

# **Perspectives on Combating Corruption Through Public Information Systems: The Primacy of the Rule of Law**

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## Introduction

We all know that corruption thrives in the absence of transparency. We also know that public information systems which seek to ensure openness in government, and in corporate activity to some extent<sup>2</sup>, militate against corruption. But in jurisdictions where the rule of law is absent, the challenges to fighting corruption are of a greater – often much greater – magnitude than mere law reform. For both the eradication of corruption and establishment of the rule of law are matters of deep, cultural change, changes which make great demands of the people whose ways of life will be subject to such transformation. For make no mistake: change such as this, which puts a priority on long-term societal benefit, rather than short-term individual gain, will usually be slow to take hold.<sup>3</sup>

We should always think about the implications of what we have learned abroad for our domestic affairs. The lessons we learn from struggles against corruption in countries without the rule of law speak to the need for vigilance here. For cultures, including our own, are not static; they are always changing, and there is reason to believe that ethical deterioration can happen a lot more quickly than its reverse, that is, ethical improvement. Our society's commitment to the rule of law could be undermined over

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<sup>1</sup> This paper is based on one prepared earlier this year jointly with Heather MacIntosh, also of the Sheldon Chumir Foundation for Ethics in Leadership, and the Foundation's 2007-2008 Intern, Katherine Austin-Evelyn. Janet thanks both Heather and Katherine for their earlier work on this topic.

<sup>2</sup> For example, laws requiring disclosure of information from companies issuing shares for sale on stock markets.

<sup>3</sup> I am not especially cynical about human nature, but collective change is difficult. For example, the "free-rider" phenomenon is a well-documented obstacle to improvement of a group's ethics.

time. So, there is no room for complacency. Thomas Jefferson was, I think, right: “The price of freedom [really] is eternal vigilance”.

### International experience on these issues

Before joining the Chumir Foundation in 2006, I was a Research Associate and Director of Russia Programs for the Canadian Institute of Resources Law.<sup>4</sup> In late 1992, my then colleagues and I were asked to become part of a group of Canadian agencies (all of them governmental except for us) preparing to advise the Russian Ministry of Fuel and Energy. The goal was to expose Russians to models of oil and gas regulation developed over time in Canada, a democracy with a largely market-driven economy.

The most intensive part of this work extended over the period 1994 – 2005. In the beginning, almost no one queried whether there was any point to this. *Russia is moving towards democracy and a market economy; Canadians can help show how these values can be embodied in a governmental system for regulating oil and gas. It's all good.* But it became increasingly clear that efforts at law reform in a country without the rule of law could only be of significance over a very long period of time and that there was no avoiding the more basic need, which is establishment of the rule of law.

The problem is that a country's legal system is part of its culture and therefore reform of that system cannot be viewed as a technical fix. When law is not understood as part of an interconnected web of social institutions and traditions, there is almost bound to be big trouble. This big trouble can take a variety of forms. Here are just two. First, efforts to provide legal solutions for problems in the receiving country may be entirely rebuffed: they may simply be to no avail. In the early days after the Soviet Union fell apart, a group out of the University of Houston in Texas drafted a law on oil and gas for presentation to the Russian Duma (Parliament). Despite some advocacy work on behalf of this statute, it wasn't adopted then, nor in fact ever. The necessary ground work (which would at the time have been massive) had not been done (either by the Americans

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<sup>4</sup> See [www.cirl.ca](http://www.cirl.ca)

or by the Russians with whom they had been working) and all that law reform work was for nought.

Second, the proposed laws may be adopted, but fail either entirely or substantially to operate effectively. For example, again in Russia, a law on bankruptcy was adopted in the 1990s, but initially failed almost entirely to have the desired impact. Why? Because none of the other institutions on which the operation of such a law relies were in place. You cannot appoint a receiver in bankruptcy, for example, if there is no such thing as a receiver. And so on. Eventually, things improved a bit, but at first, the existence of the law actually made matters worse, rather than better, because it provided a veneer of legitimacy to transactions that were in fact totally fraudulent and ran directly contrary to what a properly functioning bankruptcy law would dictate.

I draw on Russia and other countries of the former Soviet Union, especially, in this paper, for examples, because they are the foreign societies I know best in this context.

