

**THE NOVA SCOTIA FREEDOM OF INFORMATION
AND PROTECTION OF PRIVACY ACT**

A REQUEST FOR REVIEW of an opinion that the **REGIONAL INDEPENDENT STUDENTS' ASSOCIATION** is not a public body subject to this **Act**.

REVIEW OFFICER: Darce Fardy

REPORT DATE: **March 12th, 2003**

ISSUE: Whether the Regional Independent Students' Association is subject to the **Freedom of Information and Protection of Privacy Act**.

In a Request for Review under the **Freedom of Information and Protection of Privacy Act**, dated January 28, 2003, the Applicant asked that I accept her view that the Regional Independent Students' Association is a public body and is, therefore, subject to this **Act**.

In accordance with Section 5(1) of the **Act** the Applicant asked the Association, a non-profit organization which operates student residences and support centres for students at risk of not completing their high school education, for documents related to the death of her daughter at Edwards House one of the residences it operates. The Association replied that it "is not a public body and is not funded by the Province of Nova Scotia" and is therefore not subject to the **Act**. Instead, it offered to meet with the Applicant.

A definition of "public body" can be found in **Section 3(1)(j)**:

"public body" means

(i) a Government department or a board, commission, foundation, agency, tribunal, association or other body of persons, whether incorporated or unincorporated, all the members of which or all the members of the board of management or board of directors of which

(A) are appointed by order of the Governor in Council, or

(B) if not so appointed, in the discharge of their duties are public officers or servants of the Crown, and includes, for greater certainty, each body referred to in the Schedule to the Act but does not include the Office of the Legislative Council,

(ii) the Public Archives of Nova Scotia,

(iii) a body designated as a public body pursuant to clause (f) of subsection (1) or Section 49, or

(iv) a local public body.

The Schedule attached to the **Act** lists more than 80 commissions and agencies and other bodies recognized as “public bodies” but the list is not exhaustive.

The Applicant provided arguments to support her position that the Association is subject to the **Act**:

- Edwards House exclusively provides services to clients of the Department of Community Services and the Children’s Aid Societies;
- Such dependence on public funds makes Edwards House an agent of the Crown;
- The service provided by Edwards House does not fall into a landlord/tenant relationship because it provides specialized services to the Crown;

- Because Edwards House submitted to an “Internal Review of Procedures” conducted by the Department of Community Services, it should be regarded as an agent of that Department.
- If Edwards House were not an agency of the Department, it could have refused to submit to the “Internal Inquiry”.

The Association submits that although virtually all of its residents pay their expenses with funds provided by the Department of Community Services, Edwards House is not under the supervision of the Department and it sets its own standards. The Board is appointed by members of the Edwards Foundation. The Association describes its role as providing a service which is purchased by the Department of Community Services.

Conclusions:

There is no question we have entered a grey area because Edwards House is sustained virtually solely on public money. For guidance I am looking to the Nova Scotia Court of Appeal case *McLaughlin v. Halifax-Dartmouth Bridge Commission* [1993] N.S.J. No. 420.

Before the new Act was passed in 1995, “public bodies” were known as “departments”. The Halifax-Dartmouth Bridge Commission rejected an application under the Act with the argument that it was not a “department” as defined in the Act. The trial judge confirmed that decision. The Court of Appeal ruled that the Commission was subject to the Act and noted that “the range of types of government institutions...is indicative of the intention of the legislature” to have this Act broadly applied.

In that case the issue came down to a definition of “public officer”. The Court of Appeal adopted a definition from *Henley v. the Mayor of Lyme*, 5 Bing 92: “Every one who is appointed to discharge a public duty and receives a compensation in whatever shape, whether from the Crown or otherwise”.

McLaughlin cited a definition of public officer found in *The Interpretation Act*, R.S.N.S 1989, c.235: “‘public officer’ includes a person in the public service of a province”. It concluded that because the Bridge Commission is a statutory body created by statute; is required to make an annual report to the Province and the municipality and; that the Commissioners are acting on behalf of the public in the discharge of their duties, it is a public body and subject to the *Act*.

The Schedule of this **Act** lists some ninety agencies of government departments which are subject to the **Act**. It includes agencies of the Department of Community Services “within the meaning of the *Children and Family Services Act*”. Section 3(1) of that Act defines agency as “an agency continued by or established and incorporated pursuant to this Act”. The Association was not established or incorporated pursuant to the *Children and Family Services Act*.

Unlike the Bridge Commission, the Association is not a body created by statute, is not required to report to the government, and is not acting on behalf of the public in discharging its duties.

I have concluded that the Association and Edwards House are not “public bodies” as defined in this **Act** and are not agencies of the Department of Community Services as defined in Section 3(1) of the *Children and Family Services Act*.

In my view, the Association and Edwards House are not public bodies in accordance with the **Act**.

Dated at Halifax, Nova Scotia this 12th day of March, 2002.

Darce Fardy, Review Officer