

17 February 2016

The Right Honourable Justin Trudeau
Prime Minister of Canada
Office of the Prime Minister
80 Wellington Street
Ottawa, ON K1A 0A2

Dear Prime Minister Trudeau,

One Canadian's open letter to Prime Minister Justin Trudeau

I am writing to draw your attention to the regulatory capture of the Canadian Radio-television and Telecommunications Commission (CRTC) and respectfully request that you initiate an investigation into corruption at the federal regulator, as well as to put my request in the context of your open letter to Canadians.

Specifically, evidence exists of long-term systemic corruption in relation to a highly unorthodox company subsidy scheme, one involving public officials abusing the authority of the CRTC and manipulating the cost paid for cable television service by millions of Canadians since 1995. The highly regressive scheme has served to unjustly enrich cable television companies, including corporations controlled by some of the wealthiest families in Canada (e.g. Rogers Communications Inc. and Shaw Communications Inc.), and also subsidize the operations of television production companies through a variety of funds, including the Canada Media Fund.

As background, I was employed in the Canadian broadcasting industry for my knowledge of the cable television industry and its regulation by the CRTC when this scheme started. My opposition to the scheme's violation of citizens' rights and its unjust enrichment of corporations has resulted in questions in the House of Commons during the Chrétien and Harper governments^{1,2}, a precedent-setting legal case³, an official complaint alleging unlawful activities⁴ and an unpublished CRTC decision in response to the complaint.⁵

In that unpublished decision, the CRTC ruled itself and corporations innocent of unlawful activities, while determining that the Canadians being required to pay for the company subsidy scheme were not legally entitled to direct notice of the fact that they were being required to pay for the scheme and its monthly cost.

¹ Hansard (30 March 1995), Parliament of Canada, Oral Question Period, No. 180, 11299.

² Hansard (8 February 2008), Parliament of Canada, Oral Question Period, No. 047, 1130.

³ *Mahar v Rogers Cablesystems Ltd.* (1995) 25 *Ontario Reports*, (3d) 690 (General Division).

⁴ Cable Watch complaint to CRTC (28 November 1995), CRTC file 1000-121.

⁵ Unpublished CRTC decision (25 June 1996), CRTC file 1000-121.

Open Question

It is worth stressing that since the unpublished CRTC decision was not subject to a review by the Federal Court of Appeal, it remains an open question whether or not the CRTC and corporations acted unlawfully in relation to the scheme.

Failure by Prime Ministers

The company subsidy scheme first surfaced in the final month Brian Mulroney was prime minister;⁶ it was originally designed by individuals that he had appointed to the CRTC and requires citizens to subsidize private corporations, thereby redistributing wealth from Canadians to these corporations.

I brought this issue to the attention of Canada's last three prime ministers: Jean Chrétien, Paul Martin and Stephen Harper. Their collective failure to properly address the regulatory affair has served to critically undermine transparency, protect powerful vested interests from accountability and facilitate the exploitation of millions of citizens to this present time.

Case Study

Attached is a copy of *One Media Law*, a case study that I completed in 2015 into the company subsidy scheme and systemic corruption at the federal regulator.

A copy is also posted on www.onemedialaw.com, as well as a database with a number of documents related to the issue.

As documented, the first phase of the highly regressive redistribution scheme was facilitated by the introduction of subsection 18(6.3) of the *Cable Television Regulations, 1986*, enacted in 1994 (SOR/94-133); modifications to the scheme were incorporated into the *Broadcasting Distribution Regulations* (SOR/97-555).

Following is a brief commentary on how initiating an investigation into the scheme and evidence of systemic corruption fits with the priorities and commitments that you made in your open letter to Canadians.⁷

Transparency and Accountability

Your commitment “to set a higher bar for openness and transparency [and] shine more light on government to make sure it remains focused on the people it was created to serve” is precisely what I am calling upon.

As specifically addressed in *One Media Law*, a host of misleading and deceptive tactics have been employed to accomplish this transfer of wealth from millions of citizens to these corporations without transparency or accountability.

⁶ Public Notice CRTC 1993-74, 3 June 1993.

⁷ 'Prime Minister Justin Trudeau's open letter to Canadians', 4 November 2015.

