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—
Chair

Mr. Gary Schellenberger

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• (1535)

[English]

The Chair (Mr. Gary Schellenberger (Perth—Wellington, CPC)): I call this meeting to order.

I understand Mr. Fast has something to say first, please.

Mr. Ed Fast (Abbotsford, CPC): Mr. Chair, Mr. Patrone is here before us. His nomination was tabled in the House this morning, I believe. Can someone confirm that? Can our staff confirm that his appointment was tabled this morning? That's my understanding.

A voice: Yes.

Mr. Ed Fast: All right.

I just want to confirm that this hearing is proceeding under Standing Orders 110 and 111, and that we will proceed on that basis.

The Chair: All in favour—

A voice: Is there a motion, Chair, as opposed to...?

Mr. Ed Fast: I think if he weren't an appointee, it would have to come under a different standing order.

Hon. Mauril Bélanger (Ottawa—Vanier, Lib.): If you read the motion I presented, it said it's with regard to his appointment with the CRTC.

Mr. Ed Fast: Then I think we're all on the same page.

The Chair: Welcome to meeting 21 of the Standing Committee on Canadian Heritage. Pursuant to Standing Orders 110 and 111, we are considering the appointment of Marc Patrone as a member of the Canadian Radio-television and Telecommunications Commission, the CRTC.

Welcome, Mr. Patrone.

Mr. Bill Siksay (Burnaby—Douglas, NDP): On a point of order, Mr. Chair, I'm confused now with the number of standing orders that have been thrown around.

The agenda today says "pursuant to Standing Order 108(2)", and Mr. Fast has introduced some other numbers. Without a copy of the standing orders in front of me right now, I'm concerned that there is something I need to know about here. Could you explain why the agenda differs from what you just said?

The Chair: Mr. Patrone has been gazetted and then presented as a member of the CRTC. With that, he is a member of the CRTC and has been gazetted and presented to the House of Commons. When the bulletin was put together, he was not yet a member; he had not passed through that. He was then coming before the committee under Standing Order 108(2). Now he's under Standing Orders 110

and 111 as a member of the CRTC, and the questioning is pursuant to that.

Welcome, Mr. Patrone. We'll start with your opening statement, please, sir.

Mr. Marc Patrone (Designated as member of the Canadian Radio-television and Telecommunications Commission (CRTC), As an Individual): Thank you, Mr. Chair, members of the committee, and assembled guests.

I'd like to thank you all for the opportunity to meet with you and talk with you about my recent appointment as a full-time member of the Canadian Radio-television and Telecommunications Commission.

As you know, the CRTC oversees the broadcasting and telecommunications industries. These two industries employ thousands of people and occupy a vital place in the daily lives of Canadians, so this is, without a doubt, a very important appointment, and one I take very seriously. It's only natural that the members of this committee do too.

Before I get to my qualifications, please allow me a minute to tell you a little bit about myself.

I was born and raised in Toronto. I'm a first-generation Canadian. My parents came to this country from Italy during the 1950s. Were they alive today, I have no doubt they would be extremely proud of this appointment. Those with immigrant parents will know what I mean.

Many of my relatives came through Pier 21 in Halifax before moving on to Toronto, where most of them still live. While I was growing up, my family was very much involved in the city's Italian community, and my upbringing gave me a strong appreciation for Canada's multicultural society.

I attended Centennial College, where I completed a three-year broadcasting course. Not long after my graduation, I began working full time at Citytv and later at MuchMusic. My duties were mostly of a technical nature for the first seven years of my career. It was there the CRTC and its rules and regulations all became part of my daily working life. In master control, for instance, we had to stick to content and regulatory rules.

Those were the early days, especially in television, and Citytv was breaking new ground by airing cutting-edge programs, which meant we all had to be mindful of the CRTC's rules. Words like satellite coordinates, simulcasts, Canadian content, cable TV, and specialty channels all became part of my vocabulary and stayed there as I went to work for MuchMusic.

I later worked in the cable industry with CUC in Scarborough and gained an appreciation for community access television. Within nine months I'd caught the attention of what was then ATV and was soon working for CHUM all over again, this time in the Maritimes, managing a news bureau in Bathurst, New Brunswick. It was a one-person operation, and for two and a half years I pretty much did it all. It was everything from dealing with satellite feeds to meeting the editorial demands of a huge area stretching from Quebec to the fishing communities along the Acadian Peninsula and south to the Miramichi.

• (1540)

[Translation]

I quickly gained an appreciation for the issues associated with broadcasting in the regions. I also learned some French during my time in Bathurst, which has given me a foundation I intend to build upon.

[English]

I've spent the last 14 and a half years at CTV Atlantic, working as a reporter, producer, writer, and anchor. Nine of those years were spent covering the Nova Scotia legislature, during which time I covered three premiers and eight provincial budgets.

Business reporting became a keen interest of mine, and I filed for *Report on Business TV*, as well as for *CTV National* and *Newsnet*.

Three years ago I was invited to run as a Conservative in Dartmouth—Cole Harbour. As an immigrant son from a humble background, I was genuinely thrilled to have been offered this opportunity. I thought long and hard about it and considered several factors before reaching my decision. As a journalist, I had spent almost a decade covering politics and had developed a keen interest in public policy issues. I was also eager to take on a new challenge.

It soon became obvious that there would be no election, and rather than remain in limbo I returned to CTV after an absence of only four weeks. I was happy to return to what I had been doing for almost a quarter of a century by that point. That was three years ago, and I have not been politically active since.

I'm proud to say I went on to do perhaps much of my best work when I returned to CTV. I continued to increase my profile and gain the respect of colleagues in the industry. My stories were regularly picked up by CTV's national affiliates and other national networks.

One of the most important lessons I learned as a TV journalist was that I had to be accountable to viewers. I had to earn their trust each and every day. You can be sure that viewers let you know whether or not you're doing a good job.

Although my appointment to the CRTC marks the beginning of a new chapter in my life, I see my role in a similar light. We must never lose sight of the fact that the airwaves belong to the public. We

must ensure that Canadian voices are heard and Canadian stories are told throughout our broadcasting system.

This is a critical time for the broadcasting and telecommunications industries. As you know, the world is changing when you can view TV clips on your cellphone or sign up for home phone service with a cable company. It's an exciting time to join the CRTC, and I'm absolutely thrilled about the opportunity to bring another east coast perspective to the regulator.

Given my understanding of the realities of life outside central Canada and my experience in broadcasting, I look forward to making a positive contribution to the commission.

I would be happy now to answer any questions you might have. Thank you.

The Chair: Thank you for that.

Mr. Regan.

Hon. Geoff Regan (Halifax West, Lib.): Thank you very much, Mr. Chairman.

Through you, Mr. Chairman, to Mr. Patrone, welcome to Parliament Hill. You have interviewed me in Halifax, of course, before. It's kind of interesting to have this reversal of roles, as you can imagine.

Mr. Marc Patrone: "Interesting" is a good word.

Hon. Geoff Regan: It doesn't happen a whole lot for us politicians.

As you understand, I'm sure, it is the responsibility of us on the committee to examine the decision of the government in relation to your appointment. So we have to talk about your qualifications and your background; you understand that. The intent here is to focus on the government's decision itself. That's what this is all about. So if I can—

The Chair: Excuse me. I think we're interested in the qualifications of the applicant, not the government's decision.

Hon. Geoff Regan: Mr. Chairman, with all due respect, the reason we're interested in the qualifications of the applicant is that we're here to hold the government to account to consider its performance in making decisions, and in this case the decision to appoint this particular applicant to the CRTC.

So I would argue that that's the reason we're looking at the qualifications.

The Chair: I would argue that we want to know the qualifications, yes. Ask questions about the qualifications of Mr. Patrone.

Hon. Geoff Regan: Thank you.

Now let me talk about your background a little bit in terms of your business experience, if I may.

Prior to February 26, what was your position with a company listed with the Registry of Joint Stock Companies as Alivion Entertainment Inc.?

