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Abstract

According to a well-established expert, the Canadian access-to-information (ATI) regime is at a standstill and in a state of paralysis. In an Opinion Piece, Michel W. Drapeau, a lecturer at the Faculty of Law, University of Ottawa and the co-author of an authoritative legal textbook on Canadian access to information, contends that the Office of the Information Commissioner (OIC) is currently unable to perform its sole and unique role of investigating complaints from ATI users. In the process, the OIC has accumulated a two-year backlog of complaints, a high percentage of which dealing with straightforward delay complaints. This backlog permits several federal institutions to enjoy a two-year amnesty (extension) period to release records as no judicial recourse is possible until the OIC completes its investigation of a complaint. It also encourages many institutions to claim a range of exemptions, exclusions or exaggerated fees, which they would not otherwise be permitted under the act, knowing that under the circumstances it will take the OIC no less than the said two years to adjudicate an eventual complaint by a dissatisfied ATI user. Either way, requested records remain sealed until the OIC performs its investigative duties and makes findings, creating more and more illusory the Canadian quasi-constitutional 'right of access' to government records within a 30-day statutory delay period.

*Rien ne va plus!*¹

A Commentary from Canada: Canada's Access to Information

Article 19 of the United Nations' *Declaration of Human Rights*² recognizes the public's right to access to information as an essential element to government accountability. The right of access also constitutes the basis for an effective and participatory citizenry. Since 1983, in Canada, the *Access to Information Act* has provided the quasi-constitutional basis for overcoming barriers to openness including unreasonable costs and delays in the delivery of information.³

THE INFORMATION COMMISSIONER OF CANADA

The Information Commissioner of Canada (the "Commissioner") is appointed by the Governor-in-Council after approval by Parliament.⁴ The Commissioner holds office during good behavior for a term of seven years and is eligible for re-appointment. The Commissioner heads the Office of the Information Commissioner which is considered to be a department of the government of Canada.

Pursuant to section 30(1) of the *Access to Information Act*, the Commissioner's only duty is to receive and investigate complaints from persons who have requested access to a record under the said Act. He can

¹ A French phrase meaning "Nothing goes anymore".

² See article 19 of the *Universal Declaration of Human Rights*, as adopted by the United Nations' General Assembly at its 138 Plenary Meeting on December 10, 1948:

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

³ *Access to Information Act*, Revised Statutes of Canada (R.S.C) 1985, Chapter A-1

⁴ Addressing the House of Commons on May 27, 1983, moving the appointment of the first Information Commissioner, the Honorable Mr. Justice Mark R. MacQuigan, then Minister of Justice, spoke in the following terms:

"[. . .] the Information Commissioner is an officer reporting directly to the Parliament. Being entirely free of the executive, the Commissioner will be at liberty to recommend release of government information, criticize the actions of the executive taken under the Act, table her recommendations in Parliament and take government institutions to court to obtain the release of information."

investigate complaints in respect to any matter relating to the requesting or obtaining access to records under this Act. In so doing, the Commissioner plays a unique and pivotal role in the Canadian access to information regime.

As the Officer of Parliament, the Commissioner is vested with immense powers - equal to those enjoyed by a Superior Court judge in Canada.⁵ In addition to these broad legal powers, the Commissioner can also, through the force of his personality, his leadership, communication skills, as well as his significant right of access to Parliament, sound the alarm and alert the Parliament and the Canadian public when powerful government institutions neglect to respect the quasi-constitutional 'right of access' of ordinary Canadians.

A RICH LEGACY

On this, the 25th anniversary of the coming into force of the *Access to Information Act*, Canadians pay homage to the performance of three exceptional public servants who, in succession, have occupied the Office of Information Commissioner: the Honorable Inger Hansen (1983-1990); Dr. John Grace (1990-1998); and, the Honorable John M. Reid (1998-2006). Each proved to be singularly committed to the principles of access and, as important, to possess the fortitude, the resilience and unflinching determination to both enforce the Act and to oppose and/or denounce the secretive or non-transparent behaviors that existed among some high officials or the actions taken by government agencies to frustrate one's 'right of access'.

During their respective mandate, each of these Commissioners was respected by parliamentarians and users of the Act alike for their professional competence, integrity and judicial acumen. They left behind an unparalleled legacy of service.

