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Less Government, More Secrecy: Reinvention and the Weakening of Freedom of Information Law

Many critics have suggested that worldwide efforts to reinvent government could also weaken democratic control over public institutions, but few have considered how attempts to implement the "new paradigm" in public management might affect a widely used instrument for promoting accountability: freedom of information law (FOI). FOI laws give citizens and nongovernmental organizations the right of access to government information. However, recent Canadian experience shows that reinvention can weaken FOI laws in three ways. First, attempts to reduce "nonessential" spending may cause delays in handling FOI requests and weaken mechanisms for ensuring compliance. Second, governmental functions may be transferred to private contractors and not-for-profit organizations that are not required to comply with FOI laws. Third, governments' attempts to sell information and increase FOI fees may create new economic barriers to openness. Thus, restructuring provides an opportunity for political executives, public servants, and some well-organized business interests to weaken oversight mechanisms and increase their own autonomy within the policy process.

In the last 15 years, the governments of many advanced democracies have dramatically reorganized their public sectors in an attempt to manage the problems of growing indebtedness, taxpayer burnout, and increasing citizen dissatisfaction with the quality of public services. These restructuring exercises were not undertaken in isolation, however. They were accompanied by the rapid development of an international reform community that knit together professionals and academics in many different nations and permitted the rapid diffusion of ideas about reform strategies.

Members of this new international reform community have emphasized the commonality of experiences across national boundaries. "It is impossible to miss the worldwide nature of these changes," Donald Kettl argues. "The scope, breadth, and pace of change proved stunning and universal. It proved nothing less than a global revolution" (Kettl 1999). Governments around the world pruned "nonessential" or "noncore" spending, transferred functions to the private sector or to quasiprivate special-purpose bodies, and put more emphasis on collecting nontax revenues, including new charges for government services. In the United States, reforms such as these were recognized as essential attributes of "reinvented" governments (Osborne and Gaebler 1992). In other nations, proponents of similar reforms argued that they were hallmarks of a "new paradigm" for organizing public services (Organisation for Economic Co-operation and Development 1995), now widely known as the New Public Management or NPM (Hood 1991).

Critics often focus on the danger that NPM reforms might undermine democratic control of organizations exercising public authority. Some emphasize the risk that public officials imbued with a new "entrepreneurial" ethic will become inattentive to the public interest (Frederickson 1997). Others worry that spinning off functions to nongovernmental organizations will weaken the "chain of responsibility" that ties frontline bureaucrats to elected representatives (Greenaway 1995; Jenkins 1996). Critics have also suggested that diminished emphasis on the legal foun-

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dation of administrative practices, coupled with weaker mechanisms for judicial review, will increase the risk of inequities or corruption within the public sector (Freedland 1995; Moe 1995). These are important concerns, but they do not exhaust the ways in which NPM reforms might weaken democratic control of governing institutions. An important but neglected question is how far NPM reforms may undermine laws that give citizens the right of access to government information.

These statutes, widely known as freedom of information (FOI) laws, had diffused quickly throughout the established democracies by the early 1990s. The United States adopted its first Freedom of Information Act in 1966, and all 50 state governments had similar laws by 1984 (Rast 1984, note 33). Canada's federal government adopted the Access to Information Act in 1982, and 11 of its 12 provinces and territories later passed comparable statutes. Many other Commonwealth and Western European governments also acquired FOI laws during this period (Bennett 1997). Just as important as this legislative action was the entrenchment of the idea that FOI is an important tool for ensuring democratic control of government—so important, in fact, that freedom of information could be regarded as a basic human right (Johannessen 1995; Perritt and Lhulier 1997). Without the right of access to government information, it is argued, a citizen's ability to participate actively in policy deliberations or hold institutions accountable for their conduct is compromised. In 1978, Justice Thurgood Marshall called FOI "vital to the functioning of a democratic society."[1]

The possibility that public sector restructuring might undermine FOI laws was not widely recognized in the early 1990s. In fact, several governments promised to improve transparency even as they renovated the public sector. In Canada, the Liberal government elected in 1993 promised that improved openness would be "the watchword" of a reform project aimed at "getting government right" (Liberal Party of Canada 1993). In Britain, a new Labor government promised stronger FOI rules as part of a program to "modernize" constitutional arrangements (Silverman 1997). In the United States, the Clinton administration promised that its reinvention of the federal government would include efforts to improve compliance with FOI law (Clinton 1993). "Reinvented governments," Secretary of State Albright argued at Vice President Gore's 1999 Global Forum on Reinventing Government, "tend to be slimmer, more open and honest" (Albright 1999).

The Canadian experience in public sector reform shows that the relationship between reinvention and openness is not nearly so innocuous. As Canada's federal and provincial governments attempted to restrain nonessential spending within public institutions, compliance with FOI laws deteriorated. Enforcement mechanisms designed to protect FOI rights also weakened. FOI rights were further undermined as functions were spun off to new special purpose agencies, quasiautonomous nongovernmental organizations, and private contractors. New economic barriers to the exercise of FOI rights were created as governments became more aggressive in imposing fees for processing FOI requests and began treating government information as a saleable commodity. The steps taken by Canadian governments have been rationalized as an attempt to improve the efficiency of the public sector by applying NPM principles. Taken together, however, these reforms substantially weakened the ability of citizens and nongovernmental organizations to monitor the conduct of public institutions.

The clash between NPM reforms and FOI laws illustrates an important point: Reinvention is more than an exercise in making government "work better and cost less" (National Performance Review 1993). It also represents an attempt to adjust the institutional arrangements that regulate policymaking in ways that favor political executives, senior officials, and some well-organized sectors of industry (Thelen and Steinmo 1992). To a degree, these changes are hidden from public view because they are undertaken through amendments to administrative policy rather than legislative reform. Governments are thus able to make a show of conformity with FOI principles (Meyer and Rowan 1991) and at the same time to deter weakly organized segments of civil society from exercising their FOI rights.

Effect of Cutbacks on FOI Laws

One of the most important elements of NPM reform is its emphasis on reducing nonessential or noncore spending, that is, spending that is not directly related to the production of services. "Restructuring," Jones and Thompson argue, means "cutting everything from the organization that does not contribute value to the service or product delivered to the customer" (Jones and Thompson 1997, 16). In practice, this has often meant cutbacks to central administrative functions, including monitoring or compliance offices and middle management (Osborne and Plastrik 1997, 226).

In Canada, the effect of such cutbacks on the operation of FOI laws has been clear. Canadian laws, like those in other jurisdictions, specify that FOI requests should be handled within a specified period of time.[2] These time limits recognize the fact that the usefulness of information often diminishes over time, and that access delayed may be access denied.[3] However, the likelihood that institutions will meet these time limits depends heavily on the resources departments allocate to processing FOI requests. Canadian law, like that in most Commonwealth and European nations, also allows citizens to protest delays to an

independent commissioner or ombudsman. Once again, however, a commissioner's ability to resolve complaints depends on his budget, which is set by the executive. In most of the larger Canadian jurisdictions,[4] governments cut resources to FOI offices within departments and agencies and froze commissioners' budgets; as a result, citizens experienced longer delays and had weaker remedies in cases of delay. These cutbacks were often justified as efficiency measures.

