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# When is a secret not one?

Some time before the end of the year, a joint Senate-Commons committee will make a set of recommendations about what kinds of information the government should release to whom—and when.

Given the tradition of secrecy that covers so much of the decision-making process in this town and the obsession with plugging leaks, this is a question of great public interest.

Curiously, there has been little public debate and not much coverage of the hearings of the joint committee on regulation and other statutory instruments on the subject.

One valid starting point for a discussion might be a document presented to the committee last June 25 by Gordon Robertson, cabinet secretary for federal-provincial affairs.

The document, entitled *The Provision of Government Information* was completed more than a year ago by Don Wall, a former assistant secretary in the Privy Council office, who has since been named a member of the National Parole Board.

Last Saturday, this column dealt with Mr. Wall's description of some of the major flaws in the government's attitudes toward information and the ways in which it delivers or does not deliver it.

Today, some of his recommendations will be examined.

The underlying principle in the Wall document is progressive in the sense that it says that to inform—and not just persuade—is an essential part of governing and that all information should be made public unless there is a good reason for keeping it secret.

In this, Mr. Wall agrees

## THE BUREAUCRATS

by Frank Howard

with parliamentarians like Conservative MP Jed Baldwin, who is sponsoring a private bill that would impose that sort of duty on government.

Mr. Wall then goes on to make a series of recommendations about what should be held secret and about the ways in which much government information should be made public either through the media or Parliament.

He lists eight classes of information which should be held secret, some of which should probably be knocked down in public debate.

No one should have much difficulty with the first two classes:

- "Information, the release of which would be detrimental to the safety and security of the nation."

- Information whose release "would be detrimental to the effective pursuit of Canada's interests in international relations."

While there are certain difficulties in those categories of information, as the Americans have discovered in the Gulf of

Tonkin and the Bay of Pigs, it is hard to argue that there should be no such thing as a military or diplomatic secret.

Mr. Wall's third grouping of restricted information is more questionable. Here he tries to stretch the security blanket to cover information whose disclosure would be "detrimental to the performance and fulfilment of the federal government's constitutional duties and obligations in its relations with the provincial governments, giving due regard to the constitutional duties and obligations of the provincial governments."

There is a growing suspicion, in the press at least, that federal-provincial relations have become a closed decision-making process which in practice, if not in theory, presents Parliament and the public with a fait accompli, without any real possibility for effective public debate.

Giving the process the benefit of quasi-diplomatic security is not likely to open up this extra-parliamentary process to the scrutiny it probably deserves.

The fourth classification of information requiring confidentiality is easy to accept. This is information whose disclosure would "constitute an unjustifiable invasion of privacy or would be demonstrably and

PRESS CLIPPINGS COUPURES DE JOURNAUX

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unjustifiably harmful to an individual." As long as the stress is on "unjustifiably" there can be no real quarrel with respect for the privacy of individuals.

The fifth and sixth groupings of proposed restricted information are a mixed bag—some examples seem reasonable, other less so. They are information whose release would:

- "Jeopardize a government process of financial or commercial negotiation or a contractual arrangement or result in undue financial loss or gain by any person or group of persons.

- "Jeopardize the confidence necessary to the advisory, consultative and deliberative processes of government administration."

In the first of those two examples, it is understandable that there should be secrecy surrounding decisions affecting taxation or the value of money. What is less understandable is assigning the same degree of confidentiality to

certain contractual arrangements.

A case in point is the current internal debate about aircraft procurement. Whatever decision is finally made about the purchase of long-range patrol aircraft will launch a chain reaction that will affect Canadian budgets and Canadian industrial strategy for the rest of this decade. It's hard to accept that all of the information that will affect this decision should be kept out of the public domain until after the decision is made.

The problem with the second of those two categories is that it seems to buttress the myth that public officials only advise, while politicians decide.

In fact, the public service has become the initiator and the final arbitrator in many fields of decision and as such, they should be more visible and the nature of their "advice" should also be disclosed.

The seventh class of restricted information proposed in the Wall document poses no problems. He suggests that disclosures which would "jeopardize the integrity of legal opinions or proceedings" should be restricted. The notion of "sub judice" is well enough established as to require no further discussion.

The final grouping is probably acceptable. Here the document calls for restriction on disclosure of information which would constitute "a breach of confidence or of the law or of the rules of Parliament." Presumably the reasons for excluding that sort of material

from the general principle of full disclosure would be debated or has been debated case by case.

The Wall document also makes several suggestions for improving the delivery of information to the press, Parliament and the public. They include improvements in the relationship between Information Canada and departments, improvements in departmental information staffs, regular briefings for the press and parliamentarians by senior public servants and release of more background documents. Some of those are bound to be useful; others seem overly-optimistic. This group of suggestions will be dealt with in a future column.