

CONFERENCE PROCEEDINGS



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Office of the Information Commissioner of Canada

30 Victoria Street Gatineau
QC K1A 1H3

Website: www.ci-oic.gc.ca

Library and Archives Canada

550 boulevard de la Cité Gatineau
QC K1A 0N4

Website: www.bac-lac.gc.ca

Canadian Commission for UNESCO

150 Elgin Street, P.O. Box 1047 Ottawa
ON K1P 5V8

Website: <http://unesco.ca/home-accueil>

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MESSAGE FROM SUZANNE LEGAULT, INFORMATION COMMISSIONER OF CANADA

I would like to thank our partners who greatly contributed to the success of the Transparency for the 21st Century Conference: the Department of Justice Canada, the Treasury Board of Canada Secretariat, Library and Archives Canada and the Canadian Commission for UNESCO. I would also like to thank those who collaborated in the development of the program: the Canadian Committee for World Press Freedom, the Library of Parliament and Carleton University's School of Journalism and Communication. I also pay tribute to the international delegates, my Commissioner colleagues, and to all of those who contributed to this Conference by fueling the discussion on the importance of transparency and accountability in our society.



My vision for the Conference was organized around five key objectives. The first was to gather all of the expertise and commitment to government transparency together in one place so we could begin to develop a stronger community and to break down the silos. The second objective was to create a common understanding about the right of access to public information and assert it as a fundamental human right. The need to find the right balance between transparency and required protections was a third objective. Fourth, I hoped that Conference participants would find a way to rethink our transparency platforms as the Fourth Industrial Revolution or “technological revolution” is upon us. Finally, together, we need to discuss and anticipate how access to information will keep pace with the rapid transformation of our economies and societies.

The Conference made significant headway on all of these fronts. I was pleased to witness access to information specialists, open government advocates, open data architects, information management specialists, archivists, historians, journalists, along with advocates for indigenous rights, civil liberties and human rights, come together to share best practices and plan for the future. The various interactions throughout the Conference validated my belief that we have all of the resources to succeed as a strong community and that there are many achievements we can celebrate.

The Conference confirmed that transparency has a profound impact on people's lives, notwithstanding where they live. We all recognized that information is one of society's most valuable assets.

It also confirmed that the balance between secrecy and transparency is ever shifting and dependent on factors such as political realities, technological advancements and cultural and national differences. From every perspective, however, there was the same call to action: it is time to establish the right balance between transparency and the protection of certain interests. The status quo is no longer acceptable.

There is no question that the tremendous capacity, knowledge and expertise that resides in the groups and individuals who work in this challenging field, can be leveraged to advance our collective quest for transparency. This work is too important and too urgent for us to continue to work in silos.

The Conference reminded us that we still have important work to do and we need to continue to work together to find a way forward.

MESSAGE FROM DR. GUY BERTHIAUME, LIBRARIAN AND ARCHIVIST OF CANADA

There is a fundamental link between transparency, history, and the progress of democratic society.

As the central repository of our country's history, Library and Archives Canada (LAC) recognizes that public trust relies on knowledge and institutional openness. As part of its day-to-day business, LAC provides access to historical evidence that helps to empower communities, guide decision-making, and resolve issues. In an era of "post truth", it is more critical than ever to recognize both the value of libraries, archives and other memory institutions as the purveyors of knowledge, and the importance of defending the public's access to the records and documentary heritage that inform their history.

In March 2017, it was my pleasure to co-host the *Transparency for the 21st Century* conference. Over the course of three days, attendees were provided with diverse accounts of how transparency has served academics, journalists, citizens, and governments themselves. Speakers and panelists outlined their respective visions for the future of transparency in Canada, and provided examples where open government has succeeded and where it has fallen short. The differing perspectives and experiences of individuals from an array of professional backgrounds was extremely stimulating, as were the lively and challenging discussions that they prompted.

Events such as *Transparency for the 21st Century* allow the concept of access to information to remain top of mind. As a firm believer in bringing history into the personal sphere, it is my view that a proactive approach to making digital and physical records available broadens our capacity to know ourselves and others, and will inform important conversations today and in the future.



