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# Standing Committee on Canadian Heritage

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Chair: Mr. Scott Simms





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• (1110)

[*English*]

**The Chair (Mr. Scott Simms (Coast of Bays—Central—Notre Dame, Lib.)):** Welcome back, everybody. Welcome to clause-by-clause consideration of Bill C-10.

We are in the middle now of a five-hour debate, as was voted on by the House. We have just over two hours left, and we're going to jump right into that.

(On clause 7)

**The Chair:** We left off with Conservative amendment 9.3. Just so you are aware, you did not get CPC-9.3 in your original package. The last three digits in your reference number are 641. That takes care of the hymn book.

Last time, Mr. Genuis had the floor. He is not here with us now, but I don't see anyone who wishes to speak to CPC-9.3. We will proceed to a vote.

(Amendment agreed to [*See Minutes of Proceedings*])

**The Chair:** This is a viciously efficient start we have going here. I'm just saying that for the record. Since I'm on record for many other things, I might as well be on it for that too.

There was a CPC-9.4, but as you know, that falls later. No, I'm sorry, that's not right. We're going to CPC-9.5. Is that right? I'm going to check with the legislative clerk for just a moment.

Go ahead, Mr. Méla.

**Mr. Philippe Méla (Legislative Clerk):** Mr. Chair, yes, indeed, we are going to CPC-9.5 now, because CPC-9.4 was dealt with earlier at the previous meeting where unanimous consent was asked for because it was not in the right place. Now we are at CPC-9.5.

**The Chair:** If you recall, CPC-9.4 was the motion that should have been placed before. We did not get unanimous consent to return to that, so that brings us now to CPC-9.5. The last three digits for the reference number are 200.

To move that, I'm looking at Mr. Waugh.

Mr. Waugh, the floor is yours.

**Mr. Kevin Waugh (Saskatoon—Grasswood, CPC):** I have a point of order here, Mr. Chair.

I did do a notice of motion that went through the clerk yesterday, but I was wondering if I could move it today instead of Friday.

• (1115)

**The Chair:** I can tell you that it's not a point of order, and you can't move a motion on a point of order, Mr. Waugh.

**Mr. Kevin Waugh:** Okay.

**The Chair:** I'm going to have to—

**Mr. Kevin Waugh:** I was going to get clarification through you.

**The Chair:** Absolutely. I'll give you that clarification in just a few moments, if you wish, but I'm going to go to Ms. Ien right now.

Go ahead, Ms. Ien.

**Ms. Marci Ien (Toronto Centre, Lib.):** Thank you, Mr. Chair.

I just wanted to talk a little bit about CPC-9.5. Is it okay to do that now?

**The Chair:** It hasn't officially been moved yet. We have to have a mover to do that.

**Ms. Marci Ien:** I shall wait until it's moved.

**The Chair:** Okay, we're on CPC-9.5.

**Mr. Kevin Waugh:** Don't worry, Mr. Chair. Let's do it tomorrow. We're fine.

**The Chair:** Okay.

**Mr. Kevin Waugh:** We have a long day ahead of us.

**The Chair:** I'm glad you said that.

As you know, everyone, we are having another session at 3:30 p.m to 5:30 p.m. eastern time. You do not have the Zoom coordinates yet, but they will be emailed to you near the end of this meeting. The reason you don't see it is that it hasn't been sent to you yet.

Now we're back to CPC-9.5. That is in our schedule right now. Do I see someone who's moving CPC-9.5?

Is there somebody?

[*Translation*]

**Mr. Alain Rayes (Richmond—Arthabaska, CPC):** Yes.

[*English*]

**The Chair:** I'm sorry. I didn't see you, Mr. Rayes.

You have the floor, sir. Go ahead.

[*Translation*]

**Mr. Alain Rayes:** Thank you, Mr. Chair.

I thought it was automatic, so that's why I waited until you recognized me. Now I realize that I am supposed to move each amendment formally. I'll try to be quicker on the draw next time.

[*English*]

**The Chair:** Mr. Rayes, I'm sorry, but we're not receiving the English translation. Could you very eloquently say the name of your riding so we can do a test?

[*Translation*]

**Mr. Alain Rayes:** I am Alain Rayes, the member for Richmond—Arthabaska.

On my end, I do not hear the French interpretation of what you are saying, Mr. Chair.

[*English*]

**The Chair:** We're good now.

I will do a test of my own. Give me the thumbs-up. There you go.

Mr. Rayes, welcome to the virtual world. The floor is yours.

[*Translation*]

**Mr. Alain Rayes:** Thank you, Mr. Chair.

With amendment CPC-9.5, I am proposing that Bill C-10, in clause 7, be amended by adding after line 19 on page 8 the following:

9.2 (1) The Commission shall, for each regulation or order made, or condition imposed, under this Act in relation to an online undertaking, obtain an independent legal opinion as to whether any of the provisions of the regulation, order or condition are inconsistent with the protections provided to Canadians by the Canadian Charter of Rights and Freedoms, particularly those relating to freedom of speech under paragraph 2(b).

(2) The Commission shall publish the independent legal opinion on its website within 10 days after obtaining it and shall cause it to be published in the Canada Gazette.

I want to make clear that subsection 9.2(1), as proposed in the amendment, applies to online undertakings.

I'll explain the rationale behind the amendment.

Actually, before I do that, I want to thank everyone for adopting amendment CPC-9.3, which the committee debated yesterday and voted on at the beginning of today's meeting. I had forgotten to thank my fellow members for their support.