Cutbacks have significantly weakened the effectiveness of Canada's federal FOI law. Although the Liberal government made a commitment to improved openness during the 1993 federal election, it soon became preoccupied with restraining expenditures in order to eliminate a substantial budget deficit. An important component of this restraint exercise was cutting "nonessential spending" and administering government programs more efficiently (Canada Treasury Board Secretariat 1997, 5). Many senior officials did not consider the resources dedicated to FOI administration to be essential spending; on the contrary, they were inclined to regard FOI requirements as a "disruptive and costly" imposition (KPMG Canada 1996). Many cabinet ministers probably shared this view. A previous government's finance minister, for example, complained that "in the vast majority of instances, embarrassment and titillation are the only objects of access to information requests" (Crosbie 1997, 300).

The effect of cutbacks on processing times for FOI requests was immediate and substantial. In 1993–94, the federal government responded to 62 percent of FOI requests within 30 days. This proportion dropped to 48 percent by 1996–97. At the same time, the proportion of requests that took longer than 60 days to process increased from 21 percent to 33 percent (Canada Treasury Board Secretariat, InfoSource Bulletins nos. 14–20). Within some federal departments, the problem of response time was much more dramatic. In 1997, the federal information commissioner called it a "festering, silent scandal" (Canada Information Commissioner 1997, 5).

However, the commissioner could do little to remedy the problem. His own office was swamped with protests about bureaucratic slowness, while his budget declined in nominal terms.[5] As a result, the delay in responding to complaints grew substantially. The average processing time for all types of appeals increased from just under four months in 1992–93 to five months in 1996–97. For more complex protests about departmental decisions on the withholding of records, the increase in processing time within the Office of the Information Commissioner was substantially greater.[6] There is evidence that the burgeoning caseload within the Office of the Information Commissioner encouraged federal departments to engage in other forms of noncompliance as well. Over the same period, departments became more likely to invoke statutory provisions that justify nondisclosure of information and less likely to disclose all the information described in an FOI request (Roberts 1999, table 3).

Delays in processing FOI requests also became more extensive in other jurisdictions. In the province of British Columbia, the proportion of requests that were answered by government institutions within 30 days declined from 55 percent in 1995 to 34 percent in 1997. In the same two years, the proportion of requests requiring more than three months increased from 3 percent to 37 percent.[7] Senior members of the province's social democratic government were known to be dissatisfied with the province's FOI law, particularly after an FOI request produced evidence that the government had understated the severity of the province's budget deficit before the 1996 provincial election (British Columbia Report 1996). In 1998, the government announced that it had cut the budget for departmental FOI offices by 40 percent (British Columbia, Hansard, May 20, 1998). The cabinet minister responsible for administration of the FOI law argued that the cuts were "part of a general strategy to make government programs more efficient and effective" (Petter 1998).

The province's information commissioner protested that the cuts would cause further delays and undermine "open and accountable government" (British Columbia, Information and Privacy Commissioner, April 7, 1998). However, the provincial commissioner's ability to respond to the problem was limited. Like his federal counterpart, he was overwhelmed by widespread noncompliance. The number of complaints received by British Columbia's commissioner doubled between 1994–95 and 1996–97. The drafters of the province's FOI law had tried to avert this problem by incorporating a novel provision that required public institutions to obtain the commissioner's approval to extend response times beyond 60 days, but this requirement is usually ignored.[8]

In the province of Ontario, the time required for a response by government institutions also increased as a result of cutbacks. Between 1992 and 1997, the proportion of requests processed within 30 days dropped from 63 percent to 39 percent. At the same time, the proportion of requests requiring more than 60 days increased from 15 percent to 37 percent. Officials attributed the increasing delays to budget cutbacks within the public service.[9]

The effect of cutbacks on the administration of other provincial FOI laws is difficult to gauge because statistics are not collected. There is evidence, however, that other jurisdictions' enforcement mechanisms have also been weakened. The number of complaints received by Quebec's Information Commissioners doubled between 1992–93 and 1996–97 (Quebec, Commission d'accès à l'information 1997, table 20). During recent legislative hearings, advo-

cacy groups complained that it may now take the Quebec commissioners five months or more to address a complaint (Quebec, National Assembly, October 23, 1997). In Newfoundland, government cutbacks have had a more obvious effect on FOI enforcement. In March 1990, Newfoundland's government announced its intention to abolish the office of the provincial ombudsman, whose responsibilities included receiving complaints about the government's handling of FOI requests. The decision was defended as part of an effort to "eliminate spending that is no longer serving a useful purpose" (Newfoundland 1990, 11). Newfoundland's law is now the least-used FOI statute in Canada (Roberts 1998a, table 6). One journalist has remarked that the government's action "almost makes the Act a farce."[10]

Transferring Functions to Nondepartmental Organizations

A second important element of NPM restructuring programs is the shift of functions away from conventional bureaucracies to other organizational forms. Governments, it is argued, should "steer, not row"; that is, they may set policy and provide funding but need not actually operate the organizations that produce services (Osborne and Gaebler 1992; Davis 1998). Canadian governments have implemented this principle in three ways: 1) by transferring functions to new, special-purpose agencies which, although publicly owned, are expected to operate at arm's length from government; 2) by delegating functions to new quasiautonomous, nongovernmental organizations; and 3) by assigning functions to private-sector contractors. All of these approaches threaten FOI laws, which were drafted at a time when public functions were typically undertaken by a few large government departments. The devolution of governmental work to a broader variety of organizations may produce inconsistencies in compliance, and frequently results in completely excluding information from FOI laws.

Delegation to Special-Purpose Public Agencies

This process, the least dramatic of the three ways to separate policy and delivery functions, is sometimes called "agencification" (O'Toole and Jordan 1995). It involves transferring work from conventional government departments to new, special-purpose agencies that are publicly owned but expected to be independent of political executives. These new agencies are often exempt from many of the rules imposed on government departments, on the supposition that greater freedom will allow them to become more efficient and innovative.

The Canadian government began a limited experiment with agencification in 1990, when it began transforming parts of the federal public service into "special operating agencies" (SOAs). The SOA plan was modeled on a British reform that moved most central government activities into more than 100 new agencies, but the Canadian plan never affected more than a small proportion of the federal bureaucracy. In 1993, however, the federal government's interest in special purpose agencies revived. The Liberal government consolidated food inspection activities that were formerly undertaken by several government departments into the new Canadian Food Inspection Agency.[11] It also plans to transfer responsibility for administering federal tax laws to a new Canada Customs and Revenue Agency and to delegate responsibility for managing national parks to a new Canadian Parks Agency.[12] The federal Department of Human Resources Development is also considering the possibility of transferring some functions to a new independent agency (Bakvis 1997, 163–64). The federal Department of Finance has transferred responsibility for the management of social security funds to a new government-owned corporation, the Canada Pension Plan Investment Board.[13] The federal Transport Department is transferring responsibility for major ports and airports to over 40 new independent authorities.[14]

Provincial governments have undertaken similar initiatives. The Manitoba government, for example, has established 16 special operating agencies and says that it is considering 50 other candidates for SOA status (Manitoba, SOA Financing Authority 1997, 9–10). Ontario's recent Capital Investment Plan Act allowed the provincial government to transfer responsibility for infrastructure investments to three new government-owned corporations. The government also established two new provincially owned entities, the Ontario Electricity Generation Corporation and the Ontario Electrical Services Corporation, to manage components of the province's electricity generation and distribution system. Similarly, the British Columbia government has transferred responsibility for spending on highways to a new Transportation Financing Authority and proposed the transfer of provincial safety services to a new Safety Authority which would operate at arm's length from government (British Columbia, Ministry of Municipal Affairs 1997). In 1994, Quebec's government adopted legislation that made it easier for municipal governments to transfer activities to publicly owned companies.

