



House of Commons
CANADA

Standing Committee on Canadian Heritage

CHPC • NUMBER 037 • 1st SESSION • 39th PARLIAMENT

EVIDENCE

Thursday, February 22, 2007

—
Chair

Mr. Gary Schellenberger

Also available on the Parliament of Canada Web Site at the following address:

<http://www.parl.gc.ca>

Standing Committee on Canadian Heritage

Thursday, February 22, 2007

• (0900)

[English]

The Chair (Mr. Gary Schellenberger (Perth—Wellington, CPC)): Good morning, everyone, and welcome to the 37th meeting of the Standing Committee on Canadian Heritage. Pursuant to Standing Order 108(2), we are here to study the future of the Canadian Television Fund.

I would like to welcome our witnesses from the Canadian Radio-television and Telecommunications Commission.

Mr. von Finckenstein, the new chair, welcome. Please introduce your people, sir, and make your presentation.

Mr. Konrad von Finckenstein (Chair, Canadian Radio-television and Telecommunications Commission): Thank you very much, Mr. Chairman and members of the committee.

[Translation]

I am accompanied today by the Vice-Chair of Broadcasting, Michel Arpin, and the Acting Associate Executive Director of Broadcasting, Scott Hutton.

I know that you are aware of the current situation with regard to the Canadian Television Fund (CTF). The Commission recognizes that the funds administered by the CTF play an important role in supporting the production of Canadian programs and fulfilling regulatory requirements regarding the broadcasting of Canadian content. We also believe Shaw and Quebecor have raised some serious issues that need to be resolved and that the CTF Board of Directors has yet to address.

I will not take up your time by repeating what you already know about the controversy involving Shaw, Quebecor and the CTF. Instead, let me go straight to the point that I believe you are interested in, what the CRTC can do to resolve the situation.

[English]

Let me begin with some brief background. As you know, Quebecor Media agreed last week to resume its payments to the fund, while expressing the view that significant reforms are required in the way that the CTF does business. Quebecor also announced its support for the commission's effort to find a solution that will satisfy its concerns while also meeting the objectives related to the production of Canadian content.

Two days ago, Shaw also agreed to resume its monthly payments to the CTF, stating it is sufficiently assured and confident that the CRTC will take a serious look at the suggestion it made to reform the CTF.

These decisions by Quebecor and Shaw mean that the funding for the next season is no longer in doubt. Accordingly, the commission announced on Tuesday the creation of a task force, headed by my colleague here, Michel Arpin, to work with the parties to find a solution that will address the distributors' criticism of the fund while also serving the objectives of the Broadcasting Act regarding Canadian content.

If ultimately a full solution cannot be reached by the task force, then at the very least, the task force will lay out options to deal with any remaining points of disagreement.

[Translation]

The task force will primarily address the following issues: what is the most effective use of the contributions of broadcast distributors to the CTF?; what is the appropriate size and structure of the CTF Board of Directors?; what are the appropriate mechanisms for dealing with real or perceived conflicts of interest at the CTF?

The task force will begin its work immediately. Between now and the end of April, it will consult the CTF, Shaw and Quebecor, other broadcasters and broadcast distributors, and several other stakeholders—including the CBC, the Department of Canadian Heritage, television production funds, producers, unions—, in short all those who have an interest in the future of the CTF.

[English]

By necessity, the work of the task force will be conducted in private so that the concerns raised by all stakeholders can be discussed in a frank and open manner and there can be no fear of retribution.

After its consultation and fact-finding are completed, the task force will make recommendations to the commission about the CTF and produce a public report—I stress, a public report. The report will spell out the concerns raised, solutions or modifications suggested, and any consensus that is reached or can be reached with further government assistance.

If there is no consensus, the report will set out various options to resolve the concerns that have been expressed. At that point, based on the task force's findings, the commission will make a decision about whether it is necessary or desirable to issue a public notice and hold public hearings. If we were to go ahead with public hearings, we would expect to complete them by the end of August.

[Translation]

Mr. Chair and members of the committee, I have been brief to allow as much time as possible for your questions. I would be pleased to respond to them. Thank you.

● (0905)

[English]

The Chair: Thank you very much.

Mr. Scott.

Hon. Andy Scott (Fredericton, Lib.): Thank you very much, and thank you for being here. The brevity of the presentation will allow us more opportunity to ask for elaboration and get into some of the details.

Could you elaborate on the comment that Shaw and Quebecor raised a number of serious issues that need to be resolved and that as of today these issues have not been addressed by the CTF's board of directors? Could you be a little more specific about that?

Mr. Konrad von Finckenstein: Well, you've had the witnesses before you. You had Shaw here. You had Quebecor here. They raised their concerns about how the fund is being administered, how it's being spent, etc. These were set out in great detail. I think they speak for themselves. I don't purport to speak for Quebecor or Shaw.

These are serious concerns that they addressed in their letters to the minister and in their appearance before you, and they need to be addressed. There is clearly a great amount of discontent. I have no idea what the solution is. I also don't take those concerns automatically as gospel truth. I just take them as what they are, assertions by those parties that there are issues to be addressed.

Hon. Andy Scott: On the comment, though, that these issues have not been addressed, we also heard testimony from CTF that they had been working on these things. That's the point I'm trying to get at. You seem to be weighing in a little bit here, no?

Mr. Konrad von Finckenstein: No, Mr. Scott, I'm trying to do just the opposite. I'm trying not to take a position. I want the task force to take the position. I'm just pointing out that the assertions are that they have not been addressed.

I know that the CTF has taken certain steps, but obviously they have been deemed to be insufficient and not to have addressed the concerns. Whether that is the case or not, and to what extent, etc., that's exactly what the task force is supposed to find out.

Hon. Andy Scott: To read this, though, it would suggest that. But we'll leave that.

It also says that when Shaw agreed to resume the payments that it was because they were sufficiently assured and confident that the CRTC would take this. What was the nature of the discussions between you and them that would cause them to be sufficiently assured?

Mr. Konrad von Finckenstein: I met with both Pierre Karl Péladeau and his vice-president, and I met with Jim Shaw and his vice-president to find out what their concerns were and to echo the call by the minister to resume payments. The minister, as you know, suggested that they should make payments.

I should add here that the obligation to make payments is annual. The obligation to make monthly payments is by convention or custom. It's not spelled out in the regulation. So technically, neither Shaw nor Quebecor were offside in not making payments prior to August. However, the tradition had arisen that these would be done monthly on the basis of a directive from the CRTC.

So the industry had built up on the basis that there would be monthly contributions and that's how the funding arrangements were. By their withholding the monthly payments, they really caused a disarray in the industry and a lot of uncertainty, and the production for next year, which is being done right now and has to be funded right now, was in doubt. Therefore, the minister suggested in very strong words that they should pay.

I went one step further and said, if you don't pay, I will have no choice but to amend the regulations and make you pay on a monthly basis. Probably that would lead to confrontation, and I prefer to work things out.

Here there is clearly an issue. You have raised it several times over the last two years. You feel it is unaddressed. I am prepared to address it, and what I'm prepared to do is to address it quickly so that it's resolved by August 31.

Now, I'm the new kid on the block. I didn't choose this crisis. It was imposed upon me, basically. I'm here, and I'm willing to solve it, but work with me rather than against me.

Obviously, something in my argument, whatever it was, convinced them that this was a good approach and they resumed payments. Therefore, when Shaw agreed to resume payments, I issued the press release setting out the task force's terms of reference and its timetable.

● (0910)

Hon. Andy Scott: When you first told them of the option that if they didn't resume payment, in fact you'd have to amend the regulations to enforce that to happen in future, what was the sequence? When was the first time the CRTC said that to Shaw and Quebecor?

Mr. Konrad von Finckenstein: I issued the press release after the minister had publicly asked them to resume payments. I had been, at that point in time, one week on the job. I was being briefed and the minister made that comment, and obviously I read letters from several parties. For instance, the Directors Guild asked me to step in because the season was in jeopardy and asked for regular payments to be resumed.

After being briefed by my staff, understanding the legal situation and realizing that, notwithstanding all the verbiage about breaking the law, they actually weren't breaking the law—they were breaking an industry custom that had arisen—I decided I have the tool and I can use it, although I don't want to use it. I don't believe in confrontation if it can be avoided, but on the other hand we are responsible for Canadian content. We direct payments into this fund and we want the fund to produce Canadian content. That's not happening if the monthly payments aren't happening.

I think the words in our press release were very careful, saying “if necessary” we will move expeditiously to legislate monthly payments, which so far had been done on a customary basis, but not on a legally obligatory basis.

Hon. Andy Scott: Am I done?

The Chair: You can have one really short one.

Hon. Andy Scott: Thank you.

In part, I was more referring to the position, because I recognize that you're new to the position. What was the position of the CRTC before you held the position you have now? What intervention did they make?