1

PANEL

RIGHT TO KNOW: INTERNATIONAL PERSPECTIVES

MODERATOR

Brian Beamish
Information and Privacy Commissioner
Ontario

PANELISTS

Joel Salas
Commissioner
Institute of Transparency and Access to Information
Mexico

Ambassador Per Sjögren
Ambassador to Canada
Sweden

Toby Mendel
Executive Director
Centre for Law and Democracy

Nancy Bélanger
General Counsel
Office of the Information Commissioner of Canada

Elizabeth Denham
Information Commissioner
United Kingdom

QUOTES

« Le droit à l'information est essentiel pour améliorer la transparence et la responsabilisation et pour lutter contre la corruption ». [Traduction] Joel Salas, commissaire, Institut de la transparence et de l'accès à l'information du Mexique

WHAT WE HEARD...

The panelists for this session discussed the merits of various models for protecting the right to know and its relationship with open government/data/information initiatives.

Tool for evaluating access to information regimes

The Right to Information (RTI) rating system was developed by Access Info Europe and the Centre for Law and Democracy. It was described by panelists as “an incredible advocacy tool” because it allows for the assessment of the legal frameworks for access in countries around the world. The RTI uses 61 indicators, in seven categories, and allows for an assessment of existing laws. The RTI is based on international law, standards and best practices. It is noteworthy that many newer laws got better scores than those that have been in place for years.

Strengths and weaknesses of their regime

Participants also heard the Mexican access to information legislation described as a “good model” that is now ranked first under the RTI rating system. Anyone in the world has the right to ask for any public information from Mexican authorities, and the legislation has been credited with improving transparency and fighting corruption. In Mexico, the primary concern is to increase the use of access to information provisions, especially by people of lower economic or social standing, as it will help to guarantee the security of their other legal and human rights.

In Sweden, requests for access to official documents are handled immediately. There is a strict application in practice: a public servant must leave all pending work and focus on providing the information to the requester. Swedish courts have ruled in favor of a time limit of two to three days, even in very difficult cases.

In Canada, access to information rights is viewed as a key pillar in a healthy democracy. However, the Canadian Commissioner’s recent modernization report highlights the need to amend the federal *Access to Information Act* in order to strike the right balance between transparency and interests that need to be protected.

Despite the public’s right to know, panelists noted that the culture of secrecy is well entrenched in modern democracies. In Canada, Commissioners are often faced with a predominant challenge balancing access to information and privacy rights.

In the United Kingdom, exemptions under freedom of information laws, which are designed to prevent a specific harm, are often subject to a “public interest” test. As a result, public authorities must keep the principles of openness and transparency in mind and recognize that, in some circumstances, the public interest will trump concerns about harm.

Panelists also discussed the need for reforms regarding the outsourcing of public services to the private sector. This issue has often limited transparency and denied the public’s crucial right to scrutinize contracting processes.



Open government/data initiatives that have expanded the public’s right to information

In Mexico, the right to information has guided the signing and implementation of action plans that contain commitments that go beyond the traditional standard for freedom of information. For example, seven states launched a local action plans in their jurisdictions that included a commitment to the

publication of relevant information to help solve problems such as security, pollution, corruption and infrastructure.

For its part, the United Kingdom has imposed a positive obligation, via legislation, for public bodies to disseminate key data about their activities. Businesses can use this data to create new products and services that generate new resources and revenues.

Despite excellent initiatives related to open government and open data, all panelists agreed that these initiatives would not render a legislated “right to know” redundant or irrelevant.