Only some of these new agencies will remain subject to FOI requirements. For example, the federal government has agreed that its agencies for food inspection, revenue, and parks will remain subject to FOI requirements. On the other hand, the new Canada Pension Plan Investment Board, responsible for managing billions of dollars in social security funds, will not be covered by the federal FOI law. The federal government's new port authorities remain covered by FOI requirements but its new airport authori-

ties are not. Concern about the erosion of accountability that may result from excluding airport authorities has already been expressed (Pynn 1998). There is similar confusion about applying FOI laws in the provinces. British Columbia's Transportation Financing Authority is not required to comply with provincial FOI law. The Ontario government decided to include new infrastructure investment corporations under the province's FOI law but excluded new electricity generation and distribution corporations. Environmentalists and provincial legislators have protested that excluding the new electricity generation corporation, which remains one of the world's largest producers of nuclear energy, will undermine their capacity to protect public safety (*Toronto Globe and Mail* 1999).

In Quebec, both provincial and municipal governments have transferred activities to new agencies that are not covered by the province's FOI law. The Court of Quebec recently ruled that Nouveler Incorporated, a wholly owned subsidiary of the provincial utility, Hydro Quebec, was not subject to Quebec's FOI law, even though Hydro Quebec is itself subject to the law. This decision has already been relied upon by Hydro Quebec and the province's lottery corporation to block access to records held by other wholly owned subsidiaries. Another recent Quebec court decision permitted 100 municipally owned economic development corporations to escape the province's FOI law. Quebec's information commissioners argued in 1997 that the proliferation of provincial and municipal special purpose agencies constituted a major threat to the effectiveness of the province's FOI law (Quebec Commission d'accès à l'information 1997, 75–84).

Even when new agencies remain covered by FOI law, there is reason to worry about the protection of access rights. Experience with agencification in other countries has shown that a disdain for centrally-imposed red tape may become ingrained in agency culture, eroding the willingness to comply with those laws and regulations that still apply to the agency (Price Waterhouse 1993, 6; Trosa 1994, 6; Boston 1996, 222–23; U. S. General Accounting Office 1996). The Canadian government's early experiment with special operating agencies also provided evidence that compliance with a variety of laws and policies could be weakened. A 1994 review of the SOA initiative worried that SOAs would become "independent fiefdoms, operating in response to their own agenda rather than the public interest" (Wright 1994). Compliance may be further undermined when new agencies are expected to operate on a business-like basis by charging fees for services and competing against private suppliers for the right to provide services. These "commercialized" agencies may argue that FOI laws impose a financial burden and a level of transparency that unfairly "tilts the playing field" in favor of private sector competitors (Roberts 1996, 195).

Delegation to Quasiautonomous, Nongovernmental Organizations

A second, more radical, method of dividing steering and rowing is to transfer service delivery and regulatory functions to new nongovernmental, not-for-profit organizations that are owned and managed by the industry that consumes the service or is engaged in the regulated activity. This sort of delegation is advantageous for both cash-strapped governments and industry. Typically, industry assumes responsibility for a large part of the cost of service production or regulation in exchange for enhanced control over the new organization. These transfers of responsibility also present a clear threat to access rights, since the new organizations are typically excluded from federal or provincial FOI laws.

The difficulties created by this sort of delegation are illustrated by a recent controversy involving the Software Human Resources Council (SHRC), a private, nonprofit organization governed by representatives of the Canadian software industry. The SHRC is one of 27 "sectoral councils" established with financial support from the federal Department of Human Resources Development. The SHRC runs several programs for the department, mixing federal appropriations with funds solicited from its industry sponsors. One of these programs is a variant of the United States's controversial H1-B visa program, which gives certain kinds of software workers preferential treatment under federal immigration law. Under the Canadian program, it is the SHRC, rather than a government agency, that decides which classes of foreign workers will be given preferential treatment. However, the Council is not covered by the federal FOI law and is not required to release the analysis that explains how the privileged job categories are selected (Roberts 1998b).

The federal Department of Transport has also been active in transferring functions to industry-managed, not-for-profit organizations. The most substantial experiment has been the transfer of federal air traffic control responsibilities to Nav Canada, a private corporation owned and operated by aircraft operators, which finances its operations through fees that are charged to operators. Nav Canada is not covered by the federal FOI law, even though the same functions were subject to the law when they were located within the Department of Transport.[15] Control over Canadian operations on the St. Lawrence Seaway will shortly be transferred to an industry-run, not-for-profit corporation similar in structure to Nav Canada. Even though the existing St. Lawrence Seaway Authority is subject to FOI law, the proposed new seaway corporation will not be.[16] Another recent federal law reorganizes the Canadian Wheat Board in a similar way.[17] The Board, which has a statutory monopoly on some domestic sales and all export sales of

wheat and barley, will be governed by a board elected by grain farmers. The government ignored demands from some dissident farmers' groups that the Board be made subject to the federal FOI law. Recently, U.S. trade negotiators have echoed complaints about the "veil of secrecy" that is said to envelop the Board (Morton 1998).

Provinces have also transferred functions to industry-run, not-for-profit organizations that are wholly or partly excluded from FOI law. The Safety and Consumer Statutes Administration Act (S.O. 1996, ch.19) permits the Ontario government to delegate regulatory responsibilities to industry-operated, not-for-profit organizations which the government calls "administrative authorities" and which are funded through fees imposed on firms in each industry. In 1997, the government transferred functions to four new authorities: the Ontario Motor Vehicle Industry Council, the Technical Standards and Safety Authority, the Real Estate Council of Ontario, and the Travel Industry Council of Ontario. None of these authorities is subject to Ontario's FOI law. Some arrangements regarding public access to records are included in the contract that is negotiated between each authority and the government, but these provisions have limited usefulness. Exemptions are broadly worded, and there are no requirements for timely responses. Furthermore, there is no remedy for individuals who are dissatisfied with an authority's response.[18]

The Alberta government is also transferring many functions to similar organizations that in most cases are not covered by provincial FOI law. The Racing Corporation Act (S.A. 1996, c. R-1.5) allowed the government to transfer licensing activities relating to horse racing from the Racing Commission to a new industry-run corporation that has been excluded from the province's FOI law. Alberta's Department of Environmental Protection has also transferred many functions—including operation of recycling programs, management of a provincial conservation fund, and regulation of outfitters and guides—to industry-run entities known as Delegated Administrative Organizations (DAOs). No provision has been made for public access to records held by these DAOs. Alberta's Department of Labour has also transferred responsibility for enforcement of the provincial Safety Codes Act to five industry-run DAOs. None of these DAOs is subject to Alberta's FOI law. However, the agreements that govern the transfer of responsibilities from the Labour Department to DAO make clear that records created "in the course of carrying out" delegated functions are the government's property which makes those records accessible through a request to the delegating ministry (see, for example, Alberta Department of Labour 1996). This approach, although preferable to that taken in Ontario or by Alberta's Environmental Protection Department, still has limitations. Labour's DAOs may be reluctant to cooperate fully with FOI requirements and may be too strict in deciding which of its records relate to delegated functions.

