

# School of Public Policy & Governance

## UNIVERSITY OF TORONTO

November 1, 2017

M. Hugues La Rue  
Committee Clerk  
Committees and Legislative Services Directorate  
House of Commons  
131 Queen St., 5-79  
Ottawa, Ontario  
K1A 0A6

Dear Mr. La Rue,

You invited me to testify to the Committee of ETHI on Bill C-58 and unfortunately, I was unable to do so. This short letter is intended to help the Committee in their deliberations.

I am a former Clerk of the Privy Council and Secretary to Cabinet and Head of the Public Service. I was appointed to the ranks of Deputy Minister by a Conservative Prime Minister and served a Liberal Prime Minister as Clerk. I spent thirty years in the public service of Canada. I have no partisan perspective.

Please accept the attached as a submission to the House Committee on Access, Privacy and Ethics examining C-58, Act to amend the Access to Information Act and the Privacy Act and to make consequential amendments to other Acts. I so believe the work of the Committee on this subject is important that I felt it necessary to write and submit this brief.

Essentially, this letter makes five key points.

First, there is an **optimal** degree of openness and it is not total.

Second, openness in government has to be **for a public purpose** and not for its own sake.

Third it is the **effectiveness of decision-making** that should be promoted and protected.

Fourth, **candour** and openness within government may require some protection of secrecy within government.



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Fifth, the **preservation of the written record** for historical purposes is important as well.

Access to information is a very important principle for the functioning of democracy. However, there is an optimal degree of openness and transparency in government and it is not total. Complete openness and transparency would violate democratic principles of privacy as well as undermine the efficacy of the decision-making process. Finding the right balance is the challenge for Parliament.

The objective of finding that balance is to promote the effectiveness of decision-making and ensure the protection of the public interest. However, the public interest is a many-faceted objective. There is a democratic public interest in openness to avoid corruption and to ensure public engagement. But there is also a public interest in ensuring Ministers are comfortable speaking candidly among themselves and speaking their minds.

The effectiveness of decision-making requires Ministers to speak their mind in Cabinet and in exchanges among themselves. To ensure candour in that exchange, protection of the confidentiality of Ministerial correspondence, exchanges, ruminations and speculations is essential. Moreover, to ensure candour from officials in advising Ministers and to preserve Ministerial accountability, protection of the confidentiality of that advice is essential.

In a Westminster parliamentary democracy it is important that Ministers get the best advice from a non-partisan and professional public service. And that may require some measure of secrecy. The candour of the written advice of the public service depends on their advice being private and protected. Ministers should be held to account for their decisions. They will hold their officials to account for their advice. I would suggest the Committee consider the incentives created by too much openness.

For Ministers to avoid moving to an oral tradition eschewing written or electronic memoranda and to provide for the historical record, confidentiality of some communications is essential.

Finally, as a former official I cannot help but note that the resources that go into dealing with frivolous access to information requests are enormous. Making the unprotected information open and accessible will significantly reduce the costs of administering the access system. But it requires protecting some information from access.



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My strong recommendation to the Committee is to draw a high wall of secrecy around those functions and categories of information that need to be preserved to protect the public interest and then make all else open and available to the public. However the latter openness depends mightily on the secrecy of the former information.

The Committee should keep these five points in mind as it considers C-58. These guiding principles are important to maintain and improve the functioning of government and advancing the public interest.

Thank you,



Mel Cappe  
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