



Office of the Information & Privacy Commissioner

Nova Scotia

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March 11, 2019

Law Amendments Committee
c/o Office of the Legislative Counsel
Legc.office@novascotia.ca

//via email//

Dear Law Amendments Committee:

Re: Bill 97 – Credit Union Act

I write today to contribute to the public debate of Bill 97 (the “Bill”), as introduced by the Minister of Finance and Treasury Board, which passed its second reading on March 7, 2019. Upon reviewing the Bill, I have identified a number of potential concerns with Clause 34. Clause 34 reads as follows:

34 Chapter 4 is further amended by adding immediately after Section 255 the following Section:

225A (1) Notwithstanding the Freedom of Information and Protection of Privacy Act and the Personal Information International Disclosure Protection Act, the Superintendent may provide information to and receive information from other governmental or regulatory authorities, both in Canada and outside of Canada, approved by the Superintendent to facilitate the exchange of information pursuant to this Act and the regulations.

(2) The Superintendent is exempt from the disclosure of information obtained pursuant to subsection (1) if the Superintendent determines the information should be maintained in confidence.

There are four concerning aspects to this proposed amendment. I make these comments based on very limited information regarding the intention of this amendment. Further study is required to fully and accurately assess the implications.

First, section 225A(1) would allow the Superintendent of Credit Unions to provide personal information to other governmental or regulatory authorities inside and outside of Canada without any of the protections afforded in the *Freedom of Information and Protection of Privacy Act (FOIPOP)* such as reasonable security requirements and limitations on further disclosure and use. Under this clause, information received from and provided to other governmental or regulatory authorities is excluded from *FOIPOP*. It is not clear what the nature of the information received or provided is, nor why it must be excluded from *FOIPOP* and the *Personal Information International Disclosure Protection Act (PIIDPA)*.

Second, notwithstanding *PIIDPA* and *FOIPOP* will result in a significant loss of transparency. Both laws allow for exemptions but do so in a transparent manner. *PIIDPA* allows personal information to be stored and accessed outside of Canada, provided the head of the public body consents in accordance with section 5 of *PIIDPA*. Those decisions are publicly reported in annual reports published by the Minister of Justice. Notwithstanding *FOIPOP* will mean that individuals will not be able to make access to information requests for the information.

Third, section 225A(1) of the amendment appears to be focused on providing the Superintendent with authority to disclose personal information outside Canada. What is not clear is why one of the more than 20 existing authorities for disclosure of personal information under *PIIDPA* and *FOIPOP* is not adequate for the purposes of the Superintendent. In fact, both laws permit disclosure of personal information where authorized under a statute. So, a simple solution would be to give positive authority for the disclosure; there is no need to notwithstand either law. This approach would have the benefit of maintaining the protections and transparency afforded by *FOIPOP* and *PIIDPA*.

Fourth, section 225A(2) attempts to shroud information received under section 225(1) in secrecy. It permits the Superintendent to simply determine that the information should be confidential. The Superintendent already has this discretion under *FOIPOP*. Section 12 of *FOIPOP* allows the head of a public body to refuse to disclose information that would harm the relationship between the Nova Scotia government and other governments, or reveal information received in confidence from another government. It is not clear why this portion of Clause 34 is necessary, as the Superintendent of Credit Unions can rely on these existing exemption provisions.

I was not consulted on this proposed amendment to the *Credit Union Act*. There has been very little time to study this Bill and provide input as it was introduced on March 6th and is scheduled to come before Law Amendments on March 11th. I am requesting that law makers delay this Bill and seek clarification on these matters before this Bill is returned to the House of Assembly.

Sincerely,



Catherine Tully
Information and Privacy Commissioner for Nova Scotia

cc: The Honourable Karen Casey, Minister of Finance and Treasury Board
Allan MacMaster, MLA for Inverness
Claudia Chender, MLA for Dartmouth South