

June 6, 2019



Re: Your request for access to information under Part II of the *Access to Information and Protection of Privacy Act, 2015* [Our File #: PRE/36/2019]

On May 8, 2019 the Premier's Office received your request for access to the following records/information:

"March 2019 information note titled "JPS - Way Forward Updates."

I am pleased to inform you that a decision has been made by the Chief of Staff of the Premier's Office to provide access to the requested information.

You may ask the Information and Privacy Commissioner to review the processing of your access request, as set out in section 42 of the *Access to Information and Protection of Privacy Act* (the *Act*). A request to the Commissioner must be made in writing within 15 business days of the date of this letter or within a longer period that may be allowed by the Commissioner. Contact information for the Information and Privacy Commissioner is as follows:

Office of the Information and Privacy Commissioner
2 Canada Drive
P. O. Box 13004, Stn. A
St. John's, NL. A1B 3V8

Telephone: (709) 729-6309
Toll-Free: 1-877-729-6309
Facsimile: (709) 729-6500

You may also appeal directly to the Supreme Court Trial Division within 15 business days after you receive this response, pursuant to section 52 of the *Act* (a copy of sections 42 and 52 of the *Act* have been enclosed for your reference). This response will be published as outlined on the Completed Access to Information Requests website. (<http://atipp-search.gov.nl.ca/>)

If you have any further questions, please feel free to contact me by telephone at (709)729-3570 or by e-mail at joybuckle@gov.nl.ca.

Sincerely,



Joy Buckle
ATIPP Coordinator
Enclosure

Access or correction complaint

42.(1) A person who makes a request under this Act for access to a record or for correction of personal information may file a complaint with the commissioner respecting a decision, act or failure to act of the head of the public body that relates to the request.

(2) A complaint under subsection (1) shall be filed in writing not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16(2).

(3) A third party informed under section 19 of a decision of the head of a public body to grant access to a record or part of a record in response to a request may file a complaint with the commissioner respecting that decision.

(4) A complaint under subsection (3) shall be filed in writing not later than 15 business days after the third party is informed of the decision of the head of the public body.

(5) The commissioner may allow a longer time period for the filing of a complaint under this section.

(6) A person or third party who has appealed directly to the Trial Division under subsection 52(1) or 53(1) shall not file a complaint with the commissioner.

(7) The commissioner shall refuse to investigate a complaint where an appeal has been commenced in the Trial Division.

(8) A complaint shall not be filed under this section with respect to

(a) a request that is disregarded under section 21;

(b) a decision respecting an extension of time under section 23;

(c) a variation of a procedure under section 24; or

(d) an estimate of costs or a decision not to waive a cost under section 26.

(9) The commissioner shall provide a copy of the complaint to the head of the public body concerned.

Direct appeal to Trial Division by an applicant

52. (1) Where an applicant has made a request to a public body for access to a record or correction of personal information and has not filed a complaint with the commissioner under section 42, the applicant may appeal the decision, act or failure to act of the head of the public body that relates to the request directly to the Trial Division.

(2) An appeal shall be commenced under subsection (1) not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16(2).

(3) Where an applicant has filed a complaint with the commissioner under section 42 and the commissioner has refused to investigate the complaint, the applicant may commence an appeal in the Trial Division of the decision, act or failure to act of the head of the public body that relates to the request for access to a record or for correction of personal information.

(4) An appeal shall be commenced under subsection (3) not later than 15 business days after the applicant is notified of the commissioner's refusal under subsection 45(2).

Information Note
Department of Justice and Public Safety

Title: Way Forward Updates

Issue: To provide information to Cabinet Secretariat on JPS's planned updates to the public Way Forward website related to the review of legal services and court administration.

Background and Current Status:

- JPS has responsibility for several Way Forward commitments, including those related to conducting a review of legal services and a review of court administration.
- The Way Forward commitment related to the legal services review states: "The Department of Justice and Public Safety provides legal counsel to all core Government departments and often contracts external legal counsel for additional support. Legal services are a cost pressure for our Government. Our Government will undertake a review of the use of legal services within the core public service to identify opportunities for efficiencies. This review will be concluded by March 31, 2018. Our Government will also encourage ABCs to review their use of legal services to determine potential efficiencies."
 - The 'What We've Accomplished' section of the Way Forward website presently states:
 - Surveys have been completed by legal services clients within the Provincial Government, lawyers within Civil Division in the Department of Justice and Public Safety, and other civil divisions across Canada.
 - This review has been finalized. A report is expected to be posted online in the Fall of 2018.
- The Way Forward commitment related to the court administration review states: "Currently the Supreme Court of Newfoundland and Labrador and the Provincial Court of Newfoundland and Labrador have separate administrative structures. Our Government will work with both court systems to identify opportunities for collaboration and sharing of services in an effort to improve efficiency. This review will begin in 2017-18."
 - The 'What We've Accomplished' section of the Way Forward website presently states:
 - The Department of Justice and Public Safety has met with the heads of court administration at Supreme Court and Provincial Court to engage in planning for the review.

