspended under subsection (1), the Lieutenant-Governor in Council, on the recommendation of the Internal Economy Commission shall appoint an acting Citizens' Representative to hold office until the suspension has been dealt with in the House of Assembly.

2001 cC-14.1 s7

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Salary and pension

8. (1) The Citizens' Representative shall be paid a salary fixed by the Lieutenant-Governor in Council after consultation with the Commission of Internal Economy.

(2) The salary of the Citizens' Representative shall not be reduced except on a resolution of the House of Assembly carried by a majority vote of the members of the House of Assembly actually voting.

(3) The Citizens' Representative is subject to the *Public Service Pensions Act, 1991* where he or she was subject to that Act prior to his or her appointment as Citizens' Representative.

2001 cC-14.1 s8

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Expenses

9. The Citizens' Representative shall be paid the travelling and other expenses incurred by him or her in the performance of his or her duties that may be approved by the Commission of Internal Economy.

2001 cC-14.1 s9

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Citizens' Representative's staff

10. (1) The Citizens' Representative may, subject to the approval of the Commission of Internal Economy and in the manner provided by law, appoint those assistants and employees that he or she considers necessary to enable him or her to carry out his or her functions under this Act.

(2) Persons employed under subsection (1) are members of the public service of the province.

2001 cC-14.1 s10

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Oath of office

11. Before beginning to perform his or her duties, the Citizens' Representative shall swear an oath, or affirm, before the Speaker of the House of Assembly or the Clerk of the House of Assembly that he or she shall faithfully and impartially perform the duties of his or her office and that he or she shall not, except as provided by this Act, divulge information received by him or her under this Act.

2001 cC-14.1 s11

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Oath of staff

12. Every person employed under the Citizens' Representative shall, before he or she begins to perform his or her duties, swear an oath, or affirm, before the Citizens' Representative that he or she shall not, except as provided by this Act, divulge information received by him or her under this Act.

2001 cC-14.1 s12

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Secrecy

13. (1) The Citizens' Representative and every person employed under him or her shall maintain secrecy in respect of all matters that come to their knowledge in the exercise of their duties or functions under this Act.

(2) Notwithstanding subsection (1) or an oath taken or affirmation made under this Act, the Citizens' Representative may disclose in a report made by him or her under this Act those matters which he or she considers necessary to disclose in order to establish grounds for his or her conclusions and recommendations.

2001 cC-14.1 s13

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Delegation

14. (1) The Citizens' Representative may in writing delegate to another person his or her powers under this Act except the power to make a report under this Act.

(2) A person purporting to exercise the power of the Citizens' Representative by virtue of the delegation under subsection (1) shall produce evidence of his or her authority to exercise that power when required to do so.

2001 cC-14.1 s14

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Investigation

15. The Citizens' Representative may, on a written complaint or on his or her own initiative, investigate a decision or recommendation made, including a recommendation made to a minister, or an act done or omitted, relating to a matter of administration in or by a department or agency of the government, or by an officer, employee or member of the department or agency, where a person is or may be aggrieved.

2001 cC-14.1 s15

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Reference by Lieutenant-Governor in Council

16. The Lieutenant-Governor in Council may refer to the Citizens' Representative, for investigation and report by him or her, a matter relating to administration in or by a department or agency of the government, or by an officer, employee or member of it, and the Citizens' Representative shall,

- (a) subject to a special direction of the Lieutenant-Governor in Council, investigate the matter referred to him or her so far as it is within his or her jurisdiction; and
- (b) make a report to the Lieutenant-Governor in Council that he or she considers appropriate.

2001 cC-14.1 s16

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Reference by House of Assembly

17. The House of Assembly may refer to the Citizens' Representative, for investigation and report by him or her, any petition that is presented to it for consideration or any matter to which the petition relates, and, in that case, the Citizens' Representative shall,

- (a) subject to special directions of the House of Assembly, investigate the matters referred to him or her as far as it is within his or her jurisdiction; and
- (b) make a report to the House of Assembly that he or she considers appropriate,

but nothing in section 24, 25 or 39 applies in respect of an investigation or report made under this section.

2001 cC-14.1 s17

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Exercise of powers

18. The Citizens' Representative may exercise and perform the powers, duties and functions conferred or imposed on him or her under this Act notwithstanding a provision of another Act to the effect that a proceeding, decision, recommendation, act or omission that he or she is investigating is

- (a) final;
- (b) not subject to appeal; or
- (c) not subject to be challenged, reviewed, quashed or called into question.