The misleading and deceptive tactics employed include the failure to properly notify ratepayers about the scheme; fees being collected under false pretences by cable television companies; closed-door decision-making processes used by the CRTC with industry; the CRTC decision addressing allegations of unlawful activities and the rights of Canadians not being published; the destruction of CRTC file 1000-121 and related documents; and false or misleading information being provided to citizens, journalists, the House of Commons Standing Committee on Canadian Heritage and Parliament.

The ongoing lack of transparency at the federal regulator is reflected by the fact that the CRTC still refuses to even identify which commissioners voted in favour of adopting the company subsidy scheme more than two decades ago.

CRTC file 1000-121

More importantly, CRTC chairman Jean-Pierre Blais has declined my requests to explain why exactly CRTC file 1000-121 was destroyed on 27 March 2006, or who authorized its destruction and the documents stored in that particular file. For the sake of clarity, CRTC file 1000-121 was where all the documents were stored relating to the complaint I had initiated alleging unlawful activities by the federal regulator and corporations, including the unpublished CRTC decision.

CRTC file 1000-121 and all of these documents were destroyed after my lawyer submitted information to Stephen Harper addressing my allegations of long-term systemic corruption at the CRTC, which specifically identified the existence of CRTC file 1000-121 in connection with the corruption.

Given the nature of the material involved, the timing of its destruction and the failure by Jean-Pierre Blais to provide basic information in relation to the destruction of CRTC file 1000-121, it is entirely possible that the federal regulator is trying to evade transparency and accountability.

I am attaching for your benefit copies of three documents formerly stored in CRTC file 1000-121: the complaint alleging unlawful activities, a submission with legal argument related to these serious allegations and the unpublished decision by the CRTC effectively exonerating itself and corporations from wrongdoing.

Copies of these documents are also posted on www.onemedialaw.com.

Change in Government

Your commitment that your government “will bring real change – in both the things we do and the way we do them” is relevant in this matter.

For a start, if you choose to be honest with Canadians by simply acknowledging the existence and nature of the company subsidy scheme in the House of Commons you will be doing something different to your predecessors.

Government-Industry Relations

Changing the excessively close relationship between politicians, corporate executives, federal regulators and lobbyists is needed in Canada. In short, a greater degree of separation between industry and state is required.

Sheila Copps is responsible for the federal government entering its original partnership with cable television companies in relation to the company subsidy scheme in 1996,⁸ while she was deputy prime minister and minister of Heritage. Today your government continues to be in partnership with these corporations in the Canada Media Fund, a public-private partnership financed by Canadian taxpayers and money collected from consumers through the scheme.

According to Professor Joel Bakan, the existence of public-private partnerships is reason for citizens to worry. He states: "If corporations and governments are indeed partners, we should be worried about the state of our democracy, for it means that government has effectively abdicated its sovereignty over the corporation."⁹

Appointment Process

Reform is also needed to better insulate the CRTC and Canadian Broadcasting Corporation (CBC) from undue political and/or industry interference, including changing how appointments are made to these important public institutions.

A case in point is the recent campaign by Friends of Canadian Broadcasting to address that nine of the eleven current members of the CBC Board of Directors – all appointed by Stephen Harper – have all been financial contributors to the Conservative Party of Canada.

Furthermore, Professor Joseph Stiglitz maintains that it is a common practice for industry leaders in regulated sectors to use their political influence to get individuals sympathetic to industry appointed to regulatory agencies because regulators "write the rules of the game".¹⁰

Professor Matthew Fraser describes the CRTC appointment process as "opaque" and states that "big media companies lobby hard in political corridors to get reliable proxies appointed [and] over the years, the commission has been stacked with a motley collection of failed politicians, wives and offspring of political bagmen, girlfriends of senior party members and cronies of industry executives."¹¹ He also alleges that the CRTC has been completely captured by corporate interests in the broadcasting industry since the late 1980s.¹²

⁸ Canadian Heritage (9 September 1996), 'Copps Launches Canada Television and Cable Production Fund', news release.

⁹ Bakan, J. (2004), *The Corporation: The Pathological Pursuit of Profit and Power*. Toronto: Viking Canada, p. 108.

¹⁰ Stiglitz, J. (2013), *The Price of Inequality*. New York: Penguin Group, p. 59.

¹¹ Fraser, M. (11 August 2000), Let CRTC judges be judged. *The National Post*, p. C15.

¹² Fraser, M. (10 June 2000), The man who won't do lunch. *The National Post*, p. D11.

