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Chair

Ms. Jean Crowder

Standing Committee on Access to Information, Privacy and Ethics

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•(0845)

[English]

The Chair (Ms. Jean Crowder (Nanaimo—Cowichan, NDP)): Good morning, everybody. We're resuming our study on the access to information dispute and resulting court action concerning the CBC. I want to welcome Ms. Legault and Ms. McCarthy to this meeting.

Ms. Legault, you will have 10 minutes to present. Then we'll take questions. I know you're all experienced committee members by now, but I want to remind you that the time for your questioning includes the time for the response from the commissioner.

I'll turn it over to you, Ms. Legault.

Ms. Suzanne Legault (Information Commissioner, Office of the Information Commissioner of Canada): Thank you, Madam Chair.

My remarks this morning will be brief, if a little bit out of breath.

I will address three issues. First, I will review the origin and the current status of the ongoing court case involving the CBC and the Information Commissioner. Second, I will review the corporation's performance under the Access to Information Act. Third, I will review the situation in other jurisdictions as it relates to their public broadcasters and suggest possible changes to our own act, if the committee should choose to review the current legislative text as part of its deliberations.

[Translation]

First, let me introduce Ms. McCarthy, our new general counsel. She is currently acting as Assistant Commissioner, Complaints Resolution and Compliance.

[English]

The origin of the dispute between my office and the corporation dates back to 2009. My office was then investigating complaints regarding CBC's refusal to disclose records based on section 68.1 of the act. Section 68.1 provides an exclusion from the act for information relating to CBC's creative programming or journalistic activities. However, there is an exception to this exclusion for information relating to the general administration of the corporation.

In the course of our investigations we asked the CBC to provide us with information that had been withheld, so that we could assess whether its decision on disclosure was justified or whether the withheld information fell within the exception to the exclusion. The CBC refused to provide the relevant information, so my office issued a production order to the CBC in relation to certain complaints. That

same day, the corporation initiated a judicial review application under section 18 of the Federal Courts Act, challenging my office's authority to obtain records they claimed were excluded under section 68.1.

The Federal Court dismissed the CBC's application for judicial review, and the CBC appealed that decision. The Federal Court of Appeal heard the appeal on October 18, 2011, and has taken the matter under reserve, which limits my ability to comment much further on the case.

[Translation]

Given the ongoing court process, my office has, up to now, suspended the investigation of 196 refusal complaints in which CBC has relied on section 68.1.

Some of these complaints date back to 2007. Given the age of some of the complaints, I raised a concern with this committee, in March 2009, that the failure to retrieve responsive records could have a negative impact on Canadians' right to access information.

[English]

I can report that since our last appearance on this matter, the CBC assured my office that it has started retrieving the records responsive to the complaints that have been put on hold, but it is still not confirmed that the CBC has identified and retrieved the responsive records in all cases.

[Translation]

Madam Chair, this morning, I submitted to the committee a brief statistical overview of the CBC's performance since it became subject to the act.

In sum, I can safely say that the CBC's performance has improved since it became subject to the act in 2007, but I still have serious concerns. Let me explain.

•(0850)

[English]

Since it became subject to the act, the CBC has received about 1,400 requests for information. Of those, close to 1,100 have resulted in complaints to my office. However, as you can see from the document I handed out this morning, the number of complaints relative to the number of requests has been declining steadily year over year. Last year, a special report highlighted that the CBC took an average of 158 days to process access to information requests and had a deemed refusal rate of close to 60%.

Although we have not verified this information yet, the CBC is reporting significant improvements on these numbers in its most recent annual report to Parliament, claiming 57 days on average to respond to requests, and a deemed refusal rate of 22% in the last fiscal year. If one goes on the CBC's website, one will see that they also claim an improved performance for this fiscal year, which is not completed.

Notwithstanding this progress in performance, I still have serious concerns. In addition to the cases currently on hold pending the outcome of the litigation, my office still has around 180 ongoing investigations with the CBC. It is my observation at this time that the current level of resourcing in CBC's access to information office is not sufficient to address the investigation of these complaints with my staff. If there is no change to the current resource levels, the situation will likely be aggravated once the investigations into the 196 on-hold complaints begin.

I'm also very concerned with the guidelines for the interpretation of section 68.1 recently published by the CBC. The guidelines state that an access to information request may be refused on its face by the person with the delegated authority if this person concludes that the requested information is excluded from the application of the act by virtue of section 68.1 on the sole basis of the wording of the actual access to information request. In my view, individuals with delegated authority to make decisions as to whether or not information falls within the exclusion found in section 68.1 must review the responsive records to make a valid decision under the act, including appropriate severances, as required under the act, to maximize disclosure.

[Translation]

It is therefore encouraging that the most recent statistics indicate that the CBC's performance is gradually improving. However, if the reason for improved response time to requests is that the CBC is not receiving and processing records in accordance with the act, as the recently published guidelines suggest, then the decrease in response time may not reflect an improvement in performance.

That said, my office has not yet had the opportunity to discuss the guidelines with CBC officials. I plan to do so shortly. Actually, it was while preparing my presentation for the committee that I learned about those guidelines, which are obviously a major source of concern for me. We will also follow up on the performance of the CBC in the next fiscal year, as part of our report cards process.

[English]

I've also tabled with the committee a review of the freedom of information laws in Australia, Ireland, and the United Kingdom as they relate to the coverage of public broadcasters. I've also included in that document suggestions for change, should the committee be interested in looking at our own act.

In a nutshell, the situation in the jurisdictions reviewed is that public broadcasters are subject to the freedom of information legislation; programming and journalistic records are covered by way of exclusions to their respective legislation; the oversight bodies have the power to review the records to determine the application of the exclusion; and they can order disclosure. In the U.K., the ability

of the information commissioner to actually review the records was pursuant to a court decision as well.

I've also included possible changes to our own act, because as Information Commissioner—and as previous information commissioners have also advocated—I believe that exceptions to the application of the act should be limited and specific, and such exceptions should be injury-based. The wording of exceptions should be clear and objective, which is consistent with the existing provisions of the act.

Injury-based exemptions require that the public institution establish a reasonable expectation of harm, and support that claim with specific evidence. A discretionary exemption ensures that the public interest in obtaining access to the requested information will be considered by the head of a public institution, even where the information otherwise qualifies for exemption.

• (0855)

[Translation]

Madam Chair, I believe these suggested changes would be consistent with the purposes underlying the Access to Information Act and would protect the CBC's journalistic and programming independence.

I thank you for the privilege of appearing before the committee. I would be pleased to respond to your questions.

[English]

The Chair: Thank you very much, Ms. Legault.

Before we turn to the first round of questioning, I would like to thank Ms. Davidson for filling in for me last week, and I want to turn to the clerk for an update on the presentation the Canadian Taxpayers Federation made to the committee.

The Clerk of the Committee (Mr. Chad Mariage): Thank you, Madam Chair.

In response to the request made by Mr. Andrews, Mr. Thomas has submitted his six requests of the CBC to me—they're pretty lengthy—in addition to the responses he received from the Information Commissioner, and all documentation pertaining to those requests. It's in translation and I will endeavour to get it to members as soon as possible.

The Chair: Great. Thank you.

Now for the round of questioning, we'll begin with Mr. Angus for seven minutes.

Mr. Angus.

Mr. Charlie Angus (Timmins—James Bay, NDP): Thank you.

It's excellent to have you come back again, Madam Commissioner, to our committee. Of course, you know we all have great respect for your work, and you've been very instructive in terms of what you think should be covered under information and how it should be covered.

I'd like to ask you a few questions, because as we try to work our way through the questions of exclusions for CBC, we're also in the midst of what the media has called a dirty war between CBC and its number one competitor, Quebecor. It's been rather difficult to find out if what we're dealing with is in the public interest here or actually an attempt to undermine the legitimacy of a public broadcaster in Canada.

I'm looking at the complaints from 2007-08 up to 2011-12. I understand that over 80% of the complaints came from one source. Is that correct?

Ms. Suzanne Legault: It varies from year to year.

I compiled the statistics, actually, before this morning's committee meeting, and overall, for the CBC over the five years, most of the complaints, 83%, came from business, and that represented six complainants. In 2008-09...I don't really have the data for 2007-08 because we were capturing statistics differently, but certainly that year CBC did receive a very high number of requests in a short period of time. But in 2008-09, 90% of the requests to the CBC came from business as a category, and that was 90% of the total amount of complaints. The only year that's an outlier is 2009-10, and that's because I initiated a few myself that year against the CBC, so that changed the actual percentage.

Mr. Charlie Angus: You said 90% came from business—

Ms. Suzanne Legault: In 2008-09.

Mr. Charlie Angus: I'm looking at one year, September 2007 to March 2008; there were 485 requests, 88.7%. Do you have a breakdown of how many businesses, or was the vast majority from one business?

Ms. Suzanne Legault: It would be very, very high. We're not supposed to disclose the identity of the requesters, nor of the complainants. There are very strict confidentiality provisions. I can say that in that first year, certainly, it was 90% that came from one or two complainants, who were from business.

Mr. Charlie Angus: Okay, I see.

I think that's important, because again, we're trying to establish whether CBC is being accountable to the taxpayer or if CBC is being undermined in a campaign by their number one competitor. Our information shows that over 80% came from Quebecor. Mr. Péladeau has made no secret of his deep opposition, and uses his newspapers across the country to demand that CBC be put out of business.

I only want to have a context for that, because I'm also interested in the issue of the exclusion. I'm looking at the 2006 Information Commissioner's report on the exclusion, and it's interesting that the government took a very different line than they're taking now. In the response to the government's action plan for the reform of Access to Information Act, on page 6:

It is the position of the government of Canada that the Information Commissioner may not examine information which the government claims to fall within an exclusion.

Is that still the government's position as far as you know?