2001 cC-14.1 s18

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Restriction on jurisdiction

19. Nothing in this Act authorizes the Citizens' Representative to investigate

- (a) a decision, recommendation, act, order or omission of the House of Assembly, the Lieutenant-Governor, a committee of the House of Assembly, the Lieutenant-Governor in Council, the Executive Council, or a committee of the Executive Council;
- (b) an order, decision or omission of a court, a judge of a court, a master of a court, or a justice of the peace made or given in an action or proceeding in the court, or before the judge, master or justice of the peace;
- (c) an award, decision, recommendation or omission of an arbitrator or board of arbitrators in an arbitration to which the *Arbitration Act* applies;
- (d) a matter in respect of which there is under an Act a right of appeal or objection or a right to apply for a review on the merits of the case to a court or tribunal constituted by or under an Act, until after the right of appeal, objection or application has been exercised or until after the time limit for the exercise of that right has expired;
- (e) a refusal to provide access to information under the *Freedom of Information Act*; or
- (f) an action, decision or proceeding taken under the *Child, Youth and Family Services Act*.

2001 cC-14.1 s19

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Restriction on investigation by minister

20. (1) Where the Minister of Justice certifies in writing to the Citizens' Representative that the investigation of a matter would be contrary to the public interest under the circumstances, the Citizens' Representative shall not investigate the matter, or, where the Citizens' Representative has commenced an investigation of the matter, he or she shall discontinue the investigation.

(2) Where a certificate is given under subsection (1), the Citizens' Representative shall include that fact and a brief description of the circumstances of the matter in his or her next annual report to the House of Assembly.

2001 cC-14.1 s20

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Questions relating to jurisdiction

21. Where a question arises as to the jurisdiction of the Citizens' Representative to conduct an investigation or class of investigations under this Act, he or she may apply to the Trial Division for a declaratory order determining the question.

2001 cC-14.1 s21

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Complaints in writing

22. Every complaint to the Citizens' Representative shall be made in writing.

2001 cC-14.1 s22

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Privacy of communication to Citizens' Representative

23. Notwithstanding another Act, where a letter written by a person in custody on a charge or after conviction for an offence, or by an inmate or patient in a hospital, mental hospital or home, or an institution operated by or under the direction of the government, or by a person in custody of another person for another reason, is addressed to the Citizens' Representative, it shall be forwarded immediately, unopened, to the Citizens' Representative by the person in charge of the place or institution where the writer of the letter is detained or in which he or she is an inmate or patient, or by the person having custody of the writer.

2001 cC-14.1 s23

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Refusal to investigate

24. (1) The Citizens' Representative, in his or her discretion, may refuse to investigate or may cease to investigate a complaint where

- (a) it relates to a decision, recommendation, act or omission of which the complainant has had knowledge for more than one year before the complaint is received by the Citizens' Representative;
- (b) in his or her opinion it is frivolous or vexatious or not made in good faith or concerns a trivial matter;
- (c) the complainant does not have a sufficient personal interest in the subject matter of the complaint;
- (d) in his or her opinion it should not be investigated or the investigation should not be continued because the public interest outweighs the interest of the person aggrieved;
- (e) in his or her opinion the circumstances of the case do not require investigation; or
- (f) the law, or existing administrative procedure provides an adequate remedy in the circumstances for the person aggrieved and, where the person aggrieved has not availed himself or herself of the remedy, there is no reasonable justification for his or her failure to do so.

(2) Where, in the course of or after an investigation of a decision, act or omission, done or omitted by a department or agency of the government, or an officer or employee of it in the exercise of a discretion vested in that department, agency, officer, or employee, the Citizens' Representative is satisfied that the decision, act or omission is not clearly wrong or unreasonable, the Citizens' Representative shall make no further investigation of the matter and shall report to the complainant that he or she is so satisfied.

2001 cC-14.1 s24

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Report of refusal to investigate

25. Where the Citizens' Representative decides not to investigate or to cease investigating a complaint, he or she shall inform the complainant, and other interested persons, of his or her decision and shall provide to them reasons for his or her decision.