Mr. Marc Patrone: Mr. Chair, through you to the member, that was my wife's company. I had co-signed a loan because she needed my help in order to gain financing. She ran the company. As you can well appreciate, I had a career and a full-time job, so I was in no position to get too involved with my wife's endeavours. However, she did run it for a while, and I was listed as co-signing for financing. I believe I was listed as a director. I'm no longer listed that way.

•(1545)

Hon. Geoff Regan: Mr. Chair, through you, just to be clear, I don't think anybody would say there's a problem with the fact that somebody has had difficulties in a business; whether it was you personally, your spouse, or what have you, the fact is that there are lots of entrepreneurs who become multi-millionaires who had problems and setbacks along the way. That isn't the concern I have.

The concern is that you were listed as secretary of the company until February 26, which was the same day as the story appeared in the *Chronicle Herald* in Halifax that you were being appointed to that. The question I guess it raises is, were you in fact trying to sanitize your resumé by coming off the company at that time because it was having problems?

Mr. Ed Fast: On a point of order, Mr. Chair, that's totally inappropriate.

What Mr. Regan is trying to do is dig into the personal life of Mr. Patrone and avoid focusing on the qualifications he brings to this job. We've already established that this is a review under Standing Orders 110 and 111. It's appropriate for Mr. Regan to address questions to Mr. Patrone on his qualifications. I think we're already starting to diverge from that.

The Chair: Again, I must say we're worried about the qualifications of Mr. Patrone in this particular instance. We're not going to go off stream here. So ask about qualifications, please.

Hon. Geoff Regan: Mr. Chairman, if I may, as we know, the CRTC will be engaging in a huge hearing in April that deals with enormous fees for carriage. In the matter of business judgment, the questions of how you perform and if you are trying to hide something when you're being appointed, I think, are very relevant in terms of qualifications, for that reason. I guess my question stands: were you trying to sanitize your record on the day this came out?

Mr. Marc Patrone: Mr. Chair, I would ask the member to clarify what he means by "sanitize".

Hon. Geoff Regan: Let me put it a different way. Why would it happen on the very day that the story appeared in the *Chronicle Herald* that you were removed as secretary—and maybe director as well, I'm not sure—of the company?

Mr. Marc Patrone: My record as far as this company is concerned is a matter of public information. I believe my wife was about to close the store anyway, or had already done so. There was no point in my remaining as director or secretary of any company that was no longer a going concern. It's a coincidence.

Hon. Geoff Regan: Fair enough. Okay.

Let me ask you this. How were you approached about the job?

Mr. Marc Patrone: My dealings have been with Heritage throughout the entire endeavour, Mr. Chair. I dealt with, and I'll try to pronounce the gentleman's name correctly, Paul Enwerekowe.

Hon. Geoff Regan: You were never approached by Andrew House, by Jordi Morgan, by John MacDonell, or by Peter MacKay about this?

Mr. Marc Patrone: I was given a call by Mr. MacDonell. It was a call asking if I had any interest, informing me that there was an opening. Mr. MacDonell contacted me in December. He wanted to know if there was any interest on my part in putting my name forward and that if there was, I should be in touch with the department that oversaw the CRTC, Canadian Heritage.

The Chair: Thank you.

Hon. Geoff Regan: Is my time up?

The Chair: I think time's up, yes.

Ms. Patrone. Oh, I'm sorry, Ms. Mourani.

Some hon. members: Oh, oh!

An hon. member: There's a conflict.

The Chair: Excuse me. It was my mistake, but at least we got a laugh out of it, and that's good.

Ms. Mourani, please.

[Translation]

Mrs. Maria Mourani (Ahuntsic, BQ): Mr. Patrone, thank you for being here today to answer questions about your appointment. I would like some clarification about how you were recruited. So my questioning is a bit along the same lines as Mr. Regan's. You mentioned Mr. MacDonell, and I must admit that I do not know everyone. Who is Mr. MacDonell?

•(1550)

[English]

Mr. Marc Patrone: Mr. MacDonell, I believe, works—

Mrs. Maria Mourani: Mr. MacDonell, okay.

Mr. Marc Patrone: He was a lawyer in Halifax, somebody I had interviewed, as I had Mr. Regan, on a number of issues that had come up over the years. He subsequently moved to Ottawa and I believe works in the department of Minister MacKay.

[Translation]

Mrs. Maria Mourani: Thank you. He is Mr. MacKay's chief of staff. So he contacted you and asked you to apply, if you were interested, to Canadian Heritage. Is that right?

[English]

Mr. Marc Patrone: That's right. We spoke a little bit about the position. He contacted me while I was still an employee at CTV. He called me while I was there, and I—

[Translation]

Mrs. Maria Mourani: You were still working at CTV.

[English]

Mr. Marc Patrone: Very much so.

The Chair: Can we make sure we get to some qualifications here too? I'd like to find out Mr. Patrone's qualifications.

[Translation]

Mrs. Maria Mourani: Yes, I'm coming to that, Mr. Chairman.

Did you know Mr. MacDonell before that? Was he a friend of yours? Did you know him before as a journalist or...?

[English]

The Chair: Go ahead, Mr. Fast.

Mr. Ed Fast: I have a point of order, Mr. Chair. I've tolerated this for the last five to 10 minutes. It's an attempt to go outside the scope of this particular hearing. This is simply to establish the qualifications of Mr. Patrone. We all understand that. This is not about the process by which he was actually nominated. That's the prerogative of the government.

Could we please, Mr. Chair, focus on the scope of this particular committee meeting—the qualifications of Mr. Patrone? I'd be glad to start questioning if they're not prepared to ask those questions.

The Chair: I must say that I've tried to stay on course. This will be about qualifications.

How governments go about filling some of these positions has, I suppose, gone on before. I'm just asking the committee to ask for qualifications and to try to stick a little closer to that. If there is anything else but that, or if we're going to stay on that type of questioning, then I will have to make a ruling.

Go ahead, Madam Fry.

Hon. Hedy Fry (Vancouver Centre, Lib.): Mr. Fast presented a point of order. I would like to ask you a question with regard to that point of order.

If qualifications alone are what we discuss when we discuss an appointment, surely in terms of transparency and all those other reasons, one may ask questions about a conflict of interest or about ethical breaches that one feels may make a person not qualified on that basis. Qualifications, in my understanding, when one interviews anyone, are not only about their academic past or what their job description is or has been; it is to determine whether or not the person is ethically and in other ways fit or qualified to be doing the things that they're doing. These are public positions.

I believe that some of the questions being asked are within that prerogative with regard to ethical and/or different qualifications. Surely if all we're going to talk about is academic and work qualifications, we are missing the point of this whole thing.

The Chair: I will ask Ms. Mourani to please continue with her questions and to try to keep them to the qualifications of our witness.

[Translation]

Mrs. Maria Mourani: How much time do I have left, Mr. Chairman?

[English]

The Chair: You have three minutes left. During the—

[Translation]

Mrs. Maria Mourani: Thank you, Mr. Chairman.

Mr. Patrone, if I am asking you how you knew Mr. MacDonell, it is because I am trying to understand the difference between you and

someone else with the same qualifications. That is what I am trying to understand, Mr. Chairman.

You say that you applied for the position. Were there other candidates? How did this actually work? Why were you the person chosen for the position?

• (1555)

[English]

Mr. Marc Patrone: The member asks a valid question.

Frankly, I don't know if there were other candidates spoken to. That is perhaps a question for officials over at Canadian Heritage. There may very well have been.

In terms of my own qualifications, you have seen my CV. I have 27 or 28 years' experience in the industry. Most of that time was spent as a journalist, although some of that time was certainly spent, Mr. Chair, on the technical side of the business.

Why was I chosen? I suspect it had a lot to do with what I bring to the table in terms of that experience. As you are aware, the CRTC oversees broadcasting. There is a journalist already among our commissioners. Perhaps I bring an east coast perspective to the proceedings. We didn't have an Atlantic representative among the national commissioners. Now we do. We do have a regional commissioner who is from Nova Scotia, but not on the national side.

I believe I was chosen because of what I bring to the table in terms of those skills, and whether or not other people were interviewed for the position, I cannot say, Mr. Chair. I simply don't know.