• (0900)

Ms. Suzanne Legault: I don't know the government's position in this respect, Madam Chair. Obviously, our position is the position we

have before the court, that we still have the right of oversight and therefore the right to subpoena records so that we can determine whether or not the records fall within the exclusion or within the exception.

What the government's position is, I really don't know.

Mr. Charlie Angus: Okay.

This is their position in 2006. They are categorical that the Information Commissioner may not examine records that fall within an exclusion. On June 19, 2006, at this very committee, Vic Toews, who was then President of the Treasury Board, said:

I was somewhat surprised when I found out that the implications of the Information Commissioner's recommendation would be that CBC journalists... would have to disclose their sources and that it would be the Information Commissioner who would then determine whether or not those sources should remain confidential. I found that, quite frankly, shocking.

It seems that our colleagues on the other side have twisted themselves upside down, because I think Minister Toews' position is a reasonable one in terms of an exclusion. The CBC should have some level of protection of its sources to maintain its integrity as a news unit and as a competitor in a mostly privatized landscape.

Would you agree with Vic Toews that the CBC should be able to have exclusions to protect its journalistic integrity?

Ms. Suzanne Legault: What I do believe in terms of access to information is that the act provides for adequate protection. I also review informants' names and locations in very confidential national security matters, top secret matters. The office is there as an oversight body. The documents are reviewed in a very secure manner, and decisions made within my office lead to recommendations to the entity. They still have the opportunity, if they disagree with my recommendations, to present their case to the court. That's the way our system works.

I think it is a fundamental tenet of freedom of information and of that right, nationally and internationally, that there be the right of independent oversight. In fact, I advocate all the time that I should have oversight over cabinet confidences as well, for the same reasons.

Mr. Charlie Angus: That's what I want to go to now. Again, I'm just trying to clarify the position here, because Vic Toews called for an exclusion for the CBC to protect journalistic sources.

Yet we see that the government has called an exclusion for anything that has to do with covering the rear ends of any of their ministers and any of their departments, and they went as far up the court chain as they could.

On the implications of allowing government to exclude documents based on ministerial privilege, what effect do you think that has on our ability to actually create an accountable system for the public?

Ms. Suzanne Legault: As I said, I think there should be, as a matter of principle, broad coverage. I think ministers' offices should be covered. I think anywhere public funds are essentially being administered and spent should be covered by access to information legislation.

I think that in most instances, if not all, the exemptions should be discretionary, which allows for a harms test and a public interest analysis. I think that provides adequate protection for the most confidential of information.

What it does is allow for independent oversight. It also allows for a case-by-case analysis, which takes into account the public interest, and that is consistent with modern principles of access to information internationally.

The Chair: Thank you, Mr. Angus. Your time is up.

We'll go to Mr. Del Mastro for seven minutes.

Mr. Dean Del Mastro (Peterborough, CPC): Thank you very much, Madam Chair.

I want to go back to something you said off the top, Madame Legault. You said that originally the court action was initiated by CBC. Is that correct?

Ms. Suzanne Legault: That's correct.

Mr. Dean Del Mastro: In that court action, just so the committee has a proper backdrop, what you were actually seeking was to have oversight of the documents so that you could determine whether section 68.1 applied or not. Is that correct?

• (0905)

Ms. Suzanne Legault: That's correct. Essentially, we sent a request for the documents, a subpoena for records, so that we could get all the records, all these complaints that are subject to the production order.

Then we review all the records and determine whether we agree with the institution, in this case the CBC, on their application of everything under the act that's exempted or excluded. That's the way we do our work.

Then we seek their representation. The onus is on the institution, by the way, to make the case as to why the exemption or the exclusion should apply in the case. Then we make recommendations. We usually agree. I mean, 99.9% of the time we reach an agreement with the institution. We have only four cases in court, and last year we closed 2,100 cases.

Mr. Dean Del Mastro: I'm going to play devil's advocate with you for a minute, so bear with me. In case anybody's ever going to quote me on this, I'll be sure that I said I'm playing devil's advocate with you.

You're not in the broadcast business. You don't know anything about broadcasting. How would you know if any of these three exemptions apply or not? As the CBC, we don't trust you to be able to determine if 68.1 applies or not. Therefore, what we have determined, and what we're going to make clear in the guidelines, is that we might just deny applications on their face, because we are the broadcaster. We know what applies. We think 68.1 is clear in what applies or not. Therefore, we're prepared to go to court. In fact, we're prepared to go to court until we get the court decision we like, not just any court decision. We're going to go to court until we get a decision we like.

That I think is largely the CBC's case in saying that you're not qualified to determine if 68.1 applies. Your office is not qualified

because you don't understand broadcasting. Do you feel that your office is qualified to make determinations under 68.1?

Ms. Suzanne Legault: I'm also not a former general who worked in Afghanistan. I'm also not somebody who worked in a crown corporation. I'm not a trade lawyer or a patent lawyer, and yet my office has been trusted since 1983 to make decisions about these cases. Luckily, I'm not the only person in the office, and I rely heavily on people like Ms. McCarthy. We also hire experts as required.

There is no question that these new provisions are breaking new ground. We're going to have to determine what the scope of these words mean. Creative material is a pretty broad concept, as is some of the wording surrounding it. But these concepts are in the Broadcasting Act. I don't have the power to order disclosure. I can only make recommendations. The institution still has the option to disagree, and if they disagree and refuse disclosure, we can then determine the matter in court.

I've said from the beginning, and it was in my special report last year, that these new provisions will lead to litigation. That is a given. This first case is about a procedural matter. It's not even a substantive case so far.

Mr. Dean Del Mastro: You've made the case for changes to section 68.1 or suggested that we might want to look at that. Konrad von Finckenstein had similar comments. Justice Boivin, in his verdict, had similar comments.

If we were to look at a rewrite of section 68.1, whereby we were to make sure that journalistic sources are protected, and we understand what that means—and the Supreme Court has been clear on this—but eliminated the balance of the protections, do the court cases continue or do they end?

Ms. Suzanne Legault: I think there will be court cases on these provisions. That has been the experience in the U.K. The language that I proposed in the handout I gave you is an injury-based, discretionary exemption. I've kept to the language of the Broadcasting Act, so that we mirror what exists. The difference between what we have in the current legislation under 68.1 versus the Broadcasting Act is that the Broadcasting Act deals with creative programming and journalistic independence, whereas our act deals with any activities related to these three concepts. That's a lot more broad in concept, it seems to me, than what the Broadcasting Act states and what these provisions should be capturing. We should be dealing with protecting the journalistic independence of the CBC.

• (0910)

Mr. Dean Del Mastro: Which is why CBC is essentially making the argument that 68.1 applies to everything, and that they will seek to define it in the courts since it's not defined in the act.

Ms. Suzanne Legault: Most of the time in our cases, we reach an agreement with the institution. As part of our interactions with the institutions, we listen to their representations. They make representations in writing. A lot of them are well educated and well informed. We listen to their recommendations, and most of the time we come to an agreement. I don't expect that it would be anything significantly different with the CBC as we move forward with the interpretation of the words in that section. At this time, pending the court case, we're just not seeing any of the documents. We haven't even started this discussion with the CBC at all. We can't.

Mr. Dean Del Mastro: The Taxpayers Federation said that since they don't have answers, they're not asking any more questions. Is that why you have concerns about why they're showing some improvement?

Ms. Suzanne Legault: No. They are getting fewer requests and complaints. One thing's for sure: they used to get a lot of requests because they weren't responding on time or because they were charging a lot of fees. Those administrative complaints seem to have abated significantly, and that's great because now they can deal with their actual substance. This is the message I give to all institutions, by the way, and these admin complaints are coming down system-wide because of that.

This is what concerns me: they seem to get a request, and on the mere wording of the request, they make a decision on the application of 68.1—without retrieving the records, without going through the relevant pages of the records, and without using this evidence to decide what is disclosable as an exception, under general administration, to the exclusion provision in the act. They seem, based on these guidelines, not to be doing that work. I'm concerned about that, especially in the context of not having any decision on 68.1, on the substance of this so far. They're making those decisions. The other thing—

The Chair: Could you please wrap up, Ms. Legault? We're well over time.

Ms. Suzanne Legault: I'm sorry.

The Chair: Thank you.

Mr. Andrews, go ahead for seven minutes.

Mr. Scott Andrews (Avalon, Lib.): Thank you.

Welcome again, Commissioner. It's a pleasure to see you.

Just to carry on regarding the rewrite of section 68.1 and your suggestion to change it to an injury-based exemption, is that the only rewrite you see required in section 68.1? Do you think rewriting it this way will help solve this problem? Just explain it a little bit. I know you've attached some background from some other countries as well. Could you just explain that a little further?

Ms. Suzanne Legault: The other countries I've mentioned all have exclusions. That's why I think, when the Federal Accountability Act came into effect, section 68.1 was drafted as an exclusion. I don't know. In French, I wasn't

[Translation]

dans le secret des dieux, or in the know, as they say.

[English]

I wasn't behind the scenes with the government when this was drafted, but it seems as though it followed an international model. Although I like the international models most of the time, in this case, I don't see the necessity for an exclusionary provision. I think an injury-based exemption would be sufficient. It actually allows the institution to say, "Well, this information is covered by this exemption, and if it is disclosed it will lead to the following harm, i.e., it will lead to the disclosure of journalistic sources that must be protected." But it also allows for, in some instances, a public interest analysis, which says, "Well, yes, there is a harm, but is the public interest in disclosure greater than the harm?" That's the analysis you go through when you have an injury-based discretionary exemption. That's what I think would be appropriate in this case. But internationally I would be the outlier, certainly, in terms of the models that exist right now.

• (0915)

Mr. Scott Andrews: So that would be the only change to that?

Ms. Suzanne Legault: It's a pretty significant change.

Mr. Scott Andrews: Okay.

We talked a little earlier about the number of requests the CBC has gotten and their failing report card grade. Is it fair to say that if someone put in 100 requests on one particular day, that would automatically give them a failing grade?

