

# For the Purpose of Accountability

## The Need for a Comprehensive Recordkeeping Act

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**ABSTRACT** The adoption of digital technologies has been sudden, pervasive, and global in scope. A consequence of this paradigm shift is the threat these technologies pose to the effective accountability of our public institutions. Given the fundamental importance of accountability to democracy, and the central role records play in documenting accountability, records management cannot be discretionary. It must be a matter of law. The requirements of an effective records management system mirror those of the financial management systems used by governments across Canada. Modern financial management systems are comprehensive regimes, which have developed over decades. They incorporate legislation, policy, procedures, standards, and the means to verify compliance. To create a similar regime for the management of records as sources of evidence, governments need to establish strong, enforceable legislation and policies, and the creators, managers, and users of information need to apply standards-based approaches to all aspects of the care of information and evidence.

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**RÉSUMÉ** L'adoption des technologies numériques a été soudaine, envahissante et globale. Une conséquence de ce changement de paradigme est la menace que font peser ces technologies sur la responsabilisation réelle de nos institutions publiques. Étant donné l'importance cruciale de la responsabilisation pour la démocratie et le rôle central des documents dans la documentation de la responsabilisation, la gestion des documents ne peut être laissée à la discrétion de chacun. Elle doit faire l'objet d'une loi. Les exigences pour un système de gestion des documents efficace reflètent celles des systèmes de gestion financière utilisés par les gouvernements partout au Canada. Les systèmes de gestion financière modernes sont des régimes complets qui ont été développés sur des décennies. Ils comprennent des lois, des politiques, des procédures, des normes et des moyens de contrôler la conformité. Pour créer un régime similaire pour la gestion des documents comme sources de preuve, les gouvernements doivent établir des lois et des politiques fortes et exécutoires et les créateurs, gestionnaires et utilisateurs de l'information doivent appliquer à tous les aspects de la prise en charge de l'information et des preuves des approches basées sur des normes.

*The real problem of humanity is . . . we have paleolithic emotions; medieval institutions; and god-like technology.<sup>2</sup>*

## Introduction

It is often said that the world is experiencing a paradigm shift. Exponential changes in science and technology – occurring in every area of human endeavour – often seem truly “god-like.” This transformation brings with it both great opportunities and great threats. Many believe that the pace of scientific advancement is outstripping our capacity as humans to manage the changes. These end-of-the-world pronouncements are not emanating from religious communities but from scientists and technical specialists. The threat of global warming and the risks posed by artificial intelligence are only two of the transformations that are scaring those who know the subjects best.<sup>3</sup>

One change with immediate and direct impact across society is the transformation in digital communication technologies in what is now known as the information age. Only a few decades ago, information and records came only in physical form, and it took days or weeks to move that information from sender to receiver. Today, information can be created, stored, and shared in an instant. The adoption of digital technologies has been sudden, pervasive, and global, and archivists are struggling to cope with an almost unimaginable increase in the volume and complexity of digital information and records. One consequence of this paradigm shift – less obvious to the outside world but of critical concern to records and archives professionals – is the threat these technologies pose to the documentary heritage of our societies and to our ability to protect accurate and authentic information and records so that they can be used to hold agencies to account.

2 E.O. Wilson, quoted in “An Intellectual Entente,” *Harvard Magazine*, 10 September 2009, accessed 26 April 2018, <https://harvardmagazine.com/breaking-news/james-watson-edward-o-wilson-intellectual-entente>.

3 See for example Samuel Gibbs, “Musk, Wozniak and Hawking Urge Ban on Warfare AI and Autonomous Weapons,” *Guardian*, 27 July 2015, accessed 26 April 2018, <https://www.theguardian.com/technology/2015/jul/27/musk-wozniak-hawking-ban-ai-autonomous-weapons>. See also Nicole Mortillaro, “More than 15,000 Scientists from 184 Countries Issue ‘Warning to Humanity,’” *CBC News*, 13 November 2017, accessed 26 April 2018, <http://www.cbc.ca/news/technology/15000-scientists-warning-to-humanity-1.4395767>. Further, Nick Bostrom, the Oxford professor and director of the Strategic Artificial Intelligence Research Center, has written a thorough discussion on the complex challenges of artificial intelligence. See Nick Bostrom, *Superintelligence: Paths, Dangers, Strategies* (New York: Oxford University Press, 2014).

Given the existing state of archival development in Canada – defined in large part by limited resources and inadequate public recognition of the importance of information management, particularly with regard to accountability – we face an almost impossible task. If archives are to be protected effectively as evidence, the changes brought by the information revolution need to be met with a corresponding transformation in how people think about, create, and manage records.

However, I suggest that most government institutions and their archival operations fall under Wilson's label of "medieval institutions." Governments by their nature are not innovative: they do not easily embrace new ways of working, and they do not act with speed and agility when faced with change. This reality is compounded, in my opinion, by people working in government who often struggle with Wilson's "paleolithic emotions": the system requires that bureaucrats focus first on addressing immediate threats rather than on pursuing new opportunities and seeking different directions. In this environment, asking governments to develop strong and sustainable records management programs that encompass archives management as a critical component – which means asking them to focus not on short-term dangers but on long-term accountability – is unlikely to succeed.

Records are a pervasive if often unacknowledged part of bureaucracy. They are proof, sometimes the only proof, of a government's actual actions and decisions. They stand as evidence to confirm or contradict what the government says it is doing or what people think it is doing. Authentic and reliable records, well managed from creation to disposition, are necessary if public institutions are to be truly answerable to the public. If a record is not accessible or, worse, has been destroyed, the public institution cannot be held accountable. As the English archival scholar Elizabeth Shepherd has noted, "Providing access to reliable records is commonly cited as a necessary prerequisite for accountability, transparency, and good governance."<sup>4</sup> Given the fundamental importance of accountability to democracy, and the central role records play in documenting responsibility and therefore supporting accountability and democracy, the reality is that records management cannot be discretionary. It must be a matter of law.<sup>5</sup>

4 Elizabeth Shepherd, "Right to Information," in *Currents of Archival Thinking*, ed. Heather MacNeil and Terry Eastwood (Santa Barbara, CA: Libraries Unlimited, 2017), 248.

5 For a more complete discussion on records and accountability, see Richard J. Cox and David A. Wallace, eds., *Archives and the Public Good: Accountability and Records in Modern Society* (Westport, CT: Quorum Books, 2002).

To establish an accountability regime for records will not be easy. A sea change in thinking is required both within and outside government. Records management must be perceived as a distinct, crucial, core government function. A formal and structured records management regime must govern the creation of records, whether they document large transactions or small, and it must ensure the protection of those records over long periods so they persist as authentic evidence. To work, this records management system must be routine, verifiable, efficient, accountable, and transparent.

The major impediment to effective information and records management is the absence of a comprehensive, binding, standards-based framework for regulating not only the management of existing records and archives but also the creation of new sources of information and evidence. Without the “stick” of regulated records management, no amount of “carrots” as incentive will prompt busy government employees to change their existing practices, no matter how medieval such practices may be.

In fact, the requirements of an effective records management system mirror those of the financial management systems used by governments across Canada. Modern financial management systems are comprehensive regimes that have developed over decades. They incorporate legislation, policy, procedures, standards, and the means to verify compliance. To create a similar regime for the management of records as sources of evidence, governments need to establish strong, enforceable legislation and policies, and the creators, managers, and users of information and evidence need to apply standards-based approaches to all aspects of their care. These conditions should apply to all levels of government, whether municipal, provincial, territorial, or federal, as well as to any non-governmental entities that receive substantial support from the public sector.

In this article, I consider the potential for developing such a framework. I begin with an examination of the current state of records management in Canada, after which I discuss the potential for adopting financial management strategies for use in the records management realm. I conclude by arguing that it is essential that we pursue fundamental change in our public institutions at all levels and that all stakeholders need to participate fully to support this

change. Requiring compliance, rather than encouraging participation, is critical to achieving accurate and accountable records management.

