



**Nova Scotia Freedom of Information
and Protection of Privacy Review Officer
Catherine Tully**

**Keynote Address
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Thank you to Chris Lutz, Verney Conference Management and the Agenda Planning Committee for inviting me to speak today.

Background

I arrived to take up my new role as Nova Scotia's sixth Information and Privacy Review Officer on September 8. I am a transplant from points west but like to say, in my own defense, that I did spend a couple of years here in beautiful Halifax in the late 1980s when I was completing a master's degree in law at Dalhousie University. It is truly a pleasure to return to Halifax and an honour to take on the responsibilities of Review Officer.

Because I have been meeting and talking with so many of you in the past few weeks, you may already know some of my background.

I began my career practicing law in a rural Ontario legal clinic. During that eight year period I made numerous demands for records and became familiar with the challenges of accessing information from a user perspective. I moved to British Columbia where I began my career in access and privacy law as an analyst with the Ministry of Forests in British Columbia. That was a short – 6 month – career. I then became the Director of Access, Privacy and Records Management for three ministries including the Ministry of Attorney General. In that capacity I became intimately familiar with the challenges of processing thousands of access requests per year and completing hundreds of privacy impact assessments. I experienced the complexities of administering an access and privacy program in an environment of competing priorities.

After six years as an IAP Administrator, I moved to the Office of the Information and Privacy Commissioner of British Columbia. I began as a senior investigator mediating access to information review requests, investigating privacy complaints and privacy breach reports. I worked in a variety of positions ending as the Assistant Commissioner responsible for investigations and mediation. My group of intake officers and investigators mediated hundreds of access review files each year and investigated hundreds of privacy breaches and privacy complaints.

During my six years at the B.C. Commissioners' Office I had the honour of working with three very different and very able information and privacy commissioners including David Loukidelis, Paul Fraser and Elizabeth Denham. They each had unique working styles and each taught me important lessons about being an effective regulator.

For the past two years I was in Ottawa working most recently as the Director of Access and Privacy for Canada Post. It was indeed a refresher course in the complexities of administering access and

privacy programs in an organization with many competing priorities. It also gave me an opportunity to experience being regulated by the federal information and privacy commissioners - all part of my education. I am very pleased to say that the Chief Privacy Officer for Canada Post, Amanda Maltby, is here today to give a presentation with me on how to implement a privacy management framework.

Nova Scotia Access & Privacy Environment

So I appear before you today with almost three whole months of experience as Nova Scotia's Review Officer but with more than 20 years as a user, administrator and regulator in the field of access and privacy law. Any observations I might make specifically about Nova Scotia are really only initial impressions. I know I have a lot of work ahead of me to gain a deep and evidence-based understanding of the challenges facing all of you in the area of access and privacy rights administration.

In my opinion, an active civil society helps ensure the success of access legislation. I'm pleased to discover that Nova Scotia has at least two very active and interesting groups in the access arena. I'm talking about the journalism program at King's College led by Fred Valance Jones and of course the Centre for Law and Democracy led by Tony Mendel. In addition I note that the media here takes an active interest in access and privacy issues including as active users of access legislation.

I have been very impressed with the dedication and professionalism of the IAP Administrator community. It is I know, through your hard work that access requests get processed. You are a very important part of ensuring that Nova Scotians have meaningful access to information rights.

I was also very pleased to find that my office is staffed by five capable and committed individuals, a testament to my predecessors' ability to attract talented professionals to the office.

My very early impressions of the challenges and successes of access to information are based in part on my conversations with some of you in the audience. My impressions are also based on a review of our caseload at the Review Office and on reading through the existing statistical reports prepared by the government.

The emerging patterns I have seen are that the number of access requests has been rising over the past couple of years, the types of requesters are changing and the amount of fees being charged increased significantly at least from 2011 to 2012 when statistics were last available.

What does that mean? Well it is good for our democracy that citizens are actively using the access request process. It is obviously a concern if fees are rising. I very much look forward to seeing the next statistical report issued by government to see if ongoing patterns are emerging.

My early observations about the state of privacy protection in Nova Scotia are that the challenges facing Nova Scotia are no different than in other jurisdictions. There is a rising risk associated with managing personal information. Governments are collecting more personal information, combining more data and using it to deliver new and innovative programs. The increase in the amount and sensitivity of data increases the risks and consequences of the loss or mishandling of data. Citizens are certainly more aware of their privacy rights and the costs associated with privacy breaches are rising.