2001 cC-14.1 s25

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Notice of investigation

26. Before investigating a complaint, the Citizens' Representative shall inform the deputy minister, or the administrative head of the department or agency of the government affected, of his or her intention to make the investigation.

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Private investigation

27. Every investigation by the Citizens' Representative under this Act shall be conducted in private.

2001 cC-14.1 s27

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Hearings

28. The Citizens' Representative may hold hearings and hear or obtain information from a person and make an inquiry that he or she considers appropriate.

2001 cC-14.1 s28

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Right to be heard

29. The Citizens' Representative is not required to hold a hearing and a person is not entitled, as of right, to be heard by the Citizens' Representative, but, where it appears to the Citizens' Representative that there is sufficient grounds for his or her making a report or recommendation in respect of a matter that may adversely affect a department, agency of the government, or person, he or she shall give to the department, agency, or person, an opportunity to make representations in respect of the matter, and the department, agency, or person may make representations in respect of the matter by counsel.

2001 cC-14.1 s29

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Consultation with minister

30. (1) The Citizens' Representative may, during or after an investigation, consult a minister who is concerned in the matter of the investigation.

(2) Where, during or after an investigation, the Citizens' Representative is of the opinion that there is evidence of a breach of duty or misconduct by a department or agency of the government or an officer or employee of it, he or she shall inform the deputy minister or administrative head of the department or agency of the government of his or her opinion.

2001 cC-14.1 s30

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Evidence

31. (1) The Citizens' Representative may require a person who, in his or her opinion, is able to give information relating to a matter being investigated by him or her

(a) to furnish the information to him or her; and

(b) to produce a document, paper or thing that in his or her opinion relates to the matter being investigated and that may be in the possession or under the control of the person,

whether or not the person is an officer, employee or member of the department or agency of the government and whether or not the document, paper or thing is in the custody or under the control of a department or agency of the government.

(2) The Citizens' Representative may summon before him or her and examine on oath or affirmation

(a) a person who is an officer or employee or member of a department or agency of the government and who in the opinion of the Citizens' Representative is able to give information relating to a matter being investigated by him or her;

(b) a complainant; and

(c) another person who in the opinion of the Citizens' Representative is able to give information relating to a matter being investigated by him or her.

2001 cC-14.1 s31

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Restrictions on disclosure

32. Where the Minister of Justice certifies that the giving of any information or the answering of any questions or the production of any document, paper or thing might involve the disclosure of

(a) the deliberations of the Executive Council or a committee of the Executive Council;

(b) proceedings of the Executive Council, or committee of the Executive Council, relating to matters of a secret or confidential nature and would be injurious to the public interest; or

(c) interfere with or impede the investigation or detection of an offence,

the Citizens' Representative shall not require the information or answer to be given or the document, paper or thing to be produced, but shall report the giving of the certificate to the House of Assembly.

2001 cC-14.1 s32

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Application of certain rules

33. (1) A rule of law that authorizes or requires the withholding of a document, paper or thing, or the refusal to answer a question, on the ground that the disclosure or answering would be injurious to the public interest does not apply in respect of an investigation by or proceedings before the Citizens' Representative.

(2) A provision of an Act requiring a person to maintain secrecy in relation to, or not to disclose information relating to, a matter shall not apply in respect of an investigation by the Citizens' Representative, and a person required by the Citizens' Representative to furnish information or to produce a document, paper or thing or summoned by the Citizens' Representative to give evidence, shall not refuse to furnish the information, produce the document, paper or thing, or to answer questions on the ground of that provision.

2001 cC-14.1 s33

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Admissibility of evidence

34. Except on the trial of a person for perjury, a statement made, or answer or evidence given by that or another person in the course of an investigation by or a proceeding before the Citizens' Representative is not admissible in evidence against a person in a court or at an inquiry or in another proceeding, and no evidence respecting a proceeding before the Citizens' Representative shall be given against a person.

2001 cC-14.1 s34

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Defence for certain offences

35. A person is not guilty of an offence under another Act by reason of his or her compliance with a request or requirement of the Citizens' Representative to furnish information or produce a document, paper or thing, or by reason of answering a question in an investigation of the Citizens' Representative.

2001 cC-14.1 s35

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Right of entry

36. (1) For the purpose of this Act, the Citizens' Representative may enter the premises occupied by a department or agency of the government and carry out an investigation within his or her jurisdiction.