Other people may very well have been interviewed, but let's face facts. Not everybody who lives in Atlantic Canada, with those types of qualifications, wants to move to Ottawa. Some people want to continue living there.

[Translation]

Mrs. Maria Mourani: I understand that you are saying that you simply submitted your name and that you had the required qualifications for the position and therefore you were chosen. It has nothing to do with your political choice, nothing to do with your connections with the Conservative government, even though Mr. MacDonell allegedly called you about this. In your opinion, it is because of your skills and not because you had run as a Conservative party candidate or because you knew Mr. MacKay's chief of staff. It has nothing to do with any of that, but only because of your skills that you were chosen, is that right?

[English]

Mr. Marc Patrone: The member encapsulates my thoughts entirely.

The Chair: Thank you very much.

Mr. Siksay.

Mr. Bill Siksay: Thank you for coming today, Mr. Patrone.

I want to get at what you bring to the job and why you would have been recruited for it. I gather you were recruited and didn't apply. This wasn't your initiative, to seek an appointment to the CRTC.

Mr. Marc Patrone: On the initial interest, frankly, I didn't know there was an opening on the CRTC. I was just going about my business as a journalist, as I had been for many years, through you, Mr. Chair, and there was an expression of interest on the part of officials with the government. When I was told about the position, it immediately struck me as something I would love to do, having been involved in broadcasting for a long time. To be involved in the regulatory side, frankly, struck me as being an incredible opportunity, so I took whatever steps I needed to take in order to make sure that interest was reciprocated.

Mr. Bill Siksay: In that initial conversation, was there any discussion of your qualifications and what explicitly you'd bring to that position when they were recruiting you? Did they discuss the kinds of qualifications you had and what was needed for the position they were looking at?

Mr. Marc Patrone: There was a lengthy process that went on, through the initial expression of interest to the point at which the appointment was made, and that process included an interview involving a number of people—Mr. Enwerekowe being one of them. There was someone from the Prime Minister's Office, a special assistant to the Minister of Industry, as well as the director general for broadcasting policy and programs at Canadian Heritage.

There was a very structured process that led to this appointment. A date for the interview was set up through a conference call. There were fairly lengthy periods in which, I take it, there were deliberations over my qualifications among members who were part of the committee that decided to pick me. As you're aware, it went up for cabinet approval, and that's where we are at this point. It took a while to get to this point.

• (1600)

Mr. Bill Siksay: Did you get the sense that the interview was a make or break part of the process, or was that just to get to know you further and the decision had already been made? Was that an evaluation of your qualifications, or was it another chance to get to know somebody who was already on track to be appointed?

Mr. Marc Patrone: Mr. Chair, the questions were forwarded to me half an hour... There were rules set forth before the actual interview began. The questions were largely about issues around the CRTC. It wasn't at all about me in terms of what I bring to the table. It was about the CRTC, what they do, about policy. There were issues around this: if this were to happen, how would you deal with it? It was really of the skill-testing variety, I would suggest, Mr. Chair.

Mr. Bill Siksay: Did you ever see a list of the kinds of criteria they were looking for—skills and competences they were looking for—in a member of the CRTC?

Mr. Marc Patrone: Mr. Chair, I went on the website and I studied past decisions of the CRTC. I did much reading about what the commission has done over the years. I checked the biographies of the other commissioners.

Mr. Bill Siksay: But you never saw a list of skill-based competences or anything like that that they'd be looking for in someone who was being considered for a position at the CRTC.

Mr. Marc Patrone: Mr. Chair, I really get the sense that there's no desire on the commission to have a cookie-cutter list of commis-

sioners. In other words, they have excellent commissioners currently serving. I don't believe there's any desire on the part of the commission to have everybody have the same set of educational backgrounds, the same skills. I think the commission is stronger because of the variety that the various commissioners bring to the table.

Mr. Bill Siksay: Mr. Patrone, in terms of preparing to appear today before the standing committee, did anyone assist you in preparing for this meeting or brief you ahead of time? If so, who was it who helped you out today?

Mr. Marc Patrone: Are you talking about the briefings, like about the questions that were going to be asked?

Mr. Bill Siksay: Yes, that kind of thing, or just what...to prepare you for the meeting today.

Mr. Marc Patrone: Yes, I've worked with the communications staff at the CRTC concerning what might be asked.

Mr. Bill Siksay: Was there any political staff?

That was a no?

Mr. Marc Patrone: That was a no.

The Chair: Your time is up, Mr. Siksay.

We'll go to Mr. Fast, please.

Mr. Ed Fast: Mr. Patrone, I'm glad to hear you investigated the CRTC and its role. I was really pleased to hear that you had looked at some of the biographies of the current members on the board.

In going through those biographies, were there any individuals on the board who actually bring broadcast journalism experience to the board? If so, how many?

Mr. Marc Patrone: I would say Michel Morin is the closest one in terms of the skills that I would bring to the table. Monsieur Morin has impeccable credentials as a reporter and he has worked in foreign bureaus. I've had a chance to have lunch with him to pick his brain and to allow him to work on his English while I worked on French. He represents Radio-Canada, of course. That's what he brings to the table, anyway, in terms of his background from Quebec.

Frankly, I think it's a nice balance to have somebody from the private side, from eastern Canada, who perhaps also has the journalism background, but from a slightly different perspective—from the private broadcast side rather than the public.

Mr. Ed Fast: Are you saying you're bringing to the table a regional view that may not be reflected in the CRTC right now, at least on the board. You're also bringing a TV broadcast journalism perspective to the table that may not be as prominent on the board right now.

Mr. Marc Patrone: I would say we have an excellent regional commissioner. Elizabeth Duncan has been there for a while. She brings excellent credentials from an accounting background. Until now, we didn't have anybody sitting as a national commissioner from that part of the country.

So I would say yes, that's true. I have some radio background, but most of it, as you've seen, is on the television side.

•(1605)

Mr. Ed Fast: Let me go through your background. I think I'll go backwards and list some of the employment history that you've given to us.

Just before your appointment you were a broadcast journalist with CTV Atlantic in Halifax. That was for 14 years.

Mr. Marc Patrone: That's correct, fourteen and one-half years. I started in September 1993.

That was a return to CTV. I had actually worked in New Brunswick for two and one-half years, where I ran the bureau. So I gained an appreciation of life in the Maritimes, in that part of the Maritimes. That was from about 1990 to 1992.

Then I moved to Halifax, where I worked for a Global affiliate and then spent some time at Broadcast News/Canadian Press, before returning to CTV in 1993.

Mr. Ed Fast: You've also had some public television experience, public access television.

Mr. Marc Patrone: Yes, it was a fairly brief experience, but it was a perspective that I appreciated, working for a cable company. It's part of what the CRTC does.

Mr. Ed Fast: If you could extract two or three key skills you developed through your many years of broadcast journalism, skills that might contribute to the debates at the CRTC board level, what would they be?

Mr. Marc Patrone: When you look at a hearing, it's very much Q and A on the part of the commissioners and the various people who appear—as I am appearing here today to answer questions. A journalist brings to the table powers of analysis, interviewing skills, skills and abilities associated with having access to information, absorbing it, getting the essence of that information, and being able to draw from the various people being interviewed facts associated with what they're trying to say.

I would say interviewing skills, skills of analysis, communication skills. Certain comments have been made, perhaps, about my lack of skills as an executive. Now, I'm not saying that those skills are not valuable, but I would suggest that the skills of a journalist are equally valuable. You're on the ground dealing with people constantly, dealing with the public. Managerial abilities are already well represented on the commission. The position of a commissioner is not managerial in nature. You do not have a staff of dozens who report to you. You work with staff, you consult with staff, staff come to your office. There is that back-and-forth of information. There's also give-and-take between commissioners, where you communicate between commissioners, talk about different positions. Those communications skills are also incredibly valuable.

The Chair: Thank you.

Mr. Regan.

Hon. Geoff Regan: Mr. Patrone, are you the CTV guy on the board now?

