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Monday, June 19, 2006

Chair

Mr. Tom Wappel

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● (1530)

[*English*]

The Chair (Mr. Tom Wappel (Scarborough Southwest, Lib.)): We have quorum. I'd like to call this meeting to order.

Pursuant to orders of the day, we have some business to conduct. Since the minister is here, colleagues, I'd like to proceed with him. We'll deal with committee business after the minister and before the Information Commissioner, if there's time, or after the Information Commissioner.

Appearing before us today is the Minister of Justice, the Honourable Vic Toews. I'll let the minister introduce the officials who are with him. We're going to proceed with the minister until 5:30, or until there are no questions, whichever occurs first. We'll take a short break, and then we'll have the Information Commissioner until 7:30, or until there are no questions, whichever occurs first. Hopefully everybody will be able to get home to watch the Stanley Cup game.

Minister, I presume you have an opening statement.

Hon. Vic Toews (Minister of Justice): Yes I do, Mr. Chair. I'd like my officials to introduce themselves. They will give a bit of background as to exactly what they are responsible for.

Ms. Carolyn Kobernick (Assistant Deputy Minister, Public Law Sector, Department of Justice): Good afternoon. My name is Carolyn Kobernick and I'm the assistant deputy minister for the public law sector. Access to information comes within one of the areas of my responsibility.

Ms. Joan Remsu (General Counsel, Public Law Policy Section, Department of Justice): I'm Joan Remsu, director of the public law policy section. One of my responsibilities is access reform.

Thank you.

Hon. Vic Toews: Thank you, Mr. Chair.

I want to start by thanking you for inviting me. I'm pleased to have this opportunity to address your committee.

As you know, since the introduction last April of the Federal Accountability Act and action plan, a lot of progress has been achieved with regard to our commitments to make government more accessible and accountable. We have brought forward specific measures to increase accountability, transparency, and oversight in government operations. Through this act and action plan, the government is reforming the financing of political parties, strengthening the role of the Ethics Commissioner, and toughening the Lobbyists Registration Act. We are also ensuring truth in budgeting, with a parliamentary budget authority; cleaning up the procurement of government contracts in polling; providing real protection to whistle-blowers; strengthening the power of the Auditor General; creating a director of public prosecutions; and finally, strengthening access to information legislation.

Today I am here to discuss with you what I believe should be the next step with regard to our common objective of strengthening the Access to Information Act, ATIA. Since that act became law in 1983, much has changed in the federal government, in Canada, and around the world. Accordingly, there have been numerous calls for reform of the Access to Information Act. Our government believes that it must enhance the public trust and respect the public interest by encouraging the greatest degree of openness and transparency. At the same time we must take legitimate concerns into account, like personal privacy, commercial confidentiality, the protection of national security, and the government's relationship with its international allies.

To that end, the Federal Accountability Act already includes a number of reforms to the ATIA. The Accountability Act will expand the coverage of both the Access to Information Act and the Privacy Act to include seven agents and officers of Parliament; all parent crown corporations and their wholly or majority-owned subsidiaries; and five foundations. In addition, the FAA will provide a duty that institutions assist all requesters, regardless of their identity, and will clarify the time limit for making a complaint under the Access to Information Act. It will also increase the number of investigators the Information Commissioner may use for investigations concerning information related to defence or national security.

Mr. Chair, as you are well aware, for the last two months a legislative committee has been studying Bill C-2. Many amendments were brought forward at the committee, and several were considered to have enough of a consensus to be adopted by the committee. I'm glad we were able to make that type of progress, but I'm here today to say that I don't believe we should stop there; we can continue to achieve our common goal of strengthening the Access to Information Act, and it's my hope that this committee will agree to hold consultations on Access to Information Act reform.

You will remember that on April 11, I tabled in the House of Commons a discussion paper offering comments on various approaches for dealing with potential reform to the Access to Information Act and on several of the Information Commissioner's key proposals for reform. Since then the Information Commissioner has presented a special report to Parliament, addressing the government's action plan for reform of the Access to Information Act.

I'd like to point out that as justice minister I disagree with several of the commissioner's observations. In particular, I should mention that last fall, when he presented his proposals for reform, the Information Commissioner was very clear about the fact that his proposals had not had the benefit of public consultation and that he would be open to considering adjustments. I must say, I find it surprising that the commissioner stated the opposite in his special report and at committee. In fact, the reason we proceeded as we did was based on the commissioner's very clear admission that his office had not had the benefit of public consultation.

That being said, the members of this committee know that the ATIA is a complex piece of legislation, with a broad constituency across many sectors of society. There are widely divergent views on its application and administration. With that in mind, and in order to achieve a comprehensive reform, I regard it as essential that the committee continue the work required.

● (1535)

It is my hope that your committee will engage in a complete and inclusive consultation with a broad range of stakeholders. This would allow for diverse views to be heard and balance the value of transparency with the legitimate interest of individuals, other governments, and third parties. After a comprehensive analysis and full debate, it would ultimately allow for the resulting reform to find broad support.

The government believes the act must be reformed, and we agree in principle with the Information Commissioner's desire to strengthen the act. We think we are off to an excellent start with the amendments made to the ATIA by means of the FAA.

This brings me to the role I hope the committee will consider playing. As the Minister of Justice, I have confidence that the government would benefit from the committee's views on access reform. It is your work as parliamentarians that will be important in shaping this reform. Therefore, it is my hope that your committee will study the discussion paper and consider, among other issues, what follows.

First, what institutions should be covered by the Access to Information Act? By adding agents of Parliament, all parent crown corporations and their wholly or majority owned subsidiaries, and five foundations to the ATIA through the FAA, the government is broadening the coverage of the ATIA. In addition, the legislative committee amended the ATIA last week to provide for authority to make regulations that would establish the criteria for covering other entities. The government is now seeking the advice of the committee on what those criteria should be.

Where should we draw the line in terms of coverage, and why? Your determination of which institutions should be covered by the ATIA could be guided by the perceived objective of the act. For example, if the committee considers that the principal purpose of the ATIA is to foster public participation in public policy decisions by allowing access to unfiltered information, then the focus of coverage might be those institutions that develop and apply public policy. On the other hand, if the committee believes that the main purpose of the act is accountability for actions, then the focus of coverage would be those institutions considered to be operational. Or if the committee considers the principal purpose of the ATIA is accountability for spending money, then the focus would be financial.

Once the determination is made as to which institutions, or parts of institutions, should be covered by the ATIA, another determination should be made: whether the existing protections are sufficient, and if not, what new or additional protections should be added?

The second issue concerns offices of ministers, members of Parliament, the House of Commons, the Senate, and the Library of Parliament. As you know, previous prime ministers have consistently taken the position that the ATIA does not apply to records held within ministers' offices. The ATIA was interpreted to treat a minister's office as being separate and distinct from the government institution or department for which the minister is responsible.

However, the Information Commissioner does not agree with this position and argues that some records in a minister's office should be subject to the ATIA. He has proposed that records held in a minister's office relating to departmental matters should be covered, while the personal and political records of ministers should not. Another issue that may be addressed by the committee is whether to extend coverage of the ATIA to the House of Commons, the Senate, and the Library of Parliament, in terms of their administration.

The third issue is cabinet confidences. You are all aware that the question of the access to cabinet confidences is an issue that has received a lot of attention over the last decade, but so far no consensus has been reached on how to deal with this issue. Under the current law, the Information Commissioner has no legislative right to review the decisions of the Clerk of the Privy Council, as to what information constitutes a cabinet confidence. An information practice exists, however, by which the Information Commissioner can investigate the decisions to withhold cabinet confidences from disclosure.

● (1540)

The government believes it would be appropriate to legislate a certification process in the ATIA that would closely parallel the Canada Evidence Act. This process would grant the commissioner a right of review of the issuance of certificates by the Clerk of the Privy Council, thereby ensuring his right to review the cabinet confidence exclusion. We would be interested in the committee's views with regard to this proposal.

The fourth issue is the exemption scheme. Members of the committee will remember that in his legislative package, the Information Commissioner proposed three broad significant changes to the current exemptions scheme: transforming most mandatory exemptions into discretionary ones, adding more injury tests, and adding a broad public interest override test to all exemptions. Several concerns have been raised about the potential impact that such changes would have on relationships between government and its stakeholders, on government's core operations, and on third-party stakeholders themselves. Given that the main objective is to strengthen the Access to Information Act, we believe it would be useful for the committee to focus on each exemption to determine whether any changes are necessary, rather than reforming the entire scheme in the broad manner proposed by the Information Commissioner.

For example, the committee might want to consider section 13, which is a mandatory exemption that currently requires the head of a government institution to refuse to disclose a record containing information obtained in confidence from the government of a foreign state. Subsection 13(2) permits disclosure of information if the government from which it was obtained makes the information public or if it consents to disclosure. The Information Commissioner proposes to change this exemption from mandatory to discretionary, and he also proposes to add an injury test to section 13. Specifically, he recommends adding the following:

> 13.(1)(b) disclosure of the information would be injurious to relations with the government, institution or organization.

I submit to you that converting section 13 to a discretionary, injury-based exemption would set Canada apart from its key partners and would likely have a negative effect on other governments' willingness to share information with Canada. If they cannot be assured that the information they provide in confidence remains confidential, they will be very reluctant to provide us with any information.

Another item that I would like to bring to the committee's attention is the Information Commissioner's proposal to add an injury test to section 23, which deals with solicitor-client privilege. Currently, section 23 permits the head of a government institution to refuse to disclose records containing information that is subject to solicitor-client privilege. Solicitor-client privilege is based on a presumption that disclosure of the communications between a client and his or her lawyer would erode the candour that is necessary to a relationship between solicitor and client. The Supreme Court of Canada has described the privilege as “nearly absolute”.

It is important to note that solicitor-client privilege does not merely cover the opinions provided by counsel. It also applies to all communications made to counsel by the client to obtain that advice, as well as advice given in the course of drafting of legislation, the preparation of litigation, advising on individual rights, the functioning of government departments' investigations, and government transactions. The exemption in section 23 ensures that the government has the same protection for its legal documents as persons in the private sector. The exemption was made discretionary to parallel the common law rule that the privilege belongs to the client, who is free to waive it.

Under the commissioner's proposal, information subject to solicitor-client privilege would only be protected if the “disclosure of the information could reasonably be expected to be injurious to the interests of the Crown”. I would therefore encourage the committee to consider whether the introduction of an injury test would result in the stifling of communication between government lawyers and the ministers, officers, and public servants who are the clients of those lawyers. If government ministers cannot be assured of complete and full discussion of the issues, how can those ministers in fact be given the best possible information and indeed make the best possible decisions?

● (1545)

I would suggest that the addition of an injury test to section 23 could lead to a greater risk of disclosure given the difficulty of proving injury that could arise by releasing a particular document. This would also have some impact on the ability of government to confide in its legal agents.

I should also bring to the committee's attention the fact that no provincial freedom of information act in Canada applies an injury test to the solicitor-client privilege exemption. The same can be said for the federal freedom of information acts found in the United Kingdom, Australia, Ireland, and New Zealand.

I'm convinced that the committee will also want to look at the use of section 24, which provides a link to confidentiality clauses in other federal statutes. This section has been debated almost since its inception. Some believe that section 24 in schedule II is necessary to protect valid confidentiality regimes, while others believe that this type of provision detracts from the principles and goals of open and accountable governance that underlie access to information regimes.

The Information Commissioner proposes to repeal section 24 and schedule II. He states that there is adequate protection elsewhere in the act for the documents protected under the mandatory section 24 and that the secrecy provision undermines the efficiency of the act.

This exemption safeguards information requiring a very high degree of protection not afforded by the other exemptions, such as income tax information and census data. We should not lose sight of the fact that Canadians provide such information to the government on the understanding that it will be treated as absolutely confidential.

The committee should consider the government's commitments to national security, public safety, and law enforcement. It should also consider whether the repeal of this mandatory protection for certain information collected pursuant to the Canadian Security Intelligence Service Act and the Criminal Code of Canada, as well as for sensitive aeronautic, marine, and other transport information could cause Canadians and international allies to lose confidence in the ability of the government to protect sensitive information.

Instead of repealing section 24, the committee may wish to consider adding criteria and a review process to section 24 to govern the addition and/or removal of provisions to schedule II. This approach would ensure that only specified classes of sensitive information would benefit from the clear protection provided by section 24.

These criteria could capture only those confidentiality provisions that prohibit disclosure to the public in absolute terms or set out clearly defined limits on any discretion to disclose.

Fifth, concerning administrative reform, I will point your attention to the Information Commissioner's recommendations for changes to the administrative process under the ATIA. His proposals include fees, time limits, the right of access, and general procedures.

The government would benefit from the committee's view on these aspects of the reform. Before taking on this study, this committee should note that the cost implications of the Information Commissioner's proposals have not been fully assessed. In this regard we thought it would be useful to your efforts to provide you in the discussion paper with a preliminary estimate of the potential magnitude of the costs.

As your committee takes on the task of recommending additional measures to strengthen the Access to Information Act, you will be assisting the government in modernizing the framework that forms the basis of our system of access.

It's my hope that a crucial aspect of your review will be an open and wide-ranging discussion with stakeholders representing all aspects of the system—requesters, access officials, outside organizations and institutions being considered for coverage, and officials from institutions that may be most affected by proposed changes.

● (1550)

In conclusion, I would just like to say that as Minister of Justice, I appreciate the important work that you are being asked to do. It is a difficult task to balance competing public interests, so it must be done carefully, and it must be done thoroughly. I look forward to receiving your considered views when your work is complete.

Thank you very much.

The Chair: Thank you very much, Minister.

Before we begin questions, I have just three brief points. You may or may not know that this committee was prevented from meeting in fact by the Standing Orders at any time that the legislative committee on C-2 was meeting. So we really haven't had too many meetings. I'm very pleased to get started on some issues, and I'm glad that you were able to advise us on some of your thoughts.

Secondly, you quoted the Supreme Court, which said that solicitor-client privilege was nearly absolute. That's really a surprise to me. I've been a lawyer for 30 years and I was always taught that it was sacrosanct. So I'm shocked that the Supreme Court thinks it's nearly absolute.

I just wanted to ask you something before we go to the first questioner. You began your comments by saying that you disagreed with several of the Information Commissioner's proposals. Then you asked the committee to consider a number of issues. On a number of the issues you asked us to consider, it sounds as if you disagree with the Information Commissioner's proposals on those issues. Are there any other issues on which you disagree with the Information Commissioner? If there are, could you advise us as to why you disagree?

Hon. Vic Toews: Mr. Chair, I think those are the main issues. We wanted to focus on what we considered the larger issues, and I think those are primarily the issues. If there's something that comes to our attention—my staff's attention—we will bring that to your attention.

To comment very briefly on your statement with respect to the Supreme Court of Canada, I was hard-pressed to think of an exception to that solicitor-client privilege. Nevertheless, your comment serves to underscore the radical departure that is being recommended in this particular area from the traditional view of solicitor-client privilege and the essential role that privilege plays in the relationship between all clients and their legal counsel, not just in the government context.

The Chair: Thank you.

Mr. Dhaliwal, would you like to go ahead? You have seven minutes.

Mr. Sukh Dhaliwal (Newton—North Delta, Lib.): Thanks, Mr. Chair.

Thanks, Minister, for coming to the committee. I'm very pleased to hear that you're willing to work with the members of the committee and their recommendations. I certainly have a bit of difficulty when we don't agree with the commissioner's report.

Could we look at the reforms mentioned in the discussion paper from your department? It says that you're targeting approximately $120 million to implement this committee report. But we're not, right?

Canadians aren't hearing these numbers. Why are we hiding those numbers from them? They have been led to believe that this is a very straightforward exercise and that this is not going to cost the taxpayers anything. It is all magic, and the report will come into effect and the act will be in place.

How do you tell Canadians how much it's going to cost, and how will you manage that?

Hon. Vic Toews: Thank you. That's a very good point.

In the report that I tabled in the House of Commons in April, the costs are outlined in annex 1. Adding institutions is $40 million to $45 million annually; the public register is more than $60 million annually; universal access is about $5 million annually; the duty to document decisions, essentially, would be another $7 million annually; a time limit for investigations would create another $4 million annually; and other proposals that we've been able to identify on a tentative basis are $5 million annually. So the total estimate is more than $120 million annually. When added to the present base cost of $50 million, we're looking at $170 million on an annual basis.

