ACCESS TO INFORMATION

Thirty years later, Canada's 51st in the world on a list of 89 freedom-of-information rankings. p. 13

Canada's Access to Information Act turns 30, but who's looking or caring

Parliament has done nothing for the Access to Information Act which can be a legal weapon that sheds light into corrupt practices, government waste, unhealthy consumer and environmental situations, and government privacy intrusions.

BY KEN RUBIN

OTTAWA—There has been little public notice that it was 30 years ago this June that the House of Commons passed both Canada's Access to Information and Privacy acts. This contrasts with the many public commentaries earlier this year on the impact 30 years of living with the Charter of Rights and Freedoms has had on Canada.

Yet, it took nearly 10 years of very public campaigning for access and privacy rights by groups that I was a part of like ACCESS and the then Canadian Rights and Liberties Federation before the acts' June 1982 passage.

Both acts are now engrained in Ottawa's daily routines even though they continually meet institutional resistance. Thirty years of thousands of access and privacy requests have not, however, had a significant impact on Ottawa's landscape. That's in part because both acts as enacted have been deeply flawed, offer little privacy protection and minimal disclosure and are beholden to the protection of government and special interests.

There is still no progressive road map in place to change that reality. Parliament itself can not take credit for nurturing or improving either act's viability which is why both acts are so broken and endangered.

Still, what has been mine and other users' experience with both acts is that access can be a legal weapon that gives glimpses into corrupt practices, government waste, unhealthy consumer and environmental situations, and government privacy intrusions.

On the privacy side, Cabinet ministers and officials since 1982 like Public Safety Minister Vic Toews have been walking all over the Privacy Act's protection collection and retention code.

There have been many causes for such concern; from massive personal information computer matching by federal agencies, to border agents eager to install expensive eavesdropping equipment, to police pressing for warrantless internet access, to officials tracking and restricting the content of public postings on government social media sites.

One of the biggest threats to Canadians' personal information has come from anti-privacy measures in the United States such as the Patriot Act and by Canada passing passenger information legislation that overrode the Privacy Act so as to satisfy American interests.

Public opinion polls have, however, consistently shown that Canadians throughout the years have been disquieted about privacy invasions by the federal government and by others.

The current Privacy Commissioner Jennifer Stoddart, for one, has called the federal Privacy Act a weak act in need of much reform and strengthening. Many technological changes have made "Mack Truck" surveillance inroads into what is left of privacy. The best change that occurred was when some privacy protection was extended to the federally-regulated private sector via the Personal Information Protection and Electronic Documents Act.

On the access side, Canada's Access to Information Act, that I began using in 1982 even before its July 1, 1983 implementation date, has attracted remarkably low usage and been met with many barriers, including from those in leadership roles.

Each of Canada's seven Prime Ministers so far has contributed to making the Access to Information Act so dysfunctional. Even PM John Turner, whose term of office was very brief, succeeded in taking away the right to access Cabinet discussion papers. PM Brian Mulroney got very defensive about his travel expenses and superimposed more bureaucratic early warning devices to ward off quick or easier access. Jean Chrétien did everything he could to hide his government's sponsorship and other spending practices and was inclined to let bureaucrats tighten secrecy practices or let the events of Sept. 11, 2001 dictate much more state secrecy.

Yet it's PM Stephen Harper's brazen centralized vision, gagging of bureaucrats, record manipulations and dumping that has stood out, stifling any hope for better disclosure. Modest suggested changes proposed in the last decade have been turned aside. Harper's 2007 omnibus Accountability Act access changes—far from being directed at altering Ottawa's culture of secrecy—embraced that culture and added further grounds for exemptions.

One example of just how embedded Ottawa's secrecy obsession has become is found in PCO's total exemption on national security and policy advice grounds of a short June 17, 2011, memo to Prime Minister Harper by PCO Clerk Wayne Wouters concerning a Harper telephone call to U.S. President Barack Obama.

Sadly, as *The Ottawa Citizen* reported on June 24, the pro-active public opinion polling minimal disclosure requirements under the Accountability Act are being turned on their head. That's because important polls like Finance's surveying of Canadians' views on the economy are now having the analysis of polling results done internally and those results are not posted or readily available and can be hidden. Such government creative avoidance end runs are putting Treasury Board Minister Tony Clement's open government claims to shame.

It's now at the point where the Privy Council Office dictates that at least an additional 240-day period is imposed on departments to consider whether records requested concern Cabinet. PCO has even introduced a silly rule that makes departments purchase and spend time placing and punching those records with claims of being Cabinet confidences into three-ring binders for shipping off for a slow central PCO review.

Before Ottawa lived by the traditional 30-year archival record rule before "regular" access could be granted to some of Ottawa's more reputedly "sensitive" public records. Now, this has been superceded with instances of permanently excluding certain "sensitive" records from any public access such as in the nuclear safety field.

It would be nice to expect better access to information under our prime ministers. But the next 30 years does not look all that promising.

The future looks more like what recently took place in Newfoundland and Labrador where regressive changes were made by the provincial Conservative government to restrict public access to audit and other reports, including on broader Cabinet confidences grounds. That's despite opposition parties trying all-night filibusters to prevent such changes.

Access legislation now the norm in every province and territory, has seen access users being treated more as the "enemies" who can tend to make too many "frivolous" and demanding requests. That in turn leads to flagging such requests as "red alerts" because some embarrassing tidbits of data many months later may get released.

In 1982, there were just over 10 countries with ATI legislation. Now, there are an estimated 90 countries. But by 2011, Canada has been rated 51st in the world on a list of 89 freedom-of-information rankings, and 11 spots lower on the list than when it was first released last September, according to the Halifax-based Centre for Law and Democracy and Access Info Europe of Madrid.

International advocacy groups are currently debating whether the gains made around the world in freedom-of-information legislation in the last 10 years are under threat. They too recognize that they will need to spend more time defending such gains and preparing for greater institutional resistance.

The needs and aims of the Canadian Access to Information and Privacy acts have gone their separate ways since 1982. But neither act has aged well or achieved the transparency and privacy protection goals they set out to address.

These days the acts are officially barely tolerated, and are far from being considered well-respected, constitutionally guaranteed, or effective rights.

It has been and will remain an uphill fight to gain better access and privacy protection and bring government accountability to the forefront.

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