### Corruption and freedom of information in Russia

Russia is a deeply corrupt country. Transparency International's latest (2007) Corruption Perceptions Index ranks it 143<sup>rd</sup> of 180 countries, on a par with Gambia, Indonesia and Togo.<sup>5</sup> Virtually everyone in Russia knows corruption is a huge problem, but everyone (or nearly everyone) is also in on, that is, participates in, the corruption, so it is exceedingly hard to combat. Unfortunately, but perhaps not surprisingly (because culture is indeed very slow sometimes to change for the better), Russians still often use the old Soviet technique of dirtying everyone's hands so as to minimize whistle-blowing: when people first join an organization, they are given a manifestly corrupt task to carry out, so that they can never even dream about turning others in. The only person I know to have refused to engage in such a maneuver was a young lawyer who resolved the conundrum by leaving the field of law altogether and taking up interior design.

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<sup>5</sup> In contrast, in 2007, Canada ranked 9<sup>th</sup>, behind – from first to eighth – Denmark, Finland, New Zealand, Singapore, Sweden, Iceland, Netherlands and Switzerland. See [www.transparency.org](http://www.transparency.org)

The culture of corruption is very deeply embedded in Russian society, as it is in many others. On the other hand, Russia's constitution contains several guarantees of access to information.

Article 24.2: Government ... shall provide to each citizen access to any documents and materials directly affecting his or her rights and liberties unless otherwise stipulated by law;

Article 29.4: Everyone has the "right to seek, get, transfer, produce and disseminate information by any lawful means";

Article 42: Everyone shall have the right to a favourable environment [and] reliable information about its condition ...

Unfortunately, like many other provisions of the Russian Constitution, these articles are virtually meaningless. Although the wording of the Constitution in several places would suggest otherwise, the received view is that, without specific implementing legislation, these guarantees are empty – and there is no implementing legislation.

But I would suggest that it doesn't much matter that there is no implementing legislation. When the State cares about keeping information secret, that is exactly when it would not comply with access to information legislation anyway. In a state without the rule of law, government feels no compunction to comply with legislation, and thus it does not, unless it chooses to do so. In a culture of secrecy, dominated by rumour and paranoia, you probably aren't going to get even harmless information. But when the information is not manifestly harmless, you certainly would not get it, even if there was a law in place which, on the surface, seems to give you access to it.

So how does progressive cultural change of the necessary kind come about?

The question that interests me is, how do cultures change so as to allow the establishment of the rule of law and adoption of legal measures, such as access to information legislation, which seek to contain corruption? The converse is also important, I think: how might things deteriorate in countries which have traditions of

good governance, to the point where it could be said they no longer have the rule of law, or that the rule of law had become very weak?

Consideration of even a small number of examples suggests that there are a variety of approaches to trying to bring about the change needed for better governance.

### There is the violent route

Consider the Kenyan case. Kenya had been viewed as relatively stable and well-advanced in democratic terms, when violence erupted after the December 2007 presidential election, and many wondered what had gone wrong. In a speech made at a conference held by the World Movement for Democracy in April 2008<sup>6</sup>, Maina Kiai, Chairman of the Kenyan National Commission on Human Rights, made some observations which give a picture of what may be happening there.

In the speech, Kiai deplores the violence spawned by the elections, but he sees that violence as evidence of a public no longer content to allow governmental abuses. Here is some of what he had to say:

I believe that the reaction to the flawed elections has deep roots in the fact that Kenya has been on a forward democratic trajectory since 1992 when multi-party politics was restored, and Kenyans have come to appreciate and guard jealously their hard won freedoms. ...

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... Kenyan elections have been progressively better and fairer since 1992, culminating in the 2002 elections that were the best ever, and resulted in regime change, and the 2005 constitutional referendum that the government lost. The effect of these last two plebiscites was that Kenyans finally believed in the power of the vote as a way of peacefully resolving differences, and as a legitimate way to change leaders; a fact confirmed by ... the [then] recent parliamentary elections [which] saw almost 70% of incumbents lose their seats. When this

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<sup>6</sup> Maina Kiai, “*Crisis in Kenya: What lessons for democracy?*” keynote address to the World Movement for Democracy, 5<sup>th</sup> Assembly. Kiev, Ukraine. April 6-9, 2008.

sense of empowerment was subverted in the manipulated presidential elections – watched live on TV by voters – and peaceful legal spaces for protests were disallowed, it was not surprising that frustrations boiled over and violence ensued.

