

Keynote Address

**The Critical Role of Information in a Democracy
Toward a New Approach to Public Disclosure**

Access to Government & Corporate Information Conference

**Check against delivery*

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My hope this evening is to engage the issue of freedom of information in something other than the traditional and somewhat overburdened discourse of rights, freedom, and democracy. Not because that discourse is less relevant, but because as it is the first refuge of extremists on the right and the left, the proponents of literally all advocacy interests, political or media, the discourse point in its very ubiquity seems destined to dilute the myriad of causes in whose support it is referenced. And, as this entire conference reflects a careful reflection on information and democracy, I hope that the perspective contributed on this presentation will add some value.

Beyond the democratic frame of reference relative to freedom of information, I suggest we should examine the freedom of information issue in the context of risk and risk-management. And, in order to do so, we need to spend a moment on how the management of risks – social, economic, political, and security has changed in the last half-century.

In Canada, and in other Western countries to different degrees, the dominant post-war consensus on economic and social risk was that the state managed those risks for its citizens; in return for a relatively open economy, federal and provincial governments acted to manage the risk of unemployment, the risk of illness and hospitalisation, the risk of education cost and the risk of abject indigence and poverty. While there may have been differences of approach government to government, or country to country, the broad consensual commitment here was real. The spirit of “can do” liberalism, which emerged from the success of the war efforts against the Nazis, was a dominant political ethos in the 1950s and 1960s.

This “welfare state” framework combined with the British parliamentary and explicitly adversarial structure of our system of democracy to foster a paternalism in a host of ways – of which the management of information was but a small if important part. Part of the culture of collective risk-management by the state would and did naturally extend to the management of information in the context of the huge risks – namely the Cold War against the Communists, against whom the free world was positioned – and aiding the opposition, with whom the media are deemed to be fellow travellers, or at least alarming the public whom after all, one was, in government service to protect from a host of risks.

So, quite independent of new technologies, heightened anxieties about privacy and the impact of Watergate on trust in government in the early 1970s, we entered that era with a liberal-inspired ultra-conservative bias relative to information held and used by public authorities.

In Canada, when I worked as a legislative assistant to the Leader of the Opposition in the early 1970s and the Opposition House Leader, Ged Baldwin, MP for Peace River, was pushing so hard for freedom of information, he was doing so in the context of the liberal state that had grown so large, so expansive, so pervasive and expensive that parliamentary oversight was becoming essentially impossible. The growth of the state was a response to the management by the state of risks – economic, social, security – for its people. The push for freedom of information was a desire on the part of parliamentarians for the necessary tools for them to manage their political and representational risks relative to democratic oversight.

Keith Banting, the Director of the School of Policy Studies at Queen's has suggested that the shift in social and income security policy brought about by a mix of events in the 1970s has changed quite substantially the framework around risk management. Rather than the state expanding its

role to manage expanding life cycle risks for the population, the new consensus appears to be more focused on assuring individuals the tools they need to manage risk from themselves. These tools involve everything from literacy, to more tax revenues left in citizens' hands, to more freedom, mobility and economic opportunity. It is in the context of deleting some state functions so individuals can have more tools to make their own choices and their own way, that the concern about information as just such a tool has come to the fore.

Let us take the idea of a risk society one step further.

Anthony Giddens in an essay on risk society in the context of British politics¹ makes a distinction between natural risk and manufactured risk. The natural risks, for which we have insured either privately or publicly are different in scope and source from the manufactured risk which is produced by our own scientific and development activity – the negative drug reaction, the unsafe airplane, the exploding air bags in the automobile, etc.

Let me suggest that this “manufactured” risk concern extends in the minds of many to the roles of public and private institutions. So, whether it is tainted blood, cutbacks in education spending, waste of taxpayers' dollars, or wrong or obsolete military equipment, the notion that things can be made wrong or worse by decisions of omission or commission in our public institutions is now a pervasive part of our culture. The trust factor in a more paternalistic state, managing risks for its citizens, erodes along with deference when each of us must manage more risks on our own. Is the government of the day making those risks harder to manage by virtue of what it does or chooses not to do? Do we need to know more to understand better? Who would dare say otherwise? Everything we need to know surely exists somewhere – and our failure to have access to it, it follows, increases our exposure to risk. The point here, and the logic that access to more information is always better, becomes almost irresistible.