(2) Upon entering a premises under subsection (1), the Citizens' Representative shall notify the deputy minister or administrative head of the department or agency of the government that occupies the premises.

2001 cC-14.1 s36

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Report on investigation

37. (1) Where, after making an investigation under this Act, the Citizens' Representative is of the opinion

(a) that a decision, recommendation, act or omission that is the subject matter of the investigation appears to be

(i) contrary to law,

(ii) unreasonable,

(iii) unjust,

(iv) oppressive,

(v) improperly discriminatory,

(vi) in accordance with a practice or procedure that is or may be unreasonable, unjust, oppressive, or improperly discriminatory,

(vii) based wholly or partly on a mistake of law or fact, or

(viii) wrong;

(b) that in making a decision or recommendation, or in doing or omitting an act, a power or right has been exercised

(i) for an improper purpose,

(ii) on irrelevant grounds, or

(iii) on the taking into account of irrelevant considerations; or

(c) that reasons should have been given for a decision, recommendation, act or omission that was the subject matter of the investigation,

the Citizens' Representative shall report his or her opinion and his or her reasons and may make those recommendations that he or she considers appropriate to the appropriate minister and to the department or agency of the government concerned.

(2) In making a report under subsection (1), the Citizens' Representative may recommend

- (a) that a matter should be referred to the appropriate authority for further consideration;
- (b) that an omission should be rectified;
- (c) that a decision should be cancelled or varied;
- (d) that a practice on which a decision, recommendation, act or omission was based should be altered or reviewed;
- (e) that a law on which a decision, recommendation, act or omission was based should be reconsidered;
- (f) that reasons should be given for a decision, recommendation, act or omission; or
- (g) that other steps should be taken.

2001 cC-14.1 s37

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Notice of proposed steps

38. (1) Where the Citizens' Representative makes a recommendation under section 37, he or she may request the department or agency of the government to notify him or her within a specified time of the action it has taken or proposes to take to give effect to his or her recommendations.

(2) Where within a reasonable time after a request respecting recommendations is made under this section, no action is taken which seems to the Citizens' Representative to be adequate and appropriate, the Citizens' Representative, in his or her discretion, after considering the comments made by or on behalf of the department or agency of the government affected, may report the matter, including a copy of the report containing the recommendations, to the Lieutenant-Governor in Council and may mention the report in the Citizens' Representative's next annual report to the House of Assembly.

(3) A report made under subsection (2) shall include comments made by or on behalf of the department or agency of the government upon the opinion or recommendation of the Citizens' Representative.

2001 cC-14.1 s38

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Report to complainant

39. Where the Citizens' Representative makes an investigation on the basis of a complaint received by him or her, he or she shall report to the complainant, in the manner and at the time that he or she considers appropriate, the result of the investigation.

2001 cC-14.1 s39

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Review of Citizens' Representative's decision

40. A proceeding of the Citizens' Representative is not void for want of form and, except on the ground of lack of jurisdiction, a proceeding or decision of the Citizens' Representative shall not be challenged, reviewed, quashed or called into question in a court.

2001 cC-14.1 s40

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Proceedings against Citizens' Representative prohibited

41. An action does not lie against the Citizens' Representative or against a person employed under him or her for anything he or she may do or report or say in the course of the exercise or performance, or intended exercise or performance, of his or her functions and duties under this Act, unless it is shown he or she acted in bad faith.

2001 cC-14.1 s41

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Citizens' Representative not to be called as witness

42. The Citizens' Representative and a person employed under him or her shall not be called to give evidence in a court or in a proceeding of a judicial or quasi-judicial nature in respect of anything coming to his or her knowledge in the exercise or performance of his or her functions and duties under this Act.

2001 cC-14.1 s42

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Annual report to House of Assembly

43. The Citizens' Representative shall report annually to the House of Assembly through the Speaker on the exercise and performance of his or her functions and duties under this Act.

2001 cC-14.1 s43

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Publication of reports

44. Where it is in the public interest, or in the interest of a person, department or agency of the government, the Citizens' Representative may publish reports relating generally to the exercise and performance of his or her functions and duties under this Act or to a particular case investigated by him or her, whether or not the matters to be dealt with in the report have been the subject of the report made to the House of Assembly under this Act.

