



House of Commons  
CANADA

## **Standing Committee on Canadian Heritage**

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CHPC • NUMBER 002 • 2nd SESSION • 39th PARLIAMENT

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**EVIDENCE**

**Tuesday, November 20, 2007**

**Chair**

**Mr. Gary Schellenberger**

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## Standing Committee on Canadian Heritage

Tuesday, November 20, 2007

• (1135)

[English]

**The Chair (Mr. Gary Schellenberger (Perth—Wellington, CPC)):** Order.

We can now deal with the motion that the committee adopt the following motion and present a report to the House: That, in the opinion of the committee, any new directive to the CRTC from the Governor in Council amending the interpretation of the broadcasting policy for Canada or the Canadian telecommunications policy be first put before the House for its approval.

Would you like to speak on the motion?

[Translation]

**Mrs. Maria Mourani (Ahuntsic, BQ):** Yes, thank you.

I would like to thank my colleagues for kindly agreeing to deal with this motion right away.

The idea is that if the minister wants to make a change of any kind by order, it would have to come to the House. In other words, any change to or interpretation of the act should come to the House.

I read an article in which the Minister of Canadian Heritage said that there would be changes. So they have to come to the House. Otherwise, we do not know where the changes are coming from. With new directives, we end up with a kind of deregulation, subject to market forces, and so on. That is all.

[English]

**The Chair:** Mr. Bélanger.

[Translation]

**Hon. Mauril Bélanger (Ottawa—Vanier, Lib.):** Mr. Chair, I am a little confused and I will try to explain why.

First, I completely agree. I think that directives issued by the executive branch telling the CRTC how to interpret or which criteria to use should be... It happened last year. At the suggestion of Mr. Bernier, the Minister of Industry, the governor in council issued a directive on telecommunications under which the marketplace should determine the interpretations.

So I am in agreement. But let me tell you about an exercise I went through. I asked the Library of Parliament who would take precedence if the will of Parliament, expressed by a majority vote in the Commons, went counter to the will of the executive, expressed by a directive in the form of an order in council. I did not like the answer, as you can imagine. It seems that acts as presently drafted give the executive the authority to issue directives. If such a conflict

arose, the order in council, the Cabinet directive in other words, would take precedence.

Just such a directive was issued by order in council last year. You will remember that it came on the recommendation of the Minister of Industry. You will also remember that, in the first session last year, the House passed a report from this committee that contained a motion to the effect that it was the will of the Parliament of Canada that the government should not allow changes to restrictions on foreign holdings, that it should keep its rules on Canadian content and on the funding of a public broadcaster. I made that motion here and the committee supported it. We tabled a report in the House, and it was passed. So we have a good argument that the Bernier directive went counter to the will of the House. Now, because of convergence, if the governor in council issues directives on telecommunications, they will inevitably have repercussions for broadcasting. That is what is happening, and it explains the fear that the arts and culture communities are expressing loudly.

I support the motion, but unfortunately, Canadian laws as they are presently written make it moot. That is why I wanted to take the time to explain. If we ask for a legal opinion—and I think that is going to happen—the opinion or decision—I do not really know what form it would take—will unfortunately prove me right.

Because of that, instead of saying “for its approval”, we could say “for information”. Then it would be clear, and anyway, that is what would happen.

So, Ms. Mourani, all this is to say that I share your frustration. But the law being as it is, I think that it would be better to table a bill that would amend either of the acts that concern us, that is, the Canadian Radio-television and Telecommunications Commission Act or the act that allows the executive branch to issue directives. At the moment, at least according to what the Library of Parliament tells me, the executive has the right to issue directives even if they go against the will of Parliament as expressed by a majority of members.

• (1140)

**Mrs. Maria Mourani:** Even if it also goes against the spirit of the act?

**Hon. Mauril Bélanger:** No, in a case like that, I do not think so.  
[English]

**The Chair:** Mr. Fast.

**Mr. Ed Fast (Abbotsford, CPC):** Mr. Chair, I do agree with Mr. Bélanger's analysis of the law. The minister does have the right to a Governor in Council order to make certain directions to the CRTC.

My concern is this: the motion seems to imply that the broadcasting policy of Canada can somehow be amended by the minister issuing a directive. In fact, that's not the case. The Broadcasting Act actually sets out the broadcasting policy for Canada. I believe it's section 8 of the Broadcasting Act that actually spells out that any amendments to the broadcasting policy have to be placed before both houses of Parliament. So that protection is already there.