Tension between transparency and the Data Protection Regulation in Sweden

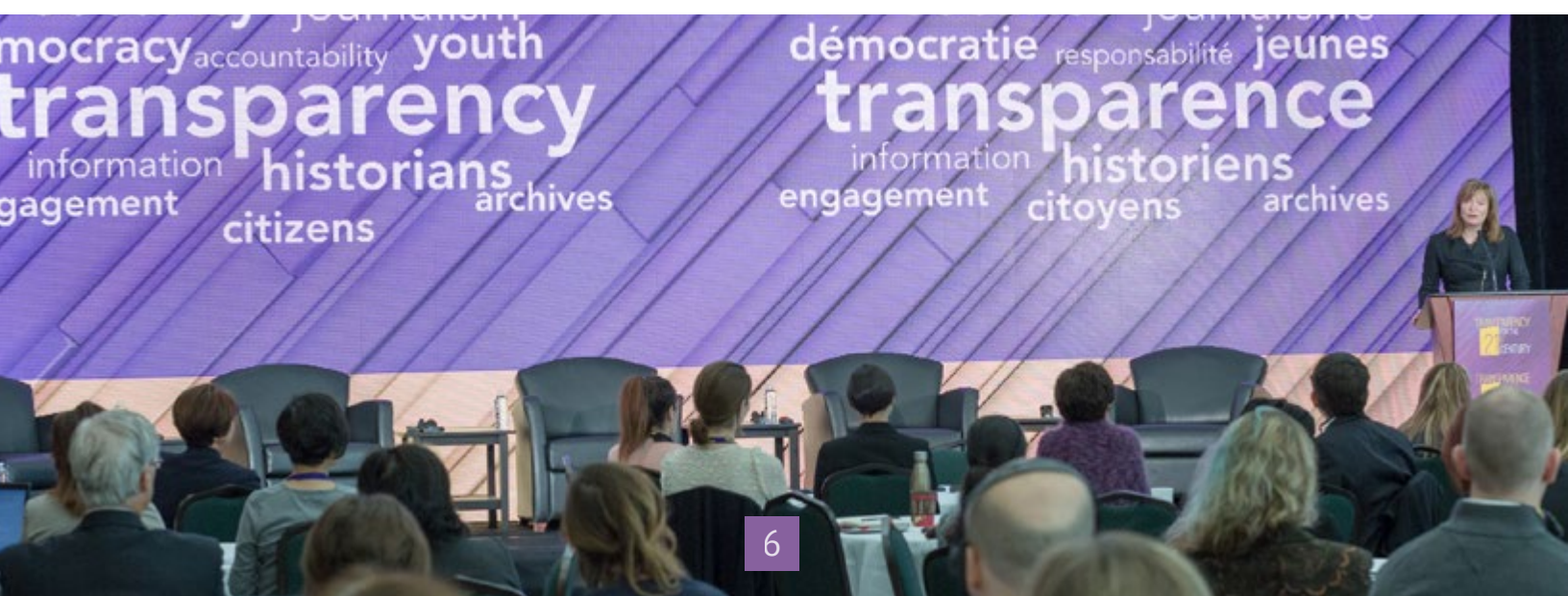
In Sweden, the potential conflict between these two interests has already been foreseen in the European Union Data Protection Regulation, which leaves enough room for a balancing of these interests at the national level.

Right to be forgotten vs. the public's right to know

Panelists agreed that there is a distinction between the “right to be forgotten” versus the public’s right to know. The right to be forgotten is an emerging and important right that provides the assurance of obscurity and deals with the linkage of related information. It reflects the right of an individual to have certain information

deleted from Internet records so that third parties can no longer trace them through search engines.

Panelists agreed that there is no simple answer as to whether the “right to be forgotten” poses a challenge to the public’s right to know, since it is a matter of how this right is recognized. This right raises a constructive conflict between privacy and access to information, and needs an appropriate balancing. This balance is more easily achieved if access to information is elevated to the status of a “proper human right.”



2

PANEL

THE ROLE OF THE FOURTH ESTATE

MODERATOR

Paul Lalonde
Chair of the Legal Committee of Transparency International Canada
Dentons

PANELISTS

Frédéric Zalac
National Television Documentary Reporter
CBC/Radio-Canada

Mark MacKinnon
Senior International Correspondent
The Globe and Mail

Daniel Leblanc
Parliamentary Reporter
The Globe and Mail

QUOTES

“Transparency is beautiful if you have nothing to hide.” – Advertising panel in Cook Islands

“Transparency is terrible if you have something to hide.” – Frédéric Zalac,
National Television Documentary Reporter, CBC/Radio-Canada

3

PANEL

TRANSPARENCY AND INDIGENOUS RIGHTS

MODERATOR

Peter Di Gangi
Research Director
Algonquin Nations Secretariat

PANELISTS

Ry Moran
Director
National Centre for Truth and Reconciliation
University of Manitoba

Gwen Phillips
Representative of the British Columbia First Nations Open Data Initiative
Director of Corporate Services and Governance Transition
Ktunaxa Nation Council

Normand Charbonneau
Assistant Deputy Minister and Chief Operation Officer,
Library and Archives Canada

QUOTES

“Reconciliation needs to retain its meaning without being appropriated into a slogan – it means something and it requires something.”

“Comprehensive claims, specific claims, land rights – title cases are largely based on proving violation of rights and, most often, it is the records in archives that show this violation most clearly.”



WHAT WE HEARD...

