Communications and Politics: Canada's Cautious Steps Toward Open Government

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Freedom of Information laws are aimed at providing the general public right of access to government information, i.e. documents. A walk through the offices of senior civil servants at the Privy Council Office leaves an unforgettable impression: large combination locks on the filing cabinets. There are similarly locked filing cabinets in all the departments and agencies of government at both the federal and provincial levels across Canada. Unlocking these filing cabinets and making most of the documents they contain available to the public is what freedom of information legislation is all about. "Access to documents", "open government", "right to know" are terms closely related to freedom of information and are sometimes used interchangeably. There is a democratic ring to these broad terms and the adoption of freedom of information legislation is generally seen as a step fostering democratic practices. This paper examines the tradition of secrecy in Canadian government and the increasing pressures for open government.

The case for general access to government documents—with relatively few and well defined exceptions—is strong. The conventional argument is that access to documents helps provide meaningful information about the political process: it enhances the notion of responsible government, makes government more accountable to the governed, and helps to protect the public against government arbitrariness.

The late Harold Laski observed in A Grammar of Politics: "A people without reliable news, is sooner or later, a people without a basis for freedom."¹ In Canada, Pierre Trudeau, said some years before he became a member of parliament and prime minister: "Democratic progress requires the ready availability of true and complete information. In this way people can objectively evaluate the government's policies. To act otherwise is to give way to despotic secrecy."² The Conservative party leader, Joseph Clark, before he became prime minister for a brief period warned in the House of
Commons ‘There is excessive power concentrated in the hands of those who hide public information from the people and Parliament of Canada’.” In the United States, Richard Nixon, before he became president said: ‘The plea for secrecy could become a cloak for errors, misjudgements and other failings of government.’ The appreciation for the importance of information in the political sphere is not new. One of the classic quotes on the subject comes from James Madison (a founding father of the United States and fourth president):

A Popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy, or perhaps both. Knowledge will forever govern ignorance: and a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.

Open Government and Freedom of Information

Information has been described as the currency of democracy and it is argued that the sword of democracy is blunted by the indifferent vote who is ignorant about what is going on in his country. The conventional argument is that without an informed public, political accountability is illusory. In order to play any meaningful role in the political process, the voter needs information about political affairs and usually turns to the mass media, the professional collectors and disseminators of information in society. This wisdom lies behind the pressures in democratic societies to follow the long standing example of Sweden and more recently in the United States for legal provisions (constitutionally enshrined in Sweden) whereby the public and consequently interested individuals, the political Opposition, the mass media, scholars, business groups and interest groups have access to government documents. The legal guarantee for access to documents is called freedom of information legislation.

The very definition of “open” and “closed” government is based on the presence or absence of freedom of information legislation in a country. In the ‘open’ system of government, there are legal requirements that give the public access to government documents and all documents are available on demand except those in limited and special categories where disclosure would be contrary to national interests (e.g., defence, security or equally compelling reasons). In the closed system, all documents are secret except those that the government releases at its own discretion because it believes that making the information available is in the public interest.

Secrecy

There are contradictory pressures for secrecy and openness in Canada. Political traditions, federal-provincial politics, bilingualism
and biculturalism, international considerations, economic interests, a strong belief in democratic practices have interacted to bring about what Professor Donald Rowat has called "schizophrenic conflict" between secrecy and openness: "Among the developed countries of the world, Canada seems to rank about midway between those having the most administrative secrecy and those enjoying the least." 6

The support structure for secrecy comes from constitutional factors (cabinet and civil service secrecy), the nature of Canadian federalism, the practice of elite accommodation in the political process, economic considerations and the tradition of individual privacy.

(i) Constitutional Factors

Canada's parliamentary system inherited the traditions of secrecy from Britain and in some ways we have made it even more secret. The main decision-making centres in Canadian government are the cabinet and the civil service and both are surrounded by a cloak of secrecy.