Mr. Marc Patrone: I'm the CRTC guy. I spent a good part of my career with CTV. I make no apologies for that. I learned a heck of a lot while I worked there. But I also recognize that one must be

absolutely fair. That, by the way, is another skill that journalists might bring to the table, the element of fairness.

Hon. Geoff Regan: Thank you, I accept that.

Have you ever been a member of the Radio-Television News Directors Association?

Mr. Marc Patrone: I've never been a member of that organization.

Hon. Geoff Regan: What about the Canadian Association of Journalists?

Mr. Marc Patrone: Yes, I have been a member of the Atlantic journalism.... There is a loose association of journalism. I was also a member of Howe Room group, the legislative association at the Nova Scotia legislature.

Hon. Geoff Regan: When Mr. MacDonell approached you, had you ever submitted a resumé for other government positions?

•(1610)

Mr. Ed Fast: I have a point of order, Mr. Chair. We're getting into the process of Mr. Patrone's appointment. In fact, we're going far beyond it. He's talking about a history of other applications he may have made. That has nothing to do with his qualifications.

I would like to read, for the record, the salient provisions of Standing Order 111, subsection 2:

The committee, if it should call an appointee or nominee to appear pursuant to section (1) of this Standing Order, shall examine the qualifications and competence of the appointee or nominee to perform the duties of the post to which he or she has been appointed or nominated;

That's the framework within which this hearing takes place.

I know Mr. Regan is attempting to veer off into other issues, other appointments. That's not the point here. We're talking about Mr. Patrone being appointed to the CRTC board.

Hon. Geoff Regan: Mr. Chairman, on the same point of order, clearly it appears that Mr. Fast wants to censor the work of the committee. In my view, it is our responsibility to examine this appointment, the qualifications, and the circumstances of the appointment. And if in fact he has submitted his resumé for other kinds of appointments, that's certainly valid and relevant.

The Chair: I have taken this out of Marleau and Montpetit, for committees:

Questioning by members of the committee may be interrupted by the Chair, if it attempts to deal with matters considered irrelevant to the committee's inquiry. Among the areas usually considered to be outside the scope of the committee's study are the political affiliation of the appointee or nominee, contributions to political parties and the nature of the nomination process itself.

We've already skirted the outside of this, so please keep questioning a little closer to the qualifications of this witness.

Mr. Bélanger.

Hon. Mauril Bélanger: Mr. Chairman, I haven't intervened so far, but with all due respect, if the witness himself had not mentioned his own political affiliation, perhaps you'd be right in reprimanding us about raising it. He raised it.

The Chair: Mr. Scott, on a point of order, and then we're going to proceed.

Hon. Andy Scott (Fredericton, Lib.): I don't disagree with the general comment that we're dealing with competence and qualifications, but to ask whether the witness submitted a resumé in advance of the call by the chief of staff to Peter MacKay I think speaks to why he may have got that call. Asking about his qualifications that might have prompted that call I think is a legitimate question.

Hon. Geoff Regan: Let me put it a different way, Mr. Chairman.

If you submitted your resumé, what did you feel you were qualified for at the time you did so?

Mr. Marc Patrone: Ahead of being contacted?

Hon. Geoff Regan: Right.

Mr. Marc Patrone: What would I think I'd be qualified—

Hon. Geoff Regan: No. What did you think, if you did that?

Mr. Marc Patrone: It's a speculative question.

Hon. Geoff Regan: I asked already if you submitted your resumé in advance of being approached about this particular position. If that's the case, the question then is what you thought you were qualified for when you submitted it. It goes directly to your qualifications and what you thought of them.

Mr. Marc Patrone: What I think, based on my qualifications, is that when I—

Hon. Geoff Regan: I know you're having trouble understanding this, so I'll try to be clearer. If in fact it is the case that prior to being approached about this particular appointment you had already approached, for instance, Mr. MacKay, Mr. MacDonell, or someone in the Conservative government with your resumé, or if they had approached you for a resumé, you must have had in your mind that you were qualified for some government position and an idea of what that might be.

Mr. Marc Patrone: Well, I didn't give my CV ahead of that.

Hon. Geoff Regan: That's what I asked.

Mr. Marc Patrone: I don't mind answering that question.

Hon. Geoff Regan: All I wanted was an answer.

Mr. Marc Patrone: As far as I can recall, over the course of years I may have applied for a position and simply forgotten about it. I mean, you can go on Workopolis and see what's out there.

Hon. Geoff Regan: I'll give my time to Mr. Bélanger.

The Chair: Mr. Bélanger, you have two minutes left.

Hon. Mauril Bélanger: Mr. Chairman, I hope judgment falls under qualification, so I have a question on that.

Mr. Patrone, as commissioner, if you are confronted with a situation where you have an executive who gives a directive to the CRTC on a certain matter, and the House of Commons, through a vote by the majority of the members, expresses an opinion that is different from the directive from the executive, in your judgment which should prevail?

• (1615)

Mr. Marc Patrone: I would have to give that some thought, Mr. Chair. I would have to think about that long and hard. I know there are provisions in the act, section 15, for instance, in which the minister is entitled to seek the guidance and expertise of the CRTC

on issues. I know that recently happened as far as the Canadian Television Fund is concerned.

As for that particular scenario, frankly, I don't feel comfortable answering without giving it sufficient thought.

Hon. Mauril Bélanger: My second question is picking up on something you said, that Monsieur Morin represents CBC or something, and then you watered that down a bit. The question that came was whether you were representing CTV. The question has merit, because you were approached right after the CRTC announced it would hold hearings on fee for carriage. These hearings, which will be held in April, will have great ramifications for the entire industry. How does the public know, Mr. Patrone, that you don't come to those hearings with a bias in favour of the private broadcasters?

Mr. Marc Patrone: Mr. Chair, I just want to clarify something about what I said about Monsieur Morin. If I said he represents CBC, that was incorrect. He does not represent anybody on that commission except himself and what he brings in terms of his own experience. So I don't want that to be on the record, suggesting that he represents anybody, any more than I do.

As far as fee for carriage is concerned, I believe, through you, Mr. Chair, that there are stipulations at the CRTC in which a period of time is designated under which a person who has extensive background with one firm or another would not be involved in decision-making, specifically with respect to certain things.

Now, I'm not going to prejudge at this point what Mr. von Finckenstein will do as far as where he intends to place me is concerned, but I will inform you that this rule does exist—I've been made aware of it—and that I will trust the chairman to make the right decision in terms of when and how to use what expertise I bring to the table at the CRTC.

The Chair: Thank you.

We'll move on now to Mr. Malo.

[Translation]

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

This committee frequently has newly appointed chief executives and board chairs appear before it. I believe that this is the first time, however, that we have had a commissioner here to present his CV.

If colleagues around the table are wondering whether political affiliation has anything to do with why this candidate or some other candidate was selected, it might be worthwhile to invite the minister to come to the committee and explain the criteria she uses for all appointments.

Mr. Patrone's CV seems to me to indicate that he has the necessary qualifications and experience to be a member of the CRTC. The only thing that I need to do today, Mr. Chairman, is to wish him the best luck in the world, since there is a paradigm shift on the way in broadcasting and television. The world is changing, and we need well-informed people who care deeply about this industry and the regulatory regime in order to make sure that the public gets value for its money. The airways belong to the public, and you are making decisions on our behalf.

So I wish you the best of luck in carrying out your duties, Mr. Patrone.

[*English*]

Mr. Marc Patrone: I thank the member very much for his comments. He couldn't be any more correct when he talks about the public airwaves and the need to have Canadian voices on those airwaves. Thank you.

•(1620)

The Chair: Thank you for that.

We're then going to move over to Mr. Abbott.

Hon. Jim Abbott (Kootenay—Columbia, CPC): I'm interested in your comments this afternoon....

Thank you for coming. I'm sorry, I was a little rude there.

Mr. Marc Patrone: That's all right.

Hon. Jim Abbott: Referring to the news bureau in Bathurst, New Brunswick, you say it was a one-person operation. For two and a half years you did it all, from dealing with satellite feeds to meeting the editorial demands, etc.