The focus of Panel 3 was how transparency continues to play a crucial role in the empowerment of Canada's indigenous communities and is essential to a broader understanding of their history and experiences. As the notion of access rests at the heart of transparency, it serves as the conduit through which indigenous communities may exercise their right to know and disseminate knowledge to younger generations. To help fulfil this, archives such as Library and Archives Canada have pursued partnerships with indigenous communities that are based upon respect, neutrality, communication, and a focus on the needs of indigenous users.

Panelists outlined how access to documentary heritage serves Canada's indigenous communities in a number of crucial ways. The voluminous government and administrative records accumulated in the three centuries since European colonization bear witness to the experiences of indigenous peoples and nations across Canada. At the intersection of legal action and history, access to documentary heritage not only provides the basis upon which indigenous communities can transmit experiences to future generations in perpetuity, but also serves as an important tool for supporting legal and business claims that can further enable indigenous self-governance going forward. Panelists put forward their visions of how transparency and easier access to these records can serve as key enablers of indigenous self-determination in Canada.

As in other panels, the theme of balancing privacy with access emerged during the lively question-and-answer period that followed the panelists' discussion. Panelists considered the particularly poignant example of residential school records, and acknowledged the deeply personal, and often traumatic, impact that such materials have on both communities and individuals. Other questions from the audience touched on how to break down barriers to access and dissemination of indigenous records, as well as how to ensure this material is provided with the appropriate context.

The diverse experiences and viewpoints of the three panelists gave conference attendees a better understanding of the importance of transparency and access in the context of both indigenous history and self-determination. Factors for improving transparency were identified, including the adoption of a neutral and supportive approach by government archives, and the need to enable dissemination and decentralization of particular records to the widest and fullest extent possible. While the most recent instance of the demonstrable importance of indigenous archival records came through the Truth and Reconciliation Commission on residential schools, panelists reminded the conference that archival records play just as indispensable a role in defining the future of Canada's indigenous communities as they do in building knowledge of the past.

4

PANEL

BUILDING TRANSPARENCY FOR THE FUTURE: THE ROLE OF ARCHIVES AND HISTORIANS

MODERATOR

Dr. Guy Berthiaume
Librarian and Archivist of Canada

PANELISTS

Dr. Victoria Lemieux
Professor, Master of Archival Studies
University of British Columbia
Lead, InterPARES study group on transparency

Dr. Timothy Sayle
Assistant Professor
University of Toronto

Yvette Yakibonge
Youth Advisory Group member
Canadian Commission for UNESCO

QUOTES

“Access to information laws are rebalancing a power asymmetry between citizens and governments. At the heart of access to information law are power, law, and politics.”

WHAT WE HEARD...

Panel 4 saw three practitioners of history and the archival sciences speak to their personal experiences with transparency and visions for its future. Panelists highlighted global trends related to recordkeeping, technology, and access, as well as the areas in need of improvement in many jurisdictions.

