

R E V I E W

Government Information: Access & Privacy

By Colin McNairn and Christopher Woodbury
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*Eugene Szach**

ONE DAY IN THE EARLY 1980S, the Attorney General of Manitoba was feeling flush with the spirit of reform that characterizes a new provincial administration. (The Attorney General shall remain nameless in this narrative, but he has recently turned up in the more respectable — and leisurely — profession of Dean of Law.) He summoned me, a bewildered employee, into his office and instructed me to prepare a freedom of information statute that would be (here I am paraphrasing) “cheap, simple and effective.”

In the event, the Manitoba *Freedom of Information Act*, 69 sections long, is an intricate web of access procedures, access restrictions and review mechanisms. The fee structure, comprising concepts such as estimates, deposits, preparation time, and duplication fees, is embodied in a separate regulation. Proclamation of the *Act* was delayed for over 3 years because of the need to organize (and re-organize) departmental records, train staff, and prepare the Access Guide.

In short, *The Freedom of Information Act* has become part of our “body of law”, and is burdened by all the complexities that expression entails. This should not be surprising. The principle of citizen access to government records is, arguably, fundamental to the operation of a democratic system. But in the practical process of developing working legislation, this principle collides with other fundamental values, such as the protection of personal and corporate privacy. (One of the ironies of “access” legislation is that it is often developed in conjunction with “privacy” legislation that restricts the power of government agencies to develop, use and disclose personal information.)

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The recognition of competing values inevitably means that certain records will be "exempt" from the right of access. It then becomes necessary to develop sophisticated procedures, including the ultimate remedy of court review, for testing the right of access against the power of exemption. Throw in some necessary time limits, a fee structure, and consequential changes to pre-existing access provisions or restrictions in other laws, and you have the complex system referred to above.

There consequently arises the need for a reference source to help the information-seeker work through the maze of rules and procedures in the legislation. This brings us to **Government Information: Access & Privacy**, by Colin McNairn and Christopher Woodbury, two lawyers from the Toronto firm of Fraser & Beatty. This publication is a detailed comparative survey of the access and privacy statutes enacted by the federal Parliament and six provinces, including Manitoba. It also covers provincial legislation establishing access and privacy rights in respect of information held by municipal governments.

The publication is in looseleaf form. For ease of reference, it contains four separately tabbed sections: finding tools, text, legislation/appendices, and cumulative supplement. The finding tools include a table of contents, an index and a table of statutes and regulations. The table of statutes and regulations keys the legislation of each jurisdiction, section by section, to appropriate passages in the text.

The text itself first takes the user step-by-step through the process of applying for access to a government document. It covers such matters as the initiation of the process, the application of exemptions, and the resolution of access disputes. At each step, there are comparisons among the rules and procedures in the various jurisdictions. There are also references to the applicable section numbers in the statutes and regulations of each jurisdiction. These references enable the user to consult the full text of any relevant statutory provision under the "legislation/appendices" tab. The text then proceeds to deal with privacy laws, using much the same format. Finally, the text contains a concluding chapter on access and privacy rules in respect of municipal information.

This publication has many strengths. First of all, the finding tools are particularly effective. The table of contents is thorough and detailed. The index is excellent, because the topic headings are bold-faced and contain specific references to individual jurisdictions. Thus, by consulting the index, the user can immediately locate the discussion in the text on, say, the fee structure in Manitoba.

The text is written lucidly and, again, in considerable detail. In addition to carefully reviewing the legislation in each jurisdiction, it also provides helpful practical information. In the case of Manitoba, for example, the authors (obviously as a result of personal communication with departmental officials) disclose that the Access Guide is updated more frequently than our statute strictly requires.

I was also impressed with the overall organization of the work. As noted above, the text has been thoroughly cross-referenced to other parts of the publication, such as the finding tools and legislation/appendices section. Thus, the user can easily determine where a specific statutory provision is discussed in the text, or conversely how a provision referred to in the text appears in its full statutory wording.

My major criticism of this publication is with respect to updating. In my view, the ideal method for updating a looseleaf publication is to publish replacement pages, because replacement pages keep the continuity of the text. In this publication, however, only major new sections, such as the new chapter on access and privacy in respect of municipal information, are inserted into the text. Most new information is consolidated in the "cumulative supplement" section under a separate tab. This supplement functions much like a pocket part supplement in a hard-bound publication, with the resulting loss of continuity. For example, the enactment of a new *Freedom of Information Act* in Nova Scotia has required numerous selective changes to the text (because of the comparative format of the text). All these changes are grouped together in the cumulative supplement and therefore require the user to flip back and forth between the text and the supplement. This updating process even results in a decimalized set of endnotes in the supplement, because of new cases that must be inserted into the endnote sequence.

There are also omissions in the updating process, at least in the case of Manitoba. The publication does not refer to some minor amendments to our *Freedom of Information Act* enacted in 1988. Also, the chapter on access and privacy in respect of municipal information fails to mention the access-to-information requirements imposed on the City of Winnipeg through amendments to *The City of Winnipeg Act* that came into force in 1990.

The limitations on the updating capability, and the generalized approach necessitated by the comparative format of the text, mean that this publication will have reduced value for researchers (such as lawyers) who need in-depth legal analysis of specific statutory provisions. However, I still recommend the publication for purchase

by libraries, including law firm libraries, because of its uniqueness in the field and because of its excellent value to the comparative researcher and any user seeking a well-organized manual on the access process.

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