Amendment CPC-9.5 isn't very complicated, so everyone should find it quite straightforward. In light of all the concerns raised vis-à-vis the Canadian Charter of Rights and Freedoms, the amendment would require the CRTC to publish an independent legal opinion relating to the charter when it makes a decision or a new regulation regarding online content. The idea is simply to ensure that the rights guaranteed by the charter are protected.

Under the proposed procedure, the opinion would be published on the CRTC's website and in the Canada Gazette, to let all part-

ners, traditional digital broadcasters and Canadians know that the regulation in question was consistent with the charter.

By adopting amendment CPC-9.5, the legislator, the Parliament of Canada, would be ensuring that the freedom of speech of all Canadians was protected. We know that freedom of speech is at issue and that the bill will most likely be challenged by lawyers, lobby groups and special interest groups. We sense that many university teachers and lawyers have doubts about the work we are doing and the direction in which the bill is going. Accordingly, this amendment gives us another opportunity to ever so slightly improve the iteration of the bill currently before us.

Thank you, Mr. Chair.

● (1120)

[*English*]

**The Chair:** Thank you.

Mr. Shields, you have the floor.

**Mr. Martin Shields (Bow River, CPC):** Thank you, Mr. Chair, I appreciate that.

The amendment has been explained and the rationale for it, and I very much appreciate that, but the department is with us today. I was wondering what they believe in terms of how this could work with the CRTC. They're familiar with the CRTC and the regulations they develop and their undertakings regarding the things they do now.

Could the officials explain to me how they believe we could do this in the future, as the CRTC would look at this piece within the work they would do looking at this legislation?

**The Chair:** I see Mr. Ripley has lowered the boom of his microphone, which means he's prepared to rocket fire.

Mr. Ripley, the floor is yours.

**Mr. Thomas Owen Ripley (Director General, Broadcasting, Copyright and Creative Marketplace Branch, Department of Canadian Heritage):** Thank you, Mr. Chair.

Thank you, Mr. Shields, for the question.

There would be a few things I would underline with respect to the amendment that has been tabled.

The first thing is to highlight a point that came out in the committee's discussion with respect to the charter and freedom of expression, and to remind the committee that, of course, the CRTC is bound by the charter. Its decisions are already subject and will be subject in the future to review for charter consistency through things like judicial review of its decisions, etc.

Second, perhaps this may not be well known to the committee, but the CRTC is actually already served by independent legal counsel. In other words, its lawyers are not Department of Justice lawyers. In that respect, the CRTC already avails itself of independent legal advice.

The third thing I would note is that the amendment that is on the table would be quite exceptional in the sense that we're not aware of any other regulatory body that is in the practice of publishing its legal opinions. My understanding of the amendment is that the requirement would actually be quite significant in the sense that it would apply to each regulation or order or condition imposed on online undertakings. We expect that those would be quite numerous.

At the end of the day, Mr. Shields, the impact on this would be that any time the CRTC made a regulation or an order it would have to go and get a charter analysis done with respect to that, and then publish that and make it available. Again, from what we have seen, that would be fairly exceptional in the current regulatory landscape.

**Mr. Martin Shields:** Thank you.

Mr. Chair, could I follow up?

**The Chair:** Absolutely.

**Mr. Martin Shields:** In looking at this when you first mentioned this, I see that would then lead to somebody on the outside, if this wasn't in place, to do that, take it to court and challenge what they haven't seen as a ruling. They would have to challenge it in the legal sense.

As this is new legislation, new ground in the sense of what we're dealing with, would they not want to make sure they are establishing the groundwork? This amendment should cover them in the sense that if they were to do this, because we're moving into new territory, it should provide cover for what we think is going to be challenged by the outside anyway.

Wouldn't this be a safeguard step as we're moving into it?

**Mr. Thomas Owen Ripley:** Thank you for the question.

The expectation is certainly that the CRTC would consider the charter in making its decisions. Again, the CRTC already has a team of independent legal counsel that would provide that opinion.

To your point, publishing those legal opinions would obviously then subject them to external scrutiny. The question of whether that's a safeguard or not is a judgment call that I would leave up to the committee. Again, it would be fairly exceptional. This is not done.... When a legal opinion like that gets published, it waives solicitor-client privilege. That can complicate matters if ever there are court proceedings in this respect.

Again, not to go over ground that we've already been on, but that's why, for example, the charter statement that's published on a bill is not a formal legal opinion in a sense, but rather an analysis of how the charter is potentially engaged.

This would be fairly exceptional to require a regulatory agency like that to publish a legal opinion with respect to every decision it makes with respect to a certain kind of entity.

• (1125)

**Mr. Martin Shields:** I very much appreciate your explanation and your belief of how this could work. That's what I asked for was your opinion. I appreciate that.

In the sense of the amendment, as we've moved into this area—this legislation could possibly pass—you try to look for all the safeguards you can find. You know that it will probably end up in court and challenged, so you try to find ways to protect as much as possible as you go into new territory, making sure that those things are protected and that there is as much legal advice and judgment ahead of time as possible. I understand what you're saying about confidentiality, client confidentiality.

You know, it's an amendment that maybe protects things from getting tied up in court and this getting tied up in court for years. I thought, maybe, as an amendment, it might help that process along. Nobody wants to have a law put in place and then all that happens is that lawyers make money for years fighting things in courts, and nothing happens. No money moves other than to law offices. That's the last thing you want to do when you pass legislation.

I think it's a protection, and that's why it's there.

Thank you for your opinion. I appreciate it.

**The Chair:** Mr. Aitchison.

**Mr. Scott Aitchison (Parry Sound—Muskoka, CPC):** Thank you, Mr. Chair.

This whole discussion has actually made me wonder about a couple of different things.

