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Chair

Mr. David Chatters

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● (0910)

[*English*]

The Acting Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): Good morning, ladies and gentlemen. Welcome to the Standing Committee on Access to Information, Privacy and Ethics. We're commencing our study today on the reform of the Access to Information Act.

Today we welcome to our committee the Honourable Irwin Cotler, Minister of Justice.

Good morning and welcome, Minister.

Hon. Irwin Cotler (Minister of Justice): Good morning, Mr. Chairman.

The Acting Chair (Mr. David Tilson): I see two people sitting with you. Before we start your presentation, perhaps you could introduce the people who are with you.

Hon. Irwin Cotler: Thank you, Mr. Chairman.

I'm delighted to have with me two of our experts from the Department of Justice in the whole matter of access to information: Oonagh Fitzgerald and Joan Remsu. They represent the repository of institutional memory on these matters, as well as the kind of expertise that I think will benefit this committee.

The Acting Chair (Mr. David Tilson): On behalf of the committee, welcome to you as well.

Minister, the floor is yours.

Hon. Irwin Cotler: Thank you, Mr. Chairman.

I'm pleased to have this opportunity to share with you a comprehensive framework for access reform and a corresponding strategy involving a central role for Parliament to achieve this reform. Indeed, access reform is something the Government of Canada is committed to. It has been a long-standing concern of mine, even before I ever entered politics, and it proceeds from two basic principles.

The first is that freedom of information is a cornerstone of a culture of democratic governance, involving accessibility, transparency, and accountability in government. The second is that access and the Access to Information Act are themselves pillars of democracy whose importance is such that the act has been recognized as a quasi-constitutional statute by the Federal Court of Canada, relying on the words of the Supreme Court of Canada in Dagg v. Canada (Minister of Finance) in the 1997 decision.

The Supreme Court wrote that the act helps "to ensure that citizens have the information required to participate meaningfully in the democratic process and that politicians and bureaucrats remain accountable to the citizenry". Accordingly, the Government of Canada is committed to reforming the Access to Information Act so that it meets the needs of Canadians and further strengthens the integrity, accountability, and transparency of government operations.

[*Translation*]

Canada's proactive approach to access to information reform.

Canadians are fortunate to have benefited from a law that has provided a comprehensive right of access to government information since the act was introduced in 1983. Canada was one of the first countries to have enacted access legislation and seeks to be among the world's leaders in governing in a transparent manner.

You may recall that when the legislation was first enacted, Canada was viewed as a model country in this area, and indeed the legislation has served us well.

● (0915)

[*English*]

However, it is in need of reform; 22 years later, it is no longer up to date and needs to be modernized, while deficiencies have been revealed and need to be addressed.

This is not to say that nothing has been done over the past 20 years. The government, in cooperation with parliamentarians, has taken several steps to ensure that the act keeps pace with society. For example, in 1999 a provision was added to the act to make it a criminal offence to alter, destroy, or conceal a record in order to thwart an access request. In 2000 the President of the Treasury Board announced the establishment of the interdepartmental Access to Information Review Task Force, which was asked to review and make recommendations on all components of our access to information framework. The report of the task force, published in June 2002, set out 139 recommendations relating to legislative and administrative reforms to improve the federal access regime.

[*Translation*]

When the new government was sworn in on December 12, 2003, the prime minister stated that increased transparency would be one of the new government's guiding principles . The prime minister also announced a new policy on the mandatory publication of travel and hospitality expenses for selected government officials.

In 2004, the president of the Treasury Board launched the Review of the Governance framework for Canada's crown corporations as one of a series of initiatives to strengthen transparency, accountability, and management across the federal public sector. Tabled in February 2005, the review identifies more than thirty measures to strengthen oversight, management and accountability and to increase transparency in crown corporations.

[*English*]

There is need for a comprehensive framework and related strategy to reform the Access to Information Act. While there have been a few amendments to the act over the years, none of them constitute the comprehensive reform required to adequately respond to the current environment. In fact, it has been 15 years, Mr. Chairman, since Parliament even reviewed the act in depth, let alone proposed any amendments to it.

Yet much has happened in the administration of government and the expectation of a culture of democratic governance, both in Canada and internationally, since the act was passed. Simply put, citizens expect greater involvement in the decision-making process of their government—what has been called, “participation rights”—while rapid advances in information technology have changed the way government creates, stores, manages, and communicates information.

Let me move now to the issues related to ATI reform. They are complex and reflect competing expressions of the public interest. In recent years, some members of Parliament have introduced private members' bills aimed at extensively reforming the Access to Information Act, while the task force report underpinned reformist considerations. The Government of Canada agrees that the act must be reformed, and agrees in principle with many of the proposals made in these private members' bills and recommendations in the task force report. Indeed, this comprehensive framework that I am sharing with the committee this morning, Mr. Chairman, is itself guided and inspired by these initiatives.

[*Translation*]

But it needs to be appreciated that some of these issues are complex, and involve significant and competing conceptions of the public interest. They engaged diverse interests of government, NGOs and various stakeholders. What is required is the informed, comprehensive and considered appreciation of the competing and serious expression of the public interest. We also need to consider the related additional costs associated with administering the access regime.

[*English*]

Therefore, reform of an act that is in constant and continuous use, and one that has a multi-layered complexity, requires the application of the precautionary principle to ensure that proposed reforms actually provide appropriate and workable improvements to the overall scheme. As well, we cannot act unilaterally on reforms without facing the significant risk of adversely affecting the range of interests and stakeholders in a prejudicial manner. I will provide you with some concrete examples of these complexities and the corresponding competing interest.

First, my colleague Minister Alcock has stated that the government will cover more crown corporations under the ATI Act, as I mentioned. He followed this up with a review that was recently tabled. I entirely agree with this approach. However, despite their connection to the government, there can be no doubt that these crowns are corporations that compete in the open market in a variety of fields. For example, the Export Development Corporation wants to expand export markets for the products of Canadian companies. In order to do this, the EDC must have access to confidential information about the businesses it works with. Those business have told the EDC that they will not share their confidential information with the EDC if that information is subject to access laws. That is because they fear their competitors will submit an access request to EDC for their confidential information.

● (0920)

[*Translation*]

If we care about the competitiveness of Canadian businesses and the potential survival of our Crowns, than we must give serious thought to how we will bring them under this legislation without jeopardizing their very raison d'être.

Additional protections for the interests of Crowns and their business partners may have to be added to the act. If so, these new protections would have to be crafted with great care in order to balance openness with the crucial need to protect confidential business information.

[*English*]

Another example is the issue of covering agents of Parliament, such as the Chief Electoral Officer, the Information Commissioner, the Privacy Commissioner, and the Auditor General. These agents receive large amounts of confidential information from other entities. The importance here is maintaining a distinction between the administration of these offices and the confidential data they collect.

Third, let me here mention two items where current protections in the Access to Information Act have been the subject of much criticism and dramatic reform proposals. I'm referring here to the matters of ministers' offices and cabinet confidences. These exclusions were designed to protect key political functions of the executive, long recognized as essential components of our Westminster style of parliamentary democracy. Let me emphasize that in relation to cabinet confidences, the government believes the status quo is not an option, and is committed to substantial reform of both the Access to Information Act and the Canada Evidence Act.

[*Translation*]

With respect to ministers' offices it is important to bear in mind that any change to these historic protections needs to take into consideration the fact that ministers are also members of Parliament and members of political parties, operating and a partisan parliamentary environment.

In recent months this government has made a number of administrative changes to enhance transparency, for example, with respect to ministerial expenses, as I have just said, and recent court decisions have clarified and improved the treatment of Cabinet confidences.

As parliamentarians who understand the importance of the political process and appreciate the complex balance of our particular parliamentary democracy, you will no doubt have views on these important and complex issues. You may well want to consider the impact of such changes on the functions of members of Parliament more generally, and specifically whether the access regime should apply to all M.P.s as well.

● (0925)

[*English*]

A fourth example is the modernization of certain exemptions. For example, the exemption in section 24 provides a link between the act and confidentiality clauses in other federal statutes. Entities subject to the act are required to protect the information covered by these confidentiality clauses. As far back as the original parliamentary review of the act in 1986, concern was expressed about too many confidentiality clauses being linked to section 24. This concern is entirely valid, as the number of clauses listed has gone from 40 to over 70.

