



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Access to Information, Privacy and Ethics

ETHI • NUMBER 082 • 1st SESSION • 41st PARLIAMENT

EVIDENCE

Wednesday, May 29, 2013

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Chair

Mr. Pierre-Luc Dusseault

Standing Committee on Access to Information, Privacy and Ethics

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• (1555)

[Translation]

The Chair (Mr. Pierre-Luc Dusseault (Sherbrooke, NDP)): Welcome to the 82nd meeting of the Standing Committee on Access to Information, Privacy and Ethics. We are continuing our study on Bill C-461.

Unfortunately, we are 25 minutes late; we have the Information Commissioner with us. She is accompanied by Ms. McCarthy, Assistant Commissioner, Complaints Resolution and Compliance.

I now give the floor to the Information Commissioner, Suzanne Legault. She will be speaking to us about the bill for about 10 minutes. Then there will be a period when committee members will be able to ask questions.

Without further delay, you have the floor for 10 minutes, Ms. Legault. Thank you for being here.

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

Thank you for inviting me to speak to you today in relation to your study of Bill C-461.

[English]

This bill proposes the repeal of section 68.1 of the Access to Information Act, which excludes information relating to the Canadian Broadcasting Corporation's journalistic, creative, or programming activities, subject to an exception for information relating to its general administration.

The bill would replace that exclusion with a new exemption, which would allow CBC to withhold records that could reasonably be expected to prejudice the journalistic, creative, or programming independence of the CBC.

[Translation]

At the outset, I would like to describe briefly the general structure of the act, the limits to the right of access and the powers given to my office.

To that end, Mr. Chair, I have circulated a document to committee members which sets out in a little more detail the various exemptions and exclusions, and explains the difference between the two. The document also explains the general provisions of the legislation as applied to my powers. It provides committee members with more information.

The legislation creates a right to access information under the control of government institutions, subject to specific and limited exceptions. The act limits access by way of exemptions and exclusions.

[English]

Exclusions provide that the act does not apply to certain records or information. The act also includes various exemptions that permit or require institutions to withhold a range of records and information.

The act gives the commissioner broad investigatory powers, including access to all the documents under the control of the federal institution to which the act applies. The commissioner has broad powers to require the production of these records.

Thus, when an exemption is invoked by an institution, the commissioner has access to the documents in their entirety. However, where an institution invokes an exclusion, access to the underlying information or records depends on the nature of the exclusion relied on by the institution.

The commissioner's access to records and information, which had been identified by the CBC as falling within the exclusion found in section 68.1, was at issue before the Federal Court of Appeal at the time of my appearance in October 2011. In November 2011, the Federal Court of Appeal rendered its decision.

[Translation]

The question of the extent of the commissioner's powers to examine documents for which an exclusion is invoked was raised in the investigations of the many complaints about the CBC's use of section 68.1 of the act.

As the result of the CBC's challenge to my power to compel the production of documents mentioned in that section, the Court of Appeal confirmed that the commissioner is allowed access to documents covered by the exclusion in order to determine whether the exception fell within the exception for information relating to the administration of the CBC.

With respect to information that would reveal a journalistic source, the Federal Court of Appeal's explanation was:

The identity of journalistic sources cannot clash with the exception relating to general administration, regardless of the scope attributed to this exception. In these circumstances, the only conclusion possible if one gives effect to the Federal Court judge's reasoning is that the exclusion for journalistic sources, like the exclusions provided in sections 69 and 69.1, is absolute. It follows that in the event that a request seeking the disclosure of journalistic sources was made, a record—or the part thereof—revealing this type of information would be exempt from the Commissioner's power of examination.

In its decision, the Court of Appeal resolved the scope of the commissioner's powers to compel the production of the records to which CBC has applied section 68.1. What the decision does not resolve is the scope of the exception to the exclusion and the meaning of the terms used in section 68.1, such as “journalistic, creative or programming activities”. So this does not preclude subsequent litigation on the scope of the exception or the exclusion.

•(1600)

[English]

Before I discuss the specific modifications proposed by Bill C-461, it is important to emphasize that the challenges related to access to information are complex. They demand thoughtful, unified action, and are not easily amenable to a piecemeal solution.

Like my predecessors, I have more than once observed that the act requires modernization to bring it in line with more progressive and international models. While it is true that the act was considered state-of-the-art legislation when it received royal assent in 1982, it is now significantly outdated. While acknowledging the need to amend the law, I maintain that it should not be done in a disjointed way, since this leads to issue-specific amendments that erode the act's status as a law of general application.

At the very least, the structure of the act as a whole must be considered when amendments are proposed. We must examine not only the specific interests to be protected by changes or additions to the law, but also the spirit of the law, the way in which it is structured, and its general framework. The chosen approach must, in my view, preserve the law's character as one of general application.

The amendments proposed in Bill C-461 in relation to the CBC reflect what I suggested when I appeared before this committee in October 2011.

Since the committee has been having hearings, I have been following the comments of the stakeholders very closely, as well as the comments of parliamentarians in the House of Commons, and I'll be happy to discuss some of the issues that have been raised by various parties.

At this time, Bill C-461 proposes the repeal of section 68.1 and the insertion of a discretionary, injury-based exemption that would permit the CBC to withhold information that “could reasonably be expected to prejudice the corporation's journalistic, creative, or programming independence”. A discretionary, injury-based exemption will ensure requesters' rights to an independent review process in all matters.

To be clear, any information or records obtained by my office are reviewed solely for investigative purposes. Indeed, the access act's confidentiality requirements are very strict and do not allow the disclosure of any information during the performance of my duties.

[Translation]

In concluding, I ask the committee to consider how these proposed amendments to the Act will apply to the more than 200 complaints currently under investigation. Will the new provisions be applicable to ongoing files, that is, requests and complaints to CBC, or only to new requests? The bill in its current form makes no mention of transitional measures for dealing with

existing files. So I invite the committee to consider that matter as it deliberates.

In my view, it would be better that the new provisions be applicable to existing complaints and requests since a requester may simply make a new request, thereby benefiting from the application of the new provisions. But, for that to be the effect, a specific provision is needed, in my view.

With that, Mr. Chair, I would be pleased to answer your questions.

•(1605)

The Chair: Thank you for your presentation.

The floor goes first to Mr. Boulerice, for seven minutes.

Mr. Alexandre Boulerice (Rosemont—La Petite-Patrie, NDP): Thank you very much, Mr. Chair.

Thank you for your presentation, Madam Commissioner.

This bill raises a number of issues. It deals with a complex matter that is critical in terms of the public interest and of transparency. But at the same time, it deals with the ability of CBC/Radio-Canada, and especially the ability of its journalists, to do their jobs properly.

Could you give us your interpretation of the word “independence” as used in the current bill? A number of witnesses feel that it is quite a restrictive definition. The provision says that CBC/Radio-Canada gets protection for journalistic, creative or programming work if their independence is prejudiced.

In your opinion, is that independence limited to CBC/Radio-Canada's independence from the government, which basically is not a lot?

Ms. Suzanne Legault: That is a good question. I have heard a number of witnesses express that concern in their testimony.

When I proposed that provision in 2011, I was really influenced by the CBC's guidelines. They are on page 5. I'm not sure if you are going to forgive me for this, but I only have the English version.

