



FÉDÉRATION
PROFESSIONNELLE
DES JOURNALISTES
DU QUÉBEC

Vote Down Bill C-461

A submission by Quebec's Professional Federation of Journalists

By Brian Myles, President

To the Standing Committee on Access to Information,
Privacy and Ethics

On Bill C-461 to amend
the Access to Information Act (ATIA) and the Privacy Act

May 27th 2013

To entertain a discussion about Bill C-461, Quebec's Professional Federation of Journalists (FPJQ) first wants to share with the Standing Committee on Access to Information, Privacy and Ethics the values that are at stake here. We believe that everyone, legislators and citizens, must defend these values in a democratic society.

A - Defending values

1. The relevance of a public broadcaster

The Standing Committee was not given the mandate to consider the appropriateness and the pertinence of a public broadcaster in Canada. Parliament has decided on this issue decades ago when it launched the CBC. Yet, it is the subtext to C-461, as if there was an elephant in the room.

The FPJQ has always defended the existence of a strong public broadcaster as an irreplaceable vector of public interest information. The Federation opposes any measure that would diminish this role.

The mainstream media are facing, worldwide, economic difficulties that affect their ability to inform the public in a professional manner. In an era of crisis and declining advertising revenues for traditional media, we must be careful not to weaken one of the most important news organizations in the country; which is the recipient of many prestigious awards for the quality of its information.

2. The independence of the CBC as a public broadcaster

It can be difficult to accept the idea that an organization funded largely by public funds should not be held fully accountable, as any other Crown corporation.

Still, it is a reality that we must accept since the CBC operates in a very special and unique field: information and journalism. In this field, the value of a media company, regardless of its structure of property, is its independence from all the powers in place. In the CBC's case, we must especially protect and warrant its independence from the various governments that come and go at the helm of the State.

«The status of the broadcaster is a defining feature of the CBC and helps to distinguish it from other Crown corporations. It has the status of a diffuser, and as such, it is in charge of its editorial decisions and it takes full responsibility for them, to the exclusion of executive power of the State.»¹

The Broadcasting Act explicitly stipulates in article 46, paragraph 5:

«The Corporation shall, in the pursuit of its objects and in the exercise of its powers, enjoy freedom of expression and journalistic, creative and programming independence.»

¹ Trudel Pierre et Abran, France. Droit de la radio et de la télévision, Les Éditions Thémis, Faculté de droit, Université de Montréal, 1991, p. 841.

One can not freely report if one is not independent. And if one does not freely inform, one is not in the news business but in the realm of promotion, publicity or worse, propaganda. The free flow of information and the freedom to report is a feature of the CBC, unlike some of its counterparts in authoritarian regimes, where state sponsored information is censored and controlled.

The FPJQ intervened several times in its some 40 years of activity to protect the CBC's independence against the threats made by successive governments.

For instance, in November 1995, the FPJQ denounced then Prime Minister Jean Chrétien, who saw the CBC as an instrument to promote national unity. The Federation launched a petition which confirmed the support of journalists throughout Quebec for the independence of the CBC. Within two weeks, a total of 1069 journalists signed the petition that was sent to the Prime Minister.

Journalistic Standards and Practices of the CBC confirms its independence:

«We are independent of all lobbies and of all political and economic influence. We uphold freedom of expression and freedom of the press, the touchstones of a free and democratic society. Public interest guides all our decisions.»

3. The transparency of the State is a central value

Access to information is a core value to ensure the transparency of government and public agencies. The damning reports of Newspapers Canada and critiques of Information Commissioner of Canada that followed both show that the lack of transparency is the rule rather than the exception at the federal level of government.

The FPJQ has always advocated for better laws on Access to information, and it continues to do so. But the Federation also recognizes that certain exceptions are legitimate and that everything can not be disclosed. However, we must ensure that these exceptions are not frivolous, too broad or arbitrarily interpreted by the political will of the moment.

4. Freedom of the press is a fundamental value

Freedom of the press is another core value that we all should cherish, share and foster. This freedom is essential to ensure that citizens have access to a broad scope of news and comments, thus enabling them to understand all the contradictory aspects of a reality and fully take part in the public debate.

5. The protection of journalistic material

The protection of journalistic methods in each of its many stages is another value to defend in a democracy. This protection is the basic guarantee included in freedom of the press. You can not have a free press if reporters can not commit themselves to the task of news gathering, safe and away from prying eyes and external pressures.