A. Cabinet Secrecy

At the cabinet level in Canada, secrecy is almost absolute. How the decisions at the apex of the governmental system are made and on what grounds are closely guarded secrets. The cabinet is the body of advisers to the Sovereign and since the Crown's business is confidential there is a constitutional reason for secrecy of cabinet proceedings. (The Privy Councillor's Oath taken at the swearing in of cabinet ministers stipulates secrecy and it would appear that the Official Secrets Act could be applied for a breach of cabinet secrecy.) While the role of the Crown re secrecy is theoretical, there is a practical reason for the strictest privacy; full and frank discussions are encouraged. The cabinet deliberates the decisions of government and there are bound to be opposing views for the very task of cabinet making involves bringing in disparate voices. The representative principle—reflecting provincial representation, religion, regional economic interest, special interest groups—is deeply embedded in the Canadian Cabinet. The member of the cabinet must be able to talk freely and raise considerations that may stem from provincial or regional interests or other factors. Not even successor government have access to the records of discussions of the cabinet or cabinet committees.

The different views of ministers emerge as one voice when cabinet arrives at a policy decision whether it be by consensus or imposed by the Prime Minister. The cabinet as a whole takes responsibility for the policy and ministers must give their public support or resign. This is the concept of collective responsibility; a convention of parliamentary government. Collective responsibility would be impossible without secrecy.

Collective responsibility emerged in Britain in the 18th century in the power struggle between the political executive (the cabinet) and the
formal executive (the King).\textsuperscript{10} The principle behind collective responsibility is that the monarch could ill afford to ignore the collective strength of the unified cabinet. Today, with the universal franchise and the supremacy of Parliament, this reasoning is obsolete. Rather than disappear, collective responsibility blossomed with the extension of the franchise, the development of mass parties and rigid party lines;\textsuperscript{11} it remains a powerful tool for maintaining the government in office. The effect of collective responsibility is that if members of Parliament withdraw their support from a minister, on an important matter, considered one of confidence, they are bringing down the government and probably precipitating a general election. This usually occurs only when there is a minority government because government supporters hardly ever vote against their own party. Collective responsibility thus contributes to party discipline, with members of the various political parties voting along the lines dictated by their leadership. This means that secrecy, which is an important ingredient of the constitutional convention of collective responsibility, filters down to the party level and into caucus and should therefore be properly identified as \textit{political secrecy}.

Political secrecy, in this sense, may be defined as the secrecy that serves the interest of the various political parties vying for power. Its main purpose is to project for the party a unified image and thus aims at hiding evidence of differences over party leadership and policy. Furthermore, such secrecy enables opposition parties to develop strategies for parliamentary manoeuvring that might catch the government off-guard. It is political interests and not any legal restraints that are the basis for political secrecy. Disclosures of confidentially happenings in caucus may lead to hard feelings and intra-party feuds but it is a secrecy that has no constitutional or legal basis.

B. Secrecy at the Public Service Level

The matter of secrecy in the decision-making process at the officials level, that is, by senior civil servants in the various departments of government, stems from the constitutional principle of individual ministerial responsibility. This principle—far older than collective responsibility—requires that a minister be responsible to parliament for all actions and decisions of civil servants in his department. Parliamentary praise or criticism pertaining to a department is directed at the minister. Departmental employees act in the minister’s name and on his responsibility. It is from this inherited principle of British governmental system that the practice of civil service anonymity has grown up. Students of Canadian politics have shown that the involvement of senior civil servants in the policy process in this country has been as close and continuous as anywhere in the world.\textsuperscript{12} The enormous growth of governmental activity since 1940 has brought about a greatly expanded need for decision making at the civil
service level with a corresponding increase in the power of the administrative machinery of government. But the departments continue to speak through the minister only; they are to a large extent out-of-bounds to the public and journalists seeking information. There is no right of access to documents in Canada; administrative secrecy is the prevailing practice.