So this is not cheap. This comes at a very big cost that we need to consider. That's why I put it in the report, immediately, so that people are under no illusions when it comes to that issue. So we're mindful of it, and I thank you for bringing it to the attention of the people of Canada, specifically, in these hearings.

● (1555)

Mr. Sukh Dhaliwal: When we look at the cost, you say it's $170 million. When I look at the facts, that the seven corporations also include Canada Post, VIA Rail, and the Public Sector Pension Investment Board, they are only partly covered under the Access to Information Act. For this price tag for these reforms, how much further ahead do you think Canadians will be after we have this act in place?

Hon. Vic Toews: I think we're generally agreed that there is a public interest in disclosing this information; generally speaking, governments should not operate in secrecy.

So how do you put a cost on what is essentially a cost to democracy? I would never suggest that because it costs $170 million, let's just shut it down. There is a cost of operating a democracy, and one of those costs is the information that should come out of government corporations, departments, and the like.

What we have to balance are the costs and the benefits that citizens receive. That very difficult balancing act is something this committee is actually going to have to do. Are we prepared to spend $170 million a year on this effort? Should it be more limited? Can we still advance the basic principles of this act by limiting it more than was suggested perhaps in the Information Commissioner's report? But I'm going to leave that to the committee.

Our estimates of costs at this point are tentative, but they are our best estimates.

I don't know if my staff can add anything.

The Chair: We have a little time, so does anybody on the Liberal side want to ask a question in this round?

Mr. Peterson.

Hon. Jim Peterson (Willowdale, Lib.): Thank you very much.

There's been so much study going on that I would imagine the Information Commissioner is becoming quite frustrated. This committee was asked to ask the Information Commissioner to draft proposals. He came up with his open government act, and now we're going on to further studies.

Are these further studies really necessary? Would you be prepared to give us an assessment of what the Information Commissioner came up with in the open government act? Where do you feel it is wrong? Where do you feel he erred?

Hon. Vic Toews: I think those are good questions, but I don't want to set out those concerns again. I thought I brought them to your attention in the course of my general comments. I know I had to move through them pretty rapidly. It's difficult to consider each aspect of them very carefully, but the reason we brought in this discussion paper instead of a bill was the Information Commissioner's own statement that he really hadn't had the opportunity to review some of these issues. Issues of cost, for example, need to be borne in mind. And some of the recommendations that were being made are fundamental to the operation of government—fundamental.

I know that in my own experience as a government lawyer for many years, I had to provide ministers with absolutely frank opinions on certain courses of conduct. I know those ministers wouldn't want to hear some things if in fact they thought they might be disclosed. I'm concerned about solicitor-client privilege, or violating solicitor-client privilege.

Hon. Jim Peterson: We are as well.

Hon. Vic Toews: You can imagine all the government lawyers sitting there saying, how to do we say this without saying it directly? That's what I'm concerned about. As a minister, which I acted as in a provincial government, and now in the federal government.... As a government lawyer, I want absolute frankness, so that when I'm telling my minister something, there is no question about what I've said.

Again, I think this proposal raises a huge concern. I'd be very surprised if the law societies in this country wouldn't have a huge concern about that as well.

● (1600)

The Chair: That's it for this round.

Madame Lavallée, s'il vous plaît.

[*Translation*]

Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ): Hello, Mr. Toews. I am very pleased to have this opportunity to meet with you today. I would like to talk to you about the approach of your department and your government with respect to the bill dealing with what is called transparency, presented by the Information Commissioner.

You are no doubt aware that last November, this committee, including your Conservative friends, unanimously requested new legislative provisions, in this case a bill. We asked the government to introduce a bill on access to information, so that we could debate it. I myself raised the question recently, that is to say after May 15.

What you said is correct. We have here a nice report from the Library of Parliament that specifies each of the steps. At the Office of the Information Commissioner of Canada, all holders of the position of commissioner have requested a modernization and a strengthening of the act. A number of studies have been done in that regard. Last November, this committee said that it was ready to take action. Unfortunately, that decision, which had been unanimous, was overturned on May 15.

In the meantime, the legislative committee responsible for Bill C-2 began looking at certain provisions with regard to access to information. I know that the clause-by-clause study of the bill is being done quickly. I do not know what stage the committee is at or what is happening with the access to information provisions.

Whatever the case may be, we feel that there are two approaches being taken. On the one hand, Bill C-2 is being studied at an accelerated pace without a thorough analysis or real debate, and on the other, there is an access to information bill which has given rise to a great deal of analysis. The Information Commissioner has even developed a bill, which you do not seem to like very much.

Given such a situation, it would appear that the transparency to which your government aspires is superficial. You want a government that is responsible, as is stated in your Bill C-2, but not necessarily more transparent.

I would like you to comment a bit on that approach, which seems bizarre to me to say the least.

[*English*]

Hon. Vic Toews: Thank you very much.

In making my presentation here today, I didn't mean to suggest that we didn't value the work of the Information Commissioner. We do so, and we value it very much.

There are shortcomings with respect to his recommendations—I think shortcomings that he recognized himself, in saying that he hadn't had the opportunity to consult quite as extensively as he would have liked. So in my address to you at the committee today, I simply pointed out some of the concerns we have. I could go through the report of the Information Commissioner and the work he has done and point out all the good things he has done as well, but in fact that's not my role here today. I want to point out specific concerns or issues that I think need further analysis before we can come out with legislation.

I consider this act to be much more than simply a government bill. This will affect the way the House does business for generations to come. Therefore, rather than simply have the government come with a specific bill—which may be seen to be partisan in some respect—we feel there is an important aspect for the committee to play here. That's why we chose to go the way we did.

So have we identified certain concerns? Yes, we have. Is there a good basis on which to build? Absolutely, there is a good basis on which to build.

But I think this committee needs to do some of the work that the commissioner admitted he simply didn't have the time to complete.

[*Translation*]

Mrs. Carole Lavallée: All of the arguments that you put forward could be invoked in the case of Bill C-2. One could say that there are deficiencies in the bill and that it would consequently be appropriate to take more time to study it. Yet that did not keep you from presenting it. Furthermore, once all of the amendments have been studied, the Bloc Québécois is very likely to support it. We look favourably upon the passing of such a bill. The same can be said for the one dealing with transparency tabled by the Information Commissioner.

You spoke about partisanship, and one could think that Bill C-2 contains provisions to that effect. For example, you want to prohibit companies from funding leadership races. You're asking us to rework the access to information bill. You have made us aware of your dissatisfaction in the form of questions. I find that clever, but the fact remains that we are not fooled.

If we resume work on the bill with a great deal of seriousness, what guarantee do we have that it will be taken into consideration and that later on, it will take the form of a bill? What type of timeframe do you foresee with respect to the carrying out of the work?

● (1605)

[*English*]

The Chair: There are only 14 seconds, but I'll give them to you.

Some hon. members: Oh, oh!

Hon. Vic Toews: I wanted to ensure that my answer would be concise, so that I wasn't wasting your time.

I think when you look at C-2 generally, the government has put into legislation much of what it had in fact promised.

With respect to this particular situation, we felt it was very different because we hadn't made particular comments, and there were big issues that affect the operation of cabinet and government. Indeed, this affects how your office may do business as a non-government or an opposition member.

We felt it would be appropriate to give that discussion paper to this committee. Obviously we'd like to see it move as quickly as possible, but I realize there is a lot of work.

I think there would have been a lot more work had we come to certain conclusions that were diametrically opposed to what the Information Commissioner had said, for example. Had I come here and said, look, we disagree with what the Information Commissioner said about cabinet confidences or solicitor-client privilege and we had simply put it in the legislation, you might have been tempted to say, you're ignoring the Information Commissioner.

In fact, what we're doing is simply recognizing that these are huge steps in terms of how government operates and how it would impact on it. We didn't feel that it would be appropriate. It's not a partisan issue because we know this will affect all future governments, and we want to be on the right side of this issue.

[*Translation*]

The Chair: Unfortunately, your eight minutes are almost up.

Mr. Martin.

[*English*]

Mr. Pat Martin (Winnipeg Centre, NDP): Thank you, Chair. Thank you, Minister.

I'm sitting here thinking of Yogi Berra saying this is déjà vu all over again, because I've certainly seen this movie. I've been in this exact seat in this room with a different Minister of Justice saying exactly the same thing: we need to begin the process, to start to review, to study, and analyze the nuances of possible amendments, blah, blah, blah. It's sick. I can't tell you how profoundly disappointed and frustrated and even angry I am that we're at this stage of this issue at this point of this Parliament. It's not satisfactory; it's annoying. We all know what needs to be done, and it's not the job of the committee.

When you've been around politics long enough, you don't even write a campaign leaflet by committee, never mind a piece of legislation. It's not the committee's job to come up with legislation. It's not the commissioner's job to come up with legislation. It's the job of the government of the day, especially when you should feel duty bound by your own campaign literature from the last federal election. It's a matter of historical record, and I haven't heard any Conservative deny the intent. The language is as clear as the nose on your face. The number one priority on your list of accountability issues was to implement all the recommendations of the Information Commissioner on access to information. It was a promise.

At the first opportunity in the FAA, first it was in and then, miraculously, it disappeared. There was a change of heart.

So I don't accept that this committee should be seized of the issue of studying access to information reform. I think we should be working on a draft bill. The same questions, the very legitimate questions you raised, all of them are interesting and they're legitimate and they're unanswered. But we could be studying them in the context of a bill instead of a draft or another discussion paper.

I now know when the Liberals bailed on access to information. I know the precise moment of the specific cabinet meeting where the Prime Minister intervened and said, “No more, we're not going there.” When did you guys change your mind about access to information? When exactly did you get the rug pulled out from under you in terms of fulfilling your campaign promise?

● (1610)

Hon. Vic Toews: All I can point out to you is that a number of issues are open questions about whether it would be feasible to implement exactly specifically what was stated by the Information Commissioner, especially when the Information Commissioner says he hasn't had the opportunity to examine all these issues. So if you're saying we should have brought in a bill essentially fundamentally changing solicitor-client privilege, I would suggest that you, as opposition members, would have grave concerns with that particular issue.

Mr. Pat Martin: As the ruling party, sir, you could have brought in a bill without that, saying we're not going to include that because we have some concerns about it.

Hon. Vic Toews: And then you would have said to me, you're not implementing all the recommendations.

Mr. Pat Martin: But at least we would have had a bill. "Uneasy lies the head that wears a crown." It's your job to bring in the bill. We can either take it or leave it as a committee. Maybe we would have added that back in, but at least we'd be working on something material, not studying how many angels can dance on the head of a pin. I'm sick of this academic exercise because it's dominated my life for about two and a half years now.

Hon. Vic Toews: Well, unfortunately, it's not an academic exercise.

Mr. Pat Martin: It has been to date.

Hon. Vic Toews: The point is the implications of the decisions this committee makes with respect to these issues have profound impacts on the advice cabinet ministers receive, on national security issues—

Mr. Pat Martin: Not if it never finds its way into a bill.

The Chair: Mr. Martin, would you let the minister finish his remarks?

Hon. Vic Toews: It has profound implications on national security, profound implications on commercial third-party interests—those are all issues you can consider as a committee and give the government some recommendations on.

I know, Mr. Martin, you'll be having some free time over the summer, and since you won't be sitting in the House, if you want to suggest that the committee sit during the summer time.... I know it would interfere a little bit with some of the hard constituency work you have to do, but if that's what you would like to do, that would move the bill ahead a lot more quickly.

Mr. Pat Martin: We'll certainly consider that.

The Chair: You have time, Mr. Martin. Anything else?

Mr. Pat Martin: I'm happy to do all that we can and to provide all the input we can, but I still want to know when exactly this dramatic turnabout took place. Who got to you? Was it senior bureaucrats? Was it the push-back from senior bureaucrats that did it? Was it your senators in the Senate?

I mean, there are enemies to open government. There are people who are opposed to the idea of freedom of information. There are very few ruling parties or governments that are fans of open government once they take power.

As I say, I know what happened to the Liberals. I know the precise day, hour, moment, that access to information was jettisoned by the Liberal Party—even after their promises.

The Chair: I'd be fascinated to hear that. What was the date?

Mr. Pat Martin: I'll share it with you sometime.

I want to know what happened to the Tory's resolve. What happened to the grand, flowery rhetoric that used to come from the Conservatives about freedom of information as a fundamental constitutional right? All of a sudden, it's no longer of interest, and it's death by committee in studying this issue yet again.

Hon. Vic Toews: Mr. Martin, putting this kind of detailed discussion paper in front of eminent parliamentarians such as yourself is hardly death by committee. I would say this is elevating the discussion one step higher.

● (1615)

Mr. Pat Martin: Well, that's—

The Chair: I guess we'll agree to disagree on that, won't we, Mr. Martin?

Mr. Pat Martin: Well, do I have any time?

The Chair: You have about 10 seconds, or you can go to the next round.

Mr. Pat Martin: Let me simply say that the one issue you do raise that I'd like to deal with is this idea of personifying government to the status of client. In my view, the sacred relationship between solicitor-client is an individual and his lawyer. There's room for abuse when you start to view government as client and every lawyer in the country who is advising them as their solicitor; everything would be confidential because of solicitor-client privilege. I would be interested in your view of the personification of government. It worries me.

Hon. Vic Toews: I can tell you, it didn't originate with government. Solicitor-client privilege attaches to corporations, for example, in order for them to conduct their business. It's simply been a necessary doctrine that allows decisions to be made on an informed basis. Government, perhaps even more so than private interests, needs to make its decisions on an informed basis that not only deal with narrow partisan interests but with the public interest as well.

The Chair: Thank you.

Mr. Tilson.

Mr. David Tilson (Dufferin—Caledon, CPC): Thank you, Mr. Chairman, Minister.

I'd like to return to the issue that everybody seems to be talking about, which is this section 23, the privilege section. Section 23 of the existing act seems to be repeated in paragraph 23(a) of the new bill—when I say the new bill, I mean the bill proposed by the Information Commission—and then this injury test is added to paragraph (b).

Quite frankly, I have trouble with both. I have trouble with the existing act and I have trouble with the new act. Quite frankly, I think a government can be a client; a government is a client. A minister seeks a legal opinion on anything.

Hon. Vic Toews: Technically, it's Her Majesty, the Crown, that is the client.

Mr. David Tilson: Absolutely.

I don't think there's any question that a government, or a member of the Crown, or a minister of the Crown can seek legal opinion. That makes them clients.

My concern is that when the issue of solicitor-client privilege is raised in legal proceedings, lawyers can rant and rave that they have solicitor-client privilege, but it's the courts that decide whether there's solicitor-client privilege, not some lawyer who is trying to stick up for his or her client.

With both the existing section and the sections proposed by Commissioner Reid and his staff, the head of the government decides. That's rather a new concept, I think. I suppose, too, it's possible that if someone didn't like that, they could appeal to the Information Commissioner. I don't know. I'm not sure about that, but I assume there's an appeal process, and there could be an appeal. That's my first observation: that it's a strange process. For everybody else, the courts decide, yet in this particular legislation, old and proposed new, it's the head of a government institution that decides.

Secondly, I also find it strange that it's the head of the government that decides what's injurious to the interest of the Crown. I don't even know what that means. Who knows what that means? I don't know what it means. I'll bet you the head of a government institution doesn't know what it means.

Those are two comments, Minister. I don't know whether you have put your mind to that—maybe your colleagues have—and whether we could have your comment.

Hon. Vic Toews: Certainly you've touched on two very important issues that are concerns arising out of the recommendations. Trying to add an injury test to the issue of solicitor-client privilege is, I would suggest, almost impossible to do.

The goal you're trying to achieve when it comes to solicitor-client privilege is absolute confidence with respect to the communications the solicitor provides to the client. To start second-guessing that privilege by saying it would apply only if there could be demonstrated injury to the government.... I don't know where you would begin to demonstrate injury to Her Majesty the Queen. Maybe we should say it that way. It is virtually impossible in this kind of context. It's the application of a test, which in certain circumstances does work; it simply doesn't apply here.

With respect to who makes that determination, let's take, for example, the case of cabinet confidences. When cabinet confidences are challenged, they do in fact go to judges, as I recall. You provide that material to the judge; the judge reviews that material and determines whether the information falls within a cabinet confidence or not.

In respect of the solicitor-client privilege, I'm not familiar with any law that allows judges to say, “Now, I want you as the lawyer to tell me everything you told your client, and I'll determine whether it should be solicitor-client privilege.” I can't remember a case. In fact, if there were such a case, I would think that the law societies of this country would be outraged that a judge would even ask that question. In my experience, a lawyer stands up in court and says, “That's solicitor-client privilege, and the only one who can waive that is my client.”