6. Protection of journalistic sources and material is essential

The protection of journalistic sources and material is crucial in journalism and therefore it lies at the heart of the freedom of the press. If the notebooks or any unreleased material gathered by reporters and their anonymous sources are no longer protected, reporters will eventually be cut from relevant information that would serve the public interest.

May we remind the importance of confidential sources. It is «Ma Chouette» who helped *The Globe and Mail* to uncover the sponsorship scandal. At this very moment, in a boomerang effect, the U.S. government is facing a major scandal for spying emails of journalists from the Associated Press to find a whistleblower. Sources need to be protected.

B - Bill C-461

The Access to Information Act in Canada has not been reformed since its inception. Changes, however, would be needed. The 2012 survey of a Treasury Board publication called *Infosource* shows that in 45 % of access requests, federal agencies wait beyond the statutory period of 30 days to respond. And all information requested was released in only 21 % of the requests.

Bill C-461 provides a very sharp and limited change to the law, which not only does not help to solve its many problems, but creates another major problem.

C-461 eliminates the protection that the current Act gives to the CBC. The current law states in Article 68.1 that:

«This Act does not apply to any information that is under the control of the Canadian Broadcasting Corporation that relates to its journalistic, creative or programming activities, other than information that relates to its general administration.»

The bill replaces the text saying, at article 18.2 that the CBC:

«[...] may refuse to disclose any records requested [...] if the disclosure could reasonably be expected to prejudice the Corporation's journalistic, creative or programming independence.»

The wording of C-461 does not protect journalistic material and sources from intrusive requests under access to information.

We are not talking here of subpoenas, court orders and legal procedures related to police investigations that already exist. Our laws and jurisprudence, up to the Supreme Court, already mark out, to a certain extent, the roadmap to access journalistic material. An adversarial process is expected in court in case the information held by journalists would be essential to the resolution of disputes, and it's now based on the Wigmore Test, following the Supreme Court's decision, in 2009, in the case of *The Globe and Mail v. the Attorney General of Canada and Groupe Polygone Éditeurs*.

The bill addresses this issue with surprising lightness, as if journalistic principles and their implications for the freedom of the press were simply not understood.

Bill C-461 places the preservation of the integrity of journalistic material and sources in the hands of an access to information coordinator who would have to ponder the potential risk «likely» caused by their diffusion. The burden of proof would be reversed. It would now fall on the broadcaster to prove that the release of any particular journalistic material would likely have negative consequences on the independence of the CBC.

We can expect legal disputes with no end that will affect the news gathering efforts of the CBC. The independence of the CBC, pertaining to its journalistic activities, would be constantly brought into play by repeated requests for access to information, as we saw immediately after the Crown corporation was subjected to the Act on matters of general administration.

The FPJQ argues that the lack of journalistic protections provided by C-461 causes in itself permanent damage to journalism.

C-461 sends indeed the message to the public that the protection of journalistic material and sources is weaker at the CBC than it is in any other Canadian media. The ill-advised decision by an access to information coordinator could compromise this protection with a stroke of a pen.

With such a lame bill, how can the citizens place their confidence and trust in journalists from the CBC and provide them with confidential material, knowing that an ordinary request for access to information could possibly put it in the open?

For the FPJQ, it is not up to an access to information coordinator or the courts to judge the relevance or not of disclosing journalistic material or sources. Period. This is too important an issue and it must remain an exclusion in the Access to Information Act.

At this stage, it is not relevant to the discussion to argue that access to information requests received so far by the CBC did not involve journalistic material and sources. It is a way to trivialize and dismiss with the back of the hand what must be a non-negotiable principle. If nobody asked for such material, is it rather not an argument in favor of upholding the existing exclusion in the Act?

Bill C-461 opens a door that must remain padlocked «double turn». We must maintain the current exclusion, which is perfectly defensible under the principles aforementioned by the FPJQ.

About the FPJQ

Quebec's professional federation of journalists is the largest professional association of journalists from across Canada. It counts nearly 2,000 members among managers,

employees and freelancers of all types of media in Quebec. A non-profit and non-political organization, the FPJQ defends freedom of the press and the public's right to information.

Recommendation

FPJQ has only one recommendation on Bill C-461. It should be rejected in its entirety. At the heart of the bill lies a trivialization of journalism, which will cause great harm. The only way to avoid it is to reject C-461 altogether and maintain Article 68.1 of the law as it is.