

OPINION: ACCESS TO INFORMATION

Welcome to information age, network society: a global modern phenomena currently bypassing Canadians

There is a demonstrated need for a clarion call from the PM who has yet to add the voice of definitive leadership to a most essential and basic tenet of democracy: the right of citizens to be informed.



BY MICHEL DRAPEAU

Earlier this month, Suzanne Legault, the interim information commissioner of Canada joined her forebears, the late John Grace and John Reid, in drawing urgent public and Parliamentary attention to the critical failures of government institutions and agencies concerning their obligations pursuant to the Access to Information Act (ATIA). In so doing, she singled out no less than 13 under-performing federal institutions out of 24 which receive 88 per cent of all ATI requests made in 2009.

Legault's view, that it is leadership, writ large, which is required from the Prime Minister on down, is heartily applauded. In fact, at the political level, leadership is also required by the president of the Treasury Board, the minister responsible for the administration of the access to information statute and, the minister of justice, who as the official legal adviser of the Governor General and the legal member of the Queen's Privy Council for Canada, has a statutory obligation to ensure that the administration of public affairs is in accordance with the law. As importantly, and often forgotten, leadership from the top is also required by the Clerk of the Privy Council, who as the most senior non-political official in the Government of Canada, provides professional, non-partisan support to the Prime Minister on all policy and operational issues thereby ensuring the implementation of programs and the delivery of services, including the access to information program.

There is a demonstrated need for a clarion call from the Prime Minister who has yet to add the voice of definitive leadership to a most essential and basic tenet of democracy—the right of citizens to be informed.

However, even in the absence of such a call on the part of our Prime Minister, the clerk of the Privy Council still has an over-arching responsibility to Canada and to Canadians to become engaged and provide appropriate and visible stewardship in this area which is governed by both statute law and a wide body of jurisprudence. It is therefore the very role and the function of the clerk of the Privy Council to lead the mandarin, starting with those who are his immediate subordinates and leaders in the Privy Council Office, in its respect of and obedience to the obligations and to the efficient implementation of this quasi-constitutional act of Parliament.

The tabling of a special report before Parliament is an extraordinary event. Sec. 39 of the Access to Information Act authorizes the information commissioner to submit such a report when, in the opinion of the commissioner, a matter is of such *urgency* or *importance* that its treatment should not be deferred until the transmission of the next annual report which is due by no later than June 31 of each year. In the 27-year history of the access to information regime, there have been only a handful of such reports. Hence, not surprisingly, it is an attention-grabbing method of saying to Parliament and the Canadian democracy that 'there is a serious crisis' in the land. Unfortunately, there is a real danger, without the aforementioned leadership requirement, that there is no-one listening, again.

The real heart of this particular special

report is in the first 19 pages. "The evidence of delay" is but the vehicle and the report cards are but illustrations of how well or how poorly the vehicle has been maintained.

But similar to North American car manufacturers (and some would now add a Japanese model), the root of the problem does not rest with the "dealerships." As discussed above, it rests, instead, with the leadership at both the highest political and civil service levels.

Regrettably, however, with the exception of radio interviews conducted in the wake of her report, Legault did not point out the predominant role of the Prime Minister and the necessity of the PM to bring this issue to the fore by providing strong, unequivocal direction to members of the cabinet, and thereto to the high echelons of the civil service. Neither has she chosen to really reconcile how a potent central agency and nerve centre such as the Privy Council Office, which is blessed with some of the most talented, experienced and skilled public servants and is charged with the onerous task of managing Cabinet business and the government's priorities, can, on one hand, effectively manage the critical and multi-faceted affairs of a nation of 30 million people with both aplomb and efficiency and yet, on the other, be unable to cater to a rather small volume of 1,500 access requests a year.

In the section "Taking stock of systemic issues" of the report, Legault makes some very sensible and worthwhile recommendations. Further, it is understood why she has addressed these to the Treasury Board Secretariat (TBS) as it is the TBS which is responsible for the administration of the Access to Information Act itself. Unfortunately, the truth is that the Treasury Board Secretariat has done diddly-squat, paying only lip service, for the past 27 years to the proper training, professional standards and organisation of access to information offices throughout government. As a result, for the most part, access to information staff have been very poorly trained and, there are yet no professional standards set for access and privacy officials despite regular exchanges of views and concepts with professional associations such as the CAPAPA (Canadian Association of Professional Access and Privacy Administrators), the AAPI (*Association sur l'accès et la protection de l'information*) and the CAPA (Canadian Access and Privacy Association).

As an aside, in terms of education; setting of standards; exchanges of views both nationally and internationally, the province of Quebec is light years ahead thanks to the excellent work and stewardship of the AAPI. (On April 21, 2010, at its annual conference, the AAPI announced the creation of a Qualifying Education Program which will commence operations in the fall 2010.) So too are foreign governments who used to look at Canada as the enlightened lead nation.

Moreover, in the report card section of her special report, the interim commissioner makes particular note of the failure of some institutions to provide their access to information coordinator with sufficient delegation of authority contained within the act. Interestingly, those institutions, which have failed this delegation, are those whose performance is amongst the worst. In the world of access to information (and privacy, for that matter), the coordinator, similar to government lawyers, should be independent of departments and institutions and thus quite apart from departmental influences. They should be professional employees of the centre.

Perhaps the time has also come for party leaders to take a leadership role in forming a joint Senate and House of Commons Committee on Access, Privacy and Accountability which would be charged with the oversight of the access and privacy functions, quite separate from those pesky 'ethics' and episodic issues which would best be left under the purview of a House of Commons committee.

A joint committee could, for example, draw upon the known talents and expertise of individuals such as Francis Fox, who, in many respects, is the chief architect of the current access regime, and other notables such as Pamela Wallin, who in a previous incarnation, has shown her appetite and mettle for having an open and accountable government. Their first order of business should not be to restructure or refocus the act which will not do anything to change the current negative mindset of both the political and the public service elites. Its focus would be far more *terre-à-terre*; first, to ensure that the institutions are being given sufficient resources, qualitatively and quantitatively; second, to ensure that senior executives understand and live up to their legal accountabilities under the Access to Information Act. Thirdly, examine as to why, the ATIP offices spread out across 250 institutions could not be grouped under a single agency (Access Canada) reporting, say to the Treasury Board Secretariat or the Privy Council Office. Apart from significant economies of staff and resources, such a central agency would provide single wicket through which to address the informational rights of Canadians.

As a first order of business, such a joint

committee ought to summon the clerk of the Privy Council and then the deputy ministers of the presently offending institutions and have each explain why they have failed, essentially, the nation in this vital democratic process.

There is one final recommendation. The silence which has engulfed the three opposition parties in ignoring the fact that Canada has been without a Parliament-appointed information commissioner since June 2009 has been deafening. Surely, these members who currently sit as a majority on the House of Commons Committee on the present Access, Privacy and Ethics Committee could and should address this issue. Legault should be confirmed in her position, *tout de suite*. Failing her nomination before the summer recess sets in, they should present a motion in the House for action in that regard by the Prime Minister.

In closing, one thing to also keep in mind is that, in many respects, a bellwether sign as to the vibrancy and genuineness of a modern democracy is an operating access/freedom of information regime. This is most certainly the case in the U.S., the U.K., most other G8 or G-20 nations and among the democracies which emerged in the post-Cold War era. However, in that regard, Canada is now increasingly lagging behind. This is a shame since Canada's leadership in the pursuit of this and other democratic values are a much sought-after example to the community of nations.

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The Hill Times



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