



House of Commons
CANADA

Standing Committee on Canadian Heritage

CHPC • NUMBER 017 • 2nd SESSION • 39th PARLIAMENT

EVIDENCE

Tuesday, February 26, 2008

—
Chair

Mr. Gary Schellenberger

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•(1225)

[English]

The Chair (Mr. Gary Schellenberger (Perth—Wellington, CPC)): We will move to a public meeting.

Our committee clerk, Jacques Lahaie, will be leaving us to take on the responsibilities of the international trade committee. Catherine will be our new clerk.

Jacques has been with the heritage committee for four years and has been involved with major studies of this committee: the feature film industry study in Canada, with cross-country public hearings. I remember so many of them. I can remember being in Montreal and there were two of us sitting around the table at that particular time. There could have been an election called any day, so we had to be ready for votes. He handled those situations quite well.

We had major hearings on the Canadian Television Fund crisis, the court challenges program hearings, and the extensive hearings on the role of the public broadcaster in the 21st century—also hearings across the land.

Jacques and the people who were looking after our trip to the Northwest Territories.... When everyone was in Calgary and I was in Edmonton, they had to find me; they did, and they picked me up and took me to Yellowknife for what I thought was a tremendous round table and a great meeting.

There was one thing that happened that night. After we let everyone have their say—we were about half an hour late getting things started because of our flight changes and so on, and I think we went until close to 11:30—and we left, we went out and I can still see those northern lights happening right in front of us. It was a tremendous night.

Jacques, it's been a tremendous honour for me to have you as clerk. Thank you very much.

Some hon. members: Hear, hear!

[Translation]

The Clerk of the Committee (Mr. Jacques Lahaie): The honour is mine.

Hon. Mauril Bélanger (Ottawa—Vanier, Lib.): Perhaps it would be appropriate for me, on behalf of myself and my colleagues, to propose a motion of congratulations to Mr. Lahaie, and of thanks for all the work he has done.

(Motion agreed to. [See *Minutes of Proceedings*.])

The Clerk: This is very kind. Thank you very much. I have enjoyed working with this committee a great deal. It studies very important matters and the spirit of collegiality is excellent. It is fascinating, and one of the most interesting committees.

Hon. Mauril Bélanger: It is a model committee.

The Clerk: Yes, indeed.

Thank you very much.

[English]

The Chair: Thank you for that.

Hon. Mauril Bélanger: Do we have motions, or are we going to put off that business? You have motions in front of you.

The Chair: It's up to the will of the committee. Do we want to work on the motions that are before us, or will we put them off until Thursday?

Could we put our motions off until Thursday?

[Translation]

Mrs. Maria Mourani (Ahuntsic, BQ): We can get through them quickly.

[English]

Hon. Jim Abbott (Kootenay—Columbia, CPC): I don't think so.

The Chair: Do we want to make them our first item of business on Thursday? Could we do that?

Mr. Siksay.

Mr. Bill Siksay (Burnaby—Douglas, NDP): Chair, we're scheduled to go to 1 o'clock. I'm prepared to keep working until 1 o'clock.

The Chair: Okay.

It's just that I knew there were a couple of people who had a couple of other things to do.

All those in favour of putting off the tabling of the motions that are before us until Thursday?

(Motion negatived)

•(1230)

The Chair: Our next order of business is a notice of motion from Maria Mourani:

That the Standing Committee on Canadian Heritage call the President of CBC/Radio-Canada to appear as soon as possible to explain the policy regarding the right of CBC/Radio-Canada employees to communicate with Members of the House of Commons and specifically with members of the Standing Committee on Canadian Heritage.

Would you like to speak to the motion, please, Ms. Mourani?

[Translation]

Mrs. Maria Mourani: Thank you, Mr. Chair.

As the motion says, we would like the president of CBC/Radio-Canada to come and explain his internal policy regarding the right of employees to communicate with members of Parliament.

I think that a number of you, perhaps everyone who is an official member of this committee, must have received several e-mails, including a letter suspending an employee for three days. I do not want to get into the administrative details of CBC/Radio-Canada and I do not think that anyone does. But what concerns me greatly is the perception of interference in the committee's work. I am a very down-to-earth person and I like knowing the facts: I do not go by hearsay and gossip. So I want to have my questions answered.