(ii) Federalism

Another important factor that contributes to secrecy in Canada is the nature of our federal system. Canada has perhaps the most decentralized federal system in the world. The former Prime Minister, Mr. Clark, described Canada as “a community of communities.” The provinces have formal constitutional powers of an extensive nature in vitally important matters including natural resources, social welfare and education. The ten provincial capitals are political powers in their own right with such factors as population size, industrialization and natural resources important aspects of the power configuration. The coordination and cooperation requirements of federalism necessitates significant exchanges of information between the two levels of government. There is at the same time a strategic withholding of information in the ongoing federal provincial bargaining. The practices of secrecy that flow from parliamentary government apply to the provincial governments in the same way as to Ottawa.

In Canada, there are only ten provinces, accounting for a relatively limited dilution of provincial power as compared to the United where there are 50 states. This, combined with decentralization, the secretive nature of governmental systems and other factors brings about a situation where federal-provincial relations have some of the characteristics of international politics. Diplomacy used in this kind of interaction has usually thrived in secrecy; compromises are far more feasible before public positions have been defined. Political information exchanges and bargaining occur at meetings of federal and provincial ministers, usually behind closed doors. A further reflection of the international flavour aspect of Canadian federalism are the so-called heads-of-government conferences that bring together the federal prime minister and the ten provincial premiers. The importance of confidentiality in these negotiations has long been appreciated by the participants and going public is perceived as an obstacle to agreements. Premier Rene Levesque, in his first major statement after the defeat of the Sovereignty Association referendum, indicated Quebec would take part in constitutional negotiations in “good faith” but made it clear that if things didn’t go the way he wished he would bring in the press.

(iii) Elite Accommodation

A characteristic of the Canadian political process that finds its base in the demands of federalism, regionalism, corporate interests,
religious and cultural pulls, is "elite accommodation." Professor Donald Smiley argues that "elite accommodation in Canada is facilitated by the dominance of bureaucratic traditions and relative weakness of liberal individual." The interests of the bureaucracy are enhanced by the practice of secrecy.

(iv) Economics
Canada's economic structure also encourages secrecy. While there is a mixed economy with private industry often competing with nationally owned corporations (e.g., Air Canada, Canadian National Railways), in both the private and public sector the rules of the competitive business world are emphasized, i.e., confidentiality. Canada has laws that safeguard the secrecy of information collected by the government on private industries. The government's involvement in business ventures and in providing social services is very much respected in Canada and is related to attitudes of trust toward the authorities. In Canada's pioneering origins, government usually came before society; As Franks has observed: "there were tremendous needs for government services in Canada's difficult environment, and the origins of the country are so recent for these influences still to be pronounced."

(v) Individual Privacy Tradition
At the personal level, there is also a support structure the secrecy in the strong Canadian tradition of individual privacy. Governments (at both the federal and provincial level) have accumulated on computers vast amounts of personal information dealing with such matters as age, health, education, religion, income, property ownership, taxes, legal violations and convictions, customs declarations, among many other matters. The widespread use of the Social Insurance Number, or SIN as it is called, gives governments extraordinarily easy access to information about our personal lives. There are growing pressures in Canada for safeguarding the confidentiality of this information.

The pressures for secrecy stemming from a variety of sources—constitutional factors, federalism, economics and individual privacy—are in combination a formidable obstacle to the easy flow of communications from the political sector.

Openness

The pressures for openness in Canadian society are also extremely strong. They include the democratic characteristics, the requirements of Canadian unity and the American influence.

