



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Access to Information, Privacy and Ethics

ETHI • NUMBER 081 • 1st SESSION • 41st PARLIAMENT

EVIDENCE

Monday, May 27, 2013

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Chair

Mr. Pierre-Luc Dusseault

Standing Committee on Access to Information, Privacy and Ethics

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• (1530)

[Translation]

The Chair (Mr. Pierre-Luc Dusseault (Sherbrooke, NDP)): Welcome, everyone.

I would like to ask the members of the media to leave the room as soon as possible.

Pursuant to the Order of Reference of Wednesday, March 27, 2013, and the motion adopted by the committee on Monday, April 22, we are resuming our study of Bill C-461, An Act to amend the Access to Information Act and the Privacy Act (disclosure of information).

During the first hour, we will be hearing witnesses from the Canadian Broadcasting Corporation, the Canadian Media Guild, and the Professional Federation of Quebec Journalists. Without further delay, we will begin the meeting.

Mr. Andrews, you have a point of order?

[English]

Mr. Scott Andrews (Avalon, Lib.): Mr. Chair, I'd like to move the following motion before the committee:

That the Committee hold hearings on the conduct of public office holders in relation to the handling of the repayment of Senate expenses by Senator Mike Duffy and the conduct of officials in the Prime Minister's Office in this process, and that the witness list include but not be limited to: Nigel Wright; Benjamin Perrin; Right Honourable Stephen Harper, Prime Minister; Ray Novak;

And that, in the context of this study, the Committee table a report in the House asking that the House send a message to the Senate requesting the appearance before the Committee of the following senators: Senator Mike Duffy; Senator David Tkachuk; Senator Marjory LeBreton.

The reason I move this motion is that it is critically important that this committee be immediately seized with this issue, and the government has actually scheduled time allocation votes during our proceedings, which will block this motion before the end of the meeting. This is no coincidence. I'm also forced to move my motion now because the Conservatives will undoubtedly move the meeting behind closed doors to deal with my motion, as they do with most, time and time again, preventing Canadians from seeing Conservative MPs carry out orders of the Prime Minister to stifle dissent.

The conduct of public office holders in relation to the handling of the repayment of Senate expenses by Senator Mike Duffy and the conduct of officials in the Prime Minister's Office in this process go to the heart and the trust of Canadians' need to have a democratic institution—

An hon. member: I have a point of order.

Mr. Scott Andrews: —and it seems that the Conservatives across the way—

An hon. member: Point of order...

Mr. Scott Andrews: —are somewhat bothered that this very serious issue, this situation, has the potential to undermine their confidence.

An hon. member: I have a point of order, Mr. Chair.

Mr. Scott Andrews: The issues raise very troubling questions, which have yet to be answered and which merit the immediate action of the committee.

Voices: Oh, oh!

An hon. member: Mr. Chair...

Mr. Scott Andrews: We are talking about the most senior officials of the Government of Canada—the chief of staff to the Prime Minister providing a substantial cash gift of \$90,000 to a sitting parliamentarian. This raises a whole host of other terms as to whether this arrangement was fully compliant within the Conflict of Interest Act, the Parliament of Canada Act, the rules of the Senate, or the Criminal Code. There are many unanswered questions, and it's up to this committee to get answers for Canadians. There are 10 key issues that need to be addressed.

Number one, on Monday, May 20, the PMO told CTV News that they had forwarded a copy of this agreement between Senator Duffy and Nigel Wright to the Ethics Commissioner, Mary Dawson. On Tuesday, the Conservatives said this document couldn't be released because no such agreement exists. An e-mail, which in fact does exist, describes the secret agreement. The e-mail was dated February 20, 2013, and is currently in the possession of the Prime Minister's Office.

Will the government commit to releasing this and any other e-mails or documents, electronic or otherwise, that relate to the secret deal between the PMO—

[Translation]

The Chair: Mr. Andrews, I am going to have to interrupt you—

[English]

Mr. Scott Andrews: —and Senator Duffy, so that the review for the Canadian public—

[Translation]

The Chair: Mr. Andrews—

[English]

Mr. Scott Andrews: Number two—

[Translation]

The Chair: Mr. Andrews, I have to interrupt you.

[English]

Mr. Scott Andrews: Mr. Chair—

[Translation]

The Chair: I had given you the floor for a point of order. However, I now see that this is not at all the case. I would prefer that we continue our meeting as planned and hear our witnesses. Your motion was the second point on our agenda. I am not obliged to give you the floor. I thought you were making a point of order. I think that we should instead continue our meeting as per our agenda.

Did you want to add something on this? I don't think I can give you the floor if your only purpose is to delay the presentations we had planned to hear.

[English]

Mr. Scott Andrews: I never asked for a point of order. I just asked to have the floor, and you gave me the floor, so I'd like to continue with my motion.

[Translation]

The Chair: I thought you wanted to raise a point of order.

I would have let you speak if you had had a point of order to raise, but since that was not the case, I would prefer to give the floor to the people who have come here to testify. We can deal with your motion, as planned, when we get to the second point on our agenda.

Mr. Angus, do you really have a point of order?

• (1535)

[English]

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

I have immense respect for your understanding of the rules. I do believe you'll be this generation's Stanley Knowles, and many years from now you'll still be walking circles around the rest of us.

I accept the clarity. Given the importance of this and the fact that it's on the floor, I would ask my colleagues that we vote on it and then move on to business. I think that would be fair.

I would ask my colleagues whether they support this motion and we can move forward and deal with it.

[Translation]

The Chair: That is not a point of order either.

I move that we now deal with the first point on our agenda and that we hear the testimony relating to Bill C-461.

In our notice of meeting, as you can see, Mr. Scott Andrews' notice of motion is listed and we are supposed to discuss it under the heading: "2. Committee Business". So we will have the opportunity to talk about it more at length later.

For the moment, I am going to give the floor to the witnesses who took the trouble to come here to make a presentation on Bill C-461. And so I am going to let the representatives from—

[English]

Mr. Scott Andrews: I have a point of order.