I have a version of the facts that leads me to make certain assumptions. But I do not want to deal in assumptions. I do not want to get into the details of any particular matter, but I want to understand. Can a CBC employee speak to members of Parliament? Can he talk to us on a matter we are working on? Is there an internal directive or policy that specifies whether a person can do that, and under which circumstances? I especially do not want to get into rhetoric or make assumptions about the e-mails I have received.

I think that we are perfectly justified in asking the CBC to come and explain, so that all sides can be heard. Furthermore, I believe that the corporation has held a news conference with the person in question. So it is in the public domain.

I would like to hear what the president of the CBC has to say about his policy, not necessarily about this particular matter.

[English]

The Chair: Mr. Fast, and then Mr. Bélanger.

Mr. Ed Fast (Abbotsford, CPC): Mr. Chair, before we get into the merits of the motion, I want to raise with the committee the whole issue of *sub judice*, which is a principle at law that has been adopted by the House and certainly by committees, that if in fact a matter is already under consideration by a judicial or a quasi-judicial body, the committee will not consider it until those proceedings are complete.

It's my understanding that an appeal of the decision by CBC on this suspension has been made. If that is the case, clearly that is a quasi-judicial proceeding that should play itself out before we intervene, because this is a public meeting.

Frankly, Mr. Chair, I would request that we have a ruling from you and perhaps the clerk determining whether that principle of law applies to this situation and also to determine whether in fact an appeal has been launched by the employee in question.

• (1235)

The Chair: Mr. Bélanger.

[Translation]

Hon. Mauril Bélanger: Mr. Chair, the *sub judice* rule exists, but it does not apply here because the matter is not before the courts. Even if it were, the rule is very clear: it does not prevent the government from looking into a matter. It must simply be careful in the way it proceeds.

I am very familiar with the *sub judice* rule. In this case, I am absolutely convinced that it does not apply. A procedural clerk or some other authority on procedure could quickly confirm that for us. That is the first point.

The second point is that the motion as worded causes me some difficulty. First, if we want to speak to an institution, we do not need to speak to the president of that institution; we could speak to its representatives. Second, we have to tread carefully. I cannot support a motion whose object is to investigate a particular case. But I feel that it is legitimate to seek an understanding of policies that deal with how people employed by the CBC can interact with members of Parliament.

I have a compromise suggestion. For the moment, we would ask our research staff to gather information on the CBC and to prepare a quite detailed report on the rules that apply to the present problem. When we receive that report, we will be able to decide if we want to call the CBC to clear up any matters.

At this stage, I do not have enough information. The information can be gathered. I suggest that we seriously consider this approach. It would not prevent us from calling the CBC later, but we would do so with more information than we presently have.

That is my suggestion and I hope that it will be given due consideration.

[English]

The Chair: Mr. Chong.

Hon. Michael Chong (Wellington—Halton Hills, CPC): Thank you, Mr. Chair.

I agree with Mauril on this. I don't think we need to call the president of Radio-Canada/CBC to explain to us the policy of the corporation with respect to employees contacting members of Parliament.

The second thing I'd say is that I don't think we should get into the specifics of this particular case that you're alluding to, in the interest of that person, because if they are under discipline and that discipline beyond the appeal continues, you're putting them in a very awkward position too.

And finally I'd say we have to realize that if there's wrongdoing within a crown corporation or a department, clearly employees of the crown corporation or the federal government have an obligation to report that either to the authorities or to members of Parliament or the like. But if somebody has a disagreement with government policy or with the corporation's policy and they go through backdoor channels, improper channels, and relay those concerns to the public or to the media or to individual members of Parliament, they're violating crown corporation or departmental guidelines. They may disagree with those guidelines, but those are the guidelines, and they do so at their own risk. That's the modus operandi for any organization.

So in the cases where there's illicit activity or wrongdoing, clearly they have the right and the obligation to report that to the authorities or to us, but in the case where it's a disagreement over policy or a disagreement over direction and they come to a member of Parliament or they go to the media, they are assuming the risk that comes along with that decision, which is that if they're caught out they're subject to discipline.

