

ATIPPAReview

From: Gregory French <gfrench@clarenvillelawyers.com>
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To: ATIPPAReview
Subject: Submission for ATIPPA Review

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To whom it concerns:

My name is Gregory French. I am a solicitor practicing in Clarenville, NL. As background, I am past President of the Canadian Bar Association – Newfoundland and Labrador Branch (2020-21), I am current Chair for both the Canadian Bar Association National Real Estate Section and the CBA-NL Real Property Section, former Chair of the Law Society of Newfoundland and Labrador's Real Estate Committee and Title Standards Committee, and a solicitor of fourteen years' practice experience in this province. I have had many opportunities to engage with ATIPPA in the course of my work, in particular in the fields of real property and municipal law. I offer the below comments to assist in your review based upon problematic experiences with ATIPPA encountered in my work.

1. Real Property Issues

I first comment in relation to the function of the Registry of Deeds. In my capacity as Real Estate Chair, I have been contacted by many solicitors within the last twelve to eighteen months relating to problems with deed acceptance at the Registry of Deeds. I am informed that the Registry of Deeds has rejected deeds for having "personal information", and made reference to ATIPPA in at least some communication with solicitors as a reason for deed rejection.

I reference this because it must be made clear that ATIPPA cannot apply to the Registry of Deeds. "Personal Information" is defined as including "the individual's name [or] address"; "the individual's age, sex [...] marital status" (ATIPPA, s. 2(u)(i) and (iii)). All of this is collected in the course of executing deeds, which are registered for public viewing at the Registry of Deeds. By definition, a deed must contain the name of both the vendor and the purchaser, and must define what the property is. Marital status is required by law to be recorded with a deed owing to the vesting provisions of the Family Law Act: see Family Law Act, R.S.N.L. 1990, c. F-2, s. 6, 8, 12.

The Registry has previously refused to register documents such as wills as appendices to deeds, which are alleged to be "private information". However wills are in no way private, as probate records are available to the public, and the legislation of other provinces specifically permits wills to be registered in public Registries: see Ontario Registry Act, R.S.O. 1990, c. R-20, s. 53; New Brunswick's Registry Act, R.S.N.B. 1973, c. R-6 s. 19(5) and 22; Manitoba's Registry Act, C.C.S.M., c. R-50, s. 57; Nova Scotia's Registry Act, R.S.N.S. 1989, c. 392, s. 17; Prince Edward Island's Registry Act, R.S.P.E.I. 1988, c. R-10, s. 53.

Further, if ATIPPA were applicable to the Registry of Deeds, the entire operation of the Registry would have to cease. At present, title is searched by professional title searchers operating from the publicly-accessible Deeds Registry on Elizabeth Avenue in St. John's. If ATIPPA applies, then no public access to land records would be available, and requests under Part II of ATIPPA would be required to the Registrar of Deeds. Such an approach

would grind real estate in this province to a complete standstill and force Registry staff to conduct searches on behalf of lawyers and potential property purchasers.

In sum, ATIPPA must make clear that privacy concerns are not germane to the work of the Registry of Deeds and ATIPPA is inapplicable to their work. It may be necessary to make this clear in statute under Schedule A or B of ATIPPA, or under section 5 of ATIPPA.

2. Municipal Issues

In my work as counsel for several rural municipalities, a disturbing practice of “ATIPP Abuse” appears to have developed in recent years. Bad faith actors engage in a campaign of harassment and intimidation against municipal governments by besieging them with ATIPPA requests. This practice was noted by the Supreme Court of Newfoundland and Labrador in *Memorial University of Newfoundland v. Oleynik*, 2024 NLSC 42, beginning at paragraph 116.

The particular issue is the ability of the statutory body to pre-emptively dismiss repetitive or abusive ATIPPA requests, which are made in bad faith or for frivolous or vexatious purposes. Such a power existed previously under section 43.1 of the former version of ATIPPA (S.N.L. 2002, c. A-1.1; with the operative section added by S.N. 2012, c. 25, s. 21). This was eliminated in 2015, but the reasons for its initial addition have become more apparent in the present day. There is a gap in the current legislation that allows for bad faith vexatious practice, which forces public bodies to respond to such abusive claims. In my particular experience working with small municipalities, which have very limited human resources and are often governed by unpaid volunteers, ATIPPA can allow aggrieved individuals to wage a “paper war” on local governments.

I would make the submission that the former section 43.1 be reinstated. That section permitted the head of a public body to request the commissioner to authorize the public body to disregard a request, and where the disposal of the request was authorized, the aggrieved party could then appeal directly to the Commissioner or to the Supreme Court. This system adequately balanced the public interest in disclosure with a mechanism to prevent abuse.

I thank you for the opportunity to express these concerns, and I hope that you will take them under consideration in your review.

With best regards,
Gregory French



Gregory J. French
Barrister, Solicitor & Notary

MPT PLC INC.
111 Manitoba Drive, Suite 201
Manitoba Professional Building
Clareville, NL
Canada A5A 1K2

Ph: 709.466.6535

Faxsimile: 709.466.7109

Email: gfrench@clarevillelawyers.com

www.clarevillelawyers.com