[Translation]

The Chair: Do you really have a point of order, Mr. Andrews?

[English]

Mr. Scott Andrews: Well, I think we should discuss how we're going to proceed with this meeting today.

We know there are two votes scheduled, and with all due respect to our witnesses, their time here today is going to be shortchanged. I think we should—

Mr. Chris Warkentin (Peace River, CPC): Well, if you quit talking, we'll get to them.

Mr. Scott Andrews: If Mr. Warkentin would like to participate in the debate in public, we could have this discussion. Unfortunately, every time we get to a motion in this committee, the Conservatives will move that we go in camera.

In the interest of transparency and respect to our witnesses, I think we should proceed with this motion, as you did give me the floor to discuss it.

[Translation]

The Chair: I think that we would do better to respect the agenda we prepared ahead of time and sent you a few days ago. According to our agenda we were to hear the witnesses' presentations first, and then we were to discuss your motion at the end of our meeting.

I gave you the floor because I thought you had a point of order. I was mistaken. You were discussing something else. I would prefer that our meeting proceed according to the agenda we had established.

Accordingly, the executives of the Canadian Broadcasting Corporation will have 10 minutes to make their presentation. The witnesses have 10 minutes for their presentation, and afterwards, the members of the committee will have an opportunity to ask them some questions.

Ms. Bertrand, thank you for being here. You have the floor.

Ms. Maryse Bertrand (Vice-President, Real Estate, Legal Services and General Counsel, Canadian Broadcasting Corporation): Thank you, Mr. Chair.

[English]

Chairman, members of the committee, on behalf of CBC/Radio-Canada, I would like to thank you for the opportunity to be here today to discuss our concerns about Bill C-461 and its potential effect on the public broadcaster.

We are concerned that this bill as currently drafted will have some unintended consequences that may undermine CBC/Radio-Canada's ability to do its job as mandated by Parliament.

First, the bill would remove the current protections for journalism programming and creative activities under the Access to Information Act. There was much discussion in 2010 and 2011 about section 68.1, which is the exclusion for these activities, and how it needed to be clarified. In fact, it has been clarified. In November 2011, the Federal Court of Appeal made it crystal clear. The Information Commissioner can review documents held by CBC/Radio-Canada to determine whether the exclusion applies, except when it comes to journalistic sources.

I would like to read what the court of appeal said:

...the exclusion for journalistic sources, like the exclusions provided in sections 69 and 69.1, is absolute. It follows that in the event that a request seeking the disclosure of journalistic sources was made, a record – or the part thereof – revealing this type of information would be exempt from the Commissioner's power of examination.

[Translation]

That decision is extremely clear and at the time, both CBC/Radio-Canada and the commissioner expressed their satisfaction with it. The government, in its response to this committee's study, wrote that the decision, and I am quoting: "settled the dispute between CBC and the Information Commissioner".

Indeed, since then, we and the commissioner have been working together to resolve the files which had been awaiting the court's decision. As you have heard from the commissioner, that work could be completed by the end of this year and we are collaborating closely with the Commissioner's Office in order to meet our goals.

This bill is proposing to do away with 68.1 completely and to replace this exclusion with an injury-based exemption. That change will introduce a great deal of uncertainty regarding its application as the commissioner, CBC/Radio-Canada and third parties will have to debate not one, but two elements now: whether the material is journalistic, creative or programming information, and secondly, whether the release would prejudice the corporation's independence. This will be the case even where there are confidential sources. We are losing ground, going backwards, where sources are concerned.

Introducing an additional requirement of "prejudice to independence" which is untested in any current case law in Canada will inevitably bring us to a new level of uncertainty that will likely require several cases and years to resolve before a sufficient body of legal decisions exist to give us all the necessary guidance.

Parliament must balance the desire for more access to information for federal institutions, with the requirement that media organizations such as ours operate effectively and independently.

The specific protections in both the Broadcasting Act and Access to information Act for journalism, programming and creative activities, exist to ensure independence.

• (1540)

[English]

Incidentally, those protections are not unique. As the commissioner pointed out in the comparison document that she shared with you in 2011, public broadcasters in Ireland, England, and Australia, all have specific exclusions from their access to information laws for their journalism programming and creative activities, and all without any test in order to demonstrate a negative impact on their

independence. Why would Canadians want to change that for their own public broadcaster? Why is such a change necessary when CBC/Radio-Canada is among the strongest performers under access to information?

Here are some facts about that. We have taken the lead among organizations in posting on our website much of what we release under access. That's in addition to the board minutes and the business travel and hospitality expenses that we post proactively. CBC/Radio-Canada earned an A from the commissioner in her most recent review for its performance under the act. Last fall, the corporation was recognized for improving transparency and accountability in the 2012 IPAC/Deloitte Public Sector Leadership Awards.

But that accountability goes beyond access to information. Every year we provide detailed financial information to the CRTC, which oversees our licence conditions. Every year the Auditor General of Canada signs off on our financial statements. Every five to 10 years he conducts a comprehensive special audit. In his most recent audit tabled in Parliament this year, the Auditor General gave CBC/Radio-Canada a clean audit opinion. That's the best result a federal agency can obtain.

We also report to our minister, to parliamentarians, and to Canadians through our corporate plan, our annual report, and our quarterly financial statements published on our website. We also have an independent board of directors, including an audit committee and a governance committee, all appointed by the government to oversee our budgets and our operations. It's their job to ensure that our programming and journalistic resources are being spent wisely.

This means while we are accountable under access to information for the general administration of our corporation, the law also draws the line at publicly releasing those things that would undermine our independence, or prejudice our competitive position—things like how much Peter Mansbridge gets paid, or how much we paid for the upcoming Olympics, or the details of our promotional strategies for new shows. For those things, it is the responsibility of our board of directors to protect both the public interest and the corporation's arm's-length independence.

[Translation]

There are two other unintended defects of C-461 I would like to mention with respect to proposed changes to the Privacy Act. These are the consequences I would now like to discuss.