Private members' bills have proposed, therefore, the complete repeal of section 24. I would suggest that this is too blunt an approach. There are some confidentiality clauses that really should be listed—not 70, but some, including the confidentiality clauses in the Income Tax Act and the Statistics Act.

[*Translation*]

Now, if I may, let me mention a subject very close to me in my role supporting the Anti-terrorism Act review.

The security environment has changed dramatically since the access to Information Act came into force, especially since the events of September 11, 2001. Internationally, through UN security council resolutions and domestically, with our own anti-terrorism law, states have strengthened their capacity to protect the security of citizens against acts of terrorism.

[*English*]

It is significant to note that these heightened security concerns have not in any way necessitated a closing down of our access to information regime. As Alasdair Roberts wrote in his article “National Security and Open Government”, which appeared in the *Georgetown Public Policy Review*, openness in fact can strengthen security by shedding light on important issues of public concern. The old saying is that loose lips can sink ships, but tight lips can also sink ships. Indeed, neither the task force nor a more recent review of the access regime found that greater protections were required for national security information.

This makes ample good sense to me, as I've always emphasized that security measures in a democracy must be fundamentally about protecting core human rights, such as the right to human security and our democratic values. The access to information law must be seen, as I mentioned, as an important pillar of our democratic regime, even in the post-2001 arena.

[*Translation*]

Having said this, in crafting our anti-terrorism legislation, the government and parliamentarians took great pains to develop appropriate ways to protect national security information while making it available as needed in court proceedings. The new provisions of the Canada Evidence Act give me a very serious role in promoting the proper balance between protection of national security information and openness in legal proceedings.

My sense is that parliamentarians who helped craft the Access to Information Act succeeded in setting a balance between protecting security and openness that continues to serve us well to this day.

[*English*]

Why is this comprehensive framework for access reform and parliamentary involvement now the best strategy? We all share a common goal, to have the most comprehensive and workable access legislation possible. Therefore, we must craft a set of reform proposals that effectively balances the complex and varied interests at stake.

[*Translation*]

I believe in a greater role for parliamentary committees in the reform of legislation that is of such crucial importance. Accordingly, in my view, it is imperative that this committee have an opportunity to study the issues brought forward by the task force report and by information commissioners present and past—particularly the complex ones I've touched on—and provide input on access reform before amendments are tabled in the House of Commons.

[*English*]

I've decided that the most appropriate action is to present this committee with a comprehensive paper outlining areas of potential access reform that would benefit from further discussion and study. This paper is a critical step to ensuring an effective and comprehensive set of amendments. I see it as a two-stage process—this, the beginning of a necessary dialogue between this committee and me and Mr. Alcock on the exact shape of those reforms, and then the actual implementation of those reforms.

[*Translation*]

The Access to Information Act is by nature all about a complex balancing of openness, transparency, accessibility to Canadians, and accountability. You may recall the criticism by the information commissioner at the time of the task force report that parliamentarians had not been consulted in that government review exercise. That is why I am before you today: to consult with parliamentarians; to ensure that both our process and our product on access reform are supportive of democratic engagement, by opening a dialogue with this committee on a subject that is complex in scope and substance, and of particular importance to parliamentarians.

[*English*]

As Minister of Justice, I am anxious to move forward on this file. As member of Parliament, I want to ensure that Parliament's voice is heard before we proceed. By actively engaging parliamentarians on the issue of access reform, the government can affirm its commitment to transparency, accountability, integrity, and its broader agenda on democratic reform.

This necessitates a thorough, open, and inclusive process with abundant, early, and frequent opportunity to discuss what reforms to the act would look like. Government would rather err on the side of being open and inclusive than rush to a fast result and simple solutions to complex problems without having important and adequate consultation and deliberation. Canadians need to be fully engaged in the reform of an act that is about their rights. The honourable members of this committee play an important role in ensuring this broad public engagement.

This brings me expressly to the role of the committee. Specifically, it is my hope that you will see fit to consider doing the following.

One, I invite the committee to examine the specific concerns that I've outlined in this discussion paper—for example, those issues regarding cabinet confidences, crown corporations, agents of Parliament, and modernizing current, and creating new, exemptions.

● (0930)

[*Translation*]

Second, it would also be helpful if the committee would advise us regarding how best to protect the interests of the various entities, if they are to be covered under the act, such as Crowns and their subsidiaries, and alternate service delivery organizations.

In this regard, we need to be mindful of the burden that is being subject to the act undoubtedly places on an entity, particularly for organizations whose competitors do not face this added and potentially time-consuming and costly responsibility.

[*English*]

Third, we would benefit from the committee's views on how to subject agents of Parliament to the ATIA while addressing their concerns not to impair their core mandate whereby they must handle large amounts of information belonging to others.

Fourth, on the issue of exemptions, it would be greatly helpful if the committee would review the list of over 70 confidentiality clauses linked to section 24, and retain only the necessary ones.

Fifth, as I mentioned earlier, the discussion paper considers reform of cabinet confidence protections and suggests a number of important improvements. It also discusses the applicability of the act to records under the control of a minister's office. It has always been the position of the government that the ATIA does not apply to records under the control of ministers' offices, an interpretation that was endorsed by the first Information Commissioner. The government interprets the ATIA as recognizing a distinction between records under control of a minister's office and records under the control of a government institution, which is the characterization in the law. This distinction allows for the free and frank debates that are required to ensure the proper functioning of the political process.

[*Translation*]

Our system of democracy depends on electoral, parliamentary and decision-making processes in which political parties and political considerations play vital roles. These processes require confidentiality in order to function effectively. While the government has a position on this issue, we expect committee members to have views on this issue and are open to discussing the issue further.

[*English*]

Sixth, I believe it would also be useful to the committee to hear firsthand the perspectives and concerns of the various stakeholders, including regular users of the act, such as the media and public interest researchers. It will be particularly important to canvass the various issues with the Information Commissioner, whose knowledge and experience will be invaluable to this committee.

Let me close where I began, and that is with the notion of access as a pillar of democracy. As I indicated, the Access to Information Act sets out fundamental rights for Canadians and contributes to open and transparent government. The courts have described it as quasi-constitutional in nature—more than an ordinary statute—helping to ensure that citizens have the information required to participate meaningfully in the democratic process.

[*Translation*]

However, the right to access government information is not absolute. In certain cases, limitations are necessary and entirely justifiable. It is for this reason that the act contains exemptions that protect the privacy of individual Canadians, law enforcement activities, and issues of national security and defence, for example.

[*English*]

When we are dealing with a quasi-constitutional statute of fundamental importance to our democracy, it is imperative that we strike the appropriate balance between the imperative of openness and the protection of sensitive information, as recognized in the act. Our goal, then, is to ensure increased transparency and accountability while balancing access, protection of competing and compelling interests, efficiency, and fairness.

This discussion paper has been guided and inspired by—and I want to make express reference to that—the work done by the ATI Review Task Force, by proposals put forward in private members' bills, and by proposals made by information commissioners in the past. Considering the magnitude and the impact of the ATI act, we must come together as parliamentarians to discuss access reform, to hear expert testimony, and to consider all elements, all perspectives, and all people. In this way, access reform will be enriched by the expertise of the committee. Once the committee has completed its important work, the government will be in a far better position to move forward with ATIA legislative reform, following upon the comprehensive framework for that reform that we have shared with you this morning.

Thank you, Mr. Chairman.

● (0935)

The Acting Chair (Mr. David Tilson): Thank you, Mr. Minister. I want to thank you for your presentation. It's lengthy, but it's detailed and will be useful to the committee to digest.

We also have before us a document called "A Comprehensive Framework for *Access to Information* Reform", which you have referred to. Members of the committee just received that, so I expect that we'll need time to digest that as well. We may have to have you come back to ask for assistance as well.

Hon. Irwin Cotler: Mr. Chairman, perhaps I should have mentioned that I will be pleased to come back at any time, at the committee's pleasure, when you feel it will be helpful to your deliberations. I also appreciate that members of this committee have only now received this comprehensive framework for reform, and that it will therefore take time for you to appropriately appreciate it. I will be at your disposal whenever you wish.