Mr. Alexandre Boulerice: That is inexcusable.

Voices: Oh, oh!

Ms. Suzanne Legault: Actually, I am really sorry. I invite you to consult the original text, and I will translate it as we go along.

Section 68.1 is said to be written with a good deal of latitude in mind, because it involves all the information that CBC has that is related to journalistic activities. According to CBC, the words

[English]

“that relates to”

[Translation]

can be interpreted quite broadly. On page 5, in fact, it states that it is something that must be interpreted very broadly.

[English]

It says “journalistic, creative or programming activities”.

[Translation]

It is something that must be interpreted very broadly.

Further down in its guidelines, on the bottom of page 5 and on page 6, CBC indicates

[English]

...CBC...believes that it is inappropriate to interpret the language that way, given the legislator's objectives as regards access to information, and the Corporation's desire to be transparent and accountable.

CBC...therefore based itself on the principles underlying Sub-section 52(2) of the *Broadcasting Act*, along with the general philosophy it proffers with respect to the importance of striking a balance between accountability and transparency, on the one hand, and the public broadcaster's independence on the other. Therefore, when the Corporation is faced with an access to information request for information subject to CBC's...exclusion, it can disclose it as long as doing so allows it to maintain its journalist, creative and programming independence.

That's where it comes from.

I have listened to what's been said, and I've also spoken to a couple of journalists who are now in the academic field since the bill has been tabled—Chris Waddell and Jeff Sallot, who are both at Carleton University and are used to working with sources. I've spoken to these folks, and we've looked at the *Broadcasting Act* as well.

What you see in the *Broadcasting Act* is that there are various provisions that talk about freedom of expression and journalistic, creative, and programming independence. Subsection 52(2) is more specific because it relates to the financial reporting obligations of the CBC towards the government.

[Translation]

Mr. Alexandre Boulerice: Let us imagine that CBC/Radio-Canada is preparing a piece on a new and controversial medication, that the pharmaceutical company is made aware of the piece that is being prepared and makes an access to information request in order to get hold of anything about the company that CBC/Radio-Canada might be working on. Would that affect CBC/Radio-Canada's independence? Given the provisions before us, could the pharmaceutical company get hold of that information and stop the piece from being broadcast?

• (1610)

Ms. Suzanne Legault: You know that I will never get into hypothetical situations. What I can tell you is that the current section, which was written with the discretionary exemption and the concept of independence in mind, has never been interpreted within the limits of the *Access to Information Act*. That much is clear.

What we have is the *Broadcasting Act*. I have explained that some of its provisions make reference to freedom of expression and to the matter of independence. Is that a direction that the committee should study? Does the idea of freedom of expression, when added to the idea of journalistic, creative or programming independence, provide enough reassurance to the various players? Perhaps.

Mr. Alexandre Boulerice: I have another question, still on the matter of journalistic sources.

You said that you should have access to journalists' sources, since you are used to dealing with sensitive documents, such as ones from National Defence. Your argument is that you can be trusted with

them. But that is not the issue; the issue is the relationship of trust between the source and the journalist. Why would a person wanting to disclose confidential information go to a CBC/Radio-Canada journalist knowing that a third party, even though it is you, will know who he is, what he said and the information he provided? That person will go to someone else in the media.

I was a journalist. For journalists, protecting their sources is crucial. Journalists have gone to prison to protect their sources. It lies at the core of their work. If someone else, it matters little who, can have access to the information, it is an extremely tricky situation and it breaks the relationship of trust.

Ms. Suzanne Legault: I have heard comments along those lines too.

First of all, I have to tell you that, as Information Commissioner, I am fundamentally opposed to the exclusions in the *Access to Information Act*. I have gone through that experience with cabinet confidentiality, for example, which is excluded. Despite the fact that I could not see the documents, some inquiries have found that the exclusion of cabinet confidentiality was well founded.

In my experience with CBC from 2007, the exclusion has been applied—

Mr. Alexandre Boulerice: Madam—

Ms. Suzanne Legault: Let me answer—

Mr. Alexandre Boulerice: It's just that I have 10 seconds left and I want to make a motion.

Ms. Suzanne Legault: Okay.

Mr. Alexandre Boulerice: Actually, I want to make two motions. I have 10 seconds of my seven minutes left and that is why I have to interrupt you, even though I would like to continue talking to you for longer.

Mr. Chair, I would like to move that the committee hear from the Privacy Commissioner in a subsequent meeting.

I would like to make a second motion as well, but we can deal with the first motion first.

The Chair: Do we have consent to invite the Privacy Commissioner to appear at an additional meeting?

(Motion agreed to)

The Chair: So we will do what is necessary for our study to extend over five meetings.

Mr. Alexandre Boulerice: Great.

My second motion is somewhat along the same lines, but I think that you have just agreed to my request. I move that the committee extend its study of Bill C-461 in order for us to invite Brent Rathgeber, the sponsor of the bill, to appear before the committee again before we start clause-by-clause study of his bill.

The Chair: Does anyone want to speak to that motion?

Go ahead, Mr. Angus.

[English]

Mr. Charlie Angus (Timmins—James Bay, NDP): We said at the beginning, when Mr. Rathgeber came, that we wanted to ensure we had full fairness and due diligence for private members business. It's important. For a backbench member, or any member who brings forward their legislation, they have the right to come to committee and be heard. Unfortunately, Mr. Rathgeber didn't get the full chance to be heard because we were interrupted. We had one round. Normally we would have been given the full period.

I feel it's a fundamental issue of respect, whether we all support the bill or not. This is part of our job as parliamentarians, and I'd like to give Mr. Rathgeber the full chance to hear from the MPs.

We would prefer not to spend too long on the debate; we'd like to be able to move on, because I know my colleagues want to talk with the commissioner. We're running out of time on this, so if we have the indulgence of the committee, we could pass the motion and move on.

• (1615)

[Translation]

The Chair: We are still debating the motion.

You have the floor, Mr. Warkentin.

[English]

Mr. Chris Warkentin (Peace River, CPC): We don't oppose that; we oppose this practice of eating into witnesses' time in order to undertake committee business. In the future, I'd like to defer this until committee business. But we have no opposition to hearing Mr. Rathgeber.

[Translation]

The Chair: Let us now move to the vote.

(Motion agreed to)

The Chair: So we will add a meeting on Monday, June 3, to which we will invite the additional witnesses. So the study will take five meetings instead of four. That will also change the date by which amendments must be submitted. The new date is Tuesday, June 4, at 9 a.m.

If that is agreeable to everyone, we can now continue with the questions.

The floor now goes to Ms. Davidson.

[English]

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

Thanks very much, Commissioner and Ms. McCarthy, for being with us today.

I want to go back to the exclusions and exemptions because I find it very confusing. I'd like you to talk to us again about how this distinction is important in the context of the bill. I know you said in your remarks that you were against one of the exclusions, and then you went on to talk a bit about when an exemption is invoked. Could you please talk to us about that?

If you have time at the end, I am interested in what you said about considering how the proposed amendments will apply to the current backlog or current numbers we have. Could you talk a bit more about that, if you have time?

Thank you.