Mr. Konrad von Finckenstein: There really was no need to take a position because payments were being made on a monthly basis. I don't know when Shaw announced that it wouldn't make the monthly payments, but I think it was basically during the interregnum—my predecessor was leaving and I wasn't appointed yet—and under such a situation it's very difficult for an organization to take a firm position. I think the CRTC was essentially silent. It didn't say anything on it.

The Chair: Thank you.

Mr. Kotto.

[*Translation*]

Mr. Maka Kotto (Saint-Lambert, BQ): Thank you, Mr. Chair.

Welcome. My question pertains to the groups or entities you will be consulting.

With regard to the issue of broadcasting, have you considered consulting experts from the universities? There are some who have followed the development of the CTF from its beginnings as the Cable Production Fund to the present. These individuals have observed very objectively the evolution of the Fund and of new technologies. The latter are the source of the crisis.

Mr. Konrad von Finckenstein: The new technologies are at the centre of the crisis, there is not doubt about that. They are the major cause. As for who we will be consulting, my colleague Mr. Arpin is in a better position to answer that question.

Mr. Michel Arpin (Vice-Chair, Broadcasting, Canadian Radio-television and Telecommunications Commission): When the task force was announced, we indicated that we intended to consult various authorities in the industry. You may perhaps have noted this. We said we were prepared also to meet with other stakeholders. Some have already come forward. We definitely intend to meet with them.

Yet, no one from the universities has shown an interest in this matter. Over the years, several have looked at how the Fund operates. I admit that their opinions could be useful.

Mr. Maka Kotto: The reason for my question is that I wish to strike a balance between the industry's concerns and cultural concerns. Today, business concerns predominate. As was said recently before witnesses, the effect of all this on Canadian content has been somewhat understated.

We have seen what happened with satellite radio. The CRTC granted two licences to operators and now Quebec and Canada's share is 10%. The Broadcasting Act structure was not taken into account. A share of 10% is quite low for reserved space. At the beginning the 2.5% share was increased to 5%. In the present case we have forged ahead without considering the impact on cultural sovereignty.

Cultural sovereignty will have to be taken into consideration in the discussions of the task force. I am giving you a heads up, particularly with regard to the attitude of Shaw Communications Inc. This company is more concerned with the material aspect than the cultural aspect.

I would like to know if the CRTC has in the past received complaints from Shaw and Vidéotron with regard to this matter.

● (0915)

Mr. Konrad von Finckenstein: I was not there at the time; therefore I cannot answer.

Scott are you able to respond to that?

Mr. Scott Hutton (Acting Associate Executive Director, Broadcasting, Canadian Radio-television and Telecommunications Commission): We did not receive an official request for changes. However, at one or another of our hearings or meetings, among others during the television review that took place last November and December, certain comments were made.

In his presentation on matters pertaining to television regulations, Mr. Shaw spoke about concerns regarding the Fund, but it was somewhat out of context.

Mr. Maka Kotto: Two groups that appeared before this committee stated that the authorities, in this case the CRTC and elected officials, had been alerted. I was surprised because we did not receive any complaints or statements.

Mr. Konrad von Finckenstein: Do not forget that we are not responsible for the Fund. It is the responsibility of the Department of Canadian Heritage. When people speak of the authorities, they are probably referring to the department. Our responsibility is limited to disbursing Fund monies.

I do not know who they spoke to but, as my colleague said earlier, no one filed a complaint or asked us to take specific action with regard to the Fund.

Mr. Maka Kotto: All right.

[*English*]

The Chair: Time's up right now.

Mr. Angus.

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

Thank you for coming here this morning.

When I heard that there was going to be a CRTC task force, I thought it seemed to be a possible way of resolving this conflict. But I'm looking at the tradition in the CRTC in terms of task forces. In 1979 we had one on northern and remote communities and we had over 400 public representations. We had one on the role of sexual stereotypes and women. We had regional hearings right across the country.

What part of the Broadcasting Act gives you the authority to hold private, closed-door task force hearings?

Mr. Konrad von Finckenstein: The Broadcasting Act, the Canadian Radio-television and Telecommunications Commission Act, and the Telecommunications Act give me a task to do, and essentially as an independent regulator we discharge our mandate in the way we see best, most efficient, and hopefully most successful. We hold public hearings, and we made it clear here that we will make the report public, and if necessary, if the matter is not resolved, then indeed we will hold public hearings. If it is resolved, then the solution will be public and we may very well have to amend the regulations, and we will do that.

The reason we are holding the first part in confidence is very simple. We are talking here about commercial reality, a big dispute between producers, the fund, and the contributors to the fund. We want to get at the root of it. We want to know what's going on. We want people to be able to talk to us freely without it in any way imperiling their commercial relations or making their negotiating position—because after all these people are all negotiators, each of them at one point in time—in any way more difficult by tilting the balance for somebody.

That's why we're doing it.

• (0920)

Mr. Charlie Angus: If the CRTC thinks someone has failed to comply with a regulation, licence decision, or order, which I think is the case, it can hold an inquiry under subsection 12(3), but the inquiry panel must have three CRTC commissioners. In this case we have only one. If you want to undertake research about any matter in your jurisdiction, you can do so under subsection 14(1), but I don't see where it gives you the authority to hold closed-door meetings to settle this.

Mr. Konrad von Finckenstein: I disagree with your initial argument that there has been a breach of the law. As I explained to Mr. Scott, there has been no breach of the law here. What there has been is there have been no monthly payments. The monthly payments are traditional, but they're not mandated by law. So that section doesn't apply.

What we have here is a concern by people that the fund does not relate to its stated objective, namely to foster Canadian content, and it's not operated in an efficient way. Whether those allegations, assertions, whatever you want to call them, are correct or not is why we are making the inquiry or task force. It's really an evidence gathering. We will make our results public. I explained to you why we do it in confidence—so that we get to the root of issues.

Mr. Charlie Angus: You say there was no breach of law, that this circular is just, as I think you referred to it, an industry custom. “Custom” to me sounds somewhat quaint. Yet the CRTC issues circulars all the time for election obligations, for making sure there's equitable, fair election coverage, fair election advertising. Is that just a custom? Does the television station get to ignore that, like Shaw and Vidéotron did? What steps would you take in the case of a television station ignoring the election circulars?

Mr. Konrad von Finckenstein: First of all, I don't know the specific issue that you're referring to. My colleague will answer on it.

I just want you to understand that the CRTC is a regulator. We regulate. We lay down the regulations on those things that absolutely have to be done. We also issue directives, which basically we expect people to live up to. We don't need to elevate them to the level of a regulation because there is voluntary compliance, as everybody's interested. It also allows us to change them should the circumstances change.

Mr. Charlie Angus: But are election circulars voluntary?

Mr. Konrad von Finckenstein: I'm sorry, I'm here to talk about the CTF, not elections. I will ask my colleague to answer that.

Mr. Charlie Angus: Well, I'm here to understand why a circular... as you tell me, a circular is custom and can be ignored. Can other areas of CRTC circulars be ignored as well because it's just a custom? That's what I want to know.

Mr. Konrad von Finckenstein: I don't know what's so difficult to understand. There's a difference between something that's law and something that's convention. It's usually to the interest of both sides of convention to live up to it.

Michel will tell you about the election circulars.

Mr. Michel Arpin: The circular regarding the election refers to the Elections Act and to the various regulations. It's only a handout for the broadcasters reminding them what the rules are and where they can find the information. It's very useful for people working in the newsroom and public affairs, as they do change from time to time and new people come in. That's why the commission puts out these types of circulars every time there is a federal or provincial election.

Mr. Charlie Angus: So it's not any real obligation of the broadcaster. It's just a reminder.

Mr. Michel Arpin: It's a reminder that there is a federal Elections Act or a provincial election act and there are some specific regulations pertaining to radio, television, and the BDUs. It's a reference to an existing piece of legislation.

Mr. Charlie Angus: Thank you.

The Chair: Mr. Fast.

Mr. Ed Fast (Abbotsford, CPC): Thank you, Mr. Chair.

I want to focus back on the CTF rather than on elections regulations. There was some suggestion initially that the minister was slow off the mark, and yet virtually all of the witnesses that have appeared before us commended the minister for acting as quickly as she did to address this problem. Obviously through her and your efforts, Mr. von Finckenstein, the parties did come back to the table and we have the funding restored to the CTF.

My question first of all is this. How long have these problems between the BDUs and the CTF been percolating? How long has that problem existed? How long has there been inaction on this particular file?

• (0925)

Mr. Konrad von Finckenstein: Scott can probably tell you better how long it has been percolating.

Mr. Scott Hutton: Essentially, the CTF has grown through the years from various sources of funding and has reinvented itself many times. Often enough there have been changes to its structure, changes to its board. There was a recent change dating back to about 1995, the first full year of which, I believe, was undertaken last year. So there were discussions and an evolution at that point in time.

I believe some of the current difficulties relate to the fund in its most recent year of operations. It came to a head at the end of this year. Secondly, there are other factors in the industry and other changes in the industry, certainly with regard to technology, that are having an impact on the fund and on production and our broadcasting industry. New business rules and new ways of doing business are having an impact—a very current impact—on the operation of the fund and the operations of broadcasters.