It is, as I've said, early days and I will certainly continue to meet and talk with public bodies, local government bodies, municipalities and health custodians to learn more about the strategies used to ensure that the privacy rights of Nova Scotians are adequately protected.

I'd like to now give you an idea of my short term priorities. I have set three tasks for my office over the course of the next six months. At that point, we will see what progress we have made and then refocus on some more long term priorities.

My approach

Before I can really identify long term goals for my office, I need to truly understand the issues and challenges from a Nova Scotian perspective. Part of my strategy will be to carefully consider the lessons learned every day in our office from the complaints and review requests we receive. These are real life experiences of how the access and privacy rules are working. Further, I have, over the past couple of months, made an effort to get out and meet with almost anyone willing to meet with me. I'm happy to talk to anyone who has an opinion on these issues and I have had the pleasure of meeting with many of you in the audience who are access and privacy professionals. I very much appreciate how welcoming the access and privacy community has been. I have had the opportunity to meet or talk with many of the access and privacy administrators, with deputy ministers, security experts, activists and media.

My goal as Review Officer is to contribute in a very practical way to ensuring that access and privacy rights are respected and meaningful for citizens. I want to create tools and information for citizens that will help ensure that they can understand and effectively exercise their access and privacy rights. I also want to create tools and information for public bodies, municipalities and health custodians to help ensure that the various access and privacy laws are applied in a consistent and fair manner. Finally and most importantly, I want to ensure that my office conducts its work in a timely, accessible, and neutral manner. That leads me to my first short term priority.

Priorities in the First Six Months

Backlog

My first priority is to deal with the backlog of cases in my office. These cases are almost all reviews filed by applicants unhappy with the response to their access to information requests. When I arrived in September the number of outstanding reviews was well over 230 and dated back to 2009.

From my perspective this is a very significant problem. As an independent oversight agency our primary job is to provide accessible, timely, independent oversight. Providing recommendations five years after an access request response is received is neither accessible, timely nor indeed meaningful. We needed to find a way to tackle this backlog.

As a result we have changed the way we manage cases. Many of you in the audience are aware of this change because as IAP administrators or as applicants, we have been in contact with you directly to discuss some of these very old files. I have given my investigators 60 days to attempt an informal resolution of these files. Generally we will stick strictly to this 60 day timeline unless some progress is being made toward an informal resolution and more time is needed.

If that does not work, the file will be moved on to the formal report process. Both parties will be advised in writing when this stage begins and they will be given an opportunity to provide any final arguments or evidence in support of their position. I will then review the file and write a formal report to conclude the matter. I anticipate that very shortly I will be getting very busy with these reports because we started the new process 59 days ago. I have cleared the decks for the next couple of months so that I do not become a new bottleneck in the process.

Early indications are that the new process has been well-received and is having an impact on our backlog. As of today we have assigned all of the 2009, 2010 and 2011 files from the backlog and they are now being actively worked on. In the past seven weeks since we began this process we have resolved 43 cases and are on track to resolve 50% more cases this year than we did last year. Naturally Murphy's Law dictated that as we made headway on the old files, we received a bumper crop of new ones so our overall inventory of cases remains high. However, as I noted earlier, now the files in the backlog of unassigned files dates from 2012 onward which is in itself a significant improvement.

Open Government

My second short term priority relates to my office's participation in the conversation around open data and open government. As you all know, access legislation is essential to a healthy democracy. Some say information is the "oxygen" of democracy – it is an essential part of good government.

The importance of access legislation should not be underestimated. Those of us who are keen students of access laws know that in the past 10 years alone the number of access to information laws in the world has increased from below 40 to over 100. Why? Because countries trying to develop a truly democratic government know that transparency is fundamental to this process. An even more recent development in access law is that some countries are also enshrining the right to access government information into their constitutions. For example, Tunisia (the first of the "Arab spring" countries) adopted its new constitution in January 2014. Included in their constitution is the following provision:

32. *"The State shall guarantee the right to information and the right to access to information."*

I am a firm believer in access to information legislation as a safety net, when all else fails, we have the right to make a formal request to access information. But I'm also a firm believer in trying to find more immediate ways of accessing information – having governments "push" out information to citizens rather than waiting for citizens to "pull" the information out through formal requests.

