

Summary

The dilemma of any government information management regime lies in balancing the strong public interest in disclosure in all areas, including national security, against legitimate secrecy. In this study, Craig Forcese assesses Canada's efforts to balance transparency with secrecy in the national security area. He first highlights the principles of transparency that animate the Canadian concepts of open government and open courts. He then posits several principles of national security confidentiality – that is, justifications for secrecy predicated on national security preoccupations. He also describes how Canadian information laws seek to guard national security confidentiality. In the final section of the study, he assesses how well Canadian information law reconciles national security with transparency, identifying a number of structural and practical problems that plague this reconciliation.

Forcese assessment is that Canada's information laws and practices leave much to be desired. Past commentary from the security and intelligence community suggests that secrecy laws are broader than is necessary to protect legitimate national security secrets. At the same time, the incoherence of these laws, the uncertainty this incoherence produces and the overclaiming it allows, create conditions that are likely to curb benign information exchanges. This would be at great expense to the credibility of the security services.

In addition, he says, the limits these laws impose on information access, and the draconian penalties they level in some instances, are deeply inconsistent with the very democracy they are supposed to protect. They are sufficiently ambiguous to let government sidestep embarrassment and mask incompetence, all in the name of national security. If they are used to this end, they will jeopardize confidence in government and potentially stimulate changes that make protecting legitimate secrets more difficult.

The study concludes with a number of recommendations as to how secrecy and transparency might be reconciled better in Canadian law and practice. Among other things, he urges Parliament to formally repeal section 4 of the *Security of Information Act* and replace it with a much more measured provision. He also calls on government to standardize its definition of "national security" across the statute book, to avoid the confusing array of terms that currently exist. Forcese also expresses support for a standing reviewer of national security law and policy, and a separate committee of parliamentarians with legislated powers and access to secret information.