Mr. Konrad von Finckenstein: You will recall that one of the criticisms by Quebecor was that the fund did not finance projects on different platforms in the new media, etc. Clearly this is one of the drivers behind the discontent with the fund at this point in time.

Mr. Ed Fast: This brings me to a follow-up question.

When Shaw and Quebecor were in front of us, obviously they highlighted their concerns with the CTF in very broad strokes, but when we asked them about the solutions they were offering, both of those entities actually had quite different perspectives.

Shaw seemed to suggest—and I hope I'm properly characterizing Mr. Shaw's remarks—that the system was broken and needed to be fixed. I believe he was referring to the CTF being fixed; in other words, he was accepting the fact that the CTF perhaps still had a future, but perhaps required a renewed mandate.

When we spoke to Vidéotron, they had a different perspective: Hey, we don't want government money at all. What we're looking for is to be able to focus on Canadian programming ourselves. Let us do the job. We're prepared to set aside some \$100 million over the next three years to do that kind of programming in-house.

Those are two different perspectives on or two different approaches to the solutions that might be offered.

I'm wondering if you have any preconceived notions about where this would go. Or are you going to be looking at all the different options?

Mr. Konrad von Finckenstein: No, first off, we have no preconceived notions.

Secondly, as you pointed out, everybody talked in broad strokes. If you're going to understand what's really going on here, you have to go down to the details and what the funding and distribution mechanisms are that people really want to focus on.

Michel has a big task, first of all, to actually find out what everybody wants and where. Never mind the public pronouncements, what are the real business interests, or whatever they happen to be, that the parties feel need to be addressed here? And secondly, he has to find a consensus or, as we said in our press release, if a consensus can't be found, set out the options that could be used to...

As long as everybody talks at the 10,000-foot level in broad strokes, it's very difficult to put it all together and figure out whether or not there's consensus; therefore, there is the task force.

Mr. Ed Fast: Through witnesses, we heard also that the minister has actually met with these various groups.

I'm just curious, have any of the three of you met directly with Shaw or Vidéotron to get a preliminary analysis of what their problems are?

Mr. Konrad von Finckenstein: Yes and no. As part of my job, it is absolutely vital that I understand what the industry thinks, or what the players in the industry think, and hear their views unfiltered either by briefing notes from my staff or intermediaries. So I have been taking off every Friday since being appointed to visit a different city to meet with the key players in the industry. I will probably do this for the rest of the year. Of course, I start with the large players and the small players, and I will talk to some of the umbrella organizations.

So I started off in Montreal my very first week in office, and I met four people. One of them was Pierre Karl-Péladeau. With me was Michel. We talked in general about the industry, where it was going, and about the challenges and the new media, etc. Of course, we also talked about the CTF, but in a very cursory way or at a very general level, with my point being: look, you have to resume funding. If you don't resume funding, there'll be disarray in the industry, and that won't be helpful to a resolution. That was about the extent of our discussions.

Last week—again with Michel—I met with Mr. Shaw and his vice-president, Mr. Stein, because this issue was obviously burning. It was actually the night before they came to appear before you. I said exactly the same thing: this is an issue that the minister wants resolved and she has asked you to pay, and I have asked you to pay. As I said this morning, I told them I preferred cooperation to confrontation and thought we could work it out, but the first step was that they had to resume payments. If they resumed payments, then we would will strike a task force and deal with it.

Again, it was in very broad strokes, without details, and with me just saying, I realize this is a problem; I didn't choose it; it landed on my desk. It is an enforcement issue, or will become one; I've got to deal with it and I intend to deal with it quickly, but first of all, I need something from you, namely, a resumption of the payments, because without them, I'm driven to do it in a confrontational mode, etc.

Obviously, whatever I said and Michel said was enough for Mr. Shaw to do it and come here and suggest to you.... Maybe he had already decided, I don't know, but he mentioned to you that he was resuming payments

Then in order to make it clear that I meant business, that this issue had to be resolved and couldn't gather dust, the same day we issued our report, appointing Michel, and pointing out the mandate and the timetable for the task force.

● (0930)

The Chair: Thank you very much.

Ms. Keeper.

Ms. Tina Keeper (Churchill, Lib.): Thank you.

Thank you to the CRTC for appearing here today, because, as you mentioned, Mr. von Finckenstein, there was certainly a lot of trepidation. It's been a tumultuous time for the Canadian television production industry.

The press release issued by the CRTC regarding the task force mentioned, as you did here today, long-standing concerns; I know we heard of them from Shaw and Vidéotron as well. Could we get some sense as to how these long-standing concerns have been addressed or not addressed, what the history is and why it got to this point? How is it that this could have come to this point?

Mr. Konrad von Finckenstein: You heard what the concerns were when both of them were before you, so I don't need to repeat them. You had Mr. Shaw here and Mr. Péladeau here.

Why has it taken so long? You know, it's a system that works, and at least to some extent a lot of people benefit from it. There's a reluctance to change these things, and they cannot be changed overnight. I think the main thing was what your colleagues had said: it's the new media. The new media are really the driver of everything, changing the landscape. The fund, like everything else, has to adapt to the new media. This is very often a difficult change, because nobody has a crystal ball and knows how things are.... It's also sometimes painful.

I think that's the main reason why this is now on the agenda, when it wasn't before. It became urgent thanks to the new media.

Ms. Tina Keeper: Well, we heard from Mr. Shaw that it was in fact governance issues, and an issue around funding being allocated for productions that were going to be on the CBC. The new media, of course, is an issue, and I know the CRTC has been looking at them. In fact, they recently did a report, right?

So I'm wondering why there wasn't a process in place or a mechanism or discussions that would have ensured something like this wouldn't happen.

● (0935)

Mr. Konrad von Finckenstein: It's a good question. Unfortunately, you're asking the wrong person. I don't have supervisory responsibility for the fund. I don't have any members of the CRTC sitting on the fund, etc. My role, or the role of the CRTC, comes in at the very tail end. Namely, our regulations say that if a licensee "is required under these sections to make a contribution to Canadian programming, it shall contribute (a) to the Canadian production fund at least 80% of its total required contribution". That's the hook for the CRTC. A licensee is required to pay into the Canadian production fund at least 80% of its total required contribution.

What we saw was a threatening that it might not happen in August. And the interim payment, which traditionally went down on a monthly basis.... So that's how it became, de facto, an enforcement issue and why we came onto the scene.

As to why it wasn't addressed earlier, you should ask the CTF and its board of governors, or you should ask the minister. Really, I'm the wrong person to put the question to.

Ms. Tina Keeper: Thank you.

We haven't had much clarity around this. The minister has repeatedly answered many questions around the issue of what her role is, what the role of the CRTC is. And you just read a section to us.

But essentially, what assurances do we have, if these companies decide to do this again, say come May or June, that there's a process in place to deal with it?

Mr. Konrad von Finckenstein: Firstly, I don't assume the companies are acting in bad faith. They both announced they will resume the payments, etc. Secondly, I'd expect that our task force will resolve the issue. Thirdly, a resolution, whatever it will be, will probably require an amendment to the regulations. This time we'll amend them properly to make sure the payments are done monthly.

Fourthly and lastly, I don't even want to contemplate this, but if, as you suggested, companies are acting in bad faith and suspend payments again, I will move swiftly to amend the regulation. It will take me about two weeks to do it. It's an eventuality I don't even want to contemplate, because we are not in confrontation; we are working this out and we're going to find a solution.

Ms. Tina Keeper: Thank you.

The Chair: Thank you.

Ms. Bourgeois.

[Translation]

Ms. Diane Bourgeois (Terrebonne—Blainville, BQ): Thank you, Mr. Chair.

Good morning, gentlemen.

I would like to go back to something you spoke about earlier. On February 20, you issued a press release which stated, and I quote:

As payments to the Fund are mandated by CRTC regulations, the CRTC has a role to play in the resolution of the concerns regarding the Fund.

Representatives of Shaw Communications told us that they have been talking about their concerns for five years and those of Vidéotron have been voicing their concerns for two years.

You may not have received formal requests, but they did refer to the CRTC. In your press release, you indicated that you had concerns about the Fund. If that was the case, why did the CRTC not take action sooner?

Mr. Konrad von Finckenstein: As I already said, the system is quite clear. We are responsible for ensuring the broadcasting of Canadian content. We do that by requiring cable companies and satellite communications companies to make contributions to the Canadian Television Fund. To date, that has worked and the Fund ensured that this content was present. However, when these two companies threatened to suspend their payments we had to intervene because one of our main tools to ensure that there is Canadian content, are the contributions to the fund that are allocated to Canadian productions.

• (0940)

Ms. Diane Bourgeois: You have established a four-person task force. What criteria were used to choose them and who chose them?

Mr. Konrad von Finckenstein: I chose Mr. Arpin because of his experience within the industry and the CRTC and because he knows all the players very well. Mr. Arpin chose the individuals who will be working with him. He will explain why.