Ms. Suzanne Legault: It depends how they would treat them. Citizenship and Immigration Canada receives something like 14,000 requests every year. They have a great report card. They do very well in the treatment of their requests. But most institutions, if they unexpectedly receive 100, 200, or 300 requests in one day, will not be able to absorb them, so there will be administrative complaints. They will be out of time. They will be outside of the delay prescribed in the legislation. That leads to complaints, and that really tends to bog down the institution. That is what happened to the CBC in the first year. And then they had all the complaints from my office. It also bogged down my office that first year, in 2007-08, for sure. So that's the result of that.

CBC is not the only institution that has a high number of requests by some requesters. The Canada Revenue Agency and other agencies seem to be targeted sometimes. "Targeted" is the wrong word, but they seem to have frequent requesters who specialize in certain departments. The Privy Council Office will have a couple of requesters. It's the same for Canada Revenue Agency and National Defence. Some journalists, for instance, specialize in certain areas, and they make their requests with certain departments. So the situation at CBC is not unusual. It does happen to other institutions for sure.

Mr. Scott Andrews: Okay.

When you look at all the other institutions—and I know you're familiar with them—CBC does some proactive disclosure on its website, so that any requests it fulfills automatically get put up on their particular website. That's not common amongst all departments, is it?

Ms. Suzanne Legault: Following our recommendations to Treasury Board Secretariat a couple of years ago, in the CAIRS investigation, by December, I believe, it's going to be mandatory for all institutions to post all access to information requests. It's part of the government's open government platform. A few institutions do it now, and many more will be doing it by the end of this fiscal year.

Mr. Scott Andrews: By the end of this year, all government departments will have to—

Ms. Suzanne Legault: They're supposed to.

Mr. Scott Andrews: Okay.

I've gone to the CBC one and I found learning about the different requests quite interesting. You don't know who the requester is, but you see the information.

Ms. Suzanne Legault: Yes, I went on that last night too. I wasn't sure whether all the requests were posted.

They seem to post certainly the documents of the requests that they deem will be of public interest. I'm not sure they have a full access request log, which is what's going to be required by institutions.

Mr. Scott Andrews: Who will be monitoring that format by the end of this year? Will that be your office?

Ms. Suzanne Legault: No. Normally, I guess, because it's something the Treasury Board Secretariat is putting forward now, they would be looking at how that is being implemented throughout the institutions.

Mr. Scott Andrews: And in your opinion that's a good thing.

Ms. Suzanne Legault: It follows our recommendation.

Mr. Scott Andrews: Good.

Ms. Suzanne Legault: We wanted that to be done. I think it is a great idea. It does reduce, I think, the number of requests.

We've been doing it in our office for over a year, 15 months or something like that. Requesters can just go on that and say they want the documents in relation to this request, and we just send them out. It's great.

Mr. Scott Andrews: How often has that happened where a department gets the same request?

Ms. Suzanne Legault: I don't have any statistics on that.

Mr. Scott Andrews: You don't know? Okay.

Thank you.

The Chair: Great, thanks.

We'll go to Mr. Calkins for seven minutes.

Mr. Blaine Calkins (Wetaskiwin, CPC): Thank you, Madam Chair. Welcome back.

Ms. Legault, it's good to see you again today.

I'm just going to follow up on a previous line of questioning from my colleague Mr. Del Mastro.

One of your comments that caught me a little bit off guard and got my mind thinking was your comment in regard to the.... It appears that the folks working in the access to information office at CBC seem to be making a decision on section 68.1 based on the nature of the question rather than actually retrieving the information and applying the lens of section 68.1 on the information, redacting that information, which they might feel should be protected under section 68.1, and then releasing the rest of the information to the requester.

Is that your perception or interpretation, or do you actually know that this is exactly what's happening?

• (0920)

Ms. Suzanne Legault: As I said in my opening remarks, I looked at this on their website as I was preparing for this committee appearance. I looked at their guidelines, which are very recently published. I wasn't aware of those, and I will follow up.

This is something the committee might want to follow up on when CBC comes here. I will definitely follow up on it.

I'm extremely concerned. If it is exactly how I read it and how I understand it, I will definitely have to pursue it with the head of CBC and make a recommendation, on the face of this, that they immediately discontinue this practice.

The other thing I'm concerned about, if that is the practice, is that if there is a complaint subsequent to that, there is a 60-day timeline to make a complaint to my office. If the records were not retrieved in the first place, that creates more delays once the complaint comes to my office.

As well, I don't know what their retention and disposition authority is in terms of their records. What about electronic records? If a request comes in on the first of the month and basically no documents are retrieved, and they say to the requester that it's all excluded under section 68.1, and I get a complaint to my office 60 days later, how many records...? Electronic records, BlackBerry messages—they may be transitory records, but at the time of the request, there's an obligation to preserve those records.

So I'm really concerned about this practice. I will definitely follow it up with the head of CBC. I think it's mistaken and misguided, if they're doing that.

Mr. Blaine Calkins: It actually sounds quite concerning and quite alarming. What seems to be the case, I would guess, is that not only would they just.... We've heard from previous witnesses who've said here that there's a lot of hybrid information on some of these documents, and hybrid documents where some of the information might be section 68.1 and some of it might not be.

If the organization doesn't actually retrieve the records to look at the records, and makes the case based on just the simple question of the access question that is being asked, do you think they're simply considering the source, as in who's asking the question, and making the determination that way?

Ms. Suzanne Legault: I frankly don't know.

I'm going to read to you from their document, "Guidelines for the Interpretation of Section 68.1 of the Access to Information Act". I believe it was published just last month. I'll read this part verbatim:

Procedure applicable to CBC/Radio-Canada's Access to Information Office

2. When, after reading an access to information request the person mentioned in the preceding paragraph

—the person with the delegated authority—

concludes that the requested information is excluded from application of the Act in its entirety by virtue of section 68.1, the information does not have to be provided to the Access to Information Office. Thus, an access to information request may be refused on its face.

That's the text in these guidelines.

So I'm very concerned about this.

Mr. Blaine Calkins: What precedents have been set in the courts that would make this policy not stand up? Does CBC have a case to even present this as a viable, bona fide policy?

Ms. Suzanne Legault: Last year I had a similar case with the Privy Council Office and I also asked them to discontinue this practice. It's reported in the annual report. They were following a similar kind of practice whereby the access to information coordinator—who by the way does not have the delegated authority—would say in the face of a request that these records are probably all cabinet confidences so they weren't going to retrieve them. We strongly objected to that with the Privy Council Office, and they changed their practice at that time.

That's why I'm saying I haven't had a chance to discuss this with CBC. They're not aware of the concerns I'm expressing this morning before the committee because I looked at this in preparation for these committee hearings and it is very recent.

Mr. Blaine Calkins: In the past I made a comment to the effect that a lot of taxpayers' dollars are at stake here. Taxpayers' dollars going to the state-funded state broadcaster, taxpayers' dollars for your office, tax dollars to pay judges and to build courthouses, and so on, and a lot of money is being spent here to work this out.

The more problems you have with these refusals by CBC—and these complaints must increase the costs your office has to bear. This litigious process must be quite expensive for the CBC. What's the cost to your office through this litigious process? If those costs are so high, it would only lead one to conclude that CBC must be hiding something incredibly damaging.

● (0925)

Ms. Suzanne Legault: I'm not going to make any comment about what CBC is hiding or not.

As I said, we now have 375 cases. I have 196 on hold and I have 179 that I still have to investigate. That's the situation out of a total inventory of about 2,000. That's a rough estimate; I don't have the latest number. That gives you a sense of how important a caseload that is, both in my office and in their office for sure because those have to be treated.

In terms of legal costs, I'm always very proud to say that I think the OIC is a very lean machine, but we did outsource legal costs the first two years of the litigation. So one year was \$19,000 and the other year was \$12,000. We are lucky that a lot of very high-level lawyers in the private sector will work with our office at a very low

cost. Now we have inside counsel. I've increased the number of lawyers in my office and I'm changing the way we're doing business a little. So this year the litigation has cost \$628 so far, aside from the salary of a lawyer, but that lawyer works on other cases in the office. That's my cost. I don't know what the CBC costs are.

Mr. Blaine Calkins: Okay.

The Chair: Your time is up.

Mr. Blaine Calkins: Thank you, Madam Chair.

The Chair: Before we start the next round, the clerk will send around to committee members any of the guideline documents the commissioner referenced.

We now start our five-minute round, and we'll start with Monsieur Dusseault.

[*Translation*]

Mr. Pierre-Luc Dusseault (Sherbrooke, NDP): Thank you, Madam Chair.

I would first like to welcome Ms. Legault.

I am happy to have you with us once again. Actually, a number of things have happened since you last came to see us. A few weeks ago, I was also at an event you organized that was attended by information commissioners from around the world. I think that one of the documents you submitted talks about some of the subjects discussed at that event.

I would like to go over the information commissioner's power at greater length. I saw that other information commissioners seemed to have a lot more power when it came to ministerial departments and crown corporations.

Do you think the committee should consider broadening the commissioner's mandate to include access to certain departmental records? I saw that this was already the case in a number of countries.

Ms. Suzanne Legault: As I said when the Supreme Court of Canada rendered its decision, I think that the act should indeed apply to ministers' offices in terms of departmental administration. There is now a significant amount of proactive disclosure regarding certain departmental spending. I feel that Canadians should be able to obtain documents underlying those proactive disclosures.

Yes, I believe that political institutions should be covered by the act, as long as we're talking about their general administration, and ministerial and departmental functions, and not their political functions.

Mr. Pierre-Luc Dusseault: I did not take my discussion with the foreign commissioners any further. However, I assume that crown corporations operating in a competitive market, such as the CBC or VIA Rail, are subject to certain exclusions that protect them from private competitors—whoever they may be—and from a disadvantageous position. Do you agree that this is key for crown corporations?

Ms. Suzanne Legault: I personally don't feel that exclusions are necessary. I feel that discretionary exemptions suffice.