The hopeful take on the results of the Kenyan election is that the culture has already started to change and that – as a function of that change – people are demanding still better governance (that is, away from corruption and towards government for the good of ordinary people). This is taking place through unfortunate means (violence), but perhaps the only means available to them.

### Peaceful methods

Some countries are luckier than others. Consider the changes wrought in the three Baltic Republics since the fall of the Soviet Union and their emergence as fully independent states.<sup>7</sup> While all of the rest of the former Soviet Union remains deeply corrupt, the three Baltic Republics – Lithuania, Latvia, but especially Estonia – have made significant strides towards good governance, including, at least in Estonia, liberal access to information laws.

How did they accomplish this? At the outset, it has to be acknowledged that they started from a different place than did many of the countries that were behind the Iron Curtain. There was clearly more to work with in the Baltic Republics when the Iron Curtain dissolved than there was in the rest of the former Soviet Union, and even – it would appear – in eastern European countries such as the Czech Republic and Hungary. But Estonians, to take the most successful of the three Baltic Republics as an example, were able to build relatively quickly on that more solid foundation, I think, because they were motivated by two powerful forces. One was a deep desire to distinguish themselves from other parts of the former Soviet Union, that is, to show the rest of the world they

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<sup>7</sup> Any talk of the good fortune of the Baltic Republics is, of course, of very recent provenance. Their history, like that of so many Eastern European countries, is predominantly sad indeed. Nevertheless, their very recent history, and again especially that of Estonia, is encouraging. See for example, the documentary film “The Singing Revolution”. No doubt many Russians would contest some of the Estonian interpretations of history advanced in the film, but the basic point – that positive change came about there largely peacefully – is beyond refutation.

really never belonged in that company. And the second was to qualify for membership in the European Union (EU) and show that they could function well within it. In so doing they would be protected, hopefully forever, from being swallowed up again by Russia.

How does Estonia do on Transparency International's Corruption Perceptions Index? Quite well: in the 2007 ranking it stands at 28<sup>th</sup> (out of 180 countries). That is just a bit better than Portugal and not far behind Spain (both countries which have been in the EU considerably longer than has Estonia). Latvia and Lithuania sit at 51<sup>st</sup>, which is considerably worse than Estonia, but still ahead of other eastern Europe countries such as Poland (61<sup>st</sup>), Bulgaria and Croatia (64<sup>th</sup>) and Romania (69<sup>th</sup>). And where do the other countries of the former Soviet Union sit? Besides Russia (again, ranked at 143) here are the other eleven with their rankings: Georgia (79), Armenia (99), Moldova (111), Ukraine (118), Azerbaijan, Belarus, Kazakhstan, Kyrgystan and Tajikistan (all at 150), Turkmenistan (162) and Uzbekistan (175).

In fact, you can see this difference between Estonia and other countries of the former Soviet Union Soviet with your own eyes. I crossed the border between Russia and Estonia by train a few years ago. The difference in public sector culture exhibited by officials on opposing sides of the border was nothing short of remarkable. The Russians were either surly and apparently determined to be as unpleasant as possible (3 of the 4) or – the fourth person – delightfully negligent in inspection of our luggage. The Estonians were (besides being more efficient – it took only two of them as compared with the Russian four) straightforward and professional, seeking neither to intimidate nor to befriend.

This does not mean that corruption is not a problem in Estonia. But it does show a profound difference in attitude and is consistent with a deeper commitment to good governance, including the rule of law. And I think this difference exists for reasons of principle, pride and history (the corrupt Soviet way of life never was us) and for reasons

of self-interest (EU membership), and perhaps also for reasons of revenge, vis a vis the Russians (see how well little Estonia can do – what’s wrong with you?).<sup>8</sup>

And how does access to information legislation fit into Estonia’s relative success on the anti-corruption front and development of good governance in general? Access legislation has been a significant factor: according to the Council of Europe, introduction of Estonia’s Public Information Act of 2000 – 2001 brought about “dramatic changes”.<sup>9</sup> Estonia’s legislation is said to be “especially effective”, with “strong implementation” provisions. Notably the legislation has a wide scope, for example, it imposes responsibilities to disclose information on NGOs.<sup>10</sup> It takes a commitment to good governance – including to the struggle against corruption – to adopt such legislation. In turn, this kind of serious access to information legislation reinforces that good governance.