Ms. Diane Bourgeois: Please go ahead.

Mr. Michel Arpin: The other members of the task force work for the CRTC: the Senior Director, Television Policy and Applications, who is responsible for analysing and formulating television policy; the Senior Director, Distribution Policy and Applications, who is responsible for cable, satellite or other services; and our General Counsel, a former President of the COGECO Program Development Fund and a member of the Board of Directors of the Maclean Hunter Television Fund for many years. He is very familiar with how television funds work.

Ms. Diane Bourgeois: All these people will make presentations and they will remain confidential. Given that the Government of Canada contributes \$100 million to the Canadian Television Fund—you are conducting a study in this regard—, would it not be better for the hearings to be public so that it would all be out in the open?

Mr. Michel Arpin: First of all, these are matters of a business nature that could result in more acrimony than solutions. The purpose of the task force is to find a solution and to allow the Fund to continue operating in the best possible way. As our Chairman mentioned earlier, the report of the Task Force, which is seeking a consensus, will become a public document available for public consultation if a consensus is not reached.

Ms. Diane Bourgeois: You say that only the conclusions will be made public. Since the Canadian government provides some money—that is the issue—and consequently, the public provides some

money through its taxes, it is entitled to know what is happening at the hearings. I do not wish to cast doubt on your transparency and impartiality, Mr. Arpin, but the fact that everything is going to happen behind closed doors and that only a report will be produced bothers me.

You say that the task force will proceed by invitation. You speak of several other stakeholders. Will small groups that would like to be heard be able to attend these hearings? Will it be open or will you settle for inviting certain individuals?

Mr. Michel Arpin: First of all, the purpose of the task force is to find a solution. The purpose is not to hold hearings and hear grievances. Our mandate is very limited. It is limited to questions of governance and operations. It is not a fundamental review of programs. We will not make value judgments about the methods used to allocate funds. The purpose of all this is to bring everyone to the table and to see if there is a consensus. If not, the task force will broaden the discussion in order to find regulatory mechanisms to re-establish order in the way the Fund works.

• (0945)

Ms. Diane Bourgeois: Thank you.

[English]

The Chair: Thank you very much.

Mr. Fast.

Mr. Ed Fast: Thank you, Mr. Chair.

Just along the same lines, I sense that we may be misunderstanding what a task force does. In my experience as a city councillor, we often established task forces to do what was essentially fact-finding, or determining on a fairly informal and flexible basis the prevailing facts that would help us come to a decision. On each occasion, there was no overtly public process. Somebody was charged with managing the task force. That individual would then go out and solicit the information that he or she needed and would come back to city council, and then the city council would determine whether public hearings were required.

Task forces, as I understand them, are more informal in their nature.

Could you comment?

Mr. Konrad von Finckenstein: What we have here is a crisis. We want to resolve it quickly; we want to find a solution. That's why we should have, first of all, the facts; let's get past the headlines and the public positions of people to find out what's really going on.

Secondly, we're dealing with very confidential information, commercially confidential information, that is very germane to the health of the players, which they are very reluctant to part with. So we can't do a public hearing.

On the other hand, we don't like to work behind closed doors and we have a duty to account to the public for what we're doing. So we struck the equilibrium of saying the task force will meet in confidence with the players, one by one, to find out what's going on. Then we will try to put it together to figure out if there is a consensus. Hopefully, there is. If not, we'll at least set out the options, which we will make public. So you will get the conclusions, but not the data behind them.

I would not be surprised if this committee were very interested in our report and asked Mr. Arpin and me to appear again to talk about the report and the conclusions, etc. That is your right. We will gladly share that with you.

What we are trying not to do is to share any confidential information that could lead to harm if it got into the wrong hands. But on the other hand, we need to get to the bottom of it; we need full and frank disclosure of where the issues and concerns really are.

Mr. Ed Fast: The task force isn't replacing the public process.

Mr. Konrad von Finckenstein: No, not at all.

Mr. Ed Fast: It's really a precursor to that.

Mr. Konrad von Finckenstein: I should have used those words; that's a very good description.

Mr. Ed Fast: And you're committed to a broad consultation, in any event. Is that correct?

Mr. Konrad von Finckenstein: Yes. The release specifically mentioned, "Other relevant stakeholders". So if a group comes forward and wants to contribute, of course Michel and his task force will talk to them; we want to make sure we cover the landscape. But his mandate is limited to resolving this issue, and is not a review of the whole funding of the television sector, or something like that.

Mr. Ed Fast: I'd also like to go back to an issue that was raised earlier, and that was your role in trying to address the concerns of some of the BDUs as to the management of the CTF. From what I understand, it's the role of the CTF, not the CRTC, to manage the fund, to liaise with the BDUs, to ensure the fund is operating properly and to respond on a timely basis to the concerns of the BDUs.

Am I correct?

Mr. Konrad von Finckenstein: You're absolutely right. The fund is a non-profit corporation. It has its own board of governors. On it sit various representatives from the industry, including the ones from the cable companies, and representatives from the Department of Canadian Heritage. Its responsibility is to manage the fund and to place the contributions in the most effective way to generate Canadian content.

Mr. Ed Fast: You had mentioned that you typically get engaged only at the end of the process, typically to enforce regulations. I would suggest that you also get engaged at the very beginning, when you establish the regulations that provide the framework for the CTF.

• (0950)

Mr. Konrad von Finckenstein: Yes, you're absolutely right.

Mr. Ed Fast: All right. But in between those two points, typically it's the CTF that is charged with doing the work of making sure the fund is operating properly.

Mr. Konrad von Finckenstein: Yes, that's its purpose. The purpose of the CTF is to receive those funds and to place them in the industry to generate Canadian content. In its simplest form, that's what it is. And it makes sure that's done in an equitable and efficient way, and one where you get the most bang for your buck.

The Chair: Thank you.

Ms. Fry.

Hon. Hedy Fry (Vancouver Centre, Lib.): Thank you very much for coming today.

In your paper today, you stated the three distinct objectives of your review, and those are fine. They talk mostly about the current fund, exactly as it is—what the most effective use of the contributions is, the size and structure, and how to deal with the real or perceived conflicts. Those are three ways of dealing with the fund per se.

I would, however, like to know if you view your mandate under the heading of facilitating the provision of broadcasting in Canada and facilitating the provision of Canadian programs to Canadians. Do you see your role as broader than that? Do you see the fund itself, having regulations supporting it, as an adequate way to provide Canadian broadcasting for Canadian production and for Canadian programs and Canadian content?

The structure and process work. But do you think it's the best way? Do you think that we are, in fact, dealing with the needs of the new media and with providing a very strong Canadian presence in this country that requires not only production but also promotion and marketing to give us a place on the international scene to allow us to be a competitive nation in terms of our Canadian content?

Do you see yourself as dealing with that under this, or are you going to just restrict yourself to how things are working right now and whether they're fulfilling the regulations?

Mr. Konrad von Finckenstein: I think there are two very distinct issues. One is the mandate of the CRTC. The other one is the mandate of the task force. The task force, which is headed by Michel, is dealing with one tool that we have, to procure and to induce Canadian content, which is the fund.

We have all sorts of other tools for our broad mandate, which is to encourage the health of the Canadian broadcasting system and to make sure that it represents Canada, reflects Canadian content, etc. We use all sorts of tools. We have public hearings. We have licensing hearings. We have conditions of licence. We have rules regarding airing of shows—at what times and all of that—and of course marketing, as you say, and the whole gamut.

I wasn't expecting to walk you through this. That's why I'm stumbling a bit. If you want, I can have them set out all the tools we have.

The task force here is really dealing with a small crisis we have that concerns the funding of the CTF.

Hon. Hedy Fry: I understand that. My broader concern is that, fine, we're putting a band-aid here on a bleeding wound, but are we going to keep putting band-aids on? Or are we going to actually look at the future of Canadian production, Canadian broadcasting, a strong and vibrant Canadian industry? If so, it's time to do it, because the problems are upon us. They're upon us every day.

As we speak, there are new problems coming forward that are actually creating an inability for Canada to be a really strong competitor, given that we're so close to our neighbours to the south. We don't have the luxury of Australia out there being isolated and we certainly don't have the history of the British content and industry.

I wonder whether you feel that this is an important time now to really go into what it is that we really need to do. That leads me to the question that you've been asked by everyone. If you're going to do the hearings in camera...and I understand, having been on many parliamentary committees, that there are times for in camera. But if you are doing a hearing and a review, it should be open. There should be the ability for all Canadians to be able to have a say on this, and there should be places where you have in camera for those people who feel they are compromising their positions by speaking.

I mean, we've done that as committees in the past. We've had in camera sessions and then we've had open sessions.

This is of interest to all Canadians. I have met with little programmers, people who are trying their very best with very little, who have a lot to say about how this is done and what's the best way to do it. So I'm hoping that you would rethink your idea of dealing with it only on an in camera basis, and would have some in camera sessions but would open this up. With this issue we're on the cusp, on the brink, of deciding what we're going to do and where we're going to go as a country.

