Introduction

As I gear up for the annual fall town halls around the Saanich Peninsula and the five southern Gulf islands (see schedule below for details), this newsletter focuses on the status of key issues when the House adjourned June 20, 2017. Many have noted that, compared to the Harper years, Trudeau's administration has passed fewer pieces of legislation through parliament.

The Liberals nestled their contentious infrastructure bank into a 400 page budget implementation bill that they rushed through Parliament this spring. At the same time, the Liberals sought to change certain key House rules called "Standing Orders." Some of their proposed changes were positive; while others were much more controversial, including reforming the way Parliament schedules its own business. In the end, the Liberals dropped the most contentious proposals.

Following heated debate in the spring resulting in procedural shenanigans on all sides, in late May, the majority Liberals approved new rules for the last month of the session: sitting until midnight every night with the elimination of time wasting manoeuvres. That resulted in a number of legislative measures introduced and passed – some of which I describe below. As for the rest, I look forward to the discussion we'll have this fall at town halls throughout Saanich—Gulf Islands.

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September Town Halls

Saturna Island
Wednesday, September 6
7:00—8:30pm
Saturna Island Community Hall
109 East Point Road

District of Saanich
Thursday, September 7
7:00—8:30pm
Bob Wright Centre, Room B150
University of Victoria

Pender Island
Friday, September 8
7:00—8:30pm
Pender Island Community Hall
4418 Bedwell Harbour Road

Mayne Island
Saturday, September 9
6:00—7:30pm
Mayne Island Community Centre
493 Felix Jack Road

Galiano Island
Sunday, September 10
5:30—7:00pm
Galiano Community Hall
141 Sturdies Bay Road

District of Saanich
Monday, September 11
7:00—8:30pm
Our Lady of Fatima Church
4635 Elk Lake Drive

Saanich Peninsula
Thursday, September 14
7:00—8:30pm
Bodine Hall
Mary Winspear Centre
2243 Beacon Avenue

Salt Spring Island
Friday, September 15
7:00—8:30pm
Fulford Community Hall
2591 Fulford-Ganges Road

Key promised reforms dealing with C-51 and omnibus budget bills C-38 and C-45

Now that we have had 18 months under the new Trudeau administration, a pattern has become clear. In approaching promises from the campaign to reverse changes made under the previous government, those things that were easily fixed were done quickly and early. Scientists and diplomats were unmuzzled. Liberal ministers set a more respectful tone. The centralized power of Prime Minister's Office (PMO) over all decision-making was greatly reduced, although not eliminated. It is certainly the case that individual Cabinet ministers play a much larger role in making decisions under their portfolios than was the case under former Prime Minister Stephen Harper.

But repairing damage to legislation is slow, painful and potentially futile. Some areas have seen relatively swift action. Anti-trade union laws have been repealed. Citizenship laws are well on their way to being restored to a pre-Harper respect for the principle that citizenship cannot be stripped for political motive. But in other areas, fixing what Harper broke is sinking into a sea of consultation exercises.

These patterns apply in many policy areas. I will focus on two areas of concern about which my constituents have been active and engaged: the Liberal response to the Anti-Terrorism legislation, then known as Bill C-51, and reversing the damage to environmental laws by the 2012 omnibus budget bills (C-38 and C-45).

These approaches to reform followed a now predictable pattern – long consultations followed by more consultations and ultimately legislation. There is still time for citizens to comment on both sets of proposed reforms.

Repairing the twin 2012 omnibus budget bills: C-38 and C-45

We needed swift action to restore the environmental assessment laws as they existed before 2006. Trudeau and his Liberal candidates were clear through the 2015 election campaign that the environment assessment process was "broken" and that the National Energy Board (NEB), which had never had authority to conduct environmental reviews before 2012, was making a hash of the bastardized process. The Liberal platform promised action on the multiple areas eroded by C-38 and C-45.