Part of the problem with the culture of individual risk-management is that it is given to being trapped in the same kinds of shibboleths that engaged risk-management by the state. In the state risk-management mindset, excesses by the state, oversimplification, bureaucratic delays, poor financial control, secrecy and elements of paternalism always nibbled away at the legitimacy, effectiveness, and credibility of the state and its programs as a whole. In the individual risk management framework, the liberal illusion that all risks can be managed, that all we need is more and better information and more time and freedom to choose, are similarly corrosive of our capacity to address the larger reality with a hardwired well informed perspective. The mythologies of the “state knows best” informed one set of prejudices about information and how it should be managed; the mythologies about the individual and the role of information in helping risk management, which can be equally delusive, inform many a present view of information.

What we need to remember here, is that there are conflicting and equally legitimate value sets operating at cross-purposes on the entire information and access issue within our political and risk-management culture.

¹ Giddens, Anthony, Risk Society: The Context of British Politics. In The Politics of Risk Society, Jane Franklin, ed. (London: IPPR, 1998), edited by Jane Franklin, Policy Press, IPPR, London, 1998. Pp. 23 – 34.

1. Democracy is about competition between political parties that can be installed in or relieved from government at the will of the voters.
2. Competence is about results, not just process.
3. Elections give governments a mandate to govern and make decisions.
4. Governments are accountable to the public through Parliament.
5. Journalism and media activity are competitive undertakings that seek to use information for profit, self-interest and public service.
6. Business information is both confidential in proprietary contexts and public when regulation and market convention mandates it.
7. There are subsets of these values that add to the complexity.
8. Governments should be transparent, but the stuff and substance of individual's dealings with government have a right to privacy.
9. Corporate/government interaction in some categories are often excluded from transparency frameworks.
10. Efficiency in the use of taxpayers' money, counts.
11. In the face of private, commercial, foreign, and sectoral interests, the government has a duty to protect the "public interest" because of its accountability, through the electoral process to the public at large.

Having served in both federal and provincial governments, and opposition, I can tell you frankly that all these principles and values exist without any implicit or explicit hierarchy. While some in academe or the media may find this hard to believe, they are not arranged at all in public service or politics through the exclusive prism of partisan or self-interest.

And, it is precisely here that we need to ask the most difficult questions.

Is freedom of information an instrument towards a greater good, or, is it a goal in and of itself? The answer to this question is truly important.

Let me say at the outset that I worry that we have as Canadians forgotten the distinction between goals and instruments – and our confusion here is causing us serious problems as a society. For some, sovereignty has become a goal to be protected and enhanced at all costs – despite the fact that it is often a tool or instrument to be used to achieve important goals such as peace, international human rights, or more open movement of people, capital, goods and services. The same is true of our universal health care program, which, if a goal, must be preserved, according to some, from change or dilution; if it is an instrument to achieve longer illness-free living for more and more people then we must be open to modernisation and improvement.

It is in this context that I ask you to reflect on freedom of information as an instrument for risk-management in a democracy. There are many instruments in place to help Canadians manage risk, govern themselves, and choose governments democratically – the political party, the campaign finance rules, the *House of Commons Act*, the Auditor General, the rules and procedures of Parliament, the *Election Act*, and so on. Those who serve in government as public servants or elected and appointed officials are governed by more than just freedom of information legislation. And, the use of freedom of information access instruments largely by journalists, lobbies and competing commercial interests only serves to marginalize the importance of these instruments to the accountability process for the population as a whole.

The basis upon which one makes decisions in government reflects perforce a series of critical perspectives in the public good that cannot but contextualize the role of access to information; a context without it would be seriously diminished, a context dominated by it would be seriously unbalanced.

If we live in a time when ideology is somewhat less pervasive, pragmatism somewhat more compelling and information, science and critical judgement are all part of how we seek to address the world we share, then surely the instrumentality of freedom of information must be addressed in this context.

Les Pal made the point some years ago at a Canada-UK Colloquium on the Communication Revolution² that the wired reality seems to have increased both the access to information of relevance to government decision-making outside of government, and the relatively limited role government had in managing information that was all that important.