Analysis:

- The review of legal services has been completed. JPS has prepared an Executive Summary (see Annex A) of the final report, for posting on the Way Forward website.
- The review of court administration has also been completed; however it did not identify the desired efficiencies. As a result, JPS continues to review this matter in an effort to identify opportunities for the sharing of services and to improve efficiency.

Action Being Taken:

- JPS will update the Way Forward website to: 1) post the Executive Summary of the legal services review; and 2) update the text of the What We've Accomplished section related to the court administration review to "The review of court administration has been completed; however it did not identify the desired efficiencies. As a result, JPS continues to review this

matter in an effort to identify opportunities for the sharing of services and to improve efficiency.”

Prepared/Approved by: M. Collins/J. Mercer, Q.C.
Reviewed by: C. Osmond/C. Blundon, Cabinet Secretariat
Ministerial Approval: Received from Hon. Andrew Parsons, Q.C.

March 22, 2019

Annex A

Executive Summary – Legal Services Review

As outlined in *The Way Forward: Realizing Our Potential*, Government committed to conduct a review of the use of legal services within government. Civil legal services, as opposed to criminal, are provided by the Civil Division of the Department of Justice and Public Safety, (JPS). The Civil Division provides a range of legal services to Government including, where necessary, the retention of external counsel. It provides general legal advice to government departments and agencies and handles Government's litigation responsibilities, including general litigation and child protection litigation.

The solicitors in the Civil Division are divided into four units: Family Litigation, Corporate/Commercial, Central Agencies, and Civil Litigation. The majority of these individuals are located in St. John's but there are also solicitors operating out of offices in Grand Falls-Windsor, Corner Brook, and Happy Valley – Goose Bay.

There are three major categories of expenses in the Civil Division: Allowances and Assistance, Professional Services, and Salaries and Benefits. Court ordered damages or settlements negotiated by JPS solicitors are funded from the Allowances and Assistance fund. These liabilities arise from the activities of all government departments. The Professional Services Budget provides funding for the retention of external legal counsel and experts. External counsel expenditures which are ordered by the Court, necessitated by litigation, required to avoid a conflict, or result from judicial indemnification are not discretionary and must be funded. These expenses are often incurred on behalf of other government departments. The Salaries and Benefits budget covers 37 solicitors, five legal assistants, one paralegal and two articling students.

The methodology for the review included conducting: interviews with client departments; a jurisdictional scan on service/funding models; staff surveys, and; analysis of previous reviews of the Civil Division. The main findings of the review include:

- Given that settlements generally arise as a result of past conduct or events, there are limited means available to Government to limit such liability.
- Expenditures for court-appointed counsel have proven to be difficult for JPS to control, as JPS has little control over the events in which they will arise or the work being performed. The Court-mandated expenditures from this account have been growing in recent years.
- Most Civil Divisions in other Provinces and Territories require client departments to pay for external counsel.
- A number of different models for funding of government internal law firms exist in Canada. It is unclear if any of the models is actually more cost effective overall for a government.
- Salary ranges in the Civil Division are comparable to professional salaries within government and compare fairly well to the local market for legal services.
- In-house counsel is the most cost effective way to provide legal services to a large corporation or a government. JPS' Civil Division continues to be the cost effective manner to provide quality civil legal services and deal with legal claims on behalf of all government.
- Any further reductions in Civil Division staffing levels, beyond those experienced since 2009, and in particular 2013, will increase turn-around times, lower client satisfaction, increase workloads within the Civil Division and undoubtedly lead to additional expenditures on professional services.
- Client departments identified a need for either more legal services or faster turnaround time on existing work. While development of initiatives to facilitate continuing legal education, practice management, time management, and workplace wellness could produce some modest efficiencies, it is unlikely that this would completely address the

demand expressed by client departments for more legal services or faster turnaround on legal services.