## The Evolution of Bureaucracy

Before we consider the future, we must briefly review some history. Even though the social welfare state seems pervasive in Canada today, the notion that the state exists for the benefit of its citizens (a common perception in Western democracies) is in its infancy. For millennia, the church was the essential governing body in society, and secular bodies played only transient roles. Then, in the 13th and 14th centuries, monarchies established power, supported by the aristocracy, taking over many of the territories and much of the power formerly held by the church.<sup>6</sup> In this period, documents recorded the obligations of citizens and indicated whether they met those obligations. As the archival theorist Geoffrey Yeo states, “Medieval royal governments, ecclesiastical institutions and sometimes individuals preserved records to safeguard their interests and protect their entitlements.”<sup>7</sup> Records were perceived as an essential tool for control – and sometimes oppression – not for public accountability. As another archival thinker, Judith Panitch, has noted, “The power of archival records, then, could be vast, for upon them rested the entire legal, political, and economic legitimacy of the monarchy and nobility.”<sup>8</sup>

In the late 18th century, the balance of power changed dramatically, as demonstrated by the seismic social and political shifts that came with the American and French revolutions. The rise of democracy in the 18th and 19th centuries meant “civic duties were replaced by civil rights.”<sup>9</sup> Consequences of this change in power relationships was an increase in the complexity of government, with an associated and dramatic increase in the volume and nature of records. As an example, in 1912, the US government generated some 60,000 cubic feet of

6 Jos C.N. Raadschelders, *Handbook of Administrative History* (New York: Routledge, 2017).

7 Geoffrey Yeo, *Records, Information and Data: Exploring the Role of Record-Keeping in an Information Culture* (London: Facet Publishing, 2018), 9.

8 Judith M. Panitch, “Liberty, Equality, Posterity? Some Archival Lessons from the Case of the French Revolution,” *American Archivist* 59, no. 1 (Winter 1996): 33.

9 Raadschelders, *Handbook of Administrative History*, 176. See also Shepherd, “Right to Information,” 265–67.

records per year. By 1976, just one department, the United States Department of Agriculture, was creating 64,000 cubic feet per day.<sup>10</sup> In less than a century, the size and power of federal, state, and local governments has grown to an unprecedented, unimaginable scale. Government is now the major external factor that affects every facet of a citizen's life from birth to death. In Western societies like Canada, democracy is our chosen method for maintaining accountability in the face of this tremendous growth in the complexity, pervasiveness, and power of government. The challenge is to ensure this increasingly bureaucratic state continues to serve its citizens.

## The Situation Today

As I have argued already, technology can seem god-like. Digital technologies gather, store, and manipulate vast amounts of data, allowing us to exploit information in ways never before thought possible. Tools such as email, social media applications, global positioning systems, and digital commerce devices such as bitcoin have and will continue to have a dramatic and (ideally) beneficial impact on our day-to-day lives.

But god-like technology has a downside. *Time* magazine recently reported that the Internet (that is, “the Web we know”) occupies 19 terabytes of digital space. But the “content not indexed by search engines, including illegal commerce sites” – the place where information about guns, child pornography, and contract killers is available – occupies almost 400 times more digital space: over 7,500 terabytes.<sup>11</sup>

Leaving aside the dark web of guns, pornography, and contract killing, we are all exposed daily to horror story after horror story of identity theft or privacy breaches or lost or stolen data.<sup>12</sup> Given that government is the creator and custodian of the vast majority of our personal information, including information

10 See H.G. Jones, *The Records of a Nation: Their Management, Preservation, and Use* (New York: Atheneum, 1969), especially 8–9, and James R. Beniger, *The Control Revolution: Technological and Economic Origins of the Information Society* (Cambridge, MA: Harvard University Press, 1986), 414.

11 The Editors of *Time*, *Cybersecurity: Hacking, the Dark Web and You* (New York: Time Books, 2018), 19. To learn more about the dark web, readers might be interested in the growing number of books on the topic, including, as one example, Jamie Bartlett, *The Dark Net: Inside the Digital Underworld* (New York: Melville House, 2015).

12 Ibid.

about our health, finances, property ownership, and so on, people are becoming increasingly concerned about how their information is being managed.

For example, various municipalities in Canada are implementing law enforcement programs based on predictive policing software. Large amounts of disparate data about issues such as “noise disturbances, broken street furniture, poor lighting, and the presence of a bar” are loaded in to software tools, which are then manipulated to predict where possible crimes might take place, and police services can use these predictions to identify possible methods of prevention. Crime may decrease, but where is the privacy protection if a broken chair on the sidewalk or the mere existence of a local tavern can be used as a predictor of crime? What are the downsides? As journalist John Lorinc suggests, one might be “the over policing of racialized and lower income communities.”<sup>13</sup>

Politicians of every ideological stripe have picked up on the general anxiety concerning the power and ability of governments and corporations to exploit and hide information. Distrust in our institutions is on the rise. In the United States immediately following World War II, over 70 percent of citizens polled said that they trusted the government. That number is now below 20 percent.<sup>14</sup> Looking outside the United States, trust in government officials in several Western countries sits at a disquieting 29 percent.<sup>15</sup> This lack of trust in government and consequent decrease in civic engagement – often evidenced by lower voting rates – poses an existential threat to democracy.<sup>16</sup>

Digital technology has been seen as a major part of the solution. Many believe that computer technologies will increase public faith in government institutions by allowing wider and more equitable access to information. Some see digital technology as a silver bullet, because the tools allow agencies to make vast amounts information available to a wide audience, independent of geographic constraints.

The Open Government Partnership, for instance, is an international consortium of governments, non-profits, and private-sector companies. Established in

<sup>13</sup> John Lorinc, “Safety in Numbers,” *Walrus*, 1 April 2018, 27.

<sup>14</sup> Mary Francoli, “Trust in an Era of ‘Open’ and Digital Government,” in *Government Digital: The Quest to Regain Public Trust*, ed. Alex Benay (Toronto: Dundurn 2018).

<sup>15</sup> *Ibid.*

<sup>16</sup> Treasury Board, “Directive on Open Government,” Government of Canada, 9 October 2014, accessed 8 July 2019, <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=28108>.



2011, the Open Government Partnership aims to secure “solid commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance, in partnership with civil society and the private sector.”<sup>17</sup> Each member of the partnership “is required to publish a two-year action plan for their open government initiatives developed in consultation with civil society and interested citizens.”<sup>18</sup>

Canada joined the Open Government Partnership in 2012 and, in compliance with the requirements, issued its own Directive on Open Government in 2014. The purpose of the directive was “to maximize the release of government information and data of business value to support transparency, accountability, citizen engagement, and socio-economic benefits through reuse.” The Treasury Board of Canada Secretariat is one of chairs of the organization, and the Government of Canada contributes \$200,000 a year to the Open Government’s \$9 million budget.<sup>19</sup>

However, a truly open government requires more than just publishing vast amounts of data on the Internet. Another important mechanism is the establishment and enforcement of access to information legislation, which many democratic governments have instituted in order to make information and records publicly available. But while many see legislated access as another silver bullet solution, the reality is much less straightforward.

### **The Challenge of Access to Information Legislation**

Access to information and privacy (ATIP) laws have been implemented and information commissioners or their equivalents have been appointed in every major political jurisdiction in Canada.<sup>20</sup> In a comparatively short time, access and privacy have gone from being niche topics to becoming central planks in the platforms of all three of Canada’s major political parties. Indeed, the provision

17 Government of Canada, “The Open Government Partnership,” Government of Canada, 1 October 2018, accessed 15 November 2018, <https://open.canada.ca/en/open-government-partnership>.

18 Ibid.

19 Treasury Board of Canada Secretariat, “Directive on Open Government,” Government of Canada, 9 October 2014, accessed 8 July 2019, <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=28108>.