The Acting Chair (Mr. David Tilson): Thank you, Mr. Minister.

We'll start the first round of questions, Mr. Minister, with Mr. Hiebert.

Mr. Russ Hiebert (South Surrey—White Rock—Cloverdale, CPC): Thank you, Chair.

I, too, express my regret that we haven't had a chance to review this document in advance, so I concur with the chair's request to arrange another meeting for us to discuss it with you.

Mr. Minister, the Prime Minister has spoken of a democratic deficit. He promised during the last campaign, as you reminded us in your opening statement this morning, to bring openness to the appointments process. He promised to allow parliamentarians to review the appointments of key office holders. That did not happen with Gordon Feeney, that did not happen with Glen Murray, and that did not happen with our latest two Supreme Court justices.

The term of current Information Commissioner John Reid will be expiring this year. I'm asking if you could tell this committee whether or not your government has learned any lessons from the embarrassment of the broken promises that came with these recent high-profile appointments, and whether or not this committee will have the opportunity to meet and question the government's intended appointee before the appointment is ratified in the House of Commons or in the Senate.

Hon. Irwin Cotler: I begin my response by saying that I reject the premise on which your question is based. I don't characterize what the government has done as an embarrassment of broken promises, so I will reply without organizing myself around, as I say, the mistaken premise that underpinned your question.

That being said, let me give an example why I take that premise to have been mistaken. I will refer specifically to one of the examples you gave in respect of which I have particular responsibility, and that is the matter of parliamentary involvement in appointments to the Supreme Court.

You're correct. The Prime Minister indicated, as part of transparency, accountability, and reform in that matter, that there would be parliamentary involvement in the appointments process to the Supreme Court of Canada. And there was. I myself appeared before a committee in a public televised hearing for the first time in Canadian history—it lasted for three hours—with respect to consideration of both the process by which the nominations were arrived at and the merits of the nominees themselves.

Mr. Russ Hiebert: Mr. Minister, my question is more specific—

The Acting Chair (Mr. David Tilson): Perhaps I could remind everyone we're here to talk about the Access to Information Act.

Mr. Russ Hiebert: I was just going to bring that point.

Mr. Minister, my question to you was whether or not this committee would have the opportunity to meet and question the government's intended appointee. That obviously did not happen with the Supreme Court of Canada appointments. I'm asking you if it will happen in this committee with the future Information Commissioner.

Hon. Irwin Cotler: Mr. Chairman, this committee makes its determinations as to the process and procedures before it. It is not for me to state to this committee how it shall conduct its deliberations.

● (0940)

Mr. Russ Hiebert: I have a further question, then. Do you have any plans at present of replacing the current commissioner, or would we see an extension to his term?

Hon. Irwin Cotler: Mr. Chairman, I don't think the question of the tenure of the present commissioner is a matter for deliberation before this committee. It is a matter that operates by way of statute and appropriate dispositions in that regard.

Mr. Russ Hiebert: So you're saying you have no plans of replacing or extending the commissioner's—

Hon. Irwin Cotler: I'm just saying that I am not going into that issue.

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): I have a point of order, Mr. Chair.

The Acting Chair (Mr. David Tilson): A point of order.

Hon. Marlene Jennings: I understood from the orders of the day that we're here to discuss the reform of the Access to Information Act. I'm not aware that the government's intentions, whatever they may be, as to appointment, reappointment, or non-appointment are part of that.

We have a presentation that's been made to us by the minister. I was part of the John Bryden ad hoc parliamentary committee on access to information. Mr. Martin has in the past put forward a private members' bill on major and substantive reform to the Access to Information Act, and I personally would like to get to that.

I can understand that Mr. Hiebert may have questions about the appointment system and how it may pertain to the information, but —

The Acting Chair (Mr. David Tilson): Ms. Jennings—

Hon. Marlene Jennings: May I finish, sir? May I finish my point of order, sir?

The Acting Chair (Mr. David Tilson): Ms. Jennings, I've allowed a lot of leeway to Mr. Hiebert to proceed with this issue. The access to information commissioner is part of the Access to Information Act, and I'm going to give him a certain amount of leeway. But as I indicated at the outset, I remind all members of the committee we're here to talk about, just as you have suggested, reform of the Access to Information Act.

That being said, Mr. Hiebert, hopefully you will proceed to another issue.

Mr. Russ Hiebert: I can definitely make a connection for my honourable colleague, and I ask the chair that my time not be penalized for the comments made on the point of information.

Hon. Marlene Jennings: Mr. Chair, may I complete my point?

Mr. Russ Hiebert: The connection to this question is that if the commissioner were to be reappointed—

Hon. Marlene Jennings: You're giving leeway to Mr. Hiebert. May I complete my point? Then if you wish to go to Mr. Hiebert, you may.

Mr. Russ Hiebert: —then the committee would have an opportunity to deal with somebody....

The Acting Chair (Mr. David Tilson): We have two people talking at the same time.

Do you have another point of order, Ms. Jennings? Had you finished your first...?

Hon. Marlene Jennings: I have not finished my first point of order, so I find it amazing that you would rule without having heard it.

The Acting Chair (Mr. David Tilson): All right, proceed.

Hon. Marlene Jennings: Thank you.

Therefore, given the fact there has been a great deal of interest, private members' bills, and ad hoc parliamentary committee reports on comprehensive and substantive reform to the Access to Information Act, my suggestion and point of order was that if Mr. Hiebert wishes simply to deal with the question of appointment as it pertains to the Information Commissioner, he may wish to ask this committee to deal with it in a separate meeting.

The Acting Chair (Mr. David Tilson): Thank you.

Proceed, Mr. Hiebert.

Mr. Russ Hiebert: I do ask that my time not be penalized by this point of order.

To respond to the colleague's question and the minister's question, if the commissioner were to be replaced or there were to be an extension of his term, it could be argued that this commissioner would be a valuable asset to this committee during the study that we are currently undertaking. If he were to remain in that place, he could provide his experience to us.

So I think it's still a relevant question to ask whether or not the minister has any plans to replace the current commissioner or whether could we see an extension to his term.

Hon. Irwin Cotler: Mr. Chair, I would refer the honourable member, as I mentioned, to the statutory framework that governs this. It's section 54 of the Access to Information Act, which sets forth the process by which the Information Commission is appointed, the tenure of that appointment and related considerations. It is not my responsibility at this point to make that appointment or to make comments on it.

● (0945)

Mr. Russ Hiebert: All right.

My final question at this point, Mr. Minister, is that there has been some speculation that you might appoint Jennifer Stoddart, our Privacy Commissioner, to fill the role of the Information Commissioner. I was wondering if you would like to comment on that speculation.

Hon. Irwin Cotler: I never comment on speculations.

Mr. Russ Hiebert: Fair enough.

I note that Bill C-201 is before the House. It calls for an expansion of the Access to Information Act to include some crown corporations. I think this bill has a lot of support in the House of Commons and among Canadians. You did mention the need to expand the role of the ATI Act to crown corporations.

I wonder, though, Mr. Minister, if this isn't the wrong approach. Shouldn't the government be approaching the question from the other direction and apply the reverse onus? Shouldn't the government say that every agency, every crown corporation, every foundation, and every department must be subject to the Access to Information Act? And from that point, should consideration then be given to withdrawing certain sub-departments or certain activities from scrutiny, as you mentioned in your examples?

I think we can all agree that the issues of national security, for example, would pre-empt the exposure of a given file to the act—and potentially, information for competitors to government departments or crown corporations could be prevented from being disclosed. However, for far too long the government has taken the opposite approach; they've been fighting Canadians' right to know every inch of the way.

Would you as the minister now agree it is time that the government take a small but significant step towards resolving the democratic deficit and commit to reversing the onus and give Canadians full access to information?

Hon. Irwin Cotler: Mr. Chairman, I began my presentation by stating that it proceeds from two foundational principles. The first is the notion that access to information is a cornerstone of our culture of democratic governance. Therefore, if you want to call it reverse onus, I'll begin with that principle and that presumption. That's the threshold principle from which we'll begin.

The second thing, as I indicated, is that the Access to Information Act itself is not an ordinary statute; it is a quasi-constitutional statute. It has been characterized as such by the Supreme Court of Canada. That has certain consequences with respect to the recognition of citizens' rights—and I use the term “participation rights”—on the one hand, and the responsibilities and accountability of the government on the other. Those are the two generic foundational principles upon which my presentation was based, and with respect to it, I relate to the whole matter of access to information.