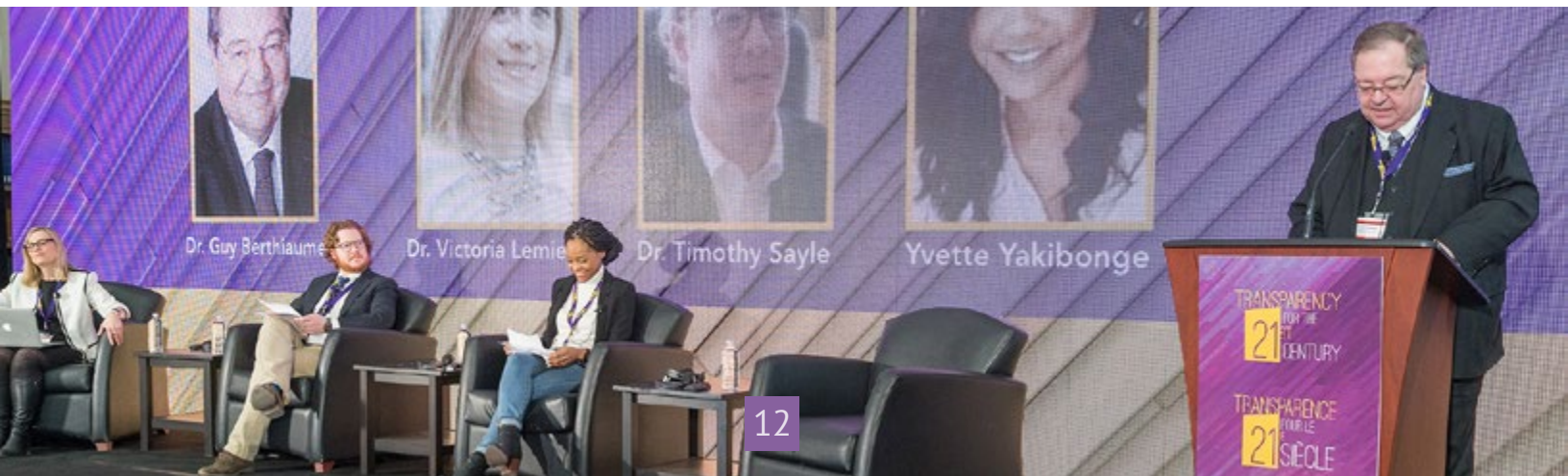
The panel looked first at the importance of sound recordkeeping in the digital era, and how the mishandling of digital records continues to pose a challenge for governments striving for transparency. While the level of digitization in governments worldwide has grown enormously, there are still significant gaps in the rigor by which digital files are preserved and made available. The shift in communications from paper to digital mediums has prompted the need for a similar evolution in recordkeeping practices; ensuring that information is appropriately stored and made accessible is a necessary activity for enabling transparency. While the extent of these gaps in records management, and the will to overcome them, vary considerably across jurisdictions, they share a common need for evolving standards to reflect the technology-centric nature of modern governments.

Panelists also looked at how transparency affects the writing of contemporary history. While some institutions have undertaken 'block review' activities to proactively declassify records, closed-by-default still remains a common reality across government. One example is Canada's currently inaccessible materials related to its international engagements in the 21st century: the blanket restrictions that still apply to these records pose serious challenges to academic

research of contemporary history, and illustrate how the current access regime in Canada can impede the work of historians. In the absence of proactive declassification, it falls to the researcher to request declassification in order to open once-sensitive government information. While improvements have been made in recent years to facilitate access to contemporary historical records, proactive declassification has not yet become a common practice for many governments.

Conversely, the panel also discussed encouraging accounts of how transparency has led to meaningful research and the empowerment of community. For example, access to documentary heritage material has played an important role for the Franco-Albertan official language minority community. This case study highlighted how making information openly available to younger generations of Franco-Albertans provided a means of building both the knowledge of their past and the capacity to maintain their identities and communities into the future. By ensuring access to collective memories, minority communities have been able to improve intergenerational education of past experiences while pursuing greater accountability on the part of government.

The panel was effective in highlighting how due diligence on the part of governments continues to play a major role in the ongoing pursuit of transparency. By providing an encouraging example of where access supported both research and culture, this panel drove home the idea that the pursuit of transparency is not done in vain and can bring significant benefits for users and communities.



FIRESIDE CHAT WITH THE COMMISSIONERS

MODERATOR

Dean Beeby

Journalist, author and specialist in freedom-of-information laws
CBC/Radio-Canada

COMMISSIONERS

Sherry Liang

Assistant Information and Privacy Commissioner
Ontario

Elaine Keenan Bengts

Information and Privacy Commissioner
Northwest Territories and Nunavut

Drew McArthur

Information and Privacy Commissioner
British Columbia

Charlene Paquin

Ombudsman
Manitoba

Catherine Tully

Information and Privacy Commissioner
Nova Scotia



WHAT WE HEARD...

During this session, commissioners from various jurisdictions across Canada discussed the challenges they face with access to information.

In order to keep up with the quickly evolving technologies, all commissioners agreed that there is a need to modernize their respective laws.

Assistant Commissioner Sherry Liang pointed out that records management is an important component of access to information, but noted that policies have not adapted to the reality of various technologies. For example, the use of personal email accounts by government employees poses a significant challenge to recordkeeping. Current policies do not take into account the need to document the information held on external servers. This results in a loss of control over important government information.

Commissioner Elaine Keenan Bengts noted that the public is now more aware of their right of access to information. She also raised the lack of enforceability of many of the recommendations made by information commissioners. For example, public bodies know that there are no consequences if they do not follow these recommendations.