Ms. Suzanne Legault: The most significant distinction with the exemption we have before us in Bill C-461...and I'll just speak in terms of the specific exemption and the exclusion. That way I think it will be clearer.

The current exemption being proposed is a discretionary exemption. There's a prejudice test, and it's linked to the independence. There is an exercise of discretion that has to be done by the head of the institution.

If there's an access to information request, the institution will have to determine whether the records that have been asked for fall within the category of records...whether they apply to journalistic, creative, or programming activities, those kinds of records. If they are, then they have the discretion to disclose them or not, looking at whether or not it will prejudice their independence. That's essentially the exercise they're going to have to do.

Emily can correct me. She's dealing with these all the time.

If it's an exclusion, what the CBC is currently doing is asking themselves whether the records relate to anything that has to do with programming, creative, or journalistic activities. If they do, then they have to determine whether they are, however, related to general administration.

You can imagine that for a public broadcaster most of its records relate to programming, creative, and journalistic activities. The difficulty with the files in relation to the CBC is that the general administration part is sort of intertwined in the records.

Whether we have an exemption or whether we have an exclusion, that difficulty in terms of deciding what can be disclosed or not will always remain. Bill C-461 will not resolve the difficulty in finding out what the exemption applies to or what the exclusion applies to.

Mrs. Patricia Davidson: Will it confuse the issue more, or will it do anything to the issue?

Ms. Suzanne Legault: It's different, because what it does is it allows the head of the institution to apply its guidelines and to basically say, "Yes, in this case it is something that applies to our programming activity, or it's a record related to programming; however, in this particular instance disclosure would not prejudice my independence."

From my perspective, I would think it should generate more disclosure.

• (1620)

Mrs. Patricia Davidson: Then on the issue of the 200 or so backlog, or existing...?

Ms. Suzanne Legault: That's a matter of transition between a new provision and an old provision, and the fact that we already have cases....

Emily, perhaps you can talk about transition provisions.

Ms. Emily McCarthy (Assistant Commissioner, Complaints Resolution and Compliance, Office of the Information Commissioner of Canada): It would just clarify the application of the statute. If you have a transitional provision, then it would be clear to all involved which law would be applicable, whether the ongoing cases would be governed by the new provision or whether we would continue to investigate based on the previous provision. But as the commissioner mentioned earlier, that raises a difficulty in the sense that the requester could then make a new request for the same information under the new provision.

So you can see where there would be potentially a difficulty, where we would be required to make a finding under the existing language, as it is right now, but also have a complaint relating to the new provision—in a sense, a use of resources that might not be entirely productive.

Mrs. Patricia Davidson: So your office would think it would be better to have it apply to everything you have on file now?

Ms. Suzanne Legault: I think so. My understanding of transition legislation or transition law—and you really have to speak to experts on this—is that if we don't provide something specific in the legislation, in the private member's bill, we would be faced with the situation that the assistant commissioner is describing, i.e., I would have a set of complaints where the old law would apply and new complaints where the new law would apply.

My difficulty with that is that it would not be very good for taxpayers to have me, my office staff, spend time to investigate old complaints under old legislation. And if I have a disagreement, and the CBC is not in agreement with my recommendations for disclosure, then it's certainly not a case I would like to take to court, because that would be a waste of taxpayers' money.

I think we need to provide for transition provisions so that this does not occur.

[Translation]

The Chair: Ms. Davidson, your time is up.

[English]

Mrs. Patricia Davidson: I'm out of time? Okay, thank you.

[Translation]

The Chair: We now move to Mr. Andrews, for seven minutes.

[English]

Mr. Scott Andrews (Avalon, Lib.): Thank you very much, and welcome back, folks.

The government is going to propose an amendment to Mr. Rathgeber's bill on two fronts. I'd like to get your opinion. They're going to come with an amendment regarding journalistic sources. How should that amendment look? If they want to protect journalistic sources, what kind of amendment could we make to this bill to protect journalistic sources?

Ms. Suzanne Legault: First, I must say, in my view, journalistic sources will be protected anyway. I think they're protected under the current act, and I think they will be protected under the proposed bill as well. You have to look at the act as a whole. Section 19 of the act protects personal information as well. It's also a provision we use in matters of human sources, for instance in national security matters.

As far as I'm concerned, the fact that it's a discretionary exemption would still protect journalistic sources. The fact that I am allowed to review documents does not mean they will be disclosed. It doesn't address your colleague's point.

I must seriously admit that the idea of having a new amendment that would make an exclusion to a discretionary exemption—and I have not seen it. Having spent several years in litigation to try to assess how an exception to an exclusion applies is a little bit of... Seriously, operationally, I would rather not see that. I would certainly prefer to see a proposed amendment before that's done, especially since I think it's not necessary to protect journalistic sources.

Mr. Scott Andrews: How do you square that with the testimony we heard at the last committee meeting, where every witness said this is their biggest concern?

● (1625)

Ms. Suzanne Legault: Frankly, I don't see it. There are two issues. The first issue is that I have the right to review documents, which could include journalistic sources. In my view, because of the confidentiality of the provision, it does not mean that journalistic sources are compromised.

The second issue is that there does not exist, at this time, a full-fledged protection of journalistic sources anyway, which goes to the point of your colleague. When people say there's a potential of disclosure, well, there is a potential now that journalistic sources can be disclosed because they can be disclosed by a court under the Wigmore test.

It's not an absolute privilege; it's not an absolute protection. That is the status quo right now.

I'm not going to comment on an amendment I haven't seen, but please consider this: you are going to create another difficult situation if we create another exclusion to an exemption. How that's going to work, I really don't know. I haven't seen any amendments. I really don't know how that would work, in practice.

If it's going to happen, my recommendation would be to have a mandatory exemption, not an exclusion. This would mean it would be mandatory for the CBC to protect journalistic sources. That would still allow me to review the matters.

I'll tell you why I think it's best if I'm allowed to review the matters. We have this all the time in matters of national security, in terms of human sources. You can have a whole document where there are human sources being referred to in the document. Then there are other types of information that may allow you to identify the human source, and then there's other peripheral information that the institution could claim allows the journalistic source to be identified. It's not so simple.

So far, we have not had any case that dealt with journalistic sources. It is not a big issue. Is it worth complicating the act and adding an exclusion to an exemption? My advice is no.

Mr. Scott Andrews: I'm going to throw my last three questions into the one.

How will the injury-based exemption being proposed in this bill work, and will it work well? Is it something we should be looking at? I think the injury exemption is something we haven't really dealt with in any piece of legislation, if I'm not mistaken.

My second question is, we often hear on the CBC that one of their competitors is going to get information about them. Can you explain to us how, under its business model as I understand it, if something relates to part of its business, it can't be released anyway because it's competitive?

Can you enlighten us on those three things, please?

Ms. Suzanne Legault: There are other provisions in the Access to Information Act that protect information, obviously. There is protection for commercially sensitive information, for instance. There is protection for personal information, which a source would be; it would protect his own personal information. It's a mandatory exemption.

In terms of other discretionary injury-based exemptions in the act, there are others. For instance, section 15 deals with national security. It probably deals with some of the most sensitive information we review under the legislation, and that's an exemption that is discretionary and that is subject to an injury test. That has been in existence for 30 years, and that has worked extremely well. As far as I know, there has not been any leak of highly sensitive security information from my office.