Alberta's experiment with DAOs has already provided evidence of the dangers that might be associated with an erosion of openness. In his 1997 report, the auditor general of Alberta worried that the government's "limited monitoring" of DAOs was not "sufficient to provide … reasonable assurance that delegated entities are carrying out their delegated duties to appropriate standards." In one case—that of the Alberta Boilers Safety Association—the auditor general suggested that inadequate oversight could result in a risk to public safety (Alberta, Auditor General 1997, 156–59).

Delegation of Functions to Private Enterprises

The third tactic used by governments that are determined to divide policy and service delivery functions is also the most familiar: the transfer of work out of government departments to private, for-profit contractors. Contracting out is not a new phenomenon, although the practice has never been as widespread in Canada as in the United States (Kettl 1993). However, budgetary pressures—and the emergence of an influential contractor lobby—have helped overcome historic predispositions against private involvement in the delivery of public services. An industry-supported advocacy group describes the recent movement toward outsourcing of functions in healthcare, education, welfare, correctional services, and transportation as a "minor revolution" in Canadian government (Canadian Council for Public–Private Partnerships 1999).

The effect of these initiatives on FOI laws is unambiguous. No Canadian law grants citizens the right of access to records that are under the control of a private contractor. This is also true of FOI laws in many other jurisdictions. A handful of Unites States FOI laws have attempted to extend FOI rights to private contractors, but with limited success (Bunker and Davis 1998). Furthermore, it is difficult under many Canadian laws to obtain easy access to information held within government institutions that relates to the negotiation or implementation of contracts. Citizens may experience a lack of transparency not only with regard to the production of services by a contractor, but also with regard to the government's own performance in making and enforcing the contract.

Provisions in Canadian FOI laws that govern access to information relating to contract negotiation and management vary substantially. Under some laws, government officials are required to withhold information supplied by contractors if two conditions are met: the information is confidential in character, and disclosure would cause significant harm to the contractor. This approach is consistent with a general rule endorsed by many FOI advocates—

that restrictions on disclosure are only justified when disclosure can be shown to cause some harm. But several laws do not follow this approach. Under four Canadian FOI laws—the federal law, as well as those of Quebec, Manitoba, and Saskatchewan—governments are required to withhold confidential information even if the disclosure would not cause any harm.[19]

The noxious effect of this approach was illustrated by a case that arose after the Saskatchewan government privatized work once performed by government-run medical laboratories. As controversy over the government's decision grew, the Saskatchewan General Employees' Union made an FOI request to the Regina Health District Board for a copy of its contract with a private laboratory. After three months' delay, the Board refused the request, arguing that the "most compelling reason" for its decision was the provision in Saskatchewan's FOI law that exempts confidential information. The Board observed, "Most of the clauses of the agreement consist of an exchange of information relating to the affairs and operations of the parties, which information was explicitly supplied in confidence by each party. The agreement itself contains a broad confidentiality clause prohibiting dissemination of the contents of the agreement by any of the parties" (Regina Health District Board 1995).

What was troublesome about the Board's response—aside from its slowness—was its failure to stipulate whether any harm would be done in releasing the contract whose contents were obviously relevant to the public debate over privatization of laboratory services. However, Saskatchewan law does not require that any harm be anticipated: it is enough to show that the parties to the contract had agreed that it should be treated confidentially. The approach taken in other Canadian FOI laws, which require proof that disclosure will cause actual harm to the contractor, is clearly preferable.[20]

The disclosure of information may also be obstructed by statutory rules that give contractors the right to protest governmental decisions to release information relating to their contracts. Most Canadian FOI laws require governments to notify contractors when they are considering disclosure of information in which the contractor may have an interest. The contractor is given an opportunity to make arguments against disclosure and, if the government insists on disclosure, may appeal the government's decision. Information is not disclosed until the appeal is resolved in the government's favor.

As a controversial Nova Scotia case shows, firms may have an interest in exercising these appeal rights even if their arguments against disclosure are weak ones. In June 1996, several individuals requested copies of a contract that the Nova Scotia government had made with the Atlantic Highway Corporation (AHC) to build and operate the province's first toll highway. The government agreed to release the contract, but was obliged to give notice to AHC. AHC protested the decision, first to the government, then to the province's FOI review officer. Both agreed that AHC's protest was baseless. AHC then exercised its right under the Nova Scotia's FOI law to appeal to the Supreme Court of Nova Scotia. In February 1997, the Court also ruled that AHC's complaints were groundless. AHC had lost the case, but it also delayed public release of the contract for eight months, during which time its parent firm had been negotiating a similar contract with the province of New Brunswick (Nova Scotia Supreme Court 1997).

A similar difficulty arose in Ontario after the provincial government contracted with Real/Data Ontario (RDO) to computerize the province's land titles information. Shortly after the contract was finalized in February 1991, several requests were made to the provincial government for disclosure of contract information. However, RDO exercised its appeal rights to block disclosure. The provincial information commissioner ruled in September 1993 that RDO's argument was baseless (Order P-532). Nevertheless, RDO had delayed disclosure for almost two years, including the months in which the soundness of the contract had been most vigorously debated.[21]

Reservations about the power that these statutory provisions give to contractors were expressed even as the laws were being drafted. In 1982, Hudson Janisch worried that "well-financed third-party interventions against disclosure, coupled with a natural inclination on the part of government to treat business data as being provided only on a confidential basis, will deprive the public of information essential for an independent evaluation of the policies adopted by government" (Janisch 1982, 547). Recent experience substantiates this fear and may justify a reappraisal of existing third-party procedures. Strong rules to protect business interests may be appropriate when the information held by government has been collected involuntarily in the course of its regulatory activities. However, the case for strong rules is weakened when information has been provided voluntarily during the negotiation or execution of a contract.[22] A better approach might be to preserve a statutory exemption against the release of confidential information that would harm contractors but to eliminate their statutory right to challenge government institutions that decide the exemption cannot be applied. A 1990 New Brunswick government review of its FOI law, which contains no provisions for notice and appeals, argued that such provisions were time consuming and unnecessary. Informal consultations with contractors were thought to provide sufficient protection against harm (New Brunswick 1990, 117–19).[23]

New Economic Barriers to Openness

A third key element of New Public Management restructuring efforts is the aggressive pursuit of new sources of nontax revenue. Osborne and Gaebler consider this to be an essential characteristic of "enterprising government" (Osborne and Gaebler 1992, 195–218). The drive for new revenue has caused two changes in Canadian governments' approach to the distribution of government-held information. First, governments are attempting to package and sell government-held information instead of releasing it at low cost in response to FOI requests. Second, governments are raising fees for processing FOI requests. In either case, the effect is to create economic barriers that deter citizens and nongovernmental organizations from exercising their FOI rights.

