

OVERSEAS DEVELOPMENTS

CANADA

Federal Information Commissioner John Grace made his first address to the access to information coordinators at a meeting organised by Treasury Board October 17, setting out his evolving philosophy of his new job, the future policies of his office and the tone of his upcoming tenure. Specifically, he addressed the role of his office in dealing with the coordinators, government, complainants and the public. He also announced the open door policy of his office and his perceptions of collegiality between coordinators and staff of the Office of the Information Commissioner. His office shall be there to help the coordinator and the complainant alike to resolve disputes.

He validated the work of his predecessor, Inger Hansen, whose 'fierce independence and sturdy integrity have made an enduring impact on this country and the office I have been fortunate to inherit.' He went on to say that 'if you have not already heard me say it, let me repeat myself: I am most grateful to her and now, I am pleased to say, to her staff.'

The Commissioner told the assembled coordinators he recognised the importance of this job as

... you have the primary responsibility for making access rights meaningful in your institutions; few jobs in government are more difficult than that ... You are confronted with conflicting loyalties. I see myself as your helper every bit as much as I am the helper of complainants. Without your professionalism, no information commissioner stands a chance of furthering the goals of the Act; no department has a chance of being in compliance with the Access to Information Act.

He affirmed that his view as privacy commissioner remains as an information commissioner in that both

... should be above all strong advocates for the legislation itself, not of the special interest of either an individual or the government. Sometimes a commissioner will come down on the side of an individual; other times he finds himself supporting the government. Either way, if we have all done our work well and appropriately balanced the conflicting values, the legislation which we serve is the winner.

Grace communicated to the coordinators the message he gave to his staff regarding the Act and the role of an Access to Information Commissioner. The following is a direct quote of what he wrote to his staff.

It is essential that we convey to complainants and government both our determination to make the legislation work and our sensitivity to the competing claims which the Access to Information Act forces us to adjudicate. Of course, this means we should be good communicators.

My first priority is to keep open and healthy lines of communication within the office and in our dealings with government departments. We are an ombudsman's office and ombudsmen live or die on their success as persuasive, reasonable communicators.

I have never regarded not being able to make enforceable orders as a weakness of the office. In fact, it is, in an important sense, our strength. We preserve the ombudsman's role. Negotiation and persuasion often achieve what an adversarial relationship does not. The power to compel compliance without views would mean confrontation. The ombudsman's office would be in a chronic state of war with government institutions — and that is not in anyone's best interest.

Our priority must be in earning the respect and goodwill of government institutions. An effective, professional working relationship with these institutions will be the key to our success which, of course, means the public's success. I will not measure success by the number of court cases we may launch or win.

He also told the meeting that he has already met with 12 deputy ministers and will continue to hold such meetings, communicating to them the message:

We want the Access to Information Act to work and we are expecting their cooperation. In return, I will tell them that the vigor with which we pursue our investigations will be tempered by courtesy, understanding, and respect for their points of view. There will be no surprises — that is not my style. You or your superiors will not be threatened or embarrassed into compliance. I am prepared to assume good faith and we will work through our [inevitable] disagreements as reasonable adults.

He also announced he will be meeting with users, especially from the media and the business community, to hear about the problems they have experienced with either the Act, government institutions or his office.

He believes that through working together

... we should dare to achieve more: nothing less than a sea-change in the perception of the Access to Information Act. Too many, both inside and outside government, have viewed the Act as an instrument designed to snare and embarrass some government department, some politician or bureaucrat. Rather, I hope the Act will come to be seen as something more positive, much less controversial and, in the long term, much more important.

The Access to Information Act can be, I am convinced, an effective positive instrument in democratizing the information age, and a powerful deterrent to turning the public sector into an information aristocracy. To do this is to bring an access to information regime into the next generation, into the computer age, and to keep it relevant.

To add to all this, he has come up with some corollaries to his thoughts about the future of access to information and electronic networks and automated systems, the role of government and his office in regard to the Access to Information Act.

1. Government information holdings in electronic data bases most desired by the public should be made easily and routinely available to electronic access. The new term is 'electronic democracy'.
2. Departmental information and communications for public affairs functions should be coordinated.
3. The Information Commissioner's office should play a key role in being an information resource center. That will require more technical expertise and policy development in my office.

He observed that he begins his term of office profoundly convinced of two things:

First, there remains, indeed grows, widespread public support for access legislation. The cynics and critics will not carry the day; the usage of the Act will continue to increase. There will be public outrage at any perceived governmental stonewalling on issues in which taxpayers see a vital personal interest.

