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Darce Fardy, President, Right to Know Coalition of Nova Scotia

The theme of your panel today is “Balancing the Right to Know with a Government’s need for Discretion”. Here’s my two-cents worth on that.

Nova Scotia’s FOIPOP Act of 1994 is a pretty good one and distinguished from all others in Canada and probably around the world for its purpose and its reach. I am satisfied it offers all of the protection a government needs, to work beyond the public glare when warranted. Having read the freedom of information debate in Hansard, after the Savage government introduced the new legislation, it is clear to me that the balancing done by the drafters of the Act and the government which introduced the legislation appeared to satisfy all sides of the House of Assembly.

I’m looking forward to hearing what the panel has to say on this.

Now let me get to what I advertised. I want to posit the view that

“Transparency is good politics as well as good policy?”

Those in power believe that transparency and accountability is good policy, because they have initiated FOI legislation, but they don’t seem to see it as

good politics.

What I don't understand is why government and public bodies do not see the inherent threat to public confidence and support when they refuse to be transparent.

Consider the awful situation in Newfoundland where a large health board thought it better to hold off informing cancer patients that their tests were faulty. What were they thinking? Cancer of all the diseases. It touches so many

While that is by far the worst example of denying information and suffering the consequences, there are many others: The sponsorship scandal; the difficulties the federal government is experiencing now, even though in the last election campaign that party offered to "clean up Ottawa" and be completely transparent.

Just this past Monday Canadian Press reported that the federal government had quietly killed a giant information registry that was used by lawyers, academics, journalists and ordinary citizens to hold government accountable.

The Co-ordination of Access to Information Requests System is a data base allowing ordinary citizens to identify millions of pages of once-secret

documents that became public as a result of freedom of information requests over many years.

It's killed, we are told by the Treasury Board, because it was not valued by government departments.

The Auditor General fears the government is trying to stifle her office.

On the comical side we saw on television recently (We must be able to see humour in everything) a young Conservative operative scramble down the backstairs of a hotel to escape journalists. You know the story. The Tory party decided to share information on election spending to a select few journalists.

The government apparently believes these events may be hot buttons for journalists and a few others, but will not register with the general public.

They may be right. Governments will be hard to convince that transparency is good politics.

Here at home, we have witnessed the refusal of the Commonwealth Games committee to give out information about their application, to the extent that they lost public support. I know it was costs that led to the cancellation of

the Games application but who says stronger public support may not have changed minds. I am told a former official of the committee has said he now regrets not providing the information that was sought.

Politicians and bureaucrats must accept that individuals have a right, it's not a privilege, under freedom of information legislation to get the information they want and need to be able to reach informed conclusions about the worthiness of government programs. Our courts have said exceptions to disclosure should be "rare".

Few people seem to care... certainly not enough to influence decision makers..

So groups like our coalition are going to find it even harder to ignite citizen interest in freedom of information.

In fact research reveals that more and more Canadians are losing interest in all civic engagement including voting. And that of course is what democracy is all about... exercising one's ability to influence societal change.... and not just at election time. Statistics reveal that in Canada between 1992 and 2005 more than a million hours a day of unpaid activity was lost.

What do you think is causing this disengagement? I don't think we know.

Best guesses include: lack of time because young parents use up all their spare time getting their kids to and from whatever with the help of the grand parents; a more demanding work life; or perhaps **an insurmountable divide between the people making decisions and all of the others that are affected by them.**

If this divide is there do we care, is it serious?

A government or municipality or other public body that wants to do its business behind closed doors might welcome this development.

In an op-ed piece in the Globe and Mail last Thursday Lloyd Axworthy, former long time Liberal politician (foreign minister) and now President of the University of Winnipeg said: **Secrecy is a nasty virus that can lay low the body politic.** The op-ed had to do with national security as an excuse for secrecy but it applies generally.

Alastair Roberts, a Canadian professor at Syracuse University in New York state, is a recognized expert in freedom of information legislation in Canada.

In no uncertain terms he says there is a "culture of secrecy in government in

Canada” at all levels. And he holds out little hope that politicians and senior bureaucrats are going to give up power to the citizens willingly.

Freedom of information legislation has been described as a shift of power to us, the citizen from them, the politicians and the bureaucrats.

