ONEMEDIALAW

A case study of regulatory capture, systemic corruption and the Canadian Radio-television and Telecommunications Commission

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> *"Much of the inequality that exists today is a result of government policy, both what the government does and what it does not do. Government has the power to move money from the top to the bottom and the middle, or vice versa."*
>
> **Joseph Stiglitz**, *The Price of Inequality*, 2013, pp. 35-36.

> *"When powerful interests gain excessive influence over regulatory agencies, the integrity of the regulatory process is compromised, and catastrophic consequences can unfold."*
>
> **Sheldon Whitehouse** and **Jim Leach**, *Preventing Regulatory Capture*, 2014, p. 467.

> *"Systemic corruption distorts incentives, undermines institutions, and redistributes wealth and power to the undeserving."*
>
> **Robert Klitgaard**, *Finance and Development*, June 2000, p. 1.

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Introduction

> *"We need to replace a culture of entitlement and corruption with a culture of accountability. We need to replace benefits for a privileged few with government for all"* (Harper, 2006).

Prime Minister Stephen Harper is being sent a copy of this report because its completion was made necessary as a result of his failure to address evidence of long-term systemic corruption at the Canadian Radio-television and Telecommunications Commission (CRTC).

Although my campaign to address this matter first resulted in questions in the House of Commons twenty years ago to then Prime Minister Jean Chrétien (Hansard, 30 March 1995), the well-documented and illuminating case of government corruption remains outstanding. In fact, the Hon. Jim Abbott misled Parliament about this issue seven years ago (Hansard, 8 February 2008), the day after I appeared at a CRTC public hearing and advocated for a judicial review of the affair (Mediacopy, 7 February 2008).

As documented, my legal counsel requested Prime Minister Harper to grant me standing to testify in relation to this case of corruption in 2010. However, no such opportunity has ever been made available. Material in this report contains facts that I had intended to place on the public record. In addition, copies of the documents submitted to Mr Harper by my legal counsel in 2006 and 2010 have been placed online for interested parties (www.onemedialaw.com).

The identified corruption is related to a highly unorthodox wealth redistribution scheme that has required Canadians – without their knowledge – to subsidize private companies since 1995. In the process, corporations controlled by powerful media proprietors have been unjustly enriched and ordinary citizens exploited and their rights violated.

The case study included in this report examines exactly how members of an economic elite have harnessed the power of the state and bypassed the democratic process in order to redistribute wealth from millions of citizens to themselves. It serves to support the allegation by Oxfam that: "Wealthy elites have co-opted political power to rig the rules of the economic game" (Oxfam, 20 January 2014).

The lessons from this case study are highly relevant to contemporary research in social sciences, including in relation to corruption in the public sector, regulatory capture, wealth inequality, democratic theory, administrative law, journalism and social justice. In addition, those studying the economics of information will be particularly interested in the methods employed by government and industry to manufacture and maintain public ignorance about the ultra-regressive scheme.

A critical social science approach has been adopted for this case study, which includes structural analysis that identifies the systemic causes of citizens' oppression and exploitation, while also incorporating "the idea that the personal is political and vice versa" (Ife, 1997, p. 134). This case study is written as a first-person narrative since my activism has generated data that provides insight into the affair and I am personally connected to the history of government and industry supressing information about this scheme to the public. At the same time, my pursuit of this governance issue has come at a high personal cost. The political is definitely personal.

The transfer of wealth from citizens to corporations was originally facilitated by the enactment of an unprecedented regulation in 1994 (subsection 18(6.3) of the *Cable Television Regulations, 1986*), while I was employed in the Canadian broadcasting industry for my knowledge of the cable television industry and its regulation by the CRTC. The title of this report – One Media Law – refers to that regulation, which is explained in detail in Chapter 2 of the case study: 'Citizens exploited to unjustly enrich corporations'. I recommend that this section of the case study be read before anything else.

One outcome of the case of systemic corruption is the Canada Media Fund, a 'government-industry partnership' that allocates subsidies to private production companies. The official version of the Fund's history is available on its website and this 'information' has been added as Appendix A, allowing readers to compare it to the research and analysis of the government-industry partnership contained in this report's case study.

While it is my hope that One Media Law will serve as a catalyst for a public inquiry into the CRTC affair which results in significant democratic reform, I am not planning to sit back and wait for politicians to finally find the courage and integrity to stand up for Canadians and hold media proprietors, federal regulators and other politicians accountable. Consequently, I intend to generate additional data through further activism, pursue opportunities to discuss this case of corruption and its implications with interested parties and write a blog on www.onemedialaw.com.

In the evocative words of the late political scientist Samuel P. Huntington, "Power remains strong when it remains in the dark; exposed to sunlight it begins to evaporate" (Huntington, 1981, p. 75).

I am simply going to try to produce some sunlight.

Summary

> *"Those at the top have learned how to suck out money from the rest in ways that the rest are hardly aware of – that is their true innovation"* (Stiglitz, 2013, p. 40).

Millions of citizens, without their knowledge, have been required to subsidize private corporations since 1995. During the original phase of the highly unorthodox wealth redistribution scheme, prominent businessmen were effectively granted the power to coerce Canadians to unjustly enrich corporations under their control. This unprecedented transfer of wealth started when officials abused the authority of a federal regulatory agency to set fees for cable television service, and was hidden from detection by corporations collecting fees under false pretences. The architects and beneficiaries of the unethical and potentially unlawful scheme have avoided accountability due to the failure of politicians in successive governments to address the issue, including Prime Minister Stephen Harper. The facts of this affair provide a disturbing insight into the relationship between the state and industry, while substantiating that a public inquiry is warranted into evidence of long-term systemic corruption at the Canadian Radio-television and Telecommunications Commission.

'Part A: Setting the Context' first acknowledges Professor Matthew Fraser's public allegation that the CRTC suffers from institutionalized corruption and has been captured by industry interests since the late 1980s (Fraser, 10 June 2000). Following this content, information regarding the CRTC is presented, including its operation at arm's length from Parliament, the significant commercial influence on decisions made by its commissioners and the fact that these federal regulators are subjected to intense lobbying. The culture of secrecy at the CRTC is also raised, as well as research findings that the governance process used to appoint commissioners to the federal regulator is poor and prone to patronage (Friendly, 2004).

To put the social phenomena of regulatory capture and systemic corruption into proper context, the work of a number of scholars and organizations is relied upon, including: Carpenter, 2014; Carpenter and Moss, 2014; Carrigan, 2014; Dal Bó, 2006; Deighton-Smith, 2004; Domhoff, 1979; Hardy, 2006; Jain, 2001; Johnston, 1997; Kernaghan, 2003; Klitgaard, 2000, 2004; Kwak, 2014; OECD, 2009; Ogus, 2004; Stigler, 1971; Stiglitz, 2013; Warren, 2004, 2006; Whitehouse and Leach, 2014; and Zingales, 2014.

'Part B: Case Study' chronicles and analyses the introduction and modification of the CRTC's wealth redistribution scheme from its inception in 1993 to the present day (from the time of Prime Minister Brian Mulroney and CRTC Chairman Keith Spicer to the present combination of Prime Minister Stephen Harper and CRTC Chairman Jean-Pierre Blais). Research and analysis of a number of primary sources provides an illuminating and valuable insight into the power dynamics at play and the relationship between federal regulators, cabinet ministers and corporations controlled by media proprietors. These primary sources include copies of documents and correspondence that are available in an online database on www.onemedialaw.com.

Chapter 1: From insider to activist

The case study starts by describing how I first became aware of the significant corporate influence on the CRTC in the early 1990s, while employed in the Canadian broadcasting industry. However, I only realized the extent of the CRTC's regulatory capture by industry interests in early 1995, after reviewing regulations that had been enacted a year earlier by the federal regulator, including subsection 18(6.3) of the *Cable Television Regulations, 1986* – which I refer to as 'Regulation 18(6.3)'.

Chapter 2: Citizens exploited to unjustly enrich corporations

The history and precise mechanics of the highly unorthodox wealth redistribution scheme facilitated by Regulation 18(6.3) is addressed. This regulation gave cable television companies the option to charge artificially inflated monthly rates to subscribers for their monopoly service, siphon revenue out of the Canadian broadcasting system and cross-subsidize other commercial activities if money was simply donated to a fund subsidizing television production companies. In effect, Regulation 18(6.3) granted several prominent businessmen the unprecedented power to require six million citizens to subsidize private companies, including the unjust enrichment of corporations under their respective control. Furthermore, CRTC commissioners sanctioned cable television companies to collect the Regulation 18(6.3) fees under false pretences, a method of collection that I've described as "government-regulated fraud" (Mahar, 13 June 2008).

Chapter 3: Theory of an 'information highway' agenda

Facts are presented which support the theory that Regulation 18(6.3) was part of a larger government agenda to accelerate the development of the so-called 'information highway', including by federal regulators abusing the authority of the CRTC to artificially inflate rates for regulated services and permitting corporations to use this revenue to cross-subsidize the cost of building their privately-owned digital networks. It is a matter of record that I first objected to this transfer of wealth agenda and advocated for an investigation 20 years ago (Haslett-Cuff, 8 March 1995; Mahar, 17 March 1995).

Chapter 4: Accountability undermined by regulators and politicians

A culture of corruption at the CRTC and political complicity emerged following a Parliament Hill press conference that I conducted with my legal counsel and three MPs to address the wealth redistribution scheme on 29 March 1995. Evidence includes the federal regulator's 'official statement' about the Regulation 18(6.3) affair containing false and misleading information (CRTC, 29 March 1995), related questions in the House of Commons to Prime Minister Jean Chrétien being left fundamentally unanswered (Hansard, 30 March 1995) and the failure of the government to publicly review the matter – despite the nature of the scheme and the existence of legal opinions that Regulation 18(6.3) was probably unlawful.

Chapter 5: Canadians entitled to knowledge of Regulation 18(6.3)

A pro bono legal team helped me initiate a strategic lawsuit against Rogers Cablesystems Ltd. in May 1995 to establish the legal right of ratepayers to notice about Regulation 18(6.3). CRTC Chairman Keith Spicer subsequently provided false and misleading testimony about Regulation 18(6.3) to the House of Commons Standing Committee on Canadian Heritage. While the corporation won a precedent-setting decision on jurisdiction to stop the court from ruling on the merits of my case, I was designated as a public interest litigant by Justice Sharpe, who made a precedent-setting decision in my favour on costs, stating that my case was "brought on a bona fide basis [and] raised a genuine issue of law of significance to the public at large" (Mahar v. Rogers Cablesystems Ltd., 1995, p. 705).

Chapter 6: Complaint alleges unlawful activities

I initiated a complaint to the CRTC pursuant to s. 12 of the *Broadcasting Act*, alleging unlawful activities by the CRTC and cable television companies in relation to Regulation 18(6.3). The Public Interest Advocacy Centre subsequently made a request to the Minister of Canadian Heritage for the government to "swiftly take steps to initiate an independent review" of the complaint (PIAC, 30 November 1995). However, the Hon. Michel Dupuy dismissed the request. Similarly, Finance Minister Paul Martin and Industry Minister John Manley also dismissed my requests to intervene in the matter.

Chapter 7: CRTC decision made behind closed doors and not published

In an unpublished decision, the CRTC ruled itself and corporations innocent of unlawful activities in relation to the complaint about Regulation 18(6.3), following a closed-door process that included the participation of Rogers Cablesystems Ltd. and the industry association, but did not permit the involvement of any government-funded consumer group. According to the CRTC decision, Parliament had granted the CRTC the authority to enact Regulation 18(6.3); corporations were entitled to collect fees related to Regulation 18(6.3); but the citizens paying these fees were not legally entitled to direct written notice about Regulation 18(6.3). Documents related to the matter were stored in CRTC file 1000-121, but I was not in a position to challenge the unpublished decision in the Federal Court of Appeal, as my mental health had deteriorated. Consequently, it remains an open question whether the CRTC and corporations acted unlawfully.

Chapter 8: An enlightening government-industry partnership surfaces

The CRTC proposed to replace the *Cable Television Regulations, 1986* with the *Broadcasting Distribution Regulations*, effectively eliminating Regulation 18(6.3) in name, but incorporating a modified wealth redistribution scheme into the new regulations that would increase the unjust enrichment of Rogers Cablesystems Ltd. in the process. The federal government became a partner in the wealth redistribution scheme on 9 September 1996, when Deputy Prime Minister and Heritage Minister Sheila Copps announced the creation of the Canada Television and Cable Production Fund, a 'government-industry partnership' to subsidize production companies from both taxpayers and cable television subscribers. MP Dan McTeague and I subsequently appeared together at a CRTC public hearing and identified several fundamental deficiencies inherent within the proposed *Broadcasting Distribution Regulations*, including the unjust enrichment of corporations and the violation of government policy. One month after that hearing, I required hospital care as a result of experiencing psychosis.

Chapter 9: Long distance return to unfinished business

The *Broadcasting Distribution Regulations* came into force at the start of 1998, entrenching the requirement for millions of citizens to unjustly enrich and subsidize private corporations through artificially inflated rates for cable television service. The Canada Television and Cable Production Fund was re-branded as the Canadian Television Fund that same year, after controversy that the government-industry partnership was subsidizing the production of television programming for foreign markets. MP Dan McTeague commissioned me to research how to reform the CRTC, resulting in a joint submission in 1999 to the Liberal Caucus Group on the CRTC. In addition I contributed to Bill C-381, a private member's bill introduced to Parliament by Mr McTeague to amend the *Canadian Radio-television and Telecommunications Commission Act*, which died on the order paper when an early election was called in 2000. The following year I migrated to Australia. I returned to the ongoing issue in 2004, submitting information and documents to Prime Minister Paul Martin. However, there was no public review of the CRTC affair.

