



Beresford and Reynolds: Respect Canadians' right to know about the Canada Infrastructure Bank

Published on: September 26, 2017

In 40 countries around the world, this week is “Right to Know” week, a time when citizens look at the transparency of their government. Just how much are we allowed to know about the way our governments make decisions?

Right to Know Week is a perfect time for Canadian citizens to look at the federal government’s new Canada Infrastructure Bank (CIB). The bank was created to encourage the development of infrastructure in Canada, but if the federal government proceeds with this plan it needs to be set up in such a way that Canadians will know about how their government operates.

For more than a decade, Canada’s legislative watch dogs – information commissioners, ombudspersons and auditors general – have been commenting on the change in the way infrastructure and services are delivered. In 2015, Canada’s information commissioner said, “Successive governments have expanded the type and altered the structures of organizations that perform government functions. Quasi-commercial entities, special operating agencies and public-private sector partnerships have become increasingly common modes for governments to carry out their business.”

Like Canada’s federal commissioner, provincial information commissioners have observed that private companies delivering public services are often largely exempt from Freedom of Information requests, unlike public bodies. The commissioners have called for this to be corrected.

The Canada Infrastructure Bank has been created to encourage more participation from banks, pension funds, insurance companies and other long-term investors in delivering Canada’s infrastructure needs. In some cases, that might mean full privatization. In others, it might mean the sorts of mechanisms described by information commissioners. In either case, it likely means less information for Canadians.

Legislation creating the CIB specifically forbids the bank from releasing any information obtained from “proponents of, or private sector investors or institutional investors.” They, in turn, are forbidden to “knowingly communicate, disclose or make available the information, or permit it to be communicated, disclosed or made available.” Should they release this information, they may be subject to “to a fine of not more than \$10,000 or to imprisonment for a term of not more than six months, or to both.”

Further, Canada’s finance minister, Bill Morneau, has said cabinet will have the final say on any projects approved by the Canada Infrastructure Bank. Canada’s Access to Information Act, like legislation in the provinces, prohibits release of information dealt with by the cabinet or its committees.

This is not inconsequential. The Supreme Court of Canada has called the overarching purpose of Freedom of Information legislation the facilitation of democracy. For democracy to work, citizens

need the right to know how their governments are operating, especially when it comes to the economics of delivering the services we need. How can citizens be knowledgeable about how their public services are being delivered if public financial activities are held behind a legislative veil?

Whether our politics are left, right or centre, we deserve to have access to information about how public services and infrastructure are delivered, whether this is done publicly or by private interests.

To varying degrees, other countries do permit citizens to have access to this kind of information. In Germany, Access to Information legislation covers private bodies if they are discharging their duties under public law. Italy's access rules cover private bodies that are for the most part publicly funded. In both Denmark and the United Kingdom, government ministers can add private organizations to coverage under access laws.

Canada's information commissioners have suggested solutions to providing transparency here at home. The federal information commissioner, for example, has called for Access to Information coverage to be based on a criteria that include government funding and the delivery of public services. Ontario's commissioner has called for proactive disclosure of all procurement records. Finally, cabinet can ensure that the public has full information about infrastructure funding.

Will the Canada Infrastructure Bank be good for Canadians? The fact is, under our current rules, Canadians will not have access to the information that will allow them to know. Transparency measures are both possible and necessary for Canadians to have confidence in the Bank's role.

Charley Beresford is executive director of the Columbia Institute.

Keith Reynolds, research associate at the Columbia Institute, is the author of a new report: *Canada Infrastructure Bank and the Public's Right to Know*.

<http://www.columbiainstitute.ca>

—

About Right to Know Week

Right to Know Week runs Sept. 25 to Oct. 1. Each year on Sept. 28, approximately 40 countries and 60 non-governmental organizations celebrate Right to Know Day. The purpose of Right to Know is to raise awareness of an individual's right to access government information, while promoting freedom of information as essential to both democracy and good governance

Canadian Right to Know website: <http://www.oic-ci.gc.ca/rtk-dai-eng/>