● (0955)

Mr. Konrad von Finckenstein: You raise two issues that, for me, are very discrete. One is the future of television in this country, on which we have just finished a review. Later this year, we're going start a review on BDUs and specialty services, and that's where we address this globally.

On top of this is the point that you and several of your colleagues mentioned, the whole issue of new media and how we can confront it, etc. This will be one of my key preoccupations through my term as chairman, to deal with the new media; first of all, to understand what it is and how it is evolving and how we can adapt our present system—which has been very successful, as we have created a very vibrant communications industry in this country—to make sure the new media doesn't render us irrelevant or destroy what we have built. So that's the broad picture.

On the narrow picture, you call it a band-aid, I call a crisis. Whatever it is, it's the CTF issue, and we have to deal with it. There are confidential issues and there are public policy issues. We have struck the balance by saying let's do the fact-finding on a

confidential basis, and let's do the discussion of the options and remedies and how to approve them on a public basis.

Thank you.

The Chair: Thank you very much.

Mr. Fast.

Mr. Ed Fast: Thank you, Mr. Chair.

The task force that's going to be established will provide some degree of confidentiality, as you've mentioned already. You recently completed the report on new technologies in broadcasting. Was that a similar process?

Mr. Konrad von Finckenstein: No, it was something was mandated to us by the minister. The minister, under the Broadcasting Act, has the authority to ask the commission to study any area and to render a report. That's what we did; we studied it, had public hearings, and basically presented something that is a survey of the industry as it existed in December. In fact, it was a snapshot of the industry. That's what it was, a snapshot of part of what's going on in the industry, what is developing, and what the pressures are. It did not recommend options or approaches.

As I mentioned in answer to Ms. Fry, this here is really a crisis that we are approaching. We are doing it in two stages. First of all, let's get the facts, and we'll do that on a confidential basis. Then let's have a solution, and we'll do that on a public basis.

Mr. Ed Fast: The report of the task force and the CTF will be a public report. Is that correct?

Mr. Konrad von Finckenstein: Correct.

Mr. Ed Fast: So members of this committee will receive a copy of it?

Mr. Konrad von Finckenstein: Absolutely. And other Canadians will see it, as it will be on our website.

Mr. Ed Fast: Right.

At that time, this committee could make a decision to hold hearings on it, you'll be judging whether that would be necessary at the time, and presumably we'll end up with stronger Canadian programming throughout Canada.

Mr. Konrad von Finckenstein: I would hope that's the case.

As I say, if you feel it is required, or helpful, or necessary—whatever—to hold those hearings, you will call us and presumably will call a lot of people who appeared before the task force to form your own views and make your own recommendations. On the other hand, if the task force is successful across the board and actually works out a consensus and everybody agrees with it, it may not be necessary to hold those hearings. We shall see.

Mr. Ed Fast: Do you expect that new technology in broadcasting will play a significant role in the deliberations of the task force?

Mr. Konrad von Finckenstein: Not per se. I just think one of the issues driving it is the funding. So far, the fund is directed to the production of broadcasting; the question is whether it should also include production for new media. That's clearly an issue that has to be addressed.

Mr. Ed Fast: Are you confident we're going to come to a resolution of this?

Mr. Konrad von Finckenstein: I wouldn't have undertaken it if I didn't think there was a possibility of success. Now, as for the degree of success, that will be for others to judge. Of course you never have a totally clean solution. There will always be some people who feel that some parts have not been addressed at all, etc. But given Michel's experience and the experience of others, I think it's the best team we can field in order to solve this difficult problem.

• (1000)

Mr. Ed Fast: I'm glad to hear that.

Thank you, Mr. Chair.

The Chair: Thank you.

Mr. Angus.

Mr. Charlie Angus: Thank you.

I want to go back to the decision to hold this task force in secret. It seems to me you're suggesting that there's something extraordinary here, that because there are commercial or financial interests at stake, we have to protect the interests of the various industrial players and cannot hold public hearings. Yet the CRTC always deals with confidential financial information because you're dealing with licensing. That's part and parcel of any CRTC process. There is a process in the CRTC where information is going to be given in confidence—that's understood—but there are still public hearings.

So I want to get from you the sense of where exactly this legal jurisdiction comes from for having a precursor to public hearings.

Mr. Konrad von Finckenstein: You're talking about two different things. When the CRTC holds public hearings, it deals with commercial information, you're quite right. And that's data. We're really talking about data of companies and their procedures.

Here what we are really trying to establish is how does the fund work? What is the actual commercial reality? What are the positions of the people? What are the difficulties they encounter when getting funding, when negotiating? This is a type of information that is not hard and fast. We're not talking about data. We're talking about means of behaviour, commercial reality—to what extent small producers have an option when they deal with large broadcasters and vice versa. It just doesn't lend itself to being disclosed in any other way except in confidence.

Just for argument's sake, let's say you're a small producer and you feel that you're being pushed around by both the fund and the cable companies, or you feel that the fund is not working properly and is really dominated by the cable fund. Are you going to say that publicly? You're also going to need funding in future years. You're going to be worried about the repercussions.

That's why we're saying, let's have the first evidence in order to understand the actual workings of all the human dynamics that surround the operation fund. That should be done on a confidential basis.

Once we understand that, then we can work out something wonderful. If not, we'll make options saying, there are problems and the problems are as follows. We will describe them generically rather than specifically.

So rather than saying that Mr. Angus said so-and-so, we will say that there have been allegations that these and these issues arise, and the way to address them, in our view, seems to be by adopting this restructuring. We'll have a public discussion about that, but we won't disclose the actual symptoms that gave rise to the complaint.

Mr. Charlie Angus: Well, under section 14, if the CRTC undertakes a review of any technical matter of broadcasting that the minister refers to the CRTC, it makes its recommendations back to the minister. In this case, you're going to be making the report back to the commission.

It seems to me you're insulating this government from the political fallout of what has been a very charged political atmosphere. You're giving the minister fairly broad arm's-length... to escape any of the fallout from this.

Mr. Konrad von Finckenstein: I don't agree with that at all, number one. Two, this is not something that the minister is mandated to meet. This is my responsibility, as regulator, to enforce. I do—

Mr. Charlie Angus: The minister said in the House that it was the CRTC's responsibility to step in.

Mr. Konrad von Finckenstein: Exactly. She's echoing the law. She's pointing out that the enforcement of the regulation is the responsibility of the CRTC, and I will do that. We're independent, and we do it in accordance with what we do.... We do not take instructions from anybody on the enforcement.

Mr. Charlie Angus: I guess I'd have to challenge you on that, because your predecessor was here. Mr. Jim Abbott said on the record that the CRTC takes its direction from the minister. He said that to Mr. Dalfen, and Mr. Dalfen did not challenge that. Mr. Abbott said that's the way it is. That's been the very clear understanding, that this government is giving direction to the CRTC.

So now we have a situation that has been a major political blowout. We've had two companies that have publicly defied, spoken again and again in their public attack, and now suddenly the CRTC is having to meet in private with them to protect anybody from fear of retribution.

There's a major public interest here, and I'm trying to get a sense of the CRTC's role in this if you're doing this behind closed doors.

Mr. Konrad von Finckenstein: Mr. Angus, you are mixing up two different things. One is, clearly, the CRTC, under statute, takes direction from the minister. The minister can give directions. They have to be public. They're going to be very well debated, etc. Those are directions, policy lines. For instance, the last one was, I think, on the DTH, the direction on how to license satellite providers. That's the process. There's also a provision that she can ask us for reports, as she did in December last year, which resulted in a report in December.

What we're talking about here is the mandate of the CRTC, when there's no such specific global direction, but in effect, to administer the act, the provisions of the act, is the CRTC's responsibility. For that, it is an independent body, specifically made independent. The statute even says, for instance, that the minister cannot give us direction on specific licensing provisions, etc. It wants an independent body there to use its independent judgment.

That's what we're doing. We're using our independent judgment here to ensure that payments are made in the fund because the fund, in our view, is one of the critical elements to ensure Canadian content. When funds are withheld on a monthly basis, it puts the whole funding scheme in jeopardy.

• (1005)

The Chair: We've gone overtime on that. Thank you for that.

Mr. Scott.

Hon. Andy Scott: Thank you.

I must say that this is a very scary series of events we're dealing with right now. As a regulator, does it not cause you some pause—without getting into the debate as to whether the circular is enforceable and those things—that two very large, powerful entities that benefit significantly from decisions the CRTC has made in the past could walk away...?

Notwithstanding the fact that you're...and I would like to be as hopeful as you are, in terms of the optimism you've expressed. But when I asked Mr. Shaw this week if he would he just repeat his behaviour if in fact he wasn't satisfied with the resolution of what happened with the board at the CTF, his answer to me was basically, if they won't do what we're saying they'll do, will you guarantee they'll do it?

