



HOUSE OF ASSEMBLY
Newfoundland and Labrador
OFFICE OF THE SPEAKER

August 13, 2014

Mr. Clyde K. Wells
Chair
ATIPPA Review Committee
Suite C, 83 Thorburn Road
St. John's, NL
A1B 3M2

Re: House of Assembly & ATTIPA Review

I am writing in response to your June 6 correspondence with the House of Assembly ATIPPA Coordinator, Mr. Don Hynes. As the Speaker of the House of Assembly, it is not my intent to make a formal presentation to the ATIPPA Review Committee. However, having discussed an ATIPPA related issue with the Management Commission of the House of Assembly, I would like to make the argument that an amendment to section 71 of the Act might provide a necessary level of protection to Members of the House of Assembly and their constituency assistants.

Constituents of Members of the House of Assembly often ask their Members to assist them in resolving issues related to employment, health care, financial support or other personal matters. Members have appeared before or had discussions with the Employment Insurance and Worker's Compensation tribunals as well as government departments to advocate for their constituents. This advocacy can require that personal information about health, job performance and finances be released by a public body (i.e. Eastern Health, Health and Community Services, Child, Youth and Family Services) to the Member. The constituent requests the release of the personal information under paragraph 39(1)(k) which reads as follows:

"Disclosure of personal information

39(1) A public body may disclose personal information only

(k) to a member of the House of Assembly who has been requested by the individual the information is about to assist in resolving a problem;"

Information released to a Member by the public body is then used by that Member to advocate for his or her constituent. It is not for use by the Constituent or Member themselves (as an end user) but is information required to assist a constituent with yet another individual or body with whom he or she has an issue. As a result, information obtained by the Member is further revealed or released again to the person or persons with whom the constituent has a problem. Consents are obtained from the constituent to have this information released by the public body to the Member and for the Member to act on behalf of the constituent.

However, in releasing the required information, the public body is protected under section 71 of the Act. This section reads:

“Limitation of liability

71. An action does not lie against the government of the province, a public body, the head of a public body, an elected or appointed official of a local public body or a person acting for or under the direction of the head of a public body for damages resulting from

- (a) the disclosure of or a failure to disclose, in good faith, a record or part of a record or information under this Act or a consequence of that disclosure or failure to disclose; or
- (b) the failure to give a notice required by this Act where reasonable care is taken to ensure that notices are given.”

The ATIPPA/Privacy personnel of the House of Assembly have instructed Members and their assistants in the best practices with respect to obtaining consent for the Member to act on behalf of constituents. It is understood that some constituents may only ever instruct verbally (which instruction is recorded in writing) or may in fact be functionally or actually illiterate and/or unable to understand the full ramifications of asking for the Member to act for them and to have their personal information. In many instances there will be no issue. The riskiest situation would be where the advocacy does not assist in producing the desired outcome and personal information has been given to other persons and bodies as a solution to a problem is sought. In such situations a constituent might be more likely to claim that they did not understand or did not consent to the release of the information. At that point a Member or constituency assistant is vulnerable to an action for breaching privacy.

The public body releasing the information is protected under section 71. The Member is not. Consequently, as Speaker of the House of Assembly, I ask that you consider recommending an amendment to section 71 of the *Access to Information and Protection of Privacy Act* so that an action does not lie against a Member of the House of Assembly for

“disclosing information obtained from a public body in accordance with paragraph 39(1)(k) while acting in good faith on behalf of an individual”.

I trust that all is in order, however, should you have any questions or wish to discuss this further, please contact Don Hynes, House of Assembly ATIPP Coordinator at 729-7408.

Yours truly,



Section 30

Ross Wiseman, MHA
Speaker of the House of Assembly