Again, we're looking at qualifications, and I think it's a bit of a challenge perhaps to some people. In considering your qualifications, people are saying, shouldn't he have some executive experience? On the other hand, you're actually taking credit for the fact that it was a small, one-person operation—that is, you see that as a qualification. I wonder if you could expand on that a bit.

Mr. Marc Patrone: Mr. Chair, through you to the member, as you look at what I offer here, I think the one thing is perhaps the lack of a title. There's no "Patrone was the executive director of this; he was the VP of that". There is none of that, and I've never had that kind of title. What I have had, however, is responsibility.

Mr. Chair, what was just raised is a reflection of the practical experience that I have brought to bear over the course of my experience in broadcasting. These are positions that demanded a lot of responsibility but perhaps didn't come with the massive salary and the corner office.

I hope that answers the member's question.

Hon. Jim Abbott: Let me just read this: "My duties were mostly technical in nature for the first seven years of my career. It was there that the CRTC, its rules and regulations, all became part of my daily working life. In master control, for instance, we had to stick to content and regulatory rules."

I wanted to key on this: "Those were the early days of specialty television. City TV was breaking new ground by airing cutting-edge programs, which meant we had to be mindful of the CRTC's rules."

Again, looking at your qualifications and as they might particularly apply to more cutting-edge ideas, could we presume that your thought process—not only because of your demographic, your age, but also just this background—would be not that of a revolutionary but of somebody who's going to be thinking outside the box?

Mr. Marc Patrone: It was great. One of the things mentioned to me while I was at CTV was that, because of the relatively young staff, they thought of me as kind of the grizzled veteran on the staff.

So it was particularly heartening for me to come to the CRTC. I was told that I was really appreciated for the youth I brought to the CRTC, which was really quite encouraging.

But yes, I think perhaps the particular era I grew up in, the time at which I entered broadcasting, was an exciting time, as it is now. So I would hope that early experience has equipped me, over time, with the skills to handle this new position.

Hon. Jim Abbott: Contrary to the position Mr. Regan took when he said we were trying to act as censors—quite on the contrary—we're trying to operate within the rules of the committee, and it says under subsection 111(2), "...shall examine qualifications and competence of the appointee or nominee to perform the duties of the post to which he or she has been appointed or nominated".

Then I read that you say, "We must ensure that Canadian voices are heard and Canadian stories are told through our broadcasting system".

Let's relate those two things. What do you bring to that?

Mr. Marc Patrone: Mr. Chair, I was part of the machinery that produced local programming. Recently we have seen evidence that the gap between programs purchased from outside Canada, mainly the U.S., and the programming produced in Canada is growing. I believe it's now up to \$107 million. That reflects the economics of broadcasting as it now stands. That can't help but be somewhat troubling, because of course what we want to do is narrow that gap so that more Canadian programs and more Canadian voices—there have been hearings about diversity and the diversity of voices in Canada—are heard over those public airwaves. So that's a source of concern.

But despite that, I'm not going to prejudice any issue that comes before the CRTC. Those matters are decided through extensive cooperation with staff and discourse with fellow commissioners.

•(1625)

The Chair: With that, this hearing comes to a conclusion.

I thank you very much, Mr. Patrone.

Hon. Geoff Regan: On a point of order, Mr. Chairman, didn't it start at 3:30?

The Chair: It started at 3:30. We haven't got time for another round. We have had two rounds, so we are finished at 4:30.

So we will recess and get ready for our next order of business.

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_____ (Pause) _____

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•(1630)

The Chair: I call the meeting back to order, pursuant to the order of reference of Tuesday, October 16, 2007, Bill C-327, An Act to amend the Broadcasting Act (reduction of violence in television broadcasts).

I welcome here this afternoon our witness, Catherine Wong, from the B.C. Civil Liberties Association.

Welcome, Ms. Wong.

Mrs. Catherine Wong (Articled Student, B.C. Civil Liberties Association): Good afternoon. My name is Catherine Wong, and I'm an articled student at the B.C. Civil Liberties Association.

The BCCLA was formed in 1963 and is Canada's most active advocate defending civil liberties and democratic freedoms. The association has a long history of providing input to government and the courts on matters of vital importance to civil liberties in Canada.

I would like to thank the committee for the opportunity to speak about the impact of Bill C-327. I'll begin my comments with some general propositions concerning the importance of freedom of expression in our society, and I'll continue with the association's main concern with the potential for violations of free expression by the delegation of regulation-making powers that proposed subsection 10.1(1) of the bill gives the commission, followed by some practical and philosophical considerations when considering the impact of Bill C-327.

The BCCLA has consistently championed the cause of expressive freedom and argued for its centrality to a democratic process. Freedom of expression has long been held to be a fundamental freedom necessary for a flourishing democracy. The Charter of Rights and Freedoms, along with a long line of case law, has consistently found that freedom of expression is critical to pursuit of truth, self-fulfillment, and the functioning of democracy.

Within the sphere of constitutionally protected freedoms is a free press. The substantive protection of expression is content neutral and includes speech, art, images, as well as violent content. Depictions of violence can also serve as forms of political and artistic expression. The justification for such broad protection is grounded in the recognition that humans are autonomous individuals who are capable of making decisions for themselves.

Empowering the CRTC to make regulations limiting content based on their perception of whether it is inappropriately violent in nature raises concerns of censorship, prior restraint, and gives rise to potential violations of expressive freedom.

The proposed bill would censor protected speech on public airwaves in Canada. Worse, it would do so without offering any effective remedy for Canadians.

Bill C-327 creates an architecture that allows for the limitation of expressive freedom. In the past we've seen that when such an architecture has been set up, unjustifiable censorship is sure to follow.

The BCCLA opposes the passing of Bill C-327 due to its inevitable violation of legally protected expression.

Proposed subsection 10.1(1) of the bill delegates to the commission the power to make regulations respecting the broadcasting of violent content, including that contained in programs intended for persons under the age of 12 years. The BCCLA has at least three specific concerns related to the vagueness of the proposed legislation.

First, the provision delegates a broad power to the commission and thereby advocates the responsibility of democratically elected legislators to fashion clear and understandable laws.

Second, the provision creates a structure that inevitably will infringe upon constitutionally protected expression. The commission is given a mandate to regulate violent content, and will presumably follow that vague mandate.

Third, the phrase "including those contained in programs intended for persons under the age of 12 years" suggests that the overall standard of adjudication in setting these regulations should be programming appropriate for children.

We submit that this threshold is inappropriate as it invites an overly restrictive interpretation and does not use the least restrictive means available to address whatever might be argued to be the "problem".

Bill C-327 is directed towards the public, not towards children. The highlighting of the interests of children within the provision creates an increased likelihood of violations of free expression of all.

The analysis of this proposed legislation must start with the observation that violent content is not illegal expression. However, limiting such content is an infringement on the right to free expression. The effect of proposed subsection 10.1(1) is that the commission would be granted broad powers to become a supernanny of broadcast television for both children and adults alike. The cost of this kind of censorship would be high, both economically and socially.

The preamble of the bill purports to recognize creative freedom and that "censorship is not a solution". Despite this recognition, the objective of regulating violent content and the lack of any type of standard or guideline for application means that there will assuredly be some violation of free expression.

- (1635)

As there is no confirmation process to vet the regulations created, the only remedy would be to litigate the commission's rulings. It is fair to say that this is a costly burden for both broadcasting companies and private individuals alike.

It is also fair to say that many, if not most, companies are unwilling to engage in the arduous legal process of judicially reviewing a ruling and following up the potential appeals. Instead, the most likely result is a chill effect on speech, whereby broadcasters will curtail the programming with the aim of complying with the regulations. The social cost will be less intelligent and less thought-provoking programming, and overall less diversity and social expression.

The association would like to direct your attention to a litigation that culminated in the *Little Sister's Book and Art Emporium v. Canada* case in 2002 at the Supreme Court of Canada. Little Sister's is a business located in Vancouver that sells books and magazines, most of which are written by and for the gay and lesbian community. Most of the books and magazines sold by Little Sister's are published in the United States and imported into Canada by Little Sister's. The BCCLA was a co-plaintive in this case.