20 Office of the Privacy Commissioner of Canada, “Provincial and Territorial Privacy Laws and Oversight,” Office of the Privacy Commissioner of Canada, 9 November 2017, accessed 26 April 2018, <https://www.priv.gc.ca/en/about-the-opc/what-we-do/provincial-and-territorial-collaboration/provincial-and-territorial-privacy-laws-and-oversight/>.

of access and privacy mechanisms is often a key election issue.<sup>21</sup> Nova Scotia was the first province to pass an ATIP act in 1977. Six years later, under the Pierre Trudeau Liberal Government, federal legislation came into force with the institution of Canada's *Access to Information Act*. Over the next 15 years, all provinces and territories across the country passed their own versions of ATIP.<sup>22</sup>

Today, the public has embraced its right to access government information. Journalists, activists, opposition political parties, and ordinary citizens have demonstrated a growing desire, each for their own reasons, to determine what information the government has and what it is doing with it. In 2016, some 30 years after access legislation was first passed, the federal commissioner of information noted in their annual report that “the number of requests made under the *Access to Information Act* has been increasing every year. . . . In 2010–11, the government received approximately 41,600 requests. In 2015–16, it received approximately 75,400. . . . an increase of 81 percent.”<sup>23</sup>

This growth is not an anomaly. The Newfoundland and Labrador privacy commissioner noted that access requests had grown from 554 in 2013–2014 to over 2,311 in 2017–2018 – more than a 400 percent increase.<sup>24</sup> In Alberta, the Office of the Information and Privacy Commissioner stated in its 2018–2021 strategic plan that there had been cross-the-board increases in requests for public information.<sup>25</sup> The Northwest Territories commissioner reported in their

21 Liberal Party of Canada, *A New Plan for a Strong Middle Class* (Ottawa, ON: Liberal Party of Canada, 2015) accessed 26 April 2018, <https://www.liberal.ca/wp-content/uploads/2015/10/New-plan-for-a-strong-middle-class.pdf>. New Democratic Party of Canada, *Building a Country of Our Dreams* (Ottawa, ON: 2015), accessed 26 April 2018, <http://xfer.ndp.ca/2015/2015-Full-Platform-EN-PRINT.pdf>. Conservative Party of Canada, *Protect Our Economy: Our Conservative Plan to Protect the Economy* (Ottawa, ON: Conservative Party of Canada, 2015) accessed 26 April 2018, <https://www.conservative.ca/media/plan/conservative-platform-en.pdf>.

22 Office of the Privacy Commissioner of Canada, “Provincial and Territorial Privacy Laws and Oversight.” It should be noted that, in some jurisdictions, access to information and right of privacy are addressed in separate pieces of legislation. In other jurisdictions, they are combined in a single piece of legislation.

23 Office of the Privacy Commissioner of Canada, “Remarks by the Information Commissioner of Canada Standing Committee on Access to Information, Privacy and Ethics: Main Estimates: Vote 1 under the Offices of the Information and Privacy Commissioner of Canada,” Office of the Privacy Commissioner of Canada, 5 May 2017, accessed 26 April 2018, [https://www.oic-ci.gc.ca/sites/default/files/userfiles/files/eng/reports-publications/annual-reports/OIC\\_AR2017\\_ENG\\_v2.pdf](https://www.oic-ci.gc.ca/sites/default/files/userfiles/files/eng/reports-publications/annual-reports/OIC_AR2017_ENG_v2.pdf)

24 Office of the Information and Privacy Commissioner of Newfoundland and Labrador, *Annual Report 2017–2018*, Office of the Information and Privacy Commissioner of Newfoundland and Labrador, 18 December 2018, accessed 19 March 2019, <https://www.oipc.nl.ca/pdfs/OIPCAnnualReport2017-2018.pdf>.

25 Office of the Information and Privacy Commissioner of Alberta, *Strategic Business Plan 2018–21*, Office of the Information and Privacy Commissioner of Alberta, accessed 19 March 2019, <https://www.oipc.ab.ca>

2018 annual report that additional resources had been allocated to the office “in light of the continuously increasing work-load in recent years.”<sup>26</sup>

However, the passage of legislation and the appointment of officials to oversee the legislation has only demonstrated shortcomings in the way government information is managed and understood – particularly, misconceptions about the ease with which governments can find key information on demand and incorrect assumptions about the ability of governments to make digital copies of records immediately available. For ATIP to work, government needs to impose strict controls over the creation and management of records in its custody. But as Canadian archivists know, these controls are not easy to establish, and they are often followed inconsistently. Consequently, as noted by the federal commissioner in their 2017 report, an increase in requests has seen a corresponding increase in complaints.<sup>27</sup> As noted below, weaknesses in compliance with access regimes have been noted across the country.<sup>28</sup>

Many of the complaints centre on the length of time it takes to get responses to access requests. News Media Canada, a national association representing the Canadian news media industry, released an audit of the federal government’s response to ATIP legislation in 2017. It found that only a quarter of requests sent to federal departments, agencies, and Crown corporations were answered within 30 days. A full third of requests had not received responses by the end of the audit period, which was nearly four months.<sup>29</sup> As noted open-access advocate Michael Geist has argued,

[/media/892825/Business\\_Plan\\_2018-21.pdf](#).

26 Information and Privacy Commissioner of the Northwest Territories, *Annual Report 2017/2018*, 11 August 2018, accessed 23 March 2019, <https://atipp-nt.ca/wp-content/uploads/208/10/Annual-Report-EN.pdf>.

27 Office of the Privacy Commissioner of Canada, “Remarks by the Information Commissioner of Canada Standing Committee on Access to Information, Privacy and Ethics: Main Estimates: Vote 1b under the Officer of the Information and Privacy Commissioner of Canada,” Office of the Privacy Commissioner of Canada, 8 May 2018, accessed 29 March 2019, [http://oic-ci.gc.ca/eng/discours-speeches-2018\\_1.aspx](http://oic-ci.gc.ca/eng/discours-speeches-2018_1.aspx).

28 For insightful discussions of the changing reality of records management in light of access to information requirements, see, for example, Gillian Oliver, “Managing Records in Current Recordkeeping Environments,” and Shepherd, “Right to Information,” in *Currents of Archival Thinking*, 83–106 and 247–69, respectively.

29 Laura Stone, “Canada’s Access-to-Information System Has Worsened under Trudeau Government: Report,” *Globe and Mail*, 27 September 2017, accessed 1 May 2018, <https://beta.theglobeandmail.com/news/politics/canadas-access-to-information-system-has-worsened-under-trudeau-government-report/article36407309/>.

Indeed, while the government has invested in making open data sets available, it has failed to provide the necessary resources to the access to information system. The Information Commissioner of Canada has warned that inadequate financing has made it virtually impossible to meet demand and respond to complaints. Regular users of the access to information system invariably encounter long delays, aggressive use of exceptions to redact important information, significant costs, and inconsistent implementation of technology to provide more efficient and cost-effective service.<sup>30</sup>

The time taken to respond to requests is a problem in many jurisdictions. For example, the Manitoba Ombudsman's 2017 annual report stated that "we continued with our efforts to address delayed cases, which have been an ongoing challenge for the office for many years."<sup>31</sup> In British Columbia, the situation was so dire that the ATIP commissioner issued a special report on the topic, noting,

I am frustrated to see that government routinely operates in contravention of BC law, especially considering the 75% increase in time extension requests to my office over the past two years. Time extensions under FIPPA are intended to be the exception rather than the norm, as each extension delays providing results to the applicant. Ministers need to prioritize responses to access to information requests.<sup>32</sup>

In 2019, Alberta Independent Senator Elaine McCoy, speaking on her research about the access to information system, stated that she was struck by "the culture of delay" that pervades it. "So, it's endemic. . . . And people who are just asking for innocent information on a regular case-by-case basis for their clients, they count on getting the information back between two and three years [later] if

30 Michael Geist, "What Open Government Hides," *Michael Geist* (blog), 1 December 2014, accessed 29 March 2019, <http://www.michaelgeist.ca/2014/12/open-government-hides-2/>.

31 Manitoba Ombudsman, *2017 Annual Report*, Manitoba Ombudsman, 28 May 2018, accessed 8 July 2019, <https://www.ombudsman.mb.ca/uploads/document/files/2017-annual-report-en-2.pdf>.