Maybe we're talking shades on the same point. All I want to emphasize is that what the Information Commissioner has recommended here is a very radical departure from a key principle that underlies our entire legal system.

● (1620)

The Chair: Thank you.

You have one minute.

Mr. Bruce Stanton (Simcoe North, CPC): I'll do this quickly.

Thank you, Minister, for your comments and presentation today.

On this notion of cabinet confidences, I noticed in the discussion paper that you went so far as to suggest that this type of openness could in fact even be extended to MPs' offices. So regarding the whole spectre of opening up the departmental offices of ministers to access to information, you went a step further and said, well, if that was the case, then this could also extend to MPs' offices.

I wonder if you could comment on what the thinking is behind that. Is there a gap there that the Information Commissioner didn't address in his proposal, which you could speak to?

Hon. Vic Toews: Without getting into too much detail, I would simply want to say that if one says the cabinet confidence should be opened, why shouldn't it also occur with respect to ordinary members of Parliament? Is it analogous? I'm not prepared to say that it's absolutely analogous, because there are differences between members of Parliament and specifically the executive or cabinet. But I don't think you would hesitate to say that if someone suggested that information you received in the course of making political or other decisions...it would compromise your ability to hear from people and come to those kinds of conclusions. I think you would agree.

If we agree that in the context of your making decisions on behalf of your constituents you would have to divulge sources or other types of personal information, then we have the same problem, perhaps magnified, at the cabinet level, when we start talking about that kind of disclosure of information. So I think it illustrates the problem, which you feel at a personal level, regarding what could happen at the cabinet level.

I have no problem, and I've been involved as a lawyer with those types of arguments about cabinet confidentiality. Lawyers on the other side of the case have said, well, those aren't really confidences. Those materials were all placed into envelopes, given to the judge, and the judge was the only one who saw them. I don't mind that kind of review.

I do have a problem with someone saying, demonstrate to us how this is going to be injurious, and if you can't, release the information. I simply don't know how you do it.

● (1625)

Mr. Bruce Stanton: Thank you.

The Chair: We're now into the five-minute rounds.

Mr. Peterson.

Hon. Jim Peterson: I regret that the Information Commissioner is not here to be able to—

Hon. Vic Toews: He will be here.

Hon. Jim Peterson: Yes, but you will not be here at the same time.

As I understand it, there are huge differences between what you are looking for and what he is looking for. I certainly share Mr. Martin's view that more study is very frustrating, as opposed to dealing with what the government feels is appropriate. This is not a partisan issue.

It would be a lot easier for the committee to work on this if we had an actual draft bill, imperfect as it may be. Certainly you would be the first to be able to point out to us where you had some possible hesitation and why you came down precisely where you did.

From my understanding, Mr. Chairman, these studies go right back to 2001, when Mr. Brison came up with some—

The Chair: It was earlier.

Hon. Jim Peterson: Even earlier—and there's a certain amount of frustration when your predecessor asks for further studies.

It's my experience here that it's a lot easier to work with a concrete proposal. It doesn't mean the committee accepts everything. Maybe that's the way you want us to do it, Mr. Chairman—draft our own bill and critique it ourselves. I don't know.

I hope Mr. Reid or his people will also have an opportunity to ask you very precise questions, because they're living with this on a daily basis, and have for a long time. I'm not saying that his draft bill would have been perfect, but maybe we should work on it as our starting point, in order to get concrete in the way Mr. Martin is insisting we do.

We could certainly have the minister back for more precise comments on the exact wording, rather than us throwing these balls up and, as Mr. Martin says, trying to count angels on the head of a pin. We could be much more helpful by working in precisely that manner. Obviously that's not what the minister wants us to do, so I invite your comments.

Hon. Vic Toews: So your suggestion is that you want to take the bill in hand, go through it, and make the recommendations that you feel are appropriate, or adopt the bill. It's certainly your right to do exactly that.

The discussion paper simply points out specific concerns we've had with it. You can take those comments for what they're worth, use the Information Commissioner's bill, and say, look, this is where we want to go. There's nothing in the mandate that's been given to you that would preclude you from doing exactly that.

● (1630)

The Chair: Thank you.

Mr. Wallace.

Mr. Mike Wallace (Burlington, CPC): Thank you, Mr. Chairman. I'm just going to follow up on the opposition's questions on this.

In the presentation you tabled with us on strengthening the act, if I do the counting correctly—I might be off by a bit—there are maybe 15 or so items that you've highlighted as issues that need to be addressed. They relate to the bill that was proposed, or the proposed changes the Information Commissioner put forward in his proposal. Is that not correct?

Hon. Vic Toews: That's correct.

Mr. Mike Wallace: So simply put, we're really not doing anything different from what was just suggested, except we may not have the legalese in front of us. Your suggestion is to take these 15 points, spread them over a few agendas, call witnesses on them from both sides of the fence, flesh them out, and feed them back to you. So when the bill comes back to us, discussion on those decisions would have already happened at the committee. Is that not a fair assessment of what we want to do?

Hon. Vic Toews: I think so. We didn't want this aspect of the proposed legislation to muddy the other aspects. The other aspects were difficult enough to proceed with, but we felt that in this context not enough background work had been done.

You know what the specific legislative recommendations are. You know what our concerns are on this set of proposals. You can make the recommendations. How you choose to do it is really up to you. If there's an expeditious way of doing it, that's fine.

The suggestion that you're somehow starting from ground zero here is simply not accurate. I'm not here to quarrel with the committee. I want to see what information I can give you to at least let you know what the government is thinking about some specific issues.

Mr. Mike Wallace: Obviously, I wasn't sure before, so I'm unclear. Mr. Martin's been working it on it for a number of years, by the sound of things. But did the actual open government proposal by the Information Commissioner ever get back to a committee of Parliament, or anything, for review before the House fell? Did it get some review?

Hon. Vic Toews: There was no review in my time in Parliament, although I could be corrected by Mr. Martin.

Mr. Mike Wallace: One other issue that I found interesting in my reading here—we've covered off a lot of it—is that if another government gives the okay, we should automatically release information that's been provided to us by other governments. Do we not send information to other countries, other governments, because we're concerned about confidentiality on their side? I don't need specific examples, but can you give me an idea of what kinds of things we are talking about?

Hon. Vic Toews: If we're sharing security information, and that information is provided to us under an absolute guarantee of secrecy, we cannot simply divulge that information. The government that provided us with that information has a right, for whatever reason... because we don't know the entire security issues in that particular country. What may look relatively innocuous to us may in fact be damaging and detrimental to not only the government but to the safety and security of its citizens. So we honour that commitment.

Similarly, if we were to send information to another country because we needed to work on the issue of terrorism on a worldwide basis, for example, another government looking at that information might say, “How would this really harm anyone if we released it? Well, we don't know.” We have the information; they don't.

I would be very reluctant to ever give a government information that could potentially be released and come back to injure our national interests or the safety of our citizens. So I don't know how you even bring an injury test into this kind of a context without having extensive reviews of both countries' security information, which you'd never have access to.

● (1635)

The Chair: Thank you.

Monsieur Laforest.

[*Translation*]

Mr. Jean-Yves Laforest (Saint-Maurice—Champlain, BQ): In your opening remarks, you said at the outset that in the opinion of your department, it was important to protect democracy and that the bills being introduced sought to achieve this objective.

We know that one of the underlying reasons behind the introduction of Bill C-2 by the government is the fact that principles of democracy had been breached. The scandals that occurred in recent years resulted in court cases and even prison sentences. This bill is about the accountability of public servants and all officials generally. Another reason the government brought forward this bill had to do with issues surrounding access to information.

That is why I do not understand why Bill C-2 does not include genuine reform of access to information. I would like you to explain that for me. As you and a number of others said, this legislation dates back to 1983. Only a few minor changes have been made to it since that time.

As a result of all the scandals that have happened, a reform of this legislation would have been completely appropriate. Why did the government not reform the legislation as part of Bill C-2?

[*English*]

Hon. Vic Toews: You're asking why we didn't do more of this under Bill C-2. We did some of it under Bill C-2, and quite frankly, we did as much as we could under Bill C-2 without getting into areas we thought were simply too contentious in the divergence between what we believed was the right answer and what the Information Commissioner was suggesting.

I've listed the main issues where I have a concern about what we need to do. We've outlined them in the discussion report we've tabled here in the House, which you now have. Those are the issues we would like you to address.

Do I have specific answers to all of these issues? Personally, I do. I know where we should be going on all of these issues. What I would rather do is simply point out where I have concerns and leave it to the committee to determine whether my concerns are valid or whether they can be discounted so you can adopt the Information Commissioner's position.

I could go away in a couple of days and write what I believe should be done, but I think that would lead to all kinds of other issues.

[*Translation*]

The Chair: Ms. Lavallée.

Mrs. Carole Lavallée: I was somewhat disappointed in what you said, Minister. I asked you whether you had a timetable for the new access to information bill, but you did not answer that question. We know what that means. When a government has no timetable, that means there is no political will. Many people sitting at this table, who have a great deal of political experience, could confirm that fact.

Ultimately, you want us to work on this for no good reason. While Mr. Martin may feel like doing that, I do not.

Rather, I would suggest that you come forward with a bill. Based on what you just said, you know that some steps must be taken. Do not wait, Minister: draft this up and present it to us. Then we can talk man to man!

[*English*]

Hon. Vic Toews: Let's look at it. You have the Information Commissioner's act. If you want to proceed in that direction as a committee, you may. You also have the concerns I've outlined in the discussion paper and in the address I gave you here today. So you have the information you need to consider. Are you prepared to simply write the act now?

● (1640)

[*Translation*]

Mrs. Carole Lavallée: Drafting laws is your government's responsibility, Minister. If you want to do that, please do not hesitate. However, if you have no intention whatsoever of doing that, do not give us work to hide the fact that you do not intend to do anything.

[*English*]

Hon. Vic Toews: If you're suggesting we set a schedule, I know the first thing the committee would say is, "You're interfering with the operations of a committee." I can tell you that this bill we brought forward, Bill C-2—

[*Translation*]

Mrs. Carole Lavallée: I am sorry, Minister, I must interrupt you. That is not what you did in the case of the Bill C-2. You really intended to pass legislation on accountability and you have done that. You behaved as a responsible government.

At the moment, you are trying to demonstrate to us that you are responsible. However, you are not trying to be transparent. The fact of the matter is that you cannot have one without the other, Minister.

[*English*]

Hon. Vic Toews: Well, I think we're getting into discussions that lead nowhere.

I can assure you that the number of amendments in Bill C-2 have demonstrated a good working relationship among all the parties, even though it was spirited at times. It's a priority for us. Bill C-2 is our priority, but we have to still be cautious in terms of the legislation we bring forward.

If you had wanted, we could have had an Information Commissioner's act. We could have said, these are the suggestions for what we would change. We could have asked what the committee thought about it, and we could have you given two weeks to make a decision. I don't think it's the appropriate way to proceed, because the first thing you would have said is that we were restricting the area of inquiry that the committee should be looking at by suggesting these are the only issues. Secondly, by putting a time limit on it, you'd say that we were interfering with the privileges of this committee.

I know that no matter what decision I made, I would have made the wrong one. But I can tell you that I believe the decision we made with respect to bringing the discussion paper here is the best decision. We are committed to moving this matter ahead.

The Chair: Thank you.

Monsieur Petit.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Good afternoon, Minister. Thank you for being with us today.

My colleague, Mr. Martin and I sat on the Legislative Committee on Bill C-2. We realized quite quickly what the government had asked for. Moreover, my colleague Mr. Stanton asked a question, and there was subsequently a discussion about the information that a member of Parliament should provide. We are wondering whether ministers, because they are also members of Parliament, must provide information. Conversely, a member of Parliament may also be a minister.

When we were studying Bill C-2, Mr. Martin, myself and the committee almost caused the proceedings to go off the rails, because we had forgotten to ask a particular question. It was actually the law clerk, Mr. Walsh, who pointed out that some provisions of the bill could violate members' privileges. We had not wondered about that until that time. So I would like to know whether there could be a violation of privilege when members have to provide information. For example, if a lobbyist meets with an opposition MP and the latter subsequently goes to see a minister, the member has indirectly done something the act prohibits him or her from doing.

In short, you are asking us to ask ourselves some questions about our immunity as ministers and members of Parliament with respect to information.

[*English*]

Hon. Vic Toews: Absolutely. It's a very good example of issues where, whether it was inadvertent or not, it was an infringement on the traditional privileges of a member of the House of Commons and Parliament generally.

We had to re-examine that particular issue. I know the clerk basically said that from a constitutional point of view, whether it's a Charter of Rights point of view or a division of powers point of view, you could go ahead and legislate to restrict your own privileges, but to be mindful of what you were doing. It wasn't unconstitutional in a traditional sense, but it very directly had an impact on your privileges as members.

When we talk about the privileges of members, I want to make sure people understand that we're talking about the tools you need in order to better serve your constituents. Similarly, when we're talking about this legislation, we are looking at the necessary tools to properly make decisions in government to serve the people of Canada.

Whether it's the retention of cabinet confidences, the retention of solicitor-client privilege, or some of the other issues, these are not issues that need to simply be looked at from a narrow point of view. We need to examine them. That's why I think the committee process is the best process to examine it.

Again, as your colleague, Mr. Wallace, pointed out, there are not that many issues, but I think we need your input on them. I don't see the actual drafting of the bill taking very long, but the fundamental policy issues behind these sections are profound.

● (1645)

[*Translation*]

Mr. Daniel Petit: Thank you very much, Minister.

[*English*]

The Chair: Mr. Martin.

Mr. Pat Martin: Minister Toews, you've said to more than one member of the committee that if we're serious, we're free to adopt the Information Commissioner's package as a bill, if we're comfortable with the 15 points that you've raised. What you don't say is, where do we go from there? We can't introduce that bill into the House, even if we were perfectly satisfied with every clause in it, or even if we changed 15 clauses and were then satisfied with it. You're the only one who can stand up in the House and introduce it, because there's a money matter associated with it. We can't even do it as a private member's bill, because I presume some of those costs that you itemized would be deemed to be a money bill; it would need a royal recommendation.

It's not quite fair to say that you've given us everything we need to have a bill. We don't. We have Mr. Reid's ideas that he thinks would form a good bill. I have a private member's bill that John Bryden drafted; he spent 10 years anguishing over that bill. He had an all-party task force of MPs.

Hon. Vic Toews: Of which I was a member.

Mr. Pat Martin: I remember. This has been studied to death. I thought, and I still believe, that if you are serious about our having true input and control as a committee, had you given us that bill at first reading, prior to it getting approved of, in principle, at second reading, then we would have a proper bill, a working document, with the latitude to make significant amendments to it, because it's at first reading. Why didn't you go that route?

Hon. Vic Toews: If what you're suggesting now is that you're comfortable with the recommendations that I've made on those 15 points and some of these concerns I've raised, and other than that you want us to simply introduce that kind of bill, that's a recommendation this committee can make.

The Chair: I think Mr. Martin's question is more specific, and that is, why didn't you bring forward an Access to Information Act, table it, and allow this committee to look at it and study it before second reading?

Hon. Vic Toews: I can't answer that question.

The Chair: Was it discussed as a possibility?

Hon. Vic Toews: I can't say because I don't know.

Mr. Pat Martin: I will deal with something more specific then. One of the pieces of unfinished business at Bill C-2 was an access to information amendment that was agreed to by all the parties, but it was ruled out of order, and that was the duty to create documents. We had all-party agreement to that.

● (1650)

Hon. Vic Toews: Duty to document....

Mr. Pat Martin: Yes. Would you consider making that change now, as an independent stand-alone piece of legislation, as there was all-party agreement, instead of waiting for this bill, which I'm afraid may not come in this Parliament?

Hon. Vic Toews: All I can say is I can get back to you on that particular issue. I know there's a bit of controversy about the bill. It was ruled out of scope here, but there's a bit of controversy as to the extent to which that documentation needs to take place. Are you talking about final decisions that need to be documented? Are you talking about every interim decision along the way? It could be a very complex bill; it could be a very simple bill—

Mr. Pat Martin: In order to get all-party compromise—not to interrupt, Mr. Minister—we did agree to only final decisions and actions, not thought processes or the advice or the recommendations along the way. That's what won all-party support. Our only mistake was we chose to put that into the Library and Archives of Canada Act, which wasn't really opened by Bill C-2; therefore, it was deemed out of scope.

