MAR 13 2019

The Honourable Serge Joyal, Senator
Chair of the Standing Senate Committee on Legal and Constitutional Affairs
The Senate of Canada
Ottawa, Ontario K1A 0A4

Dear Chair:

On February 27, 2019, I appeared before the Standing Senate Committee on Legal and Constitutional Affairs in the context of your study of Bill C-58, *An Act to amend the Access to Information Act and the Privacy Act and to make consequential amendments to other Acts*. During my appearance, I undertook to provide the Committee with further information on the following three topics: (1) data to show how often the Information Commissioner of Canada applied to the Federal Court to require action from an institution following the Commissioner’s recommendation under the current legislation; (2) what is the role of the Attorney General of Canada in these proceedings; and (3) examples of other jurisdictions that disclose judicial expenses, as is being proposed in Bill C-58.

**Data on how often the Information Commissioner applied to the Federal Court**

The Department of Justice Canada does not keep statistics on how often the Information Commissioner has applied to the Federal Court, under the *Access to Information Act*, following the conclusion of her investigation. The Information Commissioner’s Departmental Results Reports for the fiscal years between 2013-2014 and 2017-2018, which are publicly available on the Information Commissioner’s website, indicate that institutions adopt the Commissioner’s recommendations from investigations of complaints 99% of the time. This indicates that only in exceptional circumstances have government institutions not voluntarily accepted the Information Commissioner’s recommendations. Under the current *Access to Information Act*, the Information Commissioner only has the authority to issue recommendations, which are not legally binding on government institutions. Please refer to Annex A for more information on this.

**Role of the Attorney General of Canada in these Proceedings**

The Attorney General of Canada, as the chief law officer of the Crown, provides litigation services to client departments. In proceedings initiated by the Information Commissioner under the *Access to Information Act*, the Attorney General represents the institution that refused to disclose records in accordance with the Commissioner’s recommendation. In this role, the Attorney General may provide legal and strategic advice to the institution in regards to the
proceedings initiated by the Information Commissioner, which would typically be protected by solicitor-client privilege and litigation privilege.

Examples of other jurisdictions that disclose judicial expenses

The Scottish Courts and Tribunals Service publishes details of travel and subsistence expenditure incurred by individual judicial office holders in the course of judicial duties, as well as details of the costs and expenses claimed by members of the judiciary in respect of overseas travel. The Courts Service of Ireland publishes details of monies paid to members of the Judiciary in relation to travel, subsistence, judicial attire and incidental expenses in respect of the reporting period.

In Australia, in the state of Queensland, information is published on the Queensland Courts website regarding judicial entitlements, including with respect to allowances and the reimbursement of expenses. The Queensland Courts also publishes reports annually on individual judges’ expenses with respect to overseas travel.

In England and Wales, from 2009 until 2013, individual expenses claimed by judges of the High Court and above (the senior judiciary) were published. The publicly available explanation provided for ending this practice related to the redirection of resources involved in collating the figures, not because of objections by the senior judiciary.

Please refer to Annex B for more information regarding these jurisdictions’ publication of judicial expenses.

I hope this information will be helpful to the Committee’s study of Bill C-58. Thank you again for the opportunity to appear before your Committee as you continue your important work analysing this important piece of legislation.

Respectfully,

The Honourable David Lametti, P.C., M.P.  
Minister of Justice and Attorney General of Canada

Enclosures: 2
Annex A: Data to show how often the Information Commissioner of Canada applied to the Federal Court following the Commissioner’s recommendation to disclose.

Under the *Access to Information Act*, the requester may file a complaint with the Information Commissioner of Canada with regards to an institution’s application of exemptions under the Act to refuse disclosure of information. Following an investigation, if the Information Commissioner concludes a complaint is well founded and the institution does not act upon her formal recommendation to disclose records, she may apply to the Federal Court, with the complainant’s consent, to seek review of the matter.

The Department of Justice Canada does not keep statistics on how often the Information Commissioner has applied to the Federal Court, under the *Access to Information Act*, following the conclusion of her investigation. The Information Commissioner’s Departmental Results Reports for the fiscal years between 2013-2014 and 2017-2018 indicate that institutions adopt the Commissioner’s recommendations from investigations of complaints 99% of the time. This indicates that only in exceptional circumstances have government institutions not voluntarily accepted the Information Commissioner’s recommendations. The Information Commissioner’s Departmental Results Reports are publicly available and can be accessed on the Information Commissioner’s website at the following link: [http://www.oic-ci.gc.ca/eng/abu-ans_cor-inf-inf-cor_int-aud-ver-int_dpr.aspx](http://www.oic-ci.gc.ca/eng/abu-ans_cor-inf-inf-cor_int-aud-ver-int_dpr.aspx).