That being said, and in response to the particular questions you mentioned, if you look at our discussion paper that is based on those two principles, we identify four thematic approaches. I want to single out, if I may, the honourable member for Winnipeg Centre, who's here today, because I've got his private member's bill before me. I benefited greatly from the appreciation of his work and involvement in that regard. So the four thematic approaches that underpin our comprehensive framework for access reform are not unlike, and relate very much to, the work that has been done by the honourable member.

The first theme is expanding coverage under the act. We proceed from the two principles that I indicated at the beginning, with access reform being a pillar of democracy. When we talk about expanding coverage in the act, we're not referring only to crown corporations, we're referring to alternative service delivery organizations and other entities. We're referring to Parliament and officers of Parliament, we're referring to agents of Parliament, and we're also referring to the principles of universal access. That's only under theme one.

Under theme two, on modernizing and reforming exclusions and exemptions, we're referring to cabinet confidences, minister's offices, clarifying existing exemptions, and adding new exemptions under review of exemptions in section 24, schedule II, which as we indicated at this point is too broad in that regard.

The third theme is one of updating processes, which refers to matters such as the fees and the fee structure, administrative limits, redress process, and a proactive approach to administrative reform.

Those are the four thematic approaches in our comprehensive framework for access reform that proceed, as I said, from the two foundational principles regarding access to information.

● (0950)

The Acting Chair (Mr. David Tilson): Thank you, Mr. Minister.

Monsieur Laframboise.

[*Translation*]

Mr. Mario Laframboise (Argenteuil—Papineau—Mirabel, BQ): Thank you, Mr. Chairman.

I would like to start by thanking you, Minister, for appearing before this committee. We called on you to appear in order to get a status report on reform to the Access to Information Act, and today you are tabling with us this framework document. Our request is probably what compelled you to do your work.

Minister, we get the sense that you have the committee's work cut out for it. On page 6 of the English text you say:

> This necessitates a thorough, open and inclusive process, with abundant, early, and frequent opportunity to discuss what reforms to the act will look like. The government would rather err on the side of being open and inclusive than rush to a fast result and simple solutions to complex problems...

Finally, you tell us to take our time, to get to the bottom of things and to hand you a new reform of this legislation. You insist on transparency. Well, minister, the problem that I see is one of transparency. As you know, reforming legislation is not enough. Citizens must be able to get answers, therefore the system has to be transparent. The problem, currently, is that there are delays in processing requests at the information commissioner's office.

I quickly read through your document. You suggest increased rates for business requests. You refuse to shorten processing times for the handling of administrative requests, complaints or investigations. Yet, minister, that is the crux of the problem. If we don't settle the issue of funding for the Information Commissioner, if we don't allow him to complete his work within reasonable time frames, as far as citizens are concerned, you can reform the Access to Information Act as much as you like, you won't get the desired results.

Today, Minister, you could have tabled a bill which would have solved the issue of access and processing of data. You haven't done so. Rather you're telling us to take our time, to work in depth. You maintain that access reform will take place. Meanwhile, thousands of requests are not dealt with. The Information Commissioner is unable to keep pace.

Obviously, as you know, what the Liberal government has done has led to an increasing number of access to information requests regarding departments and various agencies which fall under the Access to Information Act. Finally, delays in the processing of data are an issue of transparency. You're not dealing with this today, Minister. You're not dealing with the problem brought about by the number of requests nor the need for more timely handling of requests. You may well be tabling this document today, but our Information Commissioner will still experience the same problems: insufficient funding and the inability to deal with the complaints of citizens in a timely manner.

Hon. Irwin Cotler: Thank you, Mr. Chairman. Thank you for your questions.

The reason we are presenting a document on a detailed approach to the right of access to information rather than a bill is that we feel that this approach will enable parliamentarians and interested parties to make comments on the main factors set out in the discussion paper, not just on the topics you mentioned. It will especially provide for a comprehensive approach to reform.

In the past, parliamentarians and others claimed that, for example, the government's access to information review task force consultation process was not open enough. We are talking about the parliamentary process, not just the government process.

Now there is a partnership between government and Parliament to reform the act in a way that meets the needs of the public in terms of this democratic process. This document is the first opportunity for the government to release the fruit of its thinking about the topics and proposals put forward by the task force, and to promote private members bills on topics you mentioned.

I'd like to thank the member for Winnipeg Centre, because we based our approach on many of his recommendations. This approach enabled us to specify the areas in which the government is willing to contemplate reform. We are proceeding in keeping with fundamental access to information principles.

This discussion paper is a good instrument for opening the dialogue between the committee, the government, the main stakeholders and the public, who until now have not had the opportunity to participate in this reform process. It's a democratic process that involves the public and members of Parliament. The parliamentary process gives us the chance to have this involvement.

I'm delighted that the committee was struck to do this job, to hear evidence, to respond to the content of this paper that we have released today. The government and I hope that a bill will be prepared as soon as possible, as a result of this parliamentary process.

● (0955)

Mr. Mario Laframboise: Except that—

[*English*]

The Acting Chair (Mr. David Tilson): You've got about 30 seconds, if that.

Madam Jennings.

Hon. Marlene Jennings: Thank you very much, Minister, for your presentation.

Obviously I have not had an opportunity yet to go through everything with the review task force; I've been able to do part of it. I've only been able to go very briefly through the discussion paper you've just tabled. However, in both your written presentation that was provided to us and your verbal presentation, you talked about some of the processes that have occurred to review the Access to Information Act. These included the task force, and Mr. Pat Martin's NDP private member's bill to amend the act. You also mentioned Mr. John Bryden, a former member of Parliament, who also had a private member's bill on the same issue.

You did not mention, however, that in the previous Parliament there was no standing committee on access to information. So a number of like-minded, non-partisan members of Parliament came together under the leadership of Mr. John Bryden, who at the time was a Liberal member of Parliament, and put together an ad hoc parliamentary committee on access to information. They attempted, with the limited resources they were able to bring to that, a review of the task force report and recommendations and the Information Commissioner's response to that. They also called in a number of experts.

I was a member of that ad hoc committee, and one of the points from our report, which I think was called “A Call to Openness”, was the fact that the task force report or work had two major flaws: there had been no broad-based public consultation, and there had been absolutely no parliamentary input.

I'd like to hear from you about the government's position. Do you agree with the conclusion of the ad hoc parliamentary committee that there were two significant flaws in the work of the task force? Secondly, is that partly the reason you're coming before this committee, providing this discussion paper, and asking the committee basically to do a comprehensive parliamentary review of the Access to Information Act and some of the issues that need to be addressed before any legislation is brought forward?

● (1000)

Hon. Irwin Cotler: Let me say that in referencing the work that we had consulted for purposes of preparing our own comprehensive framework for access reform, we did both consult and benefit from the ad hoc parliamentary committee. I almost regarded that as a kind of statutory committee since it worked so diligently and in such a sustaining manner. I was very much impressed with it when I was first elected as a member of Parliament, because I thought this was an exemplary representation of how Parliament works at its best in terms of process, as well as substance.

I would concur with the two critiques that were made in that report of the previous task force. I was intending to indicate in my remarks—because I was seeking to incorporate, by reference, all that had gone before in terms of what we have benefited from and presented to you today—that one of the things that came out Inger Hansen's Information Commissioner study, which we took seriously, was the need for a comprehensive parliamentary strategy to achieve this comprehensive reform. We have said before you that the framework for that reform is the substantive part of what we have sought to share with you. The process part, to arrive at it, is really the kind of thing that the ad hoc committee was recommending from the process point of view, and that we think would engage parliamentarians and the public alike in public dialogue for purposes of achieving reform.

I have to say, when I was a law professor and looked at this issue, I looked at it with an almost instinctive disposition of somebody who wanted all information free, at all times, for all people. That was a kind of small “L”, liberal-minded law professor's almost intuitive approach.

Hon. Ed Broadbent (Ottawa Centre, NDP): And now that you're a big “L”?

Hon. Irwin Cotler: I'm still a small “L”.

Some hon. members: Oh, oh!