Chapter 10: Prime Minister Stephen Harper's broken promise

Analysis of primary sources starting in 2006 identifies that the wealth redistribution scheme, the culture of corruption at the CRTC and political complicity continue to be contemporary issues in Canada. The data studied in this chapter relies upon a number of documents, including correspondence to Prime Minister Stephen Harper, CRTC Chairman Jean-Pierre Blais, former CRTC Chairman Konrad von Finckenstein and others. It is noted that CRTC file 1000-121 and all of the documents stored in that file were destroyed in 2006, after my lawyer sent information to Mr Harper about the outstanding case of corruption, the unpublished CRTC decision and identified the existence of CRTC file 1000-121. Copies of relevant documents are available on www.onemedialaw.com, including correspondence from the Office of the Prime Minister and the unpublished CRTC decision. When my campaign resulted in the NDP's deputy leader Libby Davies stating in the House of Commons that Canadians are owed "more than $1.2 billion" as a result of being overcharged by cable television companies, the Hon. Jim Abbott misled Parliament by stating that the Harper government had referred the matter to the CRTC (Hansard, 8 February 2008). The Canadian Television Fund was subsequently expanded and re-branded the Canada Media Fund, and the prime minister did not grant me an opportunity to testify about the CRTC affair on the public record, as I requested through my lawyer.

Conclusion

A public inquiry is warranted into the regulatory capture of the Canadian Radio-television and Telecommunications Commission, evidence of long-term systemic corruption and the failure of cabinet ministers in successive administrations to address the identified wealth redistribution scheme, including Prime Minister Stephen Harper. The terms of reference for such a public inquiry should be designed to hold individuals and corporations accountable for their actions and, more importantly, identify democratic reforms required to decrease the undue influence by special interests, increase transparency and accountability, and improve the process used to enact subordinate legislation in Canada. The unorthodox scheme raises civil law, criminal law and administrative law issues that citizens deserve to be fully addressed in the public interest, including whether or not millions of Canadians are legally entitled to retroactive rate refunds by cable television companies; did anyone violate Section 122 of the Criminal Code (breach of trust by public officer); did corporations collecting money to fund the wealth redistribution scheme violate Section 380 of the Criminal Code (fraud); and were the statutory rights of Canadians violated by the processes used by the CRTC to enact, modify and maintain the wealth redistribution scheme.

Part A: Setting the Context

> *"According to the theory of "regulatory capture," bodies such as the CRTC go through successive stages toward their inevitable corruption. In their infancy, regulators show youthful activism. By middle age, they have succumbed to subtle co-option by industry interests. In their final stages of bureaucratic senility, they degenerate into passive instruments of the corporate interests under their purview.*
>
> *It would take formidable powers of self-delusion to deny that the CRTC's evolution has followed the capture theory with alarming fidelity. Created in 1968, the commission was already slipping into complicity with industry interests by the late 1970s. A decade later, it was totally captured. This was especially true in broadcasting"* (Fraser, 10 June 2000).

Professor Matthew Fraser's allegation that the Canadian Radio-television and Telecommunication Commission is corrupt and has been 'captured' by industry interests is substantiated by the facts of this report's case study. The report begins by explaining and defining relevant information related to the CRTC, regulatory capture and corruption.

1. Canadian Radio-television and Telecommunications Commission

The CRTC is a quasi-judicial administrative tribunal that operates at arm's length to Parliament and is constituted under the *Canadian Radio-television and Telecommunications Commission Act* (R.S.C., 1985, c. C-22). The commission is vested with extensive statutory authority under the *Broadcasting Act* (S.C. 1991, c. 11), *Telecommunications Act* (S.C. 1993, c. 38) and *Bell Canada Act* (S.C. 1987, c. 19) in order to regulate the broadcasting and telecommunications industries in Canada in the public interest. As reported in the Communications Monitoring Report, the combined annual revenues of these influential industries exceeds $60 billion (CRTC, 16 October 2014).

The CRTC reports to Parliament through the Minister of Canadian Heritage and officials from the federal regulator are required to appear and testify before the House of Commons Standing Committee on Canadian Heritage.

As addressed in this report's case study, CRTC officials provided false and misleading testimony to this parliamentary committee when MPs asked the federal regulators specific questions related to my original campaign against the wealth redistribution scheme (HCCD, 16 May 1995; HCCD, 25 April 1996).

Under the Harper government, CRTC officials have been spared answering questions about the affair by the House of Commons Standing Committee on Canadian Heritage, which has ignored requests by both my legal counsel and myself for an opportunity for me to testify about the issue and evidence of corruption (Armarego, 14 February 2007; Armarego, 31 May 2010; Mahar, 14 June 2012; Mahar, 21 June 2012).

1.1. The appointment process

According to Professor Joseph Stiglitz, industry leaders in regulated sectors frequently "use their political influence to get people appointed to the regulatory agencies who are sympathetic to their perspectives" because regulators "write the rules of the game" (Stiglitz, 2013, p. 59).

A research report commissioned by Friends of Canadian Broadcasting identifies that the process used to appoint individuals as CRTC commissioners "remains under the direct and exclusive control of the Prime Minister, where it is subject to no consistently applied objective criteria" (Friendly, 2004, p. 1). The same report describes the lack of scheme attention to governance in the appointment of CRTC commissioners as "glaring" and states that data suggests a large number of individuals appointed to the CRTC are simply patronage appointments.

Professor Fraser describes the CRTC appointment process as "opaque" and alleges 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" (Fraser, 11 August 2000).

Allegations of political interference in the appointment process surfaced in 2011, regarding the appointment of a friend of Prime Minister Stephen Harper's communications director to the position of CRTC vice-chairman. The New Democratic Party alleged that the appointment "was marred by improper interference by the Prime Minister's Office" (Galloway, 4 February 2011).

1.2 Authority to enact and enforce regulations

In terms of writing the rules of the economic game, Parliament has delegated the CRTC with the power to make and enforce regulations, which are a type of law referred to as subordinate legislation. However, the authority of the Commission to enact regulations is strictly limited by the legislation that Parliament has enacted in relation to the federal regulator, including the *Broadcasting Act*. In addition, regulations enacted in Canada must "be made in good faith" and "rulemaker's activities must not constitute an abuse of power or discretion" (Murphy, 2005, p. 162).

This report's case study focuses on one regulation enacted by federal regulators at the CRTC which served to unjustly enrich cable television companies and permit them to siphon revenue out of the broadcasting system and cross-subsidize other commercial ventures, which is not within the scope of the federal regulator's authority granted by the *Broadcasting Act*.

1.3 Authority to determine questions of law related to its subordinate legislation

Parliament has granted extensive authority to the CRTC in order for it to regulate and supervise all aspects of the Canadian broadcasting system. For example, the CRTC has the same powers, rights and privileges as a superior court of record to conduct its hearings "with regard to the attendance, swearing and examination of witnesses at the hearing, the production and inspection of documents, the enforcement of its orders, the entry and inspection of property and other matters necessary or proper in relation to the hearing" (*Broadcasting Act*, S.C. 1991, c.11, s.16).

In addition, Parliament has granted the CRTC the "authority to determine questions of fact or law in relation to any matter within its jurisdiction" (*Broadcasting Act*, S.C. 1991, c.11, s.17), subject to review by the Federal Court of Appeal.

This case study addresses an unpublished CRTC decision in which the federal regulator ruled itself and relevant corporations innocent of unlawful activities. As the decision was not reviewed by the Federal Court of Appeal, it remains an open question whether the CRTC and corporations acted unlawfully.

1.4 Regulators subjected to intense corporate lobbying and political pressure

International Monetary Fund researcher Daniel Hardy acknowledges that regulators are subjected to "intense and effective pressure from regulated firms to modify regulations" in their self-interest (Hardy, 2006, p. 4).

Decisions made by individuals appointed as CRTC commissioners profoundly influence the revenues and profits of influential corporations. "The commission holds in its hands the power to grant – and take away – the broadcast and telecommunications licences without which some of the country's biggest companies, such as BCE Inc. and Rogers Communications Inc., would be nothing" (Fraser, 22 December 2000). As a result, the CRTC is subjected to considerable lobbying and pressure by corporate interests. Furthermore, CRTC commisioners are not immune from political pressure. For example, Prime Minister Harper did not reappoint Konrad von Finkenstein as chairman of the CRTC after tension between his government and the commission over several issues, including "internet billing practices and restricting foreign ownership of telecommunications companies" (CBC, 25 January 2012).

1.5 Lack of transparency at the CRTC

Transparency is identified as a core principle by the Organisation for Economic Co-operation and Development (OECD) in its Managing Conflicts of Interest Guidelines in the Public Service. In fact, a consultant to the OECD identifies transparency as "an essential aspect of ensuring accountability and minimising corruption [and] as an essential building block of civil society" (Deighton-Smith, 2004, p. 68).

As reported in the *National Post*, there has been a long-standing practice of executives from regulated corporations buying CRTC commissioners and senior staff dinners and conducting private meetings, without any minutes being taken regarding what was discussed (Jack, 20 March 2004). While that practice was officially stopped more than a decade ago, a culture of secrecy has continued at the commission. For example, in 2007 the CRTC conducted meetings behind closed doors with corporations benefitting from the wealth redistribution scheme addressed in this report's case study and no minutes were taken during those meetings. In addition, the CRTC has a policy of not disclosing how its commissioners vote, except where commissioners choose to express a dissenting opinion and have it attached to a decision. As a result of this policy of secrecy, the CRTC will still not identify who voted in favour of enacting the regulation in February 1994 that facilitated the start of the wealth redistribution scheme and which has unjustly enriched several corporations (CRTC, 22 August 2012).

2. Regulatory Capture

Interest in regulatory capture has increased in recent years as a result of the global financial crisis and the Deep Water Horizon Oil Spill. Senator Sheldon Whitehouse (D-RI) and Professor Jim Leach (former Republican Chairman of the House Committee on Banking and Financial Services) describe regulatory capture as a "reoccurring infection in the body politic" (Whitehouse and Leach, 2014, p. 473).

In advancing a theory to explain government regulation, the late Nobel Laureate and economist George Stigler addressed the fact that the state has powers that can be utilized "by an industry to increase its profitability" (Stigler, 1971, p. 4). "Stigler's starting point was the observation that, as a rule, regulation is acquired by the industry and is designed and operated primarily for its benefit" (Dal Bó, 2006, p. 204).

Professor William Domhoff states that "regulatory agencies are often controlled by the businesses they are supposed to regulate" (Domhoff, 1979, p. 31), and that regulatory capture is one of the means used by wealthy elites to dominate government and obtain "subsidies and procedural rulings that are in their short-run interests" (p. 25).

This report's case study identifies that millions of ordinary citizens have, without their knowledge, been required to subsidize private corporations for 20 years, including the unjust enrichment of corporations controlled by some of Canada's wealthiest businessmen for several years.

2.1 Defining regulatory capture

According to Professor Ernesto Dal Bó, the narrow interpretation of regulatory capture is "the process through which regulated monopolies end up manipulating the state agencies that are supposed to control them" (Dal Bó, 2006, p. 206).

Similarly, Assistant Professor Christopher Carrigan defines regulatory capture as "a condition whereby regulation is applied for the benefit of the regulated entities as opposed to the public interest" (Carrigan, 2014, p. 239).

Professors Daniel Carpenter and David Moss define regulatory capture as follows:

> "*Regulatory capture is the result or process by which regulation, in law or application, is consistently or repeatedly directed away from the public interest and toward the interests of the regulated industry, by the intent and action of the industry itself*" (Carpenter and Moss, 2014, p. 13).

Based upon these definitions, the facts addressed in this report's case study identify that the CRTC has been captured by corporate interests.

2.2 The revolving door phenomenon

Professor Dal Bó states: "The fact that many regulators come from industry, or end up there, has long been thought to be a source of bias in regulatory decisions" (Dal Bó, 2006, p. 214). The OECD also addresses the inherent risks associated with this type of 'revolving door'.

> "*The phenomenon of the revolving door refers to the movement of people into and out of key policymaking posts in the executive and legislative branches and regulatory agencies. This can carry the risk that it increases the likelihood that those making policies are overly sympathetic to the needs particularly of business – either because they come from that world or they plan to move to the private sector after working in government*" (OECD, 2009, p.8).

Democracy Watch's Duff Conacher acknowledges that it is common for CRTC commissioners to come from the broadcasting and telecommunications industries, and for commissioners to leave the federal regulator and subsequently appear before it as industry lobbyists. He describes this type of conflict of interest at the CRTC as "rampant" (Zerbisias, 16 February 2007).

Professor Fraser states: "The one-way door between the CRTC and the big industries it regulates has been swinging for so long there's no longer any distinction between state and market" (Fraser, 10 June 2000).

2.3 Future employment in industry

The prospect of higher paying future jobs in industry is identified as a key mechanism used to capture regulators (Domhoff, 1979; Dal Bó, 2006; Hardy, 2006; Kwak, 2014). Professor Luigi Zingales succinctly states: "the desire to preserve future career options makes it difficult for the regulator not to cater to the regulated" (Zingales, 2014, p. 124).

As noted above, CRTC commissioners and staff frequently end up employed by regulated corporations once they leave the federal regulator. In fact, Professor Fraser states: "Few industry players do not have an anecdote about getting lobbied over lunch by a CRTC commissioner looking for a job down the road" (Fraser, 10 June 2000).