Mr. Ripley, I have a couple of questions. Do you know roughly what the legal budget is for the CRTC? I mean, is it frequently in court, or is it engaging lawyers regularly for the decisions that it makes? Is it a problem?

**Mr. Thomas Owen Ripley:** I don't have the legal budget at the tip of my fingers. What I can say to you is that CRTC decisions are subject to judicial review on a regular basis in the sense that there are applicants who choose to have decisions reviewed by a court. Some of those are fairly high-level, high-profile proceedings, and others are less so. Again, just to reiterate, that's why there are mechanisms in place. There's judicial review, and there is actually another provision in the Broadcasting Act as well. If a party to a proceeding feels like the CRTC has made an error in law or something along those lines, there is also a mechanism by which it can have that decision reviewed by the federal court system as well.

One thing that I would note or remind the committee—and perhaps it speaks a little bit to Mr. Shields' earlier question as well—is that proceedings are subject to a public process in the sense that anybody who wants to make a submission and put something on the record has the opportunity to do that. Again, when the CRTC is making a new regulation or an order, there would be an opportunity for organizations or individuals to make submissions, and if they have concerns about the impact on charter rights, for example, they could make sure that those are part of the public record. Then, of course, the CRTC will have to consider those in its decision-making.

• (1130)

**Mr. Scott Aitchison:** I would understand, then, that in the past CRTC judicial reviews or public hearings would be related to big companies like, for example, Bell, Telus or those kinds of corporations. One can only imagine how many lawyers would be involved in a judicial review for something that Bell Canada was interested in.

I guess I'm wondering about a judicial review process in light of what they will now have access to regulate and make decisions on. We're not talking about big corporations but about individual Canadians and smaller entities that aren't big corporations. I'm just kind of wondering about that process and what that might look like.

Let's say I became some kind of an über-star, which we all know probably would never happen, but let's say I did and actually made a decent living from posting videos of me gardening or something. I'm not a big corporation, obviously. What would the judicial review process look like for individual Canadians who find some success on these social media sites and then become subject to regulation?

**Mr. Thomas Owen Ripley:** Thank you for that question.

There are a couple of things. One would be just to stress off the top—and again, this perhaps picks up on some of the committee's debate from yesterday—that the effect of proposed section 2.1 would mean that any individual who is unaffiliated with a social media company, no matter how big their following is or how much money they make, is not to be considered a broadcaster for the purpose of the act.

Again, even if you have millions and millions of followers, that provision means it's not a question of your being considered a broadcaster. Again, for the most part, individuals will not be participating in CRTC proceedings because the act will not apply to their activities on social media services, for example.

What we see in this space, Mr. Aitchison, is that you have individuals or organizations coming to the table to represent the public interest that may not be sophisticated corporations able to hire legal teams to represent them. A good example in this space is an organization called the Public Interest Advocacy Centre, which raises many of these issues on behalf of organizations or individuals.

One of the things the government is proposing in Bill C-10 is to actually ensure there is better support for public interest representation in CRTC proceedings. Right now, the CRTC really has no formal mechanism to ensure the activities of these organizations can be funded.

If you look at Bill C-10, the CRTC can seek contributions to support the participation of public interest organizations in CRTC proceedings. The government is doing that very intentionally, recognizing that, obviously, organizations and voices are needed at the table. The goal in that is to secure more long-term, sustainable support for those organizations so that they remain viable and can continue to bring those issues to the table and to CRTC proceedings.

• (1135)

**Mr. Scott Aitchison:** Thank you.

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

Before we go any further, I know I should have mentioned this yesterday but I will say it right now. For those who are outside and watching us through the Internet, I should explain exactly who the speaker you just heard, Mr. Ripley, is. Thomas Ripley is director general of the broadcasting, copyright and creative marketplace branch of the Department of Canadian Heritage.

I should have done that yesterday. You have my apologies, Mr. Ripley. You have been a bit of a mystery man to a lot of the people watching over the past day and a half, but now you're not.

Mr. Rayes, you have the floor.

[*Translation*]

**Mr. Alain Rayes:** Thank you, Mr. Chair.

After that fine introduction of Mr. Ripley, I would like to thank him and all the other department officials who have been with us at each meeting. Even when we don't necessarily agree with their position, they provide sound information and guidance that helps us do the best possible job we can, given our respective knowledge and expertise. I want to thank them. I join you, Mr. Chair, in recognizing the contribution of Mr. Ripley and all the other department officials.

I have a question for Mr. Ripley. One of his previous comments might suggest that my amendment is unnecessary, but as the saying goes, you cannot be too careful.

Bill C-10 gives rise to questions about freedom of expression. Some think that we are going too far or, at least, that freedom of expression is not really at risk, whereas others believe that the bill is flawed when it comes to freedom of expression. People have said that the CRTC will not use all of the powers it has been granted under the bill, but a number of experts worry that it might.

Why not impose certain obligations on the CRTC from the outset? Once the bill is a done deal, the politicians in power will say the same thing. They will say that the CRTC is an arm's-length organization that makes its own decisions. That's what happens whenever questions on the subject arise. That was the case recently when big and small telecoms imposed user fees for their services. The argument will be that the government no longer has the power to do anything once the CRTC has made a decision, because the CRTC supposedly operates at arm's length.

We experienced the same thing here, on the committee. The committee is supposed to be independent, but the government was able to interfere with the committee's work when it wanted to.

