



**Canadian Media Guild**

**La Guilde canadienne des médias**

CWA/SCA CANADA

## **Paving the access ramp to retribution**

Submission to the

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

Regarding the Study: “Access to information dispute and the resulting court actions  
concerning CBC”

October 20, 2011

## **Introduction**

The Canadian Media Guild (CMG) is a national union representing 6,000 media workers across Canada. The CMG believes strongly in the principle of access to information. We believe that CBC/Radio-Canada, as a Crown Corporation accountable to the public, should be covered under the Access to Information Act (ATI) with the proviso that journalistic and programming information be exempt.

Access to information is an important tool for citizens to participate fully in Canada's democratic institutions. Courageous and accountable governments get it right; some governments don't. There is certainly room for improvement in the way Canadians access government information.

We are therefore disappointed in the narrow scope of the current study and, furthermore, deeply concerned that it appears to match the interests of a private media organization and rival of CBC/Radio-Canada.

ATI is a tool that should never be used as a weapon to try to score political and economic points against any particular government institution. We urge you to examine ATI in the broad context as soon as possible with a view to making necessary improvements to ensure that Canadians' have real access to government information in a timely fashion.

## **Why we believe in ATI**

CMG members are among the most experienced users of access-to-information in the country. That shouldn't be a surprise since they are employed to deliver information to the public via TV, radio, web and newswire reports. Their work has brought important public policy issues into the public eye and has helped improve policies and practices for the good of Canadians.

Here are two examples of how journalists' use of ATI changed the practices of a federal agency:

- After an award-winning 2004 series on CBC, *Faint Warning*, Health Canada made its database on adverse reactions to drugs available to the public on line. See: <http://www.cbc.ca/news/adr/index.html> .
- After a joint CBC-Canadian Press investigation in 2008, the RCMP created a database to monitor Taser use and improved training for its officers. See: <http://www.cbc.ca/news/canada/story/2009/04/08/f-taser-project.html> .

At the same time, both series highlighted problems with the way the federal agencies were sharing information crucial to the health and safety of Canadians. And it is fair to say that the general problem of lack of access to government information has not gone away. In her latest annual report, the Information Commissioner points out that "(o)ver the past decade, there has been a steady decline in two important measures of access to government

information:” timeliness and disclosure (see *Paving the Access Ramp to Transparency*, Annual Report 2010-11).

### **The scope of the current study is too narrow**

It is in this unfortunate context that we are asked to provide testimony related to a single Crown Corporation, the Canadian Broadcasting Corporation. We note that it is *not* the agency with the highest number of complaints deemed by the Information Commissioner to have merit in 2010-11. Canadian Revenue Agency claimed the number one spot at 216 – nearly a quarter of the 882 well-founded complaints; Foreign Affairs and International Trade Canada had 54; CBC had 48. Transport Canada came a close fourth at 47.

CBC was also not alone among the new institutions to come under the Act since 2007 whose responses to information requests left something to be desired. The 2009-10 Annual Report gave CBC a performance rating of unsatisfactory and a letter grade of F while pointing out that it had had to cope with “an initial flood of 547 requests.” Meanwhile, Canada Post had a performance rating of “red alert,” with the letter grade “off the chart” for a worse average response time on only 84 requests.

In addition, the CBC is not the only federal institution currently in court to clarify provisions of the Act. The Information Commissioner is also in court at this time with one other Crown Corporation and two federal departments.

It is entirely legitimate to examine CBC’s compliance with the legislation; however we believe this must be done in a much broader context. Real access to information is essential to a functioning democracy; governments around the world are improving access for their citizens. There are persistent problems with access to information in Canada and we don’t believe a study of such limited scope will address them. The problems include:

- Lack of resources to respond to requests in a timely manner
- Lack of penalties for non-compliance
- Lack of clarity in the *Act* on the various exemptions

We urge the committee to examine these questions of significant public interest as soon as possible with a view to improving both the *Act* itself and its administration.

