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# **Standing Committee on Access to Information, Privacy and Ethics**

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**EVIDENCE**

**Thursday, October 6, 2011**

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**Chair**

**Ms. Jean Crowder**



## Standing Committee on Access to Information, Privacy and Ethics

Thursday, October 6, 2011

•(0845)

[English]

**The Chair (Ms. Jean Crowder (Nanaimo—Cowichan, NDP)):** Good morning. I'll just let people take their seats, and we'll get going.

While people are taking their seats, I just want to let the committee know that at the committee's request, the clerk managed to juggle the witnesses for Thursday, October 20. Now we will only have two witnesses on October 20. The Canadian Taxpayers Federation will appear in the second hour on October 18. We'll have two one-hour panels on Tuesday, October 18. I just wanted to let you know that this was done.

For my information but also to refresh the committee and other members who were not at the committee when this motion was put forward, I just want to remind the committee that the motion you adopted was that the Standing Committee on Access to Information, Privacy and Ethics call witnesses to hear testimony regarding the access to information dispute and the resulting court actions concerning the CBC. I would ask the members to focus their remarks and their questions on the access to information aspect of CBC. I will ask you to confine your remarks that way.

Just for the witnesses' information, I will explain a little bit about the proceedings. You will have up to ten minutes to present your briefs. Then we will go to committee members for questions to the witnesses. The first round of questions will be seven minutes. We'll be alternating. That seven minutes includes the member's questions to you and your responses. I apologize, but I will cut people off once that seven minutes is up.

Mr. Bernstein, are you going first?

**Mr. Howard Bernstein (As an Individual):** If that's the way you'd like it.

**The Chair:** Go ahead, Mr. Bernstein.

**Mr. Howard Bernstein:** Good morning, honourable members and Madam Chair. Thank you for inviting me to speak.

I want to start by making my position perfectly clear. In my opinion, the CBC/Radio-Canada has no right to block freedom of information requests that refer to the financial operations of their corporation. It seems obvious to me that when a corporation accepts millions of dollars from public finances, it is incumbent on them to be completely transparent on the use of those funds.

It is furthermore hypocritical for a corporation with a news operation that is a major user of data received from freedom of

information requests, an entity that in fact complains bitterly when freedom of information requests are denied, to deny the same access they demand of others.

I do not agree with the CBC when they claim that releasing such information will put them at a competitive disadvantage. The idea seems ludicrous to me. Many people at CTV and Global, for example, once worked for CBC, and vice versa, many CBC employees once worked at CTV and Global. The idea is beyond silly that they don't know how the others work. The cross-pollination in Canadian broadcasting means that all the networks know how everyone else does their jobs and all the networks work and spend in similar ways.

The real reason CBC does not want to open their books is the fear that some of the mistakes and misspending that will ultimately be revealed will result in bad publicity and even ridicule from those who are determined to harm the public broadcaster.

I'm afraid this is a real fear. There have always been political and broadcast business opponents who have had no qualms about sticking it to the CBC by taking mistakes out of context and blowing up the importance of minor misspending. Today, the anti-CBC hysteria has reached epidemic proportions. The news on TV channels shows a prime example of people who show no compunction in using distorted data and widely exaggerated claims to discredit the CBC. Members of Parliament have also been known to attack the CBC without taking the time to understand what they are criticizing and the fairness of the complaints.

Putting all of that aside, I still believe the CBC has to open its books. If they don't like the way they are read or interpreted by others, it's their duty to explain to the public that pays them and not hide from them.

However—and it's a big however—I feel I must make another point that is tangential but pertinent to what we are doing here. It seems amazing to me that members of Parliament or any politician from any level of government would take CBC to task for stonewalling the public. Are there any institutions that attempt to bury their mistakes more than governments do?

One example is this, if you'd permit me. How long have Canadians, both private and in the media, been trying to find out how close to \$1 billion was spent on the G-8 and G-20 meetings last summer? In question period we're witnesses to the spectacle of a minister refusing to answer questions on he spent the \$50 million allocated to the summits.

The CBC's hypocrisy is matched and raised every day by federal, provincial, regional, and urban governments. My suspicion is that government secrecy is carried out for the very same purpose that our public broadcaster is hiding behind its excuses: If the opposition, the media, and the public were privy to the blunders and some of the misspending, it could be a source of tremendous embarrassment to the people who control the purse strings of the nation.

Yes, the CBC should open its books. I hope the courts force the issue and rule against the CBC.

It's also time for all Canadians to demand the same level of transparency from government that some members of Parliament are demanding from the CBC. When I worked for CBC, CTV, and Global, it was not uncommon to hear my colleagues talk about having to go to Washington to find out what was happening in Ottawa. Canadian government levels of secrecy are out of control and do not make a lot of sense when considering our economic, political, and strategic place in the world.

I believe one of the best ways to force the CBC and governments of Canada to clean up their acts would be to let the public know where the waste and the misspending occur. Once the people of Canada see the errors, those in power will be forced to fix their mistakes or be punished with the loss of their jobs or worse. Most Canadians understand that in corporations as large as the CBC and within political entities as large as the federal, provincial, and urban governments mistakes and errors in judgment will be made. Canadians are willing to forgive the ones who own up to their mistakes and quickly fix the problems. It is the cover-ups and the secrecy that inevitably turn a simple error into a scandal.

● (0850)

So let me sum up. Yes, the CBC should have to open its books. But it seems to me a little unseemly to have the pot calling the kettle black.

Thank you for hearing me out.

**The Chair:** Thank you, Mr. Bernstein.

Go ahead, Ms. Denton.

**Ms. Kady Denton (I Love CBC - Peterborough):** Thank you.

Chair, members of the committee, and my fellow witness, good morning. *Bonjour*.

Thank you for this invitation.

I'm part of a group, I Love CBC—Peterborough. Your committee's study caught my interest, and I hope it's of interest to you to hear from someone who is not personally entangled in the issue, but from an ordinary Canadian.

I work in the arts. I'm self-employed full-time. I work for Canadian, British, and American publishers. I belong to no political party. And I am among the 80% of Canadians who value the CBC.

I'm not an expert on access to information, but I have done some reading, and here is how I understand things. The CBC first became subject to the Access to Information Act in September 2007. The CBC has come under fire for failing to respond to access requests in a timely manner, as required by the act. The CBC makes the point that it was overwhelmed by requests for information after it became subject to the act.

Initially, CBC's deemed refusal rate was about 80%. Now that rate is down to about 20%, and the average number of days to meet a request has dropped significantly. The Information Commissioner herself reported recently to this committee that she has noted improvements and is satisfied.

We know the CBC is a national treasure. It should appear open in its dealings. So I can't really agree with CBC's argument that it should not have to deal with the Office of the Information Commissioner on matters relating to the exemption. I think the Information Commissioner and the Federal Court can be trusted to protect the CBC's journalistic, creative, and programming activities.

An apparent lack of transparency is confusing. Surely this would tarnish the image of public broadcasting. It's CBC's president and board who claim responsibility for matters related to access to information, and each of these people has been appointed by the Prime Minister, so things get a bit muddled here.

It is pertinent that almost all the requests for information made to the CBC come from media companies under the control of Quebecor, a competitor to the CBC.

We were warned by Dalton Camp, before he died:

When you hear people talk about reducing the role of the CBC, or selling off its assets, look closely at who's talking—it won't be a voice speaking for the people of Canada, but for the shareholders of another kind of corporation.

In the *Peterborough Examiner*, which is a Sun Media publication—Quebecor—I regularly read about how much the CBC costs taxpayers. It's a constant drip, drip, drip of complaints about how much CBC wastes. It's \$34 a year per person! It's a bargain.

So why are we here? Is it because the CBC seems less than transparent? Is it because of Quebecor's attacks on CBC, or because of some other agenda?

