provides for annual publication of a compendium informing the public of the function and programs of every government institution. It will also include the various kinds of documents that may be found. The compendium will be updated twice a year and be available throughout Canada. In fact, its usefulness goes beyond the immediate purpose for which it is to be published.

• (1520)

[*English*]

I come now to the exemptions that may be invoked by the government to refuse access to information. The discussion in committee showed that there was unanimous agreement on the need for exemptions; a surprisingly wide consensus on the types of information requiring special protection was also seen. Differences that emerged had more to do with the approach chosen or the precise wording utilized. Our objective in devising the exemptions was to encompass only that information that had to be withheld from disclosure. I am referring to exemptions, not exclusions. Like its Conservative predecessor, Bill C-43 attempts to be precise and detailed. We did not think that adopting the U.S. approach of having very short but general exemptions was the best means of achieving the objectives of the legislation. The exemptions in Bill C-43 give a much better idea of what can be refused than the general and obscure wording used for the exemptions in the U.S. freedom of information act.

[*Translation*]

I would like to take a few minutes to talk about the independent review system proposed in this bill. Without independent review, the individual has no recourse against government institutions and his right of access will be a right in name only. Bill C-43 provides for a two-tiered independent review process. First, as I said earlier, the Information Commissioner is responsible for receiving and hearing, free of charge, complaints dealing with various aspects of the processing of requests. At the second level, a person who is refused access to a document, even after examination of his complaint by the commissioner, has the right to apply to the Federal Court for review of this refusal. The Information commissioner is not a member of government and is, above all, an agent of Parliament. The legislation gives him extensive powers for examining complaints, and he has access to all information covered by the bill. He may demand that officials explain their reasons for making a given decision. He may recommend that the institution change a decision that has already been made, and in that case, his recommendations are communicated to the complainant.

The commissioner may initiate an investigation without necessarily having received a complaint. He is empowered to go directly to the courts to obtain a review of a refusal to release information. Finally, he reports directly to Parliament and not through a minister. In fact, the commissioner's powers are very extensive and his main role will be to ensure that government departments and agencies abide by both the letter and the intent of the law. He will not act as a neutral ombudsman. I expect the Information Commissioner to take up the cause of persons seeking information and to defend their interests vis-à-vis ministers and officials. I feel that the Information Commissioner will be the linchpin of access to information.

[*English*]

It may be that the commissioner will not be able to bring a government department to share his view that a document should be released. In that case, the applicant can ask the Federal Court to have the department's denial reviewed. The court will also have extensive powers for the exerrcise of its functions. It will differ from the commissioner mainly in its ability to order the department concerned to release documents if it is determined that these should not be denied.

The court will be deciding on the validity of refusals according to two different sets of rules, depending on the exemption on which a refusal is based. Where a document is refused because its disclosure would prejudice the highest interests of the state—defence, national security, international relations—the court will determine whether the minister had reasonable grounds to come to that conclusion.

The reasonable grounds test review is very similar to the type of review undertaken by the courts under the U.S. freedom of information act when matters of national defence and national security are at stake. In Canada, this kind of review attempts to reconcile the concept of judicial review with the principle of ministerial responsibility.

In all other instances of refusal, the court will be undertaking what is called a *de novo* review. There was a suggestion made during the consideration of the bill by the Justice and Legal Affairs Committee that the *de novo* review does not exist under Clause 50 of the access to information portion of the bill. I sought the counsel of the Department of Justice on the matter. Their advice is to the effect that the Federal Court, in hearing an application brought with respect to a refusal to disclose a record based on exemptions on other than those involving the highest state interests conducts the *de novo* hearing in the traditional sense of the term.

The court is empowered to conduct a new hearing to determine whether or not a document for which an exemption is claimed is in fact an exempt document. If the court disagrees with the decision of the minister, it will substitute its opinion for that of the minister and order the document disclosed.

The American freedom of information act specifically requires that the court hearing a freedom of information case determine the matter by *de novo* review. The American case law has established that *de novo* review under the American freedom of information act amounts to the same type of review which exists under Clause 50 of Bill C-43. That is, the court reviews a document for which an exemption is claimed to determine whether or not it qualifies as exempt. The court will not, however, interfere with the discretion of the department or