### **Committee drawn into Quebecor campaign against the public broadcaster**

If the current study fails to encompass the broader context of access to information, it is important to look at the bigger picture in which this narrow study makes sense. And we submit that this study is taking place in the context of a ‘dirty war’ underway to undermine the national public broadcaster, CBC/Radio-Canada.

CBC/Radio-Canada’s chief news and television competitor in Quebec is Quebecor, a private media company that owns the TVA network and the Sun news franchise. Items about CBC/Radio-Canada appear regularly in Quebecor newspaper, web and TV properties.

Brian Lilley, parliamentary correspondent for Sun News reported in November 2010 that his news agency “has filed thousands of ATI requests, trying to find out how and why CBC spends taxpayer money on board meetings in Iqaluit, executive expenses, anchor salaries and bidding for commercial or sports properties.” Lawyer Michel Drapeau, who counts Quebecor among his clients, has filed 800 of the 1,400 requests CBC has received since it came under the Act in 2007 (see <http://www2.macleans.ca/2010/12/20/digging-for-dirt-on-the-cbc/>).

It is far from clear what public interest Quebecor is trying to serve with its prodigious use of ATI. In fact, it is fair to say that the line between corporate interest and journalistic practice at Quebecor is not a solid one. In September 2011, University of Ottawa journalism professor Marc François Bernier wrote on j-source.ca:

“Quebecor Media campaign against CBC/SRC goes well beyond a healthy critique of a public institution and well beyond denigration. It seems more and more like a propaganda campaign that violates journalism’s code of ethics.” [CMG translation] (See <http://projetj.ca/article/la-campagne-de-quebecor-contre-la-srccbc-transgresse-l%E2%80%99ethique-et-la-deontologie-du-journali>).

At least two of the pieces of information that Lilley lists as targets for Quebecor’s ATI requests – anchor salaries and bids for commercial or sports properties – are directly relevant to Quebecor’s business interests. Why wouldn’t Quebecor want to know how much it would need to pay to lure a competitor’s news anchor or how much it would need to bid to secure a deal with a professional sports league? In at least these cases, the public interest appears secondary.

It is the same as FedEx or UPS using ATI requests to find out competitive information from Canada Post. It shouldn’t be allowed.

However, Quebecor has an additional motivation: filling its news hole with hyped-up stories about CBC and ATI. So far, the company’s significant investment in information requests of CBC has been a no-lose proposition. If the company gets some of the information it is looking for, it can use it for whatever purpose suits; and when it doesn’t get everything it wants, it can launch a multimedia campaign full of tendentious reports about the “Secretive CBC lacking accountability” (see <http://www.torontosun.com/news/canada/2010/11/20/16234511.html>). Finally, if this kind of reporting succeeds in convincing Parliament that the public broadcaster deserves less public money, Quebecor also benefits from the hobbling of a key competitor.

### **Conclusion**

It is disturbing that the interests of a single private company have succeeded in driving the use of this committee’s precious time. Without giving due consideration to the broader issue of access to information, this can easily be seen as a cynical exercise that undermines Canadians’ sense that their parliament is working for them.

We all have an interest in seeing access-to-information legislation work. If the provisions in the Act are not clear enough, if the Commissioner's powers are too vague, if the exemptions are worded so that federal departments and institutions can hide behind them and withhold information from citizens indefinitely, if there are not enough federal employees deployed to find and release requested information. ... we submit these are the questions that this committee, Parliament and the government must address.

And if you truly believe that CBC is not living up to its mandate, there is an appropriate forum in which to examine that question as well. We will note, in that regard, that the Standing Committee on Canadian Heritage has examined that question as recently as 2007-8 and made recommendations to Parliament on how CBC could better deliver to Canadians in the 21<sup>st</sup> century. (See: *CBC/Radio-Canada: defining distinctiveness in the changing media landscape*, February 2008). Unfortunately, those recommendations and others before have simply gathered dust on a shelf.