Freedom of Information and the Official Secrets Act

I. Introduction

The operative notions in this field of inquiry are: "national security" — "open government"; "secrecy" — "openness". Clearly, the very terms employed compel discussion of the need to accommodate the tension between opposites, as both are said to represent important values in a modern democratic state.

Doern captures some of the flavour of the present national dilemma:

> Governmental secrecy in Canada is based largely on British parliamentary practice: the common-law doctrine of crown privilege, the traditions of ministerial responsibility and of an anonymous civil service, the principle of the freedom of the press, the Canadian version of the British Official Secrets Act, and a system of classification for government documents. The prevailing view among scholars is that Canadian public bureaucracies are excessively secretive and that Canada's official information policies reflect traditional concepts and a slavish adherence to bureaucratic secrecy.
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> Common-law traditions of crown privilege recognize the right of the crown to refuse to disclose classified information where it is felt that disclosure would be detrimental to the public interest. The concepts of ministerial responsibility and civil service anonymity have, in part, contributed to the general assumption that all documents are secret unless they are specifically declared to be public. These concepts also mean that opposition politicians are less able to question or criticize public servants than in other systems of government.[1]

Doern goes on to make the point that Canada's secrecy legislation exerts a significant influence on administrative practices. Because the legislation fails to distinguish periodic serious offences from minor offences that are likely to result from the day-to-day exercise of administrative discretion, there exists at present an inappropriate balance between the public's right to know and the government's preference for confidentiality.[2]

The *Official Secrets Act*,[3] though not the sole statutory guardian of national security in Canada, is the most important one, and will

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[1] Doern, "Canada" in Galnoor (ed.), *Government Secrecy in Democracies* (1976), 143, 145-46. See also Rowat (ed.), *Administrative Secrecy in Developed Countries* (1979), especially ch. 11.

[2] *Ibid.*

[3] R.S.C. 1970, c. O-3, as am. by S.C. 1973-74, c. 50.

be the primary focus of this comment.[4] The present Canadian *Official Secrets Act* does not enhance national security significantly more than would other less Draconian alternatives, but the Act does pose a substantial impediment to greater openness in government.

The 1939 Act[5] was scarcely a uniquely Canadian product. In essence, it was an amalgamation of the British *Official Secrets Acts* of 1911 and 1920.[6] Two Canadian Royal Commissions have surveyed the inadequacies of the legislation.[7] Two British Government studies have also criticized the parent British Act.[8] Both governments have recently issued Green Papers on the related issue of "open government".[9]

The Mackenzie Commission accurately described the Canadian *Official Secrets Act* as "an unwieldy statute couched in very broad and ambiguous language",[10] and as possessing "unusual" and "extraordinarily onerous" evidentiary and procedural provisions relating to espionage cases.[11] The Act's provisions include unjustifiably broad police powers: arrest may be based upon "reasonable suspicion" and searches may be conducted on this same loose ground.[12]

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[4] The *Official Secrets Act* is supplemented by the *Criminal Code* [R.S.C. 1970, c. C-34 as am.] provisions relating to treason, sedition, sabotage, breach of trust by public officers and other related sections potentially affecting national security. The provisions are listed in Government of Canada, *Royal Commission on Security Report* (Abridged) (1969), 78 (hereinafter Mackenzie Report).

[5] *The Official Secrets Act*, S.C. 1939, c. 49.

[6] *Official Secrets Act, 1911*, 1-2 Geo. V, c. 28 (U.K.); *Official Secrets Act, 1920*, 10-11 Geo. V, c. 75 (U.K.).

[7] See Mackenzie Report, *supra*, note 4; and Government of Canada, *Report of the Royal Commission to Investigate the Facts Relating to and the Circumstances Surrounding the Communication, By Public Officials and Other Persons in Positions of Trust of Secret and Confidential Information to Agents of a Foreign Power* (1946) (hereinafter Taschereau/Kellock Report).

[8] Home Office, *Report of the Departmental Committee on Section 2 of the Official Secrets Act, 1911* Cmnd 5104 (1972) (hereinafter Franks Report); Home Office, *Report on Reform of Section 2 of the Official Secrets Act, 1911* Cmnd 7285 (1978) (hereinafter White Paper).

[9] See *Legislation on Public Access to Government Documents* (1977) (Ottawa, Green Paper); *Open Government* Cmnd 7520 (1979) (London, Green Paper). See also the response of the Standing Joint Committee on Regulations and Other Statutory Instruments in House of Commons, *Votes and Proceedings* (June 28, 1978), 916-25.