This does not go down well within government. And it seems that for now not enough Canadians care enough to try to do something about it. There is no sense that the power has really shifted.

I believe that at least one of the major causes for apathy, indifference and even cynicism and distrust among Nova Scotians - witness disturbingly low voter turnouts - is a reluctance by government (provincial and municipal) and other public bodies to live up to their obligations under our FOIPOP Act.

These obligations include full transparency. Our act calls for “full accountability” and the courts have noted this.

So unless and until someone comes up with something better, I am persuaded that this reluctance to follow the freedom of information legislation is a major reason for this dis-engagement. I’ve seen enough evidence of this over 13 years of involvement in citizens’ right to know. So is it good politics to turn off so many citizens. Good politics is not about winning elections, it is about

ensuring that those who can, will participate in the electoral system as well informed citizens. That's the real test.

The right to know advocates who work in government, and I'm sure there are more than a few, should look to our courts for comfort and support..

Justice Gerard La Forest of the Supreme Court of Canada, now retired, wrote:

“The overarching purpose of the access to information legislation is to facilitate democracy. It does so in two related ways. It helps to ensure that citizens have the information required to participate meaningfully in the democratic process and, secondly, that politicians and bureaucrats remain accountable to the citizenry”.

Justice Louise Charron of the Supreme Court of Canada believes **“The legitimacy of municipal decisions does not spring solely from periodic elections, but also from a decision-making process that is transparent, accessible to the public and mandated by law.”**

Justice Roscoe of the Nova Scotian Court of Appeal, in McLaughlin v. Bridge Commission, (1993) said our Nova Scotia Act **“is to be construed liberally in the light of its stated purpose”**.

In O’Connor v. Nova Scotia (2001), Justice Saunders, taking note that the wording in the purpose of our act calls for full accountability wrote: **“I conclude that the legislation in Nova Scotia is deliberately more generous to its citizens and is intended to give the public greater access to information than might otherwise be contemplated in other provinces and territories in Canada.”**

When I became Review Officer in 1995 there was only one FOI court case.. During my time in the job there were 29. In the majority of those cases the courts came down on the side of disclosure.

Despite those supporting court cases I’ve concluded after my 13 years as an involved observer, that our Act is not living up to its potential. Far from it. In some ways it’s broke. That is certainly the view from many people who have

used it.

It seems all governments, everywhere, pass FOI legislation with great fanfare and then wish it would go away. Some may be marginally better than others. I correspond with a world wide group of freedom of information advocates in more than 60 countries around the world. There's not much good news.

As I preparing my remarks for today I was shown a long letter from a senior public servant to an applicant. The letter described to the applicant the process to be followed. The applicant who already knew the process, found the letter patronizing, insulting and frustrating.. And no wonder. It was chock full of dense and turgid prose, with a helping of legal jargon all of it a preamble to the news that it would be months before the application would be resolved.

And that raises the delay problem. The original application was made months before that letter was received. I guess the author would not agree that delay is tantamount to denial. But we all know it is.

I have to confess I was pretty upset when I read the letter. I believe I worked

hard over thirteen years to promote the legislation and to make the Act user friendly.

One of the reasons we formed our right to know coalition was to encourage people to use this essential tool of democracy, as our courts have described it, and show them how to use it in the best interests of the applicant and the public servant who deals with applications.

So are we surprised when applicants receive a letter like the one I refer to that they throw up their hands.

I'm convinced that the problems can only be fixed by public servants and I believe public servants have the power to do it. You may smile at that. Czar Nicholas is said to have said: "I don't rule Russia; ten thousand clerks do".

But I am serious. There are already a goodly number of FOIPOP administrators who promote transparency within their own departments. I'm sure their strategy includes getting to know the Act better than anyone else in the department and that I believe is the secret. That makes it a lot easier in my view to speak truth to power.

What I am proposing, I believe meets, one of your organization's mandates: *Advocating the values and ideals of public service.* What better public service than helping to ensure that our citizens are provided with information that will allow them to make informed and intelligent decisions on government practices and policies.

It's understandable that many applicants are unfamiliar with what is required... what to do and how to do it. What they don't need is obfuscation and unnecessary delays. This is not a gotcha game... it's the law.

Public servants can exercise their power by ensuring that applicants get the assistance and encouragement they need, and by encouraging senior officials to support the Act with some vigour.