2.4 Exploitation of public ignorance related to regulations

Public ignorance about regulations and the different relative stakes in the outcome of regulatory processes of individual citizens and corporations are both contributing factors in regulatory capture. "A key assumption in the economic theory of regulation is that large and dispersed constituencies remain poorly informed about regulatory issues. Because each individual is affected so little by regulatory decisions, it is not in his interest to invest in acquiring information on these issues" (Zingales, 2014, p. 127).

International Monetary Fund researcher Daniel Hardy also identifies information asymmetry as a contributing factor of regulatory capture. "As emphasized in Laffont and Tirole (1991) and Laffont (1993), regulatory capture is likely to be more effective when one interest group is highly concentrated and organized and has much at stake, and when the regulations are technically complex and asymmetric information is pervasive, so that outside verification is difficult" (Hardy, 2006, p. 4).

The combination of technically complex regulations, public ignorance about these regulations, and well-informed and highly motivated corporations is precisely the dynamic identified in this report's case study. Importantly, the CRTC and industry have adopted tactics which serve to maximize information asymmetry in this case, including the collection of fees under false pretences by cable television companies.

2.5 Legislation turned to industry's advantage

Professor Carpenter notes that many scholars and policymakers are interested in a particular type of regulatory capture, "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" (Carpenter, 2014, p. 59).

This is precisely the type of regulatory capture identified in this case study. While the *Broadcasting Act* stipulates that the Canadian broadcasting system should encourage the development of Canadian programming in the public interest, federal regulators abused the authority of the CRTC to unjustly enrich cable television companies and permit revenue to be siphoned out of the broadcasting system to subsidize other commercial ventures, purportedly to promote the production of Canadian content.

3. Corruption

Professor Kenneth Kernaghan acknowledges that Canadian public servants have been involved in various types of corruption, including "patronage, bribery, conflict of interest and influence peddling" (Kernaghan, 2003, p. 85).

According to Professor Mark Warren, the majority of people studying corruption "argue that it is a symptom as well as a cause of dysfunctions within democracies" (Warren, 2004, p. 328) and that one cause for declining trust in government is "public perceptions that government officials and institutions are corrupt and/or serve a few powerful interests rather than the public interest" (Warren, 2006, p. 160).

3.1 Defining corruption

There is not a universally accepted definition of corruption, which is one of the difficulties associated with studying the issue (Jain, 2001). Moreover, it is important to note that the existence of corruption does not necessarily require criminal conduct to occur. For the purpose of identifying long-term systemic corruption at the CRTC in this case study, I rely upon the following definitions of corruption.

Professor Michael Johnston defines corruption as "the abuse of public roles or resources or the use of illegitimate forms of political influence by public or private parties" (Johnston, 1997, p. 62).

In addition, Professor Kernaghan points out that corruption can "be interpreted as a broad phenomenon that diminishes the legitimacy of the political system and its administrative subsystem (Kernaghan, 2003, p. 84).

In terms of systemic corruption, Professor Robert Klitgaard states: "Systemic corruption distorts incentives, undermines institutions, and redistributes wealth and power to the undeserving" (Klitgaard, 2000, p. 1). He defines the phenomenon in the following way:

> "*First of all, what does "systemic corruption" mean? We use the term to distinguish two situations. One is where some people are corrupt. Another is where many people are corrupt - where the system itself has grown sick. A distinguishing characteristic of systemic corruption is that the many parts of the government that are supposed to prevent corruption have themselves become corrupted*" (Klitgaard, 2004, p.1).

3.2 Determinants of corruption

Professor Arvind Jain asserts that "corruption requires three elements to co-exist":

> "*First, someone must have discretionary power. Defined broadly, this power would include authority to design regulations as well as to administer them. Second, there must be economic rents associated with this power. Moreover, the rents must be such that identifiable groups could capture these rents. Third, the legal/judicial system must offer sufficiently low probability of detection and/or penalty for the wrongdoing*" (Jain, 2001, p. 77).

These three elements of corruption co-exist in the case study contained in this report, including the ability of individuals, corporations and the CRTC to avoid accountability and penalties for wrongdoing.

3.3 Corruption and regulatory capture

Professor Anthony Ogus acknowledges that there is a correlation between the enactment of regulations by public officials and corruption:

> "*It is not difficult to see why regulatory decision-making is particularly associated with corruption (Goudie and Stasavage, 1998). Regulation confers power on institutions, but also on officials, to make decisions on the use of resources that can generate very significant gains or losses for individuals affected by the regulatory instrument* [and] *the decision-making may lack transparency and accountability*" (Ogus, 2004, p. 331).

At the same time, it is important to clarify that the existence of regulatory capture does not automatically equate to corruption. For example, Professor Zingales states:

> "*When economists talk about regulatory capture, we do not imply that regulators are corrupt or lack integrity. In fact, if regulatory capture were due solely to illegal behavior, it would be simpler to fight. Regulatory capture is so pervasive precisely because it is driven by standard economic incentives, which push even the most well-intentioned regulators to cater to the interests of the regulated*" (Carpenter and Moss, 2014, p. 124).

While regulatory capture and corruption do not always co-exist, this report's case study identifies that the CRTC has been captured by corporate interests and that it also suffers from corruption, as alleged by Professor Fraser (Fraser, 10 June 2000).

Part B: Case Study

Chapter 1. From insider to activist

> *"With less than a week until its crucial government hearing, Rogers Communications Inc. has come out swinging at those opposed to its takeover of Maclean Hunter Ltd.*
>
> *Ted Rogers, president and chief executive officer, met with Mahar for 90 minutes to explain Rogers position"* (Brehl, 14 September 1994).

A week after I resigned from my position in the Canadian broadcasting industry and publicly opposed a major media company takeover, I had a meeting with the principal beneficiary of the commercial activity, Ted Rogers. While that meeting was uneventful, months later my focus on a highly unorthodox and potentially unlawful wealth redistribution scheme put me in conflict with the billionaire, other media proprietors and federal regulators at the Canadian Radio-television and Telecommunications Commission.

It was not my original life plan to be an activist.

I started my career in the broadcasting industry at Canadian Satellite Communications Inc. during the summer of 1987. At that time, I wasn't aware of the politics of the sector, nor was I particularly interested in the state of the CRTC or Canadian democracy. I was simply a 24 year-old with a business degree wanting to earn a decent salary and retire early. However, in order to do my job I had to learn about the cable television industry, including its regulatory environment. Cable television companies were statutory monopolies and their monthly rates and practices were regulated by the CRTC, a quasi-judicial administrative tribunal that operates at arm's length from Parliament under the authority of commissioners appointed by the prime minister of the day.

Loss of confidence in the CRTC

Over a period of time, it became more and more apparent to me that the CRTC was compromised.

First of all, the federal regulator shared a 'revolving door' culture with industry. Not only were broadcast and telecom industry insiders commonly appointed as CRTC commissioners, a significant number of commissioners and senior staff were also given lucrative positions at corporations regulated by the CRTC once their tenure at the federal regulator ended. As a result, conflicts of interest were abundant.

The commission's decision-making process was also problematic. I noticed that its public hearing process was biased towards industry. Corporate interests not only dominated a disproportionate amount of time dedicated to such proceedings, it appeared that the CRTC repeatedly ignored legitimate concerns raised by public interest groups. Moreover, while ordinary citizens have a statutory right to participate in proceedings conducted by the commission, genuine participation was obstructed by ineffective public notice procedures and the use of regulatory jargon that made it difficult for Canadians to even understand the issues.

In addition, although tasked with ensuring that Canadian programming was produced and distributed in the country to protect national cultural interests, the CRTC appeared far more interested in safeguarding the financial interests of corporations than ensuring that the television content produced related to Canada.

Furthermore, the manner in which the CRTC regulated cable television companies left a lot to be desired. While the CRTC protected these companies from competition, the regulations they enacted were ineffective at protecting the financial interests of consumers from these statutory monopolies.

During 1993 I accepted a position with CHUM Limited, an innovative Canadian broadcasting company that wanted to expand its specialty television business. I was employed as the company's national affiliate relations manager for its specialty television operations, due to my knowledge of the cable television industry and its regulation by the CRTC.

The CRTC's licensing decision for new specialty television services in June 1994 left me both disappointed and frustrated. Although CHUM Limited was awarded one of the licenses issued by the commission, some of the new services did not seem to have been licensed based on their merit. Moses Znaimer, a senior executive at the company, publicly commented that it appeared that "truly original ideas" had been rejected in favour of two or three channels that seemed "to be more of the same" (Canada Newswire, 6 June 1994). Southam News reported that the CRTC licensing decision "defied popular wisdom in the entertainment industry" (Austen, 7 June 1994).

While I subsequently represented CHUM Limited on a joint industry task force to consider how to market these new specialty television services to consumers, by that time I had lost my faith in the CRTC's ability to regulate the Canadian broadcasting system in the public interest.

Corporate takeover by Rogers Communications Inc.

At the same time, a CRTC public hearing was scheduled for that September which was going to have far-reaching consequences on Canada's media landscape. The hearing involved Rogers Communications Inc. (RCI), a major communications and media company that operated the largest cable company in the country. The corporation had applied to the CRTC for approval to acquire Maclean Hunter Ltd., a Canadian multimedia company. The acquisition was valued at $3.1 billion and was the largest media takeover in Canada of its time. If approved, Ted Rogers was going to be Canada's most powerful media baron and would also control a major telecommunications company in the country.

I did not consider such an increase in the concentration of media ownership to be in the best interest of either the broadcasting industry or the Canadian public. It was my belief that Mr Rogers and a handful of other media proprietors already wielded excessive political and regulatory influence.

RCI argued that the acquisition of Maclean Hunter Ltd. was necessary to protect Canadian culture from foreign media interests (RCI, 1994). Many involved in the industry, including myself, were sceptical. Friends of Canadian Broadcasting spokesman Ian Morrison called this rationale for the takeover "a big lie" and accused the CRTC of being too close with the cable television industry (Brehl, 17 September 1994). In fact, this group wanted the Liberal government to hold an inquiry into the federal regulator to determine whether it was truly serving the public interest. However, despite widespread concerns about the acquisition, industry insiders anticipated that the CRTC would rubber-stamp the takeover of Maclean Hunter Ltd. by RCI.

Campaign against government approval of takeover

Disillusioned with the CRTC and the increasing concentration of ownership of the Canadian broadcasting industry, and eager for more public scrutiny into the proposed acquisition of Maclean Hunter Ltd., over a period of weeks I became more and more focussed and motivated to personally take action. With the benefit of a healthy financial buffer from several years of corporate employment, I resigned from my job in early September 1994 to publicly campaign against the media takeover.

The vice-president and general manager of CHUM television was quoted in the *Toronto Star* saying that I had left a "high-paying managerial job [and] severed all ties" to the company in an article entitled, 'Would-be giant killer resigns to thwart Rogers takeover bid' (Brehl, 10 September 1994). Over time, I was going to learn the costly lesson that journalists often rely far more on sensationalism than basic investigation and critical analysis of the facts.

I had made the decision to initially focus on the potential loss of corporate tax revenue resulting from the proposed takeover. At the time, the Canadian federal deficit had increased to such a degree that the government was preparing to implement major austerity measures involving the largest spending cuts since the end of World War II.

Maclean Hunter Ltd. was a well-established corporation, operating at a profit and paying tens of millions of dollars per year in corporate income tax. In contrast, RCI primarily funded its aggressive expansion through high debt financing, which significantly reduced its tax liability due to the writing-off of its resulting interest costs. Despite significant government protection against open competition for its major businesses, the corporation was technically running at a loss. I argued that permitting the profitable company to be swallowed up by RCI and in the process losing the corporate income tax revenue being collected was not in the public interest.

The *Toronto Star* reported that days after I started my campaign, I had a meeting with Ted Rogers, who was then president, chief executive officer and controlling shareholder of RCI. The face-to-face meeting occurred a few hours after I had requested to meet with Mr Rogers and, unsurprisingly, we didn't change our respective views of the takeover. The company's public response against my criticism was simply that it was creating jobs and that its employees were paying taxes (Brehl, 14 September 1994).

I subsequently appeared at the scheduled CRTC public hearing to make the case against RCI's acquisition of Maclean Hunter Ltd. (Keeley, 22 September 1994). Two months later, I testified before the House of Commons Standing Committee on Finance to address corporate taxation in Canada, using the case of RCI to argue that corporations were not paying their fair share of the tax burden (HCCD, 23 November 1994).

As expected by industry pundits, the CRTC approved the takeover of Maclean Hunter Ltd. by RCI.

Appeal to federal cabinet

Disappointed but undaunted, I appealed the CRTC's decision to cabinet in January 1995, arguing that the CRTC's decision should be set aside because it did not meet the objectives of the *Broadcasting Act*. I also recommended that cabinet direct the commission to assess and quantify the impact that such a takeover might have on taxation, consumer rates and employment. In a show of support, the president of the Ontario Federation of Labour co-signed my appeal to cabinet (Mahar, 13 January 1995).

In addition, MP Bill Graham (later the interim Leader of the Liberal Party of Canada) supported elements of my appeal. In his letter to Canadian Heritage Minister Michel Dupuy, Mr Graham stated that I had raised "some serious questions which go to the heart of broadcasting policy in this country." He further stated that I had drawn "attention to the way in which tax regulations, in favouring debt over equity investments, are facilitating the process of mergers and acquisitions which lead to a situation of virtual monopoly in the industry." The MP offered his view that my "request to cabinet that they issue instructions to the CRTC to consider such issues [was] perfectly appropriate" (Graham, 12 January 1995).