What we do in those cases, though—and this is something I'm perfectly prepared to do in our investigations with the CBC—is to go on site to consult on the most sensitive information. We don't take the documents to our office. We basically go in and we look at the documents ourselves, just to assure ourselves that it is actually information that deserves protection.

We could very easily do the same thing with journalistic sources, if the CBC felt more comfortable, in that we would basically go there and not take the documents out, and just satisfy ourselves that the exemption was properly applied.

So no, it's not novel in the act, that kind of exemption. It exists. It has functioned very well. Institutions function very well. In fact, I would say that if you look at the guidelines of the CBC, that's really what they're proposing to do.

Our experience so far with the CBC investigations is that it's essentially what we are seeing in the application of the specific complaints. So the CBC is maximizing disclosure through our investigations right now, applying a similar exemption, even though they're actually covered by an exclusion.

• (1630)

[Translation]

The Chair: Thank you. Mr. Andrews' time is up.

We move right away to Mr. Mayes for seven minutes.

[English]

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

Commissioner, first of all, I want to say that I have all confidence in your judgment when you're looking at these files—the sensitivity of it and understanding some of the implications.

We had the CBC here at our last meeting. They made a statement in their submission that you gave them an A for their openness to access to information. But I've since found out, and I just want you to confirm this, that you gave them an A for timeliness, but you still gave them a D for the access to information, for the scope of the information.

Now, is that correct or not correct?

Ms. Suzanne Legault: No. The report cards only deal with the timeliness issues.

We do our report cards fairly regularly. That was the last of a three-year cycle. We reviewed CBC twice. The first year we reviewed them, they got an F in terms of timeliness. The last year we reviewed them, which was last year, they did very, very well in terms of timeliness. They have very few complaints related to timeliness.

We work extremely closely with the CBC in trying to resolve the cases. The assistant commissioner can speak to that. We are intensely working with the CBC to resolve these cases, and there has been significant additional disclosure.

There were growing pains, definitely, at the beginning of this legislation, but now...and I have spoken to Monsieur Lacroix; I have his full collaboration. Our offices are working very well on the complaints resolution.

We have not, so far, really had to resolve a case on the basis of section 68.1. We have resolved them with the use of other provisions of the act.

Mr. Colin Mayes: That's good to hear.

When I talked to the CBC representatives, that's what I said, that actually this has been good for them, because it's made them more aware of how they have to be open, but they also are more sensitive to what you're doing. I think we've made some gains, as you've said, and I think that's very positive.

In your opening statement, you said that we need to look at the national and international models in terms of our guidelines, and that ours might be outdated.

With regard to that, specifically around section 68.1, what do you find in places like the United Kingdom and other countries concerning those types of exemptions—I'm sure they have them—and how do we match up the current bill that we have with the existing section 68.1?

Ms. Suzanne Legault: When I appeared in 2011 and recommended the discretionary exemption, I did say, if I recall correctly, that I was an outlier internationally. That's why at that time I provided the committee with the international models, because in other jurisdictions like the U.K. and Australia, for instance, which are good comparisons, their national broadcasters are covered by their freedom of information act. However, most of the information is excluded or derogated. They use different terms. It's difficult to compare. They're essentially excluded in their programming and journalistic activities. The difference is that their exclusion or derogation works like our exemption, in the sense that their commissioners are entitled to review the records, including journalistic sources, as far as I can tell.

We did contact the U.K. and Australia following some of the debates in the House of Commons, because I was alerted to this concern as to whether or not this would affect the competitiveness of the public broadcaster if there was a distinction in being covered by the act, its journalistic sources being covered by the act, and other broadcasters. Neither of the two jurisdictions has indicated that this has been an issue. That's the extent of what I know.

•(1635)

Mr. Colin Mayes: Is there anything in this bill under proposed section 18.2 that you can see that could be amended, any suggestions you would have that would make your life simpler?

Ms. Suzanne Legault: The only thing I think the committee should seriously consider, given everything that we've heard and the two things I've heard, is the fact that we're talking about "journalistic, creative or programming independence". There is a concern that this is not sufficient to protect freedom of expression, editorial freedom, or journalistic integrity. That's what I've heard and that's what I've also been told by other stakeholders.

When I looked at the Broadcasting Act with Emily and her group, we found various provisions in the Broadcasting Act that deal with broadcasters generally and the CBC, and they do speak about freedom of expression and "journalistic, creative or programming independence". They use all of that, generally speaking.

Perhaps the committee could consider having proposed section 18.2 amended so that it would read at the end, "could easily be expected to prejudice the corporation's freedom of expression and journalistic, creative or programming independence". That would truly mirror the Broadcasting Act in its other provisions. It could alleviate some of the stakeholders' concerns.

The other option would be to leave it as is, and instead of "independence", use the word we have in the current section 68.1, which is "activities". So it would read "its journalistic, creative or programming activities". I think that's much broader than just the concept of independence, although we don't know at this point how we would interpret it. That concept has not been interpreted under section 68.1 either.

Those are two options, I think, that might go some way to alleviate some of the concerns of the stakeholder in relation to freedom of expression and editorial freedom.

In terms of journalistic sources, as I've said, I do not think there is an issue with the discretionary exemption in relation to the protection

of journalistic sources, nor have I found any evidence that this would affect the competitive position of the CBC.

[Translation]

The Chair: Thank you. Mr. Mayes' time is up.

That concludes your testimony, Ms. Legault, because, since we started 30 minutes late, we are going to give 45 minutes to each group of witnesses. We have other witnesses here as well. Thank you once more; we will—

Mr. Alexandre Boulerice: Point of order, Mr. Chair. It is about the Information Commissioner's testimony. I find it a little arbitrary that the official opposition only had one seven-minute opportunity whereas the governing party had two opportunities. I would like five minutes to be added so that our party has at least two opportunities as well.

The Chair: Actually, at the first meeting of the committee, in June 2011, we decided that the first round would be seven minutes in duration, once for the New Democrats, twice for the Conservatives and once for the Liberals. I am going by what we agreed to.

In a spirit of fairness, I am giving the same amount of time, 45 minutes, to each group of witnesses. That is why I made the decision.

Mr. Alexandre Boulerice: In a spirit of fairness, Mr. Chair, could the official opposition have two opportunities, given that the governing party had two as well? That seems fair to me.

The Chair: No, that is not what we decided when we started. There are more Conservatives; they hold the majority. So they have more opportunities to speak.

Mr. Alexandre Boulerice: We can decide something else.

The Chair: I am told that I can ask whether there is unanimous consent to give less time to the other witnesses so that we can continue with the ones we have now.

Do I have unanimous consent?

Some hon. members: No.

The Chair: I do not have consent.

So I will thank Ms. Legault and Ms. McCarthy, from the Office of the Information Commissioner, for appearing before us.

I am going to suspend the meeting for a few minutes to give the next witnesses time to take their places.

•(1635)

_____ (Pause) _____

•(1640)

The Chair: I call the committee back to order. We are continuing our meeting to study Bill C-461. Two new witnesses are taking their places at the moment.

First, we welcome Mr. Gregory Thomas, who is the Federal Director of the Canadian Taxpayers Federation, and Mr. Stephen Taylor, Director of the National Citizens Coalition.