Hon. Irwin Cotler: I enjoyed that little remark. But I'm still a small “L” and will always be that. As I've said elsewhere, and as the honourable member knows, when we legislate, we legislate for the people of Canada, not for the Liberal Party.

In that approach, what I was able to appreciate from all the studies —you know, I approached it almost like a law professor. The more I read into this, I stayed with the principles. I've not strayed from those two principles: that access reform and freedom of information are a cornerstone of democratic governance, and that the act is a quasi-constitutional statute to achieve that purpose. I haven't strayed at all from those two foundational principles.

The only thing is that you see there are competing public interests; that's the point. You can say that freedom of information is clearly in the public interest, no question about it, but then you go into it and you find where there's a competing public interest in an issue that may arise in relation to privacy, or there's a competing public interest that may arise in relation to law enforcement, and so on. Then you understand, going back to our Charter of Rights, with respect to a rights-based approach, why it says in section 1 of the charter that the rights guaranteed are “subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society”. That provides the constitutional framework. There are no rights, not in the charter or in respect of freedom of information, that are absolute. Those rights are subject to limitations that may be as a result of a competing public interest. One has to show that this competing public interest is indeed demonstrably justifiable as compatible with a free and democratic society.

So we looked at what other free and democratic societies do, and that's what we're putting before you. We have prepared a comparative inquiry of how other free and democratic societies approach this, but we proceed in the same small “L” principles of access to information.

● (1005)

Hon. Marlene Jennings: So the short answer is yes, you'd like the committee to do a comprehensive review.

Thank you.

The Acting Chair (Mr. David Tilson): Mr. Martin, welcome.

Mr. Pat Martin (Winnipeg Centre, NDP): Thank you, Mr. Chair, for this opportunity.

Minister Cotler, six months ago I agreed to withdraw Bill C-201, which you made reference to, on the basis of a handshake deal and a strong commitment from you that within this session of this Parliament we would have a comprehensive access to information act put forward by the government. That was the deal. Had I not withdrawn Bill C-201, known as the Bryden bill because it was lovingly developed for a decade by a Liberal member of Parliament, that bill would be in the Senate by now, because it was introduced in October 2004.

Six months after the fact, six months after we were promised a bill, you present this discussion document to set the framework to begin the process to start to analyze what might be needed to assess changes, blah blah blah. It's busy work for this committee, and in my mind it's specifically designed to keep us busy and occupied with the issue of access to information, yes, but it's also designed clearly so that we will not see access to information reform legislation in this Parliament.

We're out of time. We're six weeks away from the summer recess. This committee might have six or eight meetings left before it breaks for the summer, and who knows what the fall will bring.

People like Derek Lee who were on the ad hoc committee and worked with Mr. Bryden contemplated all of those issues that you quite rightly pointed out. All those things you've just said are absolutely true. We have to wrestle the right to privacy with the right to know. I agree that freedom of information is the oxygen that democracy breathes. We've all said those things for the last ten years.

For the same amount of work as your people put into preparing this framework discussion document, you could have presented draft legislation to this committee at first reading so that they could in fact be crafting a good bill.

I don't know, Minister. My disappointment is profound. I believe the agreement we made has been breached by the introduction of this framework document.

Your government has an opportunity to restore the public's faith in the system by demonstrating a sincere commitment to freedom of information. Never has the country needed a shot in the arm in terms of confidence in our system. It's shaken to the core. Yet in two situations—the whistle-blowing bill, which is dying on the vine, and now this failure to introduce an access to information act—what's the Canadian public to think, other than that this government does not truly have a commitment to open government? Even if you as minister have a sincere and genuine interest in the concept of open government, which I don't doubt for a moment, and a belief that a culture of secrecy breeds corruption—we all know that....

I don't even know if I can frame a question, because I don't know if it's worthwhile.

How do you explain this, and where did the wheels fall off of our deal? Let me put it that way. Have your bureaucrats told you it can't be done? Is it your cabinet that has told you they don't really want this? Are they afraid true access to information will reveal even more sponsorship scandals? Where is the obstacle? Where is the barrier to the commitment that we had?

Hon. Irwin Cotler: I'm glad you asked that question, because I think it deserves a reply, and not only a reply that I may share with you, but a reply that needs to be shared with the members of this committee and indeed with the public.

Let me begin with your first comment that, had you gone ahead with your bill, it would have been in the Senate by now. I have to say that I wish that were the case. If so, you would clearly be a much better legislator than I am, because I have five bills that are nowhere near the Senate.

● (1010)

Mr. Pat Martin: Yes, but I had all-party support for this bill, including that of most Liberals.

Hon. Irwin Cotler: Even if you have all-party support, there is a legislative logjam. For example, the first bill that I introduced in this Parliament, symbolically as well as substantively, was a bill with respect to the protection of children and other vulnerable persons. I regarded it almost as more important, in a certain sense, than the freedom of information.... The protection of the most vulnerable is a priority. It still has not left the House, and I can go on.

Now, I'm legislating and you say, why don't I introduce a bill? Frankly, it would have taken its place in the legislative traffic jam of my own bills, if I have to put it that way, because I have carryover legislation, including civil marriage legislation, the cannabis reform legislation, and the legislation with regard to the rights of mentally disordered accused, and I can go on. So this would have had to take its place there, because I have other legislation, such as on trafficking in women, etc., still in the legislative logjam.

Therefore, without it being a delaying approach, what I thought of was a two-staged approach. Given that the bill, had I introduced it, would have sat there in a traffic jam, why not allow for what has not yet been done while the traffic jam is there anyway—a full and public hearing on a number of competing issues?

As I said, I read your work very carefully, as I have that of others. While I thought you identified all of the issues correctly, with all due respect, I would not have responded to some of those issues in the same way. I thought that this committee and the Canadian public deserved that opportunity to look at this.

And if I may just conclude by saying one thing, I think the Canadian public deserves the best and most comprehensive access reform legislation that takes account of all of the competing interests. This committee has an opportunity to do that. In a two-stage process, there's no reason why, if we do our work felicitously, we cannot still introduce that legislation in the present session. I still see that as a possibility. I don't see this as being an either/or matter, that we have this comprehensive framework for reform or we have a bill. We have a comprehensive framework for reform, which is the first stage leading inexorably to a bill that has been refined and enlightened by the democratic parliamentary process.

The Acting Chair (Mr. David Tilson): Sorry, Mr. Martin, but you'll have to wait till the next round.

Mr. Lee.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): Thank you.

Mr. Minister, I was one of those who participated in the MPs' group looking at ATI. I share some of the sentiments of Mr. Martin, but I accept that your ministry has been extremely busy over the last few months or last couple of years. I think what we're looking for is somebody to drive the bus on this. It's not clear to me that Parliament itself is the right institution.

I also want to say that the framework you presented is actually very detailed and will be very helpful in moving the bus forward. I'll ask for your reaction on this, but I would have been happy to be dealing with an actual bill now—though I don't know about the rest of my colleagues here—rather than a framework, a bill that could come to us after first reading, where there was some flexibility. I realize the more flexibility there is for Parliament, the more vulnerable government and the other parties to the legislation feel. But a bill would at least have given us a vehicle to proceed. In the absence of that now, we're still at the study stage.

Some of us around the table have been tinkering with this for a while. I think the government has to determine or nail down in a bill just where that balance should be between all these interests in the ATI legislation. That would be most helpful to us.

Would you consider turning up the crank here on a bill? Would you be prepared to alter the course and let a bill come forward as quickly as the department can generate it? That would at least allow us an opportunity as a Parliament to deal with the subject the way we normally do, and that is in a bill.

● (1015)

Hon. Irwin Cotler: Let me say, if I may use your metaphor, because I liked it, that we want to drive the access to information bus. We want to move it forward no less than you and the honourable member for Winnipeg Centre and this committee.

Rather than having that bus languish in a parking lot because nothing was moving in that legislative traffic jam, we used the time to come before you to say, okay, guys, here's a comprehensive framework, but frankly some of the elements in that bill are not that clear to us as to what they should contain. If you look at that discussion paper, some of these issues really are complex and difficult. They don't lend themselves to easy answers. There are competing public interests.