The Information Commissioner’s Annual Reports to Parliament describe her litigation activities. As a sample, Annual Reports for the fiscal years between 2013-2014 and 2017-2018 indicate that there were eight (8) proceedings in that period under the *Access to Information Act* where the Information Commissioner was an applicant:

- **Canada (Office of the Information Commissioner) v. Canada (Prime Minister), 2017 FC 827**;
- **Information Commissioner of Canada v. Toronto Port Authority and Canadian Press Enterprises Inc., 2016 FC 683**;
- **Information Commissioner of Canada v. Minister of Transport Canada, 2016 FC 448**;
- **Information Commissioner of Canada v. Minister of Employment and Social Development, 2016 FC 36**;
- **Information Commissioner of Canada v. Minister of Public Safety and Emergency Preparedness, T-785-15**;
- **Information Commissioner of Canada v. Minister of Health, 2015 FC 789**;
- **Information Commissioner of Canada v. Minister of Natural Resources, 2014 FC 917**;
  and
- **Information Commissioner of Canada v. Minister of National Defence, 2014 FC 205**.
Annex B: Publication of judicial expenses (jurisdictional comparison)

Scotland

Judicial expenses

Since 2011, the Scottish Courts and Tribunals Service (SCTS)\(^1\) publishes details of travel and subsistence expenditure incurred by individual judicial office holders in the course of judicial duties. Reporting has been on a quarterly basis since April 1, 2018; prior to this, reporting has been annually.

The reports are published on the Judiciary of Scotland website\(^2\) and are with respect to (i) Senators of the Court of Session; (ii) Sheriffs Principal and Sheriffs; and (iii) Part-time judicial office holders.

The reports all include one or more paragraphs upfront that explain the need for judicial office holders to sit in various courts throughout the country, thus providing some context into the travel expenses. The reports include the following details:

- name of the judicial office holder;
- total expenditures for each of the following categories: transportation, accommodation and subsistence, and other (“other” expenses can include incidental expenses, parking and car hire); and
- total expenditures per judicial office holder.

The reports also provide additional context on the expenditures incurred, for example, it will include flag whether expenses were incurred in the course of circuit duties, official engagements, representation of the judiciary overseas, attending meetings, etc.

Judicial overseas travel

Since 2015, the SCTS also publishes in separate reports details of the costs and expenses claimed by members of the judiciary in respect of overseas travel. The reports are published annually and include the following details:

- dates of trip;
- name of judicial office holder;
- number of judiciary travelling;
- reason for the trip and destination;
- cost of trip (total);
- expenses claimed (total); and

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\(^1\) The Scottish Courts and Tribunals Service (SCTS) is described as an independent body corporate established by the Judiciary and Courts (Scotland) Act 2008. Its function is to provide administrative support to Scottish courts and tribunals and to the judiciary of courts, including the High Court of Justiciary, Court of Session, sheriff courts and justice of the peace courts, and to the Office of the Public Guardian and Accountant of Court. See the information on the SCTS website: [https://www.scotecourts.gov.uk/about-the-scottish-court-service](https://www.scotecourts.gov.uk/about-the-scottish-court-service).

• total cost.

These reports are also found on the Judiciary of Scotland website.³

*Guidelines for travel and subsistence expenditure*

The guidelines for the travel and subsistence expenditure are also published on the Judiciary of Scotland website.⁴

**Ireland**

Since 2008, the Courts Service of Ireland⁵ (CS) publishes details of monies paid to members of the Judiciary in relation to travel, subsistence, judicial attire and incidental expenses in respect of the reporting period. Reporting has been on a biannual basis since 2015 and prior to that it was done on an annual basis.

The reports are published on the CS’ website and are with respect to judges of the Supreme Court, Court of Appeal, High Court, Circuit Court and District Court.⁶

The reports include upfront an explanation of why travel and accommodation costs for judges arise and provide some (minimal) information on rates. The reports include the following details:

• the name of the judicial office holder;
• travel expenses paid (total);
• subsistence expenses paid (total);
• incidental expenses paid (total) – this category is not consistently included in reports and in some reports was labelled “judicial attire and incidentals”; and
• total expenses paid.