[10] *Supra*, note 4, 75.

[11] *Ibid.*, 76.

[12] Arrest is governed by s. 10 of the Act, and search by s. 11. Note the higher *Criminal Code* standard of "reasonable grounds": R.S.C. 1970, c. C-34, ss. 443 and 455.

Any person in the vicinity of a designated place may lawfully be searched.[13] In contrast to the *Criminal Code* provision, a senior officer of the R.C.M.P. is authorized, in certain instances, to issue warrants.[14]

> Both the U.K. and the Canadian statutes are designed to cover spying in its generally understood sense of obtaining information not otherwise in the public domain in order to make it available to a foreign government or agent. Perhaps more important, section 2 of the British Act and section 4 of the Canadian Act embrace in intent almost any form of information obtained in the course of service or contract of employment, or otherwise, and then passed on without authority to any other person whatever his status and whatever the purposes of the transfer of information may be, however unclassified the information may be, if obtained from sources available because of holding a government position or having a government contract.[15]

The statutes have been criticized for effecting a deliberate shift of the onus of proof to the accused when a certain limited case on the facts has been made out by the Crown, and for granting a broad power to the court to order the public excluded from the trial.[16] Section 3(2) of the Canadian Act, which allows a defendant's purpose in revealing information to be implied from his conduct or known character, is particularly prejudicial: any evidence of communication or attempted communication with a foreign agent is *prima facie* evidence of "purpose".

It is impossible to view the Act other than as a needlessly tough, authoritarian instrument — one which in its search for violation roams far beyond the usual (and, for the most part, adequate) criminal law evidentiary and procedural strictures. Even as awesome a concept as "national security" seems not to require the type of blanket excesses which prevail in the Act.

II. The civil servant conundrum

In Canada, despite the government's imposition of voluntary guidelines upon itself in 1973,[17] the rule concerning administrative openness ensures that all administrative information is secret unless and until the government, at its discretion, chooses to release it.

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[13] *Official Secrets Act*, s. 11(1).

[14] *Official Secrets Act*, s. 11(2). *Criminal Code* s. 455.3 provides for the issuance of warrants by a judge or justice of the peace.

[15] M. Cohen, "Secrecy in Law and Policy: The Canadian Experience and International Relations" in Franck & Weisband (eds.), *Secrecy and Foreign Policy* (1974), 355, 357. See in this regard *Official Secrets Act*, s. 3(2) and (3).

[16] *Ibid.* Note that the public may not be excluded from the sentencing.

[17] See (1973) 17 H.C. Deb. 2288.

It has been said that "[i]n Canada, there is no legal right to know... [n]or is there a legal duty on the government to inform. On the contrary secrecy is sanctified by the *Official Secrets Act* and the civil servant's Oath of Office and Secrecy".[18] To this, one should add that the inherited tradition of "civil service anonymity" causes matters to become even more clandestine, and secrecy even more exaggerated.[19] This tendency culminates in section 4 of the Act, the so-called "leakage" provision.

The section embraces far more than mere "communication" of secret information. It makes *recipients* of official information (most notably the press, but potentially *any* civil servant) guilty of an offence under the Act.[20] Liability is also imposed for *unlawful retention* of documents and for *failure to take reasonable care* of retained documents.[21]

The Franks Committee criticized the "catch-all quality" of the equivalent English provision:

> [The section] catches all official documents and information. It makes no distinctions of kind, and no distinctions of degree. All information which a Crown servant learns in the course of his duty is "official" ... whatever its nature, whatever its importance, whatever its original source. A blanket is thrown over everything; nothing escapes. The section catches all Crown servants as well as all official information.[22]

The breadth of the section, and the fact that in Canada there is no official, legally based system of "classification of documents" by which the secret or non-secret status of a given document can be accurately ascertained, has promoted a climate described by the Franks Committee as a "general aura of secrecy"[23] with the natural corollary of "an inhibiting effect on openness in government".[24] Reform of the secrecy legislation is thus a "necessary preliminary to greater openness in government".[25]

The section's breadth makes it impossible for the ordinary public servant to comply with its precepts. As a matter of daily

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[18] Turner, "Freedom of Information", unofficial transcript of speech delivered at the Canadian Bar Association Annual Meeting, Winnipeg, Manitoba, August 30, 1976, 2.

[19] See Rowat, *supra*, note 1, 279-80.

[20] *Official Secrets Act*, s. 4(3). Note that liability is to be presumed unless the *accused* proves that the communication to him of the information was contrary to his desire.