You know I often think that a dollop of common sense, a commodity growing rarer every day, should also be used when interpreting the Act. I believe that any reasonable person asked whether the families of suicide victims who died while patients at a hospital should receive a hospital report

on the suicides, would answer “of course”.

“What is fair” is another question to be asked.

I believe the spirit of the FOI Act requires those kinds of questions.

Was it *fair* or did it *make sense* to have the employees of the Shelburne Boys’ Home wait more than a year or more to learn what accusations of abuse had been made against them and to react. Was it fair to leave them to walk around their small community with a cloud of suspicion over their heads and with no opportunity to respond to the particular accusations? I think I can predict your answer.

There is a reason why I used to advise the public servants and applicants for that matter that only on rare occasions does one need a lawyer’s interpretation. Legislation looks forbidding but it isn’t. I frequently argued lawyers’ interpretation with no legal experience.

I don’t mean to discredit the work of lawyers. But a lawyer’s interpretation of legislation and advice is more often than not “by the book”. It’s the way

they are trained. Perhaps they would not ask the questions: Does it make sense? Is it fair?

So let me finish this bit with a little advice to public servants handling FOI applications.

Don't seek a lawyer's advice unless it is absolutely necessary. I give the same advice to applicants.

Make your own decisions. Don't pass them through some type of "clearing house". If that is necessary then an applicant is wasting his or her time going to the department FOIPOP administrator.

And when faced with an application I urge FOIPOP Administrators and senior bureaucrats to first ask themselves "**Why not disclose?**" instead of what many of them appear to ask themselves: "**Why should we disclose?**"

Our Democracy 250 group is now out talking to students and others about the importance of civic engagement. That's commendable. Especially given recent statistics I cited above.

But I hope the Democracy 250 group goes farther and recognizes, as our Right to Know Coalition does, that causes must be explored to try to explain

this disengagement.

We believe the low voter turnouts over the past several elections is disturbing if not dangerous and it has to be addressed at the highest levels. We are told on the Democracy 250 website that 1.2 million Canadians under the age of 25 did not vote in the last federal election. In fact more than eight million eligible voters didn't vote in that election. Only 50-odd percent of the eligible voters bothered to cast ballots in the last Nova Scotia election. Since the result was a minority government it appears safe to assume that the government in power now is there with the expressed support of less than 30% of our eligible voters.

We don't know for sure why people don't bother to vote but everyone seems to agree something has to be done. Last year I watched four former prime ministers on television fretting about low voter turnouts. I did not hear any of them talk about secrecy and transparency and accountability.

In an op-ed piece in the Chronicle Herald last year I opined that "secrecy breeds suspicion, suspicion breeds cynicism and cynicism breeds frustration and indifference" and even mistrust.

The result... low voter turnouts.

So let's concede no one knows the reasons for voter apathy. So we start with a clean sheet of paper. We know Nova Scotians don't have much time for their politicians. All you need do is ride a bus... or read the polls. The most recent polls I have seen indicate that 75% of Canadians do not trust their politicians. This is up 27% since 1994. The media which normally play up these figures, may want to reconsider. The same poll shows more than 50% of Canadians don't think much of journalists. Views on lawyers were also polled and results show that about 60% of Canadians have problems with that profession.

So what's bugging Canadians?

Are they right

- that most politicians are crooks? I don't accept that at all.
- that most bureaucrats are lazy and incompetent. That's not true.
- that politicians look after themselves first, their friends second and the rest of us when they have to? I don't think there's enough evidence to support

that depressing view.

So if we agree that cynicism is rampant and dangerous in a democracy, what do we do?

My suggestion is pretty simplistic. Open up. Tell it all! I see no better suggestions.

I believe a better informed electorate would be more likely to turn out on election day because they would know that government is listening.

I concede this isn't going to happen overnight and that those who promote transparency in government face an uphill battle.

To quote the Ontario Information Commissioner, Ann Cavoukian: **“Secrecy is inherently attractive to governments and demands for accountability through use of the law butt up against the instincts of self-protection on a daily basis.”**

**“A fair and honest narrative of the bad is a voucher for the truth of the good.”
- Thomas Jefferson to Matthew Carr, 1813. ME 13:264**

I don't know if I made my case about transparency being good politics... but thanks for listening.