Estonia’s neighbour, and in some sense mentor in the transition from Communist rule – Finland – is also renowned for its relatively corrupt-free government. Finland ranks number 2, second only to Denmark, in Transparency International’s 2007 Corruption Perceptions Index. “Finland has a long history of freedom of information legislation. ... Finland’s regulation of freedom of information has been on a number of occasions referred to as an example of good practice. In particular, the Council of Europe’s anticorruption commission noted that effective freedom of information legislation in Finland is one of the key factors [for the] low level of corruption in the country.”<sup>11</sup>

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<sup>8</sup> My criticisms of things Russian in this paper should not be taken as Russophobia. On the contrary, I have a deep affection for Russian people and their culture and a huge respect for their suffering. Russia is a country with a truly terrible history. I want better for them, and see criticisms such as mine as emphasizing the need for serious reforms.

<sup>9</sup> The Council’s views can be found at [www.freedominfo.org/countries/estonia/htm](http://www.freedominfo.org/countries/estonia/htm).

<sup>10</sup> See [www.legislationonline.org](http://www.legislationonline.org).

<sup>11</sup> See <http://www.legislationline.org/topics/country/32/topic/3>

## External pressure

In countries where internal pressures do not spur increased openness, external forces may be able to play a significant role. For example, external pressure for openness is leading to change in Angola where the links between anti-corruption and public access to information are strikingly clear.

The history on this seems to begin in 1999, when the international NGO Global Witness produced a report on Angola called “Crude Awakening” which alleged shocking plunder of state assets. There had been previously almost no public knowledge of the state of government oil revenues, beyond rumour. But “Crude Awakening” boldly stated that massive amounts of money went missing annually from Angola’s oil revenues and contrasted this corruption with the profound poverty in the country.<sup>12</sup>

Although exact figures are missing from “Crude Awakening”, later documents attempted to put numbers on the extent of the corruption. In 2001 the figure was estimated to be 1 billion, which was 5 times as much as the UN spent on relief to the country in that year. In 2003 the figure was estimated at between 10 and 35% of oil revenues.

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<sup>12</sup> “Crude Awakening”, p. 14. Here are some extracts from “Crude Awakening”:

A significant portion of Angola’s oil derived wealth is being subverted for personal gain and support the aspirations of elite individuals, at the centre of power around the Presidency. ... Rather than contributing to Angola’s development, Angola’s oil revenue is directly contributing to further decline. Considerable effort has been made by the government to stifle all opposition and the press has been effectively muzzled. There is no accountability in government.

Corruption starts with the head of state, surrounded by a clique of politicians and business cronies ... This group controls much of the opaque financial dealings of the State, including deployment of significant parts of state revenue, outside the state budget – in effect a parallel system of state revenue deployment.

Corruption also manifests itself in all aspects of the business community. In effect, the merge between the political centre of power and business is so well developed that it is virtually impossible to establish a functioning business without resorting to bribery. (“Crude Awakening”, pp. 2 and 14.)

This is typical of deeply corrupt countries: business is inextricably, tightly and dysfunctionally tied to the politicians or bureaucrats, usually to both.

Publication of “Crude Awakening” spurred the formation of the Publish What You Pay (PWYP) coalition, a joint initiative of over 300 NGOs worldwide which “calls for the mandatory disclosure of payments made by oil, gas and mining companies to all governments for the extraction of natural resources. PWYP also calls on resource-rich developing country governments to publish full details on revenues.”<sup>13</sup> The coalition now works hand in hand with the Extractive Industries Transparency Initiative, itself a coalition of governments (it is led by the British Government), companies, civil society groups, investors and international organizations, which was formed in 2002. Together these two coalitions are attempting to force transparency on companies and governments in what many people think is one of the most interesting global movements for access to information.

