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The Seven-Year Botch: How Not To Select An Information Commissioner

By Alasdair Roberts

Late last Thursday afternoon, Prime Minister Paul Martin grudgingly agreed to re-appoint John Reid as Information Commissioner of Canada. Reid's seven-year appointment had been scheduled to expire only eight hours later.

Martin might have preferred to see the end of Reid, a vocal critic of the "culture of secrecy" in the federal government. But faced with parliamentary pressure, Martin made a minor concession: a mere 90-day extension of Reid's term. The problem of replacing Reid has been punted until the Fall.

Unfortunately, this isn't the first time that a Liberal government has botched the job of appointing an information commissioner. In 1998, the office went vacant for weeks after the Chretien government failed to find a replacement before the retirement of Commissioner John Grace.

At first, the Chretien government toyed with the idea of replacing Grace with a former deputy minister of justice, John Tait. Eventually, however, Chretien nominated another career public servant -- Mary Gusella, a former president of the Atlantic Canada Opportunities Agency.

Gusella immediately became entangled in a stinging attack by outgoing commissioner Grace, who said that the Chretien government's attempt to appoint someone with "very close ties to the government" showed "insensitivity, if not contempt" for the Access to Information Act. Within days, Gusella withdrew her name from consideration.

Then came Reid, a last-minute compromise between government and opposition leaders. Although Reid is now heralded as a proponent of open government, his predispositions weren't so clear to some at the time. Environmental groups weren't impressed by Reid's work as a lobbyist for the nuclear industry; others worried about his loyalties as a former Liberal Cabinet minister.

The critics weren't given much of an opportunity to vent their concerns.

Within a week, Reid had been nominated, vetted in a hastily-arranged Commons committee meeting, and appointed to the job. Then Parliament moved to the really important business: it adjourned for the summer.

The Access to Information Act, we're often told, is a cornerstone of Canadian democracy. It's been called "quasi-constitutional" legislation. Why, then, do we handle the business of appointing a commissioner so incompetently?

One obvious answer might be that the government can't resist the opportunity to pick a referee who is more likely to resolve disputes over the release of information in its

favour. But it lacks the skill -- or ruthlessness -- to get what it wants. Instead, its hamhanded efforts to stack the deck merely reinforce the public perception of its hostility to open government.

The process of selecting a Commissioner should be transparent, deliberate, and manifestly fair. There are many ways to reach that goal: one approach might be to establish a committee of neutral specialists who could solicit applications, appraise qualifications, and make a recommendation to Parliament. You can design your own alternative approach, which is certain to be better than the miserable status quo.

We still have time to get it right in 2005. But if we don't, here's a reminder for planners in the Privy Council Office: 2005 plus seven equals 2012. Mark your calendar and plan ahead.

Alasdair Roberts is an associate professor of public administration at the Maxwell School of Syracuse University. His book, *Blacked Out: Government Secrecy in the Information Age*, will be published by Cambridge University Press later this year.