This implies that much of the government information that is wanted by those who largely seek it is not of a nature that is essential to managing risk – because that can likely be attained elsewhere, and in a quantity and quality that is more meaningful – but is really about government itself and how it operates, and why. Which is certainly legitimate, but not always central or vital to the way we live or the real risks we manage. Would Canadian democracy be stronger if public servants adhered more fully to a robust view of the freedom of information principles but we failed to have a strongly competitive political system? I doubt it very much. So perspective is always helpful. Moreover, the trivialization of public policy – and government – by the tendency of access to information to focus on the costs of desks, cars, planes, hotel rooms, and procurements which in aggregate may be of little real or normative importance (a process aided by all political parties in opposition and decried by those same parties in government) has the effect of associating the process of information gathering with the risk of trivialized but impactful criticism. No wonder a government will seek to manage this risk as it manages others. It would not, in the circle of political and policy competence, be prudent or capable to do otherwise.

As long as corporations, foreign powers, trade unions, private and public lobbies have the right to plan in private – government must not dilute its own right, in fact, its responsibility to do so. Acquiescence here, in favour of process over focus would be a serious dereliction of duty and abdication of responsibility on the part of responsible and democratic government.

In a normal political context a government would be held accountable by a focused parliamentary opposition with the capacity to back up its parliamentary tactics with genuine electoral muscle. This muscle must be robust enough to make defeat of the incumbent administration at least possible at the next election. It is hard to blame the existing government or the neutral public service if the opposition parties cannot get their act together.

The access to information rules now in place were envisioned at a time when incumbents faced clarifying electoral risk. A cohesive and electorally potent opposition was expected. Its inability to

2 Pal, Leslie A., Wired Governance: The Political Implication of the Information Revolution. In The Communication Revolution at Work, ~~edited by~~ Robert Bryce, ed. (-Michael Queen Press, 1999).

crystallize, these days, does not mean the present regime is failing. The better part of wisdom could suggest that the “first-past-the-post-system” – meant for a two-party Westminster model, cannot and is not accommodating the more pluralistic multi-party democracy we now have.

Degrees of freedom of information – gaps between legislation, regulation, and execution are largely beltway issues and not generally salient, politically, beyond the parliamentary Precinct. So perspective here also matters.

That being said, if we return to the risk-management framework, the most compelling call for access to information is often around the need for voters to know, so they can decide. Yet, even in complex public policy debates – like free trade or, sovereignty association, or the Charlottetown Accord, there was little relationship between the level of public outcomes and the outflow of information. Legitimate emotions, passions, anxieties, and fears – as critical a part of our democracy as facts, figures, and policy evaluations, were as important as “information.” Besides, the most serious of public policy decisions – embarking on a new program, radical reform of an existing one, engaging substantive new international obligations, dispatching requirements for the armed forces to war, defy any information based modelling that obviates faith, trust, hope and belief.

When Chiefs of the Defence Staff are asked by Prime Ministers or Cabinets what the risks of any deployment might be they usually respond that if the risks of casualties were not within acceptable parameters, they would not be, as professional soldiers, recommending this deployment!

So the hopeful “reason above all” notion that any theory of public choice is driven by perfect access to all relevant information is optimistic and naive.

Besides, it is simply wrong to assume that senior corporate or government officials know more in any objective sense than outside experts or key observers. In the risk-management context this is vitally important; governments and corporations no longer have monopolies on the bulk of information that matters. Focusing on what they do have may be a serious diversion from data that does matter. In terms of risk-management, knowing the success rate of a particular heart surgeon or surgical team may mean much more than finding out how much the Health Ministry spent on advertising; which do you think interests the press more, and why is that? Trivia will trump substance every time – and doctors and hospitals can and will sue – hence the journalistic focus on advertising.

No one is at fault here; newspapers and other media have every right to chase information they believe their readers will appreciate and set aside those issues that are too complex to explain or qualify.

In the same way as Walter Lipman would distinguish between “news” and “truth” it occurs to me that we must distinguish between core public data and simple information. Putting an equal value on both is to diminish what really matters. And that only serves to dilute the salience of the process.

Let me close with a reflection on the past and a suggestion for the future.

It has always been true that information is a vital political currency in a democracy, even a practically one-party democracy like our own; this is as true in politics as the salience of corporate information is in the financial market environment.