First, the bill proposes to strip away the existing Privacy Act protections for journalism, programming and creative activities—but only for CBC/Radio-Canada. It would allow the subject of a CBC/Radio-Canada investigation to demand all information about them held by one of our journalists, even before we broadcast. Only CBC/Radio-Canada journalists would be subject to this provision. You can imagine what this would do to the investigative journalism that Canadians value.

Finally, with respect to salaries, C-461 proposes to make public the exact salary of the highest earners working for a government institution—rather than the salary ranges of their position, which is the current law. This has a much broader impact than just on CBC/Radio-Canada.

• (1545)

[English]

The Privacy Commissioner has established four tests to determine whether an invasion of privacy is justified, and one of those tests is whether there is a less privacy-invasive way of achieving the same end. The commissioner has put it this way:

...disclosing salary ranges or aggregate salary amounts for relevant groups, as opposed to specific salaries of individuals, could prove just as effective in achieving enhanced transparency and accountability without incurring the corresponding loss of individual privacy.

In our case, we would suggest that the combination of our salary ranges being public—they're available proactively and under access to information—the aggregate of our senior executive salaries being available in our annual report, and a specific salary being the express responsibility of our board of directors, all of that achieves the goal of enhanced transparency and accountability. It does so without undermining our ability to maximize public value in our highly competitive business environment where other broadcasters' salaries are protected.

Should CBC/Radio-Canada be accountable? Absolutely, and it is. Should there be oversight? Absolutely, and there is. But in addition to accountability and oversight, CBC/Radio-Canada needs to be able to do the job it is being asked to do by Parliament. In our view, this bill will not help us do that.

Thank you very much.

[Translation]

The Chair: Thank you.

I am now going to yield the floor to Mr. Laurin et Mr. Carty, who represent the Canadian Media Guild.

Mr. Laurin, you have 10 minutes to make your presentation. You now have the floor.

Mr. Marc-Philippe Laurin (President, CBC Branch, Canadian Media Guild): Thank you, Mr. Chair and members of the committee.

My name is Marc-Philippe Laurin and I am President of the CBC Branch of the Canadian Media Guild. We represent the people who work for CBC/Radio-Canada across Canada, with the exception of Quebec.

[English]

I'm joined by guild member, Bob Carty, a long-time CBC radio producer and investigative journalist, who's also a member of the board of Canadian Journalists For Free Expression. The Canadian Media Guild represents 6,000 media workers across Canada at 10 different media outlets.

The guild has long supported a robust system to ensure access to information. We respect the fact that the CBC, as a recipient of public funds, has serious responsibilities for accountability under the access to information system, but it also has other obligations that are equally serious. It must fulfill its mandate from Parliament while maintaining a true arm's-length relationship with the government of the day. It must conduct its journalism with integrity and complete editorial freedom, and it is responsible for the protection of its confidential sources.

[Translation]

We feel that Bill C-461 would adversely affect CBC/Radio-Canada journalists. The new provisions being proposed would undermine their integrity and capacity to protect their sources. For this reason, we urge the committee to recommend that Parliament take no further measures regarding this bill. In the absence of such a recommendation, we ask that Parliament vote against Bill C-461. The bill is beyond repair, even with amendments.

[English]

Bill C-461 places demands on CBC/Radio-Canada newsrooms that do not exist for any other news organization in this country. In doing so, it puts CBC at a disadvantage compared to its competitors, undermines its ability to do journalism, and as a result, to inform the public.

As we noted in our brief, the bill would actually undo the clarity brought to the existing legislation by the Federal Court of Appeal in 2011. Since that court decision, we understand that CBC and the Information Commissioner have been successfully resolving outstanding complaints without friction or disputes. The lack of clarity in the bill's exemption would certainly be the subject of new court cases for years to come, and much of that at the public's expense.

In the meantime, the door would be open for access applicants to get a hold of information about CBC's confidential sources and news investigations. This would harm the public broadcaster's reputation as a trustworthy recipient of confidential information from whistleblowers and sources. It would allow others, including competitors, to find out inside information about how CBC is pursuing stories, information that no other news organization in the country is obliged to share with anyone.

Bob Carty is here today to further explain how these provisions would hurt CBC news operations.

• (1550)

Mr. Bob Carty (Member, Canadian Media Guild): Thank you, Marc-Philippe.

Mr. Chairman and members of Parliament, I'd like to look at this bill from the perspective of a journalist. I have worked with the investigative unit of the CBC in past years. One of the main stories we worked on for years was about adverse drug reactions, the sickness and death that could be caused by pharmaceutical products. It was an investigation that involved confidential sources, access to information requests, and it eventually won 10 Canadian and international awards.

I'd like to present a hypothetical analysis of how an access request with this kind of a topic might work currently under section 68.1, or in the future under Bill C-461.

As you know the sector that most uses access to information is the business sector, so in my example let's say an access request is made by a pharmaceutical company. It wants access to my e-mails, reporters' notebooks, even confidential sources. It wants access to perhaps my strategies to do interviews, my travel plans, and things like that—all the processes involved in collecting an investigative report. Under the access request as it currently works under section 68.1, the exclusion process, which has been clarified by the Federal Court, is fairly straightforward. My confidential sources are completely out of bounds. The court has ruled here that the CBC's right of exclusion is absolute. As for my notebooks, the e-mails, the research materials, the CBC would refuse to disclose them because they relate to journalism, by definition.

The Information Commissioner now has the right to review all these documents nonetheless, but she would likely agree because, again, the materials are clearly journalistic in nature. The pharmaceutical company could go to court, but I think the courts would side with the CBC, and my sources, my notes, my research, my investigative broadcast would be protected, and so would the CBC's inherent right to freedom of information.

This is not the case if Bill C-461 goes through. What would happen there? Under the bill's exemption, all my materials, even my confidential sources, would be on the table. Nothing is protected, not even sources, which the Federal Court and the Supreme Court have recognized as an essential component to free expression. For each piece of my material the CBC would have to prove that disclosure would harm the corporation's journalistic, creative, or programming independence, and that word is critical. It's where it gets very messy too.

