

## **TRG Brief**

# The Public's Right to Know

**IPAC Toronto Regional Group**

**Wednesday, October 31, 2007**

This was the second annual event co-sponsored by IPAC TRG and the Information and Privacy Commission dedicated to exploring issues related to the right to know. The purpose was to examine what appointed officers of the Ontario Legislature are doing to advance the right to know and what is the state of practice in the province.

The panel consisted of officials appointed by the Ontario Legislature, all of whom have mandates that involve the right to know: Ann Cavoukian, Information and Privacy Commissioner of Ontario, Justice Sidney B. Linden, Conflict of Interest Commissioner for Ontario, Andre Marin, Ontario Ombudsman, and Jim McCarter, Auditor General for Ontario.

### **Ann Cavoukian, Information and Privacy Commissioner of Ontario**

In opening remarks, Ann Cavoukian explained that from her perspective, information does not belong to government, it belongs to the governed, the people. Access to that information is a right of the governed, one of the cornerstones of an open and transparent political system, and a foundation for democracy. Two decades after the introduction of freedom of information legislation in Ontario we still encounter government reluctance and even refusal to disclose information. The issue of transparency and accountability in government has come to the forefront in recent years, prompted in many ways by the Gomery Commission into the federal Sponsorship Program.

The Canadian Newspaper Association (CNA) recently released its second annual cross-Canada audit of the effectiveness of freedom of information laws. They found that some government institutions refuse to divulge even the most basic information and stonewall requesters in an attempt to avoid disclosure. The federal government performed very poorly; it came last in the ranking of how jurisdictions responded to the CNA's audit.

In Ontario we have a lot of improvements to make, but we do have a robust process in place, and the IPC handles record numbers of requests each year. The rate at which government offices respond to requests on time, that is within the 30 day deadline, continues to increase significantly. There is an efficient appeals process in place, and government agencies in Ontario are getting the message on how important our access to information laws are. The courts and children's aid societies are not currently subject to the IPC's jurisdiction, which concerned Cavoukian.

Cavoukian expects that the Ontario government will review the current legislation, and help ministries improve compliance. She intends to lay out for the new

government the most serious shortcomings remaining in the legislation, and propose reforms.

**Andre Marin, Ontario Ombudsman**

There is a new era emerging regarding "the right to know" in municipalities. The province recently passed Bill 130 which amended the Municipal Act to bring all municipalities within the jurisdiction of the Ontario Ombudsman—unless the municipality sets up its own ombudsman process. With that way out, the Province blew it, said Marin. Things happen in municipal councils where there is no access to information. Under the legislation, municipal council meetings have to be held in the open, but the legislation provides no standards for openness, no guarantees, and no definition of what is a "meeting". Oversight can be provided by city employees who report to the municipal council, which makes the process appear to be a farce.

The Ombudsman has written to all municipalities to ask for a report on their ombudsman policies and how they are setting up investigative bodies. Results of this survey will be posted on the Ontario Ombudsman web site.

Andre Marin's remarks can be seen at [Discussion paper: "Transparency or Puffery?"](#)

**Jim McCarter, Auditor General for Ontario.**

The Independence of the Auditor is preserved by the fact that the Legislature appoints the Auditor General for a term of 10 years and the provision that the Auditor can be removed only by a vote of the Legislature.

The bulk of audits conducted are "cost-effectiveness" (value for money) types of audit, and audits are conducted across whole of the public service, including the broader public service (BPS), which includes municipalities, universities, school boards and hospitals.

There is wide support for the mandate of transparency, and an extended scope of auditing in Ontario. For example

1. The BPS is now audited;
2. The auditor is now required to pre-approve all government advertising;
3. The Fiscal Transparency & Accountability Act now requires the government to publish a pre-election financial report on the government's expected future fiscal results, with an opinion from the A.G. on the reasonableness of the fiscal forecasts
4. The auditor conducts audits by special request (a recent example being the Bruce Nuclear enterprise); and
5. There is now better reporting on customer service and waiting times etc.

Areas of continuing concern include: when and how key program outcomes are reported; cherry picking of performance reporting; and procurement decisions.

[See the link to Jim McCarter's presentation that accompanies this TRG Brief.](#)

## **Justice Sidney Linden, Conflict of Interest Commissioner**

Each of the legislative offices serves the Legislature and the public.

My role is to assist in improving services to the public and to improve the caliber of the public service. In general that means strengthening the principles of public-service, openness, accountability and transparency of Ontario and strengthening the ethics and accountability of the Ontario Public Service. The Ontario Public Service has a reputation for excellence - and there is still room for improvement.

The Gomery inquiry on federal sponsorships and the Bellamy inquiry on the City of Toronto computer leasing issue have been watershed events in turning public and government attention to improving standards of transparency and accountability.

Secrecy leads to suspicion - and often prompts public inquiries. But inquiries are expensive. It is preferable that public bodies should honour the public's right to know without the need for such cumbersome processes.

Recent amendments to the Public Service Act established the Conflict of Interest Commissioner, to develop and administer standards of ethical conduct of appointed officials and employees. The Integrity Commissioner has a similar function for elected members of the Legislature.

As Conflict of Interest Commissioner, I am responsible for three areas: a) conflict of interest standards and compliance in specific cases; b) political activity by public servants; c) financial disclosure. The Commissioner must ensure that each agency's standards are publicly posted or set by legislation. Deputy Ministers may refer individual cases to the Commissioner for decision.

Each ministry will be able to establish its own rules, and once approved by the Commissioner, they will be posted on the Commissioner's web site.

The purpose of financial disclosure is to assure that there is no conflict of interest between an employee's investments and/or activities and ministry programs.

As Conflict of Interest Commissioner, I look forward to contributing to the confidence of Ontarians in their government.

## **Questions**

**Q.** Mr. McCarter, as an accountant who doesn't necessarily have expertise in each program area - how can you audit value for money?

**A.** We engage outside experts and we identify benchmarks used internationally.

**Q.** Do conflicts or duplication arise between the oversight offices?

**A.** There is currently more work than we can handle, so conflicts are quickly resolved. We have different mandates. For example, the Ombudsman doesn't look at value for money, but rather whether a program is managed in an oppressive or unfair way.

**Q.** What should citizens do?

**A.** Ask questions! Participate. Speak up. If you apply for information under the Freedom of Information Act and don't get an answer, appeal to the Commission.

Justice Linden: "Complacency is the worst enemy of transparency"

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