[21] *Official Secrets Act*, s. 4(4)(a).

[22] Franks Report, *supra*, note 8, 14.

[23] *Ibid.*, 18.

[24] *Ibid.*, 19.

[25] *Ibid.*

routine, the public servant will receive and communicate information in technical violation of the Act. Many individuals quite simply are not authorized by the terms of the Act to communicate and receive the information that the responsibilities of their employment mandate them to receive and communicate. Discretion in the charging process, coupled with a "doctrine of implied authorization", prevents the system from collapsing upon itself.

The operation of the Act was recently scrutinized in the *Treu* case.[26] Peter Treu, though not strictly a civil servant,[27] was ensnared by this "civil servant conundrum" and was prosecuted for violations under section 4 of the Act. It was alleged that Treu, in the course of carrying out Government/NATO contracts concerning secret air communications systems, unlawfully retained classified documents and failed to take reasonable care of them. A completely *in camera* trial commenced four years after search warrants had been executed at Treu's home. He was convicted on both counts and was sentenced to imprisonment for two years on the major count of retention, and to a concurrent term of one year on the lesser count of failure to take reasonable care. Both convictions were reversed on appeal.

Treu's appeals succeeded because the Court found that a reasonable doubt existed on the whole of the evidence. Essentially, this finding implied acceptance of Treu's claim that he, in good faith, believed himself to be properly cleared for the possession and use of the secret documents. A reading of the appeal judgment reveals that Treu was a victim of the ambiguity of the "classification" system and the security procedures affecting the sensitive documents to which he had access. Treu had been prudent enough to read the security manuals governing his work and had been cleared by a designated security officer to handle most of the documents in his possession; still, he ran afoul of the Act.

The *Treu* case demonstrates that the breadth and ambiguity of the *Official Secrets Act*, features which in theory are said to promote ease of prosecution, do not necessarily enhance the cause of national security. Presumably, greater precision in draftsmanship and improved clarity, especially with respect to the definition of the types of information (that is, the classifications) which must be kept secret, would promote both national security and greater openness

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[26] *Treu* v. *The Queen*, unreported judgment, Que. C.A., Feb. 20, 1979 *per* Paré J.A.

[27] Treu was an engineer under personal contract with the government.

in government. However, it should not be thought that the mere passage of freedom of information legislation will necessarily promote greater openness in government. The real issue is how effective the government wants its proposed legislation to be. Nader has cautioned:

> No government really wants effective information legislation. Secrecy is too long an established tradition and too convenient a mode of operation to be voluntarily discarded.[28]

In this regard, it should be noted that the voluntary guidelines by which the government agreed to disclose information to members of Parliament[29] contained sixteen exemptions, several of them extremely broad.[30] The *Federal Court Act*[31] clarifies and limits the extent of Crown privilege (the discretion to refuse a request for the production of documents in open court); however, if a Minister certifies to the court that the production of a document "would be injurious to international relations, national defence or security, or to federal-provincial relations, or that it would disclose a confidence of the Queen's Privy Council for Canada, discovery and production shall be refused without any examination of the document by the court".[32]

According to Nader, "[t]he single most important citizen right conferred by the Act is the right of judicial review of agency decisions to withhold information, with the burden of proof on the agency and the standard of review *de novo*".[33] Former Justice Minister John Turner, in endorsing this approach, declared that, even in matters involving national security,[34] the judiciary should be the final arbiter[35] — a marked contrast to the approach which he advocated in 1970.[35a]

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[28] Nader, "Freedom of Information", unofficial transcript of speech delivered to the Canadian Bar Association Annual Meeting, Winnipeg, Manitoba, August 30, 1976, 7.

[29] *Supra*, note 17.

[30] The sixteen categories are listed in Rowat, *supra*, note 1, 287.

[31] R.S.C. 1970, 2d Supp., c. 10, s. 41(1).

[32] *Ibid.*, s. 41(2).

[33] *Supra*, note 28, 8.

[34] *Supra*, note 18, 13-14. He defines "national security" in terms of information which could "jeopardize the safety or security of the state and its relations with foreign countries", "military and tactical secrets which could endanger defence or national security", and "negotiations leading up to agreements with foreign countries". The term, in his view, "ought to be strictly construed". He does not, in this context, "equate the economic well-being of the State with national security".

[35] *Ibid.*, 19. Review of such matters would take place *in camera*.

[35a] *Ibid.*, 18-19.