I think we have to be aware of the difference in the two cases. I think if it was somebody who was in the corporation or a department who witnessed wrongdoing, reported it, and then got reprimanded, clearly that person needs to be defended and the person doing the reprimanding should be called on the carpet to explain themselves. However, if it's a case where the person didn't go through the public relations or government relations department but instead went through back-door channels because they disagreed with a policy of the corporation, well, they do so at their own risk, and I'm not sure that we want to waste a lot of time hashing out the details of that policy.

If we are going to go ahead with it at all, I agree with Mauril. Let's get some lower-level person to explain the policy and let's stay away from the specifics, because if the appeal fails that this person has launched, we put that person in a very awkward position: they're still an employee of the corporation and yet we're holding parliamentary hearings on their specific case. They may just at that point want to drop the whole thing and move on.

• (1240)

The Chair: Ms. Mourani, and then Mr. Siksay.

[Translation]

Mrs. Maria Mourani: I agree with Mauril. We are not here to look into any particular case. However, it is true that a particular case has raised questions. Of course this committee is not going to discuss this particular case, and certainly not with the person in question in attendance.

Should we call the president or the vice-presidents? If we are responsible for the policy of a crown corporation, we are not going to call "some lower-level person". I do not know if that is the right translation of what I heard. In a crown corporation, policies are managed higher up. We make the policies, of course, but they apply them, and a president runs a corporation, not the other employees. So if we have questions for the corporation, it seems to me that it is the president who should come to answer them.

We talk about transparency a lot. We talked about a proposed report on transparency that could fit well. The motion does not

mention any case in particular, it simply asks the president of Radio-Canada/CBC to explain his policy regarding the right of employees to communicate with members of Parliament. The motion makes no mention of any specific case. We are not discussing internal administration. If something is happening internally, regarding whistleblowing for example, it is not our problem. The problem is when we cannot speak to people in a crown corporation in the course of our work without them being punished for it. There is some kind of code of silence.

I cannot say that Radio-Canada/CBC has such a code, because I have no evidence of one. There is only one party who claims to be aggrieved and we are not here to talk about that. I would like to know if we can communicate with the employees of a crown corporation. Can they send us information that deals with our work on Radio Canada/CBC officially, not under the table, if they are in a position to do so? The person who is best placed to talk to us about it is the president of the CBC, not a lower-level person, as you said.

[English]

The Chair: Mr. Siksay, then Mr. Abbott, and then Mr. Scott.

• (1245)

Mr. Bill Siksay: Thank you, Chair.

I just want to indicate that I do support the resolution that's been put forward by Madame Mourani. I don't see it as addressing the specific case; I see it as addressing the policy issue.

I'd be happy if it said "the President or his representative" at this point. I think if we need to call Monsieur Lacroix later on, we could certainly do that. But I'd be prepared to hear from his designate, at least initially, to explain the policy matter, and if we do see problems with that, then perhaps call Monsieur Lacroix later on.

I think it is an important issue. I think Madame Mourani makes a very strong case for that, and I do want to support the motion. Maybe "President or his representative" could be a friendly amendment to the motion.

The Chair: Mr. Abbott.

Hon. Jim Abbott: I have a great deal of difficulty with this. I believe I sincerely understand where Ms. Mourani is coming from. But how many crown corporations are there that answer to the Minister of Canadian Heritage? Shall we call all of their presidents or designates? Shall we get involved in the personnel and policy issues of all the crown corporations, and if not, why not?

I agree completely with my colleague, Mr. Chong. This is a case that if an employee of one of the crown corporations becomes aware of malfeasance, of things that are distinctly and clearly wrong, we now have whistle-blower legislation and we have all of those things in place. But in this particular instance, again, I ask the question, if this committee was inclined to support this motion, maybe it should be amended so that we call on the president of the CBC/Radio-Canada, the National Gallery, the archives, and every other department and crown corporation that we deal with. If not, why would this committee be singularly looking at CBC/Radio-Canada?

The Chair: Mr. Scott.

Hon. Andy Scott (Fredericton, Lib.): I'm okay.