Commodification of Government Information

Budgetary pressures have caused public institutions to become more aggressive in searching for assets that can be tapped as sources of revenue. Many governments now recognize that government-held information may be one of those assets, and that the prices charged for access to that information can be substantial if government is a monopoly supplier. "Government information is becoming a commodity to be exploited," says Kirsti Nilsen (Nilsen 1993; Nilsen 1994), who sees a shift in government policy away from the view of information as a public resource to be widely disseminated at low cost and toward the view of information as a "corporate resource" that can be used to generate revenue.

Commodification of government information is a phenomenon that was not anticipated when many FOI laws were drafted. A 1994 controversy in British Columbia illustrates the difficulties. The Western Canada Wilderness Committee, an environmental advocacy group, submitted an FOI request to British Columbia's Environment Ministry asking for computer data used to produce terrain and resource inventory maps for the province. The government refused the request, telling the Committee that the data was already available for purchase by the public at a price of $30,000. The Committee protested that it could not purchase the data at that price and that the government's decision denied it access to mapping data that had become the "standard reference point in land use planning" in British Columbia. The Committee asked the provincial information commissioner to order the government to release the information after applying normal FOI fees.

The government strongly resisted the Committee's appeal. British Columbia's FOI law allows government departments to ignore FOI requests if the requested information is already "available for purchase by the public" or has "monetary value" to the government. The government refused to waive its usual prices for advocacy groups like the Wilderness Committee, saying that to do so would "destroy the government's ability to sell information, and eliminate this revenue source for the government." Although troubled by the government's position, the information commissioner denied the Wilderness Committee's appeal. In the commissioner's view, there was no doubt that the government was entitled to interpret the law in this way. On the other hand, the commissioner observed, the provincial legislature probably had not anticipated that the government would be so aggressive in its pursuit of revenues from selling information. He argued that the government's policy was likely to erode the quality of public debate over land-use issues (British Columbia Office of the Information and Privacy Commissioner March 1996, Order 91).

The concern about treating information as a commodity is shared by Ontario's information commissioner, who first dealt with the issue in a 1993 case that arose when an individual asked the Ontario government for a list of registered securities dealers. The government had already sold the right to distribute this information to a private firm. It denied the request, arguing that there was no right of access under the FOI law to information that was "currently available to the public." The requester appealed to the information commissioner, who ordered the government to release the information. As the commissioner observed, "the issue raised goes to the heart of Ontario's access to information legislation.… [T]he government is actively looking at the information it holds as a potential source of nontax revenue generation.… However, a very real question arises: How will the government's new initiatives maintain and balance the rights of the public to access information, with the desire to find new sources of revenue?" (Ontario, Information and Privacy Commissioner July 1993, Order P-496).

This liberal defense of access rights was soon superseded by more restrictive decisions. A 1996 decision arose out of a journalist's request to the Ontario government for a computer tape containing municipal property assessments. The government again refused the request. In this case, the information commissioner upheld the government's position, agreeing that the tape was already available to the public, albeit at a substantial price. In a contemporaneous case, the Ontario government relied on another section of the provincial FOI law to deny a request for information collected from regulated businesses that it had intended to sell to the public. The government cited a provision of Ontario's FOI law that justifies the withholding of information if disclosure would prejudice its economic interests. The information commissioner upheld the government's interpretation of the law (Ontario, Information and Privacy Commissioner 1996, Orders P-1114, P-1281, and P-1316).

The federal information commissioner has also expressed concern about the threat which commodification may pose to access rights and has proposed a legislative remedy to address the problem. He suggests that the section of federal law exempting information that is "available for purchase by the public" should be amended to exempt only information that is "reasonably priced and reasonably accessible" (Canada Information Commissioner 1994, 38). A government report is critical of the recommendation, arguing that it would "severely limit" the government's ability to generate revenue from the sale of information (Canada Treasury Board Secretariat 1996).

Increased Fees for Processing FOI Requests

Several Canadian governments have studied or implemented higher FOI processing fees. Fees for processing FOI requests have always been imposed under most Canadian FOI laws.[24] However, the new emphasis on cost recovery has led to increases in the size of fees, a broadening of the range of fees that may be charged, and limits on bureaucratic discretion to waive fees.

Governments defend fee increases as attempts to recoup the substantial costs of administering FOI laws. Although difficult to measure, these costs are widely thought to exceed the fees collected. A 1996 Canadian government study concluded that the annual cost of administering its FOI law was about $22 million. In the same year, the government collected only $200,000 in fees. The study suggested several policy changes aimed at reducing net FOI costs, including an increased application fee, a broader definition of chargeable costs, less generous treatment of "commercial" requesters, and stronger incentives for departments to recover costs from users (Canada Treasury Board Secretariat 1996). One of these recommendations is incorporated in a bill to amend the federal FOI law currently under consideration in the federal Parliament. The bill would require individuals who make regular FOI requests to pay the actual cost of preparing a response to the request, plus 10 percent of that cost.[25]

Provincial governments have already increased fees for processing FOI requests. Ontario's 1995 Savings and Restructuring Act introduced a new application fee for FOI requests, broadened the range of costs that could be charged back to clients, and levied a new fee on complaints to the provincial information commissioner. Defended by the government as a "broadening of the user-pay principle" (Canadian Press Newswire 1995), the changes have already had a dramatic effect on the frequency with which FOI laws are used. Between 1995 and 1997, the total number of FOI requests submitted to the provincial government dropped by over 30 percent,[26] and appeals to the provincial information commissioner dropped by over 40 percent. The increase in fee revenue was negligible. The effect of the fee hikes was not to improve cost recovery, but to produce savings through cost avoidance, accomplished by deterring thousands of FOI requests.

In March 1997, British Columbia's government also suggested that fees should be raised to offset the cost of administering the province's FOI law, calling the current fee schedule "an explicit subsidy to major media conglomerates" (Beatty 1997). Many fees were doubled in April 1998. Provincial agencies were also told that substantial cuts in the appropriations for FOI offices should be offset by improved collection of FOI fees (Smyth 1998). New Brunswick's government has expressed similar concerns and proposed new fees "based on partial cost recovery" (Meagher 1996; New Brunswick Executive Council 1998, 9).

The premise underlying calls for increased cost recovery—that FOI requests consume an unreasonable amount of government resources—needs to be closely examined. A substantial proportion of costs associated with the administration of FOI laws are caused either by weaknesses in records management or by government's insistence on meticulously reviewing documents before they are released. The 1996 federal study found that one-third of total FOI costs could be attributed to time spent in determining whether material should be withheld from requesters (Canada Treasury Board Secretariat 1996, sec. 2.1).[27] There is a second sense in which the total cost of FOI laws is driven by government action. In many cases, public officials divert requests that were once handled informally into the FOI system, where the cost of responding to them becomes more obvious. Public servants may have good reasons for doing this. FOI systems rationalize processes for responding to information requests and relieve public servants of the need to exercise discretion about releasing information.