My member of Parliament, Mr. Del Mastro, says he has heard from many in his riding about the matter. It wasn't me. It wasn't anyone I know. If I or anyone I know was asked what our main worry about the CBC was, I would have to say—and I know they would say—our main worry is the CBC's future and the real intentions of the government.

I do know how many people reached Mr. Del Mastro last winter about the CBC, and I don't think it's pertinent here what provoked this, but people in Peterborough thought that the future of CBC was in danger, and the city exploded. There was a tremendous discussion on social media. There were petitions. These weren't online petitions or solicited questionnaires or straw votes. This was a spontaneous uprising, a grassroots movement from the greater Peterborough region about the future of the CBC. And although I was certainly involved, I don't know all the petitions that went in. I know about the handwritten letters, the postcards, and the stuff on paper.

●(0855)

Let's say that 9,000 people—certainly I know 6,000, but 9,000 is a realistic figure—spoke out on this issue. They asked for assurance that CBC was valued by Mr. Harper's government, that funding would not be cut, and that the CBC had the resources and support needed to meet its mandate. The written material, thousands of it, asked for a response from the Prime Minister.

There wasn't such a response, but we did hear from our member of Parliament. He said before the election that funding for CBC would be maintained or increased by his government. That was a promise, and the Minister of Heritage made the same pledge the day after the election.

So what's happened? I'm reading now that CBC may face a 10% cut, and some members of Parliament are calling for the elimination of CBC funding altogether.

One related point, since CBC is under discussion, is sometimes CBC sounds like the Toronto Broadcasting Corporation. It would be nice to have a CBC radio station in Peterborough. We have an area of 250,000. My point here is that each region has its own perspective on Canada, and it's been distressing to see CBC lose their roots in communities across the country primarily for financial reasons.

To conclude, this committee can encourage the CBC leadership to not abuse its exemption under the Access to Information Act. This committee can recognize that CBC, our national broadcasting system, our voice, is under attack by private interests and corporate competitors.

The bottom line here, what's really important, is that the CBC flourish and be celebrated. So this committee can recommend in its reports that the Prime Minister and the government make a clear statement of support for the CBC, maintain or increase funding to the

CBC. That's the promise, and that should be the end of the matter and a new beginning.

Thank you.

●(0900)

**The Chair:** Thank you, Ms. Denton.

We'll go to a seven-minute round, starting with Mr. Benskin.

**Mr. Tyrone Benskin (Jeanne-Le Ber, NDP):** Thank you both for some very interesting presentations.

I will ask my first question to Ms. Denton.

You said that people have spoken to you, or you have spoken to people, about the access to information issue regarding the CBC. In terms of competitiveness, in terms of programming, which these exemptions cover, would you say it's reasonable to say we do not want to make that public because it puts the CBC at a programming disadvantage in terms of making potential programs, that they're thinking of exposing those to their competitors? Would you think that would be a reasonable reason not to want to expose that?

**Ms. Kady Denton:** I'm sorry, would be a reasonable thing not to

**Mr. Tyrone Benskin:** Not to expose those plans through access to information.

**Ms. Kady Denton:** Just a point of clarification. I have not heard people speak out on this issue. I have heard people by the thousands speak out on their concern for the future of the CBC. Frankly, I don't think this issue is on the top of the public's list of priorities, but that's what I've heard.

The future of CBC, however, cuts close to the bone. That taps people right at their heart. That's what matters.

I think the CBC should be open and transparent, and I do trust the Information Commissioner and the courts to protect essential journalistic practices. If the CBC is not open and transparent, it tarnishes its reputation as a broadcaster, and it gives ammunition to competitors to say we should look at what's going on. This is not helpful.

**Mr. Tyrone Benskin:** In terms of transparency, you are aware that any citizen can go onto the CBC website and find out how much money is being spent in various areas, right down to the spending practices of the vice-presidents, the president, and so forth. All that information is available online from the CBC. Would you feel that is open and transparent?

**Ms. Kady Denton:** Yes.

**Mr. Tyrone Benskin:** Okay.

I have a question for you, Mr. Bernstein. Thank you for your presentation.

You mentioned that there was distorted information coming out from various organizations. Were you aware that the access to information questions that were being asked were for such things as lunch receipts from its vice-president, and not the actual spending practices of the CBC?

**Mr. Howard Bernstein:** I was not specifically aware of that, but it was what I suspected.

• (0905)

**Mr. Tyrone Benskin:** I'm sorry? What was it you suspected?

**Mr. Howard Bernstein:** I wasn't specifically aware that it was for things like lunch receipts, but it was the kind of thing I suspected. Because there's so much information out there that is available, I asked myself what they could possibly be looking for. The truth, it seems to me, is that they're looking for the kinds of things that can be easily hidden in the accounting. And the things that can be easily hidden in the accounting are moneys that move around in ways that....

I mean, I've been there. I've done it. Frankly, I've moved money around myself where I thought, you know, if someone else saw this, they wouldn't necessarily understand what I was doing. For instance, if I'm overseas covering an event and someone says you can only pay cash for something specific, I pay cash, and there's no receipt for that. I have to come back and explain that to my bosses.

I think if someone were to look at that without knowing exactly what happened and how it happened, they'd ask a few questions: Where did that money come from? Where did that money go? How come there's no receipt?

I think this sort of thing happens all the time in news coverage. I think there are all kinds of expenditures that would be very hard to explain. I think it's those expenditures that are hard to explain, where one could easily point fingers and say, you know, look at what these guys were doing; they have no explanation for this.

I had covered the war in Bosnia, and there were Croatian groups that claimed the Serbian government paid for my trip over. All I could say was no, that didn't happen. But it didn't stop a media frenzy from saying that my trip was paid for by the Serbian government.

**Mr. Tyrone Benskin:** How would you feel about organizations using backdoor methods to get at, for example, programming issues?

**Mr. Howard Bernstein:** See, once again, I think it would actually help the CBC to be clear about everything they do. I don't think it will actually hurt the CBC.

Even if Sun News finds out everything they can and starts pointing fingers, I think it's an opportunity for CBC to answer.

**Mr. Tyrone Benskin:** But I'm speaking specifically of programmatic issues, proprietary issues, journalistic issues.

In North America we do have the practice of making sure that the journalistic integrity of a news organization is held. How do you feel

about somebody trying to use backdoor methods to get at that information?

**Mr. Howard Bernstein:** Once again, I have no problem. I think we all work the same way. I don't think CTV works in any different fashion from what CBC does. I think we all use the same methods. Most of us have worked for more than one network. We don't change the way we work just because we change networks.

**Mr. Tyrone Benskin:** It's not about the way you work, sir; it's about who you work with, I think, that's important.

Thank you.

**The Chair:** Thank you, Mr. Benskin.

Mr. Del Mastro.

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

Thank you to the witnesses for appearing this morning.

I'll start with you, Mr. Bernstein. You said that CBC fighting the access to information commissioner in court right now makes them look hypocritical.

I'm not sure if everyone is aware of what this argument is about right now. The access to information commissioner is seeking to have access to review documents that have been requested. She would then determine whether those documents qualify under section 68.1 for protection or whether they should be publicly released.

You've indicated that you think it's hypocritical for them to be able to come out and attack any other agency of the government or in fact the government itself if they're not prepared to release those documents.

Do you share the fears that...? It seems to me that you're advocating even the next step, which would be to say, you know, here's everything we're doing. We're not even seeking the section 68.1 protection. Here's everything we're doing. Look at it. We're not ashamed of it. We'll make mistakes, but here's how we're spending money.

Would that be correct?