The New Democratic Party's (NDP) Heritage Critic, MP Simon de Jong, also supported my appeal to cabinet. In his letter to Mr Dupuy, Mr de Jong emphasized that "enabling the Commission to give due consideration of tax issues surrounding events like this could benefit the Commission in serving the public interest." He also stressed that "the CRTC should not seem to be used as a backdoor tax retreat benefiting the concentration of wealth and power into the hands of a few players – at the expense of employees, cable subscribers and taxpayers." Mr de Jong stated: "As this petition intends to offer concrete solutions to some of the serious concerns facing government today, I believe the ensuing process can bring about progressive amendments" (de Jong, 13 January 1995).

Other appeals against the media takeover followed

Friends of Canadian Broadcasting challenged RCI's justification that the takeover was the only way to keep foreign media interests at bay, arguing that Canadian media was well protected by public policy. The group raised several objections to the takeover, including the position that reducing media diversity did not protect Canadian culture, and that adequate safeguards were not in place to prevent RCI from undermining competitive policy and overcharging cable television subscribers (Enchin, 28 January 1995).

The Consumers' Association of Canada and the National Anti-Poverty Organization jointly petitioned cabinet arguing that the CRTC's decision should be reversed to protect consumer interests.

Interestingly, the Canadian Daily Newspaper Association also filed an appeal to cabinet against the takeover, alleging that RCI was acting unlawfully by distributing non-programming services on its own network in contravention of the *Telecommunications Act.*

Despite the serious objections raised, the Heritage Minister issued a press release in March 1995 stating that the *Broadcasting Act* did not give cabinet the authority to amend or overturn this particular CRTC decision (Brehl, 15 March 1995).

Regulatory anomalies identified

By the time this press release was issued, it had become evident to me that the corporate takeover was not the only concerning trend in the regulation of the Canadian broadcasting industry by the CRTC that warranted attention.

Following the submission of my appeal to cabinet, I carefully reviewed several CRTC decisions, including two regulations enacted by the CRTC in early 1994: subsections 18(5) and 18(6.3) of the *Cable Television Regulations,1986.* For the sake of brevity, I will refer to these two subordinate laws simply as 'Regulation 18(5)' and 'Regulation 18(6.3)'.

Both of these regulations were designed to financially benefit cable television companies by artificially inflating the monthly cost of basic cable service to several million Canadians. The term basic cable is used to describe the package of television services, including local and national Canadian television stations, that subscribers are required to purchase before being allowed to buy discretionary television packages with foreign services and/or movie channels.

Regulation 18(5) facilitated a $500 million cross-subsidy from Canadians to cable television companies. The regulation permitted the monopolies to charge their basic cable subscribers $75 over five years to help subsidize the cost of addressable digital decoders, equipment that was not required to provide basic cable service, but was essential for the companies to offer telecommunications services.

However, it is Regulation 18(6.3) that is still of particular interest in 2015, as it serves as a compelling example of the economic game being rigged for members of a wealthy elite. Chapter 2 (Citizens exploited to unjustly enrich corporations) explores this regulation, and its implications, in detail.

As a result of my decision to review these regulations, my campaign against a corporate takeover was poised to escalate into a campaign to expose an unjust corporate enrichment scheme and systemic corruption at the CRTC, while serving to illustrate that fundamental democratic reform is warranted in Canada.

Chapter 2: Citizens exploited to unjustly enrich corporations

> *"The January 1996 cable rate for Newmarket, Ontario would be $22.65 if Rogers contributes to the Cable Production Fund and $17.61 if it doesn't"* (CRTC, 19 January 1996).

The above quote from correspondence by the Access to Information and Privacy Co-ordinator at the CRTC to me nearly two decades ago succinctly highlights Regulation 18(6.3) in action.

Regulation 18(6.3) allowed cable television companies to artificially inflate the cost of their basic cable service to subscribers each month if money was simply donated to a fund, established by the CRTC to subsidize private television production companies through non-repayable grants.

The design of Regulation 18(6.3) permitted cable television companies, which were protected from open competition by the CRTC, the option to overcharge more than six million citizens for their federally regulated service, siphon revenue out of the Canadian broadcasting system and cross-subsidize other commercial interests that had nothing to do with cable television (such as purchasing equipment to offer telephone or internet services, or purchasing another company, or investing in real estate, or purchasing a sports team, etc.), if the corporations simply donated money to the Cable Production Fund.

No similar regulation has been identified in any of the other member countries of the Organisation for Economic Co-operation and Development (OECD).

Unprecedented power granted to businessmen

Regulation 18(6.3) effectively granted unprecedented power to several prominent businessmen, as the four largest cable television companies in Canada each had a controlling shareholder: Rogers Cablesystems Ltd. (Ted Rogers), Vidéotron Communications Ltd. (André Chagnon), Shaw Cablesystems Ltd. (James Robert Shaw) and Cogeco Inc. (Henri Audet). Consequently, Regulation 18(6.3) gave Mr Rogers, Mr Chagnon, Mr Shaw and Mr Audet the power to unilaterally redistribute wealth from ordinary citizens to the companies under their respective control, and ultimately to themselves, through their ability to manipulate the monthly cost of cable television service for Canadians.

Furthermore, the mechanics of Regulation 18(6.3) meant that these same businessmen also had the authority to require citizens to pay for the non-repayable grants being used to subsidize private production companies.

Through the enactment of Regulation 18(6.3), CRTC commissioners had granted some of Canada's wealthiest citizens the power to coerce citizens to subsidize cable television companies and television production companies, contradicting Nobel laureate George Stigler's assertion that the state did not grant this type of power to any citizen. "The state has only one basic resource which in pure principle is not shared with even the mightiest of its citizens: the power to coerce" (Stigler, 1971, p. 4).

At the same time, Regulation 18(6.3) substantiates the belief of another Nobel laureate, Joseph Stiglitz, who states that members of economic elites are able to "shape the rules of the game" and "suck out money from the rest in ways that the rest are hardly aware of" (Stiglitz, 2013, pp. 39-40).

Unjust corporate enrichment

Regulation 18(6.3) served to facilitate the unjust enrichment of cable television companies. As addressed below, all cable television companies had to do in order to be permitted by the CRTC to charge artificially inflated rates to consumers was donate half of the revenue collected under the scheme to the Cable Production Fund. The federal regulator did not require the cable television companies to provide any service or perform any work for the revenue collected under Regulation 18(6.3).

Regulation 18(6.3) is an example of what economists call 'rent seeking', a term referring to the practice "whereby wealthy and powerful companies, organisations or individuals use their resources to obtain economic gain at the expense of others without contributing to productivity" (Australia21, 2014, p. 14).

Fees collected under false pretences

Not only were millions of Canadians being overcharged for a regulated monopoly service, CRTC officials were also allowing cable television companies to collect the Regulation 18(6.3) fees under false pretences. Consequently, citizens were not in a position to object to the highly unorthodox and regressive wealth redistribution scheme. Given the facts addressed below, I consider it reasonable to describe the deceptive method of collecting these fees as "government-regulated fraud" (Mahar, 13 June 2008).

In fact, public ignorance of Regulation 18(6.3) was the key to the successful introduction of the scheme. Following is additional information on the wealth redistribution scheme and how public ignorance was accomplished by industry and government.

Chronology of the wealth redistribution scheme

During the early 1980's, the cable television industry lobbied the CRTC for a lighter hand in terms of subscriber rate regulation, and the federal regulators complied.

In 1986, despite strong opposition by the Consumers' Association of Canada and its members, the CRTC announced the *Cable Television Regulations, 1986* (CRTC, 1 August 1986). This subordinate legislation included subsection 18(6), which will be referred to as 'Regulation 18(6)' [not to be confused with Regulation 18(6.3), which is related but enacted several years later].

Regulation 18(6) permitted monopoly cable television companies to charge special fees to their subscribers to recover 50 percent of the cost of capital equipment purchased to deliver basic cable service, amortized over a five-year period. The CRTC assured Canadians that only costs specifically incurred by cable television companies to buy equipment required to provide basic cable service would be allowed under Regulation 18(6).

Importantly, at the same time the CRTC emphasized that rates for basic cable service were not to be used to subsidize the provision of other services. Furthermore, the commission stated that subscribers were to be fully informed by their cable television companies "of any pending or proposed change in fee" related to these special monthly fees (CRTC, 1 August 1986, p. 4).

In 1989, three years after the introduction of Regulation 18(6), the CRTC reported an increase in cable television industry profitability and determined that this regulation's short-term goal had been met (CRTC, 18 October 1989). As a result, the commission proposed to stop the largest cable television companies from further increasing their monthly rates using Regulation 18(6). In addition, the CRTC proposed to introduce a 'sunset' provision to ensure that subscribers only paid prior Regulation 18(6) fee increases for a maximum of 5 years, meaning that millions of consumers would be legally entitled to rate reductions starting in 1991.

Rate reductions delayed to 1995

Cable television companies objected to the CRTC's proposal. After intense lobbying by these corporate interests, commissioners backtracked and agreed to let the companies continue to increase subscriber fees under Regulation 18(6) in the future. In addition, the federal regulators agreed to permit companies to charge existing Regulation 18(6) for more than five years (CRTC, 15 May 1990).

At the same time, the commission decided to add sunset clauses to the Regulation 18(6) fees paid by subscribers. First, the CRTC was to prevent cable television companies from charging subscribers for more than 5 years for all future Regulation 18(6) fee increases. In addition, cable television companies were to be required by law to stop collecting all previously introduced Regulation 18(6) fees on or before 1 January 1995.

These sunset regulations – which will be referred to as 'Regulation 18(6.1)' and 'Regulation 18(6.2)' respectively, were among the changes proposed by the CRTC to the *Cable Television Regulations, 1986*.

> "*(6.1) Where 60 months have elapsed following an increase pursuant to subsection (6) or that subsection as it read immediately prior to the coming into force of this subsection, which took effect on May 15, 1990 or later, a licensee shall decrease its monthly basic fee by an amount equal to that increase.*
>
> *(6.2) On or before January 1, 1995, a licensee shall decrease its basic monthly fee by an amount equal to the total of all increase* [sic] *pursuant to subsection (6) as it read immediately prior to the coming into force of this subsection which took effect during the period beginning on August 1, 1986 and ending on May 14, 1990"* (CRTC, 23 August 1990).

These sunset regulations were enacted (*Canada Gazette*, 17 January 1991). As a consequence, Canadians were legally entitled to rate reductions in the monthly cost of their basic cable service, starting on or before 1 January 1995.

However, approximately six million Canadians never received their scheduled rate reductions on 1 January 1995, or subsequently.

$100 million offer by corporations

In 1992, the CRTC announced a public hearing to consider the general structure of the Canadian broadcasting system (CRTC, 3 September 1992). The cable television industry took this opportunity to lobby the CRTC with respect to the rate reductions required by law to commence by 1 January 1995.

Prior to the start of that public hearing, a submission was filed to the CRTC from the Canadian Cable Television Association (CCTA), noting that cable television companies were prepared to voluntarily donate money to subsidize the operations of private television production companies. The industry lobby informed the federal regulator that cable television companies "with systems of 7,500 subscribers or more would commit to a maximum of 20 cents per subscriber per month to commence on January 1, 1995 [to] divert a portion of its resources to Canadian program production" (CCTA, 5 February 1993). However, this proposed support for Canadian programming was not philanthropic in nature – far from it. The industry offer was conditional upon the CRTC commissioners changing the regulations in favour of cable television companies, including the elimination of the required rate reductions due to commence on 1 January 1995, and subsequently.

In other words, the companies were offering to donate money to subsidize private production companies if and only if the federal regulators changed the law in the favour of the cable television companies.

To put the industry's offer into perspective, Canadians were scheduled to save $600 million in fees over the five years starting 1 January 1995, as a result of the sunset clauses related to Regulation 18(6) fees. Instead, cable television companies were offering to donate up to $100 million to subsidize production companies over the same period of time in return for CRTC commissioners allowing them to charge citizens this $600 million, as well as permitting the corporations to also collect hundreds of millions in additional fees from basic cable subscribers through their other requested regulatory changes. The industry proposal was to allow cable television companies to collect approximately one billion dollars more in consumer fees over a five-year period than was legally possible under the then-current regulations.

Significantly, the proposal put forward by the CCTA did not link the ongoing collection of fees formerly introduced under Regulation 18(6) to making technical improvements to basic cable service. So although Regulation 18(6) would remain the vehicle for collecting these fees from consumers, cable television companies would be free to spend the ongoing fees as they saw fit, including to cross-subsidize new business ventures that had nothing to do with cable television – fostering unfair competition in the process.

Unknown to millions of Canadians, they were about to become the silent funders of the corporate expansion of cable television companies, as well as subsidizing private production companies, by paying artificially inflated rates for basic cable service.

CRTC hearing biased

At the public hearing, the CRTC did not seek input from either the Consumers' Association of Canada or the Public Interest Advocacy Centre about this unorthodox industry proposal. Moreover, these public interest groups were only given a brief opportunity to participate at the beginning of the public hearing.

After these groups had made their brief submissions, the CRTC devoted weeks of its hearing to private interests, including the highly unorthodox offer by the cable television industry. While Rogers Cablesystems Ltd. was participating in the hearing, CRTC Chairman Keith Spicer responded enthusiastically to the industry proposal, calling it an "exciting" idea, one that would "soak" cable television subscribers but progress Canadian programming. Mr Spicer stated that cable subscribers "probably wouldn't even notice" that they were paying inflated rates to cross-subsidize other business ventures for the cable television companies. At the same time, he complained that the financial benefits to private production companies resulting from the proposed scheme were not sufficiently firm.