According to our agenda, Mr. Thomas and Mr. Taylor will both have 10 minutes in which to make their presentations. Questions and answers in seven-minute periods will follow and will continue to the end of the meeting.

Mr. Thomas, thank you for joining us. Without further delay, you may take the floor.

[*English*]

Mr. Gregory Thomas (Federal Director, Canadian Taxpayers Federation): Thank you, Mr. Chair.

I would like to thank you all for allowing me to join you today. I'd also like to thank Brent Rathgeber for proposing Bill C-461. Mr. Rathgeber has shown character and courage in standing up for his beliefs and to his caucus when he has nothing to gain politically or personally by supporting this bill. This is evidence that principles are still alive and well in the House of Commons, and this gives us at the Canadian Taxpayers Federation hope that this bill will lead the government in the right direction.

My name is Gregory Thomas. I am the federal director of the Canadian Taxpayers Federation. We are a federally incorporated, not-for-profit citizens' group dedicated to lower taxes, less waste, and accountable government. We represent over 84,000 supporters across Canada. I am here on behalf of our Taxpayers Federation and our supporters to defend the current iteration of Mr. Rathgeber's bill.

We believe that all governments should stick to their founding tenets: transparency and accountability to the people. When administrations base their governments on these two seemingly simple ideas, it benefits them, their supporters, and everyone in between. More accountability to the public gives taxpayers the rights they deserve—to know who is being paid with their tax dollars and how much of our money they receive.

Bill C-461 would cause the government to disclose all earnings above \$188,000. We believe this is a necessary shift in federal disclosure policy. Although in a perfect world every penny paid out by the government would be public information, we believe Mr. Rathgeber's bill pushes the government away from its self-imposed opaqueness and pushes the government into disclosure policy that will greatly benefit all Canadians.

This bill in its current state, we feel, does not go far enough, but the enthusiasm and hard work put in by Mr. Rathgeber makes up for this and gives us hope that other MPs will push for further reforms in the future. That being said, there have been criticisms of these amendments from all sides of the House, and I would like to address each of them.

First, there is concern regarding the number of people who would land above the \$188,000 salary disclosure limit. Their concerns have centred on the number of people whose salaries would be disclosed. We believe this is a non-issue in this discussion. Government employees are all accountable to the public precisely because we sustain their salaries. To suggest otherwise takes away from the real issues affecting Canadians: government accountability and transparency.

We hear this from the government, and, quite frankly, it confuses us. I'm not the first one, nor will I be the last, to reference the current Senate expenses scandal involving former Conservatives Mike Duffy, Pamela Wallin, Patrick Brazeau, and former Liberal Senator Mac Harb. If the government allowed us access to the records and documents relating to their expense claims, this wasteful, unaccountable spending could have been nipped in the bud before it

spiralled out of control into a \$90,000 cheque with many reputations tarnished.

The same will go for this bill. If we see what government employees are earning, we can stop unreasonable salaries, benefits, and pension entitlements before they spiral out of control. It should be clear that this would help any government avoid embarrassment and scandal, while ensuring taxpayers are being treated with the respect they deserve.

The other major criticism relates to the effects of this bill on the Canadian Broadcasting Corporation. Again, we believe this takes away from the real issues surrounding the amendments. The CBC is not the only affected crown corporation. All crown agencies, from the Atlantic Pilotage Authority to VIA Rail, are covered in this bill. In fact, there is a specific provision in this bill that would allow the CBC to withhold information that threatens its independence, and it would be subject to a test that could be tried in the courts.

We believe there are plenty of members in the official opposition, as well as the Liberal Party, who genuinely support the spirit of this legislation. I would simply plead with you not to get caught up in the sideshow that relates to the CBC, but rather focus on the real issue, which is accountability, transparency, and waste.

• (1645)

Now, you may be asking yourself, how exactly does federal disclosure policy help the average taxpayer, the average citizen? The fact of the matter is this: if we can see what crown CEOs are making and what their job descriptions are, we can avoid potential scandals before they spiral out of control.

You may believe that not every Canadian pays attention to the salaries of government officials. It's a valid assumption, and I don't deny it. However, we still owe it to taxpayers to treat their dollars with dignity. Even if every Canadian on every main street isn't going to file an access to information request, you can be assured that the Taxpayers Federation, as well as other advocacy groups for free press or free media, will be watching vigilantly to see how taxpayers' dollars are spent.

We're here to ensure that the government operates within reasonable limits. The day we stop respecting a person's money because they don't have the time or resources to be involved in the same manner you are, I believe, is the day we lose our moral authority to levy taxes.

I hope my testimony has shed some light on this issue. Canadians deserve the best from their government, and we believe the public's concerns, until this bill arrived, have been falling on deaf ears.

We commend Mr. Rathgeber and all members who support this legislation. You are the people who listen to Canadians and who are working for positive change in the stewardship the government shows over our tax dollars.

• (1650)

[*Translation*]

The Chair: Thank you.

We now move immediately to Mr. Taylor, Director of the National Citizens Coalition.

[English]

Mr. Stephen Taylor (Director, National Citizens Coalition): Thank you, Mr. Chair.

The National Citizens Coalition is a supporter-based organization founded in 1967 and counts tens of thousands of supporters in its ranks. Our organization is founded upon the principle of more freedom through less government. We advocate on issues regarding the reduction of waste in the public sector for the more efficient delivery of services to Canadians.

Government accountability is very important to our supporters, and indeed to all Canadians. Whenever taxpayer dollars are in the mix, we believe on a philosophical level that Canadians deserve transparency for where those tax dollars go and accountability by those who spend them.

Recent scandals in the Canadian Senate with regard to how our senators are spending their housing allowances serve to underscore the need for transparency and accountability in our public institutions. Canadians lose faith in their institutions when those institutions abuse the public trust. Since human fallibility seems to be fairly consistent, the system must account for it, and accountability measures must be built in. We are here to provide testimony in support of Bill C-461. The CBC and public service disclosure and transparency act is an important piece of legislation to bring transparency and accountability to the spending of public dollars at the Canadian Broadcasting Corporation. The CBC is the recipient of over \$1 billion taxpayer dollars every year.

Section 68.1 of the Access to Information Act is deficient, in our view, because the CBC has used it as a blanket exclusion to allowing oversight of how it spends public money. The Information Commissioner, the Federal Court, and the Federal Court of Appeal all agree to the limitations of section 68.1 as written. Further to the changes to the Access to Information Act, the legislation also makes other important changes to current statutes.

Canadians have been well-served by the so-called “sunshine list” in provincial jurisdictions, which list salaries and expenses of public servants. Unfortunately, such a list does not exist federally, and this legislation does not go far enough, in our view, in establishing such a list. Mr. Rathgeber's middle measure, however, is to provide specific salary figures and expenses on an individual on the federal payroll upon request.

Also troubling is the proposed amendment by this government to raise the threshold for the reporting level. In Ontario, for example, we benefit from disclosure of salaries of \$100,000 and above. Mr. Rathgeber suggests a federal list should require disclosure at or above DM-1. We implore the members of this committee to resist pressure to raise the threshold from Mr. Rathgeber's proposed figure. Ideally, though, we'd like to see the disclosure set at around \$100,000—perhaps wishful thinking.