(i) Democratic Characteristics
Most important is the fact that Canada is a constitutional democracy; although this characteristic of the constitution is nowhere
written down, nowhere guaranteed. The governmental institutions have fully developed democratic characteristics:
—The voters judge the government at regular required elections.
—The government is “responsible” to the peoples’ elected representatives in Parliament. This “accountability” provisions is somewhat tempered by party discipline and in fact Parliament rarely defeats cabinets and never impeaches them. At the very least, government must “answer” to Parliament and the House of Commons serves as the continuing electoral battleground. (The role of Parliament in the dissemination of information will be discussed in detail below.)
—Parliament is open to the press and public and the proceedings of Parliament, as recorded in Hansard, can be freely published in the media. The televising of parliamentary proceedings, the electronic Hansard as it is called, has further increased public awareness of Parliament.
—The courts are independent, insulated from political interference and open.
—There is freedom of the press in Canada. The International Press Institute, Freedom House and other respected institutions that concern themselves with civil rights around the world invariably rank Canada near the top among the very limited number of countries that have press freedoms. It is significant that there are no constitutional guarantees for freedom of the press and freedom of speech.
—The government actively seeks to encourage greater public involvement in political decision making in what has been called “participatory democracy.” This participation requires an informed public and the government has a highly developed publicity system which directs its attention to the mass media (the professional informers) and the public generally. The Government has become a large publishing house. The Government controls what it publishes but the government’s legitimacy in a democratic society is related in party to the public’s trust in the information that surfaces.

(ii) Canadian Unity

The requirements of Canadian unity also set off pressures for openness. Bilingualism and biculturalism in Canada requires that both the French and English language populations must be supplied with adequate political information that would engender trust in the political institutions. This political information is especially pressing for French-speaking Canadians who, it may be argued, have in the past felt left out from the main-stream of Canadian federal politics and thus had difficulties in relating directly to the political institutions that are associated with the parliamentary system which they seem to
perceive as alien to their traditions. Pierre Trudeau, in his article, “Some Obstacles to Democracy in Quebec,” argued that in French Canada there was an “outward acceptance of the parliamentary game, but without inward allegiance to its underlying moral principles.”

There is ample evidence that French Canadians have traditionally related to the personalities in power at the federal level of government rather than the parliamentary institutions. This emphasis on personality politics, with French Canadians sharing the helm, is a factor in the strong support of the federal Liberal party in Quebec province in national elections. The tradition, Mr. Trudeau observed, started with the choice of Laurier as the leader of the Liberals at the end of the 19th century. This development, which came at about the same time that there was strong Canadian criticism of the way the Conservatives handled the Riel rebellion, brought French Canadians en masse into the fold of the Liberal party.

For English-speaking Canadians, the parliamentary institutions are often taken for granted, though not necessarily understood. These institutions are perceived by English-speaking Canadians as part of their inherited traditions with which they feel comfortable. This situation is changing. Exposure to American mass media (television, film, magazines) means that many Canadians are more knowledgeable about American presidential/congressional politics than they are with the complexities of the parliamentary/cabinet system. Furthermore, federalism requires good internal communications on a national basis about the federal political process to help domesticate the strong fragmenting influences of regionalism.

(iii) The American Factor

The so-called American factor also provides direct pressures for openness in Canadian politics. Canada, says Mallory, has been nourished by the same stream of constitutional ideas, and in many respects, the same constitutional atmosphere, as the United States. American ways are much admired in Canada and the demonstration effect of the openness of the U.S. political process has a significant influence on Canadian attitudes towards politics. The freedom of information issue was widely debated in the United States as a result of Watergate disclosures which led to the resignation of President Nixon. It was partly because of Watergate that Congress in 1974 amended the U.S. Freedom of Information Act to make it a formidable instrument for public disclosure. The spillover effect of the American example combined with ongoing pressures for ‘democratisation’ in other western societies (e.g., Britain, Australia, France, West Germany) are helping to shape Canadian attitudes about openness.