As I mentioned in last year's special report, once we look into how institutions newly covered by the act are performing, we see that crown corporations make frequent use of their exclusions. You need only compare general statistics regarding the CBC with those regarding the government. Cases where the CBC disclosed no information to requesters under the exclusion account for 20% of all requests, which is very high. By comparison, the same cases represent about 2% to 3% of requests made across government. It seems that a dynamic is emerging where the exclusion leads to a low rate of disclosure to requesters.

In my opinion, that is not an optimal situation. That is why I suggested these changes. Of course, the specific provisions that apply to journalistic sources are completely appropriate. There are no concerns when it comes to that. However, I think that the problem has to do with where exactly those provisions fit in the act.

● (0930)

Mr. Pierre-Luc Dusseault: As you say, journalistic sources are among the major issues. In fact, we know that some journalists will even go to great lengths to protect those highly confidential sources. I assume that you will take that into account, should the act be amended. You should ensure that critical pieces of information are available, while enabling journalists to do their job properly and be protected by the information commissioner.

Ms. Suzanne Legault: Exactly. We will do so, just as we do in the case of national security or police investigations where informants' identity must be protected, for instance. That information is very well protected under the act. Commercial activities are also protected when appropriate.

The exemptions in the act are nevertheless well structured. They work very well. There is a nice balance between disclosure and the necessary protection of certain information. The same has always been the case and will continue being the case for journalistic sources.

[English]

The Chair: Thank you.

We'll now go to Ms. Davidson.

I understand you're splitting your time with Mr. Carmichael.

Mrs. Patricia Davidson (Sarnia—Lambton, CPC): Yes. Thank you, Madam Chair.

It's nice to see you again, Commissioners. Welcome back to the committee.

I have a quick question. We've had some discussion over past meetings about the makeup of the requests that have come in for access to information. I note in the 2007-08 year it was business, 88%, and media, 6%. The next year it was business, 43%, and media, 25%. Then in 2009-10 it was business, 43%, and media, 25%.

I don't understand what the definition is of business and media and how that applies to the journalistic protection of 68.1. What does Quebecor fall under? Are they media or business?

Ms. Suzanne Legault: That's a good question.

The identity of the requester is not to be disclosed, so these categories are somewhat imprecise because of the way people will couch themselves. These are statistics collected by the government writ large for all of the institutions. I think you'd have to ask the Treasury Board Secretariat how they define those categories. It is one of the areas where I think the information is quite imprecise.

Mrs. Patricia Davidson: So you don't make that definition?

Ms. Suzanne Legault: We categorize them in our office when the complaints come in, but they are imprecise. For instance, a journalist could make a request without disclosing that they're from the news media, so we would probably qualify that as an individual or a member of the public because we wouldn't know. Or you could have somebody who is an academic but doesn't report that, so we would count them as a member of the public. A company may make a request or a complaint via a law firm, for instance, and we would consider that a business.

It's very imprecise the way it's done. We do it on the basis of the information we have when we receive the complaint, and I think it's the same in the institution.

Mrs. Patricia Davidson: So the requirement to be open and to disclose is not on the requester; they could be anybody.

Ms. Suzanne Legault: Of course, yes.

Mrs. Patricia Davidson: They don't need to identify who they are requesting for.

Ms. Suzanne Legault: No. That is part of the anonymity of the process, if you wish, or the confidentiality, so the institution that receives the request does not become subjective in the way it responds to the request.

Mrs. Patricia Davidson: So you categorize on the basis of what the request is, then.

Ms. Suzanne Legault: No. You could have somebody who self-identifies as a journalist, for instance, or media or an academic. But some people don't self-identify, and in fact some people use proxies because they don't want to be identified; they would be identified by the information that's there. If there is nothing other than a name and an address, it would be qualified as public.

Mrs. Patricia Davidson: Thank you.

● (0935)

The Chair: You have a minute and a half, Mr. Carmichael.

Mr. John Carmichael (Don Valley West, CPC): Thank you, Madam Chair.

Commissioner Legault, I obviously have to be very quick.

We had Monsieur Péladeau here the other day as a witness, as you know, and he said that his companies have never made an access request or demand about journalistic activities. My understanding would be that that means journalistic sources and journalistic integrity are protected.

From the access review that you've completed to this point—those that have been done—can you confirm or refute those comments?

Ms. Suzanne Legault: As I said, anywhere a claim has been made that journalistic sources are involved, I have not seen any of those documents, so—

Mr. John Carmichael: Well, to this point in time—

Ms. Suzanne Legault: —none of these cases has been treated.

Mr. John Carmichael: My understanding is that the bulk of the requests are money requests: where is the money going? In other words, we have a public corporation or a crown corporation with public funding and the taxpayer dollars to fund it are going into a deep black hole. It has been suggested by previous witnesses that there are fiefdoms and empires within the organization over which senior management have no control.

My concern, and I would like to get your comments—

The Chair: Mr. Carmichael, your time is up. You can continue this in the next Conservative spot. So very briefly, and I'll allow Ms. Legault a brief response.

Mr. John Carmichael: If they have nothing to hide, why the delays?

Ms. Suzanne Legault: I really can't comment on that. The bottom line, from my perspective, is that I have 196 cases that have not been looked at; they are on hold because they are claiming journalistic creative programming on those or part of those. And I have about 175 that deal with a whole bunch of exceptions and exemptions, and we're going to have to treat them.

The Chair: Thank you, Ms. Legault.

Madam Brosseau.

[*Translation*]

Ms. Ruth Ellen Brosseau (Berthier—Maskinongé, NDP): Thank you, Madam Chair.

Thank you, Ms. Legault and Ms. McCarthy, for taking the time to meet with us once more. It's a pleasure to see you again.

I just want to ask you how much time you set aside for cases involving institutions before the court. Do they take up a lot of your time?

Ms. Suzanne Legault: They actually take up very little time. Cases are brought before the court very infrequently. As I was saying earlier, at this time, our office has four cases before the court, including the CBC's case. We did have a case involving Canada Post. We now have an agreement with that corporation. There are a few more steps the court must deal with, but the case will be closed over the next few weeks. We have a case involving the Department of Justice and another involving the Royal Canadian Mounted Police.

We have a few cases where we are taking action in terms of certain matters, but where other parties are also involved. We have a case in

Newfoundland and Labrador against Hibernia and another one in British Columbia related to fisheries. There is also a lawsuit against us, a writ of mandamus.

So, we have seven cases before the court. Last year, we processed 2,100 cases, so that gives you an idea of the percentage of cases that make it to court. Those cases are very few.

Ms. Ruth Ellen Brosseau: The CBC received an F grade, unlike some others. After receiving that grade, the CBC took other steps to improve its services. How does the CBC/Radio-Canada compare with other organizations?

Ms. Suzanne Legault: Those people received the F grade two years ago, but things have improved since.

When we established the report cards, we looked at the performance of certain institutions that became subject to the act after the Federal Accountability Act was passed. Canada Post's performance was very poor. Its problems were different, but its performance was nevertheless very poor. The case of those two crown corporations was not very good compared with VIA Rail's case, among others. Ms. McCarthy and I actually met with VIA Rail representatives last week. The performance of that organization, which is also a crown corporation, was very good. Some specific provisions apply to VIA Rail. Its cooperation has been very good. It operates very well.

Atomic Energy of Canada Limited is also covered by an exclusion. However, it allowed us to check the documents. We have very few records on that agency, which is very efficient. Its access to information service works very well.

The two organizations that are still problematic are Canada Post and the CBC. However, they both appear to have made some progress.

• (0940)

Ms. Ruth Ellen Brosseau: The CBC has brought a lawsuit against you. Regarding section 68.1, there is really a grey area when it comes to rules on journalism and programming.

Do you think that section 68.1 should be studied and amended?

Ms. Suzanne Legault: I suggested some changes today. In reality, terms such as “journalism”, “creation” and “programming” originate in the Broadcasting Act. It is probably a good idea to keep those terms. My suggestion is to really change the system, that is, to go from an exclusion to an exemption. That would still ensure the necessary protection, but it would really make it possible to conduct a review, an analysis in terms of injury and public interest. Under the circumstances, that seems more appropriate to me.

In addition, even the Supreme Court conducted an analysis regarding public interest in the case of disclosure of journalistic sources. That is not unrelated to the matter of journalistic sources. It is part of some decisions of the Supreme Court of Canada.

[*English*]

Ms. Ruth Ellen Brosseau: Just one more question.

When the CBC receives a request, do they know where the request comes from? Will they know that a company is requesting that information or a person is requesting that information? Do they know the source?

Ms. Suzanne Legault: The person has to identify themselves to the extent that they qualify as a requester under the legislation. So they need to establish that they are actually a resident of Canada. Aside from that, they need to have somewhere where the information can be sent to them. Some requesters, as I said before, deliberately do not identify themselves, or use a proxy or somebody else to make a request on their behalf. That's quite normal.

The Chair: Your time is up, Ms. Brosseau.

The final question will go to Mr. Dreeshen, for five minutes.

Mr. Earl Dreeshen (Red Deer, CPC): Thank you very much, Madam Chair.

It's good to see you again, Madame Legault.

I want to go through just a couple of things. They talked about the wording of the actual requests. I'm wondering if you have any examples, if they've given you any examples, of the type of wording that would mean they would not further investigate some of the requests.

Ms. Suzanne Legault: I guess the easiest thing to do would be to look at the requests that were the subject of the court case. I think there are 16 of them.

Do I have them here with me? Yes, I have some of them here. Some of them are in French and some of them are in English.

One of the requests where 68.1 was applied and that is subject to the court case—"statutory fees paid by CBC for the submission of ATI requests. Provide a copy of records indicating the amount of fees paid pursuant to the Federal Access to Information Statute during fiscal year 2007–2008." Section 68.1 was applied to that.