Damage Done by C-38 and C-45 in 2012

In spring of 2012, Bill C-38 ran over 400 pages, changing over 70 laws. Not all were environmental bills. One aspect of C-38 eliminated the Inspector General for CSIS, an important function very relevant to the changes that came later in C-51. But for the moment, let me focus on the environmental changes. The National Round Table on Environment and Economy Act and the Kyoto Implementation Act were repealed. The Canadian Environmental Assessment Act (CEAA) was repealed and replaced with a radically altered and weakened CEAA 2012. C-38 changed the treatment of energy projects, for the first time creating a different type of environmental review for energy projects versus other federally reviewed projects. No policy reason for this different treatment was ever advanced. As the NEB was given new powers, it also had changes made to its own legislation, making Cabinet and not the NEB the ultimate decision-maker. As well, C-38 substantially weakened the Fisheries Act, removing habitat protection and reducing pollution protections. The Fisheries Act, originally passed in 1868, had been strengthened over the decades. The gutting of the act in C-38 created a furor.

Some of you may recall that I tabled 400 amendments to C-38 and, with the full support of the New Democrats and Liberals, forced standing votes on each amendment – a 24 hour stretch of straight voting. My goal was to create leverage to get at least some of the amendments accepted. In the end, C-38 was passed without a single change from its original form.

In the fall of 2012, a second omnibus budget bill, C-45, was brought forward with more changes. The key change in C-45 to environmental laws was the destruction of the Navigable Waters Protection Act (NWPA).

In 2009, the Harper administration had taken its first swipe at the NWPA in that year's omnibus budget bill. At that time, the Conservatives in a minority government placed unpopular changes in omnibus budget bills. Defeating a budget bill would bring down the government and cause an election. Opposition parties are watchful of their campaign funds and level of preparedness. Former Prime Minister Harper used the opposition parties' reluctance to go to the polls as a way to push through unpopular legislation, including changing the definition of "navigable."

In 1882, the NWPA had been enacted under our first prime minister, Sir John A Macdonald. The act protected any and all navigable waters from obstruction. And "navigable" meant what it said; if a canoe could make its way through a watercourse, that watercourse was navigable. The 2009 omnibus bill changed "navigable" from a common sense definition to a political designation by the Minister of Transport.

In 2012, in omnibus budget bill C-45, the act was renamed the Navigation Protection Act. C-45 moved to a list that specifically named watercourses to be considered protected. More than 99% of Canada's inland waters were not listed.

Navigation is an exclusive head of power under Section 91 of the Constitution. For First Nations, Inuit and Métis, navigation of remote unnamed rivers is a constitutionally protected right. But C-45 meant open season for bridges, dams and obstructions of all kinds. Yet, due to the fact that navigation is an exclusive head of federal power, no provincial government can protect navigation.

The Promise of Repair—2015

The Liberal platform promised to deal with all four areas of erosion of environmental protections found in the 2012 omnibus bills:

– Canadian Environmental Assessment Act, the Fisheries Act, the Navigable Waters Protection Act and the National Energy Board.

Instead of moving quickly, the Liberals launched four different consultation exercises engaging four different ministers – Catherine McKenna for Environment, Jim Carr for Natural Resources, Marc Garneau for Transport and Dominic Leblanc for Fisheries. The two most robust were well-funded expert panels on Environmental Assessment and on the National Energy Board. For the Fisheries Act and Navigable Waters Protection Act (re-named the "Navigation Protection Act"), the reviews were undertaken by their respective parliamentary committees. I have provided written briefs to all committees and panels and, unsuccessfully, attempted to appear before them.

Navigable Waters Protection Action Review: 2016-17

The only one of the reviews to completely miss the mark was the brief review by the Transport Committee. It held only six meetings and heard from only 17 witnesses. Instead of recommending restoring protections to navigable waters across Canada, it recommended maintaining the Conservative approach from C-45, while making it easier to add specific waterways to the existing list. The committee also offered up a new justification for abandoning the protection of navigable waters. The committee accepted testimony from Transport Canada staff that the waterways that were listed in the C-45 destruction of the Navigable Waters Protection Act (NWPA) were the "largest and busiest." This is a new defense of what former Prime Minister Harper did and (forgive the pun) it doesn't hold water. It is abundantly clear that the combined effect of changes to Canadian Environmental Assessment Act, the Fisheries Act and the NWPA was for the purpose of speeding development. Many key waterways, including National Heritage Rivers were not listed. The winnowing down from every waterway that was navigable, to a handful of listed waterways was wholly indefensible. But the committee accepted it.