This argument is not posited upon access to information as a total and unqualified right. Clearly, there are legitimate limits to openness. These limits can in large measure be ascertained through the formulation of a precise and adequate definition of "national security" or other similar term;[36] once the definitional obstacle has been overcome, a safeguard may be provided by granting to our courts (or to some other independent body) a supervisory jurisdiction in this area.

Strictly speaking, questions of open government do not depend upon a consideration of national security; information truly relating to national security is not a matter for public consumption. National security information requires protection (through the imposition of criminal sanctions) from *unauthorized* disclosure.[37] Nevertheless, official secrets legislation has, in the eyes of the Franks Committee, fostered a general aura of secrecy in government and thus the relationship between national security and open government becomes apparent.[38] Reform of secrecy legislation is a necessary preliminary to greater openness in government.

III. The Toronto Sun affair: National Security v. Press Freedom

The *Toronto Sun* prosecution[39] places the national security/open government debate into high relief. All the participants — the Crown, the accused, and third parties such as M.P. Tom Cossitt — were concerned about the state of Canada's national security. Specifically, they shared a fear of what was perceived by Cossitt and the *Sun* to be excessive official toleration of known Soviet espionage activities in Canada. This matter first came to public prominence when Cossitt revealed secret government information, relating to suspected Soviet intelligence officers and diplomatic establishments in Canada, on the floor of the House of Commons. Cossitt subsequently repeated his disclosures in press interviews conducted outside the House Chambers. By any standard, the information revealed was once "secret" and bore directly upon the national security. Before publication in the *Sun,* the material in question had been distributed internally via sixty-seven inter-departmental copies, and the C.T.V. television network had utilized the information

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[36] The present language of the *Official Secrets Act,* s. 3 refers to actions which are "for any purpose prejudicial to the safety or interests of the State".

[37] White Paper, *supra,* note 8, 42-44, 73-74.

[38] Franks Report, *supra,* note 8, 18.

[39] *R.* v. *Toronto Sun,* unreported judgment, Ont. Prov. Ct, Apr. 23, 1979 *per* Waisberg Prov. Ct J.

in its television report "Inquiry". The case raised the interesting questions of what constitutes "secret information" under the *Official Secrets Act* and whether "secret information" can lose the quality of secrecy through dissemination. The Mackenzie Report contains these relevant observations:

> [M]ust the Crown prove in all cases that the information concerncd is secret and official? If so, an espionage operation directed towards the collection of information in the public domain, or within the possession of a government agency but not classified (such as much information in government files) might not constitute an offence under the Act.[40]

In *R.* v. *Boyer*,[41] Marchand J. expressed the view that the *Official Secrets Act* by its very title did not apply to what had already been published or publicized or had fallen into the public domain.[42] This view prevailed at the *Sun* preliminary inquiry (where the documents were termed "shop-worn"[43]) and resulted in the discharge of all accused on counts of communicating secret information to the public[44] and receiving secret information.[45] Waisberg Prov. Ct J. attacked the Act as ambiguous and unwieldy and called for its complete redrafting.[46] He observed that

> what is designated "secret" ... cannot be determined to be secret by the mere stamp itself. Secrecy must lie in the very nature of the document itself and in the existing circumstances surrounding and affecting the document ... [Here] the evidence is that the document was no longer, if ever, secret.[47]

The prosecution of the *Sun* raises deeper and more disturbing issues relating to the exercise of prosecutorial discretion in matters affecting national security. At first glance, the discretion to proceed with the laying of charges, or to refrain from proceeding, may not seem to relate to the issue of open government. Closer analysis reveals an intimate connection. "Open government", in the last analysis, is not a legislative — or legislated — creature. Rather, it is an atmosphere or an environment, within which governments and citizens may, if they are fortunate, operate. Turner had this to say:

> In the ultimate, [*sic*] ... no matter what a statute might say, or the courts may do, access to information will depend on the good faith of

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[40] *Supra*, note 4, 75.
[41] (1946) 94 C.C.C. 195 (Que. C.A.).
[42] *Ibid.*, 244.
[43] *Supra*, note 39, 23.
[44] In alleged contravention of *Official Secrets Act*, s. 4(1)(a).
[45] In alleged contravention of *Official Secrets Act*, s. 4(3).
[46] *Supra*, note 39, 22.
[47] *Ibid.*, 20-21.

