

Top Secret-for your eyes only

Government secrecy-Canada's 'iron curtain'

By Tom Riley
for Canadian University Press

Secrecy. The withholding of documents. An iron curtain of secrecy clamped firmly against the prying eyes of the public, with no right to information that is collected and compiled on behalf of the people. Obsessiveness with secrecy that can only lead to distrust on the part of the people.

And where is this country that consistently denies its citizens the fundamental right to know what information its government is basing decisions on and why? Well, right here in Canada, as a matter of fact.

Exaggerated you say? Not really, as there are no statutes on the books that say the government has to provide information to the public. It releases only what it chooses to release. In the House of Commons there are the 1973 guidelines for notice of motion for the production of papers. However, there are 16 exemptions under these guidelines (of information not available) and, as many an MP who has tried to get information can testify, they are so broad that requests are turned down daily. Access to information by members of parliament exists only in theory.

In this past session of Parliament we have seen the Sky Shops affair, the Judges affair, the secret list of 21 (now there are even more lists,



House and party discipline is very tight. The average MP votes according to the dictates of the party; free votes are very rare.

Yet, the problem of secrecy and the lack of access to public documents goes beyond Parliament. It extends to all government departments and agencies.

That means the government of the day can manipulate information as it chooses to its political advantage. Civil servants who feel an issue should be aired often resort to the inspired press leak, breaking either their oath of secrecy or, if the documents have been classified, the Official Secrets Act. It has been estimated that 80 per cent of government documents are classified as either top secret, secret, confidential or restricted.

In the final analysis, the question becomes how can people make rational decisions if all the facts are not available?

The government has made some concessions and introduced a green policy paper titled Legislation on Public Access to Government Documents which discusses legislative options. But the green paper is only a discussion paper and there is no actual legislation in sight.

It is this attitude of entrenched secrecy and refusal to open up the dusty files which led to the call for a Freedom of Information Act. The demand is for easy access to all levels of government, and an independent review mechanism to the courts when a request for information is denied.

This is not to say that some information should not be exempt. Advocates of a Freedom of Information Act readily recognize that government cannot be run in a goldfish bowl.

However, any exemptions such as national security, international affairs or investigative files need to be clearly defined.



Conservative MP Gerald Baldwin (Peace River), long-time information advocate and crusader, says the end to secrecy must come because people are becoming increasingly disillusioned with governments and want something better.

He is not alone. Groups have sprung up across the country in the last 18 months demanding that governments take action.

Based in Ottawa is Access, a Canadian committee for the right to public information which represents nearly three million Canadians. Access membership includes the Canadian Labour Congress, the Public Service Alliance of Canada, the Canadian Association of University Teachers, the Canadian Teachers Federation, the Canadian Nature Federation, and the Canadian Association of Social Workers.

A host of citizens' groups have emerged to demand an information act and a non-partisan committee of MPs was formed in the Commons to push for legislation. The committee includes Gerald Baldwin, Ray Hnatyshyn and Andrew Brewin. They hope to build a broad base of non-partisan support in the House.

Baldwin heads another group, the League to Restore Parliamentary Control, which has an advertisement campaign in daily and community newspapers across Canada asking people to sign the ads, which call for freedom of information legislation and more government accountability for the tax dollar. Baldwin says response to the campaign has been encouraging.

In February, the Canadian Bar Association held a press conference in Ottawa after presenting its resolution to both the Justice Minister and the Prime Minister. Association president Boyd Ferris said the government had no intention of introducing information legislation and it was the Association's plan to actively lobby for such laws.

In August, Ferris called a press conference to release a report by University of Victoria Professor Murray Rankin which heavily attacked the government green policy paper. The Rankin report said "by the paucity of its analysis, the blurring of its stated opinions and the misrepresentations of the goals and practices of freedom of information legislation, the green paper leaves little doubt that legislation will not be forthcoming."

There are many issues involved in the freedom of information debate. These include accountability of governments and civil servants, what precisely the exemptions should be, the amount of time needed between the request for documents and their actual production and the costs of reproducing requested documents. However, these are all secondary to most observers. For them the central issue is the type of review mechanism to be used if a request for information is denied. The question is one of ministerial responsibility versus judicial review.

The government's green paper discusses five options for such a review: a parliamentary option, where the denial would be debated and decided in Parliament; an information auditor who would report to Parliament once a year on requests denied; an information commissioner with advisory powers who would hear cases and then report them publicly, but would leave final decisions to the minister; an information commissioner with powers to order release who would be able to study a case and order the minister to release the document in question after deciding that a case was valid; and an appeal in the courts.

The green paper rules out court appeals and an information commissioner with power to order release of documents. The document says these methods are inconsistent with the theory of ministerial responsibility and

anything done to abrogate these powers would set a dangerous precedent at odds with Canada's constitution and traditions.

It is this very thing that information advocates strongly disagree with. They say any information legislation must contain a form of review removing it from the political arena.

But the proponents of ministerial responsibility say ministers are responsible only to Parliament and to the people. But this argument does not stand up because of cabinet solidarity and majority rule. And a particular case could easily be forgotten at election time.

And so the debate rages on. But it is still anyone's guess as to when legislation might be introduced. Still some observers have said the mechanism is now in gear for freedom of information legislation in Canada. Recent moves by the federal government show it will be as slow as possible.

Yet, governments can only benefit from being open with the people. Mitchell Sharp has said he thinks the government should pass legislation to show people how little information the government really is withholding. An interesting viewpoint in the light of recent events in Canada.

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including one on federal NDP leader Ed Broadbent, who has wondered aloud what he has done to get on a list), Polysar, the Atomic Energy Canada Limited nuclear reactor sales kickbacks and the RCMP's covert operations against l'Agence Presse Libre (which led to the Liberals naming an RCMP inquiry after steadfastly saying an inquiry was unnecessary. The about-face came after RCMP Commissioner Maurice Nadon called for an inquiry and effectively defused the controversy in the House.

Recently, there was Canada's involvement in the uranium fuel price-fixing scandal. And, during that particular juicy case, the government in September, 1976 passed an order-in-council which prohibits any discussion of the documents involving the cartel and makes it an offence for any person with access to the documents to show them. The documents were available to only a few members of the government.

The justification? It was done, said the government, in the name of the people of Canada, to protect them and their interests. Yet, the documents are available to the U.S. Congress the U.S. courts and the U.S. press while here in Canada MPs cannot see the documents let alone private citizens, who might like to see the documents to decide for themselves on the actions of the government in forming the cartel.

In each of these cases the government can withstand questions from the Opposition because it forms the majority in the