The CBC's independence as discussed in the Broadcasting Act, and as the sponsor of the bill outlined it last week, almost always concerns the issue of the CBC's independence from government and Parliament. However a pharmaceutical company eager to know what we are finding out about the deadly side effects of one of its drugs could argue in court that the release of my journalistic materials, even sources, in no way compromises the CBC's independence from government and Parliament. The release would damage my credibility, the CBC's journalistic integrity, and quite possibly subject us to a lawsuit to prevent the material from even being broadcast.

In such a scenario what reporter in good conscience could promise he or she could protect the source? Without that protection what whistle-blower would approach us with a story of corruption? The CBC would be stripped of much of its ability to conduct public

service journalism. The public broadcaster would lose its inherent right to freedom of expression.

In the same way we have deep concerns about Bill C-461's amendments to the Privacy Act. The exemption here is again based upon harm being done to the CBC's journalistic independence from government. Under these changes a person being investigated by the CBC, perhaps a doctor, or perhaps a Mafia boss in Montreal, could request all information about himself in the possession of the CBC. The CBC would be forced to turn over information about criminal activities, about this Mafia don, even before it was broadcast. No other media outlet would be subject to such a process. Again great harm would be done to the CBC's integrity, its ability to function in the marketplace, its very freedom of expression.

Mr. Chairman, both these changes to the access law and to the Privacy Act are ill conceived. They are not necessary. In the name of accountability they would cripple the public broadcaster's ability to hold those in power to account. In the name of access to information, one of the foundations of freedom of expression, the bill would damage other important freedoms of speech: the freedom and the duty to protect sources, and the right of the CBC to its editorial freedom.

• (1555)

Thank you, I'll turn it back to Marc.

Mr. Marc-Philippe Laurin: The CBC was created by an act of Parliament because Canadians wanted a public broadcaster. Today we believe that a majority of Canadians still want a public broadcaster and they want a robust one able to hold its own in the media marketplace. We can't imagine anyone trying to impose the conditions outlined in Bill C-461 on any other media in Canada. They certainly shouldn't be imposed on CBC/Radio-Canada, the biggest news organization in the country and an essential vehicle for informing the public.

[Translation]

Bill C-461 would have an adverse effect on the public broadcaster's information service. The bill attacks the very principle of freedom of the press and would not be in the best interest of the citizens of Canada.

[English]

We urge this committee to recommend proceeding no further with Bill C-461. We would certainly support a thorough review of the Access to Information Act. We would be pleased to participate in any future proceedings towards reform of the act to improve accountability and access, but without endangering freedom of expression and the integrity of the public broadcaster.

In closing what we would like to say is that if what members of Parliament want is a sunshine list of public servant salaries, then it should draft a clear and transparent bill to that end instead of using the back door and destroying CBC journalism in the process.

Thank you.

[Translation]

The Chair: Thank you for your presentations.

Without further delay, I give the floor to Mr. Myles and Mr. Robillard, who represent the Professional Federation of Quebec Journalists.

Gentlemen, you have the floor.

Mr. Brian Myles (President, Journalist Le Devoir, Fédération professionnelle des journalistes du Québec): Good afternoon.

Allow me to introduce myself: I am Brian Myles, President of Quebec's Professional Federation of Journalists, or FPJQ. To my left, I am joined by Mr. Claude Robillard, who is our Secretary General.

The federation represents 2,000 journalists in Quebec. It is one of the biggest associations of its kind. It is not a union. It is an association which includes executives, salaried workers and independent journalists who rally around the noble cause of diversity of information, freedom of the press and the public's right to information.

For the FPJQ, the issues at stake in this bill are not so much access to information and transparency at CBC/Radio-Canada, but the protection of sources and of freedom of the press. These values are very important to us. Parliament decided a long time ago to give the country a public broadcaster. The very existence of CBC/Radio-Canada is not what is being called into question today. At the federation, we continue to believe that Canada needs a public broadcaster to encourage a diversity of voices.

Over the years, this corporation has played an invaluable role, in particular in investigative journalism. In Quebec currently, as you know, the Charbonneau Commission is investigating corruption and collusion in the construction industry. However, if these journalists—and first and foremost those of Radio-Canada—had not been on the case, this commission of inquiry which is revealing inappropriate expenditures that are now totalling millions of dollars—soon to be billions—would never have seen the light of day.

We feel that at all costs, we must prevent the public broadcaster from being weakened in any way. The Canadian Broadcasting Corporation is independent, and this must not become a hollow concept, an empty expression that is useful in beautiful speeches: rather, it must be a fact of life in daily reality and in the management of the day-to-day affairs of CBC/Radio-Canada.

Parliament already has two far-reaching and very important powers, since it determines the annual budgets of the corporation, and appoints the members of the board. The CRTC is then responsible for holding the corporation to account. It has considerably improved its record, which, it must be said, was somewhat disappointing in terms of access to information. This independence is what makes the difference between a true crown corporation which practices journalism, and a phoney institution that could eventually sink into shallow surface journalism, if not promotion or propaganda, as is the case in certain dictatorships.

A public corporation cannot consider practising journalism today without this independence from the state, and private broadcasters must enjoy a similar autonomy with regard to editors or bosses. The bill weakens CBC/Radio-Canada's situation in relation to its competitors. The message being sent is that the protection of sources is less important at CBC/Radio-Canada than at other broadcasters.

Since the Supreme Court ruling in the “MaChouette” affair, the famous case of Daniel Leblanc, a journalist at *The Globe and Mail*, there is now a test to protect sources in Canada. This is the famous Wigmore test, under which a source may be divulged before a court of justice, but only as a last resort. Moreover, it must be proven that disclosure will be more beneficial to uncovering the truth than silence. As the courts and the Supreme Court have said, we must always ensure that the high value of investigative journalism is protected.