That makes me wonder whether my amendment has anything wrong with it, anything that might be detrimental. I may be asking for more protection than necessary, but in this case, it seems warranted. Once the bill comes into force, the CRTC will have nine months to do its homework and come up with a definition. After that, we will no longer be able to influence the guidelines it adopts or the manner in which it applies them.

My first question for you is this. Is there anything counterproductive in my amendment? Does it run counter to good old common sense? It may be overly protective, but if so, good. It puts additional safeguards in place to ensure freedom of expression is protected in every CRTC decision regulating the new space that is the digital world. Lobby groups and university teachers interested in freedom of expression can assuage our concerns by examining every CRTC decision or amendment, since it will be published on the commission's website and in the Canada Gazette.

[*English*]

**Mr. Scott Aitchison:** I have a point of order, Mr. Chair.

I am loath to interrupt my colleague, but the bells are ringing in the chamber.

**The Chair:** Yes, they are.

**Mr. Scott Aitchison:** I just thought maybe we should be aware of that.

**The Chair:** I was going to interrupt Mr. Rayes, but I didn't want to do that until he got to pose his question to Mr. Ripley.

Yes, Mr. Aitchison is right. We have 26 minutes and 50 seconds to vote.

As you know, the bells are ringing. The routine is very simple. I need unanimous consent to continue for perhaps another 10 to 15 minutes, if you so desire. Do I have unanimous consent to continue?

• (1140)

[*Translation*]

**Mr. Alain Rayes:** No. I will continue afterwards, Mr. Chair, as we had agreed.

[*English*]

**The Chair:** Very well then.

We're going to suspend until after the vote.

Don't forget, if you're delayed coming back from voting, could you please let us know that you're coming? That way we can do this as quickly as we can. I don't want to proceed in the committee without everyone on board.

Okay, let's suspend.

• (1140)

(Pause)

• (1225)

**The Chair:** We'll continue with clause-by-clause consideration of Bill C-10. When we left off we left off with CPC-9.5. I have Mr. Rayes who was about to ask a question.

You have the floor, sir, go ahead.

[*Translation*]

**Mr. Alain Rayes:** That's right, Mr. Chair. But first, if I may, I would like to ask you about the motion that we just passed in the House.

My understanding is that with the extension of sitting hours, the committees will have some resources cut off. Does that jeopardize the meeting that we have to have late this afternoon?

[*English*]

**The Chair:** Not that I am aware. You go ahead and do your questioning about this, but we don't have any information on that right now. When I do, you will be the first amongst many to know.

Carry on, sir, you have the floor.

[*Translation*]

**Mr. Alain Rayes:** Thank you, Mr. Chair.

Mr. Ripley, let me quickly summarize my question.

Does the amendment I am presenting have a negative effect or is it simply, as I would hope, an additional measure that we are taking to ensure that every new regulation put in place by the CRTC respects freedom of expression and that the information is published on the CRTC's website and in the Canada Gazette?

I have another question for you afterwards.

**Mr. Thomas Owen Ripley:** Thank you for the question, Mr. Rayes.

My answer will depend on the purpose of the amendment.

If the purpose of the amendment is to provide an opportunity for outsiders to submit legal opinions as evidence in a regulatory process, I would say that it is already happening. People can already make a submission to the CRTC and, if they want to file a third party legal opinion, they can do so. Once it's admitted into evidence, it certainly has to be considered by the CRTC in making its decision.

If the purpose of the amendment is to require the CRTC to publish a legal opinion that represents the CRTC's position, I would say that this could actually cause harm, because it affects solicitor-client privilege, a principle recognized by the Supreme Court as a fundamental principle of the Canadian legal system. Given the potential for harm, we believe that this would make for an obligation that would be fairly exceptional in the Canadian legal system.

• (1230)

**Mr. Alain Rayes:** I'm very surprised to hear that asking the agency to provide us with an opinion that it is in compliance with the Canadian Charter of Rights and Freedoms is doing harm to the agency, when it is the agency's responsibility to ensure that it is in compliance, or at least to confirm that it is in compliance. I am surprised by this, given the nature of this case and the challenges.

I'd like to go back to your earlier comment. You said that the CRTC is going to set up a fund to help interest groups or organizations that would like to participate in public hearings in order to ask questions when necessary. Did I understand you correctly?

**Mr. Thomas Owen Ripley:** Thank you for the question, Mr. Rayes.

I would like to clarify the government's position. The issue here is not whether the CRTC is complying with the charter. As I mentioned, the charter applies to the CRTC, and mechanisms are already in place for people if they feel that the CRTC is not complying with the charter. For example, they can challenge a CRTC decision in federal court.

To answer your question, I should say that Bill C-10 does propose to add paragraph 11.1(1)(c) to the Broadcasting Act, which gives the CRTC the power to make regulations respecting:

- c) supporting participation by persons, groups of 10 persons or organizations representing the public interest in proceedings before the Commission under this Act.

Once again, the bill includes measures to ensure the sustainability of funding for public interest groups by providing funding for those groups, as required.

**Mr. Alain Rayes:** I hear what you're saying. The intention to set up a fund is noble. I understand that the fund does not exist yet. The CRTC will set it up with the powers it will have under this bill.

Having said that, you talk about groups or individuals representing interests. To me, that's the problem. What about a YouTuber, a Canadian who is not representing someone else's interests, but who, as an individual, might feel aggrieved and have some questions about it? There are thousands of individuals like that in this country. It might be a teacher, a citizen or a politician who has a large following and posts programs or content online. Ordinary people would not have access to the fund if they feel aggrieved, because they do not represent an interest group, they just represent themselves.

Am I mistaken?