32 Office of the Information and Privacy Commissioner for British Columbia, *Timing is Everything: Report Card on Government's Access to Information Responses April 1, 2015 – March 31, 2017*, 20 September 2017, Office of the Information and Privacy Commissioner for British Columbia, accessed 8 July 2019, <https://www.oipc.bc.ca/special-reports/2074>.

they are lucky. That's not helpful. We need to say that's not the way this system is supposed to work."<sup>33</sup>

Compounding the problem, each province and territory has a different way of administering ATIP legislation. Some attach fees to their requests, a practice that also generates complaints. In 2017, for instance, a reporter's request to the Toronto Transit Commission in Ontario for information about a controversial subway extension resulted in an estimated three-year wait and an anticipated fee of \$31,983.<sup>34</sup> The government was going to charge the reporter for the cost of duplication in addition to charging \$30 per hour for the search for records. If governments cannot find information easily, they will inevitably incur higher costs for search and retrieval.

Passing these costs on to the public seems an unreasonable response to a weakness in information and records management. But in fact, ATIP legislation in Canada was based on the incorrect premise that the governments concerned had tight control over their records. The amount of time taken to respond to requests is just one manifestation of the weakness of this assumption. There are other indications. For example, the Office of the Privacy Commissioner of Canada has to investigate the unauthorized release of the personal information of 70,000 employees, which took place when the government was attempting to implement a human resources program.<sup>35</sup> In another case in Alberta, the information and privacy commissioner cleared a department suspected of destroying records of wrongful behaviour, while at the same time noting, "The investigation also found that the [staff] was not fully aware of its records management policies and procedures. Furthermore, employees . . . were not trained at the time to understand the difference between official and transitory records."<sup>36</sup>

33 Charelle Evelyn, "Senators Crack Down on 'Culture of Delay' in Access-to-Information Regime," *The Hill Times*, 27 March 2019, accessed 27 March 2019, <https://www.hilltimes.com/2019/03/27/senators-crack-down-on-culture-of-delay-in-access-to-information-regime/193897>.

34 Sabrina Nanji, "The High Cost of Accessing Public Records Is a Barrier to Democracy, Experts Say," *Toronto Star*, 30 March 2018, accessed 8 July 2019, [https://www.thestar.com/news/canada/2018/03/30/the-high-cost-of-accessing-public-records-is-a-barrier-to-democracy-experts-say.html?google\\_editors\\_picks=true](https://www.thestar.com/news/canada/2018/03/30/the-high-cost-of-accessing-public-records-is-a-barrier-to-democracy-experts-say.html?google_editors_picks=true).

35 Office of the Privacy Commissioner of Canada, "Phoenix Pay System Compromised Public Servants' Privacy," Office Of the Privacy Commissioner of Canada, 21 September 2017, accessed 3 February 2019, [https://www.priv.gc.ca/en/opc-actions-and-decisions/investigations/investigations-into-federal-institutions/2016-17/pa\\_20170608\\_pspc/](https://www.priv.gc.ca/en/opc-actions-and-decisions/investigations/investigations-into-federal-institutions/2016-17/pa_20170608_pspc/).

36 Office of the Information and Privacy Commissioner of Alberta, "OIPC Investigation Reports Focus on Records Management," Office of the Information and Privacy Commissioner of Alberta, 19 June 2018, accessed 3 February

The relationship between accountability and records management was acknowledged by Canada's information commissioners in their 2013 resolution, which stated, "Information is one of Canada's most important national resources," and "Canadians need to be able to hold public institutions and private organizations to account for their privacy practices, their access decisions and their *information management*."<sup>37</sup> As the former information and privacy commissioner for British Columbia has stated, "Without the proper creation and management of records, any statutory right of access to records will prove unenforceable in practice."<sup>38</sup> According to Duff Conacher, co-founder of the advocacy group Democracy Watch, one solution is for the information commissioner to be "given the power to order government institutions to clean up their management of records so that they can be easily found and disclosed without excessive cost."<sup>39</sup>

Providing public access is seen as a dramatic change in the nature of government. As noted by the information and privacy commissioner for New Brunswick, "We recognized that the public's right to know represents a cultural shift for government, requiring it to move away from protecting information to being more open and transparent by default, and we remain steadfast in encouraging the public sector to follow that path."<sup>40</sup> Still, the impetus to restrict government information remains strong, and legislation demanding access can be seen by government not as an enhancement but as a complication or perhaps even an actual threat. In 2017, the information commissioner for Alberta stated that their investigator received numerous comments about the "lack of respect for access to information across the Government of Alberta," and noted that "it is almost impossible to fulfill the access duties of a public body given the current environment." The report concluded, "Senior administrators and executives must

2019, <https://www.oipc.ab.ca/news-and-events/news-releases/2018/oipc-investigation-reports-focus-on-records-management.aspx>.

- 37 Office of the Privacy Commissioner of Canada, "Modernizing Access and Privacy Laws for the 21st Century," Office of the Privacy Commissioner of Canada, 9 October 2013, accessed 26 January 2018, [https://www.priv.gc.ca/en/about-the-opc/what-we-do/provincial-and-territorial-collaboration/joint-resolutions-with-provinces-and-territories/res\\_131009/](https://www.priv.gc.ca/en/about-the-opc/what-we-do/provincial-and-territorial-collaboration/joint-resolutions-with-provinces-and-territories/res_131009/) (emphasis added).
- 38 Office of the Information and Privacy Commissioner for British Columbia, *Special Report: A Failure to Archive – Recommendations to Modernize Government Records Management* (Victoria, BC: Information and Privacy Commissioner for BC, 2014), accessed 13 November 2018, <https://www.oipc.bc.ca/special-reports/1664>.
- 39 Sabrina Nanji, "The High Cost of Accessing Public Records."
- 40 Office of the Access to Information and Privacy Commissioner for New Brunswick, *Annual Report 2013–2014*, p. 5. Accessed 10 July 2019, <https://www1.gnb.ca/leglibbib/en/Resources.aspx/EDocs/Serials/86>.

voice and demonstrate respect for the legislation, including positively stating support for the legislation and setting expectations for compliance, disavowing statements that are contrary to the legislation or that undermine it, and acting to provide timely records retrieval and reviews/approval.”<sup>41</sup>

For Canada’s information commissioners, the weaknesses in privacy provisions and in public access to information and records have become insurmountable. The 2013 resolution recognized the ineffectiveness of existing legislation along with the continued intransigence of many public institutions. Every information and privacy commissioner across the country – one federal, ten provincial, and three territorial – signed the resolution asking their respective governments to “recommit to the fundamental democratic values underpinning access and personal privacy legislation.”<sup>42</sup>

The commissioners’ solutions were intended to ensure compliance with the law by strengthening monitoring and enforcement. Some of the powers they proposed included the ability of information commissioners to issue binding orders for disclosure, impose penalties for non-compliance, and legislate strict, enforceable timelines for responses to access requests. They also recommended that all public entities be required, by legislation, to document matters related to deliberations, actions, and decisions.<sup>43</sup> So far, their recommendations have not been widely adopted, if they have been adopted at all.

### **Pillars of Government Accountability**

Despite the current weakness of ATIP legislation, public institutions *have*, over the centuries, become more accountable, transparent, effective, and efficient. Where once the church and the monarch were in complete control, now people in democratic states around the world are better able to hold their governments to account by demanding evidence of government actions. In Canada, the federal, provincial, territorial, and municipal governments have established a range of management regimes for the three pillars of public service: human resources, financial assets, and information and records. The regimes are intended to

41 Alberta Justice and Solicitor General, *Investigation Report F2017 IR-01: Investigation into Alberta Justice and Solicitor General's Delays in Responding to Access Requests*, Office of the Information and Privacy Commissioner of Alberta, 23 February 2017, accessed 27 April 2018, <https://www.oipc.ab.ca/media/788396/f2017-ir-01.pdf>.