Two very important elements underpin the mandate of CBC/Radio-Canada, and they are the Broadcasting Act, which guarantees the corporation full independence in matters of journalism, and the Journalistic Standards and Practices of the CBC. That document expressly states the following: “We are independent of all lobbies and of all political and economic influence. We uphold freedom of expression and freedom of the press, the touchstones of a free and democratic society. Public interest guides all of our decisions.”

These are the values that must be paramount when studying the bill. By going from an exclusion—that is to say the current standard—to an exemption, we run the risk of weakening the protection of sources. Mr. Carty spoke earlier of pharmaceutical companies that could want to appropriate secrets. I have no trouble believing that in the current context in Quebec, engineering firms and construction contractors would try to find out who is investigating them and would try to obtain information even before any investigation was concluded or made public.

The risk is that people will eventually want to have access to journalists' notes, and will want to know who they had dinner with, how much time they spent covering an issue, who they are investigating, and what network or contacts they are using to work on a project. Ultimately, an investigation could be nipped in the bud before it was even begun.

You must know that investigative journalism is not an easy or simple genre. There is a lot of preliminary background work that has to be done, whether it concerns the selection of topics, the identification of potential sources and the contacts that will lead us to speak to a source, taking us eventually to the ultimate source, who may confirm or infirm the original thesis.

• (1600)

This cannot be an open process, it cannot be brought to fruition in real time, in the full public light of day. There has to be a minimum of protection—if not of secrecy—and of discretion if the investigation is to go forward. This can be compared to baking a cake, if you like to cook. If you put a nice cake in the oven and open the door after two minutes, your cake will not rise. This bill means that the door will be opened on investigations that are underway and they will literally be snuffed out.

What collective benefit can there be to weakening an important news voice, a voice that has provided us with great investigations that have received international awards, a voice that has allowed us to shed light on numerous scandals? Whatever government is in power, there is no advantage in doing that.

We believe that in its current form, the bill does not offer sufficient guarantees to adequately protect the sources of CBC/Radio-Canada journalists. With this mechanism, people will always be turning to executives—those responsible for access to information—or to a superior court to force the disclosure of journalist's notes. Ultimately, as my colleagues have said, CBC/Radio-Canada journalists will not be able to guarantee their sources the same degree of protection as do journalists who work for other, private media.

Unfortunately, there isn't much to be done. I don't see how an amendment to the bill to exclude journalistic sources will save the day. It seems to me that the proper route to follow—and that is the sole recommendation we are making—is to vote down all of Bill C-461. We, the members of the federation, have always defended the principle of protecting sources. If Parliament feels that we need a law to protect sources, I urge our elected representatives to hold that debate. We will be pleased to come and testify about our experience and make our suggestions, but, please, if you must raise as serious a topic as the protection of sources, do so for all of the journalistic community. Indeed, in this day and age, no investigation worthy of the name is conducted without resorting to confidential sources and journalistic material.

Thank you very much.

The Chair: Thank you for your presentation.

I now give the floor to Mr. Nantel, who has seven minutes to put questions to several witnesses or to a witness of his choice.

Mr. Pierre Nantel (Longueuil—Pierre-Boucher, NDP): Thank you, Mr. Chair.

First of all, I want to thank all of the witnesses for being here this afternoon, especially in light of the importance of the issues raised in this bill.

I will begin with a comment, if I may. Given his reactions, I think that the sponsor of this bill is being quite candid and does not realize the scope of the consequences of his bill. I invite him to consider that aspect, since, clearly, some very eminent experts have come here to warn us about the risks inherent in his bill.

My first question is addressed to Mr. Myles and Mr. Robillard.

You explained the great importance of investigative journalism very eloquently. Do you think that an amendment to protect sources could allow certain programs like journalist Alain Gravel's *Enquête*, on the Charbonneau Commission, to continue to be as significant and productive? Do you think that even with an amendment designed to protect sources, journalists could continue to generate that high quality of information?

•(1605)

Mr. Brian Myles: I fear that we may be sending a somewhat tainted message to potential whistleblowers. The journalists at *Le Devoir* and *La Presse*, and their colleagues in private media, benefit from a full level of protection, as the Supreme Court has indicated. It recognizes the importance of preserving investigative journalism and limiting as much as possible the number of cases where it is necessary to disclose the identity of sources. Indeed, anonymous sources are protected in Quebec by the Wigmore test. If you want to blow the whistle, where will you turn if you have important

information? Will it be to the organization that has the weakest protections, or to the one that has strongest ones? The choice seems obvious.

Moreover, we have to be careful to focus not only on the source, that is to say the person who is speaking anonymously. An investigation is a process. Often, we meet with certain sources, who will not necessarily be a part of the final cut or the final report, but they will have allowed us to connect up all of the dots.

As you know, the Watergate scandal was not revealed after a single meeting with Deep Throat in the basement parking lot. The work came together after multiple elements were connected.

When the trainers hired by the FPJQ talk to us about investigative journalism, they compare it to painting by numbers. It is very important to preserve the whole of that undertaking and to consider the protection of the material and of the process, as well as the people involved.

Mr. Pierre Nantel: Thank you, Mr. Myles.

My next question is for Ms. Bertrand or Mr. Poulter.

With Bill C-461, we are moving to an exception based on CBC/Radio-Canada's independence. We asked Mr. Rathgeber how he defined that concept. He replied that it was independence from the government.

In your opinion, how is the concept of independence, which is in fact derived from the Broadcasting Act, to be defined?

Ms. Maryse Bertrand: The concept of independence in the Broadcasting Act is defined by the fact that the government does not have the right to dictate policies in matters of programming or journalism to broadcasters. In that context, it is very clear that this pertains to the government. However, when we are talking about a third party, such as a pharmaceutical company, as mentioned by Mr. Carty, the notion of independence does not help the broadcaster to do its work. This exception that would apply to our independence would not allow us to preserve the confidentiality of our journalistic material. Mr. Carty spoke of this earlier.

Mr. Pierre Nantel: In your opinion, what impact will these changes have on the privacy of information?