Parliament and Information

Administrative secrecy puts governments in a privileged position;
the means of ‘looking good’ and explaining policy decisions through selective release of documents. Secrecy does not have to be justified. In 1968, a New Democratic Party member of Parliament told the Task Force on Government Information: “In Canada there is a tendency on the part of governments to be partisan in the papers made public. If it’s good news, the government releases it when it’s advantageous, but if it’s bad news, the government doesn’t want it known.” Nearly a decade later, John Turner, after resigning from Parliament following service as Justice Minister and Finance Minister in the Trudeau cabinet, admitted this practice: “Certainly, in politics there is a vested interest in presenting any policy or any decision in the most favourable light. This sometimes means selecting facts. It often means managing or manipulating information. It often involves orchestrating the timing. Full and immediate revelation of all the facts can be embarrassing. I know—I’ve been there.”

Parliament is the great receiver of government information. It is on the floor of the House of Commons that the government announces its policies, tables its legislation and makes available administrative documents. The House of Commons—made up of the people’s representatives—has a special claim for access to government documents. The rules and customs of parliament reinforce this claim: decisions which the legislative branch of government has a right to know must not be made public until Parliament has been informed. The government is severely criticized if it by-passes the House and reaches out directly to the public via the mass media. The practice of ‘first disclosure’ in the House applies to draft legislation, White Papers, Green Papers, Royal Commission Reports and Task Force Reports, among other documents. The controlled information release procedure, in terms of setting and time frame, contributes to secrecy and causes delays. In the last ten years, or so, a further cause of delay is that nothing is talked in the House until it can be produced in both languages and the delays in the translation bureau often hold matters up further.

Ministerial responsibility, party discipline and the rules and customs of parliament interact to put the focus of attention on government on the floor of the House of Commons; away from the real centres of decision making—the cabinet and the civil service. This parliamentary bias promotes the vested interest of government, and has a pronounced effect on the political communications flow. The privileged position of government, however, is tempered by the powers of sanction and investigation of Parliament.

Parliament’s role in the political process is the core of our democratic practices. It is important to recognize that in Canada there is parliamentary sovereignty and no tradition of popular sovereignty as embodied in the American and French revolutions. “The ultimate centre of legal power under the Canadian constitution lies not in the
people," as Mallory notes, "but in the sovereign legislature." The electorate selects a new Parliament at least every five years and it is the arithmetic of party politics that determines the government. In this sense, Parliament has an elective function by legitimating the government; its own composition determines the government. A second function of Parliament is to pass legislation; shape the laws of the land. Thirdly, there is the educative function in that the Opposition party is presented an opportunity to state its case to the public and thus the Opposition becomes a viable alternative to the Government. Fourthly, Parliament has a watchdog role over the government with the purpose of making the government behave.

The cabinet, while it comes from Parliament (normally, ministers are members of the House of Commons) and has considerable control over the time of the House, is held accountable by the House. The administrative activities of the Government are thus subject to the scrutiny of the Commons. The requirements for information disclosure in the parliamentary process are considerable.

An ancient rule of conduct of parliament is "grievance before supply" requiring grievances to be heard before the government is voted money supply for the next year. Perhaps the most important event in the parliamentary calendar is budget night when the government presents its spending plans and its projected incomes. In the budget and the review of the budget that follows, parliamentarians have an opportunity to focus on government activities. Traditionally, Canadian governments have limited their budget projections to spending and revenues for the coming year. In the fall of 1979, the budget brought down by the Conservative Party government of Joe Clark for the first time ever present a four year projection that went beyond general spending and revenue figures but focused also on specific items in some detail. The budget and the accompanying research paper set a precedent in government openness that future government will find difficult to disregard.

On money matters, parliamentarians have the advice of the Auditor General, an officer of Parliament who has the independent standing of a judge and has special powers of access to government documents and financial statements. The Auditor General's Report, which at times has provided devastating examples of poor government judgement in money handling, is examined largely by the Public Accounts Committee. It is significant that since 1958, Canada has followed the British example and the chairman of the Public Accounts Committee is a member of the Opposition.