⁵ The Federal Court of Appeal of Canada in *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, (1999) 240 National Report 244 at 252-254, Desjardins, Décary and Noël J.J.A., held that the investigation the commissioner must conduct is the cornerstone of the access to information system. The Court also noted that the importance of this investigation is reinforced by the fact that it constitutes a condition precedent to the exercise of the power to review by the Federal Court of Canada, as provided in sections 41 and 42 of the Act. The Court emphasized also that the Commissioner, who is a master of his own procedure pursuant to section 34 of the Act, has the powers to investigate including, at the beginning of an investigation, the power to compel the institution to explain the reasons for its refusal (subsection 35(2)). Additionally, for the purposes for which the Commissioner has extraordinary powers (section 36), he has the power to summon and enforce the appearance of persons in the same manner and to the same extent as a Superior Court of record (paragraph 36(1)(a); to enter any premises occupied by the government institution (paragraph 36(1)(d)); and, to examine any record, as no record can be withheld from him on any grounds (subsection 36(2).)

As passionate advocates, these trailblazers played a major role in the growth, strength and influence of the 'right of access' in Canada. They also built an edifice of management expertise in the Office of the Information Commissioner which was passed down to their current successor, Robert Marleau, a former Clerk of the House of Commons,⁶ who was chosen by the current Prime Minister, the Right Honourable Stephen Harper, to serve as the Fourth Information Commissioner of Canada commencing on January 15, 2007.

A DIFFIDENT APPROACH

Prior to assuming office and learning about the inner workings of his new incumbency, documents obtained under the *Access to Information Act*⁷ indicate that Mr. Marleau had already set out on a course to re-organize and refocus the Office of the Information Commissioner.⁸

- For instance, documents released under the *Access to Information Act* indicate, that, by November 26, 2006, Mr. Marleau had already opted for the elimination or replacement of a number of executives in the Office of the Information Commissioner, including the Deputy Information Commissioner.⁹
 - In their stead, Mr. Marleau canvassed the Public Service of Canada for incumbents to fill two newly created Assistant

⁶ The Clerk of the House of Commons is appointed by the Governor-in-Council under the provisions of the *Public Service Employment Act*. The Clerk is required under the *Parliament of Canada Act* to swear an oath of allegiance administered by the Speaker of the House. Members of Parliament are supported in their parliamentary functions by services administered by the Clerk of the House who, as the chief executive of the House administration, reports to the Speaker. The Clerk advises the Speaker and all Members on the interpretation of parliamentary rules, precedents and practices. The Clerk is at the service of all Members, regardless of party affiliation, and must act with impartiality and discretion. The Clerk is responsible for maintaining records of the proceedings of the House and for keeping custody of these records and other documents in the possession of the House. All decisions of the House are authenticated by signature of the Clerk.

⁷ Since September 2007, the Office of the Information Commissioner is subject to the *Access to Information Act*. Complaints against the Office of the Information Commissioner are handled by an Information Commissioner *Ad Hoc*, the Honourable Mr. Justice (retired) Andrew MacKay.

⁸ Prior to his appointment as Commissioner, Mr. Marleau likely had little, if any, involvement with the *Access to Information Act*, as the House of Commons is not subject to the access to information statute.

⁹ These executives had been in their respective position for decades and were considered by the access community as not only, experts in the field, but as dedicated and impeachable advocates of the 'right of access.'

Commissioner positions; one responsible for investigations and compliance,¹⁰ and the other responsible for corporate affairs, communications and policy.¹¹

- It is unclear at this stage, however, how the replacement of these aforementioned executives, who possessed invaluable corporate knowledge, abundant expertise and a proven record of excellence with the simultaneous appointment of two new Assistant Commissioners, has improved the efficiency of the office.
- Appearing in December 2006 before the Standing Committee of the House of Commons on Access to Information, Privacy and Ethics Mr. Marleau noted: “[. . .] *the Information Commissioner barely sees 10% of access requests through the complaints process. That leads me to think that the system is not that badly broken if somehow 90% of requests are not subject to complaints.*”
 - This glowing endorsement or assessment of the current state of access-to-information regime repudiates contemporaneous statements made by two experts:
 1. “Countless individuals reported that senior officials, both political and administrative, find various ways to deny providing information to the public.”