I think what this motion does is go far beyond that. What it does is call into question, and in fact challenges, the minister's right to issue directives that are within his power through a Governor in Council directive. That's my concern. We're going far beyond what's within our jurisdiction to do. In fact, I would suggest the motion is essentially ultra vires, which I think reflects what Mr. Bélanger has said.

I understand where she wants to go with it, but it's something that just cannot be done. So certainly on our side, we'll be voting against this motion.

**The Chair:** Mr. Scott.

**Hon. Andy Scott (Fredericton, Lib.):** I think the objective of having extra executive scrutiny of the interpretation would be positive on two fronts. I think that scrutiny would in fact add value to the process. It doesn't have anything to do with the authority of the executive council to do this; it's in the legislation. That isn't to say that we as a committee couldn't suggest to the executive council that additional scrutiny would be helpful on content.

Secondly, I think if the executive council were aware that there would be some additional scrutiny in terms of their interpretation of the broadcasting policy, it might change the way they consider it—the political reality—if somewhere between the directive and the CRTC, someone is considering it. And it probably is appropriate that it be this committee.

If the reference here is to the House. The committee is a creature of the House with, presumably, expertise in the area, and it strikes me that it would be a more efficient way to have the House offer scrutiny by depositing it with this committee.

It's not unlike the fact that we look at Governor in Council appointments. We can't jettison, but we do offer scrutiny, and there's some value in that, obviously—they send them to us.

So I think perhaps the objective could be met within the letter and spirit of the law by simply suggesting to the executive council that it is this committee's belief that it would add value to the process to have interpretations of the broadcasting policy and to include us in that process. I think it would change the way they would do it, and I think we would add value to the process.

**The Chair:** Mr. Malo.

[Translation]

**Mr. Luc Malo (Verchères—Les Patriotes, BQ):** Thank you, Mr. Chair.

If the word “approval” is too strong, given the law that governs us in this, “information” is suitable, because, when all is said and done, this motion only says that changes must be made openly and that the public should be informed. Any change to the interpretation of the

policy must be transparent. That is all. I would be interested in seeing this amendment, which reflects the spirit of the motion, supported by all our colleagues.

• (1145)

[English]

**The Chair:** Mr. Bell.

**Mr. Don Bell (North Vancouver, Lib.):** Thank you.

I was going to suggest something like what I heard Mr. Malo say, that instead of the word “approval” it be either “consideration and comment”, or the word “scrutiny”. I listened with interest to Mr. Scott's suggestion that this committee has in fact been charged by the House with this responsibility.

I don't think that I heard Mr. Fast's comments about the power or the responsibilities of the minister, and I don't see there being an intent here to take that away. I would be comfortable with changing either the word “approval” to “consideration and comment” or the word “scrutiny”, whichever was deemed to be the most appropriate, and either leaving it as “the House” or to “this committee” or “before this standing committee of the House”, because this committee reports to the House in its public meetings.

So it may be that this is the most appropriate place to take that because this is where actual debate would occur, as opposed to in the House, where at any given time the chances of a dialogue and debate and therefore of arriving at a conclusion.... It's more a place where statements are made as opposed to true debate taking place.

**The Chair:** Mr. Siksay.

**Mr. Bill Siksay (Burnaby—Douglas, NDP):** Thank you, Chair.

I do support this motion, although I think the discussion has been helpful. So I'd like to propose an amendment that after the word “House” adds the phrase “through the Standing Committee on Canadian Heritage” and that changes the final word “approval” to “consideration”.

**A voice:** Can you repeat that?

**Mr. Bill Siksay:** So after the word “House” we would add the phrase “through the Standing Committee on Canadian Heritage”, and we would change the final word “approval” to “consideration”.

Chair, I think this would allow us to do appropriate oversight in that process and do very appropriate work. I don't think it changes the ultimate responsibility in any way, but I think it will add something of value to the process, as others have stated.

**The Chair:** Mr. Abbott.

**Hon. Jim Abbott (Kootenay—Columbia, CPC):** Again, as has been said, while it's understandable that there may be frustration, and there may be some desirability to do some of these things, I've taken the time to take some advice. I'll be repeating, perhaps, something of what Mr. Fast has already said, but I'd like to put on the record five or six points.