Ms. Maryse Bertrand: Here again, we have this same vague and ill-defined notion of independence, regarding which there is no case law. What is worse is that an individual we might be investigating, having heard that this is the case—indeed, we often call these people ahead of time to get their reactions or their comments—could, following a first report, expect that there would be a series of others. He could then ask to obtain the material ahead of time so as to prevent its publication. This concerns us greatly.

Mr. Pierre Nantel: Thank you, Ms. Bertrand.

My question is for Mr. Laurin or Mr. Carty.

How do you feel about the committee not hearing from the commissioner?

Mr. Marc-Philippe Laurin: I must admit, Mr. Nantel, that we have not thought about this a great deal. There are certain questions which should, in our opinion, be put to the commissioner. It seems that during her last appearance here, the issue of independence was raised and the comments made were somewhat ambiguous. I think it would be important to ask her about this, but this decision belongs to the committee. Personally I would very much like to hear her point of view on this bill with regard to the independence and the activities of CBC/Radio-Canada, and how one affects the other.

Mr. Pierre Nantel: Thank you.

Obviously, I was talking about the privacy commissioner.

I would like to raise another point. We see that in countries that are considered comparable to us, such as Australia, Ireland and the United Kingdom, public broadcasters use the notion of exclusion rather than that of exception. And yet here we are attempting to change that status, despite the fact that it has served us well until now. I would also remind you that CBC/Radio-Canada obtained an "A" not so long ago for its cooperation.

Unfortunately, the commissioner only has the power to make recommendations in Canada, whereas in the other three countries I mentioned earlier, the commissioner may order disclosure.

Do you think it would be relevant to react to that?

Mr. Carty, I would very much like to hear your comments on this.

• (1610)

[English]

Mr. Bob Carty: That's correct. That's my understanding too. In those other countries there are exclusions that are recognized as a higher level of protection for information. I think even the Parliamentary Secretary to the Minister of Justice has admitted that. But in those other countries, the Information Commissioner or their equivalent has order-making abilities.

We think that is an important kind of reform that needs to be undertaken in Canada. We are very interested in seeing a comprehensive reform of the Access to Information Act. In fact, the organization of which I am a board member, the Canadian Journalists for Free Expression, has submitted a large number of recommendations to that end, and one of them would be more powers to the Information Commissioner.

[Translation]

Mr. Pierre Nantel: Mr. Laurin, in your presentation, you referred to Mr. Trudel's comments.

Could you explain to us how other private broadcasters could also benefit, directly or indirectly, from public funding?

Mr. Marc-Philippe Laurin: I referred to Mr. Trudel's remarks?

Mr. Pierre Nantel: Professor Trudel.

Mr. Marc-Philippe Laurin: No. I think it was Mr. Myles who quoted him.

Mr. Pierre Nantel: I apologize. It was indeed Mr. Myles.

Mr. Brian Myles: Could you repeat the question, please?

Mr. Pierre Nantel: Could you tell the committee how other public broadcasters could benefit, directly or indirectly, from public funding?

Mr. Brian Myles: England, Australia and Ireland have, if I am not mistaken, created a system according to which journalistic material is completely excluded from disclosure. This has the merit of being clear. Our main argument is that at this time, the system is not broken.

[English]

If it ain't broke, don't fix it.

[Translation]

The decision of the Federal Court of Appeal gave the Information Commissioner a certain right of oversight. This allows her to determine whether CBC/Radio-Canada is entitled to protect material, and whether that material is really journalistic. We are satisfied with that test and the current process.

The bill as it stands runs the risk of doing far more harm than good. We agree that CBC/Radio-Canada be subject to the Access to Information Act, and that a minimum of information should be accessible, but we must make sure that the fundamental principles of freedom of the press, the protection of sources and of journalistic material, are protected. This is at the heart of our concerns.

The Chair: Thank you for your questions and answers.

Ms. Davidson, you have seven minutes.

[English]

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

Thanks very much, to each of you, for being here with us this afternoon.

When it comes to the information on section 68.1, certainly this is something this committee has been looking at for quite some time. I think you're probably all well aware that we did an extensive study on that and recommended that section be amended in order to comply with the Federal Court of Appeal's decisions on the matter. I'm quite sure you would have followed that. Now we're looking at Bill C-461 and discussing the same issue with section 68.1.

Madame Bertrand, you talked about your concerns with the bill, that as it's currently drafted it would have some unintended consequences. You were afraid, in your words, that it may undermine CBC/Radio-Canada's "ability to do its job as mandated by Parliament". I would like you to talk a little bit about that. As well, you talked about the bill removing current protections for journalism, and the Federal Court of Appeal making section 68.1 crystal clear and how that should continue.

We've heard from the mover of the bill that he feels his bill absolutely upholds the Federal Court of Appeal's decision on section 68.1. I'd like to know why you feel it doesn't, if in fact that's what you do feel.

Also, when we heard from the commissioner the last time, she told us that since 2007 they've looked at close to 1,200 cases in relation to CBC and they have about 200 remaining. Out of all those cases, no case has dealt with journalistic sources, and she thinks that's an important fact to know when we consider possible amendments. Can you also talk about the fact that out of all of those cases she has not dealt with any dealing with journalistic sources?

There are three or four different things there that I'd like you to talk about, please.

• (1615)

Ms. Maryse Bertrand: Sure.

The first is the broader question of why we are concerned about the bill. Perhaps I can summarize it in four or five different points. The addition of the test that there should be a threat to our independence is something that is unprecedented in terms of the countries or jurisdictions that we've looked at: Ireland, the United Kingdom, Australia. Moreover, as you've heard from Mr. Carty, the concept of independence is misplaced in the context of access to information. It's a concept that is very important under our Broadcasting Act and our relationship with the government.

But when the time comes to deal with the programming, journalistic, and creative material that third parties are at liberty to request and that we have to provide, or not provide, depending on whether we are successful in demonstrating that this test is passed or not, it doesn't become very helpful in terms of our ability to do our job, in terms of our ability to keep that kind of material from going into the hands of individuals or companies who have, perhaps, an interest in making sure that this material doesn't get aired.

