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March 9, 2021

ATIPPA Statutory Review 2020
3rd Floor, Beothuck Building
20 Crosbie Place
St. John's, NL
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Via email: adminnlatippareview.ca

To the Committee Chair, the Honourable David Orsborn:

Re: Your letter dated February 9, 2021

Thank you for the opportunity to engage with you in consideration of the Section 39 provisions of the *Access to Information and Protection of Privacy Act* (ATIPPA) – herein referred to as “the Act”. College of the North Atlantic (CNA) has considered the questions posed in your February 9, 2021 correspondence and we offer the following responses:

1. In the circumstances set out in your letter – *Should disclosure be refused or granted?*

Using the hypothetical version of S. 39 presented in your letter and assuming that the information in question is a trade secret or proven to be one of the harms set out in S.(1)(b) and that the public interest override set out in S.4 is not satisfied, we believe disclosure should be refused.



CNA maintains that any circumstance where information can potentially harm a third party's business interests and where the public interest is either unaffected, or even possibly negatively impacted, the information should be withheld from disclosure. The experience of the college is that business relationships formed with private businesses have significant benefits to the people of Newfoundland and Labrador. Protecting these relationships serves the public interest.

2. *Should it be made explicit that the OIPC can recommend granting access on the basis of the public interest override?*

The college does not believe this is necessary. The OIPC has the ability to review the decisions of a public body as per S. 42 of the Act. This continues to be sufficient. We caution that adding such wording may in fact create ambiguity and promote future requests for clarity from the courts.

We would also like to comment on S.39(3)(a). Our recommendation would be that S.39(3)(a) is superfluous if S.39(1) is implemented as outlined in your letter. Given that all of the circumstances you have set out are true, a public body is justified in withholding the information. Furthermore, if they are true, it is highly improbable that the third party would consent to disclosure of the same information.

Section 39(3)(a) is an issue for Access to Information (ATI) requests involving the current version of S. 39. It is the college's experience that even the process of asking for consent to disclose this information could lead to harming the business relationship. It is also CNA's experience that asking for consent is difficult to document and can take up a significant chunk of the response timeframe for a request. As indicated above, it is almost unthinkable that a third-party business would consent to such a disclosure. Consequently, there is little value to



the public, and/or to the facilitation of democracy, by including this section especially in light of the administrative work that it would entail.

Thank you for this opportunity. If you would like to discuss any aspect of this submission further, please contact me by telephone at 709-643-7912, or by email: atipp@cna.nl.ca.

Sincerely,

A handwritten signature in blue ink that reads "Donna Eldridge". The signature is written in a cursive, flowing style.

Donna Eldridge
Access and Privacy Coordinator