Fisheries Act Review: 2016-17

While the Transport Committee failed, the Fisheries Committee did quite good work. The committee's report, released in February 2017, was well-received by fisheries and environmental organizations. It recommended bringing back habitat protection to the Fisheries Act. The committee also went beyond the previous Fisheries Act in a welcome move to address cumulative risk to fish habitat of multiple activities.

The committee also recommended that more should be done to protect fisheries species at risk, to improve transparency and to reduce dependence on project proponents in self-assessment of their project's impact.

Unfortunately, the Fisheries Committee stopped short of moving to control destructive aquaculture operations.

Expert Panels: 2016-17

The two expert panels, into which the government invested millions did really solid work.

Environmental Assessment

The Environmental Assessments (EA) panel, chaired by Canada's former Commissioner for the Environment and Sustainable Development Johanne Gélinas and staffed with experts from environmental law and resource backgrounds, did a super job. It spent seven months travelling Canada, holding full day public engagement sessions in 21 locations and heard from over 1,000 Canadians. On April 5, 2017 its recommendations were released. As was later confirmed by the expert panel on the NEB, the EA panel urged that the NEB not conduct EA, but that impact assessment be carried out by a single agency, to be granted quasi-judicial status.

Instead of responding to the expert panel recommendations, the government posted the panel report for further public comment.

National Energy Board

The expert panel on the National Energy Board provided a devastating critique of the NEB. Panel members included significant representation from industry, including the head of the Canadian Pipeline Association. Still, the NEB Expert Panel found that the NEB had "fundamentally lost the confidence of many Canadians." It recommended that it be substantially overhauled. The expert panel, having heard from 1200 in-person participants in ten cities, recommended the NEB be re-named the Canadian Energy Transmission Commission and be moved from Calgary to Ottawa. Its advice was then put out on a government website asking for further reaction.

The cycle of public consultation delaying any decision seemed to stretch to the far horizon.

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The Comprehensive Discussion Document: June 2017

In late June, yet another consultation document was released. This one, "Environmental and Regulatory Reviews: Discussion Paper," responds to all four of the streams of recommendations coming from two expert panels and two parliamentary committees. The deadline for comments is August 28, 2017.

With this document, things have gone from hopeful to very worrying indeed. For one thing, the title of this 23 page discussion document is misleading. It is far more than a discussion of environmental and regulatory reviews. It deals with all of the changes discussed above – including habitat protection in the Fisheries Act, the definition of navigable for our inland waters, as well as the review processes.

Having had hundreds of pages of detailed suggestions generated by the two expert panels, it is challenging to analyze the new discussion paper. It is heavy on graphics and arrows and bullet points, but provides no comprehensive response to the multi-million dollar efforts commissioned by this government.

As well, it was released quietly at the end of June – with a deadline of August 28, 2017. It appears inevitable that it will receive little attention, especially since it is drafted to read as though recommended reforms are being accepted. But on key issues, the changes wrought by Harper in 2012 will remain in place.

Navigable Waters

The poorly studied and hasty recommendations of the Transport Committee are the only set of recommendations totally accepted. The discussion paper suggests making it easier to add named bodies of water to the list. It also suggests there may be a "complaint mechanism" for obstructions built on "unscheduled navigable waters."

The solution is not to make it marginally easier to add waterways to the Act. The solution is to return to the federal government's role of protecting rights to navigation on all waters that are navigable, as that word was understood in the previous NWPA from 1882 until 2009.

Fisheries Act

This is the most promising set of proposals, reflecting the good work of the Fisheries Committee. The prohibitions on harmful alteration, disruption or destruction (HADD) of fish habitat will be restored. Indigenous peoples will be given a larger role in "partnerships" for stewardship of fishery resources. But there is no mention of the committee's strongest recommendations to assess cumulative impacts of multiple threats to fisheries and habitat. Nor is there any reference to protecting struggling fisheries stocks or better regulation of aquaculture.

