



December 15, 2017

Sent via email and post

The Honourable Scott Brison
President, Treasury Board
915 Confederation Building
House of Commons
Ottawa, ON K1A 0A6

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Bob Zimmer, Chair
Standing Committee on Access to Information, Privacy and Ethics
710 Valour Building
House of Commons
Ottawa, ON K1A 0A6

Dear Sirs:

Re: Bill C-58 - An Act to amend the Access to Information Act and the Privacy Act and to make consequential amendments to other Acts

The Law Society of British Columbia regulates the legal profession in the province of British Columbia. It is an institution whose origin dates back to 1869, and which has been continued under the *Legal Profession Act*, SBC 1998, c. 9. The object and duty of the Society is to uphold and protect the public interest in the administration of justice by, *inter alia*, preserving and protecting the rights and freedoms of all persons.

In discharging our mandate, we wish to comment on certain provisions in Bill C-58. We are, of course, aware that the Federation of Law Societies of Canada, of which we are a member, has made submissions with respect to various provisions of the Bill, and we support those submissions. We have subsequently identified another concern that we consider worth addressing.

We are concerned about how the proposed requirements to publish data relating to judicial expenses of individual judges will affect both the perception of and independence of the judiciary.

We agree with the goal of the legislation to enhance accountability and transparency, and we recognize the Bill includes sections that aim to preserve judicial independence. Nevertheless, we wish to raise some views about how the publication of expenses relating to each individual judge may be more than is necessary to achieve the goals of the legislation.

The expenses of individual judges are often beyond their immediate control. On many courts, travel is an occupational requirement. However, judges do not as a rule get to choose where and when they travel for work. Such assignments for sittings are made by the Chief Justice. The decision about which judge sits where is a component of the independence of the judiciary, and it risks being constrained if Chief Justices or judicial administrators feel it necessary to take into account the amount of travel expenses that have been incurred by a judge over a given period of time. Alternatively, if a judge is nevertheless chosen to sit on a trial that will increase travel expenses above what some might think is reasonable for one person over a year, the fault is not with the judge. However, given that judges are traditionally discouraged from speaking publicly on civic matters, the judge will be largely unable to defend or explain him or herself. We contend that this initiative could generate unwarranted criticism of judges, to which they would be unable to respond. In that respect, such conditions would certainly hinder judicial independence. Individual judges have few ways to defend their spending, which leaves them exposed to the possibility of increased and unfair reputational risk. Moreover, the disclosure of information pertaining to travel expenses could expose judges to increased safety risks as the public could track their travel patterns.

We are also concerned that the duty to publish expense data, and the authority to suppress it, rests with actors outside of the judiciary, namely: Registrars/Deputy Registrars, Chief Administrators/Deputy Chief Administrators and Commissioners/Deputy Commissioners.

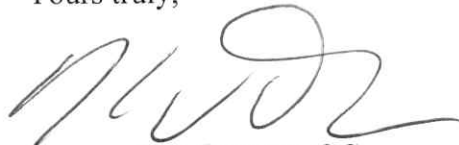
To remedy our concerns, we agree with the recommendations made by Pierre Bienvenu, counsel for the Canadian Superior Courts Judges Association, as outlined in the attached article. To that end, Mr. Bienvenu's recommendations are as follows:

- Publication of data, especially pertaining to travel expenses, can be categorized for particular expenses and should be shown in the aggregate for each court;
- Publication of aggregate data should be the responsibility of the Chief Justice for each court; and
- Authority to withhold data should be held by the Chief Justices.

Judicial independence is a fundamental component of a democratic society that cherishes the rule of law. Indeed, it contributes to public confidence in the administration of justice.

Accordingly, to sufficiently balance the objectives of accountability, transparency and judicial independence, we urge you to amend the Bill to include the above recommendations.

Yours truly,

A handwritten signature in black ink, appearing to read 'H. Van Ommen', written in a cursive style.

Herman Van Ommen, QC
President

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