So the test itself I think is flawed. The absence of precedent causes us some concern, and the absence of jurisprudence is a guarantee that, unlike the current situation where we've had other court cases that have decided quite clearly what the Information Commissioner can and cannot see, this particular amendment almost guarantees us a number of different trips to the courthouse in order to clarify how far this concept of independence actually goes in protecting our ability to do our journalistic work.

In terms of the bill and whether it actually does what the court of appeal decided, I'm not actually sure how to answer that because the court of appeal essentially said very clearly that the commissioner, herself, had the ability to see all of the information, even though it was covered by the journalistic, programming, or creative label, except for sources. The court of appeal was extremely clear on that because, quite naturally, the court of appeal concluded that in order to decide whether something is journalistic, the commissioner does not need to know the name of the source. Just the fact that you know there is a source is enough to conclude that it's journalistic, and under the current system, once you conclude that something is journalistic, it's off limits. It doesn't have to be disclosed.

Much like the Supreme Court judges themselves in the famous *Ma Chouette* case, who still to this day, to my knowledge, don't know what the name of *Ma Chouette* is, they figured quite properly that the commissioner did not need to know the name of the source in order to adjudicate as to whether something was covered by the journalistic label or not. So that is very clear.

We have declared ourselves to be satisfied with that. The commissioner has declared herself to be satisfied with that. The government, in its own submission to this committee, declared itself to be satisfied with that. So as far as we're concerned, that particular case is closed.

This particular amendment doesn't seem to shed any further light on this. As a matter of fact, I would submit that because it sends us back to this whole notion of having to show a prejudice to our independence, we are going to be arguing over the sources as well as over all of the other types of journalistic material in our future court cases. To me, it's both a step back in terms of where the court of appeal decision had put us, and it's also a huge level of uncertainty that gets introduced into the process.

I think the last question that you had was on the sources. It's fair to say, to my knowledge, that we haven't had any direct access requests for our sources. In terms of the actual journalistic material that gets protected under the current system, it's actually a pretty small portion of our overall complaints.

• (1620)

I have some statistics here. We have received a little over 1,700 requests since 2007. Of those requests, there were approximately 252 instances where the provision of section 68.1 was used to withhold records in their entirety, on the basis that they were either programming, journalistic, or creative material. So we're talking about a fairly.... It's not insubstantial, but it's by no means the lion's share of the requests we get. The lion's share of the requests we get do get released.

[Translation]

The Chair: Thank you for your reply.

Unfortunately this seven-minute question and answer period is now over.

Mr. Andrews, you have seven minutes to ask your questions.

[English]

Mr. Scott Andrews: Thank you, Mr. Chair.

Now that I have the floor, I'd like to move the following motion:

That the Committee hold hearings on the conduct of public office holders in relation to the handling of the repayment of Senate expenses by Senator Mike Duffy and the conduct of officials in the Prime Minister's Office in this process, and that the witness list include but not be limited to: Nigel Wright; Benjamin Perrin; Right Honourable Stephen Harper, Prime Minister; Ray Novak;

And that, in the context of this study, the Committee table a report in the House asking that the House send a message to the Senate requesting the appearance before the Committee of the following senators: Senator Mike Duffy; Senator David Tkachuk; Senator Marjory LeBreton.

The reason I move this motion is that it is critically important that the committee be immediately seized with this issue. I'm also forced to move this motion now because Conservatives will move that this meeting go behind closed doors to deal with my motion, as they do over and over again, hiding behind secret meetings to prevent Canadians from seeing how Conservative MPs carry out the orders of the PMO to stifle all dissent.

The conduct of public office holders in relation to the handling of the repayment of Senate expenses by Senator Mike Duffy and the conduct of officials in the Prime Minister's Office in this process goes to the heart of the trust Canadians have in their democratic institutions. This is a very serious situation that has the potential to undermine this confidence. The issues raised are very troubling questions that have yet to be answered and merit the immediate action of this ethics committee.

We're talking about the most senior official in the Government of Canada, the chief of staff to the Prime Minister, providing a substantial cash gift of \$90,000 to a sitting parliamentarian. This raises a whole host of other issues, in terms of whether this arrangement was fully compliant with the Conflict of Interest Act, the Parliament of Canada Act, the Rules of the Senate, and the Criminal Code. There are so many unanswered questions, and it's up to the ethics committee to get the answers for Canadians that they deserve.

There are 10 key questions that must be answered.

On Monday, May 20, the PMO told CTV News that they had forwarded a copy of an agreement between Senator Mike Duffy and Nigel Wright to Ethics Commissioner Dawson. Then on Tuesday, the Conservatives said this document couldn't be released because no such document existed. An e-mail, which does exist, describes the secret agreement. The e-mail, dated February 20, is currently in the possession of the Prime Minister's Office.

Will the government commit to releasing this and other e-mails, documents—electronic or otherwise—that relate to this secret deal between the PMO, Senator Duffy, and Nigel Wright so they can be reviewed by all Canadians?

Two former chiefs of staff to Conservative prime ministers have said there is no way that Stephen Harper, as Prime Minister, could not have known about this deal. How could Mr. Harper continue to say he had the utmost confidence in Mr. Wright one day, and nearly five days later say he's allegedly been kept in the dark about this serious undertaking?

Media reports indicate that Stephen Harper's former legal adviser negotiated an arrangement between Senator Duffy and Nigel Wright. That lawyer says he did not participate in this decision to write a \$90,000 cheque, but has not denied drafting an agreement. Who drafted the agreement, and why?

The Senate committee's report on Senator Duffy was whitewashed. Who ordered the members of the committee to whitewash the Duffy report, and why did the majority of senators on the committee agree to this cover-up and cooperate?

Senator Duffy told the Prime Minister's Office he would repay his expenses as long as they went easy on him in exchange for his silence. What else did the PMO expect in exchange for that \$90,000 cashed cheque and a whitewashed Senate report?