The second strong conviction I bring to my new office is that, unpopular as the Access to Information Act may be in many institutions — public servants at all levels have not set a deliberate course to thwart the legislation.

In concluding his address, Grace reaffirmed his commitment of what can be expected from his office:

1. We will be ready to discuss cases and exemptions at the staff level to the full extent possible without compromising our ability to investigate complaints.
2. We will not do your work for you but we will emphasise cooperation, discussion and negotiations. We will not leave you guessing as to what remedial action will satisfy us.
3. There will be no surprises. We may disagree about some cases, but I assure you that no adverse findings or no notice of court action will go to your minister before senior officials have been consulted and every effort made to resolve the dispute.
4. We will make every effort to be consistent in our approach. Again, no surprises.

All that, I think is good news: a new commissioner has the luxury of building upon the past, of stepping back, taking a deep breath and trying new beginnings.

He also said that he was not going to be soft and that while he is going to lower the temperature of the debate and go to court less (with four court cases that had been filed in Federal Court already resolved). But he told the coordinators that

... if I am convinced that I am right and departments are wrong, I will be determined to get my way, even if that means resorting to the courts. Being reasonable and cooperative does not mean standing by and watching the law being flouted. Indeed, I am already r stive about endemic delays which I regard as simply unacceptable.

The speech underscored the new Commissioner's commitment to the Access to Information Act and was, according to observers there, enthusiastically accepted by those in attendance.

JAPAN

Though about 167 municipalities and regional government in Japan have some form of freedom of information law, there is still deep-rooted resistance to having any form of law at the federal level, according to Professor Yoriaki Narita of Yokohama National University. He is also chairman of the Freedom of Information Council, a government advisory panel.

Despite the flood of information on government activities, ranging from details about diplomatic movements and the activities of government officials to the numerous scandals that have beset Japanese politicians in the past decade, that appears in the 24 daily newspapers that crowd Tokyo news stands, secrecy continues to be the by-word in Japan. In this highly literate society the term 'information mania' has become a buzz word to describe those obsessed with collecting data. Yet, says Narita, when it comes to finding out what government is doing and why, the Japanese find a shroud of secrecy enveloping government. Powerful bureaucrats who control their own files and take them with them in their moves within government appear to prefer it this way.

Narita recently told the *Los Angeles Times* that

Japanese bureaucrats revere secrecy. Our corporate administration may be a model for the 21st century, but Japan's administrative procedures are still in the late 1880s. When it comes to politics, we're still in feudal times.

Thus, a rigid bureaucracy has evolved which includes often not writing things down but making policy or exhorting new administrative measures over a cup of coffee or in a phone conversation.

While there are open government laws at the local level, many activists, such as environmentalists and parents attempting to exert pressure for change within the educational system, are finding that the hard-nosed bureaucrat approach extends down to the local level. Shigeki Okutsu told the *Times* that

things are basically closed in Japan. The bureaucrats don't think they have any obligation to release controversial information. The last thing they want is an open debate on their decisions.

Essentially, critics of the existing laws say that they make things look great on paper but are not responsive to the citizens in reality.

It would appear, according to statements made by Masau Matsumura, director of government information systems at the Management and Coordination Agency, that the central bureaucracy's position is that the problems that would be created by an information disclosure law would far outweigh the benefits to society. 'We don't think in terms of citizens being able to seek information based on their right to know,' says Matsumura. 'That hasn't been the spirit behind any of our laws until now. It would be a drastic change if anybody could go to a government agency to demand information and fight it out in court if disclosure was denied.' His main worry was information found in confidential documents might be discussed in the courts.

He went on to say he supported the belief that most Japanese people appear to support the idea of a powerful and benevolent bureaucracy working for the public good behind an opaque screen. 'Administrative procedures may be well codified and transparent in the United States,' said Matsumura, 'but our duties are far more broad. People have high expectations that we'll do all kinds of things for them, and our informal role is very large. This is the Japanese consciousness.'

Though there is a great deal of pessimism concerning the development of disclosure-type laws in Japan because of the deep-rooted belief in the bureaucracy itself and the informal manner in which bureaucrats conduct government business, some of the local laws are taking hold and showing good results. The Prime Minister's Office continues to review the question and some observers believe freedom of information will be accepted at the national level at some future date. As an example, on a somewhat similar issue — data protection — a law had been resisted for years but was finally passed when Japan decided to deal with the demands of the OECD guidelines on privacy, and developments in Europe. While freedom of information represents the other side of the privacy coin, it is also the rough side and the one most likely to meet stringent barriers from an entrenched bureaucracy. What Japan is going through at the moment, in terms of internal resistance, is similar to what has happened in all jurisdictions that have some kind of access statute on their books.

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