**Mr. Thomas Owen Ripley:** Thank you for the question, Mr. Rayes.

I have two points to make in response.

In fact, a fund already exists to support public interest participation in CRTC processes in broadcasting. It's called the broadcasting participation fund. The problem is that there is really no long-term funding to support the activities of the broadcasting participation fund. The fund has supported a number of organizations that have intervened in cases before the CRTC. I gave Mr. Aitchison the example of the Public Interest Advocacy Centre. It is an example of an organization that is trying to ensure that the interests of Canadians are taken into account. I am currently on their website.

• (1235)

[English]

Their mission is "To help Canadians save money and feel respected in the provision of regulated services", and the vision of the organization is "To ensure no Canadians are taken advantage of in the provision of essential, needed regulated services."

[Translation]

We can see that the Public Interest Advocacy Centre is very active in the CRTC processes.

Once again, we recognize that there is a problem with funding, so we want to make sure that the CRTC has the power to go ahead

and create a fund like the broadcasting participation fund that will support those organizations in the long term. That is why the bill is proposing to add paragraph 11.1(1)(c) to the act.

**Mr. Alain Rayes:** That's fine.

Throughout the consultations that we held during the consideration of the bill, we heard from many witnesses, but no one representing individuals who use social networks came to speak. We did not invite them because it was not part of the initial version of Bill C-10. The bill took a different turn only afterwards, when we started looking at the amendments. So the people who felt aggrieved by the bill along the way have not had an opportunity to speak out on this.

Let me ask you my question. This will be my last question, because I want to give the floor to my colleagues on the committee who would like to speak to this amendment.

Could an ordinary citizen, who is not a representative of an organization, have access to this fund to participate in public hearings?

**Mr. Thomas Owen Ripley:** If I understand the question correctly, you want to know whether a citizen is able to participate in the CRTC processes and make submissions. The answer is yes.

Of course, I recognize that going through a regulatory process requires an effort on the part of an individual. However, it is possible. A good example is the CBC licence renewal process. The service affects many Canadians. We see that Canadians do make submissions through this process because they have an opinion about the public broadcaster.

So it's possible for someone to participate, but it takes some effort for them to go through the various steps of the CRTC process.

**Mr. Alain Rayes:** Mr. Ripley, when you say that people can make submissions, do you mean that they can go and testify, or ask to testify, at the hearings, or that they can make submissions in order to have access to the fund to help them in their work so that they can testify at the hearings?

**Mr. Thomas Owen Ripley:** I'm sorry, your question was about whether the funding will be available.

My understanding is that the broadcasting participation fund, to which I referred, is limited to groups and organizations representing consumers who have a non-commercial interest.



Could the proposed subsection 11.1(1) be used to create a fund to support individual participation? The answer is yes, absolutely. Paragraph 11.1(1)(c) provides for “supporting participation by persons”, so this power is provided. However, if we ever want to move in that direction, the mandate of the broadcasting participation fund may need to be amended.

• (1240)

**Mr. Alain Rayes:** So, we agree that, right now, the wording you read to us says that it could be individuals, but those working in an interest other than their own.

The CRTC would have to modify this fund to allow one person alone to apply for funding to prepare for CRTC public hearings. The individual would not have access unless they represent an interest group. It is possible that this could be done in the future, but to date, it has not been allowed.

**Mr. Thomas Owen Ripley:** The purpose of proposed paragraph 11.1(1)(c) is to ensure representation of the public interest. Of course, if it is used to support an individual, the individual's participation in a CRTC process must be related to the public interest.

If this relates to the regulation of broadcasting activities, again, in the vast majority of cases, individuals will not be considered broadcasters. Proposed subsection 2(2.1) is very clear with respect to individuals who use social media: they are not considered broadcasters and are therefore not subject to CRTC regulation, regardless of their number of followers and their revenues. Again, someone who has a large following on social media will not be subject to CRTC regulation as a broadcaster.

**Mr. Alain Rayes:** That's fine.

Thank you very much, Mr. Chair.

[English]

**The Chair:** Mr. Shields.

**Mr. Martin Shields:** Thank you, Mr. Chair.

I appreciate the conversation. A couple of things come to mind. Recently, the CRTC was in the news when they said that after Thursday's decision, the regulator essentially set aside rates established in 2019. The reason I bring it up is that we talk about transparency. To me, this amendment leads to more transparency. We had a decision that was made, and in the news recently, with no minutes and no recorded votes. You don't know what the discussion was. When they had the open one that they went through with the CBC, there were transparent hearings, absolutely.

This concerns me in the sense that this amendment might bring more transparency to the decisions they're making. Now there are no recorded minutes. There are no recorded votes. I compare that with my involvement in municipal government. It's always out there, in front. You have to be very transparent in what you do. It's all on the record. To me, this provides another safeguard for that. I think the amendment provides that.

Mr. Ripley, I really appreciate your advice and your opinions on this, but to me, that piece is important in the sense of transparency. The CRTC doesn't operate as an elected body. It's an appointed one. They can be behind that screen that's provided for them. This, to me, is another level of transparency for elected people. We've

moved into an area that will be very challenging, with very much interest in how a decision's made. This amendment will provide just a little bit more of that transparency on the decisions and on what they're doing.

I don't think it is now, as a body or as a board. They can have all sorts of discussions with no minutes of those discussions and no records of votes or rationale for what they're doing. This recent decision a week ago was very controversial. They changed their 2019 decision to the one they'd suggested the other day. Again, that has created lots of discussion out there on both sides, but there's no background information.