Mr. Justice John H. Gomery, Restoring Accountability 2nd Report of the Commission of Inquiry in the Sponsorship Program and Advertising Activities, 2006 pp. 43-44

2. “[. . .] a good indicator of the overall effectiveness of the access to information process in government is the percentage of access requests made to government that are answered within the statutory deadlines. Regrettably, the government does not gather and report this key statistic. On that basis, it appears that the problem of

¹⁰ To be fair, in the fullness of time, the creation of an Assistant Commissioner whose time is devoted exclusively to the resolution of complaints may well prove useful in addressing the growing backlog in the conduct of investigations. See records released by the Privy Council Office under Access Request number 135-2-A-2007-00101 dated February 4, 2008 and records released by the Office of the Access to Information Commissioner under Access Request number A- 110-07-D6 issued on June 28, 2007 and December 19, 2007.

¹¹ See records released by the Office of the Information Commissioner under Access request number A-110-07-112 dated July 27, 2007.

delay remains a significant concern. This year, a higher percentage of complaints were delay complaints than was the case last year. Three of the institutions newly reviewed this year (Immigration and Refugee Board, Public Safety and Emergency Preparedness Canada, Royal Canadian Mounted Police) received failing grades, indicating an unacceptably high percentage of late responses to access requests. Five institutions that received a failing grade last year again received "Fs" this year."

The Honourable John M. Reid, Information Commissioner of Canada.

2005-2006 Annual Report to Parliament, June 2006.

p. 9

3. [. . .] after almost 23 years of living with the *Access to Information Act*, the name of the game, all too often, is how to resist transparency and engage in damage control by ignoring response deadlines, blacking-out the embarrassing bits, conducting business orally, excluding records and institutions from the coverage of the *Access to Information Act*, and keeping the system's watchdog overworked and under-funded."

The Honourable John M. Reid,

Ibid., p. 6

- This statement overlooks also the reality revealed in a host of Report Cards prepared by the Office of the Information Commissioner¹² and submitted to Parliament during period

¹² In addition to investigating complaints of late or improperly extended responses, the Office of the Information Commissioner conducts a systemic review of any federal institution whose performance in meeting response deadlines is deficient. Follow-up reviews are also conducted in these institutions which received failing grades.

- Since 1998, twenty-six (26) report cards have been completed and tabled in Parliament. The Report Cards assessed or graded each department relative to their performance in meeting the statutory time requirements of the *Access to Information Act*. All of the departments received a grade of "F", meaning that 20 percent or more of requests were not answered within the time requirements of the Act.
- Over the past number of years, institutions such as Canada Revenue Agency (CRA), National Defence (ND), Citizenship and Immigration Canada (CIC), Transport Canada (TC) and the Department of Foreign Affairs and International Trade (DFAIT) have been identified as

1998-2006 in that many users of the access legislation, although regularly denied their right to timely access to government records, do not go through the bother of a complaint. They just keep quiet.

- This statement is also in opposition to the Office of the Information Commissioner's own findings which are reflected in a series of Report Cards. These Report Cards indicate growing systemic performance shortfalls on the part of many institutions subject to the *Access to Information Act* far in excess than that revealed by the complaints submitted to the Office of the Information Commissioner.¹³

Since assuming office, the Commissioner has also shown a propensity to be careful, if not timid,¹⁴ so as not to be seen as critical of his political masters with the result that after two years in office his public profile as the

departments with serious delay problems. For instance, the actual percentages of requests not responded to within the Act's time requirements in the six departments ranged from 34.9 % to 85.6 % for the first eight months of fiscal year 1998/99.

- Since the introduction of the report cards in 1998, the Information Commissioner has observed a dramatic reduction in the number of delay complaints: from a high of 49.5 percent in 1998-99 to a low of 14.5 percent of complaints in 2003-04. Yet, in 2004-2005, the Information Commissioner reported that that the problem of delay remains a significant concern. "Three of the institutions newly reviewed this year (Immigration and Refugee Board, Public Safety and Emergency Preparedness Canada, Royal Canadian Mounted Police) received failing grades, indicating an unacceptably high percentage of late responses to access requests."

¹³ More than 30 percent of the complaints received during Fiscal Year 2007-2008 by the Office of the Information Commissioner dealt with the chronic problem of delay in answering access requests.