To ensure access to core data the corporate world, at least that part that seeks to borrow or raise equity financing from the public has a very specific irreducible minimum that must be disclosed annually, quarterly, and whenever a decision or event of any materiality occurs.

Access to information legislation tends now, in the public sector, to deal with a list of exemptions, appeal processes and procedural exigencies for the applicant and the respondent. We would do better I believe in terms of risk-management if we looked, instead at a core data set that all government departments, regulating bodies, and public institutions had to disclose. In almost any Canadian jurisdiction, government is the largest corporation or consortium of corporate economic and social activity. And, if we have, for our public companies, areas of disclosure that are mandated by law, why would governments or political parties not have quarterly disclosure duties at least as onerous as a public company? Surely this is both reasonable and appropriate.

Disclosure could include basic operations, risk issues being addressed, financial and workplace pressures, off-balance sheet activities, roles and priorities of key personnel, progress and success in various programmes and ministry priorities, gaps between statutory mandates and specific areas of activity and performance; if corporate formats were followed, then departmental audit and human resource committees would also have to report regularly. Today, government tends to resist unhelpful or embarrassing trivial disclosures which are politically or journalistically motivated.

Rather than a process of continuing a painful dialogue or dialect about whether access to information requests are properly dealt with, why not engage a constructive and creative debate on what the core elements of fundamental regular disclosure should be. Our present system may only see serious disclosure if someone happens to ask the right question of the right person at the right time and place and if the answer is not in some way exempt. Surely, we would be better to simply say that every federal or provincial department must by statute comply with a public and corporate disclosure requirement laid out publicly and in some detail; sanctions here could include a range of regulated dilutions of ministry freedom or spending authority under the *Financial Administration Act*.

In this context, it is probably wise to follow the format used in provinces and Ottawa relative to Justice personnel in each department. Most legal counsels in different departments or ministries are part of the Department of Justice and are assigned to the department involved.

A Government and Public Disclosure Compliance Act could establish that Chief Disclosure Officers all come from a central organization reflective of the culture of genuine public disclosure and were assigned to departments on a professional and rotating basis.

Normalizing what must be disclosed – clearly far more than is in the anodyne departmental annual reports or annual estimates ritual and graduating from the cat and mouse game that access to information has become would make immense good sense. It would be progress with some symmetry and policy rationale. How governments could argue that they need disclose any less

than the materiality standard applied to public companies by various security commissions is not clear.

Annual information forms, quarterly reports, audit committee reports, proxy circulars, set a relatively high level of disclosure – much higher than is required at estimate time or even at budget time. As well, the symmetry between the two sectors might help broaden the culture of public disclosure for a society as a whole.

Shaping the disclosure rules around the needs for information so as to better manage risk opens up a new and constructive avenue to build a fresh public consensus on the issue of vital public disclosure. The avenue by which that consensus is built would be a truly compelling way to bring corporate, media, public service, academic and political people around a creative table – or a series of tables and get beyond the cat and mouse game that has become demeaning to both sides.

If one reflects on the public disclosure of risk-management factors for departments like agriculture, health, education, energy, environment, finance, etc., one can begin to embrace how broad and constructive this process could and should be.

In the end, the game as it now exists helps those who are in it professionally, those who strategize the governments' responses to questions and to some extent the opposition and media who either inspire or chase the most interesting or controversial questions – which is not only understandable but an integral part of our democratic system. But it is not at all clear that it facilitates regular ongoing disclosure of vital and important information about how government runs and what key risks it manages or in some cases, creates.

A Mandatory Public Disclosure Act would go a long way to ensure a minimum level of public disclosure well above what is now in place.

In the end, a disclosure format that mandated detailed financial and human resource transparency, specific updates of program activity, detailed lists of liabilities and exposures, explicit details about national, regional, and local operations, explicit reference to assets and liabilities, partnerships, working relationships with private, public, or community collaborators plus whatever other variables might be developed would go a long way to strengthening public disclosure.

It is not by any means that the present "ATI" system is utterly dysfunctional – quite the contrary. But as a responsive system it has its limitations – as a direct result of the adversarial nature of its day-to-day operations.

I believe it has a role. But I suggest to you that unless we get beyond it to a public disclosure system of regular, quarterly, and explicit specifics – we will have miles to go before the public is appropriately served at a time when collective and personal risk-management has become so compellingly central to the way we live together.