> those in government. There will always remain the conundrum that the public will never fully know what and how much information exists. There will always be the force of government to protect its sources and its documents. Governments can always muster arguments against disclosure.[48]

Good faith, rectitude, and fidelity to duty are essential attributes of open government. These features are crucial to the prosecutorial function wherever the national interest is involved. The integrity of the state is bound up in the prosecution of those who allegedly imperil its well-being. If the public is left with the impression that partisan politics, rather than more appropriate considerations, has guided the prosecutor's hand, the state may well have induced "a general disillusionment with democratic government and the rapid erosion of public confidence in the administration of criminal justice".[49] Edwards, in a brilliant essay on the integrity of criminal prosecutions, quotes former British Prime Minister Harold MacMillan to this effect:

> It is an established principle of government in this country, and a tradition long supported by all political parties, that the decision as to whether any citizen should be prosecuted or whether any prosecution should be discontinued, should be a matter, where a public as opposed to a private prosecution is concerned, for the prosecuting authorities to decide on the merits of the case without political or other pressure. It would be a most dangerous deviation from this sound principle if a prosecution were to be instituted as a result of political pressure or popular clamour.[50]

In the area of discretion to prosecute, the Attorney General is accorded by Anglo-Canadian constitutional theory complete autonomy and independence, even from his own party, his own cabinet, his own prime minister.[51]

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[48] *Supra,* note 18, 23.

[49] Edwards, "The Integrity of Criminal Prosecutions — Watergate Echoes beyond the Shores of the United States" in Glazebrook (ed.), *Reshaping the Criminal Law* (1978), 364, 380.

[50] *Ibid.,* 373.

[51] See in support of this contention Edwards's seminal work, *The Law Officers of the Crown* (1964). See also, *supra,* note 49, 373 *et seq.* Note, however, that the independence of the Attorney General is not immune from challenge, as he is answerable before the High Court of Parliament: *R.* v. *Allen* (1862) 9 Cox C.C. 120, 122 (Q.B.) *per* Cockburn C.J. In this regard see S. Cohen, *Due Process of Law* (1977), 131 *et seq.* Note also the recent setbacks suffered by the proponents of the doctrine of abuse of process (a procedure whereby the judiciary was called upon to assume supervisory control over alleged prosecutorial misconduct): *Rourke* v. *The Queen* (1977) 33 C.R.N.S. 268 (S.C.C.); *Gouriet* v. *Union of Post Office Workers* [1977] 1 All E.R. 696 (C.A.); and see the discussion of the doctrine by Edwards, *supra,* note 49, 381-88.

> Anything savouring of personal advancement, protection or sympathy felt by an Attorney General towards a political colleague, or supporter, or which relates to the political fortunes of his party and the government in power cannot be countenanced if adherence to the principles of impartiality and integrity are to be publicly manifested.[52]

The then incumbent Minister of Justice/Attorney General claimed to be guided by these principles in reaching his decision not to prosecute Cossitt, and in authorizing, for the first time, the use of section 4(3) of the *Official Secrets Act* — the recipient of information section — in the prosecution of a Canadian newspaper.[53] In the course of justifying his decision, Mr Basford proclaimed the independence and integrity of his office. At the same time, he acknowledged, quite correctly, that he had exercised his right to seek information and advice from others (including the Solicitor General and the Commissioner of the R.C.M.P.) before embarking upon his course of action. However, subsequent to this statement, an investigative reporter insisted that the Minister of Justice had not been in favour of the charges, but had sided with the R.C.M.P. Commissioner who felt that no charges should be laid against the *Sun* since Cossitt and the C.T.V. network were not to be charged.[54] Either, or perhaps neither, of these two versions of history may be true. Ordinarily, one would presume in favour of the Chief Law Officer of the Crown, but as Professor Edwards amply demonstrates,[55] these are hardly ordinary times, and the Watergate echoes are heard far beyond the shores of the United States.

IV. Can freedom of information and official secrecy co-exist?

Scholars have been saying for some time that Canada is ready for a modernization of its general approach toward official secrets and freedom of access to information.[56] Government spokesmen for almost as long have been proclaiming the pending appearance of significant new freedom of information legislation to remedy these present ills.[57] However, is a freedom of information statute the total, or only, solution? In terms of strict theory, freedom of in-

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[52] Edwards, *supra*, note 49, 375.

[53] See (1978) 121 H.C. Deb. 3881-83 for the full text of the Minister's remarks in this regard.

[54] See "Trudeau Gave the Final Order", *Press Review*, April 1978, 5. This article was written by Robert MacDonald, a *Sun* employee. He does not name his sources.