Other international organizations have also played a role in forcing greater openness in Angola. For example, as a condition of a loan from the International Monetary Fund, the Angolan government agreed to an audit of their records by KPMG in 2002. (At the time, Angola ranked as the fifth most corrupt nation in Transparency International’s Corruption Perceptions Index.<sup>14</sup>) Not surprisingly, the audit showed that oil revenues according to Ministry of Finance accounts were between \$2 and \$2.6 billion less than those of Banco Nacional de Angola: a lot of money had disappeared from public coffers. The KPMG audit was released to the public. The government then was “forced to disclose a June 2002 signing bonus, in response to parliamentary inquiries about the deal. To the knowledge of Human Rights Watch, this was the first time that the government had disclosed such a payment to parliament.”<sup>15</sup>

The Angolan case is a complicated one on which there is a lot of information available. I am giving but a taste of it. But the sort of question my experience in the former Soviet Union would lead me to ask is, will external pressure of the kind I have

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<sup>13</sup> [www.pwyp.org](http://www.pwyp.org)

<sup>14</sup> In 2007 Angola ranked 147 out of 180 countries. However, an exact comparison with earlier standings cannot easily be made because significantly more countries are included in the 2007 index.

<sup>15</sup> “Some Transparency, No Accountability” Human Rights Watch Report, 2004.

described result in cultural change in Angola and thus sustainable improvements in openness and corruption reduction? I don't know. Others more familiar with the Angolan scene may know, or it may be – as I suspect it is – way too early to assess. But one has to be skeptical – not cynical, but doubtful. This is not, I suspect, the way that progressive cultural change comes about. But I could be wrong.

It is not that external pressures cannot ever be worthwhile or that the particular, concrete changes they bring about cannot be important. They can be, I think. But well-intentioned initiatives need to be placed within the bigger picture, in order for us to have a sense of what they are really capable of achieving, and of where we need to go to broaden and deepen the impact of those initiatives.

And what about countries which are immune to external pressure, such as Russia?

They continue along their merry (or not so much) way. There are countries that can be leaned on and those which cannot. In its present condition – still flush with oil and gas revenues, notwithstanding the financial calamities of fall 2008 – Russia is so far quite effectively immunized from external pressure to reform in any significant way.

What about the state of Canadian culture on government openness, anti-corruption and the rule of law?

I said at the outset that we have always to bring what we have learned abroad home. So, what lessons do I take from my Russian experience and how do I think they apply at home?

I struggle to achieve a balance here. On the one hand, I have no time for knee-jerk cynicism about Canadian public life. We have it *so very much better* than most other people in the world. And we would be wise never to forget that. On the other hand, it seems to me that complacency could lead, and perhaps is already leading, to serious deterioration in the integrity of our governmental systems.

Appreciation for what we have

In fact, my extensive Russian experience has turned me into something of a cheerleader for the rule of law. I now make a pilgrimage to the British Library to see the Magna Carta, the nearly 800 year old guarantee of our freedom from arbitrary government action, whenever I am in London. This was regularly when I was still working on projects in Russia. It is now in frequent, but whenever I do get to London, the British Library with its permanent display on the Magna Carta — will be at the top of my places to go.

### Two recent Canadian scandals

And it is not difficult to find graphic examples of the rule of law at work in Canada. A brief look at two recent scandals in Canadian government illustrates that, while corruption occurs here, there are systems in place to bring problems to light and correct them once identified.

### Newfoundland and Labrador Audit Scandal

Consider the 2006 audit scandal in Newfoundland and Labrador regarding misuse of government entertainment budgets. Former Auditor General Elizabeth Marshall was barred in 2000 and 2002 from auditing Member of the House of Assembly (MHA) claims, by a bipartisan committee decision. Premier Danny Williams empowered the Auditor General to examine spending by politicians, after the Tories won the election in 2003. The review resulted in an audit by the then new Auditor General John Noseworthy, which detailed \$3.9 million in questionable spending -- \$1 million in constituency allowances, much for drinking and entertainment unrelated to their jobs, and \$2.8 in untendered items. Dozens of former and sitting MHAs were implicated.

