



**Submission of the Canadian Judicial Council to the
Senate Legal and Constitutional Affairs Committee
regarding Bill C-58**

31 October 2018

1. The Canadian Judicial Council (Council) is thankful for the opportunity to provide its views to the Honourable members of this Senate Committee about Bill C-58.
2. The Bill currently proposes the proactive disclosure of all named, individual judges's expenses incurred for travel in relation to Court sittings and educational seminars and conferences.
3. Council is of the view that the provisions of the Bill are problematic because, fundamentally, they would erode public confidence in the judiciary.
4. As worded, the legislation would result in disclosure of expenditures identifying specific judges, for expenditures over which the judge has little or no control.
5. Of particular importance is that:
 - a. judges do not decide on their assignments but are given their assignments by their Chief Justice;
 - b. judges are required to take part in professional development activities, often with little or no discretion (for example, seminars for newly appointed judges or Court-based seminars) and have no control over the costs of such educational programs, whose contents and costs are approved by Council;
 - c. judges are not able to defend themselves publicly if attacked publicly about public expenditures incurred in the discharge of their duties;
 - d. certain judges are required to travel extensively (for example when serving a large territory) and incur much higher expenses, making any comparison between judges unfair and inaccurate;
 - e. the lack of discretionary decision-making in respect of these expenses makes any comparison with government officials unfair and inaccurate.

6. There are other, unintended negative consequences that would affect the proper administration of justice, including those relating to security.
7. Another important flaw is evident in the proposed legislation, section 90.22 of the Bill. This is the judicial independence exception, a recognition by the government that publication of certain expenses would in fact interfere with judicial independence.
8. The authority to determine if the publication of expenditures could interfere with judicial independence would rest primarily with the Commissioner for Federal Judicial Affairs, an official who is accountable to the Minister of Justice.
9. Council shares the views of members of the Bar and of the Canadian Superior Court Judges Association that this is a glaring constitutional defect, one that would be immediately challenged before the Courts.
10. There are other models that could be proposed in respect of this authority. Whatever the model, it must involve members of the judiciary. One model would be to vest the authority proposed in section 90.22 to “such committee of Council as is named for the purpose by the Council.”
11. The Canadian Judicial Council and the Canadian Superior Court Judges Association both support the Bill’s goal of fostering greater transparency in regard to public expenditures relating to judicial functions.
12. We believe that this objective can be achieved in an alternate manner, one that will foster public confidence and that will respect judicial independence. We jointly propose a model of aggregate disclosure of information.
13. The proposed model (see Appendix) would list the expenses of each Court, on a quarterly basis, in a manner that would allow Parliamentarians and the public alike to accurately know how public funds are expended for judges in the performance of their judicial duties.
14. We urge the Honourable members of this Committee to amend the proposed legislation accordingly.

Travel and Conference Allowances for Judges under the *Judges Act*

Expense Reports (April xx to June xx)

[Illustration only (not factual) would be adjusted depending on legislative provisions and operational factors under the authority of the Commissioner for Federal Judicial Affairs; note also that expenses would include travel, accommodation and other related expenditures in respect of travel]

Manitoba Court of Queen's Bench – Total number of judges in office = 31

<i>Type of expense</i>	<i>Reason for travel</i>	<i>Number of claims</i>	<i>Number of judges</i>	<i>Total amount reimbursed</i>
Travel	Court sittings	39	14	\$43,580.08
Conference	Meetings, conferences or seminars within Canada	21	18	\$16,450.15
Conference	International conferences	2	2	\$11,080.00