[55] *Supra*, note 49.

[56] See, *e.g.*, M. Cohen, *supra*, note 15, 374.

[57] See Rowat, *supra*, note 1, 279, 306.

formation laws are decidedly different from those governing official secrecy. It is possible to conceive of a marriage between the two concepts, but one must remember the different ends which each seeks to serve. Freedom of information laws seek to regulate public access to government information which is *not* to be kept secret. On the other hand, official secrecy legislation concerns the protection of secret government information from unauthorized disclosure. Both systems, in order to be credible and effective, require a viable system of document classification. As previously mentioned, the classification's adequacy is a central area of concern. Who determines the classification of material? Can a classification be challenged? If so, where shall the power ultimately lie — with the executive, or with a supervisory authority? If a single statute approach is adopted, where will the emphasis lie? Will the governing assumption be that all information must be disclosed save that which is specifically exempted, as is the case under the U.S. *Freedom of Information Act*?[58] Or is everything to be presumed to be secret save that which is specifically to be disclosed, as is presently the case in Canada in the absence of a precise statutory classification regime?[59]

Maxwell Cohen proposed a single statute incorporating liberal access to government information with provisions concerning official secrets.[60] He acknowledged that such a statute must address the difficult problems of establishing classifications and creating a credible review mechanism to oversee the adequacy of the determination of administrative classifications:

> A single statute thus could incorporate (1) the right to information that it is not necessary to keep secret, and — after a period of years — virtually all information; (2) the criminal law prohibitions on disclosure of information that it is necessary to keep secret; (3) a classification system to distinguish between what must, and what need not, be kept secret; and (4) an independent body to review the way this distinction is applied in practice. This proposal has the virtue of combining complementary ideas within a single legislative project. It would also have to reconcile clearly antagonistic positions, and would moreover require considerable skill in draftsmanship to incorporate statements that liberalize the disclosure of information with the subsequent sections dealing

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[58] *Freedom of Information Act*, 5 U.S.C. § 552 (1970), as am. by Pub. L. 93-502, 88 Stat. 1561 (1974). For a competent survey of the U.S. Act and its treatment, see Singer, "United States" in Rowat, *supra*, note 1, 309.

[59] The situation in England may also be characterized in this fashion. See generally Williams, *Not in the Public Interest. The Problem of Security in Democracy* (1965).

[60] Cohen, *supra*, note 15, 375.

> with prohibitions on communication and disclosure. The virtues outweigh the difficulties. In a single statute the public, the bureaucracy, and the courts could all see more readily the balancing of interests: the liberalizing provisions regarding access, and the restrictive rules for the protection of confidentiality.[61]

It should not be assumed that the United States, which has the most progressive and highly developed freedom of information legislation in the world, has opted for a single statute approach. Significant machinery for dealing with secrecy issues, such as leakage and publication, exists under certain espionage statutes.[62] The U.S. Supreme Court's decision in the *Pentagon Papers* case[63] raised, for the first time, the spectre of successful criminal prosecution of those who publish defence information.

Whatever statutory framework is chosen, there is certainly no dearth of sources to consult for guidance. As a recent Law Reform Commission study paper points out,

> [one can] ... find ample guidance in the U.S. legislation, the private member's bill introduced in the House of Commons, the Proceedings of the Statutory Instruments Committee, the Australian proposals and in numerous other documents.[64]

The challenge lies in producing credible, balanced legislation. Half measures could be worse than no legislation whatsoever; it is "much more difficult to correct faulty legislation than to write it correctly in the first place".[65] It must be recognized that our present vague and imprecise statutes seriously fetter our ability to become informed about vitally important matters where the larger public interest does not mandate impenetrable secrecy.

Stanley A. Cohen*

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[61] *Ibid.*

[62] See Edgar & Schmidt, *The Espionage Statutes and Publication of Defense Information* (1973) 73 Colum. L. Rev. 929, and Schmidt, "The American Espionage Statutes and Publication of Defense Information" in Franck & Weisband, *supra,* note 15, 179.

[63] *New York Times Co.* v. *United States* 403 U.S. 713 (1971). See the commentary on this case by Schmidt, *supra,* note 62, 180-83, and Boudin, "The Ellsberg Case: Citizen Disclosure" in Franck & Weisband, *supra,* note 15, 291.

[64] Law Reform Commission of Canada, *Access to Information: Independent Administrative Agencies* (1979), 67. See n. 108 of the study for an enumeration of some of these sources.

[65] Nader, *supra,* note 28, 8.

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