According to Acting Commissioner Drew McArthur, the most active groups of access users are located in British Columbia. He highlighted that both commissioners and public bodies are confronted with access challenges. For example, public bodies often encounter the lack of sufficient resources and specific statutory timelines. Commissioners also face issues related to the interpretation of the laws. Judges are not always familiar with the legislation so commissioners must be careful when they ask for judicial review. The results may be unexpected. For example, a court ruling in British Columbia created a precedent by extending the scope of the solicitor-client privilege exemption to include the settlement privilege. Consequently, the settlement privilege is now frequently used to refuse disclosure.

Commissioner Charlene Paquin stated that defining transparency and open government is always a challenge. She highlighted the importance of a dialogue between the requester and the institution. This dialogue will allow the institution to narrow the scope and number of requests, thus decreasing the workload.

Commissioner Catherine Tully noted that access to information is a meaningful right and people generally care about this right. However, she highlighted that there is a culture of resistance across Canada – at the provincial and national level – that needs to change. In Nova Scotia, access legislation contains complicated and unnecessary clauses. She believes there is a need for a strong “public interest” override provision in the access legislation.

Although many issues are similar across jurisdictions in Canada, Dean Beeby noted that these issues are also present at the federal level and in the United States.

KEYNOTE PRESENTATION – DAVID FERRIERO, ARCHIVIST OF THE UNITED STATES

“I try to follow the words of Wayne Gretzky and ‘skate to where the puck will be.’”

David Ferriero, Archivist of the United States, delivered the Keynote Address of the Transparency Conference. Mr. Ferriero shared with participants’ insight into the history of the National Archives and Records Administration (NARA) and its role on the forefront of open government initiatives in the U.S.

As the nation’s record keeper, NARA has responsibility for preserving and providing access to records created by the 275 Executive Branch entities, agencies, and departments (including the White House). Further, it houses the records of the Supreme Court and provides courtesy storage and service for the records of both the Senate and House of Representatives. In total, NARA serves three branches of the US Federal Government through more than 40 facilities across the United States. Beyond its 13 billion pieces of paper, 43 million photographs, and billions of electronic records, NARA also plays a significant role in the pursuit of open government in the United States through its oversight of several key bodies, including the Information Security Oversight Office, the Office of Government Information Services, the National Declassification Center, and the Office of the Federal Register.

Mr. Ferriero outlined the recent history of open government initiatives in the United States, and the impactful role that NARA has played. He explained how transparency and open government are fundamental to the work of NARA and clear in its mission: “[to] drive openness, cultivate public participation, and strengthen our nation’s democracy through public access to high-value government records.” In April 2010, NARA released its first Open Government Plan, and has since issued three subsequent Plans – the most recent in September 2016.

NARA’s four Open Government Plans have not only informed the fulfillment of the agency’s mission, but have also captured the attention of the White House Office of Science and Technology, which oversees the Open Government initiative. NARA has provided subject expertise to the Administration on policy issues related to open, participatory, and collaborative government, including Freedom of Information Act policy and modernization efforts, while also coordinating the development and implementation of the U.S. Open Government National Action Plans as part of the Open Government Partnership.

The many ongoing initiatives of NARA in the realm of open government and transparency are surpassed only by the numerous victories they have achieved since the Executive Branch’s first pivot towards open government in 2009. From pursuing a streamlined and systematic approach to declassification, to modernization of the Freedom of Information Act, NARA’s leadership role in open government and transparency activities in the United States has been prolific over the last 8 years, and will continue into the foreseeable future as technology and public engagement solidify themselves as necessities of modern governments.



VIDEO PRESENTATION – SANJAY PRADHAN, CEO OF OPEN GOVERNMENT PARTNERSHIP

Prior to the start of Panel 5, Sanjay Pradhan, Chief Executive Officer at the Open Government Partnership (OGP), joined the conference via a pre-recorded video presentation. Mr. Pradhan emphasized how transparency can be a transformative concept. While it is easy to achieve small and symbolic victories that can be tied to transparency, larger transformation toward a world where transparency is the rule and not the exception is still elusive.

Mr. Pradhan also described his vision for the OGP going forward. Since its founding, the OGP has made transparency its bedrock. Seventy-five countries have joined to date, and almost 3000 commitments to greater openness by governments have been established. While impressive, Mr. Pradhan underscored that the success of the OGP over the coming five years will not be measured in members or commitments, but rather by concrete changes that are palpable to the general public. Fundamental to this exercise will be a focus on increasing transformative commitments that are *meaningful*. This includes pressing for legislative changes to how governments deal with transparency, and carried out with public participation so as to reduce citizen distrust. Notable examples such as citizen audits of government in the Philippines were outlined as cases of a transformative initiative that achieved a level of transparency extending beyond mere openness.