**Mr. Howard Bernstein:** That's absolutely right. I think the more transparency there is, the better off we would be.

There are practices going on within the CBC today—I've seen them myself—that I don't agree with. There's a lot of misspending and errors. It's hard for even the CBC to get a handle on that and to do something about it, but I think if it were public information they would be forced to. I think it would help the CBC in dealing with some of these internal problems. The CBC is a web of internal empires, where everyone controls his own money. It's really hard for people on the inside. It's hard for the president to tell other people what to do, because there are so many separations in there and there's so little general accounting. The accounting seems to cover only one's own unit. How you present the money you spend is indecipherable, even to the bosses.

●(0910)

**Mr. Dean Del Mastro:** I heard the couple of examples that you cited. We talked about the G-20 security expenses. Frankly, the government was beaten up over it. We came forward. We said where we spent money. It came in well under \$300 million, the amount budgeted, and the story went away. There had been so many rumours out there about misspending and abuse, but the Auditor General came in and looked at it and everybody agreed that it was consistent with how we spend money. We may not want to host another G-20. In my opinion, though, I think it's a responsibility if you're going to belong to the G-20. But the bottom line is, once the Auditor General looked at it and said the spending was consistent, the story went away.

You said that you believe the CBC must open its books. That's not an attack on the CBC, is it?

**Mr. Howard Bernstein:** I don't believe it is. In the long run, it will be helpful to the CBC. If there is an understanding of where the money's going, how the money is spent, and how it can be spent better, whether those ideas come from inside or outside, it's all to the good. If it results in more money for the important things the CBC does, if it gets other folks off their backs for misspending, I think that can do nothing but help the corporation.

**Mr. Dean Del Mastro:** Since we became government, we've invested over a billion dollars a year. We're into our sixth year. There is, of course, other funding the CBC gets. For example, the Canada Media Fund, the Local Programming Improvement Fund, government advertising, and other sources. There is a lot of money going there. The government, as well as opposition parties and all Canadians, wants to know that the money is well spent. It's easy to defend that money if they think it's being well spent.

The reverse is also true. It's very easy to be attacked on it, especially by those Canadians who look at it and ask why they're spending all this money. For some folks, a billion dollars a year is still a lot of money. For some folks, it's pocket change in conversation in Ottawa. But that's a lot of money. Don't you think the government also needs to be able to look at it and determine the value we're getting versus the money being spent?

**Mr. Howard Bernstein:** Absolutely. I don't disagree with anything you've said, but I want to add to what you said.

I want to make it clear. The CBC is highly underfunded for what we expect it to do with its mandate. It's one of the worst funded national broadcasters in the world on a per capita basis. It has a job that is much more difficult than that of most countries, because of the size of our country.

What you're saying is absolutely right, but I think it has to be understood within that context.

**Mr. Dean Del Mastro:** Right.

It's just hard to make that case when there are folks out there who think CBC executives are living the high life, though perhaps they're not. That might be entirely false, but I have an awful lot of people who come and talk to me about how there is a difference between the lifestyles of the folks at the CBC and the lifestyles of private broadcasters, suggesting that it's much better to be in public

broadcasting. That may be entirely false, but as long as information is protected and not released, then that myth can be propagated.

**Mr. Howard Bernstein:** I totally agree. If I may, I do want to tell you and all those folks out there who think likewise, that I also teach journalism and that I tell all my students, if they want to make good money for the rest of their lives, not to go into journalism and not to work for the CBC, because there's not a lot of money to be made there.

**Mr. Dean Del Mastro:** Very good.

Ms. Denton, thank you for coming.

**The Chair:** You've got 12 seconds.

**Mr. Dean Del Mastro:** Twelve seconds. That's unfair, Madam Chairman.

I'll have to get back to you. Thank you.

**The Chair:** You're a fast speaker, Mr. Del Mastro. We can do it.

Thanks, Mr. Del Mastro.

Mr. Andrews, you have seven minutes.

**Mr. Scott Andrews (Avalon, Lib.):** Welcome, and thank you very much, witnesses, for coming today.

I think we need to get this back to why we're here today. We're not here to discuss the financial operations of the CBC. The purpose of our study is the access to information requests and the court actions involving the CBC and the Information Commissioner. So I think we need to stay focused on the issue at hand.

Mr. Bernstein and Mrs. Stanton, are you familiar with how many outstanding access to information requests with the Information Commissioner we're talking about here?

●(0915)

**Mr. Howard Bernstein:** I don't know the specific numbers. I've heard things like 500, but I don't know what the actual number is.

**Mr. Scott Andrews:** Okay, because it's important to know that the whole reason we're here is the number of requests that came in and the speed of the responses.

Are you familiar with what the actual requests are and who they are from?

**Mr. Howard Bernstein:** I know where they're coming from but I don't know what the specific requests are.

**Mr. Scott Andrews:** Where are they coming from?

**Mr. Howard Bernstein:** They're basically coming from Quebec.

**Mr. Scott Andrews:** Quebecor. Some of them. They're not all coming from—

**Mr. Howard Bernstein:** No, but the deluge is from Quebecor.

**Mr. Scott Andrews:** That's fair. And we don't know what the requests are. We don't know what information Quebecor is looking for. We don't know if it's financial. We don't know if it's about a journalist. We don't know if it's about something else, do we?

**Mr. Howard Bernstein:** No, we don't.

**Mr. Scott Andrews:** So we had better be careful about where we speculate they're coming from, don't you think?

**Mr. Howard Bernstein:** I can only speak as someone who has worked for several networks in this country, and say that I feel that I can speculate in general. I can't speculate specifically. As someone who has watched Sun News to see what they've been saying about the CBC, I get hints along the way that give an idea of where they're coming from, and why and how they're trying to discredit the CBC.

**Mr. Scott Andrews:** Let me ask you this then. Quebecor Sun Media, are they open to any such freedom of information?

**Mr. Howard Bernstein:** No, they're not.

**Mr. Scott Andrews:** They cannot share any of their information.

**Mr. Howard Bernstein:** They do not have to. They're a private company.

Now, I would question that as well, by the way, because all broadcasters in this country are on welfare. Every Canadian-produced show gets Canadian tax credits. Every Canadian-produced show gets funding from government. Generally, 35% to 50% of all shows produced in Canada use money that comes from governments at one level or another. So the argument could be made that, for that portion, CTV and Global should have to open their books as well. Having said that, I know the reality is that there's no.... Funds are funds. How do you know where one dollar comes from?

**Mr. Scott Andrews:** Let's get away from the books and back to freedom of information.

**Mr. Howard Bernstein:** Well, my point is that freedom of information could work. Theoretically you could argue that freedom of information should be made available from CTV and Global as well.

**Mr. Scott Andrews:** Do you see it a bit unfair that one news agency, being in the business, is trying to request information from another news agency? Don't you find that bizarre, that this could be an example of one news agency trying to get a competitive edge or trying to do something to discredit the other news agency?

**Mr. Howard Bernstein:** I don't think it's bizarre at all. I think it's normal business practice taken to its ends—taken to a fanatical end, but I think it's normal business practice. I suspect that Boeing is trying to find information about how they build planes in Europe, and vice versa. I'm sure Embraer—

**Mr. Scott Andrews:** They don't have access to government freedom of information to do so.

**Mr. Howard Bernstein:** I'm saying if they did, they would.

**Mr. Scott Andrews:** Does that make it right?

**Mr. Howard Bernstein:** It doesn't make it wrong either. I mean, competition is competition, and you do whatever you have to do. I think the business of business is business.

**Mr. Scott Andrews:** But what's good for one person has to be good for the other, though.

**Mr. Howard Bernstein:** The argument that's easy to make is that the other is not asking for a billion dollars from the taxpayers.

**Mr. Scott Andrews:** Now we're bringing it back to that.

**Mr. Howard Bernstein:** How can you separate them?

**Mr. Scott Andrews:** If you support public broadcasting and you support the concept of CBC—which we do, and we think it's money well spent—then I find it very disturbing that we have two news agencies competing against each other and both are not playing on the same playing field.