We do need a parliamentary and citizens' judgment on this. I can't really come before you and.... Leaving aside the four major thematic elements, the sub-elements on those things that relate to the whole framework with respect to not only crown corporations but alternative service delivery organizations, that relate to Parliament and officers of Parliament and agents of Parliament, that relate to the whole question of cabinet confidences and the like, and that relate to the whole matter of statutory exemptions—they're not easy.

We know what the issues are, and that's why we've been the beneficiary of all the work that's gone before. They've identified the issues. They've identified some of the concerns, but not always in the depth we have tried to share with you, which are the competing public interests in relation to these issues.

It seems to me that it is possible to do what you suggested. We've given you that discussion bill. That traffic jam is still there anyway. You can start doing your work, and we could be in a position of going to that second stage, which, as I said, was actually to produce a draft bill for your consideration that would parallel, maybe, the kind of ongoing discussion that's going on here. But certainly it required a first appreciation by a parliamentary committee of the complexities involved and what I recall as the multi-layered framework of inquiry on these issues.

I thought I knew this issue, but frankly the more I went into it, the more I found there were some complexities and considerations that really required a more informed judgment than we were prepared, at that point, almost in a pre-emptive way, to give to a parliamentary committee that had never had an opportunity to inquire into these things within the comprehensive framework of competing public interest that we sought to share with you.

The Acting Chair (Mr. David Tilson): Okay, Mr. Minister.

I remind committee members we're into the three-minute round and we're rather exceeding these things.

Mr. Epp.

Mr. Ken Epp (Edmonton—Sherwood Park, CPC): Thank you, Mr. Chairman, and thank you, Mr. Minister.

I would like to commend you for saying you would like to involve Canadians and parliamentarians and that this job has to be well done. I would like to ask, therefore, a very specific question, and in three minutes you and I won't have much time for dialogue here.

● (1020)

Hon. Irwin Cotler: We can talk outside the committee room.

Mr. Ken Epp: Okay, but here is my question. In 1986-87 a parliamentary committee did an in-depth review of this act and made some hundred recommendations. I haven't read those recommendations, nor have I been able to do the study, but based on information others have done for us, none of those recommendations has been implemented.

My question to you is very clear and succinct. Number one, were those recommendations from that report, which is now almost 20 years old, considered, and how many of them are involved? I haven't been able to look at your discussion paper, since we received it only 10 minutes after this meeting was to have begun, so I'd like your response to that. Were they considered and how many are included?

Hon. Irwin Cotler: Thank you, Mr. Chairman, and thank you, Mr. Epp, for your question.

I introduced my two experts at the outset of this meeting, but they have been sitting here rather quietly while I have been pre-emptively responding, so I think what I'll do is ask them, if I may, to respond, because they will have the institutional memory and background that I do not possess with regard to these matters. I suspect they can address it more felicitously than I can.

Joan or Oonagh.

Ms. Oonagh Fitzgerald (A/Chief Legal Counsel, Public Law Group, Department of Justice): I'm Oonagh Fitzgerald. I'll just make a couple of comments.

Certainly those recommendations have been taken into consideration in preparing this paper, this comprehensive framework. One point to mention, of course, is that many years have passed since those recommendations, and what we have noticed we have been facing more recently are a lot of issues about reshaping of government. The alternative service delivery was an issue that wasn't really developed at that time. The issue of information management has changed significantly with the increased use of computers.

There have been a number of changes like these that require us to look at older recommendations and consider their value today. They are still valuable, but we've also been looking, of course, at more recent recommendations.

Mr. Ken Epp: Okay, then can you answer this question: were any of them actually incorporated into this discussion paper, and are you proposing to include them in the legislation?

Ms. Oonagh Fitzgerald: I think there are a couple of references. I'd have to look for them.

Mr. Ken Epp: Okay, and how about the 2001 task force that Mr. Lee and some of the other people here were on? Were any of their recommendations included?

Ms. Oonagh Fitzgerald: Yes, they have also been considered. What we have done—

Mr. Ken Epp: Well, they're being considered, but I want to know whether they actually show up here as things you want to do now.

Hon. Irwin Cotler: They do.... Go ahead, Joan, and then I'll answer.

Ms. Joan Remsu (General Counsel, General Public Law Team, Department of Justice): I don't remember quite clearly what was in the 2001 report. I do remember that when I read that report and then saw the next private member's bill I noticed some of those proposals had been taken, but the private member's bill seemed to reflect a lot more of the task force's proposals than the ad hoc committee's proposals. So some of the task force proposals and the private members' bills are what this work is based upon. And in part some of the ad hoc proposals are reflected as well, but I note that the private member's bill that came forth in 2003 had shifted slightly from the report that was handed down by the ad hoc committee. I don't remember detail for detail, but I did notice a shift.

Thank you.

The Acting Chair (Mr. David Tilson): Thank you.

Mr. Bains.

Mr. Ken Epp: My time is up, and I'd like the other members of the committee to follow my example.

The Acting Chair (Mr. David Tilson): Mr. Bains, go ahead, please.

Mr. Navdeep Bains (Mississauga—Brampton South, Lib.): I will do my best. Thank you very much, Mr. Chairman.

Thank you very much, Minister, for coming out this morning and sharing your opening remarks. I had a question with respect to page four. You mentioned that there were two items, current protections in the Access to Information Act, that have been subject to much criticism. One has to do with respect to the ministers' offices, and the other has to do with cabinet confidences. You indicated these inclusions were designed to protect key political functions of the executive; however, the Information Commissioner has alleged or has stated that you are in a conflict of interest as both the minister responsible for the act and also representative of the government under the act.

I'd like your feedback or comments on that.

Hon. Irwin Cotler: I don't see myself being in a conflict of interest. Are you referring to the manner in which—

Mr. Navdeep Bains: He has stated that you would be as the person who is going to propose this legislation,

Hon. Irwin Cotler: Right.

Mr. Navdeep Bains: As the person who is responsible for putting together this legislation, ultimately you're excluded from it, and cabinet documents are excluded from it. So is there a conflict? This is a comment made by the Information Commissioner as well.

Hon. Irwin Cotler: Well, it wouldn't only refer to me as being in a conflict. You could make the argument that government is in a conflict of interest, in a sense, because it's dealing with an issue that affects government, but you could say the same thing—that Parliament is in a conflict of interest because we're dealing with parliamentary officers or we're dealing with the House of Commons.

The Acting Chair (Mr. David Tilson): Could we have order, please?

● (1025)

Hon. Irwin Cotler: In that sense, we would all be in a conflict of interest because we would all be dealing with something that involves each of us, whether it be the exclusion in one form or another of ministerial records or the exclusion in one form or another of what parliamentarians' records are in relation to their constituents. So I think we're here to legislate, and we're here to bring forth something with respect to the interests of the public.

And I wouldn't agree with the commissioner's comment on the more particularized aspect of your question, that I'm in a conflict of interest because I'm responsible for the Access to Information Act, both in cabinet and in Parliament, at the same time as I also represent the government in litigation under the act. It's not contrary to what the commissioner has suggested in his report. It's not my role, as Attorney General of Canada, to advocate on behalf of secrecy in litigation initiated under the act. My role, with respect to litigation, is to conduct it in accordance with the rule of law, and that means that in some access cases I argue for the protection of information if that is what is in conformity with the rule of law, and in other access to litigation, I argue for the disclosure of the information if that is what is in accordance with the rule of law.

So basically I'm obliged, as Attorney General, to comport myself in accordance with the Charter of Rights overall with respect to any framework legislation. I'm obliged by the Access to Information Act to govern myself by the principles and procedures in that act.

So the role of the Attorney General really is a matter of fidelity to the rule of law. It's sometimes not appreciated. Here I wear two hats. I wear a hat of a Minister of Justice, and there I'm a member of Parliament and a member of the governing party. But as Attorney General, I have fidelity to the rule of law, and in litigation I come before the courts at that point as an officer of the court with respect to fidelity under the Constitution in general and with respect to the Access to Information law in particular.

So I don't see any conflict, as I said; otherwise we all would be having a conflict, as I initially indicated.

The Acting Chair (Mr. David Tilson): Thank you, Minister.

Monsieur Boulianne.

[*Translation*]

Mr. Marc Boulianne (Mégantic—L'Érable, BQ): Thank you, Mr. Chairman.