The Broadcasting Act approved by Parliament sets out the broadcasting policy of Canada. There's no authority in the act to amend the broadcasting policy. This would require a legislative amendment that would come before this committee. The Governor in Council has the power to issue a policy direction to the CRTC subject to the process established in section 8 of the Broadcasting Act.

By virtue of section 8, any proposed policy direction must be laid before each House of Parliament and referred to such committee as the House deems appropriate. This ensures that Parliament has the opportunity to consider the proposals. The Broadcasting Act requires that any proposed policy direction be published in the *Canada Gazette* and that comments be invited from the public. There are no powers of direction in the Broadcasting Act that would allow for the Governor in Council to direct the CRTC on how to interpret the broadcasting policy for Canada established in the act.

Now, all of those points being the case, voting in favour of this motion is something that in our democratic process everyone is free to do, but, with absolutely no disrespect intended whatsoever, to do so is rather meaningless, because what we're voting on as a committee and what we're asking for is not envisioned in the Broadcasting Act. So unless the committee is going to recommend a wholesale change to the Broadcasting Act, the motion really cannot have any effect.

• (1150)

**The Chair:** Ms. Mourani.

[Translation]

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

Thanks also to my colleague. In a way, there was a small problem with the act. So it should be changed. But that is another story.

As for the amendments, it would be a good idea to add the word "information". But I wonder whether we want to go through the committee in order to report to the House, or whether we should go directly to the House. Why go through intermediaries when we can ask the minister to report to the House? It is better for changes to go directly through the House than through the committee.

If there is a legal problem, I do not see why the committee would not also be involved. But if that can be avoided, why not go directly through the House? Involving all our colleagues would be more democratic.

[English]

**The Chair:** Mr. Scott.

**Hon. Andy Scott:** First of all, in response to Jim's intervention, it could be with meeting. If the executive council decided not to act on a motion, that would be at their discretion, because they're the ones who have the authority to do this now. That doesn't mean that it wouldn't also be in their discretion to say "Yes, that's a good idea, and we will include the committee in our deliberations".

If you're suggesting it wouldn't happen, that is a judgment. But you can't argue that it couldn't happen. The executive council has the authority to engage a process, whatever process it wishes to engage in acting on its authority. So we're asking them to do this.

On the question of it going to the House, I don't think it's going to the House. By suggesting it goes to the House, the only thing the House could do is offer scrutiny. It couldn't make a decision, because it doesn't have the authority to do that. Or the executive council does, and that would speak to what Jim was saying.

Therefore, it strikes me that all we're really doing is putting parliamentarians in a process that would offer consideration, comment. The executive council can accept it or reject it. We accept that. In my view, this is the place to do that. This is the group that has the expertise, that deals with the Broadcasting Act, that deals with these issues regularly on behalf of all parliamentarians. So it strikes me that I can't agree with the interpretation that says it would be meaningless, or it wouldn't happen, or it couldn't happen.

It may be the member's judgment that it wouldn't, but I don't accept his judgment that it couldn't. It would be up to the executive council to exercise its authority any way it wishes.

**The Chair:** Mr. Fast.

**Mr. Ed Fast:** I sense from the discussion around this table that at the very least there's a consensus that at the very most this motion would be a wish expressed to the minister that we be involved in additional scrutiny.

I note that Mr. Scott actually referred favourably to additional scrutiny. Yet I do find it passing strange. I say this without wanting to be combative, because that's not the intention, but I do find it passing strange that in the previous four terms of the Liberal government, it never welcomed additional scrutiny in this way. Now it seems to be a new thing that is desirable.

I believe there's a reason why it wasn't done earlier. If you look at the wording of this, it refers specifically to the minister amending the interpretation of the broadcasting policy. The problem is, virtually every decision or directive that the minister would make could be construed as affecting the interpretation of broadcast policy in Canada. So we haven't confined the scope of this in any way. In fact, this motion is so broad it would compel the minister to refer to this committee, or to the House, virtually every directive that he ever issues, whether it's to the CRTC, the CBC, or whatever other crown corporation there may be.

So I believe this motion is ill-advised. First of all, it's ultra vires; we don't have the power to do this, so it becomes a wish to the minister. Secondly, it would open up such a huge can of worms and such a large scope of directives that could be caught by this, we could be flooded with these kinds of referrals to committee.

I would suggest we abandon this motion. I don't think it's well thought out. Again, I'm certainly going to be voting against it, even as amended.