Hon. Vic Toews: That, I understand, is probably the best place to put it in. That is a good point. I'm prepared to consider that kind of recommendation independently. If you wish, as a committee, to pass a resolution in that respect, I will take that forward.

Mr. Pat Martin: That's excellent. Thank you. I appreciate that.

That's all I really have. Thank you.

The Chair: Mr. Easter.

Hon. Wayne Easter (Malpeque, Lib.): Thank you, Mr. Chair.

Not being a regular member of the committee, the discussion is interesting to me, but I certainly agree with all those who have put forward the position that it's the government's responsibility to put forward the legislation. All the committee can do is basically put forward a report, and you can take that under consideration and do as you please. So I really do believe the government has the responsibility to put forward the legislation; that's the way you should be dealing with it.

But Minister, with all due respect, on this particular issue you've stood absolutely on your head. As one of the people who took questions from you on this issue, you were one of those asking for cabinet confidences, even as they related to security matters. I personally don't disagree with much of the position you put forward in your remarks. In fact, I come from the same standpoint as your statement on security information from other countries; you'd be putting this country at risk in terms of getting information from other countries if that information were available under access to information. But you're holding the direct opposite position to what you used to hold, and that indeed does bother me.

I agree with you as well on solicitor-client privilege. Whether you're a minister or a deputy minister, you have to expect to get frank and open information, and you don't want the people who are advising you to be worried about what they might say because it might come back at them after an access to information request. So I agree with you on that point.

But this is a complete turnaround for you, Minister. I guess it comes to the point that we have to be careful not to have the Access to Information Act acting in a way that politicians can play politics with it. It should be there for information that's required to make decisions—and, yes, to hold the government to account. But we have to be careful that in some of these issues it's not used by politicians to play politics with, which can in fact happen.

I'm going to ask a question on something a little less innocuous, on a higher level of access to information. I believe we have a real problem with the current act in terms of the cost of gaining information. I'll give you an example. In my home province we are trying to deal with a difficult issue with the Canadian Food Inspection Agency. The information we want is actually just a statistic, to affirm how much it's costing and to see if there is a better policy approach we can take. For the information we get back, it's going to cost $1,600, due to the work they have to do. I think that's one of the greater dilemmas with the act right now, in terms of the cost for an ordinary citizen, or even an MP, of photocopying per page and the investigative work, and so on, in getting the information they require. So I think that's a huge constraining factor for Canadians in gaining information that is available to them under access to information, but the cost is the prohibiting factor.

I wonder what your views are on that in terms of the overall financial cost. The information may be available, but the financial cost can be a constraining factor to individuals wanting information.

● (1655)

Hon. Vic Toews: That's a good point. The point is whether or not the actual documents exist. In some cases, if you're asking for information that simply doesn't exist in a documented form, and government has to go and create the document in order to provide the information, it does become very expensive. If you're talking about $1,600 for simply photocopying a document or record that exists, I don't believe that's what occurs.

I'm familiar with another case that was the subject of a newspaper report just recently, where someone asked for information. It was from the RCMP, and the cost was $1.6 million, they were told; yet when they went back and examined that request using a different computer program, they were able to do it at a fraction of the cost. I can't remember what the amount was.

The point is that there will be a cost associated with creating documents that do not exist. I think it's incumbent upon the government to explore the ways to ensure that the document being created is created in a most cost-effective manner. I agree with you that you don't simply want to say, well, that's going to cost $2 million, and write the cheque before we start work on that. I understand that issue.

Again, there's a very big difference between having the document and having to create the document.

The Chair: Thank you, Minister.

We'll have Mr. Van Kesteren.

Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC): Thank you, Mr. Chair. Thank you, Minister, for coming here.

Most of my questions have been dealt with. I'd just like a little bit of clarification, sir, if you would.

In your report you had some reservations about cabinet confidence. Is it your suggestion, then, that we keep the status quo, that we would have a law saying...?

Hon. Vic Toews: No, I wasn't suggesting that we keep the status quo. What I had stated in my opening statement was that we look at some kind of certification process so it could be determined whether this was in fact a cabinet confidence, which is much the way it is done presently under the Canada Evidence Act with respect to other types of information. In that context, a judge looks at the issue, makes the determination, and then determines whether it is a cabinet confidence.

Mr. Dave Van Kesteren: Then my second question. Section 23, is that the...?

Hon. Vic Toews: The solicitor-client privilege.

Mr. Dave Van Kesteren: Yes.

You mentioned law enforcement. You also mentioned privacy information. Wouldn't that infringe upon existing laws? Wouldn't the current code disallow striking section 24?

Hon. Vic Toews: Unless there's some kind of constitutional impediment, a future Parliament can always change a statute. So the question you have to ask yourself is this: where we have received information on specific undertakings, whether it's census data, security data, or other types of data, do we then unilaterally change the law and breach the undertakings we made to those people when we first collected that information?

In the last Parliament, and even before that, there was a broad discussion about the release of census information for the purposes of genealogy. There was quite a groundswell of people wanting that type of information, and yet the prior government was rightfully concerned that the information had been acquired under certain circumstances. They didn't want to breach those undertakings. I believe that we ultimately arrived at some kind of compromise in terms of how many years we had to wait. I can't remember the details. But even so, by statute, we were breaching an undertaking that was made, whether it was 50 years ago or 100 years ago.

So that is a concern. We can always make the changes in the law, but let's look at the impact we're having, then, and at the undertakings we've made in the past.

● (1700)

The Chair: Is that it?

Mr. Dave Van Kesteren: Yes.

The Chair: Mr. Dhaliwal, go ahead.

Mr. Sukh Dhaliwal: Thank you, Mr. Chair and Minister.

Minister, I am one of the newest additions to this committee. Mr. Tilson, Mr. Martin, Madame Lavallée, and Mr. Wappel have more experience. This committee has done a lot of work.

I can see, and I think there's a consensus, that you were very passionate about transparency when you were in the opposition. In fact, if that was the case, then I have to agree with Mr. Martin. Why would you climb down from that position on transparency? I think you should be passionate about it now, and you should go all the way, because there are so many holes in this paper. For example, what is it appropriate to look at in ministers' offices? How I understand it is that all you would be able to access from the ministers' offices is correspondence in regard to administration. If that's true, I think you would agree that it's profoundly undemocratic.

I would like your comments on that, Minister.

Hon. Vic Toews: I worked on this file for a number of years as well, and I've expressed concerns about proposals to open this up completely. One of the specific comments that I've made publicly in the past is on the issue of cabinet confidences when I wasn't a cabinet minister. I said this is a deep concern and that you simply don't want to open up cabinet documents to that kind of proposal. To suggest that my comments here are somehow new and that I haven't expressed reservations about simply opening up things is just wrong.

I view the right to access to information in much the same way as I do the relationship between the substantive rights in the Charter of Rights and Freedoms and the limitation in section 1. We have freedom of expression in paragraph 2(b) of the Charter of Rights and Freedoms 1982, but what we also have is section 1 of the charter, which says that the rights and freedoms set out in this document are limited in such a way as can be demonstrably justified in a free and democratic society. I'm paraphrasing a bit, but that's generally the import of section 1.

All I'm saying here today is that I am passionate about freedom of speech, for example, and freedom of expression, and yet we all acknowledge that there have to be limits on freedom of expression. What I'm asking is, how does one define those limits? I think we're having that discussion. In the discussion paper that I've tabled in the House, and in the comments that I've made here today, I've said I'm in favour of an open government. How do we define the extent of that openness in a manner that is consistent with our other obligations and responsibilities?

I've given you some very clear indications of some of the things I think should be addressed by this committee. I think the Information Commissioner, in his general principle, is correct, but he hasn't addressed what the appropriate context is. What we're trying to do here today, in much the same way that section 1 does for the freedoms set out in section 2 or the rights set out in sections 7 through 11, is establish a context. That's what I would hope this committee could look at.

● (1705)

Mr. Sukh Dhaliwal: There are many issues we could talk about if there is any doubt when we read that discussion paper.

One of the other examples is when you put two and two together it seems like it's all coming up coincidentally. Now we are saying that we should have fixed election days. I'm in favour of that, but now we are saying that if you have polling data, for example, we cannot release that for six months before the election date because there's a fixed election day. You can have the polling done to form the policy or your platform, but you might not be able to disclose that because now you know exactly when that election date is. I hope you understand what I mean.

Hon. Vic Toews: I'm not familiar with the six-month limitation on the release of that documentation. I'm assuming that's the case.

The Chair: If you assume that's the case, do you have a comment on not being able to have access to it?

Mr. Sukh Dhaliwal: You see what I mean? If the minister's office or the government has a poll done, they don't have to release it for six months from that day. Now you know the election day is going to be a fixed date, so you can get your polling done, and you can set your platform based on that, and you will not have disclosed it.

Hon. Vic Toews: If that's a concern this committee has, they should raise that concern. We're here to listen to both sides of the issue. If there is a problem about that, let's hear about it. I can tell you that I haven't memorized each of the sections in this very complicated—

Mr. Sukh Dhaliwal: I don't mean you should memorize all of those.

Hon. Vic Toews: I know you don't, and I was being a little facetious, but I'm saying if there is a concern about that, let's deal with it. We want to hear from the committee on that.

The Chair: Thank you.

Committee members, it's 5:10. Mr. Tilson is next, and we have two others who have requested an opportunity. I would really appreciate having five or so minutes during which I could ask a few questions, and I hope you'll indulge me.

We'll go to Mr. Tilson.

[*Translation*]

Mrs. Carole Lavallée: Will I have an opportunity to ask another question?

The Chair: Yes.

Ms. Carole Lavallée: Thank you.

[*English*]

Mr. David Tilson: Mr. Chairman, I believe we received an invitation from the minister for this committee to take a leadership role with respect to this issue. The Information Commissioner introduced a bill. Commissioner Reid and Mr. Leadbeater spent some time briefing us on that bill. In fact, I have the package that we went through here. We've done everything that one could with respect to a bill. Minister Toews tabled a paper in April, which provided some comments with respect to the commissioner's proposed legislation.

The one thing we haven't done, which you do for every other bill, is to have some kind of public hearings, where you could have the Mr. Walshes, members of the public, and indeed the justice ministry come to make comments with respect to legislation. Quite frankly, I would support continuing on with that process.

The only reason the bill went to the House was because of absolute frustration. We were going to proceed, we wanted action, and we were quite frankly getting nowhere with the former minister. If I could—

The Chair: No. Do you have any questions for the minister?

This is committee business that we can discuss in camera but not in front in of a witness who's making himself available as the minister to answer questions.

Mr. David Tilson: Mr. Chairman, I'm entitled to make comments to the committee at this time, and I am doing that.

The Chair: You certainly are. I'm asking you to remember that we're not going to talk about committee business when we've got a witness here.

Mr. David Tilson: I'm entitled to make statements with respect to this proposed legislation.

The Chair: Absolutely. Go right ahead.

Mr. David Tilson: I would hope that you would let me do that.

I believe the minister has been quite clear on what he is offering for this committee to do, and I would support that.

In other words, the committee should continue with this work, hold public hearings, and invite all kinds of people to come, whether they be, as I said, members of the public.... I'm sure the newspaper people would love to come and comment on this legislation. They've never had the opportunity. Mr. Walsh may have some comments. There are all kinds of people who I think would like to come.

Mr. Chairman, that is the process I would hope this committee would follow.

Thank you.

● (1710)

[*Translation*]

The Chair: Ms. Lavallée.

Mrs. Carole Lavallée: I disagree.

You have all the information you need and you know what you want, Minister; you said so a few moments ago. You know what needs to be done and you have the whole summer to do it.

I would urge you to work on this over the summer and come back to us in September with a bill. If you do not come forward with a bill in September, I will assume that you do not have the political will to do that. I will certainly be making some other suggestions to the committee, but I will definitely not be recommending that we do your job for you, since you do not really want to put this bill forward.

That said, I am going to make a genuine access to information request. My comment may seem somewhat out of context, but once I ask my question, you will see that it is really about the Access to Information Act and your department.

On a number of occasions in recent years the Bloc Québécois has complained about the Access to Information Act because it did not enable us to get all the information we wanted.

Cinar Films, a large audio visual production company in Montreal, used false names to hide the foreign origin of some scriptwriters in order to get some significant tax credits from the federal government.

The Bloc Québécois often spoke out against the fact that the Prime Minister at the time, Paul Martin, refused to disclose information that would have shed some light on this matter. More specifically, he did not tell us why the Minister of Justice had decided not to lay any criminal charges for copyright violation against Cinar Films and its founders, even though an RCMP report recommended just the opposite.

Will the new bill, that you may introduce some day soon, make it possible to get information of this type from the Minister of Justice? As the new Minister of Justice, can you tell us why the former minister refused to lay criminal charges against Cinar Films even though the RCMP had recommended this?

My next question has nothing to do with the Access to Information Act, but I am going to ask it nonetheless. Does your government intend to lay criminal charges against Cinar Films, as the RCMP recommended?

[*English*]

The Chair: The minister will be sticking to the questions that pertain to the subject matter we're discussing today.

Hon. Vic Toews: I'll deal generally with the role of an attorney general in prosecutions. All I can say is that the Attorney General doesn't make decisions in respect of whether charges should be laid. That is generally done by the police in our system. If the RCMP, for example, have evidence for a charge, it is they who lay the charge. They will consult with crown attorneys—sometimes federal crown attorneys, sometimes provincial crown attorneys—as to whether or not there is sufficient evidence and will make that decision.

Ultimately, in my experience, with one very notorious exception —and I don't mean that in a pejorative sense—in British Columbia, where the Crown screens criminal charges to determine whether or not they should go ahead, generally speaking the police lay the charges and the crown attorney then prosecutes them. I would be surprised that an attorney general would be involved in the laying of a charge. In fact, I'd be very concerned. In all the years I've been a prosecutor and a government lawyer and a provincial minister of justice, I've never had a minister involved in the laying of the charge. It would be, in my opinion, very inappropriate.

I can't tell you why the last government did or why the last minister didn't, but I would hope the reason the minister did not was because it would be highly improper for him to do it.

The Chair: Thank you.

[*Translation*]

Mrs. Carole Lavallée: Are my five minutes up? May I make a brief comment?

[*English*]

The Chair: No.

Monsieur Petit.

● (1715)

[*Translation*]

Mr. Daniel Petit: You have raised a dilemma, Minister. Should we be studying an issue that may have an impact on a bill before the bill is introduced? When the committee studied Bill C-2, we had the bill before us. Subsequently, we had a few difficulties with the bill, as I mentioned earlier, following the comments by the law clerk who spoke to us about parliamentary privilege.

I come back to the issue regarding members of Parliament, because that is of interest to me. I am a member of Parliament, not a parliamentary secretary or a minister. I find the subject rather intriguing.

First of all, when we were studying Bill C-2, we agreed that the privilege of journalists not to reveal their sources must be protected. A number of journalists from the CBC came to meet with the committee. If I understand what you have said today, a lawyer would be less protected than a journalist, because solicitor-client privilege could be set aside under access to information legislation. You are therefore asking us to consider this problem, since we dealt with the one regarding journalists. Solicitor-client privilege, which is even recognized in the case of civil procedures in Quebec, could be compromised, with the result that journalists would be better protected than lawyers.

If the opposition were to ask a lawyer for advice, that would mean, under the new legislation that you are asking us to consider, that I could ask the lawyer who advised the opposition to testify in order to find out what the opposition really thinks.

Are you asking us to study that before a bill is introduced?

[*English*]

Hon. Vic Toews: I think that's a very good point. I was somewhat surprised when I found out that the implications of the Information Commissioner's recommendation would be that CBC journalists—because it was a crown corporation, or at least at arm's length from the Crown, but through appointments and such, a crown corporation —would have to disclose their sources and that it would be the Information Commissioner who would then determine whether or not that source should remain confidential. I found that, quite frankly, shocking. And I think most Canadians who rely on at least some private but also to a great extent public broadcasters...that those journalists would be somehow subject to a standard that would compromise their ability to gather information.

I think the parallel here is this. Do we say we should just allow solicitor-client privilege for private lawyers who are advising clients but not in the public context? I think the same issue is fundamental there, and that is the protection of that source in order to ensure that ministers receive the best information. Similarly, a CBC reporter should be entitled to assure his or her sources that this information will be treated confidentially and will not be released to the Information Commissioner.