Complaints received by type – Fiscal Year 2007-2008

○ Delay (Deemed refusal)	664	(27.84%)
○ Time Extension	110	(04.61%)
○ Fees	77	(03.23%)
○ Exclusion	127	(05.32%)
○ Refusal to disclose	874	(36.65%)
○ Misc.	<u>533</u>	(22.35%)
	2305	(100.00%)

¹⁴ As engineered, the Act is as effective as is the Information Commissioner. His role is therefore critical to the efficient operation of the access regime. The Office of the Information Commissioner whose sole and unique mandate is to investigate complaints from users of the *Access to Information Act* is now, for all intents and purposes, at a standstill suffering from a state of paralysis resulting from unprecedented ballooning backlogs of complaints and with a corresponding decline in productivity and effectiveness; and

Parliament's appointed champion of the 'right-to-know' is almost non-existent.¹⁵

UNIMAGINABLE TIME EXTENSIONS NOW BEING CLAIMED INFORMATION DELAYED IS ACCESS DENIED

Not surprisingly, the public's right to know is losing ground under Mr. Marleau's watch. This is best manifested by three major indicators:

- Longer delays claimed as a matter of routine. The rapidly deteriorating performance of government in terms of providing access is evident as institutions are now regularly claiming long time extensions making a mockery of the statutory 30-day limit to release records.
 - Major institutions such as the Privy Council Office, the Department of Foreign Affairs, and the Department of National Defence now rely on *ab initio* extensions of between 120-210 days beyond the 30-day statutory delay to release the requested records.¹⁶ Increasingly, an access user,

¹⁵ In the *Access to Information Act* (subsection 75(1)), the Parliament required itself to designate a committee to monitor, on a permanent basis, the efficacy of the law. The committee so designated is the *House Standing Committee on Access to Information, Privacy and Ethics*. Also, the Parliament requires the Speakers of the House and Senate to table, in those chambers, the annual and special reports of the Commissioner. The Act also requires those annual and special reports to be referred to the designated committee to assist it in keeping the administration of the Act under review (see section 40).

¹⁶ Extensions are normally claimed by institutions on the pretext that they are faced with a towering number of requests. Yet, after a careful consideration of the then US experience (at the time a million *Freedom of Information Act* [FOIA] requests were submitted each year), the 1977 Green Paper on Legislation on Public Access to Government Documents, tabled in the House of Commons in 1977, by the Honorable John Roberts, the then Secretary of State of Canada, after applying the 'rule of ten' based on comparative population and allowing for fundamental differences in American and Canadian politico-legal traditions and attitudes, suggested that the Canadian institutions could expect to receive 70,000 access requests a year.

Canadian institutions are blessed with receiving a very small number of requests in comparison with say, the numbers originally planned by the Canadian Parliament or those received by US institutions.

- Volume of access requests for period 1983-2006 is only 18% of the anticipated and planned workload. Contrary to suggestions of impossible workloads by institutions, the Canadian public has been rather timid and reserved in its use of the FOIA. In accordance with the *InfoSource* Bulletin 29, published by the Treasury Board Secretariat, during period 1983-2006, a period of 15 years, Canadians have submitted a total of 303,883 FOIA requests, an average of 13,212 FOIA requests per year.
- Access statistics of more recent years are reveal a continuing low volume of access requests:

- Should the response received from the institution contain, as is often the case, a claim for exclusions, extensions or fees requiring the user to file a complaint with the Office of the Information Commissioner, his quest for records, as discussed below, will take an additional 18-24 months.
- Growing backlog of complaints. Records released by the Office of the Information Commissioner in February 2008¹⁷ indicate a very significant increase in the level of backlogged complaints.¹⁸
 - A two year wait for a report of findings by the Office of the Information Commissioner. This means that complainants

Number of FOIA requests received by institutions in selected periods

- 1996-1997: 12,476 requests
- 1998-1999 14,340 requests
- 1999-2000: 19,294 requests
- 2005-2006: 27,269 requests
- 2006-2007: 29,182 requests (see note)

NOTE. The volume of access requests for FY 2006- 2007 has peaked at 47% of the anticipated and planned workload.

¹⁷ See records released by the Office of the Information Commissioner under Access Request file A-110-07/66 dated February 8, 2008 indicates that the backlog of complaints totaled 1,030 in April 2007 and 1,670 in October 2007.

¹⁸ Fiscal Year 2007-2008. The investigation of access complaints by the Office of the Information Commissioner:

	Complaints
● Pending from previous year (backlog):	1383
● Opened during the year	<u>2385</u>
● On-going investigations:	3,768
	Investigations
● Completed investigations	<u>1381</u>
● Backlog	2387

This unprecedented accumulation of complaints means that the Office of the Information Commissioner has a two-year backlog of complaints. Unless a complaint is accelerated through the system, and in so doing jump the queue, a complaint to the Office of the Information Commissioner will take a minimum of two years before a report of findings is issued.

are unable to rely upon the Office of the Information Commissioner's own service standards for completion of its investigations. Instead, they have to wait approximately two years to receive its investigative findings and recommendations.¹⁹