Mr. Pradhan's video presentation drove home the clear links between improved transparency and increased trust in governments. When citizens are allowed a greater role in the adjudication of their public institutions, activities such as lobbying and procurement occur with greater integrity in the eyes of the public. The OGP continues to push governments to undertake meaningful initiatives that will make this vision a reality, allowing citizens to make a difference in their public institutions. Mr. Pradhan's theme of engagement was continued in Panel 5: Open Government and the Next Generation.



5

PANEL

TRANSPARENCY: OPEN GOVERNMENT AND THE NEXT GENERATION

MODERATOR

Dr. Mary Francoli
Associate Professor and Undergraduate Supervisor
School of Journalism and Communication
Carleton University

PANELISTS

Don Lenihan
Senior Associate, Policy and Engagement
Canada 2020

Jean-Noé Landry
Executive Director
Open North

Laura Trib
Digital Rights Specialist
Open Media

Mélanie Robert
Executive Director, Information Management and Open Government
Treasury Board of Canada Secretariat

QUOTES

“Open government needs to become more than a trend of the day. Future generations cannot be robbed of the information.”

WHAT WE HEARD...

Panel 5 featured four speakers involved in promoting engagement as a tool for strengthening Open Government and transparency activities across Canada. 'Open Government' can have different meanings depending on how a government chooses to define it, but tends to contain three streams: open data, open dialogue, and open information. At the heart of open dialogue is public engagement.

To begin the discussion, panelists were asked for their views on public engagement and the involvement of youth. For Open Government to be a permanent feature and not a fleeting trend, and to ensure that a culture of transparency is cultivated as standard practice for governments across Canada, engagement with younger generations is crucial. Further, in the view of many panelists, technology plays a key role.

As a mechanism for both engagement and access, technology has allowed information to be disseminated with unprecedented speed and ease while also enabling greater communication between citizens and their governments. The result is an increasingly empowered public that has both an enhanced knowledge of their governments' activities, as well as the capacity to engage with and provide input into decision-making processes directly. Panelists explained that pursuing meaningful engagement depends on ensuring that information is not only accessible to citizens, but is also understandable. Achieving understandability means providing curation and context, making sure that users receive the information they want in a way that is clear, useful, and according to their requests. 'Available' information that is difficult to explore or consume undermines the goal of achieving transparency.

Increased candidness on the part of governments is another means to achieve greater public engagement in the transparency process. If governments are forthcoming about their successes in pursuing transparency, and at the same time candid about the areas where improvement is needed, the ground is made more fertile for citizen engagement. In other words, engagement benefits when government improves the transparency of the access process itself.



To this end, formal mechanisms within governments need to be established to insure that channels of communication between a particular department and its public stakeholder groups are both open and effective. Given the immense diversity of Canada, targeting engagement to specific groups was considered as a more effective approach than employing one-size-fits-all methods for the entire country. By tailoring tools and dialogue for specifically targeted groups, governments can ensure higher levels of buy-in from particular stakeholder groups and a more efficient engagement process overall.

The unifying theme of the panel was the importance of making conversations surrounding transparency and Open Government truly inclusive. Making public engagement an integral part of existing Open Government initiatives is an essential step toward ensuring their legitimacy and success, and should be carried out in a manner that identifies and incorporates particular user groups in guiding the pursuit of greater transparency.

6

PANEL

THE USER EXPERIENCE

MODERATOR

Vincent Gogolek
Executive Director
British Columbia Freedom of Information and Privacy Association

PANELISTS

Ken Rubin
Public Interest Researcher

Jayne Poisson
Investigative Reporter
Toronto Star

Robyn Doolittle
Investigative Reporter
The Globe and Mail

Chase Blodgett
Youth Advisory Group member
Canadian Commission for UNESCO

QUOTES

“A duty to serve along with a duty to document need to be applied.”
– Ken Rubin, Public Interest Researcher

WHAT WE HEARD...

During this session, panelists discussed their experience with access to information for both professional and personal purposes. They shared the challenges they face, as well as some of their success stories.