There is a list—"Audits of the Olympics coverage by CBC and resulting expenditures by Deloitte & Touche. Provide copy of the audits of last three Olympics performed by Deloitte & Touche or equivalent auditing organization."

Mr. Earl Dreeshen: So in these cases....

Ms. Suzanne Legault: There are 16 of those. They are in the public domain because they're the subject of the court case.

Mr. Earl Dreeshen: So in those cases, then, there was no information given to you. Is that correct?

Ms. Suzanne Legault: In those cases there was a complaint and section 68.1 was applied. There was a complaint to my office. We sought to obtain the records to verify whether section 68.1 applied in those cases, and then the CBC took us to court on judicial review, stating that we could not order production of those records.

Mr. Earl Dreeshen: So the situations where you do get information back—for example, we looked at I think 16 pages where everything was crossed out, except for 2007 F-150; that's a different type of scenario that is given there. Can you explain the arguments that exist there?

● (0945)

Ms. Suzanne Legault: When we review cases, we get all the documents unredacted and we get the redacted copy, so we verify with the actual text where redactions have been applied and what exemptions have been applied. We get to see all of the information, and then we say, "Okay, you've applied, say, personal information here", section 19, so we will say, "Well, why do you say this is personal information?" Perhaps this person is a public servant and this information is not personal information. So we say to the institution, "You have to justify it to us." The onus is on them to justify to us why they would apply this exemption, and then we make a determination. We agree or not with them, and then we'll say, "We disagree with you on this one", and most of the time they'll agree with us, because Ms. McCarthy is very convincing.

Mr. Earl Dreeshen: That's good.

Ms. Suzanne Legault: Sometimes they don't, and ultimately we formalize the process. We make a last recommendation to the head of the institution. Usually in departments it goes to the minister, and in the case of CBC it would go to the president of the institution. They make a final determination, and then if we disagree we go to court.

Mr. Earl Dreeshen: In your remarks you also talked about injury-based issues. Could you expand upon that somewhat, please?

Ms. Suzanne Legault: Perhaps Ms. McCarthy can explain what an injury-based exemption is and how it works. They exist in the act.

Maybe you can walk him through injury-based exemptions.

Ms. Emily McCarthy (General Counsel and Acting Assistant Information Commissioner, Office of the Information Commissioner of Canada): Essentially, an injury-based exemption would require the institution to provide specific evidence of the reasonable eventuality of an injury caused by the release of that particular information, as opposed to a mandatory exemption, where it would be sufficient to qualify the information, such as personal information. It would be sufficient to qualify the information as personal information to exempt it from the application of the act.

The Chair: Mr. Dreeshen, I'm actually going to cut you off, because the allotted time for this particular section was until 9:45 a.m. and we've exceeded that.

Ms. Legault, I'll allow you a brief closing comment.

Ms. Suzanne Legault: For instance, national security matters are injury-based exemptions. This is not something that's foreign to the act, nor does it lead to massive or inappropriate disclosure of information. These types of exemptions actually work quite well, and they allow for proper analysis, proper protection, and proper disclosure.

With this, thank you very much, Madam Chair and committee members. It's always a pleasure to be here.

The Chair: Thank you very much, Ms. Legault, for coming before the committee and for getting here despite the crush.

Thank you, Ms. McCarthy.

We'll suspend for two minutes.

- (0945) _____ (Pause) _____
- (0950)

The Chair: We'll start the second hour with our two guests for 10 minutes each. I will hold you strictly to the times, since we have less than an hour left.

We're going to start with Monsieur Bernier for 10 minutes.

[Translation]

Mr. Marc-François Bernier (Professor, Research Chair in communication of the Canadian Francophonie, specializing in journalism ethics (CREJ), University of Ottawa, As an Individual): Thank you. Good morning, everyone.

[English]

Good morning. Thank you for having me here today. As the francophone research chair in journalism ethics, I'm sure you understand that I will make my presentation and answer your questions in French.

[Translation]

I will make a few opening remarks. I won't read my whole brief now. I will summarize it for you.

As I stated in my brief, I'm not here as a supporter or an opponent of the CBC. I am here as a researcher who has been conducting empirical research for many years, as an observer of the media for 30 years and as a former journalist with 20 years of experience, 14 of them at the *Journal de Québec* with Quebecor Media.

I have published scientific articles and books, publications that were rather critical of the CBC/Radio-Canada. That was especially the case in my study on the decisions made by the CBC's ombudsman. In addition, on a few occasions, I was an expert witness in cases that went all the way to the Supreme Court, where I opposed some of the CBC's claims.

So, I did not come before the committee to defend the CBC. I have no relationship as a consultant or a researcher with that corporation. Nevertheless, I think that there are important things to be said.

I also want to say that, when it comes to my work, my expertise is limited to journalistic activities. It has nothing to do with the cultural track record of Quebecor Media, which is an important player whose participation in Quebec culture is very positive. My presentation is mostly focused on the journalistic component.

Basically, I want to provide you with some context in order to explain the reason behind today's committee meeting.

For a few years, Quebecor Media has been on what I call a crusade against the CBC. It's a crusade I see as both business-based and ideological. This is the backdrop against which we must analyze the court action involving the CBC and the Information Commissioner.

In my opinion, Quebecor's strategy towards the CBC is primarily intended to serve private and corporate interests—which, by the way, are legitimate. The strategy has very little to do with the public interest.

I believe that goal includes a media campaign—I was going to talk about a media abuse campaign, as others have—to mobilize a certain opinion and, indirectly, parliamentarians like yourselves. I think that one of the goals is to weaken the CBC, whose television service represents significant competition, especially in the Quebec market. Therefore, Quebecor is trying to increase its income and its profits, which are already very significant, given the high level of media concentration and convergence that prevails in Canada. That level is one of the highest in the western world. That is the backdrop against which the issue should be looked at.

Quebecor's strategy is twofold. One of the two approaches interests me much more than the other: the journalistic approach. I think that we're dealing with a kind of a distortion of the journalistic purpose of Quebecor's reporters and editorial writers. The other approach is the high number of access to information requests, and that's probably what the committee is most interested in. I think that journalistic strategy raises very important questions in terms of ethics, professional conduct and journalistic integrity.

One of Quebecor's strategies for achieving its goal was to involve several journalists, or to indoctrinate them—I am using more colourful language. In some cases, that indoctrination has not affected just the CBC; we have seen it in other cases, as well. I have personally heard journalists' accounts confirming that. Those who have been paying a bit of attention will recall that, a year ago, some journalists publicly stated that they had been forced or prompted to produce very negative articles and reports on competitors. I won't go into detail, but emails were exchanged about that.

Over the last few months, Quebecor Media's journalists have asked me to comment, as an expert, on situations involving the CBC. As my comments were clearly not what Quebecor had anticipated, they were never published. I agree that this could be interpreted as editorial freedom, but it does add to the overall context.

This evidence could be deemed anecdotal. However, in 2007, I conducted a survey of a large group of Quebec journalists. That survey indicated that the journalists who felt most ill at ease, those who disliked self-censorship and a lack of freedom most, were Quebecor's journalists. We compared this group of journalists with that of the Power Corporation or Gesca, in Quebec, and that of the CBC. Quebecor's journalists suffered from what I consider to be a form of professional distress. Many of the journalists themselves felt that their work was often or very often meant to serve the company's interests rather than the public's.

I feel that this is the general backdrop against which you should consider the court case you are especially interested in.

That distortion of the journalistic purpose is especially based on the Access to Information Act. Hundreds of access to information requests are nothing to discredit. In a newspaper analysis in 2002, I recall publicly asking for the CBC to have a greater accountability obligation.

The issue involving the CBC/Radio-Canada's accountability is nothing new. However, it has taken a different turn. We must define how that accountability fits in. That's where the lawsuit the commissioner talked about earlier stems from.

As a journalism professor, a political scientist and a former reporter—even as a Canadian—I am a bit worried by the fact that a parliamentary committee is discussing ongoing court cases. I am always worried by this type of threat to judicial independence. I feel a bit like my colleague Sébastien Grammond, Dean of Civil Law at the University of Ottawa, who perceived it as an unprecedented attack on the judiciary and on judicial independence.

So, I think that we have to be careful about that, while, of course, understanding the context these matters fit into.

I also believe that the CBC's accountability obligation should be increased. I think that everyone wants that. It now remains to be seen how much that accountability may be increased.

Notwithstanding the lawsuit on the \$500 million mentioned last week, there are accountability organizations for journalism, and that applies to everyone. However, I have noticed over the last two years that Quebecor Media has withdrawn from journalistic accountability organizations, such as the Quebec and Ontario press councils. In some cases, Quebecor has even gone so far as to formally notify or threaten the members of the Quebec Press Council that Quebecor will take some sort of legal action against them if their decisions could negatively affect or harm Quebecor.

I feel that we must look at that issue within the broad context I presented this morning. Of course, I am not a lawyer, and I don't claim to be one, but I believe that there is another important component here. In fact, your committee's name also involves ethics, and I think that you should worry about that component as well.

Ethics is a matter of moral judgment, but it also involves values like dignity, fairness and integrity. In a way, no one should be above those values. I think that those values are scorned by men and women who make decisions in private companies and in large public administrations alike.

That's why I am a little bit concerned by our public discussion of these matters while legal procedures are ongoing.

● (1000)

[*English*]

The Chair: You have 30 seconds to wrap up, please.

[*Translation*]

Mr. Marc-François Bernier: I am done, Madam Chair.

The Chair: Thank you very much.

You have the floor, Mr. Trudel. Go ahead.

Mr. Pierre Trudel (Professor, Public Law Research Centre, Université de Montréal, As an Individual): Thank you, Madam Chair. I will read my statement to ensure I stay within my allotted time.

Thank you for inviting me and allowing me to appear before the committee.

I am here as a law professor who has spent over 30 years studying broadcasting law in Canada and abroad, as well as access to information and data protection law.