The Chair: Then Mr. Chong again.

Hon. Michael Chong: Thank you, Mr. Chair.

The other thing we also have to realize is that it's not any member of Parliament's right to contact any employee of a department, any employee of a crown corporation, and get information from that person. If members of Parliament want information from a crown corporation, they should go to the government relations group. That is the proper channel. Employees of a crown corporation are not allowed to just talk to any member of Parliament and say what they want.

Hon. Andy Scott: Yes, they are.

Hon. Michael Chong: No, they are not. They have to go through the proper channels, and the proper channels within a crown corporation are through the government relations group. If members of Parliament wish to get information about a crown corporation or about issues around the crown corporation, they are to go to the government relations group. They can't just pick up the phone, pick any employee out of the directory, and demand that this employee answer their questions. That is a violation of the rules, a violation of policy, and that employee would be reprimanded.

That's the thing we have to realize here. To suggest that it's our right individually as members of Parliament to contact any government employee, any crown corporation employee, to talk to them and demand any information we want from them is not the case. The case is if you want information from a department, if you want information from a crown corporation, you have to go through the proper channels, even if you're a member of Parliament. The same thing, I might add, goes for cabinet ministers. If you're a minister of the cabinet, and even if it's your direct department, you can't just go into the department and demand answers to this and that and everything else. You go through your deputy minister. Ministers of the crown won't pick up the phone and call some level below EX and say "I want this information now". No, they go through the proper channel. They go through their deputy minister.

It is no different for members of Parliament. If members of Parliament have a question, they go through the proper channel, and the proper channel in the case of the CBC is the government relations group or the office of the president. It's not to pick up the phone and call any employee on the staff directory and demand answers from them. That's not the way the corporation works, and to suggest otherwise is a complete misunderstanding of the rules and the way the corporation functions.

• (1250)

The Chair: Mr. Fast, and then Mr. Scott.

Mr. Ed Fast: I want to emphasize again that there is something really highly irregular about this motion. Let's not kid ourselves. This motion is here because of one particular case involving one employee at CBC. That matter is presently under review, but to ask the individual who is ultimately responsible for making that decision—whose decision now, in my understanding, is being appealed—to come forward to our committee meeting here to explain the very policy that has generated this particular disciplinary proceeding is highly inappropriate. I don't know why we're even considering this. Even bringing another lower-level management employee from CBC to explain it, given the circumstances of this particular employee, is highly inappropriate.

The safest course of action here, given the fact, like it or not, that this is being generated by a particular case...the best course of action is to delay any review of that policy until such time as that matter has been disposed of. Then we can have a comfortable discussion with the CBC representative here at this table, an open and frank discussion, rather than having to skirt around virtually every issue, especially as it relates to this particular employee.

The Chair: Mr. Scott.

Hon. Andy Scott: First, on the question of the motion, for the reasons that Bill mentioned, although my take on it is the reverse and I can't support it because I think we should wait to get a report, it is about the content that Mauril has spoken of. It's very general. It's a legitimate question. Know what the policies are and respond then, because if we take exception with those policies, then we have an obligation to do so. I think that's our role and job.

Until we know what they are, then we're only acting on a case. We don't know if that's a typical case or an atypical case. That's what the courts or somebody else is going to decide. So I think Mauril has it. I agree with Bill that we should look at it. It is serious. We should look at it as a general issue, as requested by Mauril and the staff, rather than as a specific issue as perhaps the motion goes to.

That wasn't what prompted me. I was perfectly content not to say anything until Mr. Chong....This is a public session of our committee and I couldn't leave it out there. Yes, I have a right to call federal public servants. I do it every day. I don't have any right to demand anything. I don't demand anything, but I have a right to call them, and they have a right to give me information.

Hon. Michael Chong: At their own risk. If they don't go through the right channels, they do that at their own risk. It's a violation of—

Hon. Andy Scott: I think it's important that this be placed on the public record that you're saying this. I call public servants every day and they give me information every day about programs for my constituents and so on.

Hon. Michael Chong: If you go through the proper channels, that's fine. You call up anybody in the department—

The Chair: Okay, we're in debate, Mr. Chong and Mr. Scott.