National Energy Board

The expert panel report seems to have been virtually completely rejected. The NEB will remain the NEB, will remain in Calgary and will continue to be involved in the environmental assessment of pipelines. The only organizational change will be that commissioners will no longer have to be Calgary residents.

Moreover, the NEB, alongside other energy agencies – the Canadian Nuclear Safety Commission and the Off-shore Petroleum Boards – will also have a role in environmental assessments. This collection of agencies, empowered for the first time in C-38 to conduct environmental reviews, are now collectively described "life-cycle regulators." Although the discussion paper says that environmental reviews will be conducted by a single government agency, the "life-cycle regulators" are still mandated to conduct environmental assessments of energy projects "as part of a single, integrated review process."

Improvements include removing the restrictive test for allowing intervenors in the proposed reviews to those with a direct interest. But the state of the law as it was prior to 2012 will not be restored.

Environmental Assessment

Here again, it seems the expert panel report has been largely ignored or rejected. The Environmental Assessment Agency is not to be converted to a quasi-judicial board with sole authority for conducting EA. And while the discussion document says a "project list" will be developed so that the public will know what projects require a federal review, the paper gives no hint as to how the list will be developed, what criteria will be used, or whether it will revert to the pre C-38 framework. It does emphasize something of a return to past practice in early engagement, before a project plan is finalized, better public engagement and a much expanded role for Indigenous consultation.

What's Next?

Without substantial public engagement and demand for better, I expect we will see legislation in the fall that cements for the foreseeable future most of what the previous Conservative government established through C-38 and C-45. There will be some areas of improvement, particularly for the Fisheries Act, as well as for earlier public engagement and participation in environmental assessments.

Security Legislation - What have the Liberals done with C-51

Bills rammed through parliament as omnibus legislation are much harder to repeal than stand-alone legislation. In fact, technically, omnibus bills cannot be repealed. After passage, the 70 laws gutted, repealed and replaced in Bill C-38 can only be fixed by going back to each individual law and repairing it. Similarly, after passage, C-51 ceased to exist.

I was the first MP to oppose the bill, as I saw in it a system to make Canadians less safe, while at the same time weakening our Charter rights. It was an omnibus bill touching on dozens of laws.

The Damage of C-51:

Here are its five parts and a rough sketch of what they do:

1) Information Sharing – this is not about information sharing between spy agencies working together to stop criminal elements. That would have been a good idea, but it's not in C-51. This 'information sharing" is about disclosing personal information about any Canadian to anyone who wants it.
2) No-Fly List provisions. Pretty straightforward, but puts tremendous burdens on airlines to control the work of airport screening conducted by the Canadian Air Transport Security Authority (CATSA) - a group they do not manage or control. It also does nothing to reduce the confusion and inconvenience suffered by people with names or dates of birth similar to suspected terrorists.
3) The Thought-Chill Section. This one purports to deal with the promotion of terrorism on websites. It adopted the unheard of notion of promotion of "terrorism in general." No one knows what that means, but the descriptors are so broad they could catch up a single image as promotion of terrorism in general. Anti-radicalization efforts would be compromised.
4) Part 4 is the most dangerous. It transforms CSIS, an agency designed to collect intelligence and share it with those who can act, to an agency empowered to disrupt plots. Worse it sets up a private hearing before a sole judge, with no public interest advocate present, to grant warrants for constitutional breach. None of our 5-eyes partners and no democracy in the world has any such provision.
5) Part 5 was so opaque and incomprehensible that it received virtually no attention in committee. It changes the way information going to a judge in support of a Security Certificate is handled. Only Professor Donald Galloway of University of Victoria Law School figured out what its purpose was - to allow the use of evidence obtained by torture to be submitted to a judge, without disclosing that fact.

The Promise of Repair:

The Liberals' approach to repairing C-51 was quite different than the complex and repetitive consultation exercise used on C-38 and C-45. The C-51 exercise led by Public Safety Minister Ralph Goodale and Justice Minister Jody Wilson-Raybould began with a discussion paper for review. Public reaction was invited in the fall of 2016. I held a town hall meeting on security legislation and provided a brief to the two Ministers.