2001 cC-14.1 s44

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Rules

45. (1) The Commission of Internal Economy may make rules for the guidance of the Citizens' Representative in the exercise and performance of his or her functions and duties under this Act.

(2) Except where rules respecting it are made under subsection (1), the Citizens' Representative may determine his or her procedure.

2001 cC-14.1 s45

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Offence and penalty

46. A person who

(a) without lawful justification or excuse wilfully obstructs, hinders, or resists the Citizens' Representative or another person in the exercise or performance of his or her functions and duties under this Act;

(b) without lawful justification or excuse refuses or wilfully fails to comply with a lawful requirement of the Citizens' Representative or another person under this Act; or

(c) wilfully makes a false statement to or misleads or attempts to mislead the Citizens' Representative or another person in the exercise or performance of his or her functions and duties under this Act,

is guilty of an offence and liable, on summary conviction, to a fine of not more than \$500 or to imprisonment for a term not exceeding 3 months, or to both.

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Additional remedies

47. The provisions of this Act are in addition to the provisions of another Act or rule of law under which a remedy or right of appeal or objection is provided for a person, or a procedure is provided for the inquiry into or investigation of a matter, and nothing in this Act limits or affects that remedy or right of appeal or objection or procedure.

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Schedule

48. (1) The Lieutenant-Governor in Council may, by order, add or remove a person, board, commission, association or other body to or from the Schedule.

(2) An order made under subsection (1) is subordinate legislation for the purpose of the *Statutes and Subordinate Legislation Act*.

(3) Notwithstanding subsection (1), a person, board, commission, association or other body shall not be removed from the Schedule unless the removal is recommended by the Commission of Internal Economy.

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Commencement

49. This Act comes into force on a day to be proclaimed by the Lieutenant-Governor in Council.

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Schedule

The Agricultural Products Marketing Board

The Board of Commissioners of Public Utilities

Business Investment Corporation

The C.A. Pippy Park Commission

The Cancer Treatment and Research Foundation

The College of the North Atlantic

Criminal Code Mental Disorder Review Board (section 672.38 *Criminal Code*)

The Dairy Farmers of Newfoundland and Labrador
Day Care and Homemaking Services Licensing Board
Edge Corporation Evaluation Board
The Egg Producers of Newfoundland and Labrador
Enterprise Newfoundland and Labrador Corporation
A health care corporation incorporated under the *Hospitals Act*
A health and community services board incorporated under the *Hospitals Act*
Insurance Adjusters, Agents and Brokers Appeal Board
The Labour Relations Board
An adjudicator appointed under section 67 of the *Labour Standards Act*
Livestock Owners Compensation Board
The Memorial University of Newfoundland
Mental Health Review Board
Mineral Rights Adjudication Board
Mining Tax Review Board
Multi-Materials Stewardship Board
Municipal Assessment Agency referred to in the *Assessment Act*
The Newfoundland Chicken Marketing Board
Newfoundland Crop Insurance Agency
The Newfoundland Human Rights Commission
The Newfoundland Industrial Development Corporation
Newfoundland Legal Aid Commission
The Newfoundland Liquor Corporation
The Newfoundland Liquor Licensing Board
The Newfoundland Municipal Financing Corporation
Newfoundland and Labrador Arts Council
Newfoundland and Labrador Centre for Health Information
Newfoundland and Labrador Education Investment Corporation
Newfoundland and Labrador Geographical Names Board
The Newfoundland and Labrador Housing Corporation
Newfoundland and Labrador Student Investment and Opportunity Corporation

The Private Training Corporation

Provincial Apprenticeship Board

The Provincial Information and Library Resources Board

The Public Service Commission

Royal Newfoundland Constabulary Public Complaints Commission

A school board, including the conseil scolaire francophone elected under the *Schools Act, 1997*

Social Assistance Appeal Board

Timber Scalers Board

An appeal board established under section 40 of the *Urban and Rural Planning Act, 2000*

Workers' Compensation Review Division

The Workplace Health, Safety and Compensation Commission

A corporation, the ownership of which, or a majority of the shares of which is vested in the Crown

A corporation, commission or board the majority of the members of which, or the majority of the members of the board of directors of which are appointed by the Lieutenant-Governor in Council

A board, commission or other body added to this Schedule by order of the Lieutenant-Governor in Council

2001 cC-14.1 Sch

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