Having said that, in law, we know that the courts can demand that journalists, in particular situations, release that information. The solicitor-client privilege is even in a more separate part in terms of protection. I'm trying to think of a situation where we could in fact order a solicitor to reveal information provided by a client, where the client does not consent. It would be, as the Supreme Court, nearly absolute. I'm still trying to figure out when it isn't absolute.

Your point is a good one. And yes, I think you've summarized my position very accurately.

[*Translation*]

The Chair: Do you wish to ask another question, Mr. Petit?

[*English*]

Mr. Daniel Petit: No.

The Chair: Mr. Peterson.

Hon. Jim Peterson: Was reform of access to information part of your transparency and accountability agenda in the last election, part of your platform?

Hon. Vic Toews: I'm here to speak as a minister; I'm not here to speak as a political individual. I believe the Conservative Party did in fact have that in the platform, though.

Hon. Jim Peterson: Good. Speaking as a minister, how committed are you and your government to ATI reform?

Hon. Vic Toews: Given what we did in terms of Bill C-2, bringing that forward, bringing access to information reforms in Bill C-2, because Bill C-2 also does address that particular issue.... The other concerns we had were some of the outstanding issues that needed to be resolved, and therefore we proceeded in the way we did.

● (1720)

Hon. Jim Peterson: I put this to you. You cannot be very committed to ATI reform, because my experience has always been that if you want to stall something you study it to death. These issues have been studied to death. If you really were sincere about ATI reform, you would bring in a bill, imperfect as it may be, because text-based discussions are the best way that I have ever found to deal with complicated issues.

So I put it to you, Minister, that what you're doing, asking us to again study this to death, with no commitment as to what this government will do when it comes out of this committee, with no power in this committee to bring in a bill, means that your commitment to ATI reform is, at best, very, very weak.

Hon. Vic Toews: Let me make this observation, Mr. Peterson, because I think it tells us more about the Liberal Party than it tells us about anything. You said it was in your experience that whenever you wanted to stall something you studied it to death, and yes, I think that's very true of the Liberal Party. We saw that over and over again.

Hon. Jim Peterson: With all due respect—

Hon. Vic Toews: Excuse me. Just let me finish here.

The Chair: You can have a supplementary question, Mr. Peterson.

Hon. Jim Peterson: Thank you.

Hon. Vic Toews: No one is suggesting here that we study this to death. You have the Information Commissioner's report before you, you have the concerns, and you have my comments today. If you feel you're in a position to make the recommendations tomorrow, do so. I'm not asking you to study it to death.

Hon. Jim Peterson: I'm saying it has been studied to death. If you were sincere in wanting to see ATI reform, you would bring in a bill and give us a bill to work with.

The Chair: He hasn't, and I guess we have to agree to disagree on that.

Minister, if I might, I'm going to take five minutes.

Section 75 of the act—and I'm new to this subject—requires the House of Commons to study this act, or at least it's supposed to. I have found that this has not been the case except in 1987, when the Standing Committee on Justice and the Solicitor General conducted a comprehensive review and made over 100 recommendations. That was 1987.

Very few of those recommendations have been implemented. Now, we've had five majority governments of Conservatives and Liberals since 1987. None of those governments has brought forward a proposed Access to Information Act. What are your comments on that?

Hon. Vic Toews: I can't speak for past governments. I know that my government is committed to bringing in not only Bill C-2 but an act to deal with access to information. That's part of this process.

I think in fairness, Mr. Chair, if you look at our track record in proceeding on this matter, we didn't sit on the matter. We moved on it very quickly.

The Chair: I'm not asking, Minister, from a political point of view. My observation would be that if there have been five majority governments of various political stripes that haven't moved on this, I would be looking to ask the bureaucracy why not.

I think the phraseology of Mr. Martin was that there had to be some pushback. It seems to me that with five majority governments and no change to this bill in 23 years, prima facie, that indicates pushback from the bureaucracy.

Have you had any experience of pushback from the bureaucracy on the Access to Information Act?

Hon. Vic Toews: I can tell you I've had nothing but full and complete cooperation from the public service. They have raised issues with me, and the issues they have raised I found legitimate, and those concerns are reflected in the comments I've made publicly here today.

The Chair: All right. We have the Information Commissioner coming before us after you. The briefing notes, and I just want to put the question to you so you have an opportunity to answer it, say:

> It is the contention of the Information Commissioner in his recent report to Parliament(4) that the government's discussion paper on reform of the Access to Information Act repudiates the bulk of the proposals in the open government act, as well as the recommendations made by Justice Gomery.(5)

Could you comment on that? That's on page 23 of his response.

● (1725)

Hon. Vic Toews: Yes. As I recall, and I don't have those briefing notes in front of me, he somewhat limited that statement in a subsequent discussion. I could be wrong on that, but quite frankly, I'm not going to get into an argument on that point. You can examine what we in fact have put into our comments. I think you will see that we have not repudiated the vast majority. We've raised certain issues.

We don't deny, for example, that the issue of cabinet confidences should be redone. We're simply suggesting, is there a better way? Is the injury-based test appropriate for solicitor-client privilege? Is it appropriate for cabinet confidences? We're not suggesting that there doesn't need to be reform. The question is, how do we do it most effectively?

I think the comments I've made here today give you a pretty good indication of what my concerns are. I think we're prepared to move on this bill, but I don't want to move ahead blindly. Political statements that are made have to be analyzed, and I have to give proper advice to any government that comes into power. I simply cannot say that if it was a political statement made, we now have to do it regardless of what the implications are.

We know, for example, in the context of constitutional law, that a bill cannot come forward in some respects unless there is an undertaking or a comment by the Attorney General in respect of constitutionality, or at least some analysis of that. So political statements, when implemented, have to be implemented into the appropriate constitutional context in order to make it law.

The Chair: Finally, does the Department of Justice currently conduct compliance reviews of the Access to Information Act?

Hon. Vic Toews: No, we do not audit other departments.

The Chair: You have no way of knowing, from the department's point of view, about the performance of other departments in terms of the Access to Information Act?

Hon. Vic Toews: Not that I am aware of, no.

The Chair: Minister, thank you very much for coming to answer the questions and listen to the comments. We look forward to having you back, once the committee decides how it's going to proceed. I'm sure you will be asked back.

Thank you very much.

Hon. Vic Toews: I appreciate the opportunity to be here, Mr. Chair.

The Chair: Committee members, we're going to take a short health break. We are working through until 7:30 p.m. This is a working meeting, and I invite members of the committee and staff only to get some refreshment at the back.

I'll bang the gavel in approximately 10 minutes, and we'll start with Commissioner Reid then.

● (1725)

(Pause)

● (1735)

The Chair: I call the meeting to order.

We have with us the gentleman about whom we've been talking for the last two hours, the Information Commissioner of Canada, the Honourable John M. Reid. I would invite him to introduce those he has with him and to make opening remarks to the committee.

Welcome, Commissioner Reid.

Hon. John Reid (Information Commissioner, Office of the Information Commissioner of Canada): Thank you very much, Mr. Chairman.

With me are Alan Leadbeater, who is the deputy commissioner, and Daniel Brunet, general counsel.

Mr. Chairman, *mesdames et messieurs*, thank you very much for inviting me here today. Many of you are new to this committee, and I want to congratulate you and wish you well as you take up your important responsibilities. You should understand that one of the things you will learn as a result of the work you will do in this committee is a profound understanding of how government works and how government comes to making its decisions.

This committee has a profoundly important role to play in supporting the values of ethical and accountable governance. This responsibility will become immediately apparent to you as you consider how to respond to, one, the government's discussion paper on strengthening the Access to Information Act; two, my special report to Parliament in response to Bill C-2 and the discussion paper; and three, the proposed open government act my office drafted as a model for access reform, which was done at the request of the committee a year ago.

The core purpose of the Access to Information Act is to make governments accountable and to ensure the health of our democracy by enabling citizens to know the facts—the real story of what governments are up to and not just the spin—and to deter and expose corruption and mismanagement. The Supreme Court of Canada has on several occasions spoken of the vital importance of the Access to Information Act in our society.

It is precisely because so much is at stake when we seek to change the Access to Information Act that I am deeply disappointed by the government's failure to deliver on its election promise to introduce the proposed open government act as a component part of the Federal Accountability Act. I've expressed elsewhere my disappointment that the amendments to the Access to Information Act that have been proposed in Bill C-2 do not reflect the principles the opposition promised would guide access to information reform. Finally, I'm disappointed that the content of the government's discussion paper has very little to do with the strengthening of the right of access. Instead, it urges more talk—not action—and its proposals would increase secrecy and weaken independent oversight of government decisions to keep records secret.

My comments are not a partisan attack on the government. They are in fact almost identical to the criticisms I was making one year ago of the Liberal government. Both governments urged this committee to keep studying access reform without the benefit of a government bill. Both provided the committee with a discussion paper that would weaken, not strengthen, access reform.

My plea today is the same one I made last year: it's time to stop talking about access reform; it's time to do access reform.

Last year, at the request of the standing committee, I offered the open government act as a blueprint for reform. That proposed act reflects the current design and content of modern access to information laws and is informed by the recommendations of previous parliamentary studies, government task forces, and information commissioners. It is not radical; it ensures that secrecy can be maintained when it is justifiable.

This year, I'm even more convinced of the wisdom of the open government act proposals because we now have the results of the Gomery commission of inquiry's study of needed reform into access to information. You may recall that part of Justice Gomery's mandate was to study and make recommendations concerning changes to the Access to Information Act that would improve the accountability of government and assist in deterring and identifying wrongdoing and mismanagement in government. Justice Gomery heard from many witnesses and experts across Canada and reported his conclusions in his second report, issued on February 1, 2006. You will find his recommendations for access reforms set out in appendix A of the special report to Parliament that I tabled last month. On virtually all of the issues raised in the government's discussion paper, Justice Gomery endorses the approach taken in the proposed open government act.

For example, Justice Gomery recommends that:

1. Records held in the offices of ministers be subject to the right of access;

2. The scope of cabinet secrecy be reduced;

3. Exemptions should contain an injury test and be restructured, as proposed in the open government act;

● (1740)

4. The class exemption contained in section 24 of the Access to Information Act, which gives mandatory effect to secrecy clauses and certain other statutes, be abolished.

5. There be an overriding obligation on governments to disclose records whenever the public interest and disclosure clearly outweighs the need for secrecy.

6. There be, in the Access to Information Act, a positive legal duty on public officials to create records and that it be an offence to fail to do so with intent to deny access rights.

7. All federal government institutions should be subject to the right of access according to defined criteria and subject to complaint to the Information Commissioner should governments fail to add institutions to the act's coverage.

8. The procedural incentives for timely responses to access requests recommended in the open government act be adopted.

9. The proposals in the open government act for increasing the commissioner's powers to take matters to Federal Court and to make the investigatory process more transparent be adopted.

None of these recommendations made by Justice Gomery is endorsed in the government's discussion paper. My special report sets out my critique of the government's action plan for access reform in Bill C-2.

As well, I have provided a document containing a copy of the proposed open government act in a side-by-side version with the existing Access to Information Act, explanatory notes for each proposed change, and the transcript of a technical briefing on the open government act given to this committee by Deputy Commissioner Alan Leadbeater on September 29, 2005.

Today, and in the days ahead, my office stands ready to assist this committee in its task of ensuring that the public's right to know remains vibrant and that there is meaningful government accountability through transparency in the Government of Canada.

Thank you very much for giving me time to make this brief statement. I'd be delighted to receive any questions.

● (1745)

The Chair: Thank you very much, Commissioner.

Who would like to begin? Mr. Dhaliwal.

Mr. Sukh Dhaliwal: Thank you, Mr. Chair.

First of all, welcome Honourable Reid, and your counterparts as well.

We had the minister here and I asked him some questions. I'm going to feed them to you as well, because oddly, I could not get a clear answer from the minister.

The first one is on the reforms mentioned in the discussion paper from the minister's department, which are modestly targeted at around $170 million a year. Canadians are not hearing those numbers. They've been led to believe that this is all a very straightforward exercise and that ordinary taxpayers will just suddenly consent to millions and millions of dollars to make this government appear more transparent. The fact is that seven crown corporations, which include Canada Post, Via Rail, and the Public Sector Pension Investment Board, are only partly covered under the access act.

With that price tag for the reforms, how much further ahead are Canadians?

Hon. John Reid: Mr. Chairman, it's very difficult to get a handle on what it will cost the crown corporations. You have to look at those crown corporations that are partially in the system, those that are fully in, and those that are largely excluded.

For example, with an organization like Atomic Energy of Canada, everything is basically excluded. You can see their technical details by going to the Canadian Nuclear Safety Board and you can see their financial details by looking at their website and their annual report, but it doesn't appear that anything else will come out, so the cost to them ought to be quite negligible.

On the other hand, there may be significantly more costs to an organization such as one of the foundations, for example, which will come into the act without any but the usual exclusions. So it's very difficult to predict.

On the question of costs, when the task force reported in 2002, they suggested then that the cost of access to information was approximately $35 million a year. They compared that with the cost of communications that the government was bearing at that time, and that sum was approximately $800 million a year. You have to look at those costs in comparison with a whole range of other costs to determine whether they are reasonable under the circumstances.

Mr. J. Alan Leadbeater (Deputy Information Commissioner, Office of the Information Commissioner of Canada): Mr. Chairman, could I just add one bit to Mr. Dhaliwal's question?

We don't know where these figures in the discussion paper came from. No official ever asked us what we thought the cost would be. The cost of the entire system for over 150 government institutions is between approximately $35 million and $50 million a year. Where the $120 million more comes from to add in 40 or 50 more institutions, we don't know. If there is an envelope somewhere with the calculations, maybe it will be disclosed under the Access to Information Act.

Hon. John Reid: But you will have to ask for it.

The Chair: Mr. Dhaliwal.

Mr. Sukh Dhaliwal: The second part of the question was, will Canadians be any further ahead when this act comes in with this kind of spending?

Hon. John Reid: As I said, it's going to be very difficult to understand what the effect will be until we have a chance to look at what people actually ask for. In my judgment, the cost for those agencies that come into the system will be pretty marginal, but only time will tell us what those costs will be. A lot depends on how well departments are prepared for access to information; if you have a good filing system and you're able to obtain your records quickly, and you don't spend much time and money trying to be secret, then your costs become fairly small. If you spend a lot of time putting secrecy at the top of your list, then your costs rise, because secrecy is one of the biggest costs in access to information.

● (1750)

The Chair: Anything else?

Mr. Sukh Dhaliwal: The other issue is that when it comes to the clause on lobbying for five years, which I'm sure you're familiar with, there's a gaping hole there, too, in terms of who is defined to be a ministerial adviser and will be prohibited from lobbying for five years. The act defines this person as someone,

> other than a public servant, who occupies a position in the office of a minister of the Crown or a minister of state and who provides policy, program or financial advice to that person on issues relating to his or her powers, duties and functions as a minister of the Crown or a minister of state, whether or not the advice is provided on a full-time or part-time basis and whether or not the person is entitled to any remuneration or other compensation for the advice.

The larger, less prohibitive definition of “ministerial staff” is “those persons...who work on behalf of a minister of the Crown or a minister of state”.

As the act defines it now, that's up to the minister. He can give a letter, saying this staff member was not part of the senior staff providing advice. So basically we are not getting any further ahead. One person might be the actual person who was giving the advice, compared with the person who was just there. And once the minister issues that letter, the latter staff member can go back to his lobbying team.

Hon. John Reid: Mr. Chairman, I can't answer that question. It's about another act entirely, and I'm limited to what I can talk about in terms of the Access to Information Act. I regret I have no opinion on other parts of Bill C-2.

The Chair: Thank you for being direct on that.

Mr. Sukh Dhaliwal: So you wouldn't say that amendment...?

Hon. John Reid: I cannot comment on it because I'm not familiar with it. It's outside the scope of the Access to Information Act.

The Chair: Thank you.

Monsieur Laforest.

[*Translation*]

Mr. Jean-Yves Laforest: Good afternoon.

Earlier, we had a long discussion with the minister about the advisability of reforming the Access to Information Act.

A number of people said that this legislation is out of date and that it should be completely reworked. We even discussed it during our study of Bill C-2. In some ways, the minister could have taken advantage of Bill C-2 to speed up the reform of the Access to Information Act.

I think you have already made some proposals regarding an open government act. Do you think this proposal would be a good place to start in drafting a government bill to reform the Access to Information Act?

[*English*]

Hon. John Reid: Mr. Chairman, the previous committee asked me to produce a draft model act on how to go about reforming the Access to Information Act. I was given very clear instructions that nothing radical was to be in it and it was to be an evolutionary change. That's what we did.