Welcome to you and your team, minister. You mentioned the principles at the root of the act. The Access to Information Act is a quasi constitutional enactment. You also mentioned that the act needs improvement. In 15 or 20 years, we still haven't managed to improve the act to make it better adapted to current society. We are seeking a balance between conflicting interests.

My question has mainly to do with the exemptions. You refer to them on page 7. I took a quick look at section 24 of the document; it's very thick, very substantial. You were saying before that there were some overly broad exemptions, perhaps also some overly inflexible ones.

Can you tell us what criterion will determine the choice of necessary and useful exemptions in this act?

Hon. Irwin Cotler: First, there have been amendments to the act over the past 21 years, but there has been no comprehensive reform. What's important, and what's being proposed today, is that there be a comprehensive and legislative report on the act. We are not talking about a new act, we're talking about amendments to the current act, to the criteria for exemptions and to section 24, which has to do with that. The approach has to be based on the principle of access to information. But information must also be protected: it's in the public interest, for example, when it comes to individual rights or for strengthening the act, as noted in our paper and in my comments. In my opinion, many exemptions are unnecessary at present, and only those that protect both the rights of Canadians and the public interest should be kept.

● (1030)

[*English*]

The Acting Chair (Mr. David Tilson): Mr. Powers.

Mr. Russ Powers (Ancaster—Dundas—Flamborough—Westdale, Lib.): I'm going to hitchhike on Mr. Navdeep Bains' question. You alluded earlier to the complexities and the competing interests involved, and you touched on the ministers and ministerial office. You provided us with four examples, one of them on the agents of the Crown. You specifically referred to the Chief Electoral Officer, the Information Commissioner, the Privacy Commissioner, and the Auditor General and talked about some of the challenges they had with these competing interests.

Could you perhaps go into a bit more detail with regard to maintaining the distinction between the administration of these offices and the confidential data they actually collect?

Hon. Irwin Cotler: Let me just make reference to the Chief Electoral Officer and then other agents of Parliament, as you indicated. In 2002 the task force agreed that the Chief Electoral Officer should not be covered. However, the House committee that reviewed the Access to Information Act—and this goes back to the earlier question of whether we have adopted anything from the 1986 recommendation—recommended in their report, open and shut, that all agents of Parliament should be covered, including the Chief Electoral Officer.

Also, the recent private members' bills have proposed to make the CEO subject to the act. Now, my own officials from the justice department as well from the Privy Council recently consulted the office of the Chief Electoral Officer to discuss possible approaches to coverage, including the proposal of including only some of the records relating to general administrative activities of the CEO.

I just want to indicate parenthetically that in order to prepare for our discussion paper we consulted with not only the Chief Electoral Officer of Parliament but all the other agents of Parliament to get their views, which we then factored into our discussion paper along with the views of the task force, as you see here, private members' bills and the like.

At this stage the CEO has clearly stated his preference not to be covered. He's concerned that obligations under the Access to Information Act will compromise his political neutrality and possibly result in political interference. He's also concerned with the fact that he holds a lot of extremely sensitive political information that could be exploited for partisan purposes—for example, membership lists, notes from discussions with political party representatives, etc.

I use this—and it's a good case study—because the issue is not simply whether the Chief Electoral Officer is inside or outside of the coverage of the Access to Information Act, but that there are already a lot of provisions in the Canada Elections Act that go to confidentiality and publication of information.

Rather than include the private member's bill of the member for Winnipeg Centre in the Access to Information Act, which is one alternative, the provisions of the Canada Elections Act could be made more robust. From our point of view, we are not prepared to take a position on this yet, because we're not sure what the best position is.

I've just given you competing considerations with regard to your question. Let me just look at the other agents of Parliament under the act.

The Acting Chair (Mr. David Tilson): Mr. Minister, we're limited as to time, so I'd ask you to be very brief.

Hon. Irwin Cotler: Okay.

As for the other agents—the Information Commissioner, Privacy Commissioner, Auditor General, Official Languages Commissioner—we consulted them. They do not have objections to being made subject to the act as long as we protect their records relating to their investigative and audit functions.

So here too, in order to meet their concerns, we have to look at what the various options are. At a minimum, we have to protect the records they receive from departments in order to carry out investigations and audits. These records can be protected either by excluding them from the act or through a mandatory exemption. We could also protect sensitive investigative records by including under the act a limited category of records, etc.

I can go on. My whole point here is to try to share with you the idea that there are competing considerations. We all want to say, okay, let's have the maximum amount of accountability and information accessibility and transparency with regard to agents of Parliament. But when you consult them they say, wait a minute, we also agree with you, but we have some concerns with regard to matters relating to information respecting investigations and audits. This would come even from the Auditor General.

So what I'm saying is that it's not as simple as it might appear at first blush.

● (1035)

The Acting Chair (Mr. David Tilson): We're going to have to move on, Mr. Minister. Thank you.

Mr. Broadbent.

Hon. Ed Broadbent: Thank you, Mr. Chairman.

Minister, I want to begin by making this assertion. I hope you will respond favourably to it. I want you, in responding, to take no more time in answering than I take in asking the question.

Let me begin by saying that, like you, I like metaphors; like you, I like logic; like you, I would regard myself even—dare I say it—as a small "L" liberal when it comes to political and civil rights.

Hon. Irwin Cotler: Welcome to our party.

Hon. Ed Broadbent: That's precisely why, Mr. Chairman, I'm not a big-L Liberal.

Let me come to the bill and the arguments you put forward, including all the elements, but particularly your argument that somehow this discussion paper you presented will adequately substitute for the bill that had been discussed for many years, had received unanimous agreement from all parties, and—contrary to what you've argued—was the first bill that was supposed to be dealt with by this Parliament.

It would have been adopted if my colleague had not agreed to withdraw it. And it would have been—I repeat, would have been—in the Senate. It was not subject to the logjam that you discussed. The logjam that you discussed was your series of bills. And by the way, it's a comprehensive bill—some 17 pages—that attempts to take into account all the conflicting principles that you refer to. And to pick up the metaphor, if this truck had been chosen to be driven, it would have been well beyond the parking lot now. It would be out on the highway, going to reach its destination. What you have done, may I suggest, is taken the truck right off the parking lot.

An hon. member: Into the ditch.

Hon. Ed Broadbent: Into the ditch. It's nowhere to be seen, and we might as well just get rid of that metaphor.

So I come back, Mr. Chairman, to the minister and say, why don't we have the bill before us that could have been dealt with by this committee? It could have had public hearings with public input. It could have been subject to all the reasonable provisions of a minority government in particular—amendments moved, amendments accepted or rejected—to deal with the complexity you mentioned.

I don't see the logic in your argument, frankly, that it was necessary to withdraw it for all the complex reasons. The bill is complex. The process acknowledged the complexity. Therefore, I suggest that the arguments you put forward are not, to put it bluntly, to me logically consistent. You've raised different structures as a minister introducing your own bills, instead of the process that was under way here.

Because of my colleague's efforts and many other MPs' efforts, I regret that we've now delayed this process, not only in this Parliament—because we all know we're in a minority government—but it is now going to be into the next Parliament, and we're going to be some 25 years, in my view, without comprehensive reform of this legislation.

Thank you.

Hon. Irwin Cotler: Let me just say, in terms of a brief response, that number one, I don't regard what we're doing as a substitute for the private member's bill. I regard our approach here as offering a more comprehensive framework as a process. There are two things.

Number one is a more comprehensive substantive framework for reform built on that private member's bill, but on other things as well. There were many issues in that private member's bill that we agreed with, but there were some that we did not, which included not only matters of policy but also matters of principle.

Number two, we believe the process required the kind of approach we have recommended. So there are two things: a comprehensive framework for reform and a comprehensive strategic process to achieve it. To use your metaphor, I'm not so sure that truck would be going down the highway, but if it were going down the highway, they would have said, hey, why don't you check the brakes on it before you put it on the road?

Hon. Ed Broadbent: It can be repaired. The process allows for repairs.

Hon. Irwin Cotler: We want to put the best truck on the highway, which isn't going to break down—if I can use your metaphor—because the brakes aren't working well.

The Acting Chair (Mr. David Tilson): Thank you, Mr. Minister.

The committee has about 10 minutes left.

