

Ad Hoc Commissioner and Complaints against the Information Commissioner

Summary

On April 1, 2007, the Office of the Information Commissioner of Canada became subject to the *Access to Information Act*. Consequently, the Commissioner must respond to requests for access to information that he receives. In order to avoid conflict, the duty to investigate complaints lodged against the Commissioner has been entrusted to an *ad hoc* Commissioner, Justice Cory. The *ad hoc* Commissioner has the same powers and duties as the Information Commissioner to conduct investigations and make recommendations.

Complaints should be sent directly to Justice Cory at:

Office of the *ad hoc* Commissioner
Attention: The Honourable Peter Cory
P.O. Box 2594
Station D
Ottawa, ON
K1P 5W6

Background

As a result of the enactment of the *Federal Accountability Act* (2006, c.9) on December 12, 2006, the Office of the Information Commissioner is now subject to the *Access to Information Act*. Consequently, the Commissioner must respond to requests for access to information he receives in the same manner and to the same extent as any other head of a government institution is required to, in accordance with the provisions of the Act.

However, in the event that a complaint was to be filed against the Commissioner, an obvious conflict of interest would arise if the Commissioner were to investigate his own decision. As a result, in order to resolve this conflict, an alternative mechanism was needed to address such complaints against the Information Commissioner.

Solutions Considered in Other Jurisdictions

- In some provinces, the Offices of the Information and Privacy Commissioners are subject to their own legislation and face the same issue. In these provinces, however, the Commissioners have decision-making authority. To resolve the issue of inherent conflict, the Alberta, British Columbia and Prince Edward Island legislatures opted to entrust this duty to an Adjudicator, appointed to investigate complaints against their Commissioner in the same manner and with the same authority as the subject Commissioner. The Adjudicator's decisions carry the same weight as the Commissioner's - they are final and binding.

The Report of the Access to Information Review Task Force (2002) [<http://www.atirtf-geai.gc.ca/home-e.html>] considers two approaches: the judicial review model and the investigative / recommendation model by an ombudsman independent from the Office of the Commissioner.

- Under the first approach, complainants would have direct access to the Federal Courts for a judicial review of the Commissioner's decision.
- Under the alternative approach, the investigative mechanism followed by the Information Commissioner would be carried out by a retired judge. The appointment of the *ad hoc* Commissioner was the solution adopted by the Information Commissioner.

Delegation of Power to the *ad hoc* Commissioner

- Although the Act does not provide for a specific mechanism, section 59 allows the Commissioner to delegate his authority of investigation.
- The appointment of a former judge preserves the integrity and the independence of the process. The Honourable Peter de C. Cory, former Justice of the Supreme Court of Canada, has accepted this mandate. The Commissioner has delegated to the *ad hoc* Commissioner all necessary powers under section 59 of the Act.

Mandate

- The *ad hoc* Commissioner's mandate is to receive and investigate any complaints referred to in section 30 of the Act and arising from access requests made to the Information Commissioner's Office.
- He does not have authority to review the Commissioner's activities regarding complaints received about any other federal institution.

Investigative powers, duties and process

- The *ad hoc* Commissioner has the same functions and powers as the Information Commissioner with respect to conducting investigations and making recommendations.
- The investigative process [see attached English and French document on the investigative process] used by Justice Cory is the same as the process used by the Office of the Information Commissioner regarding any other federal institution. Justice Cory may retain the services of the staff members needed to assist him in conducting his investigations.

Delegation of internal decision-making authority

- In June 2007, the Commissioner fully delegated his decision-making authority on access requests received by the Office of the Information Commissioner to an Assistant Commissioner and to the Access Coordinator pursuant to section 73 of the Act.

Lodging Complaints

- Complaints should be sent directly to the *ad hoc* Commissioner at the following address:

Office of the *ad hoc* Commissioner
Attention: The Honourable Peter Cory
P.O. Box 2594, Station D
Ottawa, ON K1P 5W6

***Ad hoc* Commissioner's Office**

- To ensure the independence and integrity of the process, the Office of the Information Commissioner concluded a reciprocal agreement with the Privacy Commissioner. Under this agreement, the Privacy Commissioner provides the *ad hoc* Commissioner with secure facilities for processing complaints against the Information Commissioner.

Annual Report

- The *ad hoc* Commissioner will report on his activities in a chapter reserved for this purpose in the Information Commissioner's annual report.