There is nothing in the act that has not been done in some other country, but we have mainly raided the provinces of Canada to look for ideas and to incorporate them into our model. Every proposal in there is in existence in some jurisdiction in Canada. We also borrowed some from the United States, Australia, and New Zealand.

There's nothing radical in it. This is a very straightforward development, and it takes into account the fact that when our act was passed 23 years ago, it was at the leading edge. It is now in the rear, desperately trying to catch up. We are no longer a leader in this field. The provinces, particularly Alberta, British Columbia, and Ontario, are far more advanced in terms of their legislation than the federal legislation is.

We produced this act at the request of the committee. The committee then took it on, studied it, and in its seventh report to the House of Commons asked the government to bring down a model act based on the open government act. At that point, the election intervened.

I should add that at that point, after the committee brought down its recommendations, Mr. Justice Gomery studied the proposal. When he was doing his cross-country tour, changes to the Access to Information Act, as recommended by the committee, were part of his mandate. He reported on them, and I have given you the information.

● (1755)

[*Translation*]

Mr. Jean-Yves Laforest: I have another question. In your statement, you referred to some recommendations made by Justice Gomery, particularly the fifth one. It states that there should be an overriding obligation on governments to disclose records whenever the public interest in disclosure clearly outweighs the need for secrecy.

Who can decide that? Do you think they should be included in the act? The statement that the public interest in disclosure outweighs the need for secrecy is arbitrary. Who must make this determination? I imagine the act should include a process to easily clarify things when such cases occur.

[*English*]

Hon. John Reid: Mr. Chairman, normally when that type of decision had to be made, there would be the usual discussions and negotiations between the Information Commissioner and the department. If that did not result in a decision, then the matter would end up going to the Federal Court and the court would make the decision.

The Information Commissioner has no power, nor does he seek any power, to release information. The Information Commissioner's job is to do an investigation. If there is a decision that information is to be released over the objections of a department, it should be taken, and is taken, by the Federal Court, and often by the Supreme Court of Canada. There is a process in place to deal with that kind of conflict.

[*Translation*]

Mr. Jean-Yves Laforest: Is a legal process not too long and complicated? Would it not prevent quick action in such cases?

[*English*]

Hon. John Reid: Yes, it is a long process, but I believe there are no other players in the system who can make that decision other than the courts. The Information Commissioner certainly does not have the power, and he doesn't seek it. In my judgment, it properly belongs to the courts.

Mr. J. Alan Leadbeater: It's analogous to what the minister spoke about today on section 1 of the charter. Is it a proper limit on a charter freedom in a free and democratic society?

It's really a judgment issue. It's dealt with by the courts, and ultimately the Supreme Court. It's a long process, but guidance is given to governments for future situations. It would be the same for public interest overrides.

Mr. Jean-Yves Laforest: Merci.

The Chair: Thank you.

For members of the public who might be following this, the seventh report of this committee was passed by the committee on November 17. It was presented to the House on November 21, 2005, and the election occurred approximately one week after that. That's the historical context.

Mr. Martin.

Mr. Pat Martin: Thank you, Mr. Chair.

Thank you, Mr. Reid, for being with us again.

Mr. Reid, have you seen the 15-point report or 15 concerns with the open government act the Minister of Justice tabled here today?

Hon. John Reid: If they're the same as the discussion paper, I have seen them; if there's a difference, I have not.

Mr. Pat Martin: Yes, they essentially are.

I'm only introducing my remarks with that because the minister used this excuse as to why he didn't table a bill with us. By justification, he said there are 15 points even the Information Commissioner says need a lot more work, need further study, etc. So even though you weren't here for the presentation just made by the justice minister, your name did come up in his remarks, saying essentially that even the Information Commissioner agrees this committee should be studying these concerns further, and therefore we're really not ready to draft a bill.

What is your opinion of that point of view?

● (1800)

Hon. John Reid: When I first heard I had said that, I went back and looked at every transcript we had from this committee and I was unable to find any point where I had actually said that. What I did say was that we should proceed apace. My experience as a former member of Parliament is that as a group we feel most comfortable dealing with the text of legislation rather than discussion papers, because then we can look at what the legislation actually is and we can test what it will do based on that.

Second, it's always very difficult to deal with amending legislation if you don't understand the legislation you're amending as well, because everything feeds into the system. So my view is the same as it was before when the committee asked me to draft the open government act. It is better to work from the text of the open government act to try to deal with these concerns, and it's probably best to start looking at the open government act and working your way down through it in a coherent, logical way, so you can see how the pieces fit together. Then you can make intelligent determinations as to what should be in, what should be out, and what amendments may be required.

The committee, I would say, has to do the hard work of going through it.

Mr. Pat Martin: Our only concern with that type of action plan—I agree it's a logical action plan. And I should compliment you and your office again; the book you put together is very, very helpful. It's not just the suggested wording; it's the background and the arguments for and the origins of. It's a beautiful piece of work.

Hon. John Reid: Thank you.

Mr. Pat Martin: It leaves us with the problem that even if we do use that methodology for this study, where does it go from there? Only a minister can introduce this, so it goes from a draft notion to a piece of legislation. So we're really stymied as a committee at this point.

Hon. John Reid: Mr. Chairman, it seems to me there are two points here. The first thing is if the committee determines it would like to move ahead with the piece of legislation, then you could take the open government bill and do as the previous committee did and say, “We support this bill as a bill, and that the government bring forth a bill based on this bill, supported by a minister.” That was the strategy adopted by the previous committee. It seems to me that's a rational decision for this committee to look at.

Mr. Pat Martin: I don't disagree. I wouldn't be surprised if we do come to that similar conclusion.

Some of the Conservative Party briefing notes must be very widespread, because I've heard a similar motif from virtually all the speakers at the Bill C-2 committee in dealing with some of the access to information clauses, one of which was CBC. They keep coming back to the fact that if we remove the mandatory exclusion, journalists are going to have to divulge their sources. That gets stated over and over again. Now the minister used the same argument today.

Can you assure people that journalistic sources would not be at risk if you made the exclusion a discretionary one, that there's a way for CBC to be covered by access to information that doesn't threaten the integrity of the privilege that exists with journalistic sources?

Hon. John Reid: Mr. Chairman, if you look at the open government act—I forget what clause it is—we made a proposal to deal with the CBC problem of journalistic integrity and protection of sources. Basically we said that journalistic information—and programming information, for that matter—should be subject to a discretionary exemption with a harm's test. What that means is that if a journalist—it's an amendment on page 18—and perhaps, Mr. Chairman, you'd allow me to read it. The proposal we made then was:

> The head of the Canadian Broadcasting Corporation may refuse to disclose any record requested under this Act that contains information the disclosure of which could be reasonably expected to be injurious to the integrity or independence of the institution's newsgathering or programming activities.

Mr. Justice Gomery looked at that and agreed with it. What does it mean? It means that if somebody asks for information on a CBC program or about a CBC journalistic investigation, and they don't get the information they request, they can complain to the Information Commissioner. The Information Commissioner will then conduct an investigation. He will look at the information, have a discussion with the CBC as to whether it is appropriate under the circumstance, and make a recommendation.

If the CBC accepts the recommendation, that's fine. If the CBC doesn't accept the recommendation, then it would go before the Federal Court.

What this means is that the CBC journalist would have the same protection that police sources, CSIS sources, military intelligence, and anybody having to do with security throughout Canada have. In point of fact, the amendment in Bill C-2 was a mandatory exemption, which means they have more protection than the military, CSIS, or the RCMP.

It doesn't seem reasonable to me, but that's what is in Bill C-2.

We knew that the CBC needed this kind of recommendation. That is the proposal we made in the open government act a year ago, and it was the recommendation we made to the committee when I appeared before it regarding Bill C-2.

● (1805)

The Chair: Mr. Kenney.

Mr. Jason Kenney (Calgary Southeast, CPC): Thank you, Mr. Chairman.

I'd like to ask a few questions to Mr. Reid about the confidentiality of reports coming from his office, insofar as he's an officer of Parliament.

I know we're all concerned about this. Both the government and the opposition were rightfully quite concerned about the apparent leak of a recent report by the Auditor General regarding the long arms registry.

I have here in my possession an article that appeared in *The Sun* newspaper chain on Friday, April 28, 2006, which says, amongst other things:

> While the commissioner's office is refusing interviews in advance of the report's release, a source who has seen the document says Reid generally concludes that the Conservatives' proposed Accountability Act is one of the worst attempts by any government to enhance public access to information.

I'd like to ask Mr. Leadbeater whether he was that source?

Mr. J. Alan Leadbeater: I can tell you, as I did before Bill C-2, that I spoke to many journalists, including that journalist, that there was no advance copy of the report given to any journalist and that there were no portions of the report quoted to any journalist.

I don't know if he's quoting a source—whether he's saying it was me or not—but I did talk to the journalist. The only advance copy of that report that was given out to anyone was to Minister Baird.

Mr. Jason Kenney: So it would be reasonable then for you to assume that you were the source. You agree that you talked to this journalist—

Mr. J. Alan Leadbeater: I did talk to the journalist.

Mr. Jason Kenney: —about the contents of the report before it was released?

Mr. J. Alan Leadbeater: I talked to the journalist that the report was forthcoming, and the journalist was fully aware of our open government act proposals, which—

Mr. Jason Kenney: Sir, if the minister's office was appropriately refusing to grant interviews on a report that had not yet been tabled by an officer of Parliament, why were you conducting such interviews?

Are you not part of the commissioner's office?

Mr. J. Alan Leadbeater: We were informing the press in advance that the report would be coming out the next day, on the instruction of the commissioner.

Mr. Jason Kenney: The comments in several quotes here, sir—I'm sure you are familiar with the article—go far beyond notifying the press.

Normally, an office would notify the press of the tabling of a report by way of a media advisory. Did your office issue a media advisory to that effect?

Mr. J. Alan Leadbeater: We are not funded for media services, so we don't have any public affairs people in our office.

Mr. Jason Kenney: Did your office issue a media advisory to that effect?

Mr. J. Alan Leadbeater: We did a listserv advisory to—

Mr. Jason Kenney: You did issue an advisory. Then why would you need to offer such comments as this? This is attributed to a source, which apparently is you, and I quote: "the magnitude of the proposed secrecy shift in the (Accountability Act) sends a powerful signal to the bureaucracy that the government values secrecy over openness."

Sir, does that agree with your earlier rendition, that you were simply advising journalists that the report would be tabled? Or would you not agree that this constitutes a disclosure of contents of the report?

● (1810)

Mr. J. Alan Leadbeater: No. I can tell you exactly what...all the journalists we spoke to, to notify them that the report was coming out.... If we were asked what was in the report—as journalists always ask you—we said, "You can read the commissioner's open government act and you'll know what his positions are."

Mr. Jason Kenney: The quote I just read doesn't say, if you read the commissioner's open government act, you can see what his comments are. This is extensive editorial commentary that clearly constitutes leaks in terms of the content of the report. How can you deny that?

Mr. J. Alan Leadbeater: You just heard my evidence, which is what I told the journalists.

Mr. Jason Kenney: Well, the evidence I have before me, sir, is actually the article.

The Chair: Order. Just a minute.

Mr. Kenney, I don't believe the witness has ever said that he made those comments. You have imported.... So then ask him that question.

Mr. Jason Kenney: A fair point, sir.

Did you say the following: "The magnitude of the proposed secrecy shift in the (Accountability Act) sends a powerful signal to the bureaucracy that the government values secrecy over openness." Do you recall having said that?

Mr. J. Alan Leadbeater: No, I do not.

Mr. Jason Kenney: So you deny having said that.

Mr. J. Alan Leadbeater: I have testified as to what I told all journalists who I spoke to.

Hon. Jim Peterson: I wish I'd said it. It was accurate. I'll take credit for it.

Mr. Jason Kenney: There you go. Well, I wish you were an officer of Parliament too, Jim.

Mr. Chairman, my question, though, is—

The Chair: May I ask you something?

Mr. Jason Kenney: I'm not asking any questions, sir.

The Chair: Okay, go ahead.

Mr. Jason Kenney: It's actually a cross-examination process where we seek evidence.

So, Mr. Leadbeater, you say that you talked to this journalist in advance but you did not say the comments that were attributed to a source? You're insisting that this was a different source.

The Chair: That's what he said.

Mr. J. Alan Leadbeater: I don't think it helps if you ask me the same question over and over again. I think my evidence is on the record.

Mr. Jason Kenney: Well, no. I'm asking you, sir, to clarify. You categorically are certain that was not your comment?

Mr. J. Alan Leadbeater: Mr. Chairman, I've answered this question twice, three times now.

Mr. Jason Kenney: Are you categorically certain? Can you say yes or no?

Mr. J. Alan Leadbeater: I did not say the words that you have just quoted. I said to all journalists, "You can read the government's..." In fact, I even probably said "open government act" to every journalist in the past, since we've tabled it.

Mr. Jason Kenney: And that's all you said?

Mr. J. Alan Leadbeater: I briefed every journalist I could on what the commissioner's position is on the open government act.

Mr. Jason Kenney: Okay. I'd like to ask Commissioner Reid if he's at all concerned about the fact that we're now in this area of ambiguity, whether or not members of his staff.... Did he pursue the possibility that members of his staff had effectively leaked contents of the report to journalists prior to its tabling in Parliament?

Hon. John Reid: The only possible leak would have been the provision of advance copies to Minister Baird's office.

Mr. Jason Kenney: I've spoken to the—

The Chair: Let him finish, Mr. Kenney. Then you can go to your question.

Hon. John Reid: I should make a point that it is a rule in our office that we do not speak off the record. The reason for that is there are only three of us who speak to the press. We are an extraordinarily small office. It would be stupid for us to try to speak off the record when everybody knows that we're such a small office.

Mr. Jason Kenney: Are you satisfied that this rule was observed in this instance?

Hon. John Reid: It was. Mr. Leadbeater has admitted that he spoke to the journalists. He has told you what he said. And I might say that before we were getting many calls from members of Parliament, and particularly from journalists, and we agreed that he could refer them to the open government act.

Mr. Jason Kenney: Commissioner, on April 28, did you have a discussion with Mr. Chris Froggatt, chief of staff to the President of Treasury Board regarding this apparent leak?

Hon. John Reid: I don't recall the date, but I do recall that he raised the question with me.

Mr. Jason Kenney: Mr. Froggatt advises me that you told him that Mr. Leadbeater leaked contents of the report in this article. Do you deny that now?

Hon. John Reid: I did not use the word "leak". Mr. Froggatt used the word "leak".

Mr. Jason Kenney: What words did you use in your conversation?

Hon. John Reid: I said we had been talking to journalists and that Mr. Leadbeater had been the one assigned to talk to the English journalists and Mr. Dupuis had been assigned to talk to the French journalists.

Mr. Jason Kenney: Have you taken any disciplinary action against Mr. Leadbeater for this information having...? If there's no other person in your office, if he's the only one talking to English journalists, then who else could it possibly have come from?

Hon. John Reid: There was no leak, Mr. Chairman.

Hon. Wayne Easter: It might have come from the PMO.

Mr. Jason Kenney: Oh yes, we were criticizing ourselves. Very good, Wayne. Nice one.

The Chair: Mr. Easter.

Hon. Wayne Easter: Thank you, Mr. Chair.

We had a discussion with the minister earlier, prior to your being here. Mr. Dhaliwal also asked a question of the government on the cost—and you've responded to it slightly—and it would be $120 million more, according to the minister. Mr. Leadbeater indicated that you as the Information Commissioner had no idea where that $120 million came from. My question to you is, were you consulted by the government as they did these calculations on costs about what the potential changes would in fact cost? Were you consulted on that?

● (1815)

Hon. John Reid: Mr. Chairman, in early March I went to see Minister Baird to give him a copy of the open government act and to offer our assistance and help in the drafting of the Federal Accountability Act. At the same time, Mr. Leadbeater met with the deputy minister of Justice and offered him the same opportunity and services from our office. Neither the Department of Justice nor anybody in Treasury Board talked to us at all. The first time we saw anything about access to information was when Bill C-2 was eventually published by the government.

Hon. Wayne Easter: Then I really do, Mr. Chair, have to question the minister's figures. There are a number of ways of preventing legislation from coming forward, and certainly I was shocked by the figure of $120 million that the minister raised. The cost itself can certainly be a deterrent, affecting whether or not one would support bringing forward legislation.