On language questions, specifically the use of French and English in government departments, there is the Official Language Commissioner. An officer of parliament, he has tenure and investigatory powers that cut across departments. A more recent development of a somewhat similar nature is the appointment of a

**Question Period**

The most publicized part of Parliament's business is Question Period. The daily, forty-five minute session enables members of the House of Commons to get information by asking the minister directly. The oral questions are usually asked without giving previous notice and the period is a free-wheeling affair, with tremendous spontaneity and vitality.24 (Franks, p.28) In the Question Period, ministers are regularly made accountable to the House through their 'obligation' to answer questions pertaining to matters that are under the jurisdiction of their departments. (A minister can choose not to reply, and sit and ignore the question but the political cost of this behaviour is tremendous.) The House is filled for Question Period as are the Press Gallery and the Visitors Gallery. The oral questions provide the leads for many of the political newspaper stories. The television and radio coverage of the House of Commons is largely confined to Question Period developments. When the Question Period ends, the media interest in Parliament declines sharply and there is almost a mass exit by the press. The Public Gallery also empties and many of the members of Parliament leave the chamber to attend other business.

**Committee**

Government in Canada has become too big for the House of Commons to be a meaningful watchdog. While Parliament has traditionally been reluctant to dilute its collective powers, the work demands have made it necessary to turn over many of the scrutiny responsibilities to the Committees of the House. (It is significant that the autonomous power of the American Congressional Committees is a major factor in disclosures about U.S politics.) In Canada, Parliamentary Committees do not have much autonomy but they have been strengthened in recent years to give them an important role in the legislative process and perhaps even more significant—in the scrutiny of departmental and other agencies of government.25 The specialist Standing Committees of the House (e.g. Justice and Legal Affairs, External Affairs and National Defence) are largely organized around the functions of various departments of government; consequently they develop specialization in certain governmental activities. The committees have the power to send for papers and summon witnesses to testify under oath. In recent year, civil servants have been allowed to appear before committees. Furthermore, the government has made money available for the publication of
committee proceedings. Research facilities have been improved. But there are also major shortcomings. Firstly, committees are not insulated from government control in that committee membership reflects party strength in the House. Secondly, that chairmen of the committees (except Public Accounts) belong to the ruling party. Thirdly, ministers appearing before committees are not obliged to give more detailed answers than they provide in the House Question Period. Fourthly, civil servants speak for the minister and there is little likelihood that they will contradict views expressed by ministers. On balance, it would appear that while the reform of the committee system has been important, the potential for scrutiny and control has not fully materialized.

**Commission of Inquiry**

When questions raised in parliament are not satisfactorily answered and there is suspicion that the government is withholding information to avoid embarrassment, there may be demands for a Commission of Inquiry. The appointment of such a Commission is usually reserved for extremely important matters. The government makes the final decision on setting up a Commission of Inquiry, determines its mandate and appoints its members. The Commissions have special investigatory powers and when employed play an important role in the disclosure of documents and information.

Important questions of policy are from time to time examined by Royal Commissions and Task Forces in the parliamentary system. Since the end of World War Two, Canadian governments have, with increasing frequency, produced White Papers. The White Papers are statements of basic policy and are preparatory to bringing down legislation. They are part of the process of stimulating a national debate. More recently, the Government has experimented with the Green Paper, a broad discussion of a variety of policy approaches about which the government has not yet made final decisions. It is assumed that the government has an open mind on the issue discussed in the Green Paper (e.g., Freedom of Information) and is interested in further consultation with the Opposition parties, interest groups, experts and the public generally. The White Paper and Green Paper experiments could result in wider consultation and participation in shaping governmental legislation but the assessments have been mixed.26

Moving beyond the parliamentary process but related to it, is the government practice over the past fifteen years to establish advisory bodies such as the Economic Council of Canada and the Science Council of Canada. The government has created its own critics, says Bruce Doern, and these advisory bodies are aimed "to bring debates in their respective domains out of the closed executive-bureaucratic
deliberations and into a somewhat broader public arena."