Also less than ideal is the per request mechanism. We hope the committee will see the benefit of full and automatic disclosure of salaries, expenses, and bonuses on a public website in a machine-readable format. The world is moving to the open data model of governance. I note that Canada has fallen to 55th place in the world for freedom of information.

Canada is watching what its legislators do in this place. As scandal looms regarding the abuse of taxpayer dollars, some have suggested abolition of the Senate. Transparency provides an automatic mechanism that helps protect against those who would abuse the public's trust. Such transparency does not exist at the CBC.

The National Citizens Coalition's view is the privatization of the CBC. This isn't a big secret. I know this view is not yet shared publicly by many in this room. However, if the CBC is to receive public dollars, it suffers a legitimacy gap when it refuses to disclose how those dollars are spent. For those who do believe in a public broadcaster, you bring legitimacy to it as a public institution when it is accountable to the public for how it spends our money.

Regarding the CBC-related amendment to this legislation, that is, to include an exclusion for journalistic source protection while allowing for an injury-test exemption on programming-related information disclosure, this sounds acceptable in principle. However, the CBC has acted in bad faith on previous access to information requests, claiming blanket exclusion under section 68.1 of the Access to Information Act. The Information Commissioner has taken the CBC to court at least twice on this matter. We are concerned that the CBC will use any loophole to protect against reasonable disclosure.

We believe that the voting public is the best judge for how its money is spent. We do believe in less government; many of you believe in more of it. However, shrouding this information from the public view is not an honest mechanism for protecting government largesse. Indeed, it delegitimizes the view that advocates for it in the absence of such disclosure.

• (1655)

Government members may be looking to amend this legislation to raise the reporting thresholds and ranges for disclosure with respect to public sector salaries and bonuses. This will put more data out of reach of the public on how public dollars are spent on public services.

I'm told that this legislation will pass with such an amendment. Indeed this bill faces a fork in the road. If this legislation fails because it lacks this particular amendment, it will be scandalous for the majority governing caucus. This is legislation that calls to the very heart of the conservative base. Such transparency is a core theme of why conservatives elect Conservative Party candidates to serve in Ottawa.

If this legislation is amended to raise the disclosure limit and passes, it will be a watered-down, paler version of itself. I implore the government members to resist amending the disclosure threshold, because recent troubles facing this government on accountability issues provide the impetus for passing the legislation that we small-c conservatives desire.

With that, I welcome your questions on this presentation.

[Translation]

The Chair: Thank you both for your presentations.

We now move to Mr. Boulerice, who will be sharing his seven minutes with Mr. Nantel.

Mr. Alexandre Boulerice: Thank you, Mr. Chair.

I listened with interest to our guests' presentations.

The current bill targets CBC/Radio-Canada, pursuant to Schedule 1 of the Access to Information Act. But it does not deal with information or transparency in the Prime Minister's Office.

As you are making the case for transparency in spending public funds, let me ask you this very simple question. Given that we all are supposed to know how much Peter Mansbridge makes in a year, should we also not know how much Nigel Wright makes, or any other chief of staff in the Prime Minister's Office?

[English]

Mr. Gregory Thomas: Yes, and if it were up to us to write the legislation, that threshold would be \$100,000. We don't believe that Parliament should be exempt; we don't believe that political staff should be exempt. We believe it should be a straight \$100,000 threshold for all federal government employees.

[Translation]

Mr. Alexandre Boulerice: Thank you.

[English]

Mr. Stephen Taylor: I would like to echo my colleague's statement. If anyone earns over \$100,000 taxpayer dollars through this government by their salary, whether chiefs of staff or any other public servant, that should be accessible and publicly disclosed on a website. If members here do believe in such transparency for members of the Prime Minister's Office or political members of this government for the sake of transparency and disclosure, they should also agree with such measures of disclosure and transparency for every such dollar in every crown corporation as well.

[Translation]

Mr. Alexandre Boulerice: Thank you very much. At least that's clear. Problem solved.

We often hear that CBC/Radio-Canada costs taxpayers \$1.1 billion a year. I would like to put things into perspective and perhaps hear what you have to say.

Most of CBC/Radio-Canada's budget comes from selling and producing its own programs, as well as selling advertising. Public funds represent only 50% of CBC/Radio-Canada's budget, not 100%. Most OECD countries have a public broadcaster. In Germany, the public broadcaster costs each citizen \$147 a year; in Japan, it costs about \$90, and the same goes for the U.K. Yet here in Canada, CBC/Radio-Canada costs each taxpayer on average \$34 a year. That is approximately one-third of what it costs someone from the U.K. or Japan.

I think we are getting pretty good value for our money. CBC/Radio-Canada provides us with a diversity of views, programs covering everything that happens in every region in Canada, as well as very interesting local and regional coverage, for an attractive price compared to other countries around the world.

• (1700)

[English]

Mr. Stephen Taylor: I'll just say that it's no secret that the National Citizens Coalition does stand for privatization of the

Canadian Broadcasting Corporation. We think that if people think the CBC is such a great deal, they can put their own dollars into it.

In the age of the Internet and the YouTube generation.... I heard a statistic from Google the other day that more Canadian content has been consumed by Canadians on YouTube since 2010 than has been consumed on CTV and CBC since the 1950s. There is accessibility of Canadian content, especially by Canadians themselves, who are able to tell their own stories without the need for a public broadcaster. I'd welcome that discussion as well, but I do believe that might be out of the scope of this particular bill.

[Translation]

Mr. Alexandre Boulerice: Time is running out, Mr. Thomas, and Mr. Nantel has a question.

Mr. Gregory Thomas: The approach of the Canadian Taxpayers Federation is completely different from that of my friend Mr. Taylor's organization. He called on other Conservatives to support this bill, but on our side, we are not a Conservative organization. We have no political affiliation. As for CBC/Radio-Canada and other organizations, we are against any subsidized organizations, such as Cogeco and Rogers, regardless of whether they are private or public.

Mr. Pierre Nantel (Longueuil—Pierre-Boucher, NDP): Thank you for appearing before us. Honestly, I know that we will not see eye to eye, but I still have to ask you questions and recognize that you have come here.

So Mr. Thomas, this is a good time to ask you what your position is in relation to Mr. Taylor's scrap the CBC campaign.

Mr. Gregory Thomas: We poll our supporters on a regular basis. We deal with issues such as government legislation, marijuana and the Senate. In western Canada, some want to elect the Senate and others want to abolish it. Under those conditions, it is hard for us to always take a stand. That said, some of our supporters want to keep CBC/Radio-Canada. In northern Canada, just like the western and Atlantic communities, CBC/Radio-Canada is the only broadcaster. It is the only—

Mr. Pierre Nantel: I must interrupt you so that I can ask you another question.

In terms of the production of documents, would you have not preferred that the Information Commissioner have that power as well?

[English]

Mr. Gregory Thomas: Our principal interest here is to....

[Translation]

The CBC/Radio-Canada issue is not our main concern, given our mandate. The issues related to the Access to Information Act are uniquely specialized. Mr. Rathgeber is a lawyer. He is very familiar with those issues. According to him, the wording of the current legislation is not specific enough.