I'm going to go to Ms. Mourani.

[*Translation*]

Mrs. Maria Mourani: Thank you, Mr. Chair.

I agree that we could meet with a representative rather than the president. However, Mr. Chong seems perhaps not to be familiar with all the details of my motion. He has made a number of assumptions, but I respect his opinion.

It is important to understand this motion. It is true that a specific case gave rise to the questions, but we are not going to talk about that specific case. Mr. Abbott asked why we are not calling representatives from other crown corporations. Because there is no problem with them. For example, if we were told about management problems at CN, we would have a right to ask CN for its side of the story, or any other crown corporation. Our questions arise from a specific case; we did not pick them out of thin air. But we are not going to talk about that case.

As my colleague said, it is important for employees, or any other representative of the corporation, to be able to be in contact with us. I do not share Mr. Chong's vision of a member of Parliament's job. We talk about a number of matters in committee and it is legitimate to ask employees or officials for explanations, especially when the explanations are about matters in their mandate. That is the legal channel, as you said.

Why not ask for a report, as Mr. Bélanger suggested? If we asked Marion Ménard or anyone else to send us a report, I do not see why we could not ask a representative to come to the committee. I see no problem with asking for a report or for a representative to come and explain it to us directly, to leave out the middleman. It is appropriate to ask for a report and then afterwards to see if we want to meet with them. Why delay things? Perhaps there is no problem. I would like to hear the person involved speak to me directly. It is not the same. I have questions to ask. There is a difference between reading a report and hearing it from a person's own lips.

My position has not changed. The government talks a lot about accountability and transparency. This is the time to do something about them.

• (1255)

[English]

The Chair: We have Mr. Scarpaleggia.

[Translation]

Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.): Mr. Chair, I agree with my colleague Mr. Bélanger. We should have more information before deciding if we should go further. I would ask the research analysts to prepare a brief for us and to link it to the legislation on whistleblowing in the public service, speaking as one who has worked there.

I do not know all the details of the procedure, but may I call for the question, Mr. Chair?

[English]

The Chair: Mr. Chong.

Hon. Michael Chong: Just to clear up some of the misunderstanding here, if the committee collectively calls a witness, that witness is obliged to give testimony at committee and can answer the committee's questions. But if an individual member of Parliament, on their own initiative, contacts an employee of a department or a crown corporation and that employee does not have the authorization to speak on behalf of the department, that is a violation of the guidelines and policies that not just our government but previous governments have put in place. It's quite simple. If the employee

doesn't have authorization to speak to the member of Parliament or to the public or to the media and they do so, they do so at their own risk, and if they are caught out, they will be subject to discipline.

This is not a new policy. This has been in place for decades. It's quite simple.

It's a whole different thing when a member of Parliament contacts an employee and that employee or the group has authorization to speak on behalf of the department. In that case there is nothing wrong. But if the employee doesn't have authorization to speak, then it's a violation of the guidelines. I don't understand what the controversy is here.

The Chair: Okay. Thank you for that.

I'm going to call the question. We've had lots of debate. This wasn't going to take very long, but it has and all the debate has been noted.

The motion is:

That the Standing Committee on Canadian Heritage call the President of the CBC/Radio-Canada—

• (1300)

Mrs. Maria Mourani: Or a representative.

The Chair: Okay, so it's a friendly amendment.

or a representative to appear as soon as possible to explain the policy regarding the right of CBC/Radio-Canada employees to communicate with Members of the House of Commons and specifically with members of the Standing Committee on Canadian Heritage.

(Motion as amended negatived)

Hon. Mauril Bélanger: May I ask that we vote on the next one, too?

The Chair: Okay. Are we going to have a long debate?

Hon. Mauril Bélanger: No.

The Chair: Okay.

The motion as brought forward by Mr. Bélanger is:

That the Standing Committee on Canadian Heritage call for Mr. Marc Patrone, recently appointed full-time member of the Canadian Radio-television and Telecommunications Commission (CRTC) to appear before the Committee as soon as possible.

(Motion agreed to)

The Chair: Thank you.

With that, the meeting is adjourned.

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

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