- o Judicial review is only possible after the publication of the findings of the Office of the Information Commissioner.²⁰ No judicial recourse to the Federal Court of Canada is possible before the publication of the report of findings of the Information Commissioner. When such judicial recourse is deemed necessary, this entails an additional 6 to 8 month judicial process before possibly gaining access to the requested records.
- Pleas for intervention not heeded. Despite direct public appeals,²¹ the Commissioner has yet to mobilize his considerable investigative powers and resources to review complaints and make findings, in a timely manner, permitting users to either gain access to the requested records or to make application to the Federal Court of Canada. His tolerance of the current lack of performance by

¹⁹ The theory. See records released by the Office of the Information Commissioner under Access Request A-110-07-D5 dated July 26, 2007 titled "Investigative Approach – Service Standards". According to this document, the Standards state that it is the policy of the Office of the Information Commissioner to make every reasonable effort to complete all administrative complaints (delays, fees, language and extensions) within 30 days of the issuance of the Notice to the federal institution concerned under section 32 of the Act. With respect to other complaints, every reasonable effort is made to complete the investigation within 90 days from the date of the issuance of the Notice.

The Reality. The following indicates the turn-around times for the bulk of these complaints in 2008:

- | | |
|---------------------------|--------------|
| • Delays (Deemed refusal) | 9-16 months |
| • Time Extensions | 11-12 months |
| • Fees | 10-21 months |
| • Exclusions | 32-34 months |
| • Refusal to disclose | 19-28 months |
| • Misc. | 9-13 months. |

²⁰ As noted previously, no action in Court is possible until the Information Commissioner has conducted an investigation of a complaint and provided the user and the institution concerned with a report containing his recommendations. Given that processing delays of 24 months or more in the investigative process are common occurrences, recalcitrant institutions automatically benefit from an unwarranted additional extension of time to disclose records while users are effectively blocked from seeking a judicial review

²¹ See article "*Is Marleau up to the job as Information Commissioner*" by Michel W. Drapeau published in the Canadian Parliamentary precinct's weekly, Hill Times, on January 21, 2008.

several government institutions subject to the *Access to Information Act* gives these institutions strong indicia that they are now operating in a protected time-zone free from censure or criticism from the Office of the Information Commissioner.

LESSONS

The most obvious lesson learned is that the mere existence of an access statute does not, in and of itself, guarantee access to information. Unless there is a firm, manifest and unequivocal political will to make the statute work; a dutiful commitment on the part of the highest echelons of the Public Service to show respect for this quasi-constitutional right of the citizenry; and, an Ombudsman with both the powers and the capacity to police and discipline the process by investigating complaints on the part of the users in a timely fashion, the access system will not work.

Regrettably, and for the first time since the enactment of the access statute in 1983, Canada now lacks the presence of these three condition precedents for an effective access regime. Worse, it is also increasingly hobbled by the presence of the following:

1. Filtered and limited knowledge about what goes on in government. The *Access to Information Act* is now replete with exclusions, exceptions and prohibitions which were made more numerous under the Conservative Government of Prime Minister, The Right Honourable Stephen Harper, who first took office in January 2006.²²
2. Continued resistance to the will of Parliament. In 1983, the Parliament wanted a shift of power away from ministers and bureaucrats to citizens. Yet, despite the passage of time since the enactment of the *Access to Information Act*, government institutions are still operating under a culture of secrecy.
3. Absence of a critical link between records management and accountable governance.²³ Increasingly, senior public servants

²² To Mr. Harper's credit, the jurisdiction of the *Access to Information Act* has now been extended to cover most of the Crown Corporations such as Canada Post, Via Rail, the Canadian Broadcasting Corporation, the National Arts Centre, the Atomic Energy Canada Limited, and a number of officers of Parliament such as the Office of the Auditor General, the Office of the Official Languages Commissioner, the Office of the Privacy Commissioner, and the Office of the Information Commissioner.

²³

"Still, after almost 23 years of living with the *Access to Information Act*, the name of the game, all too often, is how to resist transparency and engage in damage control by ignoring response deadlines, blacking-out the embarrassing bits, conducting business orally, excluding records and

have neutered the effectiveness of the Act by committing very little of significance to a permanent record (paper or electronic files) hence constructively refusing the public access to even indices of their decision-making.