In the Little Sister's case the government, via the customs tariff and the Customs Act, delegated the power to regulate the import of obscene materials to customs agents. The delegation of this broad power, which lacked any standards for application, and the lack of training provided to the officials empowered to make such determinations resulted in an overbroad application of the laws, which essentially censored protected speech.

From approximately 1985 until the trial in 1994, hundreds of books and magazines that Little Sister's imported and purchased were detained, prohibited, as well as destroyed by customs officials because they were deemed to be obscene. Over the course of the trial and its subsequent appeals, it was revealed that customs officers made arbitrary decisions, procedures were haphazardly applied, and there was no proper training or adequate time given to such decisions. There was no formal procedure for placing evidence of artistic or literary merit before the classifying officers. Most importantly, most publications were prohibited entry into Canada that would not have been found to be obscene if full evidence was considered by officers properly trained to weigh and evaluate those materials.

The result of these shortcomings was a disturbingly high amount of homosexual art and literature that was not obscene but was prohibited. The delegation of power to customs officers resulted in customs officers being arbiters and guardians of a paternalistic scheme that denied access to protected expression.

As we saw with the Little Sister's case, the delegation of broad powers affecting free speech and communication created a structure that, while holding the appearance to some of being innocent and benign, inevitably led to charter infringement. If the agency assigned to apply the law is not sufficiently cautious—in this case, the CRTC—fundamental freedoms can be encroached upon unnecessarily.

Along with the legal considerations I've outlined, I will look to turn the committee's attention to the practicality of Bill C-327.

As evidenced in the preamble, the bill presupposes a relationship between violence on television and violence in society. Whether there is a clear causal link between violence on television and violence in society remains very much in dispute. The BCCLA does not believe that turning the commission into a supernanny is a solution to decreasing societal violence.

At a practical level, there are everyday realities that we as a society must face, one being that we live in a society that unfortunately experiences violence. Thus, programs such as news broadcasts and documentaries, while possibly disturbing to watch, serve as important instruments for public safety, intelligent discourse, democratic accountability, dissemination of important information, and public decision-making.

The potential effect of this bill is the creation of regulations that will call for a sugar-coating of our daily news broadcasts. They will obscure the current realities of society and the challenges that we face.

At an operational level, the BCCLA questions the effectiveness of the bill. With modern technology such as satellite television, digital cable, and the Internet, individuals are able to access channels from

across Canada, the United States, and all over the world, the content of which can be even more graphic and violent than that found in Canadian programming.

● (1640)

To bring a west coast perspective, we know this complicates the 9 p.m. threshold argument, as it is not only possible but also increasingly common for Vancouverites to be watching eastern broadcasting, which broadcasts at local times. Therefore, while it may be 7 p.m. in Vancouver, we're watching 10 p.m. broadcasts being aired for a Toronto audience. As a result, regulations predicated on time zones and broadcast restrictions are increasingly losing their effectiveness. Moreover, more and more individuals are accessing their television programming from the Internet.

If the aim of Bill C-327 is to enable the CRTC to protect Canadians from violent content, regulation through time and place will become increasingly difficult, if not impossible, short of regulating the Internet.

My last point is philosophical in nature. The BCCLA has long argued for freedom of expression and the right of an individual to make his or her own choices. This is based on the belief that individuals are autonomous beings. We have a faculty of reason. We are capable of making our own decisions, and indeed the exercise of this faculty plays a significant role in a flourishing and democratic society. Consequently, the limiting of choice and free expression hinders not only the self-fulfillment of the individual but also the well-being of society.

The delegation of regulation-making power poses two concerns. First, individuals are unable to access constitutionally protected expression and are consequently unable to determine for themselves what they view or to formulate thoughts on it. Second, parents and guardians are unable to determine what is appropriate for their children to view. This is one step too far for the state to be venturing into the private sphere. If the parents want to censor what their children have access to on television, they can do so by a variety of means, including V-chips or other types of technology. As parents decide the appropriateness of books, music, and hobbies, they should also be able to determine what their children watch. Indeed, those households with satellite television or digital cable are already doing so.

In conclusion, the BCCLA submits that the proposed bill creates a structure that will violate free expression. Considering the costs, the practical effects of Bill C-327, and the philosophical underpinnings, the proposed structure is inadequate to provide safeguards against violations of free speech. Bill C-327 should not be passed into law.

Thank you for your time and attention.

● (1645)

The Chair: Thank you.

Mr. Scott, please.

Hon. Andy Scott: Thank you.

Ms. Wong, you mentioned, in reference to a specific proposed section of the bill, that it wasn't the least restrictive way of dealing with what it was trying to deal with. At the very end, you mentioned V-chips and a couple of things.

Could you elaborate on what less restrictive things might be acceptable, in your mind?

Mrs. Catherine Wong: The association's position on this, Mr. Scott, is that we don't believe it should be the role of the state to regulate what is available for individuals to watch. It should be up to individuals to decide whether they want access to something, whether it's through payment or self-regulation by means of a V-chip. Delegating this regulatory power to non-elected officials actually has great impact on free expression.

As for the concept of "least restrictive means", if there were a proven link, which we dispute, between violent society and violent content on television, then the next step would be to seek out how to limit the violence by the least restrictive means, the means least apt to compromise the civil liberties of individuals. That's not the case here. There is a presumption in the bill that there is a causal link. That's not proven.

Hon. Andy Scott: The research you've done would reach that conclusion. Have you also done research that would speak to the approaches that might be taken? Part of the debate we've had to date has had to do with whether the objective is to bring more balance to what's available. Maybe it isn't a question of restriction; maybe it's a question of better balance in terms of what's available.

I'm not sure, but I'm trying to figure out whether the best approach would be a restrictive one or something proactive, educational, and promotional. I don't think you can limit. In today's world, there is stuff coming from everywhere. Perhaps it would be better to make sure there's lots of stuff that's healthy and good and positive.

Have you any comment?

Mrs. Catherine Wong: If the goals are to bring a better balance, then there should be guidelines along with this bill stating that the purpose of this is a better balance and availability of programming. That's not the case. It's a general, broad, vague law that just says they shall have the power to make these regulations, which is very dangerous.

In terms of having more programming that's healthy and good, that's a very subjective decision to make. Who's going to make that decision in terms of what is healthy and good broadcasting? Actually, according to the principles of freedom of expression and advocates for it, we need to have a wide range of exposure to different thoughts. The free marketplace of ideas is the cornerstone of what makes a flourishing democratic society.

• (1650)

Hon. Andy Scott: You perhaps said it better than I did, but that's my point. It wasn't that I was taking judgment as to what would be good and bad; it was that more be available, simply more content, more choices.

Mrs. Catherine Wong: Yes.

Hon. Andy Scott: You also mentioned the issue of the exercise of judgment. I'm sure there's a question, when you're talking about very young children, about their capacity to exercise that judgment. I think you spoke about parents and responsibilities there. But interestingly, one of the witnesses last Thursday spoke of the fact that to some extent a certain amount of restriction affects

discernment, affects the development of critical thinking on the part of young children.

I wonder if you've given any thought to that.

Mrs. Catherine Wong: I completely agree with you that restriction does affect discernment in terms of exposure and development of faculties in children. That being said, I think parents have a prerogative to do so. Much as I might want to deny it sometimes, we are all products of our parents, our families, our upbringings, and the societies in which we are raised and what's available to us. Depending on how restrictive and what the social values of different parents are, that will affect the upbringing of children, but it should still be the determination of parents and not a paternalistic regime where government regulators are able to decide this.

The Chair: Thank you for that.

Ms. Mourani.

Hon. Andy Scott: If I might just say, it's generally my parents who deny that I'm a product of their upbringing, just for what it's worth.

The Chair: Ms. Mourani, please.

[*Translation*]

Mrs. Maria Mourani: Thank you for being here today, Ms. Wong.