And on both sides—and you can make the argument—I think what you're saying is that it's unfair that CBC is getting public funding.

● (0920)

**Mr. Howard Bernstein:** Sun TV and Quebecor would argue that it's unfair that CBC gets the public funding and that they have to compete with them, so they go out of their way to do whatever they can to discredit CBC.

It's journalistic only in the sense that they're looking for information to use against the CBC in a journalistic fashion. It's not about CBC's journalism. I don't think they care about CBC's journalism. They might care that they might think they're left of centre, which, by the way, I have never believed. They might think they're unfair to the government, but that's not what they're going after. You wouldn't find that out from freedom of information anyway.

**Mr. Scott Andrews:** Ms. Denton, I have a couple of questions for you. Are you familiar with how many requests are before the courts?

**Ms. Kady Denton:** In the first year there were 400 to 500. I do know—and it's curious—that the CBC has a department of seven people now just to handle the requests that are coming in primarily from Sun Media. This is costly. I can think of other things that seven people could be doing, but there you have it. This is so that the requests can be dealt with in an expedient manner, as is required.

**Mr. Scott Andrews:** Ms. Denton, how many people are involved with your group in Peterborough? Would you give us some information about your group in Peterborough?

**Ms. Kady Denton:** Okay.

**The Chair:** I'm sorry, but your time is up, Mr. Andrews.

Could you give a brief answer, please?

**Ms. Kady Denton:** Right. It's a grassroots movement. Thousands are involved. I speak here today on behalf of the spirit of the group, in that they value CBC and want it to be cherished and valued. I can speak on these points to a smaller group, but the general group, I Love CBC—Peterborough, is a hefty-sized one.

**The Chair:** Thank you, Ms. Denton.

Mr. Butt, you have seven minutes.

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

Mr. Bernstein and Ms. Denton, thank you for coming today.

Mr. Bernstein, maybe you can expand. In your opening address, you said that the CBC is a web of empires. Can you expand on what you mean by that? More specifically, do you believe that the way the CBC has been structured is leading to their lack of interest in participating fully in access to information requests?

**Mr. Howard Bernstein:** First, to clarify, I said that in an answer, not in my opening address.

• (0925)

**Mr. Brad Butt:** I'm sorry.

**Mr. Howard Bernstein:** That's not a problem.

The best way I can answer that is to say that, first of all, within the CBC—and it has taken 75 years to create this—different people have been in charge of different areas, as in any company, and the people who are best at it have learned how to amass funding for themselves and keep funding for themselves and how to work the system to keep money so that they can do whatever they want to do to create television programming. I don't mean for their own personal dollars.

They have done that, and it's sometimes hard for other people within the organization to get at exactly how the money is being used and how it's being spent. Is that the reason they're against freedom of information? It think that is only tangentially. That's only in the sense that someone might find out what they themselves can't find out about the way someone is spending money within their little empire within the CBC.

I don't think the bosses themselves know exactly how the money is being spent on a day-to-day basis.

**Mr. Brad Butt:** The crux of the dispute between CBC and the Information Commissioner is section 68.1. Do you not believe that the Information Commissioner is smart enough and talented enough and knowledgeable enough to make a determination as to whether an information request is or is not covered under section 68.1?

It seems to me that the CBC's argument is that “we know what's covered under section 68.1, nobody else knows what's covered under 68.1, and if we say it's covered, then too bad”. Do you not believe or not that the Information Commissioner is smart enough to figure out and make a determination, in an initial review of an access to information request, whether or not it's covered under section 68.1?

**Mr. Howard Bernstein:** I absolutely do believe that the Information Commissioner is smart enough to make those decisions.

Frankly, as I think I hinted in my opening statement, I don't think that's the real reason why CBC wants the information withheld.

**Mr. Brad Butt:** Do you want to expand on that?

**Mr. Howard Bernstein:** As I say, I think it has to do—

**Mr. Brad Butt:** Do you have any theories you would like to share with the committee?

**Mr. Howard Bernstein:** I think I've already shared those theories. I think it has to do with the possibility of embarrassment and of information that could be used against them in what they consider an unfair way.

**Mr. Brad Butt:** Maybe I can ask a question to Ms. Denton, then.

As has been mentioned, the subsidy that the taxpayers are giving the CBC each year is, I think, around \$1 billion per year plus the other things that Mr. Del Mastro talked about. You do believe, do you not, that the CBC, as a public broadcaster, as a company owned by the taxpayers of Canada and being significantly subsidized, should make full, complete disclosure on everything they're doing—how every penny is being spent—so that we parliamentarians and the general public are fully aware of how they're operating as a corporation? You do support that principle of full disclosure, do you not?

**Ms. Kady Denton:** I do, with the addendum that the exemption be respected.

**Mr. Brad Butt:** You mentioned that you were concerned that there are seven full-time people working in their access to information office now. Do you not think that number would be considerably fewer if the CBC stopped stonewalling requests for access to information?

**Ms. Kady Denton:** No, probably not; I would think that the requests for information will remain pretty constant. This is a battle between competitors, and seven.... The number may need to be increased to...I don't know.

It concerns me, in that I find it curious. I find it curious also that the people responsible within CBC for access to information are the president and the board, and these people have all been appointed by the Conservative government. There are some curious things here.

However, we won't meet again. You are beginning what is an important study, and I wish you well on it—you have a month of intense work. May I just say that although this is the issue, it's a coat wrapping up another issue, and that issue is the future of the CBC. You can do away with something, or you can chip away at it on this front and on that front until what's left is not recognizable and is not valued by people, so why bother anyway? That's my worry. That's my concern.

May I ask you please to remember in your reports that the guiding principle has to be that we need a public broadcasting system in Canada. It's what Canada is. If we lose the CBC as we know it, we lose Canada.

**The Chair:** We'll now go to the five-minute round, and we'll start with Ms. Brosseau.

**Ms. Ruth Ellen Brosseau (Berthier—Maskinongé, NDP):** Thank you very much.

Thank you guys for coming today—it's very important—to answer some of the questions we have.

Mr. Howard Bernstein, we're spending a lot of time on this issue. Do you think the government should spend equal time on opening up other issues, concerning the Department of Foreign Affairs or National Defence?

• (0930)

**Mr. Howard Bernstein:** I suppose that's not my decision to make. Do I think it's an important issue in these times and in the future of this country? No, I don't believe it's a very important issue. Even the dollars we're talking about are by government standards not particularly large numbers.

I suppose in some ways it does seem curious—not to mention the fact that the courts are dealing with it anyway. The question becomes, why is the government dealing with it as well?

**Ms. Ruth Ellen Brosseau:** Have you ever been to the CBC website under “corporate reports and submissions”? The financial statements are listed on the website from CBC.

**Mr. Howard Bernstein:** Yes, I have.

**Ms. Ruth Ellen Brosseau:** Is it not detailed enough? What's the problem you have when you see it?

**Mr. Howard Bernstein:** Let me say this: no, it's not detailed enough, and it never will be. It can't be, not the way the system works. Even the powers that be within the CBC don't know where every dollar is going. Even the people who put those things on the website don't know where the dollars are going.

**Ms. Ruth Ellen Brosseau:** Okay.

Kady, you're from Peterborough, and you have Friends of CBC there. Are you aware of any other groups across Canada that are supporting the CBC?

**Ms. Kady Denton:** Oh, yes; 80% of Canadians check in to the CBC. We don't live without the CBC. It's fundamental.

**Ms. Ruth Ellen Brosseau:** In rural communities, is CBC important also?

**The Chair:** I'm going to interject here. Although Ms. Denton did include some information outside of access to information in her testimony, I want to caution members to try to keep their focus on the access to information perspective.

Thank you.