A sense of proportion is also useful when thinking about the costs of administering FOI laws. The administrative costs associated with the federal FOI law are significant, but still much lower than other information management costs willingly accepted by the federal government. In 1997, federal departments spent $350 million for advertising, publishing and printing, and public relations and public affairs services (Canada Receiver General 1997, table 3a). The important difference is that this activity is tightly controlled by departments, who determine when and how information will be disseminated. The aspect of FOI law that most exasperates officials may not be the administrative cost but the loss of control over the terms under which information will be released.

Conclusion

No thorough study has yet been undertaken of the effect of restructuring on the operation of FOI laws in other

nations. However, the Canadian experience is probably not unique. In other countries typically thought to be at the forefront of New Public Management reforms, comparable concerns have been raised. United States commentators have complained that the Clinton administration's promise to improve FOI compliance has been undermined by budgetary cutbacks (Sinrod 1995) and that the administration's record on FOI is actually "as bad as most of its predecessors" (Armstrong 1998, 162–68). Worries that privatization and corporatization of government functions might erode transparency have been voiced in the United States (Fitzgerald 1995; Bunker and Davis 1998), Australia (Allars 1995), New Zealand (Eagles, Taggart et al. 1992, 32–3; Clifton 1996), and the United Kingdom (Parker 1998). A trend toward treating government information as a commodity has been evident in the United States since the Reagan administration (Andes 1988; Kelly 1997). All of this suggests that there is no necessary equation between reinvention and increased transparency. On the contrary, an aggressive application of NPM principles seems more likely to result in a weakening of FOI laws that have become widely accepted as important instruments for ensuring democratic control of governing institutions.

Governmental challenges to FOI laws are often accomplished through changes to administrative policy—affecting budgets, pricing policy, and outsourcing decisions—rather than legislative reforms. This should not be surprising. Although political executives and public servants may be ambivalent about FOI requirements, they also recognize that legislative changes are likely to be widely publicized and highly contentious. FOI statutes are now so widely diffused that they have become established as "rationalized institutional myths" (Meyer and Rowan 1991)—institutional arrangements that are entrenched in popular understanding as essential features of properly constituted authority. Governments that do not adopt FOI laws, or attempt to rescind those laws, weaken their claim to legitimacy. It is easier for governments to demonstrate adherence to openness principles by maintaining FOI laws and then to loosen the constraints imposed by those laws through less visible administrative actions. To the extent that these administrative actions must be publicly defended by governments, they may now be justified through an appeal to New Public Management principles.

The clash between the new paradigm in public management and older FOI principles illustrates a second important point about public sector restructuring. Many prominent proponents of reinvention adhere to what could be called a naïve instrumentalist view of reform. In this view, restructuring is primarily about sharpening the tools of government, that is, making government work better and cost less. It is not an attempt to reallocate political power or shift control over the tools of government.[28] An examination of the impact of reinvention on FOI laws shows the deficiencies in this widely held view. Restructuring has provided an opportunity for political executives and public servants to increase their autonomy by strengthening their ability to implement policy without close scrutiny by many nongovernmental actors, including the media, advocacy groups, and public-sector unions. Some nongovernmental groups benefit from New Public Management reforms, but these are often better-organized industries that are prepared to shoulder the cost of governmental functions in exchange for increased control over the execution of those functions. In other words, reinvention is not merely an attempt to hone the instruments by which policy is implemented; it is also an effort to restructure governing institutions in ways that favor certain social actors while disadvantaging others (Thelen and Steinmo 1992). The movement to adopt FOI laws was driven by the hope that they would diffuse political power more broadly and enhance democratic control of government institutions. Insofar as New Public Management reforms undermine the effectiveness of FOI laws, they present a serious threat to the goal of greater democratic control.

Notes

1. *NLRB v. Robbins Tire and Rubber Co*., 437 U.S. 214, 242 (1978).
2. Canadian laws generally require institutions to provide responses to FOI requests within 30 days. An extension of the 30-day limit is allowed if the request covers a large number of records or requires consultations with other institutions.
3. A federal report observed in 1977 that "the essence of the so-called 'freedom of information' idea is not simply access to government documents, but *timely* access" (Canada Secretary of State 1977, 21).
4. The vast majority of FOI requests filed in Canada are received by the federal government and the provincial governments of British Columbia, Ontario, and Quebec. However, the Quebec government does not keep a central record of processing time for FOI requests and is not included in this discussion.
5. The number of complaints about delay or misuse of time-extension provisions increased 320 percent between 1991–92 and 1996–97. By 1997, such complaints accounted for half of the Commissioner's workload.
6. Data regarding the time required to resolve complaints is provided in the Information Commissioner's annual reports.