•(1705)

[English]

We have not thoroughly examined this. But Mr. Rathgeber's point is that an exemption is a bad way to address the issue of the independence of the CBC. He believes that an injury test will give the courts and the Information Commissioner a better tool to protect the independence of the CBC, while ensuring that the CBC complies with access to information requirements.

[Translation]

The Chair: Thank you.

I will now give the floor to Ms. Davidson for seven minutes.

[English]

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

Thank you, gentlemen, for being here with us and for having the perseverance to come back. I think we've cancelled or been interrupted a couple of times. I appreciate the fact that you returned and that we've been able to have some discussion today.

I want to ask you a couple of questions on the CBC.

Do you think it's important that Canadians have access to most of the information the CBC possesses? Depending on how you answer that, can you provide examples of information that may not be appropriate for the CBC to release?

Mr. Stephen Taylor: Yes.

As the Information Commissioner has stated, and as concerns from this committee and debates from Parliament have suggested, the privacy of journalistic sources is important and should be protected. However, the CBC does receive public dollars. Unfortunately, it has used section 68.1, by its own interpretation, as a blanket exclusion for blocking access to information requests that have nothing to do with journalistic source protection and are more to do with administrative activities.

I do think there needs to be clarification within the act, and I think this will provide it, to bring the spirit of access to information, as described by the Information Commissioner so eloquently a few minutes ago, in line with how it is implemented.

Mrs. Patricia Davidson: Mr. Thomas.

Mr. Gregory Thomas: We have found it offensive that the CBC would go all the way to the Federal Court of Appeal in its disputes with the Information Commissioner in the past. We were gratified when the Information Commissioner's position was upheld in the Federal Court of Canada and in the Federal Court of Appeal.

For us, we find the spectacle of taxpayers paying for the Information Commissioner's lawyers and the CBC's lawyers to have a dispute between agencies of the Government of Canada to be profoundly offensive. We welcome any attempt by a member of Parliament to put an end to this nonsense. We herald Brent Rathgeber for his persistence in trying to improve the law to put an end to litigation. It is a travesty that different agencies, all funded by the taxpayer, would be going to federally funded courts to decide their differences. It makes no sense to us at all.

Mr. Stephen Taylor: Further, if Parliament sees fit to release items that concern national security to an ad hoc committee—swears in privy councillors on the spot—to review Afghan detainee documents, I do have faith in the Information Commissioner, who is an officer of Parliament, to use her discretion and professionalism in reviewing such information.

•(1710)

Mrs. Patricia Davidson: Along those lines—and I'll ask both of you—do you really feel there needs to be a distinction between general information and the journalistic source? Do you firmly believe that the journalistic source needs to be protected, and do you think Bill C-461 does that? Or do you not think it needs to be protected?

Mr. Stephen Taylor: I think journalistic sources need to be protected. I think Parliament is supreme in the land. I've heard from other stakeholders that perhaps a judge would be more appropriate in reviewing such information. But I believe the Information Commissioner is better placed within the supremacy of Parliament to review this information. She stated earlier that she wouldn't be releasing this information; it would only be within the scope of investigation.

I note that previous stakeholders of the CBC, when asked if any access to information requests had been made on journalistic sources, replied that none had been made. I think that any reasonable person would be able to see on the face of it what a request constitutes: information on the administrative capacities of the CBC versus the outing of a journalistic source. I know that any such information would be excluded, as stated by the Information Commissioner, in such a release. It would be blacked out on those documents.

Mrs. Patricia Davidson: Do you agree with those statements, Mr. Thomas? Or do you have a different view?

Mr. Gregory Thomas: We believe that journalistic sources should be protected. We've had some discussions with Mr. Rathgeber about it, and we believe he's reflected and investigated the issue carefully. But I think it behooves the committee to get expert advice and satisfy themselves that, whatever amendments may come out of this committee, journalistic sources are acknowledged by all sides to be protected. I realize that's a tough mandate to give you guys, but I'm sure you're up to it.

Mrs. Patricia Davidson: Okay.

Do I have some more time?

[Translation]

The Chair: Your time is up.

Mr. Andrews, go ahead.

[English]

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

Welcome, folks.

Mr. Thomas, just for clarity, you disagree with the government amendment to raise it from a DM-1 to a DM-4?

Mr. Gregory Thomas: Yes.

Mr. Scott Andrews: If the government is successful in getting that amendment passed, would you support this bill as amended?

Mr. Gregory Thomas: We'll be very critical of this bill if it comes out with that. You're talking about people earning a considerable amount, and there will be fewer than 2,000 out of 212,000 in the core public service.

Mr. Scott Andrews: Would you support this bill if it was amended in that fashion?

Mr. Gregory Thomas: No, we'd be very critical of it.

Mr. Scott Andrews: Okay.

Mr. Taylor, Stephen Harper was president of your coalition. When was that?

Mr. Stephen Taylor: That was prior to his running for the Canadian Alliance. I can't recall the exact date, but it was for one or two years.

Mr. Scott Andrews: What would Stephen Harper have said about someone in the PMO giving a \$90,000 cheque to a sitting parliamentarian?

Mr. Stephen Taylor: I'm sorry?

Mr. Scott Andrews: What would Stephen Harper, as the president of your coalition, have said about giving a \$90,000 cheque to a sitting parliamentarian to cover up expenses?

A voice: His name is Stephen Taylor, not Stephen Harper.

Mr. Stephen Taylor: I don't think we have all the facts regarding what occurred. I look forward to getting those facts before giving an opinion on that issue.

Mr. Scott Andrews: What would Stephen Harper say, as president of the National Citizens Coalition, about accountability? Who would be accountable for those actions?

Mr. Stephen Taylor: I can't speak for Stephen Harper, but I know the National Citizens Coalition regards the issues of accountability and transparency as very important.

If members of this committee want transparency and accountability, I think they will support this legislation. I don't think transparency and accountability can apply to the organizations or institutions that are politically expedient for any particular party. I think this with respect to the entire public service and the entire government. We should seek to apply accountability and transparency no matter how comfortable or uncomfortable it is or how advantageous or disadvantageous it is for any particular cause. The cause of transparency and accountability is for the Canadian people, not for any one party.

•(1715)

Mr. Scott Andrews: I can see that the members—

[*Translation*]

The Chair: One moment, Mr. Andrews. Mr. Mayes has a point of order.

[*English*]

Mr. Colin Mayes: Mr. Chair, could we stay on the subject matter, which is Bill C-461? This is not in order, and I don't think it's fair to the witnesses that they should be answering these questions. They came here to discuss Bill C-461. Let's stay on that topic.

[*Translation*]

The Chair: Thank you for your comment. I was just going to remind you that we need to stay as close as possible to Bill C-461 and its spirit.

Mr. Andrews, could you make sure as much as possible that your question has to do with Bill C-461? We must not go off in all directions by talking about topics that are not related to the spirit of the bill before us.

[*English*]

Mr. Scott Andrews: Thanks, Mr. Chair. I hope this doesn't come off my time.

The witness did bring up the inquiry that's ongoing right now. He did talk about waste in the public sector, he did talk about transparency, and he did talk about accountability of parliamentarians.

I can see how members opposite are getting very bothered by these types of questions, as you have pointed out.