In summary, the House of Commons has undergone many reforms; especially since 1965. These changes include the introduction of the electronic Hansard (televising of parliament), strengthening the committee system, and making research funds available to the parties. An important reform was making the Speaker of the House more independent from government control. The White and Green Papers and more detailed research papers for the budget are examples of an increased flow of information about government policies. But these developments and others have come at a time of enormous increases in governmental activity in Canada. There are doubts that the balance between Parliament and Government has been significantly affected.

Conclusions and General Observations

The search for a balance between the people's "right to know" and the needs and preferences of government for confidentiality is not unique to Canada. Administrative secrecy tends to be the general rule in most democratic societies although the closed governmental systems are under increasing pressures to unlock their filing cabinets. The constitutionally enshrined Swedish provisions for freedom of information and the quasi-constitutional American freedom of information legislation are in a class by themselves; there are final appeals to impartial adjudicators (the courts in the United States, the Supreme Administrative Tribunal or the Parliamentary Ombudsman in Sweden) in cases where administrative secrecy is challenged. Other countries (e.g., Norway and Denmark) have quasi-information laws called publicity acts that are not as far reaching in that appeals are to administrative bodies of the civil service and not to legal bodies. Austria, France and the Netherlands adopted access legislation with limiting provisions in the 1970s.

The progress toward freedom of information legislation in Canada is extremely slow considering the strong declarations of support from political leaders, the media, interest groups (including the Canadian Bar Association,) and the public. But Canada has clearly moved in the direction of more open government. An important break with the tradition of discretionary secrecy was advocated in the 1969 Report of the Task Force on Government Information which declared in its first recommendation that Canadians have a right to "full, objective and timely information" to government activities. The Trudeau government quickly accepted this recommendation. Another important development in 1969 was the announcement by government of its new 30-year rule whereby most official records would be transferred to Public Archives and released to the public.
after 30 years. (There were some exceptions in the 30-year provision relating to release of documents that could adversely affect Canada’s national security and external relations as well as exceptions for documents the release of which would violate the rights of privacy of individuals.) The archives provisions are of particular importance to researchers who now have even earlier access if there is ministerial approval.

The Federal Courts Act of 1970 brought some limitations to Crown privilege and enhanced the power of the courts to compel production of government documents needed by litigants or defendants except in cases where the minister certifies that disclosure could be harmful for matters of national defense, international relations, federal-provincial relations or the revealing of a cabinet confidence. In 1971, Parliament passed the Statutory Instruments Act which elaborated on governmental requirements in publication of regulations and provides for increased parliamentary scrutiny for such regulations. The Federal Court Act and the Statutory Instruments Act, are complementary in terms of greater ‘openness’: one enhances legal review procedure, the other strengthens Parliament’s hands. A further important development was the 1973 announcement by the government of a new set of guidelines for the release of documents to Parliament. The general principle in these guidelines was that departments of government should make available to Parliament as much information as possible providing such information release did not compromise effective administration, the security of the nation and the right to privacy.