7. This data was provided by the British Columbia government in response to an FOI request.
8. In 1997, 2,500 requests to provincial institutions were delayed more than 60 days. The Information Commissioner received only eighty-five requests for time extensions from all public bodies—including provincial and municipal institutions—in roughly the same period (British Columbia Information and Privacy Commissioner 1997).
9. In the fall of 1997, the author interviewed several officials engaged in the administration of the province's FOI law.
10. Interview with Mr. Brent Maloney, St. John's Evening Telegram, 4 November, 1997.
11. Canadian Food Inspection Agency Act, S.C. 1997, ch. 6.
12. Canada Customs and Revenue Agency Act, Bill C-43, 36th Parl., 1st Sess.; Canadian Parks Agency Act, Bill C-29, 36th Parl., 1st Sess.
13. Canada Pension Plan Investment Board Act, S.C. 1997, ch. 40.
14. The Canada Marine Act (S.C. 1998, ch. 10) allows the federal government to establish 18 new port authorities whose boards will be appointed by the federal, local, and provincial governments. The Airport Transfer (Miscellaneous Matters) Act (S.C. 1992, ch. 5) gives the federal government the power to implement its National Airports Policy, under which 26 major airports will be run by similarly structured airport authorities.
15. Civil Air Navigation Services Commercialization Act, S.C. 1996, ch. 20.
16. Canada Marine Act, S.C. 1998, c. 10, s. 160. The bill received royal assent on June 11, 1998.
17. Canadian Wheat Board Act, S.C. 1998, c. 17. The bill received royal assent on June 11, 1998. Unlike Nav Canada or the St. Lawrence Seaway Development Corporation, the Canadian Wheat Board is a federally owned institution rather than a not-for-profit private corporation. It is included here because of the similarity in governance arrangements.
18. The provincial Information Commissioner has no jurisdiction to deal with complaints against these authorities. The only remedy lies with the Ministry as a party to the contract (see for example, Ontario Ministry of Consumer and Commercial Relations 1997, Schedule K).
19. American courts, interpreting the provision in U.S. federal law that served as a model for these laws, determined that it should only be relied upon where disclosure of information would cause "substantial competitive harm" (Adler 1997, 88). Canadian courts, however, have chosen not to interpret Canadian law in the same way (McNairn and Woodbury 1998, 4–6.1).
20. These laws could also be improved by clarifying how the confidential character of business-supplied information is to be determined. The restriction on disclosure in these laws applies to information that is "supplied, explicitly or implicitly, in confidence"—language that gives governments and contractors room to undermine access rights by agreeing between themselves that information will be regarded as confidential. In a recent Nova Scotia case, information was found to be confidential simply because the contractor "expected confidentiality and the public body promised it" (Nova Scotia Freedom of Information Review Officer 1997, 9). Better-written laws would clarify that the information must be generally regarded within the industry as confidential in character and that mutual assurances by parties who may have a shared interest in secrecy cannot be enough to establish confidentiality (Onyshko 1993; McNairn and Woodbury 1998, 4–5).
21. Several months earlier, in April 1993, frustrated legislators had introduced a bill to override the provincial FOI law and force disclosure of the Real/Data Ontario contract. The bill died after its first reading in the legislature.
22. One expert commented on a proposed FOI bill that preceded the federal act but contained similar provisions for third-party notice, that businesses might use "protracted and expensive litigation" to deter the release of records (McCamus 1981, 292). He notes that the federal law gives businesses more protection against the release of information than it gives individuals. The federal Information Commissioner has also found that a large majority of federal FOI court cases are initiated by businesses exercising third-party rights (Canada Information Commissioner 1992, 17).
23. A more recent New Brunswick discussion paper reverses this view and recommends adoption of third-party procedures similar to those now in use in other jurisdictions (New Brunswick Executive Council 1998, 15–18).
24. In general, the practice is to levy a small filing charge for each FOI request. Many jurisdictions provide a few hours of staff time for search and preparation of documents at no charge; after that, an hourly rate of roughly $30 (Canadian) is levied. Charges for photocopying, data processing, and other minor administrative expenses are also permitted.
25. An Act to Amend the Access to Information Act, Bill C-264, 36th Parliament, 1st Session, sec. 7.
26. These data are taken from annual reports provided by provincial institutions to the Office of the Information and Privacy Commissioner. This figure excludes requests for the Ministry of Finance and the Ministry of the Environment. Other policy changes dramatically altered the number of requests handled by these two ministries.
27. One observer describes the review process within the federal Department of National Defence: "The litany of bad news exposed by frequent access requesters over the years has made political staff so 'gun-shy' that three times a week senior military officers and staff from the Minister's office now sit for hours at a time going over each file in detail, in an effort to determine what elements of the request might become the next target of opportunity for media" (Boudreau 1997).
28. This view of reform is deeply rooted in American progressive tradition. As a progressive reformer said at the turn of the century, "There is no Republican way to build a road."

References

Adler, Allan R., ed. 1997. *Litigation Under the Federal Open Government Laws*. Wye Mills, MD: ACLU Publications.

Albright, Madeleine K. 1999. Remarks at the Global Forum on Reinventing Government. Washington, DC: U.S. Department of State.

Allars, Margaret. 1995. Private Law But Public Power: Removing Administrative Law Review from Government Business Enterprises. *Public Law Review* 6(1): 44–76.

Andes, Nancy. 1988. Commodification of Government Information: A Summary and Analysis of the Reagan Administration's Restrictions on Federal Information. *Government Publications Review* 15 (September-October): 451–61.

Armstrong, Scott. 1998. The War Over Secrecy: Democracy's Most Important Low-Intensity Conflict. In *A Culture of Secrecy*, edited by A. Theoharis, 140–85. Lawrence, KS: University of Kansas Press.

Beatty, Jim. 1997. B.C. Considers Higher Fees for Access to Public Documents. *Vancouver Sun*, 13 March, A5.

Bennett, Colin. 1997. Understanding Ripple Effects: The Cross-national Adoption of Policy Instruments for Bureaucratic Accountability. *Governance* 10(3): 213-34.

Boston, Jonathan. 1996. *Public Management : The New Zealand Model*. Auckland, New York: Oxford University Press.

Boudreau, Brett. 1997. Winning Battles But Losing the War: The ATIA in National Defence. Unpublished paper.

British Columbia Information and Privacy Commissioner. 1997. *Annual Report 1996–97*. Victoria, British Columbia: Office of the Information and Privacy Commissioner.

British Columbia Report. 1996. The Consequences of "Lying Relentlessly." *British Columbia Report*, 23 September, 8.

Bunker, Matthew, and Charles Davis. 1998. Privatized Government Functions and Freedom of Information. *Journalism and Mass Communication Quarterly* 75(3): 464–77.

Canada Information Commissioner. 1992. *Annual Report, 1991–92*. Ottawa, Ontario: Department of Public Works and Government Services.

———. 1994. *Annual Report, 1993–94*. Ottawa, Ontario: Department of Public Works and Government Services.

Canada Receiver General. 1997. *Public Accounts, Volume II, Part I. Details of Expenditures and Revenues*. Ottawa: Department of Public Works and Government Services.

Canada Treasury Board Secretariat. 1996. *Review of the Cost Recovery and User Fee Approval Process*. Ottawa: Treasury Board Secretariat.

Canada Secretary of State. 1977. *Legislation on Public Access to Government Information*. Ottawa: Supply and Services Canada.

Canadian Council for Public-Private Partnerships. 1999. *About the Canadian Council for Public-Private Partnerships*. Available at *http://www.inforamp.net/~partners/aboutppp.html.*

Canadian Press Newswire. 1995. Ontario Information Access Fees to be Highest in Canada: Commissioner Tom Wright. Toronto. 4 December.

Clifton, Jane. 1996. NZ First Seeks SOE Changes. *Sunday Star-Times.* Auckland, New Zealand. 21 July, 10.

Clinton, William J. 1993. Statement of the President Regarding Implementation of FOIA. In *Litigation Under the Federal Open Government Laws*, edited by A. R. Adler, A-34. Washington, DC: American Civil Liberties Union.

Crosbie, John. 1997. *No Holds Barred*. Toronto, Ontario: McClelland and Stewart.

Davis, Evan. 1998. *Public Spending*. London: Penguin Books.

Eagles, Ian, Michael Taggart, et al. 1992. *Freedom of Information in New Zealand*. New York: Oxford University Press.

Fitzgerald, Mark. 1995. Should Government Information be Privatized?" *Editor and Publisher*, 11 November, 30–31.

Frederickson, H. George. 1997. *The Spirit of Public Administration*. San Francisco, CA: Jossey-Bass.

Freedland, Mark. 1995. Government by Contract and Public Law. *Public Law* 6: 86–104.

Greenaway, John. 1995. Having the Bun and the Halfpenny: Can Old Public Service Ethics Survive in the New Whitehall?" *Public Administration* 73(Autumn): 357–74.

Hood, Christopher. 1991. A Public Management for All Seasons? *Public Administration* 69 (Spring): 3–20.

Janisch, Hudson. 1982. The Canadian Access to Information Act. *Public Law* 534–49.

Jenkins, Simon. 1996. *Accountable to None : The Tory Nationalization of Britain*. London: Penguin.

Johannessen, Lene. 1995. A Motivation for Legislation on Access to Information. *South African Law Journal* 112: 45–60.