Journalists are key users of access provisions at the federal and provincial levels in Canada. One journalist on the panel explained that journalists are often “flying blind” when making access requests. When faced with time or fees estimates, which are often inconsistent from one jurisdiction to another, users are often unable to effectively challenge these estimates. They are unaware of the real value in money or time of what they are requesting from public institutions.

The journalists on the panel said that reviewing completed requests posted online by federal institutions was very helpful in guiding their ATIP requests. In one case, a journalist gained access to a database that was previously released, which helped with an investigation about fire incidents and subsequent deaths in Indigenous communities. This database was very helpful since it showed that many communities had firefighting equipment and facilities, but did not have the resources to maintain them. This example demonstrates that access to information is a valuable tool for journalists, especially those working in the field of investigative reporting.

Panelists agreed on the need to make access to information more accessible and user-friendly. For example, it is often quite difficult for an individual filing access requests for personal reasons to navigate the complex governmental structure in order to determine which specific department should be asked for records. As well, the user needs to identify the relevant and existing records about the topic of interest and find out what, if any, institutions keep these records.

All agreed that creating a solid user-friendly access to information regime needed to include a formal “duty to document”, an independent review and oversight provision with enforcement capacities for government institutions, and a global change in attitude towards transparency.

Panelists agreed that legislative amendments could definitely improve the overall access to information system. However, they also noted that significant modifications in the implementation of the law were equally important from a user perspective.



7

PANEL

TRANSPARENCY AND NATIONAL SECURITY: STRIKING THE RIGHT BALANCE

MODERATOR

Chantal Bernier
Counsel, Dentons

PANELISTS

Lisa Austin
Associate Professor
University of Toronto

The Honourable Pierre Blais
Chairman
Security Intelligence Review Committee

Wesley Wark
Visiting Professor
Graduate School of Public and International Affairs
University of Ottawa

“ QUOTES

“Transparency is part of what we need for a functioning democracy and it is absolutely vital for the public to trust their institutions.” – Lisa Austin, Associate Professor, University of Toronto

WHAT WE HEARD...

This panel addressed the continuous search for balance between transparency and the legitimate need for secrecy in the field of national security.

There was little doubt that these panelists view transparency as a crucial element of a strong accountability regime in democratic societies. Nearly always, however, they say that a balance must be struck between transparency and the legitimate need for secrecy and the national security interest, something that is often difficult to achieve. They went on to discuss why it is difficult to talk about transparency when dealing with national security issues and agencies (e.g., RCMP and CSIS).

Some drew a distinction between transparency in our public laws and operational transparency, and underlined the important transparency gap between the public's understanding of a law and its actual operational interpretation by the courts. This sometimes creates the problem of "lawful illegality", which was best demonstrated by the public's global outrage following the Snowden revelations.

In Canada, because we are currently in an environment marked by a unilateral interpretation of the law by government institutions, there is a need to engage in a meaningful conversation about national security to reflect the public and common understanding of the legislation. This is why (or how) having access to government information provides the public with a better understanding of how governments interpret and apply our laws and regulations.

The panelists expressed concern that Canadians do not understand the legal infrastructure of surveillance. This is partly due to the very complex legal language used in our national security legislation.

Meeting public expectations is another challenge. Panelists felt that people will always want more information and more transparency from national security agencies. This attitude is the result of a general skepticism about the government's actions. But there is an interesting paradox: Canadians who generally have concerns about protecting privacy seem to be less worried about providing their personal information to private corporations on a daily basis.

This panel explored the complexities associated with the nexus between the public and the private sector when it comes to the validity of consent, especially where individuals are giving consent to private companies. Transparency is not about sharing everything; it is about sharing when we know what we are consenting to and understanding the underlying consequences. This area needs to be well regulated so the public has clarity about these issues.

The panel concluded that there are many audiences for transparency: the public seeking reassurance of their rights, the media needing contextual knowledge to properly report on major events, and internal governmental audiences. On this last point, there are very few professionals working in the national security field who know what their fellow officials are actually doing. Therefore, increasing transparency is essential in order to develop a coherent intelligence security regime.

The panel suggested several transparency options to address the needs of these varied audiences. One of the options was the implementation of a system for routine and regulated reporting of current national security policies and activities. Such a system would put an increased onus on review bodies such as the Security Intelligence Review Committee (SIRC). This would encourage them to be as transparent as possible in their reports and to assume a leadership role in moving national security agencies towards transparency.