What I think we're talking about with this amendment is having a legal opinion out there and having it be public, having it in the Gazette. I think it would provide more of that level of transparency that we need going forward with this piece of legislation.

Thank you, Mr. Chair.

• (1245)

**The Chair:** Mr. Waugh.

**Mr. Kevin Waugh:** Thank you, Mr. Chair.

I'll keep it very short. A number of us here are former members of ACTRA. They're heavy lobbyists, of course. I bring it up because—

[Translation]

**Mr. Martin Champoux (Drummond, BQ):** A point of order, Mr. Chair.

Mr. Waugh's camera is not on. We can't see his sweet face.

[English]

**The Chair:** Yes, it's a good point.

**Mr. Kevin Waugh:** I totally apologize.

**The Chair:** You just made everyone happy. Go ahead.

**Mr. Kevin Waugh:** Thank you, Mr. Chair, and thank you, Mr. Champoux, for pointing that out.

I will say that a number of us here were probably members of ACTRA at one time, whether you had a cooking show or you were on CTV or wherever. We didn't know what ACTRA did. They were a heavy lobbyist group of the government, with many of their interventions going to the CRTC. As employees paying their dues to ACTRA, we never knew what was going on, and we still don't, to this day.

That's wrong, because when you pay dues, you always find out maybe a year later. You never find out when they do make an intervention on behalf of the members. I think Mr. Shields and Mr. Rayes were right. At times, you'll find out something, but it's always after the fact. I just wanted to bring that up.

Mr. Ripley, you've done a very good job here this morning of explaining the YouTube thing, because I think there are many out there listening today who would say that the CRTC makes too many small decisions for getting a legal opinion to be practical. You talked about that. Then there are those decisions in the online sphere that should not be taken lightly at all, as we see today on free speech. We don't want them to be able to quickly make hundreds of algorithm changes every day without proactively checking for charter compliance. I make that point because we're going to go after YouTube here and others.

Mr. Ripley, can you explain this a little? I think you've done a very good job here this morning in explaining parts of this, but I think that when you look at YouTube and a single user taking on ACTRA, CDCE and other organizations, you can see where the concern is, because a single user who maybe needs clarification going up against these organizations.... I mean, there is an imbalance there, and right away we would know that.

Do you want to comment a bit on that? I know that you've explained it pretty well, but is there anything else you want to add, Mr. Ripley?

**Mr. Thomas Owen Ripley:** Thank you, Mr. Waugh.

I might make a couple of introductory points and then suggest that my colleague Mr. Olsen jump in, who is very well versed in CRTC processes.

Bill C-10 certainly envisions a transparent process when it comes to questions of regulations or orders. The intention is certainly that anybody who wants to participate in those proceedings would have an opportunity to do so.

Mr. Chair, if you'll permit me, perhaps Mr. Olsen can just quickly jump in and explain how this would work in a typical CRTC process, the kinds of things that would be naturally published on the CRTC's website and the materials that would be made available.

● (1250)

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

**Mr. Drew Olsen (Senior Director, Marketplace and Legislative Policy, Department of Canadian Heritage):** Thank you, Mr. Chair.

When the CRTC initiates a public proceeding, it publishes a notice of that proceeding on its website and, in most cases, in the Canada Gazette. Then it calls for comments. It has rules of procedure around the time periods and the process by which it gets those comments. Sometimes there's even a reply period, during which the commission would give intervenors a chance to reply to other comments. Sometimes there isn't, but that's governed in the CRTC's rules of procedure.

The CRTC then takes all of those submissions and considers only that information that's on the public record—of course, subject to any information that was filed in confidence. Then it makes its de-

cision. For anything that's filed in confidence, the rules say that there must be an abridged version without the confidential information filed. It's usually just financial information. It's usually just numbers that get blanked out. All of that information is available to all the parties, other than the actual numbers. Then the commission takes all of that and makes its decision.

The decision is always published on its website, and the decision is almost always published in the Canada Gazette as well. The CRTC takes transparency very seriously in that regard. It is an administrative tribunal, so if it has failed to follow any kind of due process, then that would be subject to judicial review.

**Mr. Kevin Waugh:** I have one more question for Mr. Olsen, if I may, Mr. Chair.

**The Chair:** Go ahead.

**Mr. Kevin Waugh:** In conventional broadcasting, you'll hear an ad run by the radio station or TV station saying that if you have issues with the station, you can submit it to the CRTC in Ottawa.

How would that work on social media? I have the ad. I know when their licence is coming up because, well in advance, the station does a 30-second ad. There are no ads here. Will there be ads on social media?

Explain this process to me because on conventional TV, they do a pretty good job, when their licence is coming up, of directing you to the CRTC if you have issues.

**Mr. Drew Olsen:** Thank you, Mr. Chair.

Thank you for the question, Mr. Waugh.

Those commercials you refer to are part of the licence renewal process. They are an obligation that the CRTC imposes on licencees to make public the notion that the licence is being renewed and that people can make comments on the conditions of licence.

The situation in Bill C-10 is that the proposal is to move away from a conditions of licence model and towards a conditions of service model. The clause that this committee is currently debating—clause 7 of the bill, which would include proposed section 9.1—does give the CRTC the powers to make orders with respect to conditions of service that would need to be put on. The CRTC would, under the sort of umbrella, or the *chapeau* if you like, of proposed section 9.1, have the ability to make requirements related to CRTC proceedings, such as advertisements of various CRTC proceedings, if it chose to.

That, of course, also depends on what this committee and this Parliament ultimately decide to do on whether conditions of service will have a seven-year maximum duration or whether those will be subject to different periods of review.