> "*You are asking us to soak – well, let's say to invite the Canadian subscribers to come up with quite a lot of money for your industry to build an infrastructure which would be used no doubt to defend Canadian programming, but also down the road five years a whole lot of other services that have nothing to do with what normal people call television what with home shopping, banking, and things which the industry will make some honest money, and good for them. But we should know what we are asking these people to pay for.*
>
> *It seems to me the quid pro quo is not as firm as the demand you are making upon the subscriber. Your industry wants the subscribers' commitment to be absolutely firm and to come right off their cable bill. They probably won't even notice it. But the industry's commitment to the subscriber and to Canada and to the creative community, which will be the immediate beneficiary, is very shaky"* (StenoTran, 4 March 1993, pp. 1153-54).

In response, Ted Rogers said that protecting the broadcasting system would require "some suffering from all of us". The billionaire also stated: "There is a price to being a Canadian" (StenoTran, 4 March 1994, p. 1156).

Unfortunately, citizens were not informed of the price of being Canadian in this particular matter. Furthermore, as the CRTC did not notify members of the public that this significant scheme to subsidize private corporations was to be considered at this hearing, the millions of citizens who would be required to pay these subsidies under the industry offer were not given an opportunity to consider or oppose the wealth redistribution scheme – violating the principles of fairness and natural justice.

The statutory right of Canadians to be in a position to effectively participate in such a proceeding was succinctly addressed by Chief Justice Jackett in a Federal Court of Appeal case that involved the CRTC's predecessor, when the federal regulator was only responsible for broadcasting.

> "*To be such a public hearing, it would, in my view, have had to be arranged in such a way as to provide members of the public with a reasonable opportunity to know the subject-matter of the hearing, and what it involved from the point of view of the public, in sufficient time to decide whether or not to exercise their statutory right of presentation and to prepare themselves for the task of presentation if they decided to make a presentation"* (Canadian Radio-Television Commission and London Cable TV Ltd., 1976, p. 270).

Regulation 18(6.3) surfaces for the first time

In June 1993, during Brian Mulroney's final month as Canadian prime minister, commissioners that he had appointed to the CRTC published a lengthy public notice reporting numerous proposed regulatory changes (CRTC, 3 June 1993). Included in these proposed changes was 'Regulation 18(6.3)', designed to grant cable television companies the power to avoid the rate reductions commencing on 1 January 1995 if the corporations simply transferred 50 percent of the amount of these scheduled rate reductions to a production fund, established to subsidize the operations of private production companies (subsequently named the "Cable Production Fund").

Astonishingly, Regulation 18(6.3) meant that CRTC commissioners were willing to permit cable television companies to overcharge approximately six million citizens for a federally regulated monopoly service if the same corporations simply donated half of the revenue obtained from subscribers under the scheme to subsidize private production corporations, ostensibly to foster the creation of Canadian television programs.

As addressed above, analysis of Regulation 18(6.3) identifies that CRTC officials appointed by Mr Mulroney were actually proposing to grant unprecedented power to several businessmen to redistribute wealth from ordinary citizens to companies under their control, without any work or service being required in return.

In addition, Regulation 18(6.3) also proposed to grant these rich and powerful individuals the unilateral authority to compel Canadians to subsidize private television production companies.

Dissenting opinion by three commissioners

The nine individuals appointed by Mr Mulroney who participated in this decision were Keith Spicer, Fernand Bèlisle, Beverley Oda, Robert Gordon, Yves Dupras, Claude Sylvestre, Ed Ross, David Colville and Sally Warren.

Although the CRTC still refuses to identify which commissioners voted in favour of enacting Regulation 18(6.3), it is a matter of record that Ms Oda, Mr Gordon and Mr Colville voted against the unorthodox regulation, as they opted to attach their dissenting opinion to the regulatory decision (CRTC, 3 June 1993, Appendix).

In their dissenting opinion, these three commissioners stated that:

- Regulation 18(6.3) was going to enable cable television companies to retain "a source of revenue not based upon economic need or tied to a minimum level of profitability"
- Regulation 18(6.3) was "not needed to fund the technical upgrades identified by the cable industry"
- Regulation 18(6.3) was inequitable because its cost was not going to be the same to basic cable subscribers across Canada
- Regulation 18(6.3) would break a commitment made to subscribers that capital expenditure fees would only be charged for 5 years.

Commissioners Colville, Oda and Gordon concluded their scathing dissenting opinion against Regulation 18(6.3) by arguing that the rates paid by Canadians for cable television should not be used as a lever to raise revenues for "other purposes".

> "*We have considerable difficulty with the notion of changing rate regulation provisions just before the rate reductions associated with those provisions come into effect, thus disadvantaging the cable subscriber. In this case, funds related to capital expenditures are redirected to program production. Cable rates should be justified on their own merits, not used as a lever to extract revenues for other purposes*" (CRTC, 3 June 1993, Appendix).

Canadians to subsidize private companies

As a result of Regulation 18(6.3), millions of Canadians who would have otherwise seen a decrease in their fees on 1 January 1995, were instead to pay cable television companies an estimated $600 million in the first five years of the new regulation's operation. $300 million of this money would be directed to the Cable Production Fund to subsidize private production companies. In addition, the CRTC was to allow cable television companies to keep the remaining $300 million with no strings attached.

It is accurate to classify the $300 million that was to be retained by cable television companies under Regulation 18(6.3) as 'unjust corporate enrichment', as the companies were not to be required to do anything for this source of revenue except transfer other money collected from subscribers to the production company subsidy fund. Furthermore, the CRTC was not proposing to require the monopolies to spend the revenue retained on anything to do with cable television service.

Canadians to pay taxes on their subsidy fees

One of the many odd features of the proposed Regulation 18(6.3) was that its design was to require citizens to actually pay taxes on top of their cost to subsidize both television production companies and cable television companies. Since the cost of Regulation 18(6.3) was to be included in the monthly cost of basic cable service, Canadians were to be required to pay provincial sales tax (PST) and also goods and services tax (GST) on the fees paid to subsidize the private corporations. This was to cost subscribers approximately $84 million in taxes over the first five years of Regulation 18(6.3). As a result, provincial governments and the federal government were to be direct beneficiaries of the wealth redistribution scheme proposed by the federal regulators.

Table 1. Subsidies and taxes to be paid over the first five years

1 January 1995 to 31 December 1999	Cost to cable television subscribers
Subsidies to cable television companies (unjust enrichment)	$300,000,000
7% GST on unjust enrichment	$21,000,000
7% PST on unjust enrichment*	$21,000,000
Subsidies to television production companies (non-repayable grants)	$300,000,000
7% GST on non-repayable grants	$21,000,000
7% PST on non-repayable grants*	$21,000,000
Total cost of Regulation 18(6.3)	$684,000,000

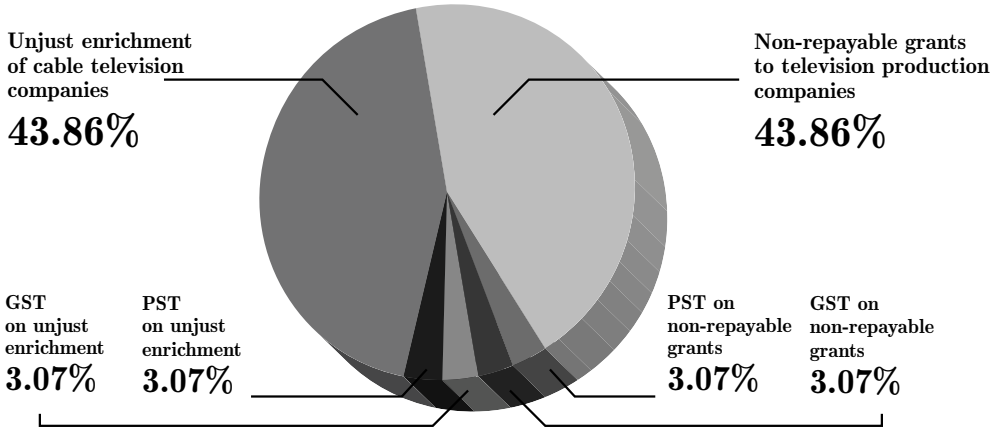
Sources: Public Notice CRTC 1993-74; *Cable Television Regulations, 1986*; *PST rate is the weighted national average, including jurisdictions without such a tax.

Grossly inefficient by design

Clearly, Regulation 18(6.3) was to be a grossly inefficient scheme in relation to its purported objective of supporting Canadian programming. In order to raise $300 million in subsidies for private production companies over the first five years of the scheme, Canadians were going to be required to pay approximately $684 million. As a result, less than 44 percent of the total cost of Regulation 18(6.3) to Canadians was to end up subsidizing domestic television production companies.

The graph below provides a visual illustration of the gross inefficiency of Regulation 18(6.3) in relation to its purported purpose, as well as the recipients and their share of the redistribution of wealth from the millions of ordinary Canadians.

Graph 1. Allocation of the wealth redistribution scheme



Highly inequitable by design

In addition to being grossly inefficient, the cost of the wealth redistribution scheme was also to be highly inequitable. Despite possessing this information, the CRTC did not publicly identify the monthly cost of Regulation 18(6.3) to cable television subscribers in its public notice. However, I obtained data directly from the CRTC's secretary general during that era which identifies the exact cost of Regulation 18(6.3) to cable television subscribers across Canada for January 1995. For example, the pre-tax cost of Regulation 18(6.3) for that month in Baie Comeau, Edmonton, Montreal, and Newmarket was to be $0.08, $0.66, $1.12 and $4.60 respectively. Consequently, Regulation 18(6.3) was designed to cost subscribers in Newmarket 57 times more than subscribers in Baie Comeau (CRTC, 24 July 1995).

Table 2. January 1995 cost of Regulation 18(6.3) to cable television subscribers in selected cities (excluding PST and GST)

Cable television company	City	Regulation 18(6.3) cost per subscriber
Rogers Cablesystems Ltd.	Newmarket	$4.60
	Oshawa	$3.52
	Toronto/Mississauga	$2.48
Vidéotron Communications Ltd.	Québec	$1.36
	Montréal Metro	$1.12
Shaw Cablesystems (Alberta) Ltd.	Calgary South	$0.92
	Edmonton	$0.66
Cogeco Ltd.	Baie Comeau	$0.08

Source: Correspondence to Keith Mahar from Allan J. Darling, Secretary General to the CRTC, dated 24 July 1995 (document posted on www.onemedialaw.com).

Furthermore, the cost of Regulation 18(6.3) was to increase to subscribers in the future, as its monthly cost was based upon on former capital expenditure rate increases. For example, the pre-tax monthly cost of the Regulation 18(6.3) scheme for cable television subscribers in Newmarket was to rise from $4.60 in January 1995 to $5.04 in January 1996, an increase of 9.5 percent.

Canadians not properly notified about the scheme

Significantly, the CRTC did not provide direct notice about Regulation 18(6.3) to the individuals who would be directly affected by it. Furthermore, this highly unorthodox and regressive wealth redistribution scheme being proposed by the federal regulators was not debated in Parliament. Nor did Canadian journalists meaningfully report the implications of this unprecedented regulation, which proposed to require citizens to subsidize private corporations controlled by some of the richest Canadians.

For example, this is how the scheme was reported in *The Globe and Mail:*

> "*The federal regulator yesterday ushered in the era of the active television viewer with a plethora of reforms designed to give Canadians more choice and greater control over what they watch. …*
>
> *One of the principal objectives of the reforms was to direct more money to Canadian programming. The CRTC has created a production fund that will generate up to $300-million over 5 years. The money will come from the cable industry, which has been given the take-it-or-leave-it option of paying rebates to customers or contributing to the fund.*
>
> *Under the previous regulatory regime, cable operators were able to partly finance capital expenditures through rate increases. But a sunset clause required that five years after a so-called Capex increase was granted it would have to be removed from the monthly fee. At the hearing, the cable industry asked that the sunset clause be removed. It got its wish, but cable operators will be allowed to retain only half the increase and must contribute the other half to the new production fund. Administration of the fund has not been sorted out"* (Enchin, 4 June 1993).

Not only did the newspaper article paint the regulatory changes as being pro-consumer, it also falsely reported that cable television operators had to contribute to the new production fund.

In any event, Canadians were not in a position to object to this proposed scheme that was proposing to grant unprecedented power to several wealthy businessmen and require millions of citizens to subsidize and unjustly enrich private corporations.

Regulation 18(6.3) enacted by CRTC

Regulation 18(6.3) was enacted on 25 January 1994.

The enactment of subordinate legislation requires its publication in the *Canada Gazette*. Note how Regulation 18(6.3) allowed cable television companies to avoid the rate reductions that had been required pursuant to Regulation 18(6.1) and Regulation 18(6.2).

> "*(6.1) Subject to subsection (6.3), where 60 months have elapsed following an increase pursuant to subsection (6) or that subsection as it read immediately prior to the coming into force of this subsection, that took effect on May 15, 1990 or later, a licensee shall decrease its basic monthly fee by an amount equal to that increase.*
>
> *(6.2) Subject to subsection (6.3), on or before January 1, 1995, a licensee shall decrease its basic monthly fee by an amount equal to the total of all increases pursuant to subsection (6) as it read immediately prior to the coming into force of this subsection, that took effect during the period beginning on August 1, 1996 and ending on May 14, 1990.*
>
> *(6.3) The requirement to decrease the basic monthly fee pursuant to subsections (6.1) and (6.2) is suspended so long as a licensee contributes one half of the amount referred to in subsections (6.1) and (6.2) to the production of Canadian programming, as mentioned in Public Notice CRTC 1993-74"* (*Canada Gazette*, 9 February 1994, pp. 999-1000).

