A Final Third Submission on Bill C-58  by Ken Rubin, Investigative Researcher and Advocate,  February 8, 2019

Bill C-58 is not the first disappointment for those advocating an open society.

Hopes were higher back in 1977 when I conducted an action research project for the citizen group ACCESS surveying Senators and MPs’ information access problems and views on the need for access to information legislation.

Prime Minister Pierre Trudeau sent his congratulations on the study's findings about those problems and that raised expectations. But in 1982, his government passed weak access to information legislation that protected far too many records as state secrets.

And now that excessive secrecy protection continues today under a very broken access system that will be accelerated by Bill C-58.

Bill C-58, even with a few amendments, will reinforce Ottawa's culture of secrecy and put the right to know back even further by turning the access act into a propaganda act, and by building a permanent firewall around ministers and the prime minister.

Nor is anyone on the government side really claiming that Bill C-58 will tackle lengthy delays and ensure more record disclosures. On the contrary, many of the bill's provisions add delays and administrative and exemption barriers to access.

The new Justice minister responsible for the Access to Information Act appearance before your committee hardly will offer much hope to reverse the pull towards more secrecy and government control of what is open or not.

My previous submissions on Bill C-58 sought to avert the most disastrous parts of Bill C-58, offering progressive improvements to prevent a further rotting of public access to government records.

First - in the area of the right of public access - I sought via recommendation two to stop the move to diminish access rights added in Bill-C-58's section 6 and 6.1. While the government now claims they are backing away from imposing conditions on access users, they still are wrongly insisting they need to add frivolous, vexatious, and voluminousness clauses which threatens and controls access subjects, users and rights.

I offered a more constructive approach for better access user rights in recommendation one that revises section 4 of the Access to Information Act,. Wording that further enhances rather than diminishes the rights of public access that users would have is so needed. It would help ensure officials have the duty to document government actions and not make public access to government records so one-sided in the government's favor.

Recommendation 10 suggested wording - in a clause where the Privacy and Access to Information Acts intersect – that would give indigenous groups the consultation rights they need to ensure their right to information are granted.

My 1977 ACCESS study described the then National Indian Brotherhood frustrations in their attempts to obtain full and free access, without restrictive one-sided rules to records while researching various land claims.

Keeping Bill C-58's vexatious and voluminous clauses helps continue government's paternal hand in such indigenous necessary investigations.

The second area of recommendations – on the right to independent review – tried to enhance rather
than weaken order-making powers for the office of the information commissioner. That office needs review powers where exemptions are excessive, where exclusions including pro active ones are scrutinized, and where failure to document is checked.

As well, recommendation four sought more certifiable enforceable order-making powers. Recommendation three proposed fuller independent review powers for the commissioner, including having explicit mediation powers to better investigative capacities.

The third area of suggestions - on the subject of greater disclosure - attempted to kick start restricting excessive exemption use, increase coverage, and back away from creating an one-sided bureaucratic-controlled disclosure system of officially approved releases outside access act coverage.

It proposed a legislated system for quick and fuller releases of many more key records that includes ministerial and health, safety, environment and consumer reports instead of so-called pro-active government official releases.

Recommendation five reinforced the need for a strong rather than a weaker purpose clause and would allow for broader access coverage. Recommendation six sought to restrict exemptions, via a public interest override mechanism and harms tests. Recommendation eight wanted to end the divide between proposed Part 1 and 2 and to legislate and encourage routine and fuller timely disclosures, and recommendation nine would make public officials' remuneration data more open. All offer means to remedy some of the most onerous parts of Bill C-58.

But Bill C-58 is without prime minister and ministerial coverage or a public interest override provision. And already the government has added to, not diminished Ottawa's secrecy practices, with their passage of infrastructure bank and parliamentary security and intelligence committee legislation.

The fourth and final area – for a more effective parliamentary review – sought in recommendation seven the opposite to a government-controlled periodic review process through a more rigorous and independent and frequent review process of access legislation by parliamentarians.

One court case in a long fight for transparency helps illustrates what Bill C-58 seems to have forgotten.

A government agency thought it could just exempt board of director meeting minutes without proper analysis. The 1989 court decision (Rubin versus Canada Mortgage and Housing Corporation (CMHC) made it clear there is no such thing as absolute government control and discretion.

But this is a point lost on the current government in its Bill C-58 regressive fixes that would put the democratic right to access back decades more.

Bill C-58, as it is, is just too one-sided, fails in its attempts to offer even an administrative fix and instead harms the right to access, greatly restricts the content Canadians can obtain, and deliberately emasculates the independent review of government actions.

The Senate can help correct and amend Bill C-58 so that toxic and arbitrary government actions are checked and regressive clauses that diminish information rights in Canada are not adopted.

It would of course be much better if Bill C-58 was set aside and the Senate and Canada instead developed model access legislation that Canadians can use and be proud of. I ask that the Senate move Canada ahead on transparency, and not take us backwards.

Respectfully Submitted,

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