**Ms. Ruth Ellen Brosseau:** The commissioner's report of 2009-10 said that a large majority of the complaints—more than 80%—against the CBC involved one requester. Do you think the purpose of these complaints was to find out certain information, to try to get a heads-up to benefit the other companies, the public companies?

**Ms. Kady Denton:** As I said, I read regularly *The Peterborough Examiner*—and I assume these same columns go out in Sun Media newspapers throughout Canada—about the costs of the CBC. There's nothing wrong with that. The effect, though, of constant pick, pick, picking is to sow doubt in people's minds as to the value of an institution. That's a concern.

**Ms. Ruth Ellen Brosseau:** Pierre-Luc, do you have anything?

**The Chair:** You have about a minute and a half.

[Translation]

**Mr. Pierre-Luc Dusseault (Sherbrooke, NDP):** I have a question for Mr. Bernstein.

Every day, or thereabouts, we see newspaper articles about private companies who oppose the CBC. Do you think they are trying to discredit the CBC?

Moreover, a large proportion of access to information requests come from the largest private competitors. Do you think they're trying to discredit the CBC?

[English]

**Mr. Howard Bernstein:** *Absolument.* Yes.

I will speak English, actually.

I do believe that this is all they're trying to do: discredit the CBC. I don't think it has anything to do with getting at real information that will bring any light to the subject of how the CBC works.

[Translation]

**Mr. Pierre-Luc Dusseault:** I'm going to let—

[English]

**The Chair:** We'll go to Mr. Calkins for five minutes.

**Mr. Blaine Calkins (Wetaskiwin, CPC):** Thank you, Chair.

Thank you very much for being here today. It's certainly interesting. I have some questions in regard to some of the responses to some of the questions others have put.

First of all, Mr. Bernstein, you mentioned earlier that you thought—I just want some clarification on this—that just because CTV or Global or somebody like that might have received a tax credit or something like that... At what level does the access to information, the public funding, come into play? I would suggest to you that any business... If there were two competing car dealerships, and one used the hiring tax credit to hire a few employees and the other one didn't, would that allow one car dealership to ask you and another...?

I think we need to be really careful when we're doing this, because I think everybody at some point in time—any business in Canada—that files and gets a tax return or gets a tax credit or a tax break on something.... I think we need to be really careful about the distinction between what direct funding is and what indirect tax breaks are for companies and corporations.

● (0935)

**Mr. Howard Bernstein:** Tax credits are a small portion of the funding.

**Mr. Blaine Calkins:** Absolutely.

**Mr. Howard Bernstein:** The larger portion of funding from the government is direct funding from funds that are created by governments to create more Canadian television. Canadian television can't be produced in this country with the amount of funds available to any network in this country from advertising.

**Mr. Blaine Calkins:** Right. Let's face it, the difference between CBC and CTV, Global, and everybody else is the direct portion that's actually funded by the taxpayers of Canada to CBC. Ms. Denton gladly pointed out that it's \$34 for every man, woman, and child in the country.

**Mr. Howard Bernstein:** But could we be fair here to mention that CBC does raise close to \$500 million that is not coming from the government?

**Mr. Blaine Calkins:** Sure, that's fine. So is everybody else in the broadcasting business. They're making enough money to pay for their own operations.

I think the frustrating thing for Canadians in this particular case is that there doesn't seem to be a clear enough dispute mechanism here to resolve questions of section 68.1 in the act so that it actually has to get the commissioner involved and a judge involved.

The other part that's really frustrating in this—and nobody seems to have commented on this—is we have a taxpayer-funded organization using taxpayers' funds to put up a defence versus a taxpayer-funded office of the commissioner of access to information, fighting each other in a court paid for by the taxpayers of Canada. I'm wondering if you could provide any clarification of what needs to happen here. This isn't in the best interests of taxpayers, clearly, unless we get to an endgame where we get the transparency we're looking for.

**Mr. Howard Bernstein:** I think I've made myself completely clear. I think it's wrong. I think the CBC should open their books more than is even asked for. I think the CBC's books should be wide open for everyone to see.

**Mr. Blaine Calkins:** I agree with you.

You speculated about what the risks are, but once those things get explained, these things tend to go away. I think CBC is making a strategic mistake right here, actually causing themselves more harm, but that's just my personal opinion.

Do you think that just because there are 1,000 access to information requests coming from one particular source that it makes any of them less valid?

**Mr. Howard Bernstein:** I think that's up to the commissioner, not up to CBC and not up to us. We hired someone to do that job, and it's

their job to decide whether the requests were fair or not. As I said earlier, I believe they will make those decisions in a fair and honest way.

**Mr. Blaine Calkins:** Perfect. Thank you.

**The Chair:** You still have a minute and fifteen seconds.

**Mr. Blaine Calkins:** I'll just pass my time to Dean. Thank you.

**Mr. Dean Del Mastro:** Ms. Denton, you mentioned that your group is largely concerned about the long-term survival of the CBC. I'm sure you've heard the same things that I've heard. There is certainly some concern that the CBC, for example, hosted an event at the Toronto International Film Festival that was not open to the public and spent an unknown amount of money on that. Are you not concerned that as long as there is concern about how money is being spent there, this in fact threatens the CBC? It's not what the programming is, it's not even whether or not they have a radio station in Peterborough, which I'm sure we'd all welcome, but it's the fact that people can't determine how their money is being spent. Isn't that a bigger threat?

**Ms. Kady Denton:** Yes, it's tough out there, and people don't like to see money misspent anywhere, any time. Your government knows this; any government in power knows this.

Sure, it concerns people, but you can't go to the movies with the family for \$34. People do put it into perspective. This is a bargain.

● (0940)

**The Chair:** Thank you.

I just want to clarify a point that I think Mr. Calkins raised, that in the court both sides are funded by taxpayers, both the Office of the Information Commissioner and the CBC, so it's not just one side that's taxpayer-funded in this dispute. I just wanted to make sure that we were clear. I think there was some confusion.

**Mr. Blaine Calkins:** And the court is paid for by the taxpayer too.

**The Chair:** Thank you.

Mr. Benskin, five minutes.

**Mr. Tyrone Benskin:** Ms. Denton, I would ask for your thoughts on how you would feel about a private corporation using the bludgeon, for lack of a better way, of Canada's courts and access to information and taxpayer dollars to further its own private interests.

**Ms. Kady Denton:** I'm sorry, I missed the first part of the question.

**Mr. Tyrone Benskin:** Can you give me your opinion on a private corporation using access to information legislation, thus Canadian taxpayer dollars, to further its own private interest?

**Ms. Kady Denton:** How would I feel about that? I don't know of that situation.

You're saying that Sun Media uses taxpayers' dollars to promote—

**Mr. Tyrone Benskin:** No, I'm suggesting that the private interests are using this process, the Access to Information Act, causing the CBC to up its staff to seven, fight in the courts, all on taxpayers' dollars, to further its own interests.

**Ms. Kady Denton:** Well, the bottom line, to me, is the damage done to the CBC. These things have a backlash.

The publicity given in Sun Media publications against the CBC I think is beginning to tire people, to irritate them, and it is looking rather silly.

**Mr. Tyrone Benskin:** Mr. Bernstein, my colleague asked you earlier if you have ever gone to the CBC website and their public records on spending and so forth. You're saying that, for you, that wasn't clear enough or it wasn't transparent enough. In what way?

**Mr. Howard Bernstein:** In what way? The details aren't there. It gives general numbers about how much is spent to create a show or how much is spent on management. These are big numbers—

**Mr. Tyrone Benskin:** Have you gone into the specific departments and the specific personnel who work there?

I've gone to the website, and in one case it actually itemizes the receipts of the individual, where they were spent, and how much was there. That's how detailed it is.