Jones, Larry R. and Fred Thompson. 1997. The Five Rs of the New Public Management. In *International Perspectives on the New Public Management*, edited by L. R. Jones, K. Schedler and S. Wade, 15–45. Greenwich, CT: JAI Press.

Kelly, Wayne. 1997. *Speech by the Superintendent of Documents, to the Federal Documents Task Force*. Washington, DC. 15 February. Available at *http://www.libr.org/PL/12-13_Kelly.html.*

Kettl, Donald. 1993. *Sharing Power: Public Governance and Private Markets*. Washington, DC: The Brookings Institution.

———. 1999. Global Reinvention: Basic Issues, Questions Ahead. Background paper for Vice President Gore's Global Forum on Reinventing Government, 14–15 January. Washington, DC: State Department. Available at *http://www.21stcentury.gov/papers/kettl.htm.*

KPMG Canada. 1996. Thoughts on "Openness" as Applied to the Review Function. Discussion paper prepared for Treasury Board Secretariat, Government of Canada. Ottawa: Treasury Board Secretariat.

Liberal Party of Canada. 1993. *Creating Opportunity : The Liberal Plan for Canada*. Ottawa: Liberal Party of Canada.

Maloney, Brent. 1997. Interview by author. *St. John's Evening Telegram*, 4 November.

McCamus, John. 1981. Bill C-43: The Federal Canadian proposals of 1980. In *Freedom of Information: Canadian Perspectives*, edited by J. McCamus, 266–305. Toronto: Butterworths.

McNairn, Colin, and C. D. Woodbury. 1998. *Government Information: Access and Privacy*. Toronto: Carswell.

Meagher, David. 1996. Takes Big Money to Get Information. *Fredericton Daily Gleaner.* 6 August, 3.

Meyer, John , and Brian Rowan. 1991. Institutionalized Organizations: Formal Structure as Myth and Ceremony. In *The New Institutionalism in Organizational Analysis*, edited by W. W. Powell and P. J. DiMaggio, 41–62. Chicago, IL: University of Chicago Press.

Moe, Ronald. 1995. Rediscovering Principles of Public Administration: The Neglected Foundation of Public Law. *Public Administration Review* 55(2): 135–46.

Morton, Peter. 1998. U.S. Plans to Get Tough with Canada in Farm Talks. *Financial Post Daily*, 13 February, 9.

National Performance Review. 1993. *Creating a Government that Works Better and Costs Less: The Gore Report on Reinventing Government*. Washington, DC: Times Books.

New Brunswick Executive Council. 1990. *Discussion Paper on the Right to Information Act.* Fredericton, New Brunswick: Executive Council Office.

———. 1998. *A Discussion Paper on Amending the Right to Information Act*. Fredericton, New Brunswick: Executive Council Office.

Newfoundland Minister of Finance. 1990. *Budget 1990*. St. John's, Newfoundland. March.

Nilsen, Kirsti. 1993. Canadian Government Electronic Information Policy. *Government Information Quarterly* 10(2): 203–20.

———. 1994. Government Information Policy in Canada. *Government Information Quarterly* 11(2): 191–209.

Nova Scotia Freedom of Information Review Officer. 1997. *Report FI-96-70*. Halifax, Nova Scotia.

Nova Scotia Supreme Court. 1997. *Atlantic Highways Corp. v. Nova Scotia*. Halifax, Nova Scotia, 20 May. S.H. No. 133151.

O'Toole, Barry, and Grant Jordan. 1995. *Next Steps: Improving Management in Government.* Aldershot: Dartmouth Publishing Company.

Onyshko, Tom. 1993. The Federal Court and the Access to Information Act. *Manitoba Law Journal* 22(1): 73–144.

Organisation for Economic Co-operation and Development. 1995. *Governance in Transition: Public Management Reforms in OECD Countries*. Paris: Organisation for Economic Cooperation and Development.

Osborne, David, and Ted Gaebler. 1992. *Reinventing Government : How the Entrepreneurial Spirit is Transforming the Public Sector*. New York: Plume.

Osborne, David, and Peter Plastrik. 1997. *Banishing Bureaucracy : The Five Strategies for Reinventing Government*. Reading, MA: Addison Wesley.

Parker, A. 1998. Information Bill Faces Revision. *Financial Times*, 20–21 June.

Perritt, H. H., Jr., and C. J. Lhulier. 1997. Information Access Rights Based on International Human Rights Law. *Buffalo Law Review* 45(Fall): 899–929.

Petter, H. A. 1998. Letter to Mr. Marc-André Charlebois, President. Canadian Newspaper Association.

Price Waterhouse. 1993. *Executive Agencies: Facts and Trends*. London: Price Waterhouse. March. Edition 6.

Pynn, Larry. 1998. The Very Private Business of YVR. *Vancouver Sun*, 27 June, A15.

Quebec Commission d'accès à l'information. 1997. *Vie privée et transparence administrative au tournant du siècle*. Montreal: Commission d'accès à l'information, June.

Rast, Claudia. 1984. Case Note. *University of Detroit Law Review* 62: 363–82.

Regina Health District Board. 1995. Letter to Saskatchewan General Employees' Union regarding request for contract with MDS Health Group Limited, 28 March.

Roberts, Alasdair S. 1996. Public Works and Government Services: Beautiful Theory Meets Ugly Reality. In *How Ottawa Spends, 1996–97*, edited by G. Swimmer, 171–204. Ottawa: Carleton University Press.

———. 1998a. *Limited Access: Assessing the Health of Canada's Freedom of Information Laws*. Kingston, Ontario: School of Policy Studies, Queen's University. 30 April.

———. 1998b. Making Policy Behind Closed Doors. *Toronto Globe and Mail*, 27 July, A11.

———. 1999. *Monitoring Performance by Federal Agencies: A Tool for Enforcement of the Access to Information Act*. Kingston, Ontario: School of Policy Studies, Queen's University. Available at *http://qsilver.queensu.ca/~foi/*.

Silverman, Debra L. 1997. Freedom of Information: Will Blair Be Able to Break the Walls of Secrecy in Britain? *American University International Law Review* 13(2): 471–551.

Sinrod, Eric. 1995. Improving Access to Government Information in an Era of Budgetary Constraints. *Urban Lawyer* 27(Winter): 105–28.

Smyth, Michael. 1998. NDP Tries to Stem Bad Ink. *Vancouver Province*, 26 April.

Thelen, Kathleen, and Sven Steinmo. 1992. Historical Institutionalism in Comparative Politics. In *Structuring Politics: Historical Institutionalism in Comparative Perspective*, edited by S. Steinmo, K. Thelen, and F. Longstreth, 1–32. Cambridge, England: Cambridge University Press.

Toronto Globe and Mail. 1999. Editorial: Free Up Ontario Hydro. 26 February, A-10.

Trosa, Sylvie. 1994. *Next Steps: Moving On*. London: Office of Public Service and Science.

United States General Accounting Office. 1996. *Tax Systems Modernization: Cyberfile Project Was Poorly Managed*. GAO/AIMD-96-140. Washington, DC: GAO.

Wright, David. 1994. *Special Operating Agencies: Autonomy, Accountability and Performance Measurement*. Ottawa: Consulting and Audit Canada. December.