• (1155)

**The Chair:** Mr. Bélanger.

**Hon. Mauril Bélanger:** Thank you, Mr. Chairman.

I want to go back to something that Mr. Abbott said, because the first two or three points he was making would indicate that essentially what the motion is recommending already exists. If the Governor in Council wishes to issue a directive, that directive is given to both houses and is referred to the appropriate committee, who can do what they want with it—either ignore it, or report back to the House, and so forth. That is the way things are currently, and I don't dispute that.

I may not share the conclusion he reached, but on those points, if I apply them to here, I would therefore conclude that when what I'll call the Bernier directive, for want of a better term—I forgot the exact number of it, but I think we all know what I'm referring to—was issued, when the notice of it was given to Parliament, both houses, it was referred to the industry committee. I don't recall it having been referred to the heritage committee. And there lies a problem, if I may say.

I suspect that because it was directed at telecommunications, it was sent to the industry committee. What they did with it, I don't know, but if it had been sent here, I expect this committee might have had something to say about it and the government could have amended its directive or not, according to the input. So there is merit in the motion in the sense that this committee, because of its work in broadcasting, writ large, has something to say perhaps in other areas that may be sent to another committee.

In that case, I would support a motion—it would have to be somewhat rewritten—that would say that directives that are sent to the House for consideration or opinion or input, if they can possibly touch on broadcasting, be referred to this committee, because that is indeed the impression out there, that the current directive on telecommunications is having an impact on broadcasting and it's not just the telecommunication side.

So there is merit in the motion, and I'm not contradicting what Mr. Fast said in the sense of whether it's *ultra vires* or not. I think the committee should express that it wishes to deal with it. I don't know if we need to do it in this format, or just, whenever there's a directive issued, that we ask our clerk to make us aware of any notice of directive being published in the *Canada Gazette*. I think there's merit to that, and as a committee we should be made aware of directives that we may or may not be following because we're caught in something else.

That brings me to how we should end today's session. Perhaps—and that would depend on Madame Mourani—there would be another attempt at crafting it and coming back in a way we can all be comfortable with.

[Translation]

Just an idea, that is all.

[English]

**The Chair:** Mr. Malo.

[Translation]

**Mr. Luc Malo:** On Mr. Bélanger's last comment, I think that Mr. Siksay moved an amendment to the amendment that does what my colleague wishes.

I would just like to come back to Mr. Fast's comments. He said earlier that saying “amending the interpretation of the... policy for Canada” might be going a little too far beyond our jurisdiction. It is not really too far. When new directives are issued and we hear back from the artistic and communications world that the interpretation has changed, we know that it the case.

I am convinced that the people in the department are sufficiently well-informed about what is happening out there and sufficiently well equipped to see that new regulations will amend the interpretation of the policy. Up to a point, we can trust them on that. I do not think that we are going too far.

When new directives are issued in order to amend the interpretation of the policy, they know that before they do it. I think we could debate this for hours. That is it, Mr. Chair.

● (1200)

[English]

**The Chair:** Ms. Mourani.

[Translation]

**Mrs. Maria Mourani:** Mr. Chair, we could vote on the amendment and then on the proposal as amended.

[English]

**The Chair:** The question has been called. First of all, I want to be clear on this.

We're going to vote on the amendment that was put forward by Mr. Siksay. I've jotted it down here. I hope I'm right. Correct me if I'm not.

That, in the opinion of the committee, any new directive to the CRTC from the Governor in Council amending the interpretation of the broadcasting policy for Canada or the Canadian telecommunications policy be first put before the House through the Standing Committee on Canadian Heritage for its consideration.

Am I correct on that?

**Mr. Ed Fast:** Could I ask for a recorded vote?

**The Chair:** We're voting on the amendment with a recorded vote.

(Amendment agreed to: yeas 7; nays 4)

**The Chair:** Now we vote on the motion, as amended. Do I need to read it again? This is a recorded vote.

(Motion as amended agreed to: yeas 7; nays 4)

**Mr. Bill Siksay:** Chair, before you move out of the public part of the meeting, may I ask a question of clarification? I know that this committee has not used an agenda and planning committee model in the past and that decisions about the agenda are made in committee of the whole, as we did earlier this morning. I'm wondering, since the decisions were made in a private meeting, if you could report those publicly when we go into open sessions so that those who are interested in what the work of the committee will be can have that information available to them. I'm wondering if you or the clerk could go over those decisions that were made earlier in closed session so that it's on the public record.