42 Office of the Privacy Commissioner of Canada, “Modernizing Access and Privacy Laws for the 21st Century.”

43 *Ibid.*

ensure that the public service is more fully accountable to the public it serves.<sup>44</sup>

To manage the first pillar, human resources, the federal government has developed strict controls. The *Public Service Employment Act* sets out the rules and principles governing the staffing of public service positions. The system is “built on the merit principle, with a view to ensure and maintain the political neutrality of the Public Service, [and] it strives to ensure fairness and equity in the way positions are being staffed.”<sup>45</sup>

To manage the second pillar, financial assets, the federal government has implemented financial management systems designed to ensure the government receives and expends public funds in the most efficient, effective, and accountable manner, in accordance to instructions issued by Parliament.<sup>46</sup>

According to the Treasury Board of Canada, the third pillar, information and records, is managed according to the requirements of the *Privacy Act*, the *Access to Information Act*, and the *Library and Archives of Canada Act*.<sup>47</sup> In her dissertation on national archival legislation in the United Kingdom, Canada, and Singapore, Elaine Goh noted that, in each instance, archival legislation “is not about recordkeeping” but, rather, “primarily addresses the transfer of records of archival value to the archives.”<sup>48</sup> This is certainly true in Canada: federal legislation provides little guidance about the actual management of information and records but, rather, concerns itself mainly with how records with enduring value should be preserved and/or made available once they exist. As important as any records legislation is, it can only be effective if there is an equally effective management system in place. Goh notes that the national archives in the three countries she studied rely on a patchwork of other records-related legislation

44 Treasury Board of Canada Secretariat, “ARCHIVED – The Financial Administration Act: Responding to Non-compliance – Meeting the Expectations of Canadians,” Treasury Board of Canada Secretariat, 25 October 2005, accessed 29 April 2018, <https://www.tbs-sct.gc.ca/report/rev-exa/faa-igfp/faa-igfp03-eng.asp>.

45 Ibid. In addition, six other detailed acts are also used in conjunction with the *Public Service Employment Act* to attempt to ensure a fair, equitable, and efficient system. These are the *Public Service Staff Relations Act*, the *Public Service Employment Act*, the *Public Service Modernization Act*, the *Canada Labour Code*, the *Canadian Human Rights Act*, and the *Employment Equity Act*. Treasury Board of Canada Secretariat, *The Financial Administration Act*.

46 Treasury Board of Canada Secretariat, “ARCHIVED – The Financial Administration Act.”

47 Ibid.

48 Elaine Mei Yee Goh, “Archival Law from the Trenches: The Impact of Archival Legislation on Records Management in Commonwealth Countries” (PhD diss., University of British Columbia, 2016), 256.



and norms to address the management and preservation of records.<sup>49</sup>

In Canada, guidance comes from the Treasury Board, which has issued a Policy on Information Management and a Directive on Recordkeeping. However, there is no legislative requirement in Canada to establish a comprehensive records management system that would provide clarity about how information should be managed, who is responsible for establishing and maintaining records and information systems, which standards should be followed, or what benchmarks should be achieved.<sup>50</sup>

Furthermore, a mechanism is required to monitor and ensure compliance with any formal records creation or management protocols; such a mechanism is not currently in place. Given the paucity of discussion at the public level, it would appear that the management of operational records of our public institutions has been and continues to be an internal affair, of little interest to higher levels of government or the wider public, even though the public cares deeply about the impact of lost or missing information on personal and collective rights and entitlements.<sup>51</sup>

## The Governance Gap

The problem, I suggest, lies not with the application of existing legislation but with a gap in the broader governance structure in which public information is created and managed. The effective management of records and data at all levels of government requires persistent, sustained effort on a daily basis by many people over long periods, under the management and oversight of those with appropriate authority. As noted, existing legislation does not normally mention

<sup>49</sup> Ibid.

<sup>50</sup> As early as 2002, it was noted, in the Government of Canada's review, *Access to Information – Making it Work for Canadians: Report of the Access to Information Review Task Force* (p. 42), that "most public servants have no idea" that access policies and directives exist. Government of Canada, *Access to Information*, June 2002, accessed 8 July 2019, <http://publications.gc.ca/site/eng/111255/publication.html>. Goh emphasizes this point in her 2016 dissertation, noting that records management activities in the federal government are defined as much by "guidelines" as by policies and regulations and that, because guidelines are not mandatory, compliance is a matter of choice, not a requirement. See Goh, "Archival Law from the Trenches," especially 136–40.

<sup>51</sup> Chapter 4 of Goh's "Archival Law from the Trenches" provides a detailed account of the ways government policies address or do not address issues related to archives and records management in the United Kingdom, Canada, and Singapore.

records management at all. When information and records management are mentioned, the laws tend to designate certain bodies, usually the government's archival institution, to provide advice to departments, but there is no mechanism to compel governments to act.

For instance, Saskatchewan's *Archives and Public Records Management Act* states that the provincial archives' role is "to promote and facilitate good records management respecting public records . . . to support accountability, transparency and effective operations." The act also states that the institution will

- (e) determine and establish policies, standards, guidelines and processes with respect to:
  - (i) the creation, handling, control, organization, retention, maintenance, security, preservation, disposition, alienation and destruction of public records in the custody or under the control of the Legislative Assembly Service, the Legislative Assembly, Officers of the Legislative Assembly, government institutions, offices of ministers of the Government of Saskatchewan and the courts.<sup>52</sup>

Similar wording is contained in acts found in other jurisdictions. In Manitoba, the provincial archivist is mandated to "(b) to promote and facilitate good recordkeeping respecting government records in order to support accountability and effective government administration," while the Provincial Archives of New Brunswick is empowered "to encourage the use by departments and local governments of modern records storage and classification systems in order to ensure that important policies and programs are documented and that public records are protected against deterioration, loss and destruction." In British Columbia, the chief records officer is required "to promote effective information management by government bodies."<sup>53</sup>

<sup>52</sup> Province of Saskatchewan, *The Archives and Public Records Management Act* (Regina, SK: Government of Saskatchewan, 2015), accessed 26 April 2018, <http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/A26-11.pdf>.

<sup>53</sup> Province of Manitoba, *The Archives and Recordkeeping Act*, sec. 5 (b), Manitoba, 2001, accessed 8 July 2019, <http://web2.gov.mb.ca/laws/statutes/2001/c03501e.php>; Province of New Brunswick, *Archives Act*, sec. 5(1)(d), New Brunswick, 1977, accessed 8 July 2019, <http://laws.gnb.ca/en/showfulldoc/cs/A-11.1/20120313>; Province of British Columbia, *Information Management Act*, sec. 3 (d), British Columbia, 28 May 2015, accessed 8 July 2019, <http://www.bclaws.ca/civix/document/id/lc/statreg/15027>.

One province, Nova Scotia, does have an act devoted to government records, which states that the minister is responsible for records management and related activities of public bodies. But this seemingly explicit oversight role is mitigated: a subsequent phrase in the act states that the institution's duties "may include . . . developing and implementing a comprehensive records management program for public bodies."<sup>54</sup>

As shown in the various pieces of legislation, the role of the records manager and archivist is more advisory than directorial, a fact that was exacerbated with the paper boom of the early and mid-20th century. As typewriters and photocopying machines led to a proliferation of records, there was an accompanying devolution of management. Records were less and less frequently managed in central repositories; instead, they were kept under the supervision of departmental officers, who could then make their own decisions about how and where the records were made, stored, and shared.<sup>55</sup>

Over time, decentralization was assumed to be the norm. The information needed to do a job was stored in the computer used to do that job, under the direct control of the person doing that job. As Glenn Dingwall states, "That era saw a decentralization of recordmaking and keeping, as desktop computing allowed organizations to push those responsibilities out to a broader class of workers."<sup>56</sup> It was perhaps inevitable that government workers would increasingly believe that the information under their care was "theirs" to administer, now that they were not longer required – or able – to send their documents to a central registry for long-term preservation. As it fell to individuals to manage their information according to their own needs, it is not surprising that idiosyncratic recordkeeping systems and a consequent decrease in access and control developed. But as Goh demonstrates, government records belong to the government, not the individual. They are evidence of government operations, and their organization and disposition are not up to their creators. Explaining this reality to records creators or decision makers can be difficult, however. And because the information professional is not empowered to demand compliance, the records manager too often ends up acquiescing to departmental demands that records must be organized and managed in a certain way. While retention and

54 Province of Nova Scotia, *Government Records Act*, sec. 5 (2) (Halifax, NS: Province of Nova Scotia, 2018), accessed 26 April 2018, <https://nslslegislature.ca/sites/default/files/legc/statutes/government%20records.pdf>.