A case of 'government-regulated fraud'

On 1 January 1995, millions of citizens started unjustly enriching cable television companies and funding non-repayable grants for television production companies without their knowledge. Neither the CRTC nor cable television companies had provided direct written notice to these citizens about Regulation 18(6.3). Given this lack of critical information, Canadians were ignorant that they were now being required to subsidize these private corporations in this fashion by paying artificially inflated rates for cable television each month. Furthermore, cable television companies had previously provided their subscribers with written notice that these fees were only being charged in order to partially offset the cost of purchasing equipment that was required to provide basic cable service. Since the purpose of these fees had fundamentally changed and this was no longer true, the federal regulators at the CRTC were permitting cable television companies to collect the Regulation 18(6.3) fees under false pretences. It is for this reason that I have publicly described the deceptive method of collecting the Regulation 18(6.3) fees as "government-regulated fraud" (Mahar, 13 June 2008).

Newmarket, Ontario

For example, consider the case of Newmarket for January 1995. In accordance with Regulation 18(6.3), Rogers Cablesystems Ltd. voluntarily donated $2.30 to the Cable Production Fund for each of its basic cable subscribers in the city, and charged them $4.60 plus taxes as a result. However, these people were not notified that this fee was being collected to pay for non-repayable grants to production companies and to unjustly enrich Rogers Cablesystems Ltd. Nor were they aware that they were also being required to pay a total of $0.68 in taxes in order to subsidize these private corporations in this fashion. In fact, the cable television company had previously notified its subscribers that this $4.60 was being collected to partially cover the cost of equipment required to provide their cable television service; a totally different purpose.

Table 3. Purpose and costs related to Regulation 18(6.3) in Newmarket

Newmarket, Ontario January 1995	Regulation 18(6.3) cost per subscriber
Rogers Cablesystems Ltd. (unjust enrichment subsidy)	$2.30
• 8% Ontario PST on unjust enrichment subsidy	$0.18
• 7% GST on unjust enrichment subsidy	$0.16
Production companies (non-repayable grant subsidy)	$2.30
• 8% Ontario PST on non-repayable grant subsidy	$0.18
• 7% GST on non-repayable grant subsidy	$0.16
Total cost of Regulation 18(6.3) for the month	$5.28

Source: Correspondence to Keith Mahar from Allan J. Darling, Secretary General to the CRTC, dated 24 July 1995 (document posted on www.onemedialaw.com).

Programs about Canada not guaranteed

Importantly, the CRTC justified enacting Regulation 18(6.3) based on the policy that the Canadian broadcasting system should encourage the development and presentation of Canadian content (Cancon), alleging at the time of its decision that "additional financial support for the production of Canadian programming is essential" (CRTC, 3 June 1993). However, the benefit of more truly "Canadian" programs resulting from Regulation 18(6.3) was to be of dubious value, as the Cable Production Fund was not specifically designed to generate additional television programming with themes, subject matter or substantive content about or related to Canada.

Professors Steven Globerman, Hudson Janisch and William Stanbury address that Cancon regulations enacted by the CRTC simply require Canadian citizens to be connected to the ownership and production of a program in order for it to be designated as a Canadian program. "In other words, "Cancon" is not – legally speaking – about thematic content at all. It is about the *citizenship* of the persons who made the program" (Globerman, Janisch and Stanbury, 1996, p. 240).

> *"Anything produced by a group of Canadian citizens is 'Cancon' regardless of its substance. In other words, if a group of Canadians made a program about South American iguanas, the history of the Albanian labour movement, Pathet Lao folk songs, the arms of Teutonic knights, medieval Spanish poetry, moon rocks, the works of a 14th-century Chinese author, the importance of cricket to old Etonians, the military campaigns of Alexander the Great, the voting laws of South Australia or Pol Pot's political philosophy – all would be classified as 'Canadian' in terms of the regulatory requirements.*
>
> *On the other hand, if a group of former Canadian citizens made a program dealing with the political philosophy of Sir John A. Macdonald, the ranching culture of southern Alberta, the spiritual life of Mackenzie King, the rise of the PQ, any of Pierre Burton's books about Canada, the history of the CBC and CRTC, the growth of minor league hockey on the Prairies, the life of professional nationalist Melville Watkins, the League for Social Reconstruction, the hobbies of John Diefenbaker or the childhood of Jean Chrétien – none would qualify as 'Canadian programs'"*(p. 240).

The Cable Production Fund was not, therefore, to be an effective mechanism to ensure that programs about Canada were produced that would not otherwise have been created. Instead, it was designed to subsidize private companies to produce a variety of programs that may have been created anyway; with subjects, themes and content that might not be related to Canada. So while unwitting cable television subscribers were being overcharged for a federally regulated monopoly service under Regulation 18(6.3), there was negligible guaranteed benefit to the protection of Canadian culture. In fact, it subsequently came to light that a significant percentage of the subsidized programs produced under the scheme were primarily produced for export markets, which meant that Canadians were being forced without their knowledge to subsidize programs that had little or nothing to do with Canada for enjoyment by foreign citizens [see Chapter 8].

First-come, first-subsidized

Furthermore, the Cable Production Fund did not include an obligation on production companies to repay the grants if funded programs turned out to be profitable. The grants were non-repayable, as requested by the production industry to the CRTC. This permissive accounting system meant that these subsidies were in effect free money for savvy production companies, handed out on a first-come, first-subsidized basis.

Power of the state to redistribute wealth

Professors Globerman, Janisch and Stanbury allege that as a result of the CRTC's definition of what constitutes a "Canadian" program, "most economists think of 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" (Globerman, Janisch and Stanbury, 1996, p. 217). However, Regulation 18(6.3) was far worse than a special interest group being able to use the power of the state to redistribute wealth to themselves. In this case, federal regulators had abused the statutory authority of the CRTC to enact subordinate legislation granting Canadian businessmen the power themselves to redistribute wealth from millions of citizens to private corporations. Moreover, the scheme had been introduced in a highly deceptive manner and was invisible to the millions of citizens who were being exploited.

In the process of campaigning for an investigation into the Regulation 18(6.3) scheme, I soon gained valuable insight into the reality of CRTC corruption, the unhealthy relationship between media proprietors and politicians, and the poor state of Canadian democracy.

Chapter 3: Theory of an 'information highway' agenda

> *"As most of you may know, the Canadian Radio-television and Telecommunications Commission began a series of crucial hearings this week that will largely determine the course of the broadcasting industry and the construction of the so-called information highway.*
>
> *"Information highway robbery" is how Keith Mahar likes to characterize the CRTC's current strategy for regulating the cable industry, which is competing with various telecommunications giants for control"* (Haslett-Cuff, 8 March 1995).

My theory of an 'information highway' agenda in relation to Regulation 18(6.3) was first given exposure during early March 1995 in *The Globe and Mail*, more than two months after corporations had started collecting Regulation 18(6.3) fees without notice to cable television subscribers. The 'information highway' was a term used at that time to basically describe what is now called the internet.

> *"The term "Information Highway" describes a network of networks that will link Canadian homes, businesses and institutions to a wide range of services. The Information Highway will provide the necessary infrastructure for Canada's emerging knowledge-based economy, and therefore, development of the highway will be critical to the competitiveness of all sectors of the economy"* (Government of Canada, 11 October 1994).

Journalist John Haslett-Cuff reported my accusation that the CRTC was permitting citizens to be overcharged for cable television service in order to raise revenue for corporations to cross-subsidize their digital infrastructure. This infrastructure was being developed by the corporations to offer future services on the information highway.

One week later, the *Toronto Star* published my op-ed article on the same agenda, entitled, 'CRTC forces public to pay for building information highway'.

> *"We are being charged inflated prices by companies protected from competition to pay for an infrastructure that will be owned by these same business interests. This action results in a direct transfer of wealth from the public to these privileged corporations"* (Mahar, 17 March 1995).

In that same article, I argued that the authority of the CRTC had been used to impose a de facto tax on Canadians to subsidize private corporations; objected to the deceptive method used to collect this money; identified that the scheme transferred wealth from citizens to privileged corporations; noted that the scheme had not been debated in the House of Commons; and addressed the fact that no elected official was accountable for the tax, its regressive nature or its beneficiaries. I concluded that the scheme amounted to "taxation without representation" and undermined the democratic process, and that a full investigation into the CRTC agenda was warranted.

Accounting of fees facilitates cross-subsidization and unfair competition

Seven days after my op-ed article, the CRTC issued "Circular No. 410", the guidelines governing how cable television companies were to account for their donations to the Cable Production Fund (CRTC, 24 March 1995).

Why was the CRTC only now instructing corporations on how to account for the 50 percent of the Regulation 18(6.3) fees being transferred to the Fund – nearly 3 months after subscribers started paying fees to finance the scheme? More importantly, the accounting system adopted by the CRTC was not requiring cable television companies to account for the 50 percent of the Regulation 18(6.3) fees that they retained under the scheme. The design of this passive accounting system was allowing these corporations to siphon this revenue out of the broadcasting system and cross-subsidize their other commercial interests, fostering unfair competition while overcharging citizens for a federally regulated monopoly service.

Time of major technological change

It is important to remember that the 90s was a period of major technological change. Digital technologies were rapidly replacing analog technologies and driving a number of policy, regulatory and business decisions in both telecommunications and broadcasting. The convergence of broadcasting and telecom technologies had enormous commercial implications. Not surprisingly, both the cable television and telephone industries intensely lobbied investors, politicians and the CRTC, arguing that their respective industry was better positioned to offer broadband digital networks to Canadians than the other industry.

At a time of general economic austerity in Canada, the recently elected Liberal government promised a bright future of technological innovation through a strategy for developing the information highway. Journalist Hugh Winsor, recognizing how key the public perception of the information highway initiative was to the standing of the government, stated at the time that the "glitzy proposals for the so-called information highway represent the only good-news items these days on an otherwise dreary Liberal agenda" (Winsor, 1 May 1995).

The information highway agenda might explain the Rogers Communications Inc. (RCI) takeover of Maclean Hunter Ltd. being rubber-stamped, and also the introduction of Regulations 18(5) and 18(6.3). The takeover presented an opportunity for the Liberal government to accelerate the digital age in Canada, while Regulations 18(5) and 18(6.3) provided a convenient source of revenue to subsidize private companies for this purpose.

RCI was in a far better position than Maclean Hunter Ltd. to progress the development of a broadband digital network due to its capital structure and governance. RCI operated using controversial dual-class shares (voting shares and non-voting shares). By maintaining ownership of the majority of the voting shares, Ted Rogers was the controlling shareholder of the company. In addition to being in a position to stop any hostile takeover, this share structure gave Mr Rogers the power to unilaterally steer the company in the direction of his choice.

> *"Dual-class stock drives corporate watchdogs crazy. U.S. proxy advisory firm Institutional Shareholder Services calls dual-class structures at publicly traded companies the "single most disenfranchising thing a company can do to investors." It's not just about the control premium, or in the worst–case scenario, corporate malfeasance, which, as evidenced by Enron Corp., WorldCom Inc. and Tyco International Ltd., occurs at publicly traded companies with single-share structures. The concentration of voting power in the hands of the founder, the family or entrenched management means the company may take actions, or fail to take actions without the support of the true majority of shareholders, or which favors the interests of the controlling shareholder"* (Van Hasselt, p. 431).

Furthermore, Mr Rogers had a history of relying upon an extensive amount of debt financing to expand the corporation under his control. (In fact, his appetite for debt financing was later noted by Caroline Van Hasselt in her book entitled *High Wire Act: Ted Rogers And The Empire That Debt Built.*) The company's access to such high debt financing was made possible largely due to the dependable cash flow generated from its cable operations, assessed by financial analysts to be extremely low-risk due to protection for RCI from open competition by the CRTC.

In sharp contrast, Maclean Hunter Ltd. was a conservative corporation without a controlling shareholder. The corporation ran at a profit and had a history of paying dividends to its broad shareholder base. Its board of directors would have been extremely hard pressed to raise the funding required, through debt or equity, to invest in digital technology to the same degree as RCI.

Consequently, RCI's takeover of Maclean Hunter Ltd. was supported by those stakeholders who had a vested interest in the information highway being undertaken as quickly as possible.

Change in legislation plays decisive role in RCI takeover

Interestingly, the takeover of Maclean Hunter Ltd. was facilitated by a change to the *Income Tax Act*, one which came into effect weeks after RCI announced its intention to purchase the corporation. As a result of this change in legislation, Maclean Hunter Ltd. was liable for $300 million in capital gains tax if it were to sell its cable television systems in the U.S. (which was a key part of a potential strategy for the company to try to stop the hostile takeover), while RCI was not going to be liable for such a tax bill if it bought the company and subsequently sold its U.S. cable systems. As a result of the change to the *Income Tax Act*, Maclean Hunter Ltd. was actually worth $300 million more to RCI than it was worth to its existing own shareholders.

According to documents obtained under the *Access to Information Act* and reported in Maclean's, officials from Maclean Hunter Ltd. lobbied for an exemption to the new law because the change in legislation had "tipped the playing field" in favour of RCI in the takeover struggle (Maclean's, 5 September 1994). However, then Finance Minister Paul Martin refused to grant such an exemption, and his decision prevented Maclean Hunter Ltd. from mounting a successful defence to the takeover – effectively handing the company to RCI.

Regulations and decisions appear tailor-made for RCI

With the takeover of Maclean Hunter Ltd., RCI established a monopoly over almost one-third of Canadian cable television subscribers through Rogers Cablesystems Ltd. a wholly-owned subsidiary. As a result, RCI was by far the largest beneficiary of Regulation 18(6.3). RCI was going to receive significantly more than one-third of the $300 million revenue retained by the cable television industry under the CRTC's wealth redistribution scheme, simply because the company had imposed the highest capital expenditure rate increases on its subscribers in the past. Regulation 18(6.3) appeared tailor-made for RCI, as Rogers Cablesystems Ltd. subscribers were being required to pay the highest Regulation 18(6.3) fees in the country and unjustly enriching RCI by a disproportionate amount in the process.