Four MHAs and the Director of Financial Operations for the House were charged with criminal offences. Provincial Supreme Court Chief Justice, Derek Green, led a Review Commission on Constituency Allowances and Related Matters (May 2007) and the province passed the House of Assembly Accountability, Integrity and Administration Act just a few months later. Some sitting and former MHAs repaid questionable

payments. We understand that whistleblower legislation is still expected to come out of this scandal.<sup>16</sup>

Access to information rules permitted further public scrutiny after the matter had been closed by the Auditor General and turned over to the police. The Opposition, though also implicated, obtained government documents to challenge hospitality expenses for the Premier's conference in the summer of 2006.<sup>17</sup> The Independent newspaper has continued to use the provincial Access to Information and Protection of Privacy legislation to obtain constituency allowance claim files as part of their commitment to on-going oversight of spending by Members of the House of Assembly. Just this past March, the paper criticized expenses of a former MHA who is now a federal election candidate.<sup>18</sup>

This case clearly demonstrates the application of the rule of law and the importance of access to information legislation to the struggle against corruption. The Auditor General investigated, the police charged, and no one – regardless of their profile, seniority, or political clout – was beyond the reach of the law. As well, Access to Information and Protection of Privacy legislation in place today allows the local newspaper, The Independent, continuous access to files previously kept secret. The government can no longer shield these expenses from public oversight.

### Canadian AD Scam / Sponsorship Scandal case

*What was the Sponsorship Scandal?*

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<sup>16</sup> “Scandal and Reform in the Newfoundland and Labrador House of Assembly” by Alex Marland, Canadian Parliamentary Review, Vol. 30, No. 4, 2007.

<sup>17</sup> “In Depth: Newfoundland and Labrador audit scandal”, CBC News online, 8 July 2006, <http://www.cbc.ca/news/background/audit-scandal/index.html>

<sup>18</sup> “Former MHA Walter Noel doesn't expect expense claim revelations to impact bid for federal seat”, by Stephanie Porter, The Independent, 8 March 2008.

Following a very close referendum on the province of Québec's sovereignty in October 1995, the federal Cabinet decided to counteract the separatist movement in Québec by making the federal government more visible across Canada. By using its Sponsorship Program under Public Works and Government Services Canada (PWGSC), which had begun in 1994, this would translate into federal government advertising and "sponsorship" of community, cultural and sporting events. The advertising department of Public Works Canada felt this type of project was beyond its scope, and so contracted private publicity and communications firms to fulfill this goal. In return, these agencies received commissions, as well as fees paid for "production costs." However, it was not clear how the program worked as there was no formal application process and no specific criteria for funding.<sup>19</sup>

*What does it have to do with Access to Information?*

In 1999, Globe and Mail journalist Daniel Leblanc needed further details for a story on an event which featured a hot-air balloon in the shape of an RCMP officer on a horse. He had heard that the government had paid for the balloon and wanted to know more. So he filed his first access to information request, which revealed that the federal government had spent \$324,000 to rent the balloon. Leblanc was shocked by this figure and wrote an article on this specific issue. Leblanc says that after this story went to press, he received a number of anonymous calls and letters encouraging him to continue researching the sponsorship program.<sup>20</sup>

This prompted the journalist to initiate a long series of access to information requests about the program. Leblanc noticed a pattern of sponsorship in Québec. In 2000, he ran another story on how his findings indicated that the majority of the sponsorship budget was spent in Québec, followed closely by another article describing the "cozy relationships" between Liberal officials and various Québec advertising firms. In one particular case, these ad firms increased their business dealings with a printing

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<sup>19</sup> "History of the Sponsorship Program" Gomery Inquiry Report Phase 1: Who is Responsible? (Summary), p.1-3, [http://dsp-psd.pwgsc.gc.ca/Collection/Gomery/Summary/3ES\\_history\\_v01.pdf](http://dsp-psd.pwgsc.gc.ca/Collection/Gomery/Summary/3ES_history_v01.pdf)

<sup>20</sup> "Globe sponsorship coverage wins Michener Award" by Jordan Press, *Globe and Mail*, April 15, 2005.

company that had hired the son of the, then, Public Works Minister, Alfonso Gagliano. However, it wasn't until 2002 when Globe and Mail reporters Daniel LeBlanc and Campbell Clark – under the Access to Information Act – tried to find out why the government paid \$550,000 to advertising firm Groupaction Marketing for a report that could not be found. No one at Public Works or the company could explain it.<sup>21</sup>