55 Shepherd, "Right to Information."

56 Glenn Dingwall, "Digital Preservation: From Possible to Practical," in *Currents of Archival Thinking*, 153.

disposal schedules serve as a check against premature destruction of records, they are a weak tool when a departmental official declares that records must be kept longer (sometimes forever) to address what are really short-term concerns or personal preferences.<sup>57</sup>

The information professional may have responsibility, but what is missing in that remit is *authority*. As Peter Drucker, a well-known academic and writer on business management, has stated, “The constitutional lawyer knows that there is no such word as ‘responsibility’ in the political dictionary. The appropriate term is ‘responsibility and authority.’”<sup>58</sup> For Drucker, no organization can be considered responsible for a problem if it is not conferred with legitimate authority and resources to deal with the problem.

In 2002, a federal government report, *Access to Information: Making It Work for Canadians – Report of the Access to Information Review Task Force*, reflected Drucker’s perspective: “There is currently no accountability regime for information management that is as effective as the regimes in place for financial and human resources management. Without such a regime, it is hard to see how the needed changes in information management – extending to the level of individual employees – can be implemented effectively.”<sup>59</sup>

In her article “Managing Records in Current Record Keeping Environments,” Gillian Oliver observes, “In today’s environment . . . there are many more occupations competing for jurisdiction over recorded information.”<sup>60</sup> It is my belief that many civil servants, especially those in senior positions, do not naturally recognize the fundamental differences between information technology (IT), information management (IM), and records management. The first is primarily concerned with *how to do* certain things, while the second is preoccupied with *what must be done*. The third, on the other hand, addresses the evidence produced, regardless of what had to be done or why.

57 Goh notes that one of the objectives of Library and Archives of Canada is to “facilitate the management of information by government institutions,” but *facilitate* is perceived as a weak term because it does not clearly specify the extent of LAC’s role in information management. See Goh, “Archival Law from the Trenches,” 187.

58 Peter F. Drucker, *The Essential Drucker: The Best of Sixty Years of Peter Drucker’s Essential Writings on Management* (Toronto, ON: HarperCollins Canada, 2001), 61.

59 Access to Information Review Task Force Government of Canada, *Access to Information: Making it Work for Canadians – Report of the Access to Information Review Task Force* (Ottawa, ON: Government of Canada, 2002), 145, accessed 23 January 2018, <http://publications.gc.ca/collections/Collection/BT22-83-2002E.pdf>.

60 Oliver, “Managing Records in Current Record Keeping Environments,” in *Currents of Archival Thinking*, 93.

A records manager might determine that, in order to maintain accountability for government actions, each change in an electronic record should be documented: for example, by tracking who made changes to a database, what change was made, and when was it made. It would then be up to the IT specialist to develop the computer code that would capture the appropriate information. Until governments recognize the differences between these three areas of authority and responsibility, they will continue to have problems with their information management systems.<sup>61</sup>

### Financial Accountability: A Comparison

Canada's existing accountability framework for information management – which is, I would argue, currently inadequate and unenforceable – stands in sharp contrast to that for the management of financial assets. The financial affairs of public agencies have always been of both internal and public concern, ever since churches and monarchs gave way to democracies. Competition between the executive and the legislature over the control of, and accountability for, finances “has been a defining feature of government since the evolution of the English Constitution.”<sup>62</sup> As well, there has long been a question of fairness. The citizen and taxpayer are direct contributors to and direct beneficiaries of public spending and so have a vested interest in knowing where their money is going.

In the 18th century, Thomas Jefferson, the American politician, writer, and third president of the United States, remarked, “We might hope to see the finances as clear and intelligible as a merchant's books, so that every member of Congress, and every man of every mind in the Union should be able to comprehend them, to investigate abuses, and consequently, to control them.”<sup>63</sup> An important characteristic of a strong, democratic public administration is

61 An analysis of the misconceptions regarding the terms *information management* and *information technology* is needed. A nuanced, scholarly discussion of the relationships between information, records, and data, which touches on the distinctions between information technology and information management, is Geoffrey Yeo's *Records, Information and Data*.

62 Michelle Bunn, Robyn Pilcher, and David Gilchrist, “Public Sector Audit History in Britain and Australia,” *Financial Accounting Management* 34, no. 1 (2018): 64–76.

63 The Institute for Public Procurement, *Transparency in Government Procurement: A Position Paper from NIGP on the Importance of Transparency in Public Procurement* (Herndon, VA: NIGP, Inc., 2013), accessed 26 April 2018, <http://engage.nigp.org/acton/attachment/24793/f-01b1/1/-/-/-/Transparency%20in%20Government.pdf>.

the existence of well-constructed, constantly evolving and improving financial management legislation, articulated in some form of financial administration act (FAA). If modern democratic governments are to prosper, the public must trust that their money is spent wisely and for their benefit.

Much has changed since Jefferson's day. Governments today have financial resources far beyond what Jefferson and his contemporaries imagined. As resources have increased, so have the volume and quality of financial controls. Today, democratically elected governments around the world process billions of financial transactions each day, the great majority of them in a routine and verifiable manner.<sup>64</sup> There are scandals, of course, such as the Canadian sponsorship scandal, which saw uncontrolled spending by the federal government to influence the Quebec referendum of 1999.<sup>65</sup> But it is not a coincidence that financial records are highly regulated and tend to be much better managed than operational records, in large part because their care is so often governed by financial administration legislation.

Since July 1, 1867, Canada has had the equivalent of an FAA. The legislation was originally part of the *British North America Act*, though it has changed significantly over the years. Canadian financial legislation sets out a series of fundamental principles about the way government spending may be approved, what expenditures can be made, how and when revenues can be obtained, and when and why funds may be borrowed. The *Financial Administration Act* establishes a treasury board – the only permanent cabinet committee explicitly created through legislation – to advise the government on financial management. The act also assigns responsibility to the finance minister for developing and maintaining a trustworthy and accountable system for receiving and expending taxpayers' dollars. In addition, it establishes a framework of principles and responsibilities the minister must follow to establish the system of accountability.<sup>66</sup>

All provinces and territories have similar financial legislation, providing for a treasury board or equivalent, establishing the duties of a finance minister, and

64 The purpose of the referendum was for the provincial government to get a mandate to begin negotiating the separation of Quebec from the rest of Canada. See the overview in Stephen Azzi, "Commission of Inquiry into the Sponsorship Program and Advertising Activities," *The Canadian Encyclopedia*, 21 September 2006, accessed 26 April 2018, <http://www.thecanadianencyclopedia.ca/en/article/sponsorship-program-and-advertising-activities-gomery-inquiry-commission-of-inquiry-into/>.

65 Ibid.

66 Treasury Board of Canada, "ARCHIVED – The Financial Administration Act."

setting out operating principles and responsibilities. There are, naturally, minor differences between the various acts. In Ontario, for instance, the act specifies that the government may indemnify those organizations and individuals with whom it enters into contracts. The Northwest Territories, on the other hand, does not allow this indemnification.<sup>67</sup> (It should also be noted that the provinces all have their own auditors general, whereas the three territories fall under the responsibility of the Auditor General of Canada.)