Also, in Ireland, freedom of information requests can also be made to the CS. Of note, on August 19, 2014, in *XX and the Courts Service*, Case no. 130140,⁷ the Information Commissioner issued a decision in relation to the CS’ decision in response to a freedom of information request for expenses claimed by judges in the Supreme Court, High Court, Circuit Court and District Court in 2012 with figures per judge and naming each of the judges. In responding to the requester, the CS had withheld the names of the judges. The Information Commissioner found that the CS was not justified in its decision to withhold access to the information sought, annulled the decision of

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⁵ The Courts Service of Ireland (CS) is an independent corporate organization established under the *Courts Service Act, 1998*, and its functions are to manage the courts, provide support services for the judges, provide information on the courts system to the public, provide, manage and maintain court buildings and provide facilities for users of the courts. See the information on the CS website: [http://www.courts.ie/courts.ie/library3.nsf/pagecurrent/4058DC8C74C03AD380257FB00053A0CD?opendocument&l=en&p=150](http://www.courts.ie/courts.ie/library3.nsf/pagecurrent/4058DC8C74C03AD380257FB00053A0CD?opendocument&l=en&p=150).
the CS and directed the release of the information requested. It found that the public interest in disclosure of the information outweighed the public interest in protecting the privacy interests in question. Decisions of the Information Commissioner are legally binding and can be appealed to the High Court.  

England and Wales

From 2009 until 2013, individual expenses claimed by judges of the High Court and above (the senior judiciary) were published and a link to the archived reports is available on the Courts and Tribunals Judiciary website. The Lord Chief Justice and Judicial Executive Board had agreed that as from October 2009, expenses claimed by the senior judiciary from the Ministry of Justice would be recorded and published for each term. The explanation provided for why this practice was halted is so that the resources involved in collating the figures to support the justice system can be used in other ways, not because of objections by the senior judiciary.

The reports were published per term (Michaelmas, Easter, Trinity and Hilary) and include the following details:

- name of judicial office holder;
- travel costs (total);
- accommodation and subsistence (total);
- other (including taxis, parking, etc.) (total); and
- total amount of expenses.

Some information on the guidelines for claiming allowances and expenses, rates of travel and subsistence payments which apply to judges, relocation assistance, excess fares allowance and relocation packages are published on the Courts and Tribunals Judiciary website.

Australia

In Australia, in the state of Queensland, information is published on the Queensland Courts website regarding judicial entitlements, including with respect to allowances and the reimbursement of expenses. Also, since 1999, the Queensland Courts publishes reports annually on individual judges’ expenses with respect to overseas travel. The reports begin with an explanation of judicial allowances that are used for overseas travel and current annual amounts of the jurisprudential allowance and are followed by a table that include the following details:

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8 See: https://www.oic.ie/apply-for-a-review/what-we-can-review/.
9 The archived reports are available at https://www.judiciary.uk/about-the-judiciary/judges-career-paths/terms-of-service/judicial-expenses/. The archived site also includes some (limited) information on the costs per term of the use by the senior judiciary of the secure Government Green Car service in 2010 and on aggregate amounts paid to magistrates (unpaid, volunteer positions) for travel, subsistence and financial loss allowances.
11 See: https://www.courts.qld.gov.au/about/publications (the reports are published under the heading “Judicial entitlements”).
12 See: https://www.courts.qld.gov.au/about/publications (the reports are published under the heading “Judicial Travel”).
• name of judge;
• countries visited;
• purpose of visit;
• period of travel; and
• cost (total).

Also, some information with respect to the Chief Justice's and the President of the Court of Appeal's first class, overseas travel is also published in the annual reports of the Department of Justice and Attorney General.¹³

¹³ See: https://www.justice.qld.gov.au/corporate/right-to-information-and-privacy/publishing-scheme (the reports are found under “Our finances”, then under “Annual Reports”). The Chief Justice and the President of the Court of Appeal are entitled to first-class travel overseas once per year, though not under allowances provided for by the Judicial Remuneration Act. Such expenditures are noted in the annual report of the Department of Justice and Attorney-General.