



By Dean Beeby

I began using the *Access to Information Act* as a young journalist during the golden age of freedom of information (FOI) in Canada, the period just after the bill became federal law in 1983. All of us were neophytes then, both the requestors and the bureaucrats. No one really knew where the loopholes in the legislation were, and no one really understood the consequences of flouting the law. The bureaucrats and politicians were largely on their best behaviour. The number of requests filed each year was small. The inboxes were manageable.

The Mulroney years were bountiful, despite frustrations. The virgin field of FOI produced a bumper crop of stories about government waste and hypocrisy. A couple of my own books could not have been written without successful access requests. Journalists would never acknowledge it at the time, but those were the salad days. The courts were supportive, and the information commissioner was a crusader in our corner.

Things changed in the mid-1990s. The Chrétien program cuts of 1995 cleared out the clerical ranks, and left the government's document-filing systems in chaos. Bureaucrats and politicians became more obstinate about releasing embarrassing information after it became clear there were no serious penalties for impeding access—no one

was ever jailed or fined. And the information commissioner, it turned out, had only moral suasion to offer in most cases. Still, requestors became more educated and aggressive. Both sides were still reasonably matched in the tug-of-war over documents. The sponsorship scandal was evidence that great FOI-based stories were still within reach. Call it the silver age of FOI in Canada.

In 1998, the number of *Access to Information Act* requests spiked as new political forces shook up Canadian public affairs. The *National Post* was founded that year, and gave itself a strong FOI mandate. The Reform Party of Canada also became the official Opposition in 1997 and, using its new parliamentary resources, soon took better advantage of the *Act*. The result was a sharper, better-informed opposition and press, bringing more depth to public debate.

The Reform Party became the Canadian Alliance in 2000, then was folded into the Conservative Party of Canada in 2003, which went on to form the government in 2006. The party had become familiar with the *Access to Information Act*—especially its loopholes—during its years in opposition. Once in government, Tory officials quickly exploited the weaknesses of the *Act*. Cabinet documents are largely excluded from the reach of the *Act*—and so the definition of cabinet confidences was

soon stretched to include a broad swath of material that once was readily accessible. Time-consuming consultations with other government departments are permitted under the *Act*, and suddenly requests were subject to lengthy consultations. In the meantime, the information commissioner's office, once an FOI beacon, lost its fervour. Junior staff replaced aggressive veterans, and the commissioner championed high-profile cases but allowed too many requestors' complaints to grow stale from neglect. The age of lead had arrived. Canada, once a global FOI leader, had become an international laggard.

The future of FOI is bleak under a government that pays lip service to openness, and tries to distract with the Open Government initiative, which pushes databases but steadfastly refuses to allow citizens to pull information. Fee increases seem inevitable. The challenge now is to build an FOI coalition, including businesses and journalists, that by the next election in 2015 will clamour for an access-to-information regime designed for citizens rather than governments.

*Dean Beeby, deputy bureau chief in Ottawa for The Canadian Press, is a frequent user of FOI systems and has conducted FOI seminars for the CBC, the CAJ and others.*