To see how financial accountability legislation is effective in controlling government funds, it is useful to look at the Northwest Territories as a case study. In the Northwest Territories, the management of public funds is controlled by the territorial *Financial Administration Act*. The Act, amended in 1967, specifies that there will be a financial management board chaired by the finance minister. This board “is responsible for the financial management and financial administration of Government.” The finance minister is then explicitly charged with matters “relating to the collection, management and control of public money.” Reporting to the minister is the comptroller general. The responsibilities of this position, as laid out in legislation, are worth considering in some depth. Below is an excerpt from the Act, showing the level of detail given about the assigned duties:

- (2) The Comptroller General shall
- (a) establish and maintain systems and procedures
  - (i) to ensure the integrity of Government financial records and accounting systems,
  - (ii) to ensure that public money that belongs to Government is collected and accounted for,
  - (iii) for internal controls respecting the receipt and disbursement of public money that belongs to Government,
  - (iv) for the management and control of money, other than public money, held in trust or administered by Government,
  - (v) for the control of public property that belongs to Government,
  - (vi) to ensure compliance by departments, public agencies and

<sup>67</sup> Government of Ontario, “Financial Administration Act, R.S.O. 1990,” Ontario, 2018, accessed 14 November 2018, <https://www.ontario.ca/laws/statute/90f12>.

- other reporting bodies with directives and Government accounting policies and practices, and
- (vii) in respect of other financial matters for which the Comptroller General is responsible;
  - (b) maintain the accounts related to the operation of the Consolidated Revenue Fund and coordinate related procedures; and
  - (c) ensure that the Public Accounts are prepared for each Government fiscal year.<sup>68</sup>

As shown in this clause, the comptroller general is charged with carrying out those policies while developing and overseeing systems that maintain the “integrity” of all financial dealings of the government. Sitting above the comptroller general, the financial management board establishes direction and policy. Sitting below the comptroller general, individual public agencies are required to

25. . . .
- (c) establish and maintain systems and procedures to ensure that
    - (i) all money belonging to or administered by the public agency is properly managed and accounted for,
    - (ii) all disbursements of money belonging to or administered by the public agency are properly authorized, and
    - (iii) all property belonging to or administered by the public agency is properly controlled.<sup>69</sup>

The line of accountability continues right down to individual transactions carried out by government employees:

90. . . . no person shall incur an expenditure on behalf of Government unless
- (a) an expenditure officer certifies that
    - (i) the expenditure is being incurred pursuant to an appropriation,

<sup>68</sup> Government of the Northwest Territories, *Financial Administration Act* (Yellowknife, NWT: Government of the Northwest Territories, 2016, accessed 26 April 2018, <https://www.justice.gov.nt.ca/en/files/legislation/financial-administration/financial-administration.a.pdf>).

<sup>69</sup> *Ibid.*



- (ii) all reasonable measures have been taken to ensure that there is a sufficient uncommitted balance in the activity, set out in the Estimates on which the appropriation is based, to incur the expenditure,
- (iii) the expenditure is consistent with the purpose of the activity set out in the Estimates on which the appropriation is based, and
- (iv) if the expenditure is subject to any statutory conditions, those conditions are met.<sup>70</sup>

Given the level of detail in the Act, there is no ambiguity about exactly who is responsible and, therefore, who is accountable.

## The Importance of Auditing

Defining financial controls through legislation is one step in improving accountability, but one cannot overemphasize the importance of auditing and oversight as tools for effective and transparent financial management. The introduction of an independent public-sector audit function was a keystone in the development of accountability in democratic governments. Initially developed as a mechanism for government management, auditing has evolved as an indispensable method for holding governments to account.<sup>71</sup>

The Canadian office of the auditor general was established at the same time as financial legislation, with Confederation in 1867. In the beginning, the auditor general's annual reports "listed every single government transaction, from the purchase of bootlaces to contracts for bridge building."<sup>72</sup> Over time, the legislation authorizing the work of the auditor general has changed, and by 1977, the auditor general was given a broader mandate. In addition to looking at the accuracy of financial statements, the auditor general was charged with examining how well the government managed its general financial affairs.<sup>73</sup>

<sup>70</sup> Ibid.

<sup>71</sup> Bunn, Pilcher, and Gilchrist, "Public Sector Audit History in Britain and Australia."

<sup>72</sup> Office of the Auditor General of Canada, "A Brief History," Office of the Auditor General of Canada, accessed 23 April 2018, [http://www.oag-bvg.gc.ca/internet/English/au\\_fs\\_e\\_370.html](http://www.oag-bvg.gc.ca/internet/English/au_fs_e_370.html).

<sup>73</sup> Ibid.

## Legislating Information Accountability

There are currently no effective, enforceable systems for managing government information. An effective accountability framework for information management could follow the example of financial accountability legislation. Financial laws provide many examples of the requirements that might be imposed in order to support accountable information management. Such requirements might include

- A demand for discipline, to ensure that authentic and reliable operational records are created and managed in a systemic, documented, and accountable manner
- Insistence that formal procedures be followed – consistently, regardless of changes in organizational structures or staff – every time a public institution makes a transaction, by either creating or receiving a record and by storing that record appropriately
- A requirement for consistent and active daily management of records and information by people empowered to make and enforce actions, to ensure efficiency and compliance
- The establishment of clear lines of responsibility for the creation and management of the systems necessary to manage records
- Documentation of the requirements expected of each person creating and using records, as well as a provision for third-party monitoring and auditing
- Mechanisms for compliance, such as a requirement that an expert third party evaluate the system at least annually

In 2002, the federal government's report on ATIP included a recommendation that the National Archives of Canada, in conjunction with the Treasury Board, be assigned responsibility for conducting information management audits in government departments. Unfortunately, this recommendation was not adopted,

and the information commissioners' more recent call for action has not yet been taken up by federal or provincial governments.<sup>74</sup>

## The Need for Standards

The accountability regime for a government's financial system is not dependent solely on legislation, even with a strong audit component. The application of best-practice standards is also critical to success. Standards – rules for action – translate the intentions behind high-level decisions into reality. Governments are about power: who holds power, who can exercise that power, and under what conditions that power can be used. The typical FAA gives the comptroller general a great deal of authority over the day-to-day financial operations of the government, but this authority is sharply constrained by the standards the comptroller must follow.

According to the British Standards Institution, standards “are the distilled wisdom of people with expertise in their subject matter and who know the needs of the organizations they represent.” They are best practices agreed to by people across an industry. Standards can include benchmarks, processes, policies, and procedures.<sup>75</sup> Standards allow institutions to defend themselves by demonstrating that best-practice principles have been adopted, and they also help institutions identify with greater precision where their systems are or are not working.

The key to standards is that they are formal public documents, produced out of a transparent planning process, that have been approved and adopted by the practitioners and institutions they are designed to serve. Standards help people in any area of expertise determine how to carry out certain tasks. But because standards are public documents, they can also be used to hold an organization or profession accountable. Standards are an essential underpinning to the work of many professionals, especially those in high-risk areas of practice, such as doctors, lawyers, or nurses. A preamble to standards for the nursing profession, for instance, states, “Standards are expectations that contribute to public

74 Access to Information Review Task Force Government of Canada, *Access to Information*.

75 British Standards Institution, “What Is a Standard?” accessed 26 April 2018, <https://www.bsigroup.com/en-GB/standards/Information-about-standards/what-is-a-standard/>

protection. They inform nurses of their accountabilities and the public of what to expect of nurses.”<sup>76</sup>

In Canada, standards for financial administration are established by the Public Sector Accounting Board (PSAB), which is a disinterested, objective third party with widely recognized expertise in public financial management. The PSAB was established by Financial Reporting and Assurance Standards Canada specifically to develop financial standards for public bodies. The standards created by this body “specify how transactions and other events are to be recognized, measured, presented and disclosed in a public-sector entity’s financial statements.”<sup>77</sup> In this case, the purpose of the standards is to meet the needs of users of financial statements by providing the information needed for accountability and decision making.<sup>78</sup> The standards themselves are developed through a rigorous process outlined in a PSAB document entitled *Standard-Setting Due Process Manual*. As shown in the Manual, there are strict controls governing how rules are produced, and the mandatory consultation process is exhaustive. The preamble notes that PSAB due process is based on the principles of transparency, consultation, and accountability.<sup>79</sup> Such a formal and transparent approach to the development of standards encourages practitioners to accept the legitimacy of the rules they are asked to follow.