In 1973, the government took the unusual step of referring a private members bill on freedom of information introduced by Mr. Gerald Baldwin to Parliament’s Joint Committee (Senate-House of Commons) on Regulations and Other Statutory Instruments. Mr. Baldwin had been pressing for such legislation over almost his entire 22 year career in Parliament (1958-80) but until 1973 his Private Members Bill had always been allowed to die on the floor of the House. The change in the government’s policy was disclosed by the President of the Privy Council Mitchell Sharp who said “some priority” was being given to freedom of information. The Joint Committee set out on a wide-ranging study on freedom of information in which it heard evidence from ministers, senior officials and experts in governmental secrecy, leaks, etc. At the end of 1974 it recommended that Canada should have freedom of information legislation. The House of Commons approved the Committee Report in February 1976. It took another 15 months before the government committed itself on freedom of information legislation by issuing a Green Paper: Legislation on Public Access to Government Documents. The Green paper presented alternative approaches to freedom of information legislation and thus invited a public debate. There was
general praise for the ‘principle of openness’ in the Green paper but much criticism of the detailed provisions. There were indications that the government would opt for a weak law with broad exemptions for documents that would not have to be made public. Professor Murray Rankin, in a research study prepared for the Canada Bar Association, was especially critical in that the Green Paper was opposed to the right of appeal to the courts. The Green Paper was studied by the Joint Committee which reported its recommendations—favouring a strong Freedom of Information Act—in June 1978. Among other things, the Joint Committee wanted clearly defined exemptions for documents that would not have to be made public and it favoured the appointment of a Freedom of Information Commissioner who would investigate disputed cases where a minister or department opts for continued secrecy. In event the government failed to comply with the Information Commissioner’s recommendations, an appeal could be brought before the courts for final decision. The government, for its part, took the position that appeal to courts was to be avoided in that it was cumbersome and costly. At the opening of the next session of Parliament, the Throne Speech announced that freedom of information legislation would be forthcoming. This did not materialize. In the election of May 1979, the Liberal government of Prime Minister Pierre Trudeau, which had taken Canada some distance along the road of freedom of information legislation, was defeated.

During the brief Conservative administration in 1979, the Clark government introduced a far-reaching Freedom of Information Act as its first major piece of new legislation. While there were some broad exemption provisions, there was no direct reference to the often troublesome “national interest.” The legislation provided for final appeals to the court following an examination by an Information Commissioner. All parties supported the legislation in principle and Parliament was expected to give quick approval. But the 31st Parliament ended abruptly with the defeat of the government in a want of confidence motion on the budget. It is almost certain that Mr. Trudeau’s Liberal government, elected in February 1980, will be introducing its own version of freedom of information legislation in the 32nd Parliament.

It has taken well over ten years to progress from accepting the principle that Canadians have a right to full, objective and timely information to government activities, as recommended in the Report of the Task Force on Government Information, to reach the drafting stage for freedom of information legislation. The beneficial expectations may be somewhat inflated considering that a single act will have the almost impossible task for declassifying hundreds of thousands of separate documents. Governments will certainly continue to look after their vested interests and present policies and
decisions in the most favourable light. Freedom of information legislation, however, will make decision-makers aware that the public can obtain information to better assess government activities.

It will, thus, generate new attitudes among officials and government leaders; the general rule will be disclosure and openness rather than administrative secrecy. Equally important, freedom of information legislation will put the onus on the mass media to be more searching and investigative in reporting on the affairs of government. Old practices in government as well as the media will gradually give way, it is hoped, to a more meaningful interaction that will be of benefit to the public.

Ed. Note — Since this paper was presented to the Canadian Communication Association Conference in the Spring of 1980, the government has introduced Bill C-43, the new freedom of information legislation. All parties supported the 98-page bill in principle and its final reading was expected this Fall. It establishes the citizen's right to information collected at the taxpayer's expense, subject to certain exemptions, e.g. papers that might disturb international relations; national defence; federal-provincial relations; security; confidential Cabinet records; pose a threat to a person's safety; material of a personal nature, trade secrets and certain competitive commercial information. However, citizens will be able, by paying a small search fee, to ask for information from 25 government departments and 100 federal agencies for a wide range of information, such as opinion survey results, photographs, maps, administrative guidelines, feasibility studies, job descriptions and salary scales. Departments affected by the request may intercede and the government may extend a 30-day search period. If it takes too long, complaints can be made to the information commissioner, a sort of ombudsman. Finally, he can appeal to the federal court on the information-seeker's behalf.

Notes


19. Ibid. Most historians would probably attribute the electoral behaviour of French Canadians on a form of bloc voting rather than an obsession with personalities. See H. Blair Neatby, Laurier and a Liberal Quebec (Toronto: McClelland and Stewart, 1973).


25. Ibid., p. 530.


27. Ibid.