According to your philosophy, the state should not interfere in people's private lives; it is up to parents to make these decisions. It is true that efforts must be made to educate parents, but your argument reminds me of the situation we faced years ago. People said that men could continue to beat their wives because it was a private matter, and the police did not take any action. The government refused to legislate because they did not want to get involved in people's private lives.

Attitudes changed and the government understood that wife-beating should not be allowed. There is now zero tolerance in that regard. Laws have been passed, the government brought in legislation and the police now intervene. So when I hear about government interference in people's private lives, I have reservations. But that is not my question.

Could you tell me how the regulations work right now, in your opinion?

[*English*]

Mrs. Catherine Wong: In terms of your initial comment, madame, there are differences between violence against women and, I would say, regulating violent content on television.

We have over 1,000 members, so we're not all going to agree on how you define civil liberties, but traditionally speaking, civil libertarians believe that state intervention is only necessary when it's to prevent harm. In the case of violence against women, definitely there was harm. I don't think there are very many civil libertarians who would say yes, let's go and beat women—although I can't speak for all of them.

In this particular situation, as I said earlier, if there were a proven causal link between violent content on television and increase of crime—

[Translation]

Mrs. Maria Mourani: Point of order, Mr. Chairman. I asked a very specific question and I would like the witness to answer. I will not have time to ask any other questions. I want to know whether she is familiar with the current regulations. How do the current regulations work? I would like you to answer that question specifically, please. I do not have much time for my questions.

[English]

The Chair: I think she's getting to that. Just to make you feel good about it, I'll give you an extra minute.

[Translation]

Mrs. Maria Mourani: Thank you.

[English]

Mrs. Catherine Wong: I'm sorry. I thought you wanted me to comment on your initial point.

•(1655)

[Translation]

Mrs. Maria Mourani: No, I would just like you to answer my question.

[English]

Mrs. Catherine Wong: You're asking in terms of how...?

[Translation]

Mrs. Maria Mourani: What is your understanding of how the regulations work right now?

[English]

Mrs. Catherine Wong: Do you mean in this specific circumstance?

[Translation]

Mrs. Maria Mourani: Right now, in Canada, how is violence on television regulated?

[English]

Mrs. Catherine Wong: To date, I believe there is a 9 p.m. threshold that the commission has decided to uphold. I know there were hearings held, but I don't know the logistics of how, if this were to be passed into law, the actual commission would make the laws. It's very vague, so I'm assuming that they're not constrained by any rules as to how they can regulate this.

[Translation]

Mrs. Maria Mourani: If I understand correctly, you do not know exactly how it really works, but you know that there is no real regulation. There is self-regulation based on the industry's goodwill and, of course, a code that was developed by the industry. I am telling you this for your information.

That said, your brief states: "First, the provision delegates a broad power to the commission and thereby advocates the responsibility of democratically elected legislators to fashion clear and understandable laws." You say that this legislation would give powers to the commission. But you also say that the government passed a measure,

subsection 163(8) of the Criminal Code, to regulate the importing of obscene material. So there is a contradiction in your brief. On the one hand, you are saying that the government needs to legislate and must not delegate the powers to the CRTC, and on the other hand, you say that the government has already brought in subsection 163 (8). I have to admit that I am not all that familiar with the Criminal Code, and I do not know where subsection 163(8) comes from. I do know that section 163 deals with child pornography.

In your opinion, is child pornography the sort of thing that we should see here in Canada? Why did customs officials prohibit the material sold by Little Sisters Book and Art Emporium? Was it child pornography? I do not know. Now, for your information, do you think...

[English]

The Chair: We have to get a question.

[Translation]

Mrs. Maria Mourani: I am coming to my question, Mr. Chairman.

[English]

The Chair: You're already over the extra minute.

[Translation]

Mrs. Maria Mourani: Mr. Chairman, 1.3 million people have signed petitions calling for regulation. You said earlier that there was no problem. So I am wondering whether we need to regulate this or not? What is the story with section 163 of the Criminal Code and obscene material? I have to admit that I do not really understand this and I feel a bit lost. When I read your brief, I feel a bit confused overall.

[English]

The Chair: I don't know exactly what the question is here.

[Translation]

Mrs. Maria Mourani: I will try to be more specific with my question.

[English]

The Chair: Make your answer very short, because we've already gone over time.

You've taken advantage of me.

Mrs. Catherine Wong: If the question is about subsection 163(8) of the Criminal Code, that's a separate case. We're using that as an example of how the delegation of powers went wrong. In that case, the delegation of power to determine what was obscene was given to customs officials. In that case there was abuse of that power, because the customs officials were not educated in terms of making that decision.

We're saying that in this situation we think there's a great likelihood, if not an inevitable chance, that there will be the same problem. In terms of the 1.3 million who signed a petition for regulation of violent content, that's fine; we need rules to determine how to regulate. Just to say that the commission shall make regulations....

I'm assuming this is different from the voluntary code of conduct you mentioned. I'm aware of that code of conduct. This sounds to me as though a completely separate set of regulations is going to be made by the CRTC respecting the broadcasting of violent scenes, which is such a vague and broad power that it's inevitable, we think....

We've seen this happen before, in Little Sister's. We're going to see it happen again, and rights will be trampled.

● (1700)

The Chair: Thank you.

I might have to cut the next questioner's time a little, because we really went over.

[*Translation*]

Mrs. Maria Mourani: No. That discriminates against my colleague, Mr. Chairman. I disagree.

[*English*]

The Chair: I didn't say three minutes—

[*Translation*]

Mr. Luc Malo: I protest, Mr. Chairman.

[*English*]

The Chair: All right. I rule.

Mr. Siksay.

Mr. Bill Siksay: Thank you, Chair.

I want to thank you, Ms. Wong, for appearing today and for bringing this very helpful brief. The clarity of it, and the way it addresses the legislation before us directly, is very helpful. I think it raises some very important questions that we need to answer before we proceed with this legislation.

I'm particularly interested in your point about the broadness of the definition of the concern. You say that it's directed towards the public and not explicitly towards children, although children under the age of 12 years are mentioned explicitly in the law. I do appreciate your concern about that, now that I reread it in light of your comments that there is a particular reference to children but the actual intent is much broader than that.

I looked at what the B.C. Civil Liberties Association has written in the past about violence on television.... You're nodding, because you know that back in 1995 a position paper was drawn up talking specifically about how the Civil Liberties Association could support regulations around dealing with violence on television that was specifically available to children under 12. They made an argument that this would be possible, and they outlined some concerns.

I wonder if you could talk a little bit about it, just so that we understand the more nuanced position, perhaps, of the association. Or maybe the association has changed its mind since that particular brief.

Mrs. Catherine Wong: The position paper that Mr. Siksay is referring to is one that we had drafted in 1995, I think specifically relating to violent programming directed towards children, and specifically with regard to the technology of the V-chip, which at the time was coming into prominence.

The association now views that position paper to be outdated, seeing that it's 13 years later and technology has changed so much. With television, the Internet, and all these new technologies, as you mentioned earlier, broadcasting now faces new challenges. We're very cognizant of that as well.

Our current position is the one that I've submitted to you today. We spent the past few weeks, in preparing for today's submission, re-evaluating our position, particularly with this provision, proposed subsection 10.1(1). It's a very different position in nature and it's also a very different provision, because it is inclusive. It's not just directed towards children. The previous position paper was directed towards content for children.

Mr. Bill Siksay: Right, and I appreciate that. I appreciate that the position could have developed over the years and that it was dealing with specifically a different context.

I think what was helpful for me, in looking at that, was that even when specific legislation around what children were able to view was contemplated, there were some key exceptions being considered, and one of those was news programming. The association took a very strong position that children shouldn't be denied access to news programming even if it did contain violent content. There's nothing in the current legislation that's before us that would exempt news programming, for instance, from the concern raised.

Mrs. Catherine Wong: Our concern, I think, is that it doesn't prohibit the prohibition of news content. It doesn't state the value of free speech in political, creative, artistic expression, and I think that's very problematic.