Over the years, I have done research work for a large number of government organizations and media companies, including the CBC,

Quebecor, TQS and Télé-Québec. I recently prepared a legal opinion on the scope of the CBC's access to information guidelines, and that opinion is available on the CBC Web site.

However, my reasons for appearing before the committee today are purely personal. My sole objective is to provide information on the legal framework, as I understand it, governing the operations of broadcasting undertakings in Canada.

To determine the meaning and scope of the section 68.1 exemption, we have to put the provision in the context of the legal framework governing broadcasting activities because the CBC is, first and foremost, a broadcaster. And in that capacity, the CBC is protected, like any other Canadian media organization, by freedom of speech under the Constitution. And that freedom is not limited to journalistic activities but extends to all expressive activities undertaken by the CBC.

Furthermore, the CBC is a broadcaster with a mandate to deliver the national public broadcasting service provided for in the Broadcasting Act. Therefore, the CBC has a duty to account for the public resources it uses. It is this dual role that justifies the CBC's exemption under section 68.1 of the Access to Information Act. Whether we like it or not, reconciling contradictory laws is never easy or cheap. It is a difficult task, but that is the price of democracy.

As set out in section 2(*b*) of the Canadian Charter of Rights and Freedoms, freedom of expression—including freedom of the press and other media of communication—is understood in Canada to include editorial freedom for all Canadians and for public and private media. In other words, the charter includes the freedom to determine what is fit for broadcast. Therefore, editorial freedom is protected under section 2(*b*) of the charter. Editorial freedom cannot be restricted other than by law and to the extent that such restriction is reasonable and justifiable in a free and democratic society.

Canadian courts have long recognized that all broadcasters, private and public alike, have editorial freedom. Editorial freedom assumes freedom of principle in deciding how information is selected, assembled and broadcast. The counterpart to editorial freedom is accountability: those who hold editorial freedom are answerable to third parties for the information they broadcast, and no one—

● (1005)

[*English*]

The Chair: Mr. Trudel, could you slow down just a little? The interpreters are having a tough time keeping up because they don't have your text.

Mr. Pierre Trudel: Okay.

Thank you, Madam.

[*Translation*]

While it is commendable that they regulate use of the airwaves and other public resources used for broadcasting purposes, public authorities cannot take the place of licensees when it comes to deciding what is to be broadcast. Like their counterparts in the United States and Great Britain, Canadian courts have refused to express the view that broadcasters, the CBC included, carry out a government activity. In summary, the CBC enjoys a degree of editorial freedom similar to that of other broadcasters.

The Broadcasting Act expresses in four places the principle of editorial freedom and the journalistic, creative and programming independence enjoyed by broadcasting undertakings. These provisions of the Broadcasting Act establish an airtight barrier between government authorities and the CBC. For instance, section 46(5) prohibits the minister from requiring the CBC to provide information that could reasonably be expected to limit its ability to exercise its journalistic, creative or programming independence.

As far as its programming activities are concerned, the CBC must answer to the CRTC, not political decision makers. If the Broadcasting Act stipulates that even ministers do not have the right to information that could reasonably be expected to limit the CBC's independence, it is all the more reasonable to assume that persons invoking the Access to Information Act should not find themselves in a more advantageous position than ministers with regard to information.

In summary, the intent behind all of these provisions is to guarantee independence for broadcasters in general and for the national public broadcaster in particular. It is a question of ensuring that broadcasters have the conditions they require to meet their obligations under the Broadcasting Act.

The scope of the exclusion set out in section 68.1 must be interpreted in the overall context of legislation concerning broadcasting undertakings, which ensures that they enjoy independence in journalistic, creative and programming matters. But in the case of the CBC, management of the national broadcaster must be transparent to Canadian taxpayers since it is publicly funded. It was decided that an exclusion would be used, which is in keeping with international practice in such matters. Consequently, the Access to Information Act does not apply to information under the control of the CBC that relates to its journalistic, creative or programming activities.

As for who should have the authority to make the determination, at the appeal or second review stage, regarding whether a record falls under the Access to Information Act or not, that decision is in the hands of the Federal Court of Appeal. Now, I will throw out a few public policy options, which, I believe, come under the jurisdiction of the legislative branch. Given that the interpretation of the act comes under the judicial branch, I do not wish to express my opinion on the matter.

When it comes to public policy options, it is important to keep in mind that section 3(2) of the Broadcasting Act stipulates the following:

[...] that the Canadian broadcasting system constitutes a single system and that the objectives of the broadcasting policy set out in subsection (1) can best be achieved by providing for the regulation and supervision of the Canadian broadcasting system by a single independent public authority.

To be specific, that authority is the CRTC. The importance of keeping regulations simple and easy to enforce is key, and that goes for all broadcasting undertakings. Making the CBC answer to a number of authorities complicates the accountability requirements that the public broadcaster must meet.

In that regard, it is not clear that the information commissioner is the best authority to oversee the CBC's decisions as to whether a record falls under the exclusion set out in the Access to Information Act or not.

The CRTC is the authority specializing in broadcasting matters and is most certainly in the best position to determine—in compliance with the editorial freedom requirements to which all broadcasters are subject—whether a requested record is related to journalistic, creative or programming activities.

The CRTC is indeed in a position to view the Canadian broadcasting system as a whole and the CBC as a part of that whole. For instance, the commission certainly has the necessary expertise to determine whether the disclosure of a record belonging to a broadcaster could jeopardize the broadcaster's journalistic, creative or programming activities, given the competitive nature of the environment.

In closing, Madam Chair, members of the committee, section 68.1 of the Access to Information Act theoretically excludes information relating to the CBC's journalistic, creative and programming activities from the access to information regime for public documents. The provision seeks to ensure that the CBC is in a position similar to that of other broadcasting undertakings while guaranteeing that it is accountable for the way it spends public funds. As a result, the only documents that can be accessed pursuant to the act relate to the general administration of the CBC and do not disclose information relating to the CBC's journalistic, programming or creative activities.

The question that should actually be asked—

● (1010)

[*English*]

The Chair: Please conclude.

[*Translation*]

Mr. Pierre Trudel: I'm wrapping up. If we want to identify the scope of section 68.1 for any broadcasting company, we must wonder what we would find legitimate to broadcast.

[*English*]

The Chair: Thank you, Mr. Trudel.

I need to be strict with the time because we have to make sure the members can ask their questions.

We'll begin the round of questions. The seven-minute limit includes the member's question and your response.

We'll start with Mr. Angus.

Mr. Charlie Angus: Thank you, Madam Chair, and my thanks to all of you for coming today.

It's been an interesting discussion about the role of Quebecor in the Quebec media landscape and across Canada. Quebecor, like all media empires, is not a natural construct. It's a decision by public regulators to allow massive amounts of media concentration. Each time one of these companies went before the CRTC to demand the right to gobble up competitors, they said they would give us diversity of voice.

I asked Mr. Péladeau what I thought was a fairly straightforward question about the lack of diversity of voice, in that every time a small-time newspaper is picked up, the local editorials seem to go out the window; the local point of view goes out the window. Now we see that marching orders have been given to attack the CBC. I pick it up in every small-town newspaper across the country now. So I asked Mr. Péladeau, not once but seven times, to explain whether this is a natural phenomenon—whether the journalists all across the country who work for him suddenly all hate the CBC or whether they get their orders from above. I had a difficult time getting a straight answer.

Mr. Bernier, you wrote an article entitled “Quebecor—A tarnished ethical and democratic track record”. You made statements in the article to the effect that journalists were ordered by Quebecor management to attack Radio-Canada/CBC. Is that correct?

[Translation]

Mr. Marc-François Bernier: In the CBC's case, it's more complicated. But we have evidence and public testimonies that say that there was a chain of command. This was particularly the case in the *Journal de Montréal*, which I'm more familiar with. Guidelines were handed down from one level in the chain to another ordering an attack on a journalist from a competing media outlet.

The testimonies heard at the conference of the *Fédération professionnelle des journalistes du Québec* in December 2010 were troubling. It was in that state of mind that I wrote the paper you are referring to. It was troubling because it was part of a larger system that I was able to document through previous quantitative research and in the qualitative research conducted with journalists who were asked to provide explanations, rather than simply tick off boxes.

Actually, Quebecor journalists share this feeling of towing a line. But it's not the case for everyone, we need to be clear on that. Not all journalists do this. Some studies show this, as we've seen in journalism sociology. When it's time to hire some journalists, some columnists, some freelancers, people who are going to tow that line are chosen.

• (1015)

[English]

Mr. Charlie Angus: You talk about it as a general feeling, but you also mention that the guidelines came down from management.

Did the guidelines come down in the forms of e-mail missives to journalists telling them they were not following the line?

[Translation]

Mr. Marc-François Bernier: Last year, when this public testimony was taking place, I tried to obtain concrete evidence of

this. I did find an email showing the order that was passed, from one level to another, to have a journalist write about another journalist that was being called a “bitch”, “big dirty disgusting”, and a “stupid imbecile”.

So that's one example. This is the case I have here. I don't have any others, but there might be more. It's not up to me to conduct this investigation. What I want to say is that...

[English]

Mr. Charlie Angus: Given orders to do what?

[Translation]

Mr. Marc-François Bernier: People were asked to talk about her in the newspaper the next day and call her those names to see how she reacted. The email indicated that people would not know it was her. Smear her, with many photos of the bitch... So we're talking about a journalist whose reputation was unfortunately to be tarnished in the newspaper the next day.

I'm not saying that this is systematic or that it happens everywhere, but it's worrisome. When we see this, as a journalist—I was a journalist—it's very worrisome. In the days preceding the order, this journalist had spoken about Quebecor Media. It's troubling to see this kind of response from a company of journalists who are doing their work, respectably or not, in other media.

[English]

Mr. Charlie Angus: With regard to this journalist who challenged Quebecor, in this management e-mail she was referred to as “a bitch”, and they were told they were going to target her?