The reality here is that I'm a little afraid of that possibility and the idea that these companies could cause this reaction. I must say, I'm not perfectly content with the way the situation has been expressed.

I understand you're new; I may be newer than you, I'm not sure. But it happened in December, and the minister was saying it's up to the CRTC. The CRTC, from your own testimony, was silent. I welcome the fact that they are no longer silent. I am a little concerned about why there's this change of heart.

It seems to me that it is a very bad precedent to allow a company that you have regulatory authority over to essentially hold this system ransom, to some extent.

Mr. Konrad von Finckenstein: First of all, I agree with you, it's not a pleasant situation, and one that I hope will not be repeated.

Secondly, I think I can say frankly that we learned a lesson. To the extent there are payment obligations, they should be clear-cut and mandatory: there should be no ifs, ands, or buts. I don't know why the payment obligation was annual in the past, but the remittances were monthly and were not set out in the regulation. It is clearly something we are going to fix so it doesn't happen again.

By the same token, as I pointed out to you, I believe in cooperation and in working things out rather than in litigation. But I will litigate, trust me, if there is a further breach. We will use the powers or levers we have, but litigation is very often unproductive. We both know litigation is not a quick process; it takes a long time and leaves a lot of bitter feelings at the end. These are ongoing relationships that aren't improved by litigating in the courts. And who knows what the courts will do in their judgments? As a former judge, I think I can say there is no such thing as a surefire win or loss. So I prefer to work things out where you can. That being said, sometimes you have to litigate.

Here, I think these two companies have made a clear commitment to respect...and I cannot foresee their walking away from that. But once this task force has issued its report and once we have a new way of doing business, whatever it is, I cannot imagine it would not require an amendment to the regulations. At that point in time, we will make sure the monthly payments, as well as the total annual payment, are laid out in the regulations.

• (1010)

Hon. Andy Scott: But on the broader question, doesn't it concern you, as chair of a national regulator, the way this has unfolded? Is that not distressing?

Mr. Konrad von Finckenstein: This is not the first time I have been a regulator. And in regulation you really cannot do it on a confrontational basis; you need the active cooperation of the people you are regulating. You are not going to have a regulation where you constantly enforce; that is ineffective. Regulations, if they are struck properly in the first place and put into place, recognize the interests of the parties and strike an acceptable balance. There may be grudging acceptance, etc., but basically, these are the rules and you enforce them around the edges. That's what we have done in the past, and it worked very well. This particular crisis that we have is very much the exception to the rule; it has not been the case in the past, and I hope it won't be repeated.

The Chair: Thank you.

Mr. Abbott.

Mr. Jim Abbott (Kootenay—Columbia, CPC): Thank you again for your testimony. It's been very helpful.

Mr. Angus has seen fit to quote me a number of times, in this and other hearings particularly relating to the CRTC, and my expression about that. I really welcome your clarification today as to certainly what I was saying, what I was meaning, and what my knowledge of the situation was.

The second thing is that I think Mr. Scott's characterization of this being a scary series of events is unnecessarily alarmist. I think we're at a point now where your making the expression of conciliation as opposed to litigation is really what it's about. Clearly, the CTF is a broken vessel at this particular point, or if not a broken vessel, one that has a number of serious fractures. I think what I see here is the CRTC saying, just a second, let's take a look at this vessel; let's do what rebuilding is necessary; let's do what re-regulation is necessary to reinforce; but then within that structure, let's get a proper balance between the creators, the producers, and the people who are making the financial contributions. So I just want to say that I commend you for your conciliation, not litigation. I wish you, and I know the minister wishes you, the very best of success on this.

I must say that from the testimony we had from Shaw and Vidéotron, even CAB, last week, which gave another perspective in terms of these hearings, I think clearly there is a willingness on their part. Recognizing that they have some understandable differences with the CTF administration as well as the other players in it—and these are very serious differences—I nonetheless think that there was clearly an expression of willingness to move forward favourably.

I for one wish you all the best, and I look forward to a positive outcome of your process.

Mr. Konrad von Finckenstein: Thank you very much. I am delighted to hear you report the attitude of Shaw and Vidéotron. That will of course be very helpful to Michel in his work.

The Chair: Thank you very much.

We can't do a full round of questioning. What I will do—I see this quite a bit—as long as you can keep to one question...because we do have another 15 minutes. We have to remember that we do have committee business to be done. I think some of the people who are going to ask some of those small questions have some motions they would like to be done.

Please keep your questions and answers short so that we can get our other business done this morning. Thank you.

Ms. Keeper.

•(1015)

Ms. Tina Keeper: Thank you, Mr. Chair.

I would like to ask one question. It's about a comment Shaw made—it was actually in their press releases—that they saw their payment as a tax, and that's how they've interpreted it.

I'd like to have you respond to that.

Mr. Konrad von Finckenstein: I saw that too, and I think it's wrong. This is clearly not a tax. This is a user fee that is directly linked to the industry. It goes to the fund. It goes to production, to produce content that they need, that they are required by law to do, etc. A tax is something that goes into the general coffers of the CRF.

That's what the Federal Court ruled, as you know, on the part II fees, as they are called. But in this case there is a clear linkage between the contributions, the system, the user, and how it's being used.

So to call it a tax is, I think, wishful thinking.

Ms. Tina Keeper: Thank you.

The Chair: Mr. Kotto.

[*Translation*]

Mr. Maka Kotto: Thank you, Mr. Chair.

I would like to make two comments. You speak of independence. I would like to remind you that the law that governs your organization—particularly section 7, for these purposes—limits this freedom because under this section, the minister may, by order, intervene to give direction on the policy or the vision you may have on a given file. That is what happened with Mr. Bernier with regard to telephony. In his case, he relied on section 8.

We have spoken of confidentiality. However, the main points have practically been debated in public. I do not know what remains confidential and justifies having the task force conduct its business behind closed doors. That is another comment.

Furthermore, we should not lose sight of the fact that the Fund, as it exists today, is the former Liberal government's baby, created by Ms. Copps who was the Minister of Canadian Heritage. If changes are made to the Fund, they will have to be reflected in the policy. I am pleased to hear you say that you are prepared to discuss in this place, with us, the findings of these consultations.

Thank you.

[*English*]

The Chair: Thank you.

Mr. Angus.

Mr. Charlie Angus: Thank you very much for coming today. I really appreciate your frankness.

It seems to me you have been put in a very difficult position, because this power play was made very publicly when there was no leadership at the CRTC. I think it was done very deliberately by Shaw and Vidéotron.

But when I'm reflecting on the issues here, your role is really to enforce the regulations, so whether the circular is a custom or whether it's a piece of law is the issue for the CRTC, it seems to me. However, as my colleague pointed out, the CTF is the child of the heritage ministry. So I'm perplexed why you have had to step in between the concerns of the producers, the creators, the broadcasters and cable companies, because this, clearly, is very much under the jurisdiction of the heritage minister. This Canadian Television Fund is not a child of the CRTC; it belongs under the heritage minister.

I'd like to ask once again, why are we having to go to these closed-door hearings to deal with something that should have been dealt with through the minister and her department?

Mr. Konrad von Finckenstein: As you know, we mandate payments into the CTF. As I mentioned before, since the payments weren't done on a monthly basis, we felt we had to step in because the convention was being broken, and this caused disarray in the industry. But over and above that, the criticisms levied at the fund are very clear and very serious.

We mandate too because we hope that the fund will produce Canadian content and add value to Canadian broadcasting, which is directly our responsibility. If the fund didn't do that any more or if the fund wasn't functioning properly because of internal dissent or lack of rules, or conflicts of interests, or whatever—there is a whole host of allegations—it would concern us very much, because it would have a definite impact on the quality of Canadian content produced, which leads to increased Canadian viewership and exposure on TV.

So that's why we step in and why we're doing it. We want to make sure this vehicle, which has worked in the past, will work in the future. Or, if it needs reform, it will be reformed so that it achieves its purpose and won't be driven by dissent, making it therefore ineffective in achieving the full purpose for which it was set up.

• (1020)

Mr. Charlie Angus: Thank you.

The Chair: Thank you very much.

I must say, we've welcomed you here today. Thank you for your candid responses to the questions.

Thanks to the committee for your questions this morning.

We'll take a short recess.

• _____ (Pause) _____

• (1025)

The Chair: Welcome back.

We have three orders of business that we're going to talk about. First of all, we have a notice of motion from Ms. Keeper, That pursuant to Standing Order 108(2), the Standing Committee on Canadian Heritage request from the government a copy of the review which led to the conclusion and ultimately cancellation of funding to the Court Challenges Program.

Would you like to speak to that motion?

Ms. Tina Keeper: Yes, thank you, Mr. Chair.

I'd just like to add that it was indicated to us, during our sessions in which we heard witnesses, that it was assumed from the government side.... Mr. Abbott had mentioned that he believed there was most certainly a review done. This is a request to have that review tabled.

• (1030)

The Chair: Would anyone else like to speak to the motion?

Hon. Andy Scott: Mr. Chair, I'd like to put a question.