The fact that Regulation 18(6.3) was serving to unjustly enrich RCI by more than any other company is confirmed by 1995 correspondence from Allan J. Darling, then the CRTC's secretary general. At my request, Mr Darling provided me with information identifying the exact cost of Regulation 18(6.3) for cable television subscribers across Canada, which confirms that Rogers Cablesystems Ltd. subscribers were the biggest losers of the wealth redistribution scheme, and RCI the biggest winner (CRTC, 24 July 1995). A sample of Regulation 18(6.3) fees is reproduced in Table 2 in Chapter 2. As documented, some Rogers Cablesystems Ltd. subscribers paid 57 times more for Regulation 18(6.3) in January 1995 than some other cable television subscribers ($4.60 per month versus $0.08 per month).

RCI was also the largest beneficiary of the Regulation 18(5) cross-subsidy designed by CRTC officials. Regulation 18(5) was to provide approximately $150 million to RCI to subsidize its digital business ventures.

Even before companies were to collect fees under Regulations 18(5) and 18(6.3), federal regulators at the CRTC appeared to be channeling money into RCI. In order to win approval by the commission for a transfer of ownership, corporations purchasing broadcasting companies were expected to propose a 'tangible benefits package' as part of such applications. These financial commitments were intended to benefit the community served by the broadcasting entity, or the broadcasting system, and generally amounted to 10 percent of the value of the transaction. In a strange decision, the CRTC accepted RCI's investment of $54.5 million into its own network as part of its satisfaction of this requirement for its purchase of Maclean Hunter Ltd., despite this infrastructure being the corporation's primary asset (CRTC, 19 December 1994).

During this same era, the CRTC was permitting cable television companies to charge subscribers for specialty television services that the subscribers had not requested to purchase. Under the controversial 'negative option' marketing practice, subscribers were provided with a package of specialty television services that they had not requested, and cable television companies subsequently started charging an extra monthly fee unless these consumers specifically instructed the companies to stop delivering the services. Again, RCI was the largest beneficiary of the negative-option marketing practice condoned by the CRTC.

In fact, negative-option marketing and packaging changes related to the introduction of new specialty television services in 1994 ignited what is still referred to as the 'cable revolt'. While public outrage made front-page news nationally (Brehl, 6 January 1995; Howard, 6 January 1995), and the Ontario and British Columbia provincial governments vowed to ban the practice, the CRTC refused to stop cable television companies from employing the negative-option marketing practice.

Ironically, millions of Canadians started paying the Regulation 18(6.3) fees during this so-called 'cable revolt'. The cable revolt was a consequence of public knowledge – consumers were notified of the negative option marketing practice because they were given the choice to opt out. In contrast, consumers were not empowered to object to Regulation 18(6.3) – which came at a far greater cost than the specialty service package in many cities – because citizens had been kept totally ignorant of its existence.

Expanding private interests through citizen subsidies

My campaign against what I considered a questionable decision of the CRTC in relation to the RCI's takeover of Maclean Hunter Ltd. became a lengthy exercise in peeling back the onion layers of systemic corruption.

Not only did my objection to the takeover lead me to carefully review the Regulation 18(6.3) scheme, it also made apparent that these acts by the CRTC were not isolated incidents. At the very least, the actions of the government, the commission and the cable television industry created a commercial and political feedback loop that served the interests of all these players. More than that however, I believe that what I had exposed was a scheme to enable RCI and other influential corporations operating cable television systems to expand their private commercial interests through an illegitimate consumer funding mechanism.

In a properly functioning democracy, all that should be required to end such a regressive and objectionable wealth redistribution scheme is to publicly expose it. But such exposure was contrary to the interests of multiple actors – the cable television industry, the television production industry, the broadcasting industry, the CRTC, and the Chrétien administration (and subsequent politicians and governments).

The stakes were about to get a lot higher and I was going to learn that Canada is not close to being the democracy that citizens are entitled.

Chapter 4. Accountability undermined by regulators and politicians

> "*Mr. Speaker, my question is for the Prime Minister.*
>
> *On January 1, 1995 the CRTC launched an innovative tax grab on Canadian cable subscribers. It ignored its previous decision to issue a rebate to consumers which would have caused cable rates to decrease. Instead, half of the money will go to line the pockets of cable giants such as Rogers.*
>
> *Why will the Prime Minister not protect the interests of Canadian consumers by getting rid of this hidden tax?"* (MP Jan Brown, House of Commons, 30 March 1995).

The late social scientist Kurt Lewin said: "If you want truly to understand something, try to change it."

Through challenging the CRTC and corporations, and lobbying politicians, I came to better understand the culture of the Canadian broadcasting industry – including the relationship between media proprietors, politicians, CRTC officials and journalists. Although my opposition to the enactment of Regulations 18(5) and 18(6.3) brought the issue to wider attention, including prompting questions to Prime Minister Jean Chrétien in the House of Commons, overall what I learned was that it is very easy for wealth and power to bypass the democratic process.

1st Parliament Hill press conference

In March 1995, I obtained a legal opinion from Toronto lawyer Christopher Leafloor that the CRTC had "exceeded its legal mandate" when it enacted these two particular regulations (Leafloor, 25 March 1995). In other words, it was this lawyer's view that the CRTC had acted unlawfully.

A few days later, Ottawa lawyer Neil Milton offered his opinion that the legality of these regulations was in "serious doubt". Moreover, he considered that these regulations served to identify "structural inadequacies" in the CRTC's regulatory regime (Milton, 27 March 1995).

On 29 March 1995, Mr Leafloor, Mr Milton, three members of Parliament (Simon de Jong of the New Democratic Party, Jan Brown of the Reform Party, and Dan McTeague of the Liberal Party) and I participated in a joint press conference in the Charles Lynch press conference room on Parliament Hill. At that press conference, Mr Leafloor and Mr Milton shared their opinions on the questionable legality of the new regulations. The attending MPs and I called on the Chrétien government to investigate Regulations 18(5) and 18(6.3). In her related press release, MP Brown stated: "These hidden taxes demonstrate the inadequacy of the CRTC and serve as a good example as to why we should reconsider its continued existence" (Brown, 29 March 1995).

False and misleading information by CRTC

In response to our press conference, the CRTC issued a press release later that day with false and misleading information, authorized by chairman Keith Spicer (CRTC, 29 March 1995). MP McTeague subsequently described this CRTC press release as "playing fast and loose" with the truth and being "misleading on several fronts" (McTeague, 30 March 1995). An appraisal of the commission's press release easily supports the parliamentarian's conclusion.

The 'CRTC Statement on Allegations of Hidden Tax' begins:

> "*There is absolutely no hidden tax. The Commission authorizes rates for basic cable services, which reflect necessary capital investments, as well as the costs of programming distributed by the cable companies"* (CRTC, 29 March 1995).

In fact, the equipment to be subsidized by the Regulation 18(5) fees was not required for the provision of basic cable service. However, far more important was Regulation 18(6.3). The CRTC was not requiring that the revenue retained by cable television companies from Regulation 18(6.3) be spent on anything to do with cable television service at all.

Furthermore, the 50 percent of Regulation 18(6.3) fees that were being used to fund subsidies to private television production companies did not reflect the cost of providing programming distributed on basic cable. The subsidies also covered programming that was aired on free-to-air television stations, such as CTV and CBC. Hence, cable television subscribers were being required to subsidize the cost of programming enjoyed by Canadians that did not even subscribe to cable television. In addition, not all cable television subscribers were forced to pay Regulation 18(6.3) fees (because their cable television companies were not contributing to the Canadian Production Fund), yet these subscribers still had access to the subsidized programming.

Further still, as identified in Chapter 2, the monthly cost of Regulation 18(6.3) varied significantly for citizens across Canada – from no cost for some subscribers to $4.60 per month plus taxes at that point in time. This difference in cost of Regulation 18(6.3) had absolutely no relationship to what various subscribers were able to view or to the cost associated with the programming produced.

The next paragraph of the CRTC's press release states:

> "*The Commission's decisions are always taken after open public process – in this case, a nationally televised hearing, which two years ago, considered 710 written submissions and 126 oral presentations. Inevitably, and taken in isolation, some decisions can be made to appear to favour one group over another. But in the long run, we must seek a balance of interests. Parliament's own Broadcast Act obliges us to maintain this balance. If anything, the heart of its mandate to the CRTC is to nurture "the production and distribution of more and better Canadian programming" (Section 3)*" (CRTC, 29 March 1995).

The CRTC's insinuation was that its changes to the regulations had been fully discussed during its public hearing. In fact, Regulation 18(6.3) was not specifically addressed in any of the 710 written submissions or 126 oral presentations noted by the CRTC. Rather, Regulation 18(6.3) surfaced a few months after the public hearing concluded, as a 'solution' to the quid pro quo offer made to the CRTC by cable television companies – an offer to which there was no meaningful right of reply by consumers or other stakeholders.

The CRTC's press release continues:

> "*Of course consumers want choice. But consumers are also Canadians who want quality Canadian choices. Without the kind of support for high-standard Canadian programs offered by the cable production fund (established after the above open public hearing), there would not be many Canadian choices. There would be very little of Canada – its ideas, values, realities and heroes – on its own screens*" (CRTC, 29 March 1995).

The CRTC's assertion that they were supporting high-standard Canadian programming through the scheme was absurd – neither the commission's own Canadian content regulations nor the eligibility requirements for subsidies from the Cable Production Fund required producers to create programming about Canadian ideas, values, realities or heroes.

The press release concludes:

> "*This desire for Canadian choices is not just what Parliament has clearly expressed in the Broadcasting Act. The Commission believes that it is also what the great majority of Canadians support*" (CRTC, 29 March 1995).

The CRTC may claim that "the great majority of Canadians" supported or would support Regulation 18(6.3), but how would commissioners know? The fact that the commission did not invite public consultation about Regulation 18(6.3) in any meaningful way, and did not effectively notify Canadian consumers about its purported benefits or associated costs, suggests that what the federal regulators actually believed was that there would be strong public opposition to Regulation 18(6.3) if it was understood.

Crossing the corruption line

The CRTC's response to our press conference clarified for me that the actions of its commissioners were not simply incompetence or an oversight. While I was certainly no fan of the federal regulator before its press release, it served to change my view of the magnitude of the problem and substantially increased my motivation to expose the conduct of its commissioners.

In light of the abuse of the statutory authority of the CRTC by federal regulators to unjustly enrich corporate shareholders, and the deceptive tactics used to hide this highly regressive and unorthodox wealth redistribution scheme, it is fair to say that the Regulation 18(6.3) affair amounts to a form of systemic corruption.

And, there was far worse to come.

In the days after the CRTC's false and misleading press release, MP McTeague described the federal regulator as "wholly and absolutely contemptuous [and] called for a full review of the commission, its methods and its accountability to average Canadians" (Brehl, 31 March 1995). However, there was insufficient political will to properly address the issue in the public interest.

Questions to Prime Minister Jean Chrétien

As a result of my campaign, MP Brown directed questions about the CRTC affair to Prime Minister Jean Chrétien in the House of Commons the day after our joint press conference, including the following:

> "*Mr. Speaker, my question is for the Prime Minister.*
>
> *On January 1, 1995 the CRTC launched an innovative tax grab on Canadian cable consumers. It ignored its previous decision to issue a rebate to consumers which would have caused cable rates to decrease. Instead, half of the money will go to line the pockets of cable giants such as Rogers.*
>
> *Why will the Prime Minister not protect the interests of Canadian consumers by getting rid of this hidden tax?"* (Hansard, 30 March 1995).

The prime minister opted not to directly answer the question. In response for the government, the Hon. Sheila Finestone (Secretary of State (Multiculturalism) (Status of Women)) avoided answering the specific question, while advocating that the country should be grateful to the CRTC.

> "*Mr. Speaker, I would suggest that the country and the government over time has been very grateful to the CRTC. It has able to protect the Canadian cultural content of the delivery system through its broadcast system.*
>
> *The growth of Canadian arts, culture and performers has been a vital part of the responsibilities administrated by the CRTC through its vigilance and its application of the rules and the will of the House"* (Hansard, 30 March 1995).

MP Brown subsequently asked how the prime minister could justify the scheme without consulting Canadians.

> *"Mr. Speaker, my question was very specific. It was specifically focused on the CRTC and the issue of the current innovative tax grab, as I say. However, I appreciate the eloquence of the hon. member.*
>
> *The CRTC has flip-flopped on the consumer rebate. It has not only imposed an information highway tax but it has also required these consumers to pay into a Canadian program production fund. This is nothing more than a tax to subsidize Canadian content. Consumers will no longer stand for this behaviour from the CRTC.*
>
> *How can the Prime Minister justify this tax without having consulted the Canadian consumer?"* (Hansard, 30 March 1995).

Again, the prime minister did not directly answer the question. Again, the Hon. Sheila Finestone avoided answering the substance of the question, alleging that it was not possible for the government to interfere in the "arm's length organization".

> *"Mr. Speaker, the hon. member should think through the outcome of her observations and her direction. It would mean that a worthy and considerate member of the ministry would have to resign as a result of interference in an arm's length organization"* (Hansard, 30 March 1995).

The disingenuous nature of this response was demonstrated a few weeks later, when the Chrétien government tabled an order "forcing the broadcast regulator to change its rules on direct-to-home satellites" (Vardy, 27 April 1995). The CRTC's decision in this instance stood to adversely impact the financial interests of Power Corp., a company headed by Prime Minister Chrétien's son-in-law (Winsor, 1 May 1995).