Nova Scotian public bodies have begun to engage in a conversation about open government and in the coming months my office will participate in that conversation. As you may know, open government is made up of two things: open information and open data. Open information is essentially an online library of government information made readily accessible to citizens. Open data is a collection of data sets that when combined or reconfigured can be used to create new data sets.

As some of you may know, at the international level there has been quite a bit of work particularly since 2011 on this topic. There are some important lessons from this experience that will benefit Nova Scotia's work in this area. Some of the key lessons are:

1. Open government must include both open information and open data. Open data requires data literacy skills and often requires software not commonly used. For both reasons, while open data is important it is not enough. Open information is the active publication of information that citizens want. Information such as audits and reports on audit compliance, information related to large government contracts, important studies on health related matters such as water quality or collision statistic evaluations and of course, the active publication of the results of completed access to information requests.
2. Open government should be based on what citizens' want not what government wants to release. Consultation with citizens is an essential part of an effective open government strategy.
3. Open data sets must be broader than just geo-spatial data. Once again, ask citizens what data they want and can use. Usually that will include health and safety data.
4. Open data must also be accompanied by efforts to improve data literacy among citizens or the data will not be used.

As public bodies work toward developing their open government websites, my office will be encouraging them to incorporate these key lessons into their plans.

Privacy Management Framework

My third short term priority is focused on privacy rights particularly in the area of developing a privacy management framework generally and in management of privacy breaches in particular.

As I stated above, my early observations about the state of privacy protection in Nova Scotia are that the risks are increasing. My office has a public education mandate particularly with respect to privacy. As part of our ongoing educational efforts, you will very shortly find on our website an explanation of the building blocks for a privacy management framework. The purpose of this framework is to ensure that institutions that hold collections of personal information can properly protect the information and are also complying with the rules respecting the collection, use and disclosure of personal information. I will be discussing privacy management framework in the next session this morning.

In the spring of 2013 the *Personal Health Information Act* was proclaimed. The Act imposes significant privacy requirements on large health authorities as well as small one person operations. I know that significant good work has already been done to educate health custodians regarding their obligations under the new Act. However, it appears that more is needed, particularly with respect to smaller health custodians on the requirements. It is a large task given that the Act covers everyone from physicians to physiotherapists, chiropractors, dentists and optometrists to name a few.

My approach to this issue will of course be informed by the information we gather from breach reports we receive from health custodians and any other public bodies who consult us for assistance in managing privacy breaches as well as information gleaned from complaints by individuals. It is part of my office's mandate to, on the request of public bodies; provide advice and recommendations regarding privacy issues. I welcome calls from public bodies if they are faced with a privacy breach and need assistance in managing the breach. Further, while health custodians are required to report minor breaches to my office, I also encourage them to report the significant breaches to my office so that we can provide recommendations to ensure that the breach is appropriately managed.

Breach notification is absolutely not the only step required to properly manage a breach. In this day and age of identity theft and class action lawsuits for damages for invasion of privacy it is very important for all institutions holding personal information to properly manage personal information including in the face of a privacy breach.

To that end you can also expect in the next few weeks to find information on our website intended to help public bodies and health custodians manage breaches. Based on best practices across other Canadian jurisdictions we will publish guidelines to assist Nova Scotian institutions in managing breaches.

Looking just a little farther down the road I know that my office will become more active in conversations relating to cyber privacy challenges including such things as ID Management, Cloud Computing, and big data. All very interesting and challenging topics.

Conclusion

I want to leave you with a few final thoughts. I am extremely optimistic about the contribution my office can make to ensuring that citizens have meaningful access rights and privacy protections. I have been very impressed with the willingness of public bodies & applicants to talk with me and my staff in an effort to resolve issues. I consider these ongoing conversations all part of my education and important to building my knowledge and understanding of the challenges ahead.

We live in a complex world. Technology creates both opportunity and risks, government continues to look for new and innovative ways to deliver services, the private sector has increasingly recognized the value of our personal information, law enforcement and security concerns have created increased pressure on our rights to privacy. As a society we need to ensure that we continue to enjoy the fundamental rights of access and privacy no matter where these new technologies, projects or money making schemes may take us.

I look forward to the challenges ahead. I am always happy to discuss these issues with anyone so please feel free to ask questions now or contact me at my office.

Thank you for your attention and I hope you all enjoy the conference and the opportunity to network with other access and privacy professionals.