[Translation]

Mr. Marc-François Bernier: This is what a journalist was asked to do. Someone said that this task was going to be assigned to a young journalist. After that, the email was sent to the young journalist in question.

[English]

Mr. Charlie Angus: And the journalist was told what to write.

[Translation]

Mr. Marc-François Bernier: Yes, but to my knowledge, he didn't do it. He managed to resist. Because there are still people in organizations who put up some resistance.

[English]

Mr. Charlie Angus: I think this is very important. Again, when you allow one person to control so much of the media landscape of Canada, there has to be an issue of accountability, not just a corporate bottom line.

I asked Mr. Péladeau if there were orders coming down the chain. He said, “I didn't get your question.” I asked him if journalists were ordered to write specific kinds of articles. He said, “I don't know where [this is coming] from.”

I asked him, “Where is the level of interference within the newsrooms...? Who sends that message?” He said, “This is not a party. This is a business...”

I then asked, “Do you mean managing the newsroom? Journalists tell us they were ordered to write....” He said, “We have our accountability and a responsibility to our shareholders....”

Number 5, I asked him, “Are your journalists ordered to follow the party line?” He said, “I have nothing to answer to this.” I said, “Should the newsroom be separate from your other vertically integrated operations?” He said, “This is not a party. This is a business....”

And number 7, I asked if he had a firewall to protect his journalists from the corporate interests of Quebecor, and he said, “Our reporters...have their jobs to do, and no one will tell them what to write.”

Is Mr. Péladeau correct in saying there is a firewall protecting his journalists, or, as he said earlier, do they manage their business as a business and the journalists don't get to have a say?

[Translation]

Mr. Marc-François Bernier: Listen, we don't have an in-depth investigation going on, but in light of the results I got from my investigation, we can confirm that the firewall is not as thick as it should be, in principle.

Basically, there are these kinds of guidelines, dogma or doctrines with journalists wanting a wall to separate the business part from the journalistic part.

The reality is that the freedom of the press also corresponds to the freedom of journalists on the ground to tell the public what is happening.

[English]

The Chair: You've got five seconds, Mr. Angus.

Mr. Charlie Angus: Thank you.

You said that Quebecor has “a tarnished ethical and democratic track record”. What do you mean by that?

•(1020)

The Chair: A brief response.

[Translation]

Mr. Marc-François Bernier: Okay.

In principle, the media should ensure the quality and integrity of the information. When orders like that arrive, it attacks the credibility and ethics of a newspaper business.

[English]

The Chair: Thank you, Monsieur Bernier.

Mr. Butt, for seven minutes.

Mr. Brad Butt (Mississauga—Streetsville, CPC): Thank you very much, Madam Chair.

I'll divert us from the sideshow on the other side to the issue at hand. We're talking about access to information requests with respect to the CBC, and I think we owe the public, the people who voted for us, the responsibility to get back on track.

I apologize for that sideshow, gentlemen. Thank you very much for being here.

Mr. Charlie Angus: A point of order.

The Chair: Go ahead, Mr. Angus.

Mr. Charlie Angus: I don't need Mr. Butt apologizing for me. I was elected to do my job and I do my job. If he wants to do something, he should stick to his point.

An hon. member: I don't think that's a point of order.

The Chair: Gentlemen, excuse me for one moment, please. I believe Mr. Angus was responding to testimony that was held last week. I reviewed the blues and that testimony was allowed last week, so I allowed the line of questioning based on that testimony.

Mr. Butt.

Mr. Brad Butt: I didn't say he didn't say it. I just made my comments, for what it's worth.

Again, Mr. Bernier and Mr. Trudel, thank you for coming.

Mr. Bernier, you said you were uncomfortable with our committee doing our work while there is a court case pending. You are aware that the reason why this committee is doing this study is because the CBC has decided they didn't like the court decision that told them they should be disclosing material and not using 68.1 as a shield for disclosing that material. You do understand that's why the committee is doing this study.

[Translation]

Mr. Marc-François Bernier: Of course, I understand that's the committee's reason.

[English]

Mr. Brad Butt: Do you not believe it's appropriate for a journalist of any organization they work for...? It doesn't have to be Quebecor. It could be the *Toronto Star*, it could be whoever. Is it not appropriate for a journalist to file an access to information request to ask for spending information about what a public broadcaster has done?

Madame Legault gave an example where one of the requests for access to information that was denied by the CBC was to find out how much they spent covering the Olympic Games. Why is that not an appropriate thing for the CBC to disclose? It has to do with their business operations. It doesn't affect journalistic integrity. They're asking for what it's costing. Especially when the CBC is getting \$1 billion a year of taxpayer money to subsidize their operations, why isn't that a reasonable request?

[Translation]

Mr. Marc-François Bernier: I'm not familiar with the Olympic spending file. I don't know what that budget covered. Certainly it covered travel, accommodation and journalistic activities. It's not my place to interpret the legislation.

But I fully agree with you: the work of journalists includes making access to information requests on topics of public interest. I did it myself when I was a journalist. It's good that we have this legislation.

[English]

Mr. Brad Butt: Thank you for that. I was going to ask whether in your career you had filed them. I'm sure you have. You would expect the organization that you've requested from to provide the information in a timely and responsible manner, would you not?

[Translation]

Mr. Marc-François Bernier: Absolutely. Otherwise the journalistic value of the information may disappear fairly rapidly, in some cases. But this isn't the case in all situations. Some topics are still relevant, but sometimes the journalistic value of the news is reduced over time, it declines.

[English]

Mr. Brad Butt: Fair enough.

Monsieur Trudel, I believe you said in your opening statement that you believe the CRTC should be the body that determines 68.1. Do you want to expand on that? I'm not quite sure I agree with you, but I'm interested in why you would think the Information Commissioner... She indicated when she was here that she has many experts in her office who are quite qualified in interpreting, in her view, the provisions of 68.1, but you seem to think the CRTC should be the determining body on whether 68.1 should apply. Do you want to expand on that and explain why you believe they're better suited than our very independent and capable Information Commissioner?

[Translation]

Mr. Pierre Trudel: The main reason is that the CBC is an integral part of the system, meaning the Canadian broadcasting system, within which competition was wanted between the public broadcaster—the CBC—and the private entities. The CRTC was given the mandate under the Broadcasting Act to ensure that this system functions properly.

The example of the Olympic Games is an interesting one. It's important to know that the Canadian broadcasters, the CBC like the others, were competing for the broadcasting rights for these Olympic Games. When determining whether a broadcaster is required to disclose certain information, we need to ask whether it is appropriate to place a company that is part of the broadcasting system in a situation where it could see its competitive position jeopardized by its obligation to disclose information that the others, private companies for example, are not required to disclose. The CRTC would therefore be in a better position to determine whether, out of the public interest, it is appropriate for broadcasting companies, public or private, to disclose some of their information to the public. But the CRTC must make sure that they do not reveal information that must remain undisclosed, so that competition within the Canadian broadcasting system functions properly.

• (1025)

[English]

Mr. Brad Butt: You're of the view then that when information requests come into the CBC, the only time the Information Commissioner gets involved is when the CBC refuses to comply with one of the requests.

So if a request has been refused by the CBC, the individual then goes to the Information Commissioner and files a complaint that the information is not being disclosed. The CBC says they didn't

disclose it because of 68.1, and they seem to do this quite a bit—hundreds and hundreds of times we're being told that 68.1 is being invoked. Are you of the view that this is acceptable in all of those cases?

[Translation]

Mr. Pierre Trudel: I think there is a real challenge when a judge or independent person is identified to determine the validity of the refusal of an organization like the CBC that relies on the exclusion in section 68.1.

Given how the Canadian broadcasting system is structured, with public and private entities, I'm not sure the Information Commissioner, whose mandate is to promote the best access to information and documents held by public organizations, has the overall perspective to properly examine the file and ensure that this type of disclosure does not jeopardize the conditions of competition that must prevail to ensure that the Canadian broadcasting system functions properly.

[English]

The Chair: Thank you very much. Your time is up. Thank you, Mr. Butt.

Mr. Andrews, for seven minutes.

Mr. Scott Andrews: Thank you, Madam Chair.

I'm going to direct this comment to Mr. Bernier. It's about the follow-up on what Mr. Butt just talked about, the Olympics coverage. This is an example of how even the Conservative members don't understand about the business interests of one company versus the business interests of another, and how Quebecor is using the freedom of information requests to get at the business interests of the CBC, which it shouldn't be. If it were any other crown corporation that has business interests, that information would not be released. This is where Mr. Butt doesn't understand this.

Mr. Bernier, you said in your statement that you felt the interest of the owners and shareholders takes precedence over the public interest, and you said there is less freedom to do their work. Can you expand on that a little bit?

[Translation]

Mr. Marc-François Bernier: Operating the business that way isn't illegal. Mr. Péladeau and the executives of Quebecor have the right to run it the way they want to. But we also have the right to be critical of how they do it.

Mr. Péladeau—and this isn't personal, but I'm using his name because he's the face of Quebecor, he's the boss—never hid the fact that he needed to use his media to promote his media and cultural products, meaning the promotion of Quebecor interests, to give value to the company's shares on the market. All business managers want to do this. The problem in this case is that we are dealing with the context of a news organization where journalists also have professional obligations, a professional code of ethics, and obligations toward the public with respect to the quality and integrity of the information.

So there's a problem. There is a discrepancy between the interests of the executives and the right of the public to quality information. In many cases, the journalists themselves have criticized this.

I'll remind you that the journalists of the *Journal de Montréal* filed a complaint with the Quebec Press Council because they were required to promote a show called *Star Académie* at the time. I think it still exists.

That's where the company's interest was taking precedence over the public's right or public's interest when it came to information.

•(1030)

[English]

Mr. Scott Andrews: Similarly, with regard to Mr. Péladeau the other day, one of his freedom of information requests was on outdoor advertising by the CBC. Of course, they want to know how much outdoor advertising the CBC does so they can counteract. This is where we've gotten into this.