This story created a firestorm in the Liberal party and, then, Prime Minister Jean Chrétien was forced to call for a report on the sponsorship program by Auditor General Sheila Fraser. She found that between 1995 and 2001, \$100 million was paid to various communications agencies in the form of “fees and commissions”. In her 2003 report, Fraser stated that Public Works officials “broke just about every rule in the book” when it came to awarding contracts to Groupaction, an advertising firm which was paid millions doing work for the government under the sponsorship program.<sup>22</sup>

Although Chretien commissioned the report, by the time it was released, Paul Martin had become Prime Minister. He fired many top civil servants, including Alfonso Gagliano, who was by that time Canada's Ambassador to Denmark. Fraser's report sparked a parliamentary inquiry. This inquiry never fulfilled its full mandate as there was an election called before the committee could carry out its tasks. However, after the Liberal party won narrowly, with a minority government, Paul Martin called for a full public inquiry headed by Justice John Gomery. This inquiry lasted over a year, and cost \$14 million. Following the inquiry, criminal charges were laid and pursued through the courts.<sup>23</sup>

These two cases, and there are many others that could do the same, demonstrate the effectiveness of the rule of law in Canada, and specifically the usefulness of access to information legislation, resulting in exposure of high level corruption. We have a lot to be grateful for.

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<sup>21</sup> Ibid.

<sup>22</sup> “Federal Sponsorship Scandal: In Depth” CBC NEWS, October, 26, 2006  
<http://www.cbc.ca/news/background/groupaction/>

<sup>23</sup> Ibid.

### Need for vigilance

On the other hand, there are serious problems with our access to information laws and a culture of government secrecy endures. Some say that secrecy has worsened in recent years – *some even say it has worsened because access to information laws exist.*

It is easy to find critiques of Canadian access laws. See, for example, a set of proposals from the Canadian Newspaper Association meant to strengthen access to information at the federal level.<sup>24</sup> Many of the objections to the original access statutes remain and some weaknesses have been exacerbated by amendments over time.

But whatever your view of the adequacy of Canadian access to information law, there are reasons to be concerned about the foundations upon which that law and all others rest – the rule of law in Canada. Yes, there are encouraging signs, for example, police forces moving to deepen respect for rule of law, and ethics generally, in their staff. But causes for concern are everywhere.

Take the regulatory systems that govern the development of natural resources in Canada, for example. We see much self-congratulatory praise for these systems, which blithely ignores the increasingly serious inadequacies both in standards set and enforcement. In Alberta the regulatory failure that led to hundreds of wild ducks dying from contaminated water in an oil sands tailings pond in early 2008 is but one illustration of the problem.<sup>25</sup> The oil sands company responsible for the lake or small sea (they are called “ponds”, but there is nothing “pond-like” about them) had been required to take measures to keep birds from landing on these waters, but it appears it had simply not done so.

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<sup>24</sup> “In Pursuit of Meaningful Access to Information Reform: proposals to strengthen Canadian democracy”, Canadian Newspaper Association, Public Affairs, February, 2005.

<sup>25</sup> See my piece on “Thinking about ethical leadership – Dead Ducks and the Rule of Law” in *Chumir Ethics Forum*, Vol. 8, No. 4, Summer 2008, pp. 1 – 2.

We are constantly told, in every Canadian jurisdiction, that resource extraction projects are not environmentally harmful because appropriate conditions are placed on operating licenses. And so – reassured – we go back to sleep, or shopping.<sup>26</sup> But with self-regulation a virtual mantra, compliance with regulatory conditions is not what it should be. We should be alarmed, not dozing or shopping, through such episodes.

For it looks like we may be letting the authenticity of our legal systems be undermined. This is at least in part, I think, because we have become complacent: wittingly or not we (or at least a large number of us) have embraced the view that we have it all figured out, all is in hand. The result, I fear, is that we increasingly take our legal system and related institutions, such as the rule of law, for granted. It seems to me we are not sufficiently vigilant about whether our rhetoric (good regulation combined with strong rule of law) actually accords with our reality (woefully inadequate environmental protection, for example).

In the result, we may be letting our country slide into one where form prevails over substance, and we can be sure that corruption will only flourish under such circumstances.

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<sup>26</sup> For a recent effort to reassure, see “Obama and Alberta Oilsands”, the lead editorial in the Calgary Herald, Sunday, November 16, 2008.