## Standards-Based Information Management

Given the importance of standards to accountability and transparency, it is only reasonable to expect that information and records management legislation should be based on standards. In fact, such standards are not new: the International

76 College of Nurses of Ontario, *Professional Standards, Revised 2002* (Toronto, ON: College of Nurses of Ontario, 2018), accessed 25 April 2018, [https://www.cno.org/globalassets/docs/prac/41006\\_profstds.pdf](https://www.cno.org/globalassets/docs/prac/41006_profstds.pdf). For additional information on the importance of standards, see “Benefits of IOS Standards,” International Organization for Standardization, <https://www.iso.org/benefits-of-standards.html>.

77 Financial Reporting and Assurance Standards Canada, “What Are Accounting Standards for the Public Sector?” Public Sector Accounting Board, accessed 8 July 2019, <https://www.frascanada.ca/en/psab/about/what-are-public-sector-standards>.

78 Ibid.

79 Financial Reporting and Assurance Standards Canada, “Due Process,” Public Sector Accounting Board, accessed 8 July 2019, <https://www.frascanada.ca/en/psab/about/due-process>.

Organization for Standardization (ISO) has developed ISO 15489-1, now an accepted reference point for effective recordkeeping, which details the elements required for a records management program.<sup>80</sup> The ISO has also issued or is developing other record and information standards dealing with metadata, digitization, and risk assessment. ISO 30300, which outlines the fundamentals of management systems for records, notes that one of the critical purposes of such a standard is to provide requirements that allow an organization to “demonstrate its ability to create and control records from its business activities for as long as they are required.”<sup>81</sup> To be effective, of course, standards must always be reviewed and renewed. To that end, in 2019, the International Council on Archives announced that revisions to ISO 16175: Principles and Functional Requirements for Records in Electronic Office Environments, originally published in 2008, were open for public input, with a plan to publish revised documents in late 2019.

Standards such as ISO 30300, ISO 15489-1, and ISO 16175 are broad, which is understandable since they are international standards meant to cover a wide variety of situations. Canada-specific standards will require much more detail. Developing standards for information and records management would provide an opportunity to modify ISO standards to meet Canadian needs and to achieve more stringent controls. For example, section 6.2 of ISO 15489 states, “Responsibility for compliance should be assigned.”<sup>82</sup> As I argue here, monitoring compliance is critical to successful information and records management. A Canadian standard should require approved methods of ensuring compliance. Other appropriate changes might include defining specific national or institutional roles and responsibilities, to ensure that any standard developed suits Canadian governance systems.

Creating standards will not be easy. Even harder – at this stage – is to have them accepted. Even financial standards, which are so easily accepted as essential today, have evolved over generations, driven by active testing and regular revision. Records professionals have a long hill to climb. At the moment, the only records-related standard created by the Canadian General Standards

80 International Organization for Standardization, *ISO 15489, Records Management Principles and Concepts* (Geneva: ISO, 2016).

81 International Organization for Standardization, “Foreword,” in *ISO-30300, Information and Documentation – Management Systems for Records – Fundamentals and Vocabulary* (Geneva: ISO, 2011), iv.

82 International Standards Organization, *ISO 15489*.

Board is *Electronic Records as Documentary Evidence*, published in 2017, which “specifies principles, methods, and practices for the creation . . . and management of all forms of electronic records” to support their admissibility and value as legal evidence.<sup>83</sup> The committee overseeing this standard included a prominent archival educator as chair, along with representatives from the Privy Council, the Treasury Board, the Royal Canadian Mounted Police, and private-sector agencies such as Deloitte, Iron Mountain, and Open Text. Such high-level representation attests to the importance of the standard.<sup>84</sup>

## Political Will

The weakness in Canada’s information and records management accountability framework is not just an archival problem. An accountability regime that mirrors the one established for public-sector financial management requires that governments and the public change their understanding of the nature and importance of information and records. To achieve the magnitude of change suggested here, a great deal of political will is required.

The absence of accountability affects everyone. It is necessary for the information management community to reach out to others who have or should have concerns, such as information commissioners, privacy advocates, journalists, lawyers, and members of the public who are concerned about government accountability in the digital age. We in the recordkeeping profession need to understand what changes these stakeholders think are needed and why. Then we need to get them to work with us to transform recordkeeping systems and processes. Achieving change in the complicated bureaucracy that characterizes Western governments requires almost universal agreement: first, that there is a problem, and second, that there is a solution.

The solution to poor information and records management is to establish a robust and enforceable accountability regime. But this outcome can only be achieved if there is both broad agreement that effective accountability is

<sup>83</sup> See the foreword to the Canadian General Standards Board, *CAN/CGSB-72.34-2017, Electronic Records as Documentary Evidence* (Gatineau, QC: Canadian General Standards Board, 2017), iii.

<sup>84</sup> *Ibid.*

critical to democracy and a recognition that existing information technologies and practices exacerbate an already weak system of transparency. Computers permit decentralization of operations, allowing civil servants to make individual decisions about why, how, when, and where records and information are created, managed, preserved, and used. Centralized control, which is essential to accountability and transparency, is reduced significantly in the digital environment.

The legislation required to increase information and records accountability will and ought to be scrutinized by those directly affected, such as government officials who must deal with new and ever-changing records and information conditions. Heads of ATIP and information professionals will be looking for signs that legislative changes result in a strengthened link between accountability and records management. But politicians, legal advocates, non-governmental organizations, taxpayers' groups, and the public cannot see the importance of addressing essential changes if they do not first recognize that there is a problem that needs to be fixed.

As with any major shift in public policy, then, the first task is to define the problem, as I have tried to do here. As I have argued, the core weakness in the administration of public records and information today is the absence of a strong and enforceable accountability regime, which has resulted in limited and inadequate attention to the management of records as evidence. Governments struggle to comply effectively with ATIP legislation. Senior managers are not compelled to take information and records responsibilities seriously. Government officials struggle to locate critical information, and they experience more and more instances of security breaches and identity theft. Department heads see their financial and staff costs increase as they struggle to locate and make available poorly managed information and records.

Having identified the problem, I believe the next step is for information and records professionals and stakeholders to document the deficiencies in records and information management systems and to analyze the potential weaknesses that will emerge with each inevitable change in information technology. Only by identifying current problems and recognizing the need for ongoing improvements can governments develop the processes needed to make effective and lasting change.

Archivists and other information managers can play an important part in this process, but real transformation will only come when those outside our

profession call for change. This fact cannot be stressed enough. As I have argued separately, a broad coalition of public stakeholders is required to document the threats posed by new technologies and arrive at solutions.<sup>85</sup> The immediate role for the archival community is to start building this inclusive coalition.

As archivists, we inhabit medieval institutions while we attempt to deal with god-like technology. We manage information and evidence not just for historical purposes but to preserve an accurate-as-possible record of – to put it bluntly – who did what to whom. If governments and organizations in positions of power and authority are going to be held accountable for their actions, they must be required to create authentic and reliable records. They must also be compelled to provide equitable and transparent public access to those records, which serve as verifiable proof of the actions, transactions, and decisions of our public institutions. Change is essential. Democracy depends on it.

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**BIOGRAPHY** D. Richard Valpy has a master's degree in history from the University of New Brunswick (1980). He joined the Government of the Northwest Territories Archives as a clerk in 1982. He was promoted to an archivist position in 1985 and became the Territorial Archivist in 1987. He retained that position until 2011, when he was appointed as the Assistant Director, Culture and Heritage Division. He retired in 2014 and now lives in Nanaimo, British Columbia.

<sup>85</sup> D. Richard Valpy, "From Missionaries to Managers: Making the Case for a National Documentary Heritage Commission," *Archivaria* 82 (Fall 2016): 137–63.