You just mentioned the media and the assignments. You said they're given assignments intended specifically to attack competing media.

Could you explain the hierarchy of Quebecor, or a media organization, when they're given an assignment? Where does that assignment come from? At what level of the organization would that be? Is it a young, crackerjack reporter trying to impress the upper management of the company?

Give us some understanding of how these assignments will be directed to the media and the hierarchy in Quebecor.

[Translation]

Mr. Marc-François Bernier: To give you an absolutely clear answer, we would need to conduct a very thorough investigation into how Quebecor operates. It remains that how media outlets make assignments generally varies. Some journalists have a lot of freedom. That's the case for specialized journalists. The managers in the press room must deliver a media product. Every day, if not every hour since the advent of the Internet, they must produce. So, there is a hierarchy that I would describe as local, confined to the editing room. In some cases, orders may come from headquarters. But it's difficult to document because the real firewall is often between the hierarchical levels.

You spoke earlier about advertising. The journalists must always be protected from these business aspects because, in fact, they work for the public, for the public interest. Of course, they are paid by a media outlet, but their first boss is the public's right to information.

[English]

Mr. Scott Andrews: Have you been following the court case? Are you totally familiar with the court case between the CBC and the Information Commissioner?

[Translation]

Mr. Marc-François Bernier: Not in this case because it comes more under the interpretation of an act. But I don't have the legal expertise to get involved in this highly legal debate.

[English]

Mr. Scott Andrews: Okay.

Also, you mentioned the role of parliamentarians and this particular committee studying this when it's before the courts. We

saw in this committee the Conservatives trying to bring a judge before this committee.

In your professional academic opinion, what are your views on our even studying this while it's still before the courts?

[Translation]

Mr. Marc-François Bernier: I'm not going to be as specific as you in your question. Having been an expert in cases that have gone as far as the Supreme Court, I would say that generally a person waits for the ruling of the courts before seeing whether the legislation should be changed or not. Seeing that there is a parallel debate while the case is before the courts is sort of what makes the political scientist and journalism professor in me a little uncomfortable. I think that out of respect for the courts, whether we like them or not, it might be a good idea to wait, although the matter is very important. We need to see to what extent the CBC is subject to that legislation. Is it urgent today? That's what I'm wondering.

[English]

Mr. Scott Andrews: Thank you.

The Chair: Thank you.

Mrs. Davidson, for seven minutes.

Mrs. Patricia Davidson: Thank you very much, Madam Chair.

And thanks very much, gentlemen, for appearing before us this morning. Certainly we've been hearing some different information than we've heard before at this committee, so it's good to get the opinions on both sides of this. As has been pointed out before, you understand that we are studying this because of the refusal to have the commissioner view the information.

I have just a couple of comments.

I believe, Mr. Trudel, you said the commissioner was not necessarily the best person qualified to oversee section 68.1, and then you suggested that perhaps the CRTC might be the best qualified. We've had other people presenting to this committee over the past couple of weeks who have emphatically stated that they felt the Information Commissioner was eminently qualified and certainly was well capable of making those decisions. Then, of course, we had the commissioner herself here this morning who was suggesting some possible changes to the Access to Information Act. I don't know if you were here and heard what those changes were.

I'll just briefly outline what she told us.

Exceptions to the right of access should be limited and specific. They should be discretionary and injury-based. The wording of exemptions should be clear and objective in nature. An injury-based exemption requires that the institution must establish a reasonable expectation of harm and support that expectation with specific evidence. The discretionary exemption ensures that the public interest in obtaining access to the requested information will be considered by the head of a government institution even where the information would otherwise qualify for exemption.

Then she goes on to say that instead of an exclusion, they would propose a discretionary injury-based exemption along the following lines: the head of CBC may refuse to disclose any record requested under the act that contains information that the disclosure of which could reasonably be expected to prejudice the journalistic, creative, or programming independence of the corporation.

Could both of you please comment on the suggested changes as the commissioner has spoken about them this morning? And could you also indicate whether you feel the CBC should be subject to the act at all?

• (1035)

[Translation]

Mr. Pierre Trudel: Actually, from the moment it was decided that the CBC is part of the broadcasting system, it became important to ask whether we were willing to force all broadcasting companies to subject themselves to the Access to Information Act. If that isn't the case, we will have to go back to the exclusion.

That's why we chose an exclusion. It protects the freedom of the press, journalistic freedom. Forcing a media organization, each time a request is made, to prove that there is harm that could cause a document to be disclosed very seriously affects its independence and flexibility to do investigative journalism, develop programs, be active in programming rights and the advertising market. That's why there's an exclusion.

That's why I think an exception, an injury-based exception, isn't an adequate way of ensuring that the public broadcaster is operating in a way that respects the constitutional freedom of expression, and that also properly protects both private broadcasters and the public broadcaster. I also have a lot of doubts about the constitutional validity of a proposal that would force the CBC to prove every single time a person requests a document that it will cause some harm. This would be the same as asking a newspaper or television station to consistently prove that its editorial freedom is being affected.

But we're talking here about an environment to produce a creative activity, programs and news. If a broadcasting agency like the CBC is required to take action to continuously defend itself against access to information requests, I'm not at all certain that it will still have the ability to ensure its own editorial freedom, which is recognized among broadcasters.

• (1040)

Mr. Marc-François Bernier: Well, I'm not a legal expert, so I don't have the expertise required to comment on the matter, but allow me to point out that protecting the freedom of the press and applying the principle of fairness are two very important aspects in this type of decision. I was a journalist, and I know that there are expenses involved with journalistic activities that are not problematic when it comes to disclosure, whether it's where a press team went to conduct an interview or when the journalists went there. In short, these are things that may influence the confidence of these sources of information in these journalists. If they are afraid that their name will eventually be disclosed in an access to information process because they don't fully understand the act or simply don't understand it at all, they may be afraid to disclose certain information to journalists.

[English]

Mrs. Patricia Davidson: Do you feel that the CBC—

The Chair: You have 20 seconds.

Mrs. Patricia Davidson: Okay, I'll be very quick.

Do you feel that the CBC, then, should be subject to the act?

[Translation]

Mr. Marc-François Bernier: Yes, that's my opinion, as far as I understand it. I'm not an expert, but I have always asked for more accountability, and I've been asking for more accountability ever since 2002.

[English]

Mrs. Patricia Davidson: Thank you.

The Chair: Thank you.

We have only about five minutes left, so I'm going to propose that we split the remaining time. I'll give two minutes to Monsieur Dusseault and two minutes to Mr. Mayes.

Monsieur Dusseault.

[Translation]

Mr. Pierre-Luc Dusseault: Thank you, Madam Chair.

Since I only have two minutes, I'll ask Mr. Bernier a question.

First though, I'd like to thank you for being here today.

I would like to go back to an article by Ms. Josée Pilote. I don't know if you know her. Ms. Pilote also noted that Quebecor's crusade is both ideological and business-based, as you mentioned in your brief. In her article, Ms. Pilote raised the issue of Quebecor's business crusade.

Since you are an ethics professor, what do you think about the way Quebecor is involved in things, in lowering its advertising prices to eliminate competition? In economic terms, we could talk about dumping. Do you think that's ethical?

Mr. Marc-François Bernier: It's a business practice that is beyond my expertise. But if certain actions may close down small independent newspapers, it compromises the diversity of information in our society. It's troublesome to me as a journalist.

You know that the ethics of journalism also rests on material bases. Small newspapers need to have a little money to do good journalism. When they are strangled, it affects the quality of the information.

Mr. Pierre-Luc Dusseault: Do you share Ms. Pilote's opinion that, what Quebecor is doing, especially in the regions, is eliminating the competition so that it will be the only supplier of information, and does that affect the quality of the information?

Mr. Marc-François Bernier: The concentration of media in Canada has always been a major concern, since the 1970s.

We shouldn't always equate plurality of the media with diversity of information. It only prevents us from having an opportunity for diversity when there are many types of media in one region.

[English]

The Chair: Thank you. Your time is up.

We'll now have Mr. Mayes for two minutes.

Mr. Colin Mayes (Okanagan—Shuswap, CPC): Thank you, Madam Chair.

Mr. Bernier, in 2006 our government was given a mandate to provide a greater accountability for taxpayers' dollars. We had to set up a framework of transparency and accountability for corporations and give the Auditor General the ability to follow the money.

You made the statement that there was an avalanche of ATIs regarding CBC. I would suggest that if CBC had been open and transparent right from day one, there wouldn't be that avalanche. This has been pent up for some time. People have wondered just where the money is going, the \$1.1 billion that CBC receives.

One of the things that is a little disturbing in a little of your testimony here is that you said it wasn't necessarily ethical that the committee be looking into this sort of attack on CBC. I would like to bring to your attention your attack on Quebecor. You've questioned their journalistic independence. You've made statements that they didn't allow that, and yet I've said there are always influences. Even CBC probably has some sort of influence on some of the journalism that is done for CBC.

• (1045)

The Chair: Mr. Mayes, if you want the witness to respond, you have 30 seconds.

Mr. Colin Mayes: Do you think what you said today about Quebecor was ethical?

[Translation]

Mr. Marc-François Bernier: I'm here because I was invited. I did not ask to appear. I have done some research, and I'm giving you the outcome of that research, which shows that the first ones need to be concerned, meaning the Quebecor journalists themselves. They are the first witnesses of the ethical problems that they are experiencing in that company.

I made a comparison with the CBC and with Gesca to see whether there were differences. The differences are statistically considerable. This isn't coincidental. The journalists are criticizing a number of things.

I would say one thing about the doubts about the CBC's impartiality. I'm from Quebec and for 40 years, there have been a lot of people who also doubt the CBC's impartiality on certain matters.

[English]

The Chair: Thank you very much, Mr. Bernier and Mr. Trudel, for taking time out of your schedules to come before the committee.

Thank you, committee members, for your participation today.

This meeting stands adjourned until Thursday.

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