**Mr. Howard Bernstein:** The best thing I can tell you, as someone who worked there for many years, who was in an executive position—

**Mr. Tyrone Benskin:** What I'm asking is have you gone that deeply into—

**Mr. Howard Bernstein:** Yes, I have, and what I'm telling you is that I know for a fact that it is not clear and it still doesn't give you all the information you need.

**Mr. Tyrone Benskin:** Okay. And you don't believe in proprietary protection of intellectual property or issues of that nature, as far as—

**Mr. Howard Bernstein:** There are proprietary issues, but I think the commissioner can figure those out.

I don't believe proprietary issues are the reason for stopping the information. I think they're stopping the information for fear of embarrassment.

**Mr. Tyrone Benskin:** But that's an opinion not based on any—

**Mr. Howard Bernstein:** That is absolutely an opinion, but it's an opinion of someone who worked for CTV, Global, and CBC. It's the opinion of someone who spoke to many people at CBC about this issue when I knew I was coming here. The people I spoke to at CBC told me the very same thing. They do not believe it's proprietary at all.

**Mr. Tyrone Benskin:** Thank you.

**The Chair:** You have another minute.

**Mr. Tyrone Benskin:** I'm fine.

**The Chair:** Mr. Carmichael, five minutes.

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

Good morning, Mr. Bernstein and Ms. Denton.

Mr. Bernstein, I have never worked at the CBC, so I have to take what you're telling us as fact today and appreciate the issue with regard to Mr. Benskin's questions vis-à-vis the statements.

I come from a business background, so I understand that in business we are all accountable through CRA reporting. We're accountable for ensuring that we meet our financial obligations, pay our taxes, and account for our expenses and all the things that go on at year-end and so on. I also agree with you that behind the statements are tremendous volumes of detail that would take us much deeper into the accounts and that there is no possible way that all of that detail could be included on a website. To the extent that it is, kudos to them, but at the end of the day, if somebody wants to go deeper, they have to gain access.

Ms. Denton, on your comment on competitiveness with regard to the information requests, you said that these requests put us at a disadvantage—I take it that you consider yourself part of the CBC family as a member of Friends of the CBC—that they don't want to expose their plans, and that there should be an open and transparent ability for the disclosure of statements and what not from the CBC. Failure to do that tarnishes their reputation.

My issue is to the point that they receive \$1 billion in funding per year, which the government has said is in place. We made the commitment. It is in place. So to your point of value from the Harper government, that is still there. I am not debating whether it is too much or too little. It is \$1 billion of taxpayers' money. If nobody showed up to watch the CBC, then from an accountability perspective, it would still get the \$1 billion. As for all the other enterprises, if nobody showed up, the advertisers would pull the plug. At the end of the day, these organizations would go out of business, because they're accountable to their shareholders and to the people who watch and to the quality of the productions they show.

My issue, Ms. Denton, if I could direct this to you, is where you believe the accountability starts and stops in terms of your taxpayer dollars and my taxpayer dollars that go to fund that organization. At what point do we have the right to know how effectively the organization is run?

• (0945)

**Ms. Kady Denton:** Sure, we have that right.

I've left the wrong impression. I wasn't aware that I had. I am not here on behalf of Friends of Canadian Broadcasting in any way. I am here as an ordinary Canadian who has been part of a large group: I Love CBC—Peterborough.

On accountability, yes, people have to be held accountable. The government is held accountable.

**Mr. John Carmichael:** Do you think \$1 billion is a reasonable amount of money to be held accountable for in terms of how effectively you are spending your money?

**Ms. Kady Denton:** Yes, of course.

**Mr. John Carmichael:** Is access to information something that should be allowed or something we put a brick wall around and fight so that nobody can gain access to that information?

**Ms. Kady Denton:** Are you asking me if you think you're engaged in an important study, a legitimate study?

**Mr. John Carmichael:** No. I believe that we are, as a committee, trying to find out how this all works and why the issues exist the way they do. As a member of this committee, I'm just trying to understand from our witnesses the point at which we agree that accountability for receiving \$1 billion is a legitimate request.

**Ms. Kady Denton:** Yes, it is a legitimate request. Accountability has to be given a context also, and in point of fact, the CBC does have an exemption clause, and that has to be respected.

**Mr. John Carmichael:** Okay, but you talked about an open and transparent environment, as well, and that they should be prepared to provide information.

**Ms. Kady Denton:** Yes, and as I've said, the commission and the courts can give them the protection they need so that no one is put in danger, so that sources are not endangered.

• (0950)

**Mr. John Carmichael:** Just in the interest of time, I'll move on to Mr. Bernstein, if you don't mind. I don't want to rush you.

**The Chair:** You have 20 seconds.

**Mr. John Carmichael:** You talked in that answer about a web of empires. How does leadership in any organization where you've got this "web of empires" manage the organization?

**Mr. Howard Bernstein:** I just spent some time last week with the former vice-president of English television for CBC. I asked him about the deterioration of the quality of news at CBC. His answer to me was that he couldn't get through to them. He said there was a cabal running the news. He couldn't get by that wall that they set up, so the kind of news he wanted didn't get done. This is the boss who said he couldn't get through it.

**The Chair:** Thank you, Mr. Carmichael.

[*Translation*]

Mr. Dusseault, you have five minutes.

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

My question is for the two witnesses. You know that the Access to Information Act allows exclusions that, as in the case of the CBC, makes it possible to protect certain documents. We can draw a parallel between these exclusions and those that apply to ministers' offices. The Conservative government has even gone so far as the

Supreme Court to protect these documents that are excluded under the Access to Information Act.

Do you think that if we open the CBC's books, we'll also have to make available all the government documents in general?

I would like both witnesses to comment on this.

[*English*]

**Ms. Kady Denton:** So that we can take a look at them, you say. Who's "we" in this? The Information Commissioner has that responsibility. We? No. Parliament? No.

The CBC is not private. It is not owned by a corporation or the government. The legislation has been set up for the protection of the CBC and the protection of the Canadian people with the commission of information.

**Mr. Howard Bernstein:** From my point of view, yes, the government should be open to the same standards as the CBC. I believe that openness and transparency are important right across the board. I don't think you can remove the CBC from the conversation, but I also don't think you can remove the government from the conversation either. They should both be dealt with in exactly the same way.

If the impression I'm getting here is that we should trust the Privacy Commissioner to make those decisions, I believe the government should trust the Privacy Commissioner in the same way it is asking the CBC to trust the Privacy Commissioner.

[*Translation*]

**Mr. Pierre-Luc Dusseault:** My second question is still about the exclusions. Do you find it fair that two competitors—the CBC and a private broadcaster like Quebecor, for example—are not subject to the same standards? In fact, the CBC is required to disclose everything, even things that have to do with journalism and programming.

Of course, one broadcaster is private and the other is public. But do you think it's fair that this is how it is?

[*English*]

**Mr. Howard Bernstein:** I believe it's fair. It's the cost of accepting \$1 billion from the Canadian taxpayers. If Quebecor, CTV, or TVA got \$1 billion from the Canadian taxpayer, we would be asking them to do exactly the same thing.

[*Translation*]

**Mr. Pierre-Luc Dusseault:** Could you please refresh my memory? I think you said that 35% to 50% of private sector programming is funded by the government. I don't know if I fully understood the start of your presentation.

[English]

**Mr. Howard Bernstein:** Yes, that is what I said. It's a grey area. It's an area that makes it a little difficult. I should say, to be fair to private broadcasters who get 35% to 50% of their money for programming from government funding, that money is audited. It's always audited. Interestingly enough, the private broadcasters have to actually pay their own auditors to audit for the government.

• (0955)

[Translation]

**Mr. Pierre-Luc Dusseault:** Ms. Denton, I have the same question for you. Do you think it's fair that two competitors are not subject to the same standards of information disclosure?