Without further consultations on the reviews, as Ministers McKenna, Carr, Leblanc and Garneau have done on C-38 and C-45, Wilson-Raybould and Goodale moved to legislation. Overall, they have

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Security Legislation—continued from page 3

done a good job, but there is room for improvement.

The first piece of Liberal security legislation was Bill C-22, tabled in June of last year, and which is now law. It creates a National Security and Intelligence Committee of Parliamentarians (both MPs and Senators). While it needed strengthening to ensure full access to information for Parliamentarians, who will go through extensive security clearance, it was overall a good step forward. I did put forward amendments to strengthen it, but even though my amendments were defeated, I voted for the bill.

It will create far better oversight of the various elements of Canada's intelligence agencies - CSIS, Canadian Border Services, RCMP, and Communications Security Establishment. But some of its weaknesses have been remedied in the new National Security Act, C-59, which was tabled for First Reading on June 20, 2017 – the day before the House adjourned.

C-59 is a major over-haul of Canada's security legislation, dealing with some of the key findings of the Air India Inquiry and Maher Arar inquiry, ignored in C-51. The approach of C-51, empowering CSIS agents to take action to disrupt plots, allowing the various security agencies of Canada (RCMP, CSEC, CBSA and CSIS) to operate independently of each other runs directly contrary to the advice of public security experts and to the conclusions of the Air India Inquiry. So too is the Arar Commission report ignored in setting up the "information sharing" provisions of Part 1 of the bill, allowing virtually any information about any Canadian to be shared between and among all federal agencies and departments, as well as with foreign governments.

None of this makes sense, and none of it makes us safer.

The new bill, C-59, for the first time establishes direct authority over all the intelligence agencies under one over-arching review agency. The National Security Intelligence and Review Agency, as security expert lawyers Craig Forcese and Kent Roach put it "could be a valuable instrument that combines internal self-regulation, ministerial over-sight and external review."

The National Security Intelligence and Review Agency and creation of an Intelligence Commissioner fill a gap created when Harper eliminated the CSIS Inspector General in C-38. But it goes beyond that gap, as the new Commissioner and Agency will have authority beyond CSIS, to the RCMP and Communications Security Establishment (CSE) as well.

Disappointing in the new bill is the protection of Canadian privacy in information sharing. The amendments proposed – despite strong language about protecting Canadians' rights to protest and engage in non-violent civil disobedience – create an overly broad ambit for information about Canadians to be shared with foreign governments.

C-59 improves the situation for no-fly lists, but only barely. Much more will need to be done to ensure Canadians who simply have the same name or birthdate as a suspected person are not unreasonably hampered and delayed. The key change is administrative; that the government and not the airlines will be responsible for maintaining a no-fly list database.

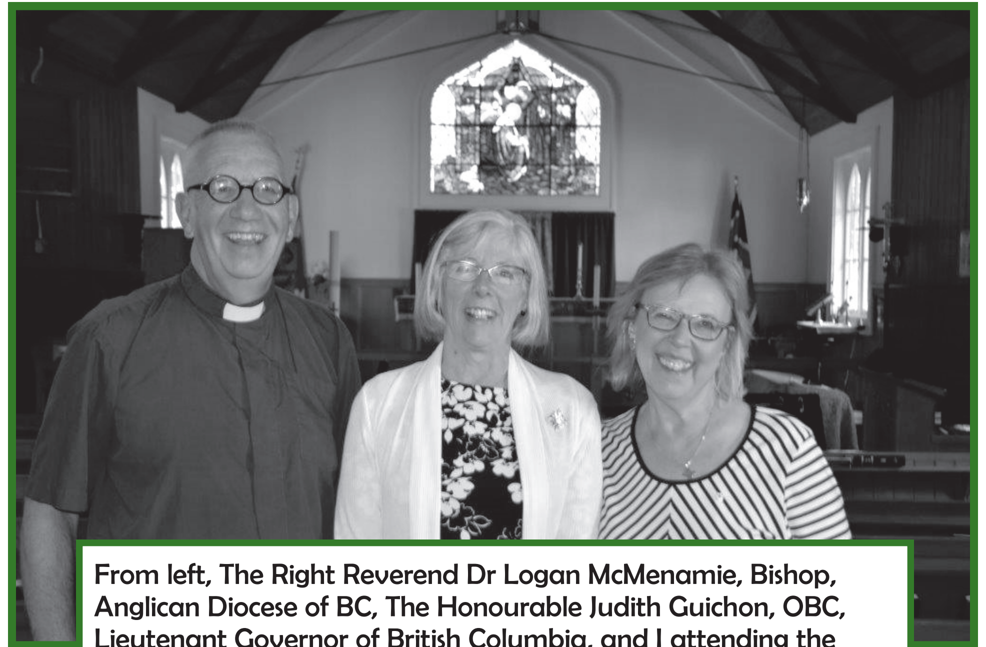
Full marks for dealing with C-51's "thought chill provisions" by eliminating the untested offense of "promoting terrorism in general." The new offence is sensible: "counseling another person to commit a terrorism act."

