

## **In Need of Reform: Lack of Transparency in Government**

In 1977, Nova Scotia was in the vanguard of the movement for greater government transparency when it adopted Canada's first law giving access to information held by public bodies. At that time, only five countries had adopted similar laws, and Canada did not adopt the national Access to Information Act until 1982.

Today, the situation could not be more different. Nova Scotia, and indeed Canada as a whole, have gone from being world leaders in public openness to trailing nations like India and Mexico. Today, over 80 countries from all regions of the world have adopted right to information laws, many of which are far more robust than those of either Nova Scotia or Canada. What is perhaps more surprising is that many emerging democracies have laws that also work better in practice.

It is not just that other countries have overtaken us. We have also failed to keep step with international human rights law. Article 19 of the UN *International Covenant on Civil and Political Rights*, which Canada has ratified, guarantees everyone the right to “seek, receive and impart” information and ideas. International courts have repeatedly held that this includes a right to access information held by public bodies.

Limitations on this right are permitted, but only where necessary to protect overriding interests recognised under international law, such as privacy, commercial interests or national security. Public bodies must demonstrate a concrete risk of harm to a recognised interest before they may deny access to information.

A series of scandals in recent months have reminded Nova Scotians about the lack of transparency in our government. The Auditor General's report on MPs expenses, tabled in February of this year, exposed a host of inappropriate spending and wrongdoing. It took an Auditor General's report to expose these problems because this information is not otherwise available to citizens.

Other countries are more open about MPs' expenses. In the UK, detailed MPs' expense reports are now posted online. In India, NGOs regularly conduct broad social audits using their right to information law to assess what their MPs are doing and spending.

Just last month, the Nova Scotia government refused to release a study on gambling that cost taxpayers \$140,000. Finance Minister Graham Steele has said there is nothing to release because the report is a “failed work in progress” (the study was terminated, for reasons which remain unclear). Karen Stone, spokesperson for the Department of Labour and Workforce Development, is also reported to have justified keeping the report secret, stating: “We would not be getting a report that was going to be helpful for government, for industry, or for special interest groups in making informed decisions on this topic”.

These claims miss the point. The public's right to access information should not depend on a paternalistic assessment by government officials of how useful the information

might or might not be. Absent a risk of harm to an overriding interest – and no such harm has been identified here – the people of Nova Scotia have a right to see what their tax dollars are being spent on. Better practice right to information laws – such as those of India and Mexico – would not allow the government to keep the report a secret.

Just last week, Nova Scotia Auditor General Jacques Lapointe refused to conduct an audit of Nova Scotia Business Inc. and the Industrial Expansion Fund. The reason for this unprecedented move was that these government agencies had refused to provide him with essential information on assistance provided to businesses, apparently on the instructions of the Executive Council Office or Cabinet.

Under India's Right to Information Law, information regarding government assistance is not only accessible, it is required to be posted online as a matter of course. The new British government has also made a commitment to radically expand the extent of disclosure of government contracts over £500 (about \$750). Most modern right to information laws impose stringent openness obligations in relation to the allocation of government benefits and assistance, because this is an area where corruption and unfair practices thrive whenever secrecy prevails.

Here in Nova Scotia, our law allows public bodies to refuse to disclose any information which would reveal the “substance of deliberations of the Executive Council” or that reveals “advice, recommendations or draft regulations” developed by or for any public body or minister. It is legitimate to protect a certain ‘space to think’ within government. But these exceptions go far beyond that, placing whole categories of information off-bounds. Other laws rely on far more carefully worded exceptions.

This problem goes beyond Nova Scotia. In April, the Canadian Information Commissioner released a report, *Out of Time*, detailing serious problems with delays in access to information at the federal level. A report by the Standing Committee on Access to Information, Privacy and Ethics in June 2009, *The Access to Information Act: First Steps Towards Renewal*, largely endorsed 12 urgent reforms which the Information Commissioner had called for. A 2008 book by Stanley Tromp, *Fallen Behind: Canada's Access to Information Act in the World Context*, meticulously details how Canada's law fails to measure up to laws in many other countries.

It is perhaps ironic that Nova Scotians and Canadians put up with a level of secrecy that the citizens of countries like India, Mexico and Bulgaria never would. In those countries, citizens understand that accessing information about their government is a fundamental right. And they are outraged by the subversion of this right, just as they are in the face of discrimination or police brutality.

The current Nova Scotian government has promised some reform, for example to the systems of oversight of MPs' expenses and to the Auditor General Act. This is welcome but it is not enough. It is time for Nova Scotia once again to show leadership by engaging in significantly more far-reaching, root and branch reform. This should start with our access to information law, which should be transformed into a true *Right* to Information

Act. Why should Canadians expect less of their government than the citizens of India or Mexico?

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The Centre for Law and Democracy is an international human rights organisation based in Halifax, which promotes respect for foundational rights for democracy.