[English]

**Ms. Kady Denton:** One does receive significantly more public money, and public money is precious. I'd make that point.

I think it's an unfortunate situation, unfortunate because of what's happening, because the intent of Sun Media and Quebecor seems to be not just to improve its own situation, but to discredit the CBC. It's a waste. We need good programming and good newspapers. To me, it's a waste of energy to spend your time and your money discrediting the competition when they could be going into something creative and positive.

**The Chair:** Thank you, Ms. Denton.

The time is up. We'll now go to Mrs. Davidson for five minutes.

**Mrs. Patricia Davidson (Sarnia—Lambton, CPC):** Thanks very much, Madam Chair.

Thanks very much to our presenters who are here with us this morning. It has been an interesting discussion.

I want to thank you and commend you for staying on the issue of freedom of information; I think that's what we're here about. Some of us, me included, certainly enjoy CBC and listening to it and think they provide a service that is needed in this country.

Also, though, because they are a crown corporation, they fall under the freedom of information act, which, as you so rightly pointed out, they became subject to in 2007. So it's not something that they have been subject to for a long period of time, and it's the same as it was with other government departments when this act was put in: there was a learning curve. I think the CBC has gone through the same learning curve that most of the other departments have. I know that we are seeing an increase in compliance and an increase in the way the freedom of information requests are being answered, so that's encouraging. I think that's very good.

But the thing I find disturbing is the very fact that the person who is responsible for freedom of information, our commissioner, has been deemed by CBC not to be capable of determining whether or not certain things are subject to section 68.1. I think it's encouraging to hear the remarks from Mr. Bernstein in particular here this morning about his feelings on what the commissioner should be capable of doing. In fact, I feel that she's capable of doing that. She wouldn't be in that position if she were not.

I have a couple of questions following up from my colleague's, though, on your comments about the CBC being "a web of internal

empires". I think what you have said is interesting: that perhaps even the people at the very top may not have a good handle on it or may not have a process in place whereby they can get a good handle on what is happening. Do you think anybody does? Or what do you think needs to change in that operation?

**Mr. Howard Bernstein:** I suspect that if I had the specific answer to that, I'd be running the CBC right now.

**Voices:** Oh, oh!

**Mr. Howard Bernstein:** This is a problem, as I say, that's taken 75 years to get here.

No, I do not believe anyone has a complete handle on how every dollar is spent at the CBC. I do believe that in much better times fiscally the CBC got in the habit of spending a lot of money.

When I first came to the CBC, I was shocked to find.... I was with CTV before that, and in charge of a budget. If I was 10¢ over the budget, I would be in big trouble. But when I came to CBC, I was told that if you're not 15% overbudget, you're not going to get an increase the next year. That was a bit shocking for me, coming from private broadcasting.

I think a lot of the people who are now in charge of some of those empires I talk about came through that system and were informed by that system. They've learned how to work within that system. They've learned how to hide money. They've learned how to hide funding for their own future enterprises.

I don't know how you break that up. I once asked my boss at the CBC how we could fix this. My boss at that time was one of the best empire builders within the CBC. He said the only way to fix the CBC is to blow it up and start all over again. But he also said we can't do that, because if we blow it up, no one will allow us to start it up all over again.

So you have to weigh both sides—the value of the CBC and the problems internally. I believe, and this is what I'm hoping to get across here, that if CBC did open their books, it would actually help them. They might be able to get at some of the problems that exist within the CBC. Possibly it would give them both the impetus and the knowledge to fix those problems.

• (1000)

**Mrs. Patricia Davidson:** I would say that I agree with that sentiment as well. I think the more secrecy that's involved, the more suppositions are out there in the public. It's very easy to keep those types of theories alive when the true facts are not on the table in front of everyone.

**The Chair:** Could you please wrap up, Mrs. Davidson? You're out of time.

**Mrs. Patricia Davidson:** Oh, okay.

Thanks very much.

**The Chair:** Thank you.

Mr. Andrews, five minutes.

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

Mr. Bernstein, a few minutes ago you said that this was Sun corporation's way of discrediting the CBC, that this was a direct attack from Sun and Quebecor. Do you want to just elaborate on that? Why do you think they're doing this?

**Mr. Howard Bernstein:** Well, again, it's strictly supposition. I don't know specifically why they're doing it.

I would say it's partially politically motivated, based on the content in their newspapers and on their television channel. It seems to me they have a specific political bent, which is quite clear. I think that's part of the reason.

I think the rest of the reason is for a competitive advantage, in two ways. One competitive advantage is being able to come up with this information on the air or in their newspapers, which sells newspapers and gets more viewers. The other competitive advantage is that I would think that the more money CBC gets, they believe, the better CBC will be at getting viewers, so if CBC gets fewer viewers, maybe some of those viewers will migrate over to their channel.

That's all I can think of.

**Mr. Scott Andrews:** So with this political bent, wouldn't you also agree, then, that in the Conservative Party's attempt at bringing this before committee, we are playing right into the hands of Sun corporation in discrediting the CBC by even continuing this discussion rather than letting the Information Commissioner and the courts solve the problem?

**Mr. Howard Bernstein:** I'm not going to come out and say that for a fact, but I will say that is my fear.

**Mr. Scott Andrews:** And we're contributing to this.

**Mr. Howard Bernstein:** That's my fear.

**Mr. Scott Andrews:** Okay.

Have you been following the court case?

**Mr. Howard Bernstein:** No, I have not. It's only what's been in the newspapers; I haven't checked in any detail.

**Mr. Scott Andrews:** So you don't know what stage the court case is at?

**Mr. Howard Bernstein:** No, I do not.

**Mr. Scott Andrews:** Okay.

Ms. Denton, I would ask you the same question. Have you been following the court case and what stage the court case is at?

**Ms. Kady Denton:** No, not in detail. I was waiting for results.

**Mr. Scott Andrews:** Thank you.

I have no further questions.

**The Chair:** Mr. Dreeshen, you have five minutes.

**Mr. Earl Dreeshen (Red Deer, CPC):** Thank you very much, Madam Chair. And to our witnesses, thank you very much for coming here today.

I too am a supporter. I have listened to CBC since we got our first television. The old radio was something I've listened to a lot as I

travel around. I've seen good programs over the years. However, I am starting to feel as though it has deteriorated. I am concerned about that, because we know a base amount of funding is going there. Therefore, I am interested in making sure there is some accountability there.

When we look at section 68.1 of the Access to Information Act, we talk about journalistic programming and creative activities. We are concerned about whether or not the Information Commissioner is able to look at what is involved there. I'm afraid the CBC has taken the stance that this commissioner has no credibility. Perhaps that is a little too harsh. However, I am curious as to what types of advice you might give to the Information Commissioner to state what is creative, what is programming, and what is journalistic, so that she, with her group of people, could take a look at information requests and make wise decisions.

• (1005)

**Mr. Howard Bernstein:** I would suggest things like future plans and future shows that are on the books that they might want to put into production. That's no one's business, and frankly there is not a lot of money being spent on that. No one has to know about things the CBC is going to look into journalistically until it's done and the money is spent.

I don't understand, because that seems to me to be so obvious that I can't imagine anyone not understanding. I don't think you have to be a Privacy Commissioner to figure that out. That's one of the reasons why I don't believe that's what the CBC is all about.

Everyone within broadcasting believes, including me, that it doesn't work the same as other businesses. Sometimes it is very hard for others to understand. If I were with the CBC, I would say I was going to open this up to you, but I'd need time to explain these things to you. As long as the time to explain is given, I don't see what the problem is.

**Mr. Earl Dreeshen:** The second point you mentioned were the empires you saw growing. My concern is that as one empire grows, you starve other parts of the operation. If we take a look at the type of viewership we have and see that it's dropping drastically, obviously what they are doing right now is not working.