4. Renewed pressures to merge the Office of the Information Commissioner and the Office of the Privacy Commissioner. Despite protestations to the contrary, and in opposition to the 2005 recommendation of a learned and respected jurist, Mr. Justice LaForest, there are strong indicators that officialdom within the Privy Council Office, the Treasury Board Secretariat and the Office of the Information Commissioner are planning to merge the Office of the Information Commissioner and the Office of the Privacy Commissioner.²⁴ Endorsing the status quo, Mr. Justice LaForest emphasized the need to have a Commissioner loyal to the statutory mandate given him by Parliament as, in his opinion, an appointment of one Commissioner to both offices would likely have a detrimental impact on the policy aims of the *Access to Information Act*.

CONCLUSION

There is no panacea in making open and accountable government a reality. Given the existence of a deep-rooted culture of secrecy within the Canadian Public Service, what is required and hoped for by the Canadian democracy,

institutions from the coverage of the *Access to Information Act* and keeping the system's watchdog overworked and under funded."

The Honourable John M. Reid, February 27, 2006
Remarks to the Managing Government Information 4th Annual Forum –
"Federal Access to Information at the Crossroads – A Commissioner's Perspective"
Ottawa, Ontario

²⁴ In June of 2005, the then Prime Minister Paul Martin, appointed an eminent person to inquire into, and make recommendations concerning, the merits of merging the Information and Privacy Commissioners' offices. After consulting broadly with relevant stakeholders and experts, Mr. Justice Gérard LaForest, concluded as follows:

"There should not be either a full merger of the offices of the Information Commissioner and the Privacy Commissioner or an appointment of one commissioner to both offices. These changes would likely have a detrimental impact on the policy aims of the *Access to Information Act*, the *Privacy Act*, and PIPEDA."

Retired Supreme Court Justice the Honourable Gérard La Forest
Report to the Minister of Justice on the Merger
of the Offices of the Information and
Privacy Commissioners
November 15, 2005

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particularly in the wake of the Gomery Inquiry,²⁵ is not only more transparency but a shift in culture to bring about the essential change in attitude from the civil service on the related issues of record-keeping, archiving and disclosing of government information as well as adherence with the existing principles and spirit of the *Access to Information Act*.

One thing is certain, however, a cultural change of this magnitude does not happen overnight in government institutions unless changes are led from the very top. And, leading the charge for such a cultural change must be Parliament's appointed Champion of Access, the Information Commissioner. Regrettably, however, at present that position appears untenanted.

In his new job, Mr. Marleau is, quite naturally, relying on the very qualities and characteristics that gave him long and successful tenure as the Clerk of the House of Commons. But, history has shown that the Information Commissioner requires a different skill set. The Office of the Information Commissioner requires someone who is unafraid to stand up to the mandarins and, where required, someone who has the fortitude to take a position critical of his elected masters. That is the very nature of the job.

*Biography

Michel W. Drapeau lectures at the Faculty of Law, University of Ottawa in access to information and privacy law. He is also the co-author of two legal

²⁵ The *Royal Commission of Inquiry into the Sponsorship Program and Advertising Activities* (better known as the Gomery Commission) was tasked with investigating allegations of the misuse of public funds through what came to be known as the Sponsorship Program. The sponsorship program was a Canadian federal government advertising campaign whose purpose was to promote national unity and to profile the federal government, particularly, in the province of Québec. Some background information is important here. The first report of the Gomery Commission, released in November 2005, detailed the Commission's key findings concerning the actual events pertaining to the scandal. In February 2006, the second report provided recommendations for reform to ensure that incidents such as the Sponsorship Scandal do not happen again. The Commission provided these recommendations in *Restoring Accountability*, in which it addressed the following specific issues:

- The adequacy of existing structures pertaining to responsibility and accountability for ministerial staff members and public servants;
- The strength of federal policies and procedures to encourage and protect 'whistleblowers' (persons that report misconduct or misdoings);
- The strength of federal Access to Information legislation and procedures; and
- The adequacy of accountability structures in Crown Corporations.

texts: *Federal Access to Information and Privacy Legislation Annotated*, Thomson Carswell, Scarborough, 2009 (Eight edition) and the *Protection of Privacy in the Canadian Private and Health Sectors*, Thomson Carswell, Scarborough, 2008 (Fourth Edition). A member of the Law Society of Upper Canada (Ontario), Michel W. Drapeau practices law in Ottawa, Ontario. He practices mainly in administrative law, in particular Canadian military law, human rights as well as access to information and privacy law. He is also a member of the Board of Governors, Collège militaire royal, Saint-Jean, Province of Québec.