Bill C-10 does give the CRTC the power to require, at any time that significant conditions of service are being looked at by the commission, that messages be broadcast by licencees to that effect.

• (1255)

**Mr. Kevin Waugh:** Mr. Olsen, that is the concern I have with the seven-year service, as you know. Every conventional TV and radio station in this country starts advertising—

**Ms. Julie Dabrusin (Toronto—Danforth, Lib.):** I have a point of order, Mr. Chair.

I kind of let it go for a while because we were talking about legal opinions in the broader context, but now we're talking about conditions of licence. I believe that the amendment we're looking at is about independent legal opinions for basically all decisions from the CRTC. I'm paraphrasing it, but there you go.

If the questions and the conversation can focus on that amendment, that would be good.

**The Chair:** Mr. Waugh, I'm assuming that your arch, as wide-swinging as it can be, at some point will come back to the centre. You still have the floor, sir.

Go ahead.

**Mr. Kevin Waugh:** Thank you, Mr. Simms.

Thank you to MP Dabrusin for the reminder. I appreciate that very much.

Thank you, Mr. Olsen. You've put more questions in my mind now than ever with your comments, but I will just leave it at that. I just hope that people in this country go to the Canada Gazette because I never did in 45 years of broadcasting. I hope that everybody in this country realizes that the CRTC does exist and the Canada Gazette will be its mouthpiece. I just thought I would say that.

I really like this amendment by Mr. Rayes, as you know. I think we have to.... All parliamentarians agree that the independent legal opinions are very important in this. That's all I'll say.

Thank you very much, Mr. Olsen and Mr. Ripley, for your time here this morning.

**The Chair:** Mr. Aitchison.

**Mr. Scott Aitchison:** Thanks, Mr. Chair.

I actually want to discuss the broadcasting participation fund again with Mr. Ripley. It does relate, Ms. Dabrusin, to this concept. I hate to think that maybe I'm offending some sensibilities about keeping to point.

I don't suggest for one second that you have such things memorized or have access to them right now, but I'm wondering if we, as parliamentarians, have access to a breakdown of what the budget is, for example, of that broadcasting participation fund.

**Mr. Thomas Owen Ripley:** Mr. Aitchison, you are right that I don't have that figure at the tips of my fingers.

What I can say is the fund has had a multi-million dollar budget over the course of its time, in the course of its existence. To date, it has been funded sporadically by what are called "tangible benefit decisions". When the CRTC approves certain transactions, one company buying another, they divert or require some of the proceeds from that transaction to go towards supporting public interest objectives. That is how the broadcasting participation fund has been funded to date.

The challenge is that there's really no sustainable funding source in place. Actually, its coffers are getting low. Again, one of the reasons the government included this power in proposed section 11.1 was to ensure the CRTC has a lever it can use, other than tangible benefits from transactions to support things like the broadcasting participation fund.

They have supported a number of different intervenors in broadcast proceedings over the years. They do publish an annual report that I think is available on their website. We can certainly get you the link to that if it's of interest.

**Mr. Scott Aitchison:** Thank you.

It really would be. I'm actually very interested. I suspect it's going to grow deeper based on what we're doing—big government, bigger programs to help people fight big government. Anyhow, if you could send a link to that information that would be really helpful.

I'm glad I entertained Ms. Dabrusin there with my final comments.

That's good for me. Thank you, Mr. Chair, for allowing that comment and questioning.

• (1300)

**The Chair:** Thank you.

Mr. Shields.

**Mr. Martin Shields:** Mr. Chair, I have a point of clarification for those on the committee and those listening.

You're referring to a clock and you're referring to timing. Could you clarify what would occur when that clock runs to zero?

**The Chair:** When it runs to zero, we proceed directly to clause-by-clause consideration, and there will be instructions with it as we go along, as you know. Based on what we received from the House, which the majority of the members voted on, we have our instructions.

We'll have five hours of debate, and then we go straight into clause by clause.

**Mr. Martin Shields:** Clause by clause in committee...?

**The Chair:** Correct.

**Mr. Martin Shields:** Okay. Thank you.

**The Chair:** Was that it? Was that all?

Mr. Louis.

**Mr. Tim Louis (Kitchener—Conestoga, Lib.):** Thank you, Mr. Chair. I appreciate the time.

As far as CPC-9.5 is concerned, I think we've discussed it at length. I'll still maybe have another question at the end of my comments, but I believe that would just really slow down the process.

From the beginning, we've heard from stakeholders and we've heard from experts that in updating Canada's Broadcasting Act it's necessary to include digital platforms. We can't spend more time doing this. These digital platforms that act as broadcasters have to be subject to the same legislative and regulatory conditions that apply to traditional Canadian broadcasters.

Every day things get slowed down, our artists are losing income by not having a level playing field. I know this from personal experience. I've sat here and I've listened and I've heard members from the other side now start to attack some of the organizations for the lobbying, ACTRA or SOCAN or others. These are the same organizations that many of us belong to or have belonged to, and so do I. They make up the arts industry and the cultural industry in our country, and we have an obligation to support them. Making art takes years of dedication, and that requires support.

We get more of what we support and we get less of what we don't. We need to move forward in a quick way, and most of us on this committee have done that. My concerns are that some members are taking the side of these big tech companies opposed to our arts community, especially during a pandemic when they're struggling, every stage in the world is dark and people couldn't perform, and they're relying on that passive income for the writing they're doing, for the performances, the things they're putting on Spotify and YouTube, and all they're asking for is a level playing field.