As we vote on this, what would be the timing of their making this available? Just for the record and so that we can get some clarity, we're asking for this to be provided, but is there anything...? Because I wasn't here for much of this.

Mr. Jim Abbott: I have no idea.

Ms. Tina Keeper: That was at our meeting on—

Hon. Andy Scott: The notice of motion was on February 5. I guess the only concern I have is that we can all agree that something should be tabled, but then it seems never to be tabled. We wonder why: oh, it's coming, and different things like that.

So I just wanted to get a sense of the expectations of the committee as we vote for this—or “on” this; some of us “for” this.

The Chair: Mr. Abbott.

Mr. Jim Abbott: Mr. Scott, your having been a minister, you could probably give me a better idea. I haven't discussed this with my minister. For the edification of the committee here, you could probably give us a better idea of what *you* would have done, as Solicitor General.

Hon. Andy Scott: If I'd done a review of a program and my parliamentary secretary used that review as justification for its elimination, I would have presented it already. So if it were me today, in this circumstance, I would say it would be this afternoon.

Mr. Jim Abbott: Okay, well, I simply have no idea.

Hon. Andy Scott: I wasn't here, so I want to make sure I'm fair to everybody. But I understand, as Ms. Keeper said, that you used the word—

Mr. Jim Abbott: No, let's be precise. I said I did not know about what had occurred. I suspected that if there was a review, that...and it would be a cabinet document. That's how I recall my testimony.

As I say, I haven't discussed this with the minister.

Hon. Andy Scott: Then you don't know if there's been a review or not.

Mr. Jim Abbott: No.

Hon. Andy Scott: We'll find out, I guess, won't we.

Mr. Jim Abbott: That's right.

The Chair: I'll put the question, members.

(Motion agreed to)

The Chair: The second order of business is a notice of motion put forward on February 9, by Maka Kotto, That, pursuant to Standing Order 108 (2), the Standing Committee on Canadian Heritage recommends to the government to make any decisions directly affecting Canada's telecommunications policy or Canada's broadcasting policy subject to votes in the House of Commons before they can take effect, and that the Chair so report to the House as soon as possible.

Ms. Fry.

Hon. Hedy Fry: I have a question with regard to this.

In the phrase, “recommends to the government to make any decisions”, the word “any” is pretty broad. If we took that word as it stands, would it therefore mean that the department, the minister, are not able to do changes that, for instance, may affect policies that aren't major, that aren't changing the direction or whatever? It really hamstrings any department and any minister in terms of doing their jobs.

So I'm asking, would you like to clarify the word "decisions" in some way such that we know exactly what you mean by that? Are they going to be substantive decisions, change in policy decisions, etc.?

I think I could support something that's clearer. It's the word "any" that's bothering me here.

[*Translation*]

Mr. Maka Kotto: I understand completely.

The idea is simple. It is everything that directly affects the Canadian telecommunications policy and the broadcasting and innovation policy.

This motion was inspired by the debate we are presently having about the Canadian Television Fund crisis. The framework is the debate about the impact of new technologies—essentially the new platforms—and the debate that will take place concerning the future upheaval of the entire audiovisual landscape because of these new parameters.

• (1035)

[*English*]

The Chair: Mr. Angus, did you have something?

Mr. Charlie Angus: Yes.

I'm very interested in the motion. I do believe we need a little more research to clarify it. I think it is very broad at this point, and it would make it impossible for any minister to carry out their work.

There are certain key areas that I think would come before Parliament. For example, a change in foreign ownership restrictions on domestic broadcast carriers would be a substantive change. Shaw and Vidéotron, when they were before the industry committee, were talking about wanting major deregulation changes in terms of broadcast policy.

If the minister was directing changes to the overall structure of broadcast that would affect a number of key sectors, but just to say "any".... Directives are given all the time. I know I can't keep on top of most of the directives that I see coming out of the CRTC and so on. So to put it to a vote....

I'm very supportive of this, but I think maybe we need to sit down and talk about exactly what we think needs to come back before Parliament. I believe there are certain areas where the parliamentary vote is crucial, but if we're not clear enough on that, we're not going to be successful.

The Chair: Mr. Fast.

Mr. Ed Fast: Mr. Chair, how can Mr. Angus be supportive of this? It doesn't address one specific issue that would have to come forward to Parliament. This is a blanket removal of the right to make regulations. I'm not aware of any government in Canada that has ever ceded that on a blanket basis.

If it's a specific issue, as you've mentioned, we could have a good debate about it. But how can you state that you're supportive of this when there's no reference to any specific issue other than this general removal of the right to make regulations for "decisions directly affecting Canada's telecommunications policy"?

I have a struggle with that.

The Chair: Thank you.

Mr. Scott.

Hon. Andy Scott: I would apply the chair of the CRTC's confidence in good faith to my colleague and say that I think I know what he's trying to get at, and I can be supportive of that. I would agree with Mr. Angus that we may have to bring more clarity to this.

I think there is language that exists in law that would speak to distinguishing between certain levels of decisions in terms of whether it's a broad public policy as against a transactional thing that happens from time to time and day to day.

What we're trying to get at are the broader issues, the ones that would profoundly affect the industry. Just the confusion between whose job it is to deal with the issue that we've had for the last couple of months really does speak to this fact. I would argue this is a broad public policy issue that we're dealing with. The CRTC stepped in because somebody was withholding funds and so they've taken it upon themselves to do this.

Now, that's a different issue, but it speaks to the same thing. I think there's a way we can find language that would capture the idea that Parliament should be engaged in those broad critical issues without necessarily being drawn into transactional things within the government.

I think there's a place that we can find support for this.

The Chair: Ms. Fry.

Hon. Hedy Fry: I just want to reflect and to reiterate what Andy and Angus are saying. I understand what it is that Mr. Kotto is trying to say. I think we all get the sense that somewhere along the way there has to be an ability for Parliament to intervene.

By the way, Parliament can intervene with the CRTC. The minister cannot, but Parliament can, because it exists at the will of Parliament. The statutes that govern the CRTC come from Parliament. So if we believe that sometime we need to make some sort of directional change because we are concerned about a direction, then I think Parliament has to have, through this committee, the ability to do that.

Also, I agree with the intent. I know exactly what he wants to do. But with his permission, perhaps we could withdraw this and all work on it with language that would be supported by all of us.

I would like to make the suggestion that we do that.

The Chair: Thank you.

Mr. Thibault, did you want to say something?

Hon. Robert Thibault (West Nova, Lib.): Very quickly; I'm not a regular member of the committee.

I understand the purpose of this and the reason for reluctance. What I might ask members to commit to in the redrafting is that the committee can play a role. Any of these things don't have to go directly to the House of Commons. It can be to the committee with reference to the House of Commons if deemed necessary to report.

•(1040)

The Chair: Okay, thank you.

Mr. Angus.

Mr. Charlie Angus: Thank you.

I think it's very clear that a profound issue is raised by this motion. My interest is on how to make this motion work so that we get to the heart of the matter.

For example, at the GATS hearings in Geneva, Canada is a lead nation on the telecom deregulation. What it's pushing in Geneva would run contrary to numerous areas of domestic law here in Canada. These are areas where if there are changes that Canada's advocating in terms of deregulation of foreign ownership restrictions, domestic broadcast content quotas, those have profound implications for maintaining our cultural policies that have been brought forward by Parliament. So certain regulations will affect the cultural fabric of this country, as has been identified and brought in by Parliament.

My only concern is that if it's too broad, we're going to technically bury ourselves and not deal with the substantive, key areas where Parliament needs to step in. It's not very often, but at those times, we have to be there.

So I'm looking to work on this motion. I think it is a very important motion, but I think we need to make sure we're precise enough that we're not tying ourselves into a bureaucratic role but are speaking about broad policy issues that we have a right to speak on.

The Chair: Mr. Abbott.

Mr. Jim Abbott: Mr. Chair, I would like to say respectfully to my friends from the Bloc and the NDP that if we take a look at it from the point of view of the party that presently has the responsibility for these issues as the government—and I would appeal to my friends in the Liberal Party who also have had the same capacity, have historically been in a position of government—this motion and even the amended motion being discussed would say that Parliament should be able to supersede, oversee, and micromanage what a minister is doing, and I just cannot see that.

The Chair: I'm going to take one more question, because we could go on and on.

We'll have one more response from Mr. Scott, and then I'm going to make a decision on what we're going to do here.

Hon. Andy Scott: As a matter of fact, as a minister who on many occasions...and at Indian Affairs in particular gave up a lot of authority to first nations, etc. So yes, absolutely and categorically.

Having said that, if Mr. Abbott would call upon the 13 years of history, I find it incredible, as a member of Parliament for the last 13 years, that the people opposite are not talking about the supremacy of Parliament the way they did for the 13 years they were in opposition, and much more aggressively. It's an amazing turn of events, frankly.

