

The Judges Win, Bill C-58 Gets to the Top of The Senate List for Quick Passage;

Entering the Secrecy Club: Judges, the PM and PMO Head the List in Bill C-58

by Ken Rubin

Judging from the Senators' orchestrated recent cave-in removing the public from getting individual judges expenses, Canada's access to information act is well on its way to being made irrelevant.

What the judges' lobby organizations succeeded in doing, without having to go in-camera to twist arms, was to remove from Bill C-58 any traceable idea of what individual judges spend.

In its place, the judges' lobby groups had a senator introduce a series of amendments that replaced any access to individual judges' expenses with aggregate costs-only for each court of how judges spend taxpayer funds.

This was all done reputedly in the name of judicial independence, for the safety protection of individual judges, and because judges cannot speak out if their expenditures look bad.

Judges already had last year successfully negotiated with Library and Archives Canada a fifty-year exemption from public access to their notes.

The result is that you might as well now just remove the public getting such vague judiciary costs altogether. Otherwise, taxpayers will be paying in perpetua for useless "pro-active" quarterly information.

Some expect the Trudeau government will now battle the senators for this flagrant anti-transparency move done. Methinks the government secretly is relieved it was the senators and not them who can be blamed for obscuring judges' expenses.

But doing this favor for judges is minor in Bill C-58's scale of special reverse freedom of information moves.

Top of the list is Bill C-58's provisions that result in the permanent exclusion of the prime minister and ministers' offices and the House of Commons and Senate themselves from ever being subject to review under the access to information act.

Think too of how officials writing "modernization" access bills tend to look after themselves first and foremost, always protecting what they say, if they bother putting it in writing.

Yet the public cannot find out about those officials' bonuses or other perks, let

alone the severance and separation pay given to such notables as resigning PMO supremo Gerald Butts and fired PCO Clerk Michael Wernick, all are judged to be “personal information”. The Butts and Wernick severance and separation pay ones were defeated when put forward for disclosure as Bill C-58 amendments at the Senate Legal and Constitutional Affairs Committee.

The special favors, exemptions and or exclusions found in the Access to Information Act limiting public access extend to the business community, law enforcement and security intelligence agencies, and of course, to politicians.

Take the business community - they even get notified and have the right to object every time someone in the public asks about their government supplied information that usually has some public incentives breaks and monies from government behind it. Some commercial public crown corporations like Canada Post, Export Development Canada and Via Rail even have sweetheart deals giving them extra commercial exemption protection.

So do not judge what the judges' lobby groups did to subvert public access as an extraordinary one-time occurrence or an entitlement that only they now would have.

The Senate Legal and Constitutional Affairs Committee did, however, despite passing judges expenses anti-disclosure amendments and defeating the Butts-Wernick amendments, offer a few good amendments (fee restrictions, certifiable orders, time-extension restrictions, disallowing ill-intent name codes). This does not mean all, like the ill-intent name codes amendment, will be accepted by the House of Commons.

What can be said is that the senators spent many hours of effort and did try to improve on an essential regressive bill, had good chairmanship and membership that offered well-intentioned if not at times naive input.

There was at times partisanship that creep in, most visibly in the Conservative Party senators' striking a minority report on their defeated amendments that will be attached to the committee's report on Bill C-58. What was apparent but less obvious at times was that the Liberal leadership and cooperation from independent senators came across as wanting to support and believe in the Trudeau government's Bill C-58.

Most disconcerting but not unexpected, was, at various points, the lack of corporate memory on past transparency/secretcy initiatives and reviews; and the-not-so-subtle bureaucratic and information officials' interventions that conspired to get all thinking Bill C-58 was not all that regressive.

Just to show how little thought was given to the truly landmark repressive nature of Bill C-58, it came out as the very first and easiest bill in the Senate that was deemed able to go back to the House of Commons for quick treatment. All the various Senate factions readily signed off on Bill C-58's first place finish by national tax day, April 30, 2019, in their recent agreement.

The Trudeau government may think then it can go to the electorate and say, look we passed Bill C-58, it had much support in parliament and that all shows we are more transparent or going to be better at.

But the opposite is true. Bill C-58 does not even pretend to narrow the long list of exemptions down or raise any expectations that lengthy delays preventing getting some government data will end.

If too the Trudeau government thinks that Canadians will buy into their creating a weak Information Commissioner system with limited order-making powers, forget it.

Their new Information Commissioner model and current seven-year term occupant that they see as the crowning achievement in Bill C-58, will do little to help revolutionize government secrecy and disclosure practices. If anything, the “new” office and regime will add barriers to quick access. The office is burdened with too many new administrative tasks and has not been given investigative and enforcement powers to review undocumented decision and “pro-active” government publicity efforts.

Canadians are wise to the Trudeau governments promises to do government better when they are like all past governments when it comes to not getting Canadians quick and easy public disclosure.

The electorate will be the ones to pass judgment on Bill C-58.

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