**The Chair:** Maybe the next time we deal with this, we'll take that into consideration. But what was done in camera was done in camera and we'll look forward to.... Next time, we'll make sure we don't go in camera until we have those things considered, if that's what the committee wishes.

Yes, Mr. Abbott.

● (1205)

**Hon. Jim Abbott:** Just for clarification, I recall one time when my colleagues on the other side of the table were rather upset with me, and understandably so. I admit that I was wrong in bringing up or referring to things that had been said in camera, and I think that if we make it a common understanding that any decisions that we make in camera will stay that way, and if we want to make those decisions in public, that they would be made in public....

It's just that I understood why my colleagues were upset. It was an honest mistake on my part and they accepted my apology. But it's something that we understand that when we are in camera, even if we arrive at a conclusion, that conclusion remains in camera as well.

**The Chair:** Mr. Siksay.

**Mr. Bill Siksay:** Chair, I don't want to belabour this, but surely the agenda of the committee is something that needs to be public information. I understand why we would have a discussion in camera on how we set our priorities so that different members can talk frankly about what the priorities of the committee should be. I don't think that discussion should be public. But once the decision is made, I would like to see some reporting of that publicly, so that people who follow this committee have access to that information readily, and as soon as possible after we've made the decision.

**The Chair:** As I've explained, what we'll do at the next meeting is to make sure those parts of the meeting.... What was held in camera today stay has been held in camera today, and that's the way it is.

Yes, Mr. Bell.

**Mr. Don Bell:** I just have a question. If I understand correctly, you're going to have Mr. Rabinovitch on November 27. Is that correct? Will he be in public or in camera?

**Hon. Andy Scott:** We're in public now.

**Mr. Don Bell:** Yes, it's in public now.

My question simply was if that meeting were to be taking place in public, shouldn't that fact be made public prior to that meeting?

I've just done it, I'm sorry. I did a Jim Abbott.

**Some hon. members:** Oh, oh!

**The Chair:** Anyway....

**Hon. Mauril Bélanger:** Mr. Chairman, if I may, there's a very simple way to do this: whenever we adjourn the meeting in camera, the motion would include that you report decisions. It's quite straightforward.

**The Chair:** Okay, thank you for that.

Ms. Mourani.

[Translation]

**Mrs. Maria Mourani:** Mr. Chair, I would like to know if the meeting with Mr. Rabinovitch on November 27 will be in camera and not televised. If so, we will not be able to ask questions.

[English]

**The Chair:** No, it's televised.

[Translation]

**Mrs. Maria Mourani:** I thought that we had decided that the meeting with Mr. Rabinovitch would be in camera, and the one with Mr. Lacroix would be televised.

[English]

**The Chair:** No, we changed this. It was suggested that way, but we voted that it will be public. It will be televised.

Now we're going to go back in camera.

**Hon. Mauril Bélanger:** Mr. Chairman, before we do that, will Monsieur Malo's notice of motion from yesterday be dealt with on Thursday?

**The Chair:** To the best of my knowledge, we can put it on the agenda. We can do it first.

[Translation]

**Mr. Luc Malo:** Mr. Chair, this motion is more of a reminder. Hearing from people who have recently been appointed to positions of interest to the committee, like Mr. Michel Roy at Telefilm Canada, is a common practice. Perhaps the motion is not even really necessary, in the sense that all my colleagues around this table recognize the importance of hearing from Mr. Roy in the next few weeks. It is not necessary to make a ruling, or to debate this motion, but we must all agree that we want to hear from Mr. Roy as common practice requires.

[English]

**The Chair:** Mr. Fast.

● (1210)

**Mr. Ed Fast:** Mr. Chairman, first of all, I believe Standing Orders 110 and 111 specifically say that he has to be called within 30 days of his appointment being tabled. It's been referred here, so we need to actually make that call.

I believe we're amenable to having that motion dealt with right now, so we can get it out of the way.

**The Chair:** Okay, we can deal with it right now.

So Mr. Roy will be called within the next few days to make sure that he appears before us—and that's the consensus around the table?

**Some hon. members:** Agreed.

**The Chair:** Now, are we done with the public part of this meeting?

Okay, as there's no other public business, we will go in camera.

[Proceedings continue in camera]







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