The C-51 "secret police act" powers for CSIS agents are to be more tightly controlled. I am disappointed that the ability to go to one judge alone in a secret hearing to get a warrant to allow the breach of our Constitution remains. Nevertheless, Forcese and Roach believe the much tighter controls and listed activities will make this measure constitutional.

Interestingly, the new act goes back and removes some of the anti-terrorism measures brought in after 9/11 as ineffective and unconstitutional. The use of "investigative hearings" (secret hearings to compel evidence about terrorism) will be banned.

However, some enhanced spy features are created. The CSE – an obscure agency with the power to collect meta-data through massive sweeps of computer downloads – will have an enhanced and active role in threat disruption. It will be modernized to work in cyber-security, including in space.

I expect to be very engaged in work at committee to develop amendments to further improve C-59, but the seriousness and thoughtfulness of the bill overall is much appreciated.



From left, The Right Reverend Dr Logan McMenamie, Bishop, Anglican Diocese of BC, The Honourable Judith Guichon, OBC, Lieutenant Governor of British Columbia, and I attending the Peninsula Wine Fest, St. Stephens Church, Saanichton, Saturday, July 15, 2017. Photo by Len Fallan.

One bright spot: the new Oceans Act

On June 15, amendments to the Oceans Act were tabled. The changes focus primarily on modernizing and expediting the creation of Marine Protected Areas (MPAs). While there are more changes I would like to see (such as ensuring MPAs have the goal of protecting ecological integrity), overall, the amendments are encouraging.

Under the new amendments, the pace of creating MPAs (currently, on average, at least a seven year process) will be sped up. The Minister will be empowered to designate Interim MPAs. Under the proposed process the government will have five years to develop the regulations that transition an interim area into a permanent MPA. New and damaging activities proposed for areas being considered for interim MPA status -- such as fisheries, seismic testing, undersea mining and offshore oil and gas extraction -- may be immediately restricted when the Minister acts to create interim protection. Existing fisheries activities in these areas may also be restricted. Still, it is the case that any and all of marine protections in Canada do not necessarily preclude any human activity. Most protect existing economic activities.

I was particularly pleased that the Oceans Act amendments include changes to the Canada Petroleum Resources Act. There will be a new legal authority to prohibit new oil and gas activities in MPAs with the Minister having the power to cancel existing oil and gas interests in MPAs, with financial compensation.

Another to watch for – the right to a healthy environment

Also in June, the Standing Committee on Environment and Sustainable Development issued an important set of recommendations to strengthen the Canadian Environmental Protection Act.

In reviewing the Canadian Environment Protection Act (CEPA), the cross-partisan standing committee has recommended that Canada recognize in law the right to a healthy environment. This is a significant breakthrough for a country that has not previously recognized this right, and the committee's combined recommendations would provide much-needed strengthening of CEPA.

Key recommendations from the report include that the preamble of CEPA be amended:

- to recognize a right to a healthy environment;
- to mention the importance of considering vulnerable populations in risk assessments; and
- to recognize the principles put forward in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

Other recommendations include that the government consider amending CEPA to include the right to a healthy environment in the administrative duties of the Government of Canada; to give greater force and effect to environmental rights; to create better monitoring and reporting of federal-provincial climate agreements; and to require mandatory hazard labelling of all products containing toxic substances.