

Canadian
Historical Association



Société historique
du Canada

Ottawa, 11 October, 2017

The Honourable Scott Brison
President of the Treasury Board
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Mr. Brison,

The Canadian Historical Association is writing to express our concerns with the Access to Information amendments introduced to Parliament in June 2017, in Bill C-58. While there are measures in this legislation that we support, and for which we have advocated in the past, several of our key priorities for improved ATI law have not been addressed in your long-promised reform. At the same time, the Bill introduces some new measures that seem counterproductive to our goal – a more effective and open access system at the federal level.

The Past President of the Canadian Historical Association, Prof. Joan Sangster, has written to your Ministry on three previous occasions since January 2016 articulating our association's position on ATI and urging both meaningful consultation and concrete movement to implement changes. Thus it was with some anticipation that our association awaited the tabling of Bill C-58 this year.

Bill C-58 has already received extensive criticism in the media and from public policy analysts because it has failed to enact a key Liberal campaign promise on ATI – the extension of access rights to Ministers' offices, the Prime Ministers' Office (PMO), and other branches of government not currently covered by the Act. Indeed, your government's own online consultation process on reform clearly proposed that legislative amendments would "ensure that the Access to Information Act applies appropriately to the Prime Minister's and Ministers' Offices, as well as administrative institutions that support Parliament and the courts." <http://open.canada.ca/en/consultation/government-proposals-to-revitalize-access-to-information> Like others, we expected such a reform to take place and are surprised that it has not.

The bill does include some important improvements, such as the new requirement to justify to the Information Commissioner, with written reasons, why information is redacted. We fully support giving the Information Commissioner the power to order government departments to release information to applicants. While such orders will still be open to challenge by government departments and institutions in the courts, it is a step in the right direction. If used appropriately, this power may help to address one of our major concerns with the operation of the system currently, which is the existence of major time delays in processing applications. The power to compel the release of information will not, *on its own*, however, resolve delays in receiving requested information. Similarly, this “reformed” legislation fails to proactively address overbroad exceptions to access rules, which often result in redacted information and denied applications.

Other provisions of the Bill are worrying. Through Bill C-58, user fees beyond the \$5 application fee may be brought back into practice, after being eliminated by your office a short time ago. Should fees for accessing information become large, it will of course have a chilling effect on our researchers, particularly graduate students and historians without permanent full-time academic positions, not to mention the average member of the public. The CHA is also concerned that Bill C-58 gives government departments and institutions the right to refuse to respond to requests that are considered too broad, “frivolous or vexatious.” As parameters for denying requests, these are vague and subjective. Properly, this power would reside with the Information Commissioner, not with the department from which information is being requested.

At the same time, Bill C-58 denies the Information Commissioner access to anything deemed cabinet confidences, even to assess whether such a claim of cabinet confidence is legitimate. This creates what some critics have referred to as a “black hole” in Canada’s access to information regime.

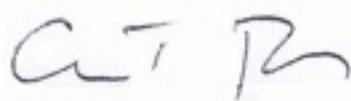
The new bill promotes “proactive disclosure” of government information, but we wish to emphasize that this is not the same as open public access to government documents on request. It means only that government departments and agencies will make more accessible documents *of their choosing*. Under proactive disclosure the power to control the flow of government information remains in the hands of government. This does nothing to enhance the rights of all Canadians to request access government information – information they are entitled to see.

Finally, the CHA shares the concerns expressed by other critics of Bill C-58 that it does not provide a sufficiently rigorous expectation for all branches of government to document their own actions. The ETHI Committee recommended action on this matter. For historians, the lack of written documentation is a grave matter, and we urge the government to take action towards meaningful documentation requirements. There are some troubling indications from your government, however, that movement on the issue is in the opposite direction. For example, Bill C-22, which establishes a committee of Parliamentarians for oversight of intelligence and security operations in all branches of government, includes a provision allowing for “oral government,” in which Ministers or their officials may report orally, rather than in writing, to the committee. In our view, this sets a poor standard for documentation.

In recent years, access to information has become a central concern among our membership, reflecting the challenges that exist today accessing historical documents, but also the fact that our profession is thinking forward to the prospects and research climate for future scholars. Ongoing funding issues at Library and Archives Canada (LAC) and changing practices of records management at a federal level that have occurred over the last two decades render issues with access to information more serious.

We had hoped that a commitment to funding LAC and a reformed ATI legislation, which was promised for some time by the current Prime Minister and your office, would establish a strong set of expectations for openness, address issues in records management, and enhance access rights. In our view, Bill C-58 does not deliver what is needed.

Sincerely,

A handwritten signature in blue ink, appearing to read 'A T Perry', is centered on the page.

Adele Perry
President