Mr. Bill Siksay: I'm glad, too, that you raised the Little Sister's case. I do think it has a fairly direct application here, given the power that was delegated to enforce the act, in that case, around what's determined to be obscene material and to prevent its importation. I think you're right to point out the concern that we may be duplicating that arrangement here and delegating again to a different body specific powers to develop the regulations and then enforce them as well. So I do think that is an important reminder to us.

Is there anything further you wanted to say about the Little Sister's case and its application to this situation?

● (1705)

Mrs. Catherine Wong: The association played a big role in the Little Sister's case. We were a co-plaintive. We fund-raised on behalf of the owners of Little Sister's to be able to litigate it. Sadly, it's still ongoing, despite the 2000 ruling from the Supreme Court of Canada.

What we can learn from Little Sister's is that when architecture for censorship is created, despite the benign nature of it, we can expect to see censorship happening, unnecessary censorship. It's not justified censorship.

In the case of Little Sister's, the customs officers who were given these broad powers were not trained. They did not have the skills and qualifications to make that determination. Our fear is that we will see this happening the same way again with this particular situation.

The Chair: Thank you.

Mr. Chong.

Hon. Michael Chong (Wellington—Halton Hills, CPC): Thank you.

I thank the witness for coming to present to us today.

I have two broad questions. The first question concerns whether or not the B.C. Civil Liberties Association believes there should be more restrictions on free expression with respect to publicly owned airwaves, like radio or television, compared with private media like films or books.

Let me expand on that a bit. We live in a liberal democratic society where we have expansive interpretations of free expression. But there are also limits on that free expression. The Supreme Court has said those limits are based on the harm principle, that is, making sure that the free expression we have doesn't harm others in society. That's an evolution of the restriction on free expression. Previously in questions regarding public decency and public morality, we used the community standards test.

So that's where it stands today. But this applies only to private media. In other words, that's the expansive interpretation of free expression when it comes to privately owned media, privately produced media like books or film.

When it comes to television, though, we're talking about a media that is publicly owned and publicly regulated. In other words, what may be lawful in the private domain when it comes to free expression is not necessarily what we allow on the publicly owned airwaves. For example, we now have the 9 p.m. rule, under which material presented before or after 9 p.m. can vary in its nature.

Does the B.C. Civil Liberties Association agree that it is reasonable to have greater restrictions on publicly owned media, like television and radio, compared with media in the private domain?

Mrs. Catherine Wong: I think we would disagree with that. This is something I would have to take to my board for a more definitive answer. But we generally take a principled approach to free expression. This is an almost non-negotiable point with us. Whether it's government regulated or privately regulated, I believe the point is individual choice and the ability to regulate access to expression yourself. The state should not be an arbiter.

Hon. Michael Chong: So the voluntary code, which is a bit of a misnomer, because it's in fact compulsory—

Mrs. Catherine Wong: Yes.

Hon. Michael Chong: —this voluntary code that's presently in place, you would do away with. You would allow free expression on television, as long as it met the harm test.

• (1710)

Mrs. Catherine Wong: I would need to become more familiar with that code before I could answer.

Hon. Michael Chong: Okay.

The second question I have concerns the harm test and empirically based evidence or studies that show a link between violence and harm to citizens in our society. Would you be able to point the committee to any studies that you know of, or any research that's

been done, that would link violence to harm done to others in society?

Mrs. Catherine Wong: Could you be a bit more specific?

Hon. Michael Chong: The bill we have in front of us concerns restrictions on programming if it's violent in nature. If one sees the harm test as the arbiter of what should be allowed and what should not be allowed, obviously you need to have evidence that violence on TV is correlated to violence in society or correlated to harm to citizens, whether they be children or otherwise.

Are you aware of any studies that have been done making the causal link between the two?

Mrs. Catherine Wong: We're not the ones purporting that there's a link. We think that's in great dispute, that there is a relationship between violent content on television and violence in society.

Hon. Michael Chong: You don't know of any studies, then?

The Chair: Mr. Chong, we've gone over the time here.

Okay, one comment, please.

Mrs. Catherine Wong: I can speak to this. Some studies have recently been done about actually bringing that into question and actually disreputing this relationship. I would have to look through my file to find the exact notation. That is in dispute.

Hon. Michael Chong: Thank you.

The Chair: Thank you for that.

I think we have bells at 5:15. I'd like to have one more short round of questioning, but I have to have the unanimous consent that if the bells ring we can do a wee bit more business.

Do we want one very short round?

Yes, Mr. Chong.

Hon. Michael Chong: Mr. Chair, I'd like not to have another round, but I would also like to bring up a topical item for the committee to study after we're through with Bill C-327, if I could.

The Chair: Could you talk about that at our next meeting?

Hon. Michael Chong: Sure.

The Chair: Okay, we'll do that.

Mr. Abbott had requested...

Yes, Mr. Siksay.

Mr. Bill Siksay: Chair, I'm happy with continuing questioning, but I do believe that once the bells start ringing, we should adjourn the meeting. I am not prepared to sit here, given the shenanigans that have happened with votes in the past in the House.

The Chair: You've heard all about the shenanigans, okay.

Mr. Abbott, first.

Hon. Jim Abbott: I'd like to make what I hope will be taken as a helpful suggestion. I think there's no question, with the kinds of questions that have been asked by members of all parties, that there's a desire to see the ability to do whatever we can do in order to make our society safer. The dispute, I suppose, is between the position of the proposer of this motion and our friends from the Bloc, who are supporting him, in terms of this bill and what it would mean.

When Mr. von Finckenstein was here, I think he made a very constructive suggestion. He was talking about the CRTC having two extremes, of having a scalpel that wouldn't be useful in some situations and a hammer that would take three or four years to get any kind of penalty, if a penalty was going to be imposed against a broadcaster. What he asked was that the CRTC be given the power to impose administrative monetary penalties, or AMPs. If I recall correctly, he was asking if that could be included in Bill C-327. I think most of us recall that.

I would like to make, hopefully, the constructive suggestion to my colleagues that before we conclude our hearings on Bill C-327, we recall Mr. von Finckenstein—and it might even be very brief, maybe just even half an hour—to speak directly to this so we can have that as part of our consideration as to how we end up dealing with Bill C-327.

• (1715)

The Chair: Mr. Bélanger, and then Mr. Scott.

Hon. Mauril Bélanger: Mr. Chairman, I don't have with me, as I thought I did, the speaking notes that Mr. von Finckenstein left with us, but if I recall, he offered to present to the committee amendments to that effect.

Perhaps we may want to recall him; I don't know. But perhaps before then the committee, through our clerk, could ask Mr. von Finckenstein to submit those amendments, whatever he had in mind, and we could take a look at them and then decide whether we want to go down that route or not. I would suggest that approach, which falls in line with what Mr. Abbott has suggested, but we may not need to have him back.

The Chair: I will go to Mr. Scott and then Ms. Mourani, and we'll be quick.

Hon. Andy Scott: I'm glad Ms. Wong is looking this way. If Mr. Abbott is suggesting there's interest on the part of the government in response to the intervention made by Mr. von Finckenstein the last time he was here, I would be interested in what the B.C. Civil Liberties Association position would be on that possibility. And I'm not picking on the B.C. Civil Liberties Association. What I'm thinking is that other witnesses who are here to speak to this bill would be very informative in responding to that idea as well, so the quicker we get it, the more value-added we can bring from other witnesses on that idea.

The Chair: Ms. Mourani, very quickly, because I have to thank our witness.

[*Translation*]

Mrs. Maria Mourani: I would like to make a request, Mr. Chairman.

Ms. Wong said that there were studies, though she did not say which ones, that showed that there was in fact no connection between violence on television and violent behaviour among young people. I may be wrong—she will be able to tell me—but that is what I thought I understood when she was speaking to Mr. Chong. If those kinds of studies do exist, I would like them to be provided to the committee and not just referred to vaguely. I want to see those studies and I would like to examine them.

[*English*]

The Chair: We'll take that into consideration.

At this particular point, though, I thank Ms. Wong for being here today. Thank you very much for being an informative witness.

Mrs. Catherine Wong: Thank you.

The Chair: The meeting is adjourned.

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