Canadian Content

Clearly, the company subsidy scheme illustrates that fundamental change is required in how Canadian content (Cancon) is supported by citizens. For too long Cancon regulations have been distorted and turned to industry's advantage.

Professors Steven Globerman, Hudson Janisch and W.T. Stanbury stated twenty years ago, "most economists think Cancon regulations as 'boiling down' to yet another case of a small, well-organized group using the power of the state to redistribute income to themselves."¹³

The company subsidy scheme is most certainly an example of this unacceptable dynamic in action.

Policy Objectives Distorted and Corrupted

In its unpublished decision, the CRTC pointed to the *Broadcasting Act* to justify its introduction of the scheme requiring citizens to subsidize private corporations, alleging: "In enacting subsection 18(6.3), the Commission was acting to implement the broadcasting policy set out in section 3 of the Act and the regulatory policy set out in section 5 of the Act."¹⁴

This is the type of regulatory capture that Professor Daniel Carpenter asserts is of particular interest to many scholars and policymakers, "one in which certain goals are expressed in legislation but where the achievement of these goals is distorted, corrupted, watered down, or otherwise turned to an industry's advantage."¹⁵

While the *Broadcasting Act* mandates it is the broadcasting policy for Canada that "each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming", citizens are not defined in the legislation as being an element of the broadcasting system. Moreover, forcing citizens – without their knowledge – to subsidize private corporations is certainly not appropriate in a democracy.

The objectives of the *Broadcasting Act* would be better served by directing funds to protect and strengthen journalism at the CBC and support not-for-profit community radio and television stations rather than paying for the company subsidy scheme, which has unjustly enriched corporations and also subsidized some programming that was produced for export markets with themes that had little or nothing to do with Canada.

¹³ Globerman, S., Janisch, H.N. and Stanbury, W.T. (1996), *Convergence, Competition and Canadian Content*. In W.T. Stanbury (Ed.), *Perspectives on the New Economics and Regulation of Telecommunications*. Montreal: Institute for Research on Public Policy, p. 217.

¹⁴ Unpublished CRTC decision (25 June 1996), CRTC file 1000-121, p. 4.

¹⁵ Carpenter, D. (2014), *Detecting and Measuring Capture*. In D. Carpenter and D.A. Moss (Eds.), *Preventing Regulatory Capture: Special Interest Influence and How to Limit It*. New York: Cambridge University Press, p. 59.

Struggling Middle Class

Your acknowledgement that “a struggling middle class” is a real and immediate problem in Canada is inherently relevant to the company subsidy scheme, while also useful to consider from a global perspective.

By its very nature, the scheme has served to increase the concentration of wealth in Canada, while economic inequality in the world is recognized as a significant and growing social problem that threatens to undermine democratic values.¹⁶

According to Oxfam International’s 2014 report *Working for the Few*, the economic game has been rigged by economic elites co-opting political power and undermining democracy.¹⁷ In this case, federal regulators have abused the power of the CRTC to rig cable television rates and effectively redistribute wealth from millions of ordinary citizens to extremely rich and politically influential citizens. Successive prime ministers have effectively supported the scheme by turning a blind eye to the fact that the power of the state is being abused to unfairly benefit members of an economic elite.

Trust in Government

Finally, I wish to address your assertion that Canada’s challenges will only be overcome if citizens have faith in the federal government’s honesty. While I agree with your assessment, Canada’s federal government simply does not deserve to be trusted by citizens at the present time. However, you are in a highly privileged position and able to help ensure that your government rightfully earns the trust of Canadians.

You credit listening to Canadians as playing an important role in the result of the recent federal election and stated in your open letter to Canadians, “I am committed to leading an open, honest government that is accountable to Canadians, lives up to the highest ethical standards, brings our country together, and applies the utmost care and prudence in the handling of public funds.”

Kindly acknowledge receipt of this letter and confirm whether an investigation into the company subsidy scheme and CRTC is being initiated.

Sincerely,

Original letter signed by/

Keith Mahar
keith.mahar@gmail.com
www.onemedialaw.com

¹⁶ Piketty, T. (2014) *Capital in the Twenty-First Century*. Cambridge: Harvard University Press.

¹⁷ Oxfam International (20 January 2014), *Working for the Few: Political Capture and Economic Inequality*, p. 1.