I'll ask you another question. If Stephen Harper was president of the coalition, what would he say about a Senate whitewashing of a report?

Mr. Stephen Taylor: Sir, if I can—

[*Translation*]

The Chair: Mr. Warkentin has a point of order.

[*English*]

Mr. Chris Warkentin: On a point of order, Mr. Chair, you did give a very clear indication that there was a necessity to bring it to the legislation at hand. We have limited time with these witnesses and I think it's important we bring attention to the legislation we're reviewing.

I respect the fact that Mr. Andrews thinks he has a job to be entirely partisan at every opportunity possible. Unfortunately, the Canadian people deserve better.

[*Translation*]

The Chair: Thank you.

I would like to remind Mr. Andrews once again that his question has to stay on the topic of Bill C-461. Otherwise, I will have to give the floor to the next person on my list.

I am not telling you what questions to ask; I am simply asking you to limit them to the context of the bill. I am giving you one last chance, Mr. Andrews.

[*English*]

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

I'd say to Mr. Warkentin that I will take no advice from him on partisanship at this committee.

Mr. Taylor, if Stephen Harper was president of the National Citizens Coalition, how would he account for more accountability for this piece of legislation, or to any other piece of legislation, on being accountable to the people of Canada, when someone in his office would do something that wouldn't be accountable?

Mr. Stephen Taylor: I think if Stephen Harper were president of the National Citizens Coalition, he would appeal to all members present, with respect to the current legislation before this committee, to support the legislation if they do believe in accountability and transparency in all aspects of the public service.

Mr. Scott Andrews: Mr. Taylor, when Stephen Harper was president of the National Citizens Coalition, if a matter became before Parliament, wouldn't he be calling for more accountability and more openness and transparency, as is in Bill C-461?

Mr. Stephen Taylor: In fact, I sit before you today at this committee calling for more accountability and transparency in the public service and in government. In the spirit of that, I encourage you to support this legislation.

• (1720)

Mr. Scott Andrews: I have no further questions.

[*Translation*]

The Chair: Thank you.

I will now give the floor to Mr. Warkentin for seven minutes.

[*English*]

Mr. Chris Warkentin: Thank you, Mr. Chair.

Moving back to the bill, I think it's clearly important that we search through this bill.

Mr. Thomas, when my colleague Ms. Davidson was speaking to you in the last little bit, you had talked about the necessity of getting the balance right.

My constituents are taxpayers, and Canadian taxpayers subsidize CBC at a rate of \$1 billion. I know somebody over there said that's not a lot of money. Where I come from, \$1 billion is a lot of money. My constituents deserve to know.

As I reflected on access to information, crown corporations and agencies of the federal government have been extended the responsibility to allow access to information to the general population. There are a number of agencies and crown corporations that deal with sensitive information. I think of BDC, and I think of the individual bank loans that are being considered. That information has never been considered to be at risk because they are now subject to the Access to Information Act. You can also look at organizations like Farm Credit that also lend money—it's the same type of sensitive information. Nobody has charged that their information is somehow now in jeopardy because it's subject to the Access to Information Act. All kinds of other departments—the immigration department or the health department—deal with very personal information of folks. Nobody has said that they might somehow be subject to disclosing personal information.

CBC has now undertaken a blanket exclusion, and has probably taken it to the nth degree to protect all kinds of information. The Information Commissioner has made it clear that at no time have they reviewed a request for journalistic source material. My constituents are wondering what's going on. Why is this the case? But my constituents also believe fundamentally in the necessity of protecting journalists and the sources that go to journalists. They believe in a free media. They believe that a free media is essential for a free society, and therefore we have to get this balance right.

I don't know if you have any reflections with regard to getting the balance right. It's important to us.

Mr. Thomas, you had suggested that there may be a necessity for an amendment. We just heard from the Information Commissioner, who is reluctant to do anything different from this bill. But we heard from CBC and other media organizations that were pretty strong in their demand for changes. I don't know. Do either of you have a reflection on how the balance might be assured?

Mr. Stephen Taylor: Sure. I'll just say that it is very important to get that balance right. I do think that journalists' source protection and the relationship between sources and journalists are important for a free media in a free society. I do think the proposed amendment on the CBC, regarding exclusion specifically for journalists' source protection, is a good one.

I think that providing an injury-based exemption for all other material—this is all good in principle. My only concern about that has been that the CBC has used pretty much any loophole to abuse that sort of trust that legislators and lawmakers have provided it for protecting information.

I remember an example of an access to information request on how many cars the CBC has in its fleet. It was revealed that there was only one Ford 500 sedan in the entire fleet of the CBC after an access to information request was “fulfilled”—we'll just use that word loosely. Pages and pages came back, all blacked out. Indeed, after being pressed by I believe the Information Commissioner, months later it came out that there were over 700 vehicles in the fleet. This has nothing to do with journalists' source protection. This has everything to do with the daily administrative costs of the CBC, which is in the interest of the taxpayers who fund it for what Mr. Boulter described as a very reasonable amount and what you have described as being not really a modest chunk of change for taxpayers.

I do think we need to strike the right balance. I do think that, yes, journalists' source protection is paramount, and that's why it's so critical that we get the balance right and do it here.

• (1725)

Mr. Chris Warkentin: I think both of you talked generally about the desire to see a sunshine list in terms of pay. This bill doesn't call for that. It calls for something different. It calls for an ability to access the information on the individual's pay through an access to information request.

Tell me how that differs from the sunshine list. You talked about the benefit in Ontario of a sunshine list. I've heard reflections on that sunshine list as being both positive and problematic. But this is different.

Could you describe the difference, and your reflections on the difference between the sunshine list versus what this bill calls for?

Mr. Stephen Taylor: Sure. This bill calls for case-by-case requests for information on public servants at DM-1 or above. The Ontario model puts all that information for every public servant earning \$100,000 or more on a public website. This is a great tool. There are not many complaints. Taxpayers love this sort of thing.

The problem with the current Ontario list, if I can play advocate here, is that it's not available in a machine-readable format. For example, in the discussion of open data and access to information, and the ability to take data, to mash it up, to build programs that run through the data and be able to sort it, that's very difficult to do as the data stands on the public website, although it's disclosed.

Ideally, what we would like to see is a sunshine list for all public servants earning \$100,000 and above disclosed on a website, but also available in a machine-readable format so that data analysts can process it easily.

Mr. Chris Warkentin: It seems to me this bill doesn't call for what you're asking for, but it may provide more usable information in terms of giving not only the pay but also the job description of the individual being disclosed. I think it's different from the Ontario list, but of course it doesn't allow for comparisons because it would be

one person.... Well, maybe there could be multiple people being asked about for pay as well as for job descriptions.

Mr. Stephen Taylor: Yes. Part of the importance of this is to be able to compare the function of those in the public service versus the related jobs or related responsibilities and activities in the private sector, so that taxpayers can actually see if that level of compensation is competitive or non-competitive.

[*Translation*]

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

That brings us to the end of the meeting. Since we only have about 30 seconds left, we will not have time for another question.

I would like to thank you once again for being here and for sharing your comments with us on Bill C-461. Hopefully, this was useful for the members of the committee.

Thank you.

The meeting is adjourned.

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