I would ask you, seeing that the Information Commissioner and his office were not really consulted on matters related to cost, whether you or at least the clerk from this committee could get back to the minister to ask for further clarification on this. If the minister is twice as high as he ought to be on those figures, we should know it, because cost is a factor.

The Chair: I'll ask the clerk to contact the minister's office to ask the minister to provide us with documentation available to back the figures he had, which he said were speculative, though he at least offered those figures.

Hon. Wayne Easter: Thank you.

Still sticking with the issue of cost—and actually, I agreed when the minister was here with some of the minister's concerns about access to information, based on my previous experiences, and especially as regards security matters and information coming from other countries—I have a real concern in the cost area about the smaller aspects of access to information; that is, that cost is a prohibiting factor for ordinary citizens, and even MPs' offices sometimes, preventing them from gaining the information through access to information.

Does your office do any analysis of either better ways of accessing the information that are less costly...? The example I'm using is that we required some information on a case through the CFIA, and it was going to cost us $1,600 just to get that information. This was just to try to make an argument that there are better ways of doing inspections of security than was currently the case. That $1,600 is a prohibitive factor for our continuing that access request. How can ordinary citizens or MPs deal with that question, and do you see it as a problem?

Hon. John Reid: The cost for an application under access is $5. It entitles you to five free hours of search time. After that, the government is entitled to charge you $20 an hour for search time—

Hon. Wayne Easter: Plus 20¢ a page, I think.

Hon. John Reid: Then, once the information has been gathered, you have a number of choices. You can see the documentation at a government reading room and determine what it is you want and have that documentation provided to you at about 20¢ a page, or you can arrange to have it sent to you electronically on a CD-ROM. Those are the two options you have.

One of the things we try to do is encourage departments to work with people to limit and zero in on what it is they really want, as opposed to what they may have asked. Individuals, not necessarily being well aware of the complexity of government filing systems, often ask for far more than they really want. We try to narrow it down that way.

● (1820)

The Chair: That's it, Mr. Easter. Thank you.

Mr. Tilson, go ahead, please.

Mr. David Tilson: Thank you, Mr. Chairman.

I'd just like to echo Mr. Martin's comments, Mr. Reid, for you and Mr. Leadbeater's work with respect to the open government bill. I still carry your brief with me. My congratulations to you and Mr. Leadbeater and others who have worked on that. It's certainly been helpful to the committee.

However, since you did this, and since Gomery, and since Bill C-2, and since Law Clerk Walsh's coming to the Bill C-2 committee, and since Minister Toews' April document of proposals commenting on the bill, my suspicion is that other consultations with other institutions inside the government and outside the government might be affected by the open government act.

If this committee were to review your bill, perhaps with public hearings—for anybody, I suppose—would it be necessary for you and your staff to go back and revise your thoughts with respect to the open government legislation?

Hon. John Reid: I think we would have to go back and look at it from the point of view of the amendments that were produced by Bill C-2, because that does involve changes to what we had proposed. We would probably like to go back and take a look at the criticisms that have been filed by the government, and to see whether or not changes had to be made in terms of what we had proposed. We would do that.

We would also like to find a way to be able to give you a clean copy, as it were, probably in the fall. We would undertake that as a separate project.

A lot of that work actually has been done to some extent in the special report as well. We did go into some detail regarding some of those criticisms.

One of the things that we were able to do was to look at the information flows on a variety of institutions. For example, there's not one institution coming into the act under Bill C-2 that doesn't have an analogue that's already in the system. For example, the National Arts Centre has an analogue in the National Gallery. We have a whole range of crown corporations that have marketing plans, all that sort of stuff that has to be kept confidential. So we were pretty confident when we made the proposals for the crown corporations that we had captured the information flows that had to be kept secret for those organizations that were dealing in the commercial world. We worked very hard to ensure that was done.

If we undertake to bring you a clean copy, we would undertake to re-examine those information flows to make sure they are properly looked after.

Mr. David Tilson: Do I have time?

The Chair: Yes.

Mr. David Tilson: Commissioner, the issue that was discussed—and I don't believe you were here when it was discussed with the minister—was with respect to the part about privilege in section 23 and the concerns.... In fact, I'm just going to repeat what I said then.

I don't profess to know that much about solicitor-client privilege, other than the fact, as I think I said before, that it was my understanding that any lawyer could say, "Oh, that's solicitor-client privilege." Anybody could say that. Normally, from my experience—which is limited, I'll admit—that's decided by a judge. So with this particular section—the proposed amended section with which the minister had expressed some concerns, the head of government, it seems, from my reading of it, decides whether or not he or she can say there's solicitor-client privilege. I suppose the person objecting to that could then appeal to the Information Commissioner. So ultimately the Information Commissioner would decide whether there was solicitor-client privilege.

I could be wrong in my interpretation of it. That's the first question.

The second question is—and we briefly discussed this a few moments ago. I don't know what "injurious to the interests of the Crown" means. So I have two questions.

● (1825)

Hon. John Reid: Let me answer the first. Since the information Commissioner has no power to release information, the decision as to whether it will be released or not will rest with the courts, not with the Information Commissioner.

I'm going to ask Mr. Leadbeater to answer the second part.

Mr. J. Alan Leadbeater: Just to finish the first part, too, as it stands now under the act, the Information Commissioner, on complaint, does see the documents alleged to be subject to solicitor-client privilege and makes a recommendation. Then, if it's not followed, it goes to the court.

Mr. David Tilson: So as you would understand the process, if someone is objecting to a comment that it's solicitor-client privilege, they would make those objections to the commissioner, and in turn, if they didn't like what the commissioner said, they could take it to the courts?

Mr. J. Alan Leadbeater: Exactly, and the court would review the documents and decide, is it or is it not protected by solicitor-client privilege?

The Chair: I'm sorry, did I cut you off in the middle of a sentence?

Mr. David Tilson: He was going to tell me what these words mean.

Mr. J. Alan Leadbeater: As the national archivist will tell you, there is no document that is always sensitive at all times and in all circumstances, including solicitor-client privilege.

I had a discussion with him about this, and he was talking about how he went to the Law Society of Upper Canada and worked out an agreement with them that documentation that's covered by solicitor-client privilege would no longer need to be protected from public disclosure by the archives after *x* number of years, the argument being that even solicitor-client privilege loses sensitivity after the passage of time.

We have in the Government of Canada, for example, 50- or 100-year-old legal opinions paid for by the taxpayer, and at some point they can be released because there would be no injury from releasing, and that's the part two. If there's injury because there's ongoing litigation or the matter is still in dispute, and so forth, those are injuries that can be demonstrated to the Crown's interest. The point of part two is trying to have a mechanism where the old legal opinions that are dated and stale can come into the public domain.

Mr. David Tilson: I look forward to debating that with you further.

The Chair: Thank you.

Hon. John Reid: Mr. Chairman, we had an example of this, and the questioner, Mr. Tilson, was involved in that. That was the special committee that was set up to look at whether or not the censuses should be released. They were given all the legal opinions that the Department of Justice had developed over 50 years for their review, and they published them all. The interesting thing, from the point of view of lawyers who hold tight to the solicitor-client privilege, is that (a) the world did not end, and (b) it turned out to be very useful to the committee. So there's a lot of very useful historical material there that I feel, as one who is trained as a historian, could be released because it has no import in terms of what happens now.

Mr. J. Alan Leadbeater: The minister made the comment that it would make lawyers less candid and less forthcoming, but every lawyer writes a legal opinion on the belief that it could be public, because the privilege is in the client, not the lawyer.

The Chair: Thank you.

As a supplementary on that point, Commissioner, you said that all of your recommendations in the good governance act are based on sections in other jurisdictions. What jurisdictions have your proposed section 23?

Hon. John Reid: Which one is that?

The Chair: That's the solicitor-client privilege. Is there any jurisdiction currently that has that one?

Hon. John Reid: Actually, that is the practice in Ontario, de facto with the Law Society of Upper Canada.

The Chair: But is it in any jurisdictional legislation?

Hon. John Reid: No, it actually applies to the Ontario archives, but it's not in their act.

The Chair: All right. Are there any other sections of your proposed act that do not have some other jurisdiction that has those sections? I believe that's what you said, Commissioner, in your opening remarks, that they all—

Hon. John Reid: That's what I said.

Mr. J. Alan Leadbeater: I'm not sure about precise wording, Chairman.

The Chair: Of course, the general intent—

Mr. J. Alan Leadbeater: I think in the commentary that we put with each section, we tried to indicate where we drew them from.

Hon. John Reid: For example, the section that deals with cabinet records is basically common to all provincial legislatures, where the Information Commissioner can see cabinet documents to make sure that only cabinet documents are subject to that exemption. Only in Canada at the federal level are cabinet documents considered to be so secret that the Information Commissioner cannot see them, to assure that only the information that is truly cabinet confidence is kept private.

The Chair: Thank you. That's very helpful.

We'll now go to Madame Lavallée.

● (1830)

[*Translation*]

Mrs. Carole Lavallée: Good afternoon, Mr. Reid. I'm pleased to see you.

I do not know whether you heard me drawing a parallel between Bill C-2 and our committee's work a little earlier. The review of Bill C-2 could never proceed quickly enough. I think the committee sat up to 45 hours a week, while our committee did not meet every week. The members of the legislative committee on Bill C-2 said that they had enough information and enough analysis to proceed more quickly and pass the bill.

Our committee has the same type of information, but we've got both feet on the brakes. Moreover, some said that Bill C-2 was proceeding so quickly that it would be imperfect. Yet our committee is told to take its time, to debate and improve upon the bill you proposed.

From the minister's comments, which have been reported to you here and there, I really have the impression that this government has no intention whatsoever to modernize the Access to Information Act. I think Bill C-2 will be enough for the government to go back to the voters and have them judge their achievements.

Can you give me your impressions about what the government is doing, Mr. Reid? Do you agree with me?

[*English*]

Hon. John Reid: I must say, Mr. Chairman, that the approach taken by the current government is identical to the approach taken by the previous government, so it is more likely to be a governmental approach rather than a political party approach.

However, the government, having made its decision that it would separate the open government act into two parts,10% of it going into Bill C-2 and the rest into committee for discussion, I think we have to respect the decision that has been taken and try to work with it as best we can. That's why I offered to Mr. Tilson that we would come back with a cleaned-up version for you, so that in the fall, if you wished to take it forward, you would have the best information possible and you would be able to proceed at your own pace.

I think Bill C-2 being done and the 45 hours a week that they were putting in over it...I think that would give you the opportunity to do what you had to do. You could probably finish up within a month or so, maybe two months, and you would have a good report for the House.

[*Translation*]

Mrs. Carole Lavallée: With all due respect, Mr. Reid, I must tell you that personally, I'm not at all pleased to do another study of your cleaned-up open government act, because in my opinion, this government has no intention of proceeding.

So rather than listening to more experts telling us the same things, rather than making intelligent comments—because we are all intelligent—about the existential anxiety, concerns and reluctance of the minister, we could all go off and play golf. That would be a lot more fun and would produce far more results, because at least we would improve our golf game. I do not think that we are going to improve the bill here in committee.

Rather than asking us to work for nothing, would it be realistic to ask the minister to do his homework again, to take the open government act and to set aside his existential anxiety? He said he knew exactly what he wanted. So let him go ahead and do that and bring forward another bill in September. Do you think that would be realistic?

[*English*]

Hon. John Reid: I agree with you that it's always easier to work with a piece of legislation, and it's always easier to work with a piece of government legislation because you're dealing with something that's real, and that would be the way to go. If that could be done, I would be one of the happiest people around.

I have another agenda that I have to talk to you about at some point, but the extension that the current government gave me runs out at the end of September. So I would want to make sure before that term ends, if it does end, that I have provided you with the information and the material you need to make good decisions and be able to promote the open government act with the government.

[*Translation*]

Mrs. Carole Lavallée: Do I still have some time left? No.

● (1835)

[*English*]

The Chair: On that point about a clean copy, the committee has yet to make a decision as to what it's going to do and how it's going to do it. But I can assure you that if the committee does make a decision that involves studying the Access to Information Act, we would ask you at the earliest possible opportunity to provide us with a clean copy of your views.

Next is Mr. Wallace.

Mr. Mike Wallace: Thank you, Mr. Chairman.

Mr. Reid, thank you for appearing in front of us.

Would it be fair to say, about the open government legislation you proposed last fall, that parliamentarians have never had the chance to debate it at the committee level?

Hon. John Reid: I can't answer that question because the committee had it in its possession for about six weeks and then produced its seventh report, forwarding it on to the House of Commons.

Mr. Mike Wallace: You were never called to talk to it?

Hon. John Reid: Mr. Leadbeater was called to give a technical briefing and I was called to give a discussion. But the committee itself held discussions and deliberations after that and then moved to its seventh report.

Mr. Mike Wallace: You didn't have people following this to find out what the discussions were and the kind of feedback?

Hon. John Reid: A lot of them were in camera.

Mr. Mike Wallace: Thank you.

The point my colleague from the other side is trying to make is that she doesn't believe that the government of today is serious about reform to the act. Even though you're quite critical in your response to the minister's response—in your language anyway, whether it's sincere or not—you state that part of it went into Bill C-2, but the rest has come here. It's not as if we've abandoned it; you just don't like the method by which we have decided to review it or tackle the issue.

Is that a fair statement?

Hon. John Reid: I accept that the government has made a decision to divide the proposed open government act of the committee in two, and I'm prepared to work with the committee on that basis.

Mr. J. Alan Leadbeater: The commissioner wasn't here during the minister's evidence that even though the discussion paper was cloaked as raising questions, they implied criticisms that he had already made his mind up. The Information Commissioner—

Mr. Mike Wallace: I don't understand. You don't think the minister has the right to have a different opinion on what was proposed by a non-elected official?

Mr. J. Alan Leadbeater: I'm just saying this witness hadn't heard that part of his evidence before. I'd never heard before that the minister's discussion points were actually intended to be government positions contrary to the proposed open government act.

Mr. Mike Wallace: I'm new to this and new to this piece of legislation. I've read most of the material, if not all of it. I don't know what else might be out there. I was struck by one area where you suggested, on information shared between governments, that if one government says we can release it, we should release it. On security and stuff, it really surprised me that you would actually recommend that kind of thing.

Internationally, what other governments are doing the same thing?

Mr. J. Alan Leadbeater: The idea of an injury test doesn't mean we're recommending that it be disclosed. You have to recall that in a changing world we have information in the hands of government here that has been provided in confidence by governments that no longer exist. How do you ever get that information released under the current provision, with no discretion and no injury test?

Injury tests and discretionary exemptions only allow you to take into account the circumstances and the times. They still allow you to keep secrets, if the circumstance and the time require it.

● (1840)

Mr. Mike Wallace: But the decision-making ends up in your office. Is that not correct?

Mr. J. Alan Leadbeater: We don't make those decisions.

Mr. Mike Wallace: You make recommendations that can be challenged in a court.

Mr. J. Alan Leadbeater: Only ministers make those recommendations.

Mr. Mike Wallace: On the other issue, if it's in the public interest it should be released. Is there a good definition of public interest and criteria?

Mr. J. Alan Leadbeater: It's the very same as what the minister was saying before about section 1 of the charter. What is reasonable in a free and democratic society? That has evolved over time with jurisprudence. It is an objective standard cast in subjective terms. The laws follow them—the reasonable person test and the public interest test.

It just means that a body independent of government will weigh all the factors, pro and con disclosure, and decide what is in the public interest.

Mr. Mike Wallace: That will be a court.

Mr. J. Alan Leadbeater: Yes.

Mr. Mike Wallace: Do I have 30 seconds? I must have 30 seconds left.

The Chair: You're already 30 seconds over. I apologize, but we'll come back to you.

For those watching, just so everybody knows, the proposed act that the commissioner brought forward at the committee's request—and a lot of us are new—was brought here, and Mr. Leadbeater gave a technical briefing, as the commissioner said, and then there were no other witnesses. Then there were discussions among the committee members, and then it was unanimously felt that the act, as drafted by the commissioner, should be tabled so that, one presumes, there would be a government response and that would get the thing moving. But in terms of whether there were witnesses, no, there weren't any.

Mr. J. Alan Leadbeater: I'll make just one correction. The commissioner was also a witness. I came in one meeting and then the commissioner came.

The Chair: Thank you for that correction.

We now go to Mr. Peterson.

Hon. Jim Peterson: The process the government is adopting here involves further study. Now, you've been around a long time, Commissioner. Has not this issue been studied to death at the committee level?