•(1625)

Conservative Senator David Tkachuk tipped off Senator Duffy that he had billed inappropriate expenses. Was Senator Tkachuk or any other Conservative senator ordered by the PMO to give Senator Duffy the heads-up as part of this deal to go easy on him?

Once Senator Duffy repaid the \$90,000, he immediately stopped cooperating with the Deloitte investigators who were auditing him. Why? Was he ordered to quit cooperating on the advice of Nigel Wright in the PMO? Why is the Conservative leader in the Senate refusing to allow committee hearings into the whole affair to be held in a public, open, and transparent manner?

Why did Stephen Harper continue to have confidence in these senators who whitewashed a report and who are now being asked to review it for a second time?

The audit of Pamela Wallin's expenses is yet to be made public. Had the Duffy-Wright deal not come to light, would she have received similar treatment?

Despite being required to disclose a gift of over \$500 to the Senate ethics commissioner within 30 days, Senator Duffy did not disclose a \$90,000 gift from Nigel Wright. Why? There can be no more important issue for the House of Commons to ensure the integrity of our parliamentary institutions than this one. This is the reason this committee must look into this very serious issue and must get to the bottom of this, so that Canadians can have trust in their institutions.

This weekend on returning to my constituency, I heard over and over again: what went on? Who knew what, and who knew what, when? It's time for this government to come before this committee and discuss this important issue. This is a government that rode into government on a white horse of accountability and they should come to terms with this motion.

[*Translation*]

The Chair: I apologize, but I have to interrupt you.

[*English*]

Mr. Scott Andrews: Now, I notice my time is up because the bells are ringing, Mr. Chair. However, as the Conservative government has moved sitting hours to 12 p.m., maybe the Conservatives wouldn't mind if we continue with this motion for the next 25 minutes or so. The House is only a two-minute walk down the way and the government has extended the sitting hours. They want to come here to work until 12 o'clock, so maybe they would like to proceed with this motion for the next 25 minutes.

[*Translation*]

The Chair: Thank you, Mr. Andrews.

Since the bells have begun to ring, I must take this opportunity to thank our witnesses. The hour we had to spend with you is now over.

I thank you for your testimony and your thoughts in the context of our study of Bill C-461.

Since the bells are ringing, I must suspend the meeting, unless I have unanimous consent to continue at this time.

[English]

Mr. Scott Andrews: They don't want to work.

[Translation]

The Chair: Do I have unanimous consent?

Since there is no unanimous consent, we are going to suspend our proceedings for a few minutes and come back afterwards. Mr. Andrews, you will then have the floor.

We will resume our meeting after the votes.

● (1625) _____ (Pause) _____

● (1710)

The Chair: We will now continue our work. I must ask the cameramen to leave the room so that we may hold the second hour of our meeting. The meeting was interrupted by the votes.

So, let us get back to where we were. Mr. Andrews still has the floor, unless he has finished, in which case I will give the floor to the other speakers who wish to intervene on the motion which was tabled earlier.

I yield the floor to Mr. Andrews so that he may conclude his presentation.

[English]

Mr. Scott Andrews: Thank you very much, Mr. Chair.

I was getting to the end of my comments regarding my motion that this committee look into the Nigel Wright-Mike Duffy-PMO \$90,000 cheque.

In the House of Commons today, the Minister of Canadian Heritage kept repeating that Mr. Wright acted alone. But if you look at Mr. Wright's statements, not once did he say he acted alone or that he didn't inform his boss of what he had done. So there are other actors in this particular case, and we need to get to the bottom of this. I have a lot of respect for the Conservative members over the years who fought for more accountability and more transparency in this place, and I'm hoping that they would support this motion to get to the bottom of this particular affair.

Thank you, Mr. Chair.

[Translation]

The Chair: We will continue our debate on the motion.

Mr. Warkentin, you have the floor.

[English]

Mr. Chris Warkentin: It's unfortunate, Mr. Chair, that my colleague has undertaken to bring this forward now, simply because we do have important witnesses we should be hearing from. I do apologize on behalf of this side of the table for dismissing our previous witnesses much earlier. Obviously, they have important

subject material that didn't get covered because of the choice of Mr. Andrews not to wait until committee business later on in the meeting.

Having said that, this is before committee now, and we'll have to undertake to review this.

You do know, Mr. Chair, that the Ethics Commissioner is currently reviewing the circumstances and the submission that has been brought forward. We also know that the Senate ethics commissioner is reviewing this. We also know that the Prime Minister has answered questions with regard to this and said that he knew nothing of it. Mr. Wright has also been clear—counter to what Mr. Andrews said—that he acted alone and he takes full responsibility for that. I would challenge Mr. Andrews to actually read some of the documentation that has circulated. If he even read local media or the media that's available, he'd know that.

We know that there is clarity that needs to be brought forward. We would look to the Liberals...it's an interesting and very partisan motion that he's brought forward. Obviously, it doesn't include Liberal Senator Mac Harb. We also think these allegations that are being brought forward are very similar to a case that we had in the House of Commons, which involved a former Liberal Attorney General, Wayne Easter. It involved a former Minister of the Crown, Judy Sgro, and it also involved a former Liberal member of Parliament, John Cannis.

We're wondering if Mr. Andrews might have an opportunity to share with us as to whether or not the fraudulent claims, of over \$170,000, of these three individuals has been paid back to the Canadian taxpayer? We'd like to know that. We also want to know if that has all been cleared up, how it was cleared up, and how it differs from this case.

Mr. Chair, I would ask that we move in camera because I think the witness list has to be reviewed, and I think this is something that can be done by the committee as we move into committee business, if that's in fact what we're going to do. So I move that we move to committee business in camera.

● (1715)

[Translation]

The Chair: The motion has just been presented. It is not debatable. The committee has to sit in camera.

Since a recorded division has been called for, I am going to let the clerk count the votes.

(Motion agreed to: yeas 6; nays 4)

The Chair: Since the motion has been passed, we are going to interrupt the meeting for a few minutes and sit in camera.

[Proceedings continue in camera]

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