Mr. Harrison, you have three minutes.

Mr. Jeremy Harrison (Desnethé—Missinippi—Churchill River, CPC): Thank you very much, Mr. Chair.

I just want to pick up on a point that Mr. Broadbent made, which is that if Mr. Martin had proceeded with his private member's bill, this would be very close to becoming law right now. The private member's process is very different from the government bill process, as the minister should know. Mr. Martin had a very high number in the priority order, and this would have been very close to becoming law right now.

I have to tell you, I find it very disturbing to hear that the deal that was made, a gentlemen's deal, was breached. I find it very disturbing that a minister of the Crown, and through the minister of the Crown the Government of Canada, would breach an agreement like that. I've dealt with Mr. Martin on a number of issues—he is an honourable member—and to have that agreement breached I find very concerning.

I have two very specific questions. First of all, does the government have draft legislation right now? Secondly, when will we see a bill, or how much longer is the government going to continue to dither on this?

● (1040)

Hon. Irwin Cotler: I know you enjoy using the word "dither", and I'm going to say—

Hon. Irwin Cotler: Deliberation, okay? I mean, you can go...and decision.

I'm not here to play politics; I'm here to see that we can put the best bill forward in the public interest—

Mr. Jeremy Harrison: Well, what other word is there for it?

When are we going to see it?

Hon. Irwin Cotler: I didn't interrupt you. I would just appreciate the same courtesy.

The Acting Chair (Mr. David Tilson): Mr. Harrison, let the minister answer.

Hon. Irwin Cotler: I think what we are talking about at this point is a deliberative process to arrive at a decision. Deliberation and decision are entirely different from dithering. We expect to have a public, democratic approach to it, which we believe will enhance the ultimate decision. Now, if this committee can arrive at a consensus with all these competing public interests, if you come back and you say, "You know what, you found complexities where we didn't; you found competing public interests where we didn't; we've been able to clarify all of these things that you said needed clarification", then we can move forward with the bill.

I'm saying to you here today we're not coming forward with a discussion paper as an alternative to a bill; we're coming forward with a comprehensive framework as the first of two stages toward a bill. So look at it as a two-stage process.

You have the opportunity here, as a parliamentary committee, to take the comprehensive framework that we've housed in this discussion paper, look at it, look at the competing interests and complexities and say, okay, we think we can recommend the following. We can then go ahead, as stage two, and come forward with a bill. And we can maybe even do this parallel to your discussion.

We're not preventing the truck from going down the highway. We want the truck to be the best-built truck as it starts to move down that highway. We share the same objective: to put the Access to Information Act on the road, but put the best one that we can produce on the road.

The Acting Chair (Mr. David Tilson): Mr. Laframboise, you have three and a half minutes.

[*Translation*]

Mr. Mario Laframboise: Minister, as I listen to you I realize that you are a very able politician. The problem is that during all this time, our access to information commissioner does not have the necessary resources and may be replaced before new legislation is passed. I think that's what will happen. Some people seem to think that a new commissioner will deal with the requests faster. That's very unfortunate.

We are here to defend the interests of Canadians. We want every Canadian citizen who files a complaint to receive an adequate response in a timely manner. Finally, we want to extend the application of the legislation to other government organizations so that Canadians can enjoy the transparency you have talked about, Minister. However, what will happen today, in light of the document you have submitted, is that there will be more delays. If Mr. Martin had been able to table his bill, we would already have something to say and to give to the access to information commissioner.

Since you are a good politician, you have offered us another delay today. The problems the Liberal government has created for the access to information commissioner are not acceptable anymore. That's why we expected to receive a draft bill today which we could have discussed. You are telling us anything and everything. However, today we do not solve the access to information commissioner's problems because he does not have enough personnel to process the access to information requests of Canadians in a timely manner.

Hon. Irwin Cotler: Thank you for that observation.

To begin, I just want to point out that I have nothing to do with the commissioner's budget., Rather, that lies with the president of Treasury Board. However, included in the reform we have presented today are functions concerning education and the commissioner's public affairs, which would be covered by the bill. So we are proposing protecting the commissioner's mandate.

As well, as I said, I am not responsible for the commissioner's budget, but your committee can make a recommendation on that issue.

I want to come back to the issues of process. I agree that we need a bill as soon as possible. We share a common cause, namely the protection of the public interest and the right of Canadians to access of information. I hope that the government and the parliamentary committee will together be able to develop legislation based on discussion and the parliamentary process.

● (1045)

Mr. Mario Laframboise: If I may, Minister, I would just like to point out that it is not quite correct to say that you have no influence on these matters. If, as was mentioned in one of the recommendations, the response was provided within 90 days, it would necessarily follow that the bill would provide for sufficient funding. At least that what I hope.

For that reason, I would say that your bill would affect the way the office is managed and, of course, the budget. When a bill containing provisions on outcomes and deadlines is passed, funding is automatically earmarked for that purpose in order to meet the needs of Canadians.

Hon. Irwin Cotler: I would suggest you turn to page 33 of our document. It may contain several answers to your question. The issue is addressed from an administrative point of view. Frankly, I have to say that we may not be sufficiently addressing the concerns you have raised. Nevertheless, we have addressed the matter and we have taken note of the importance of the administrative reform. I would advise the committee to make recommendations on this subject and on others to not only help us to improve legislation, but to also present amendments which would help us to develop the best version of this bill.

[*English*]

The Acting Chair (Mr. David Tilson): Thank you.

We are running out of time, and I think we'll give the last word to Mr. Powers.

Mr. Russ Powers: Thank you, Minister.

In your presentation you made six asks of this particular committee on that. I get the impression there may be another one this committee may adopt first to deal with. Out of the six asks—it's probably going to occupy all of our time in this committee, involved in Parliament—are there some priorities in these six items here? Obviously, they're all of urgency.

They're referred to on page 7 of your actual remarks.

Hon. Irwin Cotler: Without referring back to my paper, because I think I recall it, I will say that we sought to present them in the sequence as well as the substance they are dealt with, both in my opening presentation today and in the discussion paper. For example, we begin with the issue of crown corporations. The reason we begin with the issue of crown corporations is because that's where the President of the Treasury Board has already made a *démarche*, that's where he's already proposed a governance approach, and that's where some of the changes, frankly, can be made by the government by way of order in council, without even having to have a legislative response.

Where we have a consensus we could move forward, even while the committee is deliberating, with regard to those matters where we can be proactive, from the point of view of administrative reform, or use the order in council authority with respect to matters relating to crown corporations. We sought to go through it in a manner that the best-sequenced approach would allow for, beginning with the first package of expanding the coverage under the act, and in that are crown corporations, alternative service delivery organizations, and Parliament—officers of Parliament and agents of Parliament.

Then we go into the other matters of modernizing exclusions and exemptions. Here you deal with more difficult questions of cabinet confidences and ministers' offices, clarifying existing exemptions and the like, which gets you more into the area of competing public interests where the sort of normative and juridical approaches are more complex and at times, as I say, competing. You could go to some of the updating of administrative processes, which we put toward the end of those recommendations, but maybe one could move more quickly, even though in a sequenced way they appear toward the end of our discussion paper.

I would leave it to your committee to make the best determination as to what should be the sequence and substance of discussion. For our part, we are prepared to move during the course of the deliberations, where possible and, as I said, together with you, to make the necessary amendments—put what we hope will be the best truck on the road as quickly as possible.

● (1050)

The Acting Chair (Mr. David Tilson): Mr. Minister, I want to thank you and your colleagues very much for coming before us to assist us with our deliberations on the reform of the Access to Information Act.

As I indicated at the outset, I expect that when committee members have had an opportunity to review the discussion paper that you gave us, dated April of this year, we will ask more assistance from you.

I do thank you for coming today and sharing your remarks with us. Thank you very much.

Hon. Irwin Cotler: Thank you, Mr. Chairman. As I said, I'll be happy to come back again if I can be of assistance.

The Acting Chair (Mr. David Tilson): Thank you, sir.

That concludes our discussions on reform of the Access to Information Act this morning. I remind members of the committee that we are meeting tomorrow night at 6 o'clock to discuss, in camera, some comments of the Treasury Board Secretariat. I will therefore adjourn the meeting until then.

Thank you.

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