Mr. Abbott asked the question, and I can say, categorically, that as a minister I was in fact responsible for giving power back to communities, back to Parliament. I can give you examples. At this point—you can deny it, but it's true—the issue here is that at some

level there is a broad public policy. Micromanaging isn't what we're talking about. Because it's changing rapidly, it would be very tempting to the executive council to confuse the management of a situation or a crisis or an issue. This committee is a parliamentary committee. We're here as parliamentarians, protecting Parliament to some extent against that temptation, that possibility.

This speaks specifically to that, and it speaks to it too generally. In fact, as it reads right now, I think you're right. But I think it can be made to read in a way that would allow this committee to play a larger role than perhaps is the case right now in protecting Parliament and the industry from decisions made in good faith by governments at a level that is beyond what I believe to be their area of responsibility.

The Chair: This is a very important issue, as we sit here. On this motion, rather than just striking out a word or two or changing this and changing that, I would suggest that the people involved may want to get together, sit down, and take some time to determine how you're going to come forward with something that's going to address what Mr. Scott just said. You could take some time and come back with a new motion.

If it's that important, it can't just be a couple of scratches with the pen, scratching out a couple of words and adding a couple of words. I think we have to give it good thought.

So let's hold this motion over to our next meeting and, I suggest, get the wording the way that you feel it should be.

Okay? That's my ruling here today on that particular issue.

Now, I go to one more thing....

Yes, Ms. Fry.

•(1045)

Hon. Hedy Fry: Mr. Chair, may I ask a question? Is it possible for us to ensure that this comes back at the next session of this committee, so that we don't drag it out again for weeks?

Mr. Chris Warkentin (Peace River, CPC): I think only if you give us—

Hon. Hedy Fry: Due notice.

Mr. Chris Warkentin: If there's notice, yes, because of the amendment to the amendment—

Hon. Hedy Fry: Essentially, Tuesday gives due time.

The Chair: Yes.

Mr. Chris Warkentin: If it's 48 hours.

The Chair: If we get something by tomorrow, then it can be on Tuesday's agenda.

Hon. Hedy Fry: Sure.

The Chair: Okay? Okay.

On the last order of business that we have here today, I think everyone on this committee received a request by a Mr. Keith Mahar to come before this committee to talk on the CTF. He lives in Australia.

We don't have any more time to do any more deliberation on our panels. All our witnesses have been here. Our experts are coming up with a report on the CTF. So I said, on my own, that we didn't have room there. What I would like is confirmation from people, or to put it to the committee, that we don't have any more room.

I don't want to be an arbitrator, but....

Yes, Mr. Angus.

Mr. Charlie Angus: Thank you, Mr. Chair.

I've had a number of people phone me, write me, want to make depositions on the CTF. There was an emergency situation. We asked for four days of hearings. We do have the major CBC mandate review to undertake.

I feel that we've done our job as a committee. We've raised the issues. I know certain groups who felt left out had very legitimate stakes to bring forward, and some of their issues weren't brought forward in testimony. But they can bring forward written documentation that we should look at.

I don't really know if we're in a position to continue to entertain requests. However, I'm more than willing for us as a committee to continue to look at written depositions brought forward by various viewpoints on this.

The Chair: Mr. Fast.

Mr. Ed Fast: Mr. Chair, could I suggest that this individual actually provide a copy of his submission to Mr. von Finckenstein so that it can be part of the task force report? Obviously, this is an ongoing issue that we will be dealing with again in the future.

The Chair: We can make sure that the clerk would forward this on to the CRTC, because we do have that.

Yes, Ms. Fry.

Hon. Hedy Fry: Mr. Chair, I'm sorry, I'm lost here. Who is this man? I know nothing about him and I haven't seen the letter. I would just like to know who he is. What if he is the head of the equivalent of the CRTC in Australia?

The Chair: No, he's not.

Hon. Hedy Fry: Maybe we want to hear from him. I would like to know who he is, though, please, if you don't mind.

The Chair: It's not who we should hear from, it's whether we have any more time to hear from people. We've set our agenda for the CBC mandate review. That was set. It has been changed because of the crisis that we had with the CTF and the funding. We have initiated that. We have a report. We've set those things aside. We've moved the CBC mandate backwards.

This only came to me.... It's dated February 14. Today, our meetings of witnesses are over. As Mr. Angus has said, there are many people who would like to speak. I'll go back to some of the things that were said here today by the CRTC. We're talking about a small piece here in this particular thing. If you haven't one of these, I can make sure you get one, but we have many people who would like to speak on these things.

Again, I have made that ruling. All I would like is the support of the committee. If you would vote that our hearings of witnesses are over and we bring in a report at the next meeting....

Yes.

• (1050)

Hon. Hedy Fry: On a point of information, Mr. Chair, pursuant to the CRTC's report to us today and the fact that I know some of us around the table would have liked to ask a couple of further pertinent questions, all of us who read the CRTC's report saw that they said.... I heard, when I asked a question here, that the chair said to me that the task force will do public hearings. But when I read the report it said that the commission will make a decision about whether or not to issue a public notice and to hold public hearings.

That is unacceptable for me. While the minister cannot make the CRTC do things, I would like us to decide. I think the commission should not, in the name of accountability, make the decision about whether these hearings will be public.

This is an interesting issue, a serious issue. We are taking for granted that the hearings will do what we want them to do, that they will solve the problems we want them to solve, but when it's not public and we don't even know if the report will be made public, I think we have to ask some more questions—

The Chair: Excuse me for just one second—

Hon. Hedy Fry: I am reading what he wrote in—

Mr. Ed Fast: He said the report will be made public.

Hon. Hedy Fry: They said they'll make a decision about whether or not, and in the press release it says the same thing.

There is a decision—

The Chair: No, I'm going to interrupt here. I distinctly heard this morning that the report of the task force would be made public.

Hon. Hedy Fry: Well, then, I'd like a clarification, because I heard that too, but it belies what I see written here.

The Chair: It'll be in the blues.

Hon. Hedy Fry: Will we, as a committee, hold him to what he said to this committee as opposed to what he wrote?

The Chair: I will.

Hon. Hedy Fry: Then if we're going to do that, I'm happy. Good.

The Chair: I will.

That's what he said this morning and that's what it will be.

Mr. Chris Warkentin: I call the question.

The Chair: Call the question on more witnesses?

Mr. Chris Warkentin: I call the question.

The Chair: I called the question, on more—

Mr. Chris Warkentin: To shut it down. You did call the question, and we're wondering if you wanted us to vote on that.

The Chair: Yes. It was agreed.

Mr. Chris Warkentin: Okay.

The Chair: It was agreed.

Now, we talk about public hearings; next Tuesday there's going to be a draft report brought forward to this committee on the CTF.

Do we want it in camera or do we want it to be a public hearing?

Usually when a draft report is brought to a committee, it is done in camera and then we can release a report afterwards. If there's any time through that particular time that we feel we should open it up, we could do that.

But I suggest our meeting next Tuesday be held in camera.

Yes, Mr. Scott.

Hon. Andy Scott: I think your comparison, or inferred comparison, is after we've had public hearings; this exercise has been very public, so it's a different thing. What the CRTC is proposing is that the hearings wouldn't be public. Ours were.

The fact that we're writing this in camera should not suggest anything other than it's the process because it's a draft report. The reality is that a draft report is massaged by the committee so that it becomes, at least at the optimum, a unanimous report.

You can't do that when you start here, but that does not forgive others who would wish to have the public part of this exercise private.

You were mentioning that comparison, and I didn't want that...I just wanted to draw your attention to that.

The Chair: Okay, thank you.

Mr. Angus.

Mr. Charlie Angus: I have two issues. One is that given the nature of this report, I'd like to know that we will get any of the recommendations that are being prepared well enough in advance, because I don't think Tuesday will be sufficient for us to sit down and expect to come out of something as volatile as this has been and actually get something done.

It is past practice on committee for us to be in camera at that moment when we're discussing a report. It's, you know, a chop shop: it's going to be messy business.

We've held all our hearings in public, but I feel it's standard parliamentary process to be in camera as we are engaged in discussing the various—

● (1055)

The Chair: I'll advise everyone, as the clerk has just advised me, that it will be in your office tomorrow afternoon. Everyone will have them tomorrow afternoon.

Okay. All business done?

Meeting adjourned.

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

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

**Also available on the Parliament of Canada Web Site at the following address:
Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante :
<http://www.parl.gc.ca>**

The Speaker of the House hereby grants permission to reproduce this document, in whole or in part, for use in schools and for other purposes such as private study, research, criticism, review or newspaper summary. Any commercial or other use or reproduction of this publication requires the express prior written authorization of the Speaker of the House of Commons.

Le Président de la Chambre des communes accorde, par la présente, l'autorisation de reproduire la totalité ou une partie de ce document à des fins éducatives et à des fins d'étude privée, de recherche, de critique, de compte rendu ou en vue d'en préparer un résumé de journal. Toute reproduction de ce document à des fins commerciales ou autres nécessite l'obtention au préalable d'une autorisation écrite du Président.