When one of the members in an article in the Lethbridge Herald, I believe, referred to these artists who rely "on government grants in order to continue to exist" and who "are producing material that Canadians just don't want", those are our neighbours. Those are our Canadian artists. We deserve to move as quickly as possible to level this playing field and give them a chance to make a living.

**Mr. Kevin Waugh:** I have a point of order, Mr. Chair.

[*Translation*]

**Mr. Alain Rayes:** A point of order, Mr. Chair.

[*English*]

**The Chair:** One moment, please. I have two points of order. I have Mr. Waugh first and then Mr. Rayes

Go ahead, Mr. Waugh.

**Mr. Kevin Waugh:** Thank you, Mr. Chair.

Nowhere is he talking about the amendment that we're bringing forward. I got called on it about five minutes ago. I can see that the member is not talking about what we have in front of us.

**The Chair:** I'm generous to an exponential degree; however, Mr. Louis, with the wide arc you're swinging, I'm assuming that you're

coming back to the point of the amendment. You first started out by talking about CPC-9.5.

In the meantime, I also have Mr. Rayes with a point of order.

Is it on the same topic, Mr. Rayes?

[*Translation*]

**Mr. Alain Rayes:** I did want to raise the same point as Mr. Waugh. However, I also wanted to ask that we end the meeting, since we have another meeting this afternoon. We also have oral question period soon, and we'd like to try to eat a little. Yesterday, we all had to skip dinner.

[*English*]

**The Chair:** Yes, I'm hungry for a muffin as well.

There are two things there. As far as your point of order is concerned, you're on a point of order, so I can't let you move a motion to adjourn.

That being said, we are slightly five minutes past. I do provide leeway towards the end for folks who would like to come back from voting, so there's a lag time there. We are under implied consent, as I've said many times, around one o'clock. Mr. Louis is in the middle of his thoughts. I like to let people finish their thoughts, and then we can make a decision from there.

Mr. Louis, you have the floor.

• (1305)

**Mr. Tim Louis:** Thank you, Mr. Chair.

I appreciate everyone's need to let free speech be a thing. I can tell you right now, as an artist myself, that artists on the front line of free speech believe that everyone has a right to be heard.

As far as some of these amendments are concerned, I think that CPC-9.5 would bring things to a standstill in terms of decisions that are up for review. However, in a broader stroke, this is not about free speech. This is about supporting artists and having on a level playing field.

I wonder, in my final questions, if Mr. Ripley would give his opinion on whether he thinks the CRTC and its independent legal counsel is sufficient in terms of where it's at right now.

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

**Mr. Thomas Owen Ripley:** The government's position is that the CRTC is bound by the charter. It needs to respect the charter, and its independent legal counsel will help it do that. If ever there is a question about its not having respected the charter, there are meaningful avenues of recourse available where individuals or organizations can have oversight from the federal court system.

As I indicated to Mr. Rayes, if the objective is to make sure that there's a way that third parties can put legal opinions on record, have them made public and have them considered by the CRTC, the government's position is that this is already able to happen under the framework in Bill C-10, as Mr. Olsen outlined. There is a process whereby anybody can make a submission to any kind of CRTC proceeding. Therefore, if there are individuals or organizations wanting to put on record a legal opinion that speaks to the issue of charter and have that be part of the public record, part of the proceedings that the CRTC must consider, then there is already a way for them to do that under Bill C-10.

**Mr. Tim Louis:** Thank you.

I'll ask a quick question, Mr. Ripley.

Whether it's in some of these amendments that we're talking about now or in proposed section 2.1, individual Canadians who use social media platforms are not subject to regulation by this update of the Broadcasting Act. Is that correct?

**Mr. Thomas Owen Ripley:** Yes. Proposed section 2.1 provides that individuals who use social media are not to be considered broadcasters for the purposes of the act unless they are, in some way, affiliated with the social media service. Again, that is irrespective of how many followers they have, even if the count is into the millions, or how much revenue they make. They are not to be considered broadcasters under the Broadcasting Act and are not subject to CRTC jurisdiction thereof.

**Mr. Tim Louis:** Thank you very much.

As a committee member here—

[*Translation*]

**Mr. Alain Rayes:** A point of order, Mr. Chair.

[*English*]

**The Chair:** One moment, please.

You have a point of order, Mr. Rayes.

[*Translation*]

**Mr. Alain Rayes:** I don't know whether Mr. Louis is almost finished, but I see that the meeting has already been extended by more than eight minutes. I know you don't want to interrupt him and you

want to let him finish, but there will be another meeting this afternoon.

[*English*]

**The Chair:** Okay. Thank you.

[*Translation*]

**Mr. Alain Rayes:** We will get the five hours of debate.

[*English*]

**The Chair:** I understand.

[*Translation*]

**Mr. Alain Rayes:** No worries about that.

[*English*]

**The Chair:** Okay.

Mr. Louis, back to you. You have the floor.

**Mr. Tim Louis:** I appreciate that, Mr. Chair.

I've been waiting a while to get my comments in.

I will simply close by saying that, as an artist, I'm going to continue fighting for artists, and many of the people in this room are. I have no problem going back to my constituents and saying that we stood up for our arts community. I certainly hope that everyone in this committee has the opportunity to go back and talk to their arts stakeholders to see what they have to say.

Thank you for your time.

**The Chair:** Mr. Shields.

**Mr. Martin Shields:** I move a motion to adjourn.

(Motion agreed to)

• (1310)

**The Chair:** The Zoom coordinates for this afternoon's meeting have been sent to your inboxes.

In the meantime, we'll see you at 3:30 eastern time this afternoon.

The meeting is adjourned.





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