When you put that kind of pressure on—

**The Chair:** Can we get back to the access to information, please, for relevance?

**Mr. Earl Dreeshen:** Okay. I'm sorry, Madam Chair.

When I see the concept of the empires, and therefore wanting to know what that information is going to be, and when people are asking about why the money is put into certain sectors and not into others, maybe there is an opportunity for them to be looking at some of these minor empires, or perhaps where there aren't any empires, and find people who are saying they care enough about their job that they're going to try to improve it so the CBC can do something about increasing the viewership.

**Mr. Howard Bernstein:** I have no disagreement. I think that is the case.

Having met with the former head of CBC English last week, one of the things he pointed out was the empire of the national news, which since 1985 has done its darndest to take money away from local news. Local news has suffered to the point.... You know, in 1985 CBC had more viewers of local news coast-to-coast than it had for the national news. Today the numbers for local news are almost non-existent. Very few people at CBC watch local news. The money for local news disappeared, and the national news took all that.

Those are the kinds of things that happen. What you are describing, yes, it does happen.

**The Chair:** Thanks, Mr. Dreeshen.

Mr. Benskin.

**Mr. Tyrone Benskin:** Mr. Bernstein, you were saying that you believe any organization within the government should be subject to access to information and should trust the Information Commissioner to judge whether or not certain things are examined.

Are you aware that there are court cases pending where the government is challenging the Information Commissioner?

**Mr. Howard Bernstein:** Yes, I am.

**Mr. Tyrone Benskin:** And how do you feel about that?

• (1010)

**Mr. Howard Bernstein:** I feel exactly the same way as I feel about the CBC.

**Mr. Tyrone Benskin:** All right.

Do you believe that programming, proprietary information, the planning of shows, and journalistic integrity should be protected?

**Mr. Howard Bernstein:** Yes, of course.

**Mr. Tyrone Benskin:** That's exactly what section 68.1 does.

**Mr. Howard Bernstein:** Absolutely.

**Mr. Tyrone Benskin:** Do you believe it's a legitimate endeavour to challenge that?

**Mr. Howard Bernstein:** I believe it can be. Do I believe it is in this case? No.

**Mr. Tyrone Benskin:** But that's now before the courts to decide.

**Mr. Howard Bernstein:** That's true. Luckily for CBC, it's not my decision.

**Mr. Tyrone Benskin:** Thank you.

**The Chair:** Thank you, Mr. Benskin.

Mr. Dusseault.

[*Translation*]

**Mr. Pierre-Luc Dusseault:** My question is for Mr. Bernstein.

Do you think the Information Commissioner would have sufficient expertise to determine whether the documents in question could harm the CBC in front of its competitor? Do you think the CBC would have the best idea of which documents could cause it harm?

[*English*]

**Mr. Howard Bernstein:** I think if the documents go to the Information Commissioner, and the CBC has the ability to explain that information beforehand, I don't see why the Information Commissioner can't make a proper decision.

[*Translation*]

**Mr. Pierre-Luc Dusseault:** Okay.

[*English*]

Thank you.

**The Chair:** Mr. Del Mastro.

**Mr. Dean Del Mastro:** Thank you, Madam Chairman.

There have been a couple of statements made by members that I seek to correct. To begin with, the current state of the court process, just for witnesses and members, is that the CBC and the Information Commissioner went to court, and Justice Boivin ruled in favour of the Information Commissioner. The CBC has since appealed that decision, and the appeal will be heard on October 18.

We have already gone to court and funded both sides of this case. Should we continue to throw millions of dollars into a dispute between a government agency and an arm of government, or should the CBC be complying and allowing the Information Commissioner to determine what is subject to section 68.1 and what is not? That's the question. That's where things are. The CBC has gone to court and lost on this. I think this is necessary to understand.

Moreover, there have been a number of statements to the effect that private broadcasters aren't subject to reviewing profit and loss, financial data. That's absolutely false. Welcome to Canada, where we have the CRTC, where private broadcasters do, in fact, make submissions. In today's vertically integrated world, Quebecor is much more than just a competitor; they're also a contributor to the CBC. Under the rules in Canadian broadcasting, they are contributing as a BDU, as a vertically integrated company here in Canada. The CRTC is taking money from Quebecor and giving it directly to the CBC. I think it's reasonable.

On the fee-for-carriage argument, the CBC has stated that they believe they should be receiving additional payment from the cable companies for their signal. The CRTC disagreed with them. The CBC will argue for additional money from the Local Programming Improvement Fund. I think this is more than simply an argument about their competitive position. Nor can it be reduced to an argument that they're defending taxpayers. They're actually a contributor.

Is that well understood, Mr. Bernstein, the way that the Broadcast Act is written in Canada and the way that broadcasters in this country receive government money? Frankly, all of them do. All of them do.

**Mr. Howard Bernstein:** Absolutely, and as you point out, the CRA does exist, and all corporations have to deal with it. As I said, whenever you take money from the government for a program, those programs are audited and those audits do go to the government. Plus, everyone helps pay for the CBC, and frankly the people at Quebecor, even through their taxes, are helping to pay for the CBC.

Having said that, besides competitive advantage, I don't know how much Quebecor resents that portion of their funding going to CBC and how much they believe their discrediting CBC might cut back on the amount of money they have to spend on CBC. We can't forget that.

•(1015)

**Mr. Dean Del Mastro:** If you review the Broadcasting Act, though, nowhere does it say that the CBC is to have a dominant position in the market. They're going to receive their funding and so forth by fulfilling their mandate, not by competing. They are the only public broadcaster.

I'm always sensitive when I hear the term "competitor" being used. I suppose they may be competing, but at the same time they're not competing on an even playing field.

**Mr. Howard Bernstein:** No, they're not competing on an even playing field, but allow me to go back a step. There is nothing wrong with competition, and I don't want to give the impression that there is. Competition is a good thing. It makes the CBC better. It makes Quebecor better. It makes CTV and Global better.

I do expect businesses to compete with whatever tools they have, and I don't believe the answer is to say that Quebecor is trying to hurt CBC. I think the answer is to say that CBC should come clean and say this is what they're doing. If there are things that Quebecor is getting wrong, we'll pull the rug out from under what they're saying.

**Mr. Dean Del Mastro:** You mentioned a bit about local news, and this is certainly something I'd like to see more information on. I do have a local affiliate of CBC. It's one of only two left in the entire country.

If we go back to the Dominion Network, where CBC had many affiliates, I think they had a dominant local position and it actually benefited their programming. They don't have that any more, do they?

**Mr. Howard Bernstein:** No, they don't. CBC local news, in my opinion, is barely existing. At the best of times, they reach half a million viewers. When I was producing local news in Toronto, we had 325,000 viewers—just in Toronto.

**Mr. Dean Del Mastro:** Thank you very much.

**The Chair:** Thank you, Mr. Bernstein.

I don't have any other people on the list for questions.

With the indulgence of the committee, I have a very brief question.

A number of people have commented on audited statements. My understanding is that CBC, as well as other corporations, are required to submit audited financial statements. In your view, Mr. Bernstein, are the audited statements sufficient for either a corporation or CBC in terms of giving the level of information you're looking for?

**Mr. Howard Bernstein:** Absolutely not.

**The Chair:** So the fact that Quebecor and the CBC have audited financial statements does not satisfy, in your view.

**Mr. Howard Bernstein:** No, it doesn't tell the story. As Mr. Carmichael said, everyone who is part of business knows there are a whole lot of things you can hide within an audited statement.

**The Chair:** Great, thank you, Mr. Bernstein.

Seeing no other questions, first, I want to thank the witnesses very much for coming and staying on the topic.

I also want to remind the committee that we have that meeting, at noon, with the international information commissioners, in the Commonwealth Room, Room 238-S.

Seeing no further business, this meeting is adjourned.





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