Hon. John Reid: It's been studied to death. There has been an endless stream of reports. There's been a lot of committee debate, and I think most of the issues referenced in the minister's statement have been dealt with in public debate. We basically know everything we need to know. It's really a question of having the final debate as to where we want to go.

Hon. Jim Peterson: You mentioned earlier that you felt that Parliament usually works best, in dealing with difficult issues on which conscientious people can have differences of opinion, when there is a text from which to work. In other words, this committee can be most effective in assisting the government in its express desire to reform access to information if it is presented with a draft bill.

Hon. John Reid: That's my opinion.

Hon. Jim Peterson: I agree with you wholeheartedly. The only interpretation I can put on this government not wanting to put a draft bill before Parliament, or to table a bill, is that they are not interested in seeing reform. They want it to die through the process of lengthy discussion and debate.

You don't have to comment on that, but if you wish to, you may.

Hon. John Reid: I do not read the mind of the government.

The Chair: I knew that answer was coming.

Hon. Jim Peterson: That is certainly my interpretation, and I can only conclude that since the election, the government has done a 180-degree turn on its desire to see access to information as part of an accountability package, which was promised. And I'm very disappointed about this, because I would have thought that this should go far beyond partisanship. It's going to affect governments of all stripes in the future.

I know that the committee, under our very able chairmanship, does have experience dealing with some of these very difficult issues and could come to a conclusion if we had a text on the table to deal with. Otherwise, we're going to be discussing philosophy for a very long period of time. And I've seen this in discussions in the WTO. It was so complex, but only when you had a text on the table could people focus on where you were going and make progress.

I want to commend you for the vigilant role you've taken over the years as commissioner in what I think is a very valuable aspect of any viable democracy, which is access to information. Openness and transparency are critical to good governance, and we see so many countries in the world where you do not have that, and consequently governance gets in the way of all sorts of good things, including investment and prosperity.

So I hope we can clear up your role very quickly, and I hope you will continue to do everything you possibly can to ensure that we get a text-based act of Parliament from this government tabled at the earliest opportunity. I can assure Canadians that we will work diligently as a committee to make those tough decisions.

● (1845)

The Chair: Do you have any comments?

Hon. John Reid: I'd like to say that this is why I suggested that I would be happy to provide the committee, at its request, with a cleaned up version of the act. I think I should also note that it was the committee that asked my office to prepare the first draft of the open government act, and it was the committee that took the lead in that regard. I think it's appropriate for the committee to continue to take the lead on that.

Hon. Jim Peterson: This committee can only recommend to the government. Until the government is seized of this by a bill being put on the table, we have no assurance that it will do anything with your good work or any subsequent work that we might do to it. It could be another academic exercise of the worst order.

Hon. John Reid: That's true, Mr. Chairman, but it seems to me that the strategy that was followed by the previous committee is one that you should look at closely, where the committee unanimously recommended the open government act they had and moved it as a report in the House of Commons. I think that's one way to focus the attention of everybody in the House on how important this is.

The Chair: I think, Commissioner, we should have those discussions probably sooner than later, and thank you for your opinion.

Mr. Van Kesteren.

Mr. Dave Van Kesteren: Thank you, Mr. Chair.

A lot of my questions have been asked and some of them answered.

If we could go back, sir, to something you said about section 13, the issue of foreign state, you said at the time that most of the provinces have adopted procedures that would be in place. But wouldn't you agree that a province wouldn't be in the same position as a sovereign state would be? My follow-up question would be, have other states, like Great Britain and the United States, adopted...? It would seem to be quite a radical suggestion we should take, that is, what's in section 13. That was the one with a foreign state information commissioner.

Hon. John Reid: Let me pose the question to you. People who work in this field will often say that they can get really good information about Canada by putting in a freedom of information request in the United States. They come along and they ask for the same information in Canada and they can't get it. We often have that situation in federal-provincial relations, where the province will release it but the federal government won't release it. At some point, you have to look at it and say, how do we correct this odd state of affairs? We want to make sure that Canadians can get information from their own government without having to go to another government.

Mr. Dave Van Kesteren: Those are just some of the concerns.

Hon. John Reid: Those are legitimate concerns.

Mr. Dave Van Kesteren: I want to expand on that. When you came with this—and like Mike and some of my other colleagues here, I'm new at this, so we weren't involved with the process—did you expect that these proposals would be adopted? Did you suspect, possibly, that we would look at some of these things? Let's take that a step farther. My colleague is somewhat concerned that this is going to be an exercise in futility. Isn't the process—we've asked you for a lot of opinions, so I'm going to ask you for one as well—one where we engage you, and then you give us your expertise, but could there not be a possibility that your side might be somewhat prejudiced on the one end so that we need to ask those on the other side to come to a consensus? I would agree, a lot of these proposals are excellent, but there are a few that I'm very concerned about.

● (1850)

Hon. John Reid: I should tell you that I do have a bias. My bias is contained in the act. The bias is that all government information should be freely available, except those that are kept secret, but the secrecy is to be kept narrow and limited. That's my bias. My bias is to follow that order in the act. I will always, generally speaking, come down on the side of openness. I've had a lot of experience in government, having spent 20 years in the House of Commons and some time as a member of cabinet, and I understand the necessity for secrecy in a whole range of areas.

What I basically do in my office is I sit there and I read government files that are in dispute. I have a pretty good understanding of what can go and what shouldn't go, as does my office. That's one of the reasons why I'm happy I don't have the order-making power, because that would turn me into a judicial tribunal. I think the ombudsman role is very powerful, because it does protect these secrecy interests of the government, which are legitimate, so that those decisions are reached by a court of law and can be appealed.

Mr. Dave Van Kesteren: I have one more quick question.

Much allusion was made to the fact that this government, once it gained power—and I don't know if that's the case—seems to have backed off, and the same thing happened with the former government.

I'm sure you're a parent. I'm a parent, and before we had kids we knew how to raise kids, but all of a sudden you've got them and it's simply not that easy. Is it possible that this is what we're witnessing here?

Hon. John Reid: It's a very good analogy, but I did say, in response to somebody else about the paper the minister was talking about, that it had great echoes of the paper that came down from the previous government, and I thought it was maybe a governmental thing rather than a political party thing.

The Chair: Thank you.

I only have Mr. Tilson on the list. If anyone else wants to ask a question, they merely need to notify the clerk. We still have time, but we also have the second report of the steering committee that I'd like to discuss before we adjourn at 7:30 p.m.

I'm going to recognize Mr. Tilson next.

Mr. David Tilson: Thank you, Mr. Chairman.

During the Bill C-2 hearings, the Canadian Charter of Rights and Freedoms cropped up, so I have a question with respect to some sections in your proposed bill, as well as the existing bill, which I hadn't thought of when we reviewed this before and when we were being briefed by you earlier.

It may be a question to Monsieur Brunet, I don't know, but it has to do with the penalty provisions that are in sections 67 and 67.1.

Section 67 was left as is for your proposed changes, and section 67.1 talked about adding a new penalty clause if there was a failure to create a record in accordance with section 2.1.

My question to anyone—perhaps Monsieur Brunet—is, subsection (2) of 67.1 talks about the penalties and talks about a fine not exceeding $10,000. It also talks about incarceration for a term not exceeding six months. My question is whether any of you have directed your thoughts to the Charter of Rights and Freedoms with respect to that section.

Hon. John Reid: Mr. Chairman, that particular clause was in a private member's bill that passed. It was in the name of Madame Beaumier, and it was passed through the justice committee after a somewhat acrimonious debate, I am told. That clause had been there, so it sort of came into our domain without us thinking too much about the charter responsibility because it came directly from the justice committee and the House of Commons.

To my knowledge, it's never been used. But it was done because documents had been destroyed in the blood case, where the contaminated blood had been...and that was the reaction of the House of Commons to the destruction of those documents.

● (1855)

Mr. David Tilson: That's fine. I don't want to get into debate with the justice committee or anyone else. I guess I'm looking at the issue as yet another area that perhaps you or your staff should be looking at—and it's probably a legal issue—as to whether or not that subsection (2) of section 67.1 creates problems with the Charter of Rights and Freedoms.

Mr. J. Alan Leadbeater: In what sense, Mr. Tilson? I'm not sure I understand.

Mr. David Tilson: The issue of incarceration.

Mr. J. Alan Leadbeater: Are you suggesting that the Parliament of Canada can't make criminal law?

Mr. David Tilson: Well, no. It's not up to me to make any suggestion. I just believe—

Mr. J. Alan Leadbeater: I'm only wondering what your issue was.

Mr. David Tilson: Well, it's—

Hon. Jim Peterson: It would be cruel and unusual punishment.

Mr. J. Alan Leadbeater: I see.

Mr. David Tilson: I don't want to be flippant about it. I mean, it was an issue. The Charter of Rights and Freedoms was raised in the committee reviewing Bill C-2 and it just popped up. I only question whether our attention should be drawn to that section with respect to the Charter of Rights and Freedoms.

I'll leave that with you.

Hon. John Reid: Yes, we'll look at it.

Mr. David Tilson: Thank you.

The Chair: Thank you, Mr. Tilson.

Mr. Dhaliwal is next.

Mr. Sukh Dhaliwal: Thank you, Mr. Chair.

My question is to the honourable Mr. Reid. From the discussion, it's quite evident that the new government has done exactly the things for which its predecessor has been ridiculed. The government has only issued a discussion paper instead of a comprehensive reform bill.

I would like to echo Mr. Peterson's comment that if the government really has a will to pass this act, they should table that act asap. On the other hand, the minister was here earlier as well, and Mr. Chair you can be a witness to this. He said he wanted to be on the right side of this and he wanted to get it done right. If he had a bill to be on the right side, that is to bring this act before the committee, before Parliament, for a reading...though you cannot read the mind of the government, certainly you can comment on whether it would be wise to bring in an act in draft form rather than a discussion paper, as this new government brought in.

Hon. John Reid: Mr. Chairman, since I brought the open government act to this committee, the big change has been that Judge Gomery has had an extensive look at it, and his report is very clear in supporting it. It's had a pretty good legal examination to make sure everything in there is doable. So his comments are pretty clear.

There's no question in my mind that the best way to proceed with legislation is to do it in the form of legislation, because then we can see precisely and exactly what the definitions are. No matter how you do a discussion document, there's always a certain amount of vagueness about it. It's only when you sit down and actually have to work out what these provisions are and how they are to work that you really come down to the nitty-gritty of what you can do and what you can't do, and what continues to be ambiguous and what is clear.

So I always prefer to see things done in a legislative format, particularly before committee. I think the frustration some feel today is the same frustration felt by the previous committee, and I think the answer to this frustration is to proceed the way the previous committee did proceed.

Mr. Sukh Dhaliwal: Thank you kindly, Mr. Chair.

The Chair: Thank you.

We go to Mr. Laforest.

[*Translation*]

Mr. Jean-Yves Laforest: That is all right, I will pass this time.

[*English*]

The Chair: *Ça va.* Okay.

Mr. Wallace.

Mr. Mike Wallace: Thank you.

Just to follow up on that previous comment, the open government act—you're calling it an act. Is it in the form of a bill?

Hon. John Reid: It's in the form of a bill.

● (1900)

Mr. Mike Wallace: It is in the form of a bill. So technically the committee has a bill in front of it, and technically this committee has accepted and reported to the House on this. So technically I would say what the minister has done in his discussion paper is actually a reaction to specific points in that act.

Is that not an accurate statement?

Hon. John Reid: That's correct.

Mr. Mike Wallace: So this committee could take your cleaned-up version and work with it based on that, and I think that's what the minister was asking us.

How many years have you been the Information Commissioner?

Hon. John Reid: Eight years as of July 1.

Mr. Mike Wallace: And the previous government was there for a while. Were you pushing them for amendments for those eight years?

Hon. John Reid: Yes.

Mr. Mike Wallace: And nothing really happened. Then would you say in Bill C-2 that at least some of it has been captured in terms of information access capabilities, some of it has been captured there in that bill? Yes or no.

Hon. John Reid: Some has been captured.

Mr. Mike Wallace: Some has been captured, so there has been some progress since this government came to power. Would you say that's an accurate statement?

Hon. John Reid: It's a good question because I haven't really done the analysis, but I will say that—

Mr. Mike Wallace: I'm going to challenge you to do the analysis.

Mr. Mike Wallace: It's a good point, Mr. Chairman, you have to admit.

Thank you very much, Mr. Commissioner.

The Chair: I think, Mr. Reid, that's what Perry Mason wanted you to say.

That is apparently it, except that I'd like to ask one question. I'm not going to read it, but I think I'd like to know the answer as a new member. Our briefing notes contain it as question number two. You wouldn't know that, Mr. Reid, but I'm telling my colleagues so that they know what I'm referring to.

The previous committee issued a report on officers of Parliament. Even way back when I was on the justice committee and you used to come to the justice committee, one of your major concerns was about there being no money. That's a song that's been sung every year for a long time.

This committee made certain reports and recommendations with respect to funding and recommended a pilot project that would be overseen by the House of Commons Board of Internal Economy. To your knowledge, have any of those recommendations of this committee been acted upon?

Hon. John Reid: Indeed they have, Mr. Chairman.

The Chair: Could you tell us about that?

Hon. John Reid: As a result of work done by the previous President of the Treasury Board, Mr. Alcock, an ad hoc committee of members was struck to look at the financial requirements of the Information Commissioner and other parliamentary officers. For the first time, we were able to see the top secret documents from Treasury Board that did the analysis of our spending and what our requirements were.

As a result of that, the Treasury Board offered to give us 90% of what we had asked for, which they could justify. After testimony, the ad hoc committee provided us with about another $300,000 for additional staff to deal with the backlog. Subsequently, just before the last election, the Treasury Board ministers met and approved that recommendation, so those are our budget figures for this year.

However, we had gone to Treasury Board and said it's very difficult to hire in the public service environment, and it's very hard to get space and we'll need more space. As soon as the parliamentary committee reports and lets us know what they've decided to do, can we begin the process of hiring and looking for space? Treasury Board said yes.

Unfortunately, three months after we had started the process, Treasury Board said no. We basically had to close down the office, because we had to find $450,000 in two months or we would have spent more than we were allowed to do under the act. Basically we went through an enormous amount of stress in the office because of that decision by the Treasury Board.

But overall, the new process worked very well from our point of view. We would like to see it an open process, because right now it has been a closed process. We'd like to see it opened up so that there would be a proper transcript and a proper ability for people to come in and see. In the annual report, there's a description of how we made out and how it worked.

● (1905)

The Chair: I'm not looking for compliments for this committee, because I wasn't even on the committee at that time, but was the committee's report helpful in moving things along in that regard with respect to financing?

Hon. John Reid: There were three reports. There was the report from this committee, there was the report from the Senate finance committee, and there was a report from the public accounts committee. And all three reports had a profound effect on the government, and they moved to deal with it.

The Chair: Thank you.

All right, colleagues, thank you very much.

Commissioner, we really appreciate your coming and giving us your evidence.

Hon. John Reid: Could I say one thing, Mr. Chairman?

The Chair: Yes, of course, if you want to wrap up.

Hon. John Reid: I'd like to wrap up. I mentioned casually that my next extension will run out at the end of September. That means there has to be a process in place to find a new commissioner, and it seems to me one of the things the committee might want to start thinking about is what role it should play in finding a new commissioner and in finding out how it's going to plug into the system of dealing with the new commissioner, because that was the process.

I think it's very important that there be a good search put on for the discovery of whoever my successor will be. My view is that I am happy to go; I've had a very exciting time as commissioner. But I would also be happy to stay on until a successor is found, because I think it is important that the office not go leaderless. I have said in my annual report that the way in which my extensions have been taken is a very uncomfortable feeling, because the technique is to cause me to lose my independence.

One of the things I'd like to draw to your attention, when you start looking at what changes you might want to make, is to look at how the Information Commissioner is both found and installed, but also at how you are going to deal with extensions when required and how you're going to deal with interim commissioners. This is because the current law no longer reflects what people understood.

Thank you, Mr. Chair.

The Chair: I gave you the opportunity to get that on the record.

Thank you for your good work, if we don't get a chance to see you before you retire.

I can assure you that with access to information, privacy, and ethics, this committee is not without work, and you've given us another suggestion for more work. So thank you very much.

Thank you so much for coming this evening, and sorry to keep you from your supper at this late hour.

Committee members, I'd like to adjourn for a couple of minutes before we go in camera. Then I'd like to discuss future business of the committee, because we have a report of the steering committee.

[*Proceedings continue in camera*]

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