Clearly, when motivated to do so, the government could and did interfere in CRTC decisions. The Chrétien government simply opted not to address the issue of citizens being exploited to subsidize private corporations in the case of Regulation 18(6.3).

Poor journalism plays a role

The morning after the CRTC's press release, I appeared on live national television to discuss the issue on Canada AM. Representatives from the cable television industry and the CRTC refused requests to appear on the same program to address the Regulation 18(6.3) affair. I subsequently agreed to be a guest on CBC's program Face Off to address Regulation 18(6.3). However, that did not occur because CRTC and industry representatives refused to appear on that program too.

In effect, CRTC bureaucrats and industry representatives went into hiding and, unfortunately, the Canadian media were not up to the task of flushing them out. The following 'article' by Canadian Press, published a few days after our Ottawa press conference, illustrates the general lack of robust media coverage on the debacle. The article about this complex regulatory scheme was just four sentences long.

> *"The CRTC has denied a claim by a consumer advocate that Canadians are paying a hidden tax on their cable television rates.*
>
> *The criticism of the federal regulatory agency focused on its two-year-old decision to cancel a cable rate cut that would have started Jan 1.*
>
> *Half the money consumers would have saved was put in a Canadian programming fund and the rest was returned to the cable industry to help pay for new technology.*
>
> *Keith Mahar, a former broadcast industry employee who has set himself up as a cable industry watchdog, said the CRTC's policy effectively means consumers are paying a hidden cable tax"* (Canadian Press, 31 March 1995).

It was both disappointing and illuminating that the media did not pursue nor question the CRTC, industry representatives or politicians about the unorthodox and potentially unlawful regulation requiring millions of Canadians to subsidize and unjustly enrich private corporations. While I didn't expect it to be easy for journalists to report a scandal directly involving media companies, we had handed the issue to them on a platter at the press conference.

Given the damning nature of the affair, the bipartisan press conference, the content of the legal opinions, the recent "cable revolt" and the questions in Parliament it was reasonable to expect journalists to take up the issue in the public interest, and for the benefit of the millions of citizens paying for this unprecedented corporate welfare scheme. However, due to the media's impotence, Canadians remained ignorant of the issue and its implications. In fact, the questions directed to the prime minister related to the CRTC affair were not reported in the media.

Despite the roadblocks, I remained determined to continue my campaign. But without politicians or journalists doing their respective jobs, I was way out of my league. There is evidence that my objective of raising public awareness about the CRTC regulations was in direct conflict with an agenda of federal regulators, cabinet ministers and industry leaders.

Chapter 5. Canadians entitled to knowledge of Regulation 18(6.3)

> *"A Toronto man plans to widen his crusade against some of the most powerful vested interests in Canada.*
>
> *Keith Mahar says the cable TV industry is over-charging Canadian consumers, hundreds of millions of dollars"* (Kent, 7 August 1995).

The failure of politicians and journalists to adequately address the CRTC affair left me with a choice to either stop my campaign, or continue and go bigger. I opted for the latter – a decision that resulted in a precedent-setting legal proceeding and subsequently changed the course of my life.

I focused my attention and energy on Regulation 18(6.3), as it was by far the more problematic of the two regulations. In fact, Regulation 18(6.3) provided compelling evidence that a public inquiry into the CRTC was warranted. Furthermore, it was my belief that any such inquiry was likely to open a Pandora's Box of malfeasance by CRTC officials, industry leaders and politicians.

Given that the key to the wealth redistribution scheme was maintaining public ignorance, I initiated a strategic legal proceeding to try to force the offending cable television companies to notify their subscribers about Regulation 18(6.3) and its monthly cost to them.

Pro bono legal team

Mr Leafloor and Mr Milton offered their legal expertise at no charge to address the issue. In addition, Toronto lawyer J. Blair Drummie also subsequently offered his services for free. As a result, I had a pro bono legal team at my disposal and was more determined than ever to place Canadians in a position to effectively address their exploitation by learning the truth about Regulation 18(6.3).

The *Broadcasting Act* grants the CRTC extensive powers, including the "authority to determine questions of fact or law in relation to any matter within its jurisdiction under the Act" (*Broadcasting Act*, 1991, s.17). This legislation also grants the CRTC the authority to review complaints about any default under the Regulations. However, given that unethical behaviour and conflicts of interest involving CRTC officials were at issue, I had no faith that if I lodged a complaint with the commission that its decision on the legal issues involved would be made impartially and in accordance with the law. Consequently, I sought to evade the CRTC by filing an action directly with the Ontario Court (General Division), a provincial superior court.

Lawsuit against Rogers Cablesystems Ltd.

While my legal objectives in bringing the case were to both establish the right of subscribers to written notice from their cable television companies about Regulation 18(6.3), and the right of subscribers to refunds of all Regulation 18(6.3) fees collected without notice retroactive to 1 January 1995, my ultimate goal was a public inquiry into the CRTC.

Since the existence of the wealth redistribution scheme was reliant upon public ignorance, I believed that a court decision that subscribers were legally entitled to notice about the purpose and cost of Regulation 18(6.3) would ensure an end to the scheme, and also establish that a public inquiry into the CRTC was warranted. While my legal team recommended a class action, I was concerned that such a legal proceeding would take too long and also increase my potential liability respecting costs if the court's decision went against me.

Consequently, I elected to personally sue my own cable television company for breach of contract for not notifying me about Regulation 18(6.3). My claim was limited to a refund for the amount the company had collected from me under Regulation 18(6.3): $2.52 a month since 1 January 1995 (plus GST and PST).

Coincidentally, my cable television company at the time was Rogers Cablesystems Ltd. As a result, I was in direct conflict with Ted Rogers, the country's largest media baron and who was sometimes described as Canada's Rupert Murdoch. He was no soft target. In *High Wire Act*, Caroline Van Hasselt wrote: "Ted Rogers is like the great white shark, which tears into its prey until its needs are sated" (Van Hasselt, 2007, p. 465).

Since my objective was to establish a legal precedent for the millions of other Canadians paying Regulation 18(6.3) fees, my claim included a request for a declaration from the court that Rogers Cablesystems Ltd. had acted unlawfully by collecting the fees without providing me with prior written notice about Regulation 18(6.3). Such a request was also to prevent the company from settling out of court and evading a determination that its failure to notify me about Regulation 18(6.3) was unlawful.

I was also hopeful that a legal case would draw media attention, and that the documented facts of the case would result in comprehensive and accurate media reporting, which had been sorely lacking.

Furthermore, I timed my legal proceeding to commence on Monday, 15 May 1995, the day before CRTC officials were scheduled to testify before the House of Commons Standing Committee on Canadian Heritage in relation to other matters. This was to give journalists the chance to cover the story before the bureaucrats had to appear before the parliamentary committee. In addition, MP McTeague was a member of that parliamentary committee. I trusted that he opposed the scheme and I wanted to give him the opportunity to direct questions to the CRTC officials related to Regulation 18(6.3) on the public record.

Priming the pump

To prime the pump, I met with a journalist from the *Financial Post* the week before the CRTC's scheduled appearance and openly discussed my legal strategy. Details of my imminent legal proceeding against Rogers Cablesystems Ltd. were published in that newspaper on the weekend prior to the scheduled parliamentary committee. The journalist reported that if my legal case was successful, it "could lead to a challenge of how the Canadian Radio-television and Telecommunications Commission changed its mind in 1993 on $600 million of rate reductions and how the agency uses cable fees to subsidize Canadian program producers" (Urlocker, 13 May 1995). Clearly there was a lot at stake, and that article alerted CRTC commissioners, industry representatives and politicians of what was coming.

On that Monday, we held a press conference at the Bay Street office where Mr Leafloor practiced law, in order to explain the legal proceeding for journalists. Unfortunately, the coverage of my legal case against the cable television giant reported in the press on Tuesday morning was limited to a few brief articles, variously describing me as a "Viewer" (Enchin, 16 May 1995), and an "annoyed cable subscriber" (Hasselback, 16 May 1995). The *Toronto Star* erroneously reported that I had hired my legal team, which served to detract from the public interest merit of the case. *The Globe and Mail* erroneously reported that I had earlier alleged that specific provisions of the *Broadcasting Act* were illegal, which served to damage the credibility of the issue. The *Toronto Sun*, which was owned by RCI at that time, did not cover the story for two more days. When a story was finally published in the newspaper, it appeared on page 40 and I was described as a "Disgruntled TV viewer" (Burnett, 18 May 1995).

CRTC officials testify before parliamentary committee

Although the media coverage by the *Toronto Star* and *Globe and Mail* was poor, the articles were published hours before CRTC officials – including CRTC Chairman Keith Spicer – appeared before the parliamentary committee. The chairman of the federal regulatory agency started off with a prepared statement, which he himself admitted was uncharacteristic. In my opinion, the statement was designed to bolster the CRTC's integrity in the context of any questions related to Regulation 18(6.3). In any event, the transcript by the House of Commons Committees Directorate provides a public record of the evidence presented by the CRTC officials that day (HCCD, 16 May 1995).

As documented, Chairman Spicer told the parliamentary committee that the CRTC was an internationally respected body and that the heart of the CRTC's mandate was the development of Canadian programming. He stated:

> *"Canadian regulators offer Canadians two guarantees: independent judgement and transparency.*
>
> *First, we serve Canadians by taking the always complex, and usually controversial, decisions of modern communications out of the arena of the party politics or personal favour. ...*
>
> *Second, we make our decisions in the light of day through transparent processes, including our trademark public hearings. This transparency and respect for citizens' views are why each year we receive dozens of ministerial and regulatory delegations from around the world hoping to draw on lessons from the Canadian model of regulation"* (HCCD, 16 May 1995).

False and misleading information to committee

Mr McTeague subsequently questioned Mr Spicer about Regulation 18(6.3), stating that it had left parliamentarians with "a few very unanswered questions" and described the scheme as "a hidden tax". Mr Spicer replied: "We did not create a hidden tax. We do not have the right to do so." The chairman went on to describe Regulation 18(6.3) as a "system of voluntary contributions". He failed to clarify that it was not subscribers who were voluntarily contributing, but rather corporations voluntarily contributing subscribers' money to the Canadian Production Fund, and pocketing a windfall as a result.

Mr McTeague specifically asked Mr Spicer if the CRTC had notified Canadians of the introduction of Regulation 18(6.3). Mr Spicer replied, "Oh, yes, we did." In fact, the millions of ratepayers affected had never received written notice about Regulation 18(6.3), or its monthly cost to them, by either the CRTC or cable television companies.

Mr Spicer also misled the House of Commons Standing Committee about the process the CRTC used to adopt the regulation. Mr Spicer stated: "It was amply and specifically discussed throughout our one-month hearing in March 1993. We went over this in technicolour with the cable industry." In reality, however, Regulation 18(6.3) was never specifically addressed during that public hearing; it was designed behind closed doors sometime after the public hearing concluded. Furthermore, discussions with the cable television industry were not the point – the point was the lack of discussion with ordinary Canadians.

Mr McTeague then stated that he did not consider that the CRTC had the legal authority to enact Regulation 18(6.3). It is my belief that Mr Spicer tried to evade the question by referring to my legal case: "It's going to be discussed in court, I think in the Mahar case." Mr McTeague corrected him: "Mr. Mahar's case is specific in the area of notification. My question to you is on what grounds you are charging subscribers and why they are not getting the rebate they deserve as of January 1, 1995." Mr Spicer was spared answering this critical question by the parliamentary committee's chair, John Godfrey, who interrupted and gave the floor to another committee member.

Later in the proceeding, Mr McTeague asked Mr Spicer how the money retained by cable television companies under Regulation 18(6.3) was being spent. Mr Spicer replied: "What we did, through a public hearing, was to ventilate a new idea adapted to radically new circumstances, explain it to the public why we thought this was necessary, and then agree to it publicly and sell it. Then for two years nobody thought that this was outrageous at all." This account was false on all fronts.

First, as already outlined in Chapter 2, the CRTC never specifically discussed Regulation 18(6.3) during its entire public hearing. Rather, Mr Spicer stated to Mr Rogers during an exchange in that public hearing that the industry's proposal would "soak" cable television subscribers and permit monopoly cable television companies to subsidize other business activities, most likely without the knowledge of the subscribers who would be required to pay the subsidy (StenoTran, 4 March 1993, pp. 1153-54).

Second, the fact that the three MPs who participated in my press conference did not understand Regulation 18(6.3) before I explained it to them – despite being on the House of Commons Standing Committee on Canadian Heritage – is evidence that the CRTC did not effectively explain the nature of Regulation 18(6.3) in the public domain.

Third, Mr Spicer's allegation that nobody thought Regulation 18(6.3) was outrageous, until my legal proceeding, is incorrect. While ordinary Canadians were not in a position to voice their objection to the regulation, because they had not been notified about it, the three CRTC commissioners who opposed Regulation 18(6.3) made it clear in their dissenting opinion that they thought it was outrageous.

In addition, Friends of Canadian Broadcasting filed a scathing submission to the CRTC opposing the highly unorthodox regulation (Friends, 17 September 1993). The group described Regulation 18(6.3) as a "tax" which the CRTC did not have the jurisdiction to enact, and which would enable cable television companies "to pick the pockets of its captive subscribers." The group also stated that Regulation 18(6.3) was a "breach of faith with seven million Canadian households," and that if it was "properly understood by consumers" it would generate mistrust of the CRTC "and thereby threaten public support for broadcast regulation in general, and the public good which that regulator has been designed to contribute." Clearly, this group thought that Regulation 18(6.3) was both outrageous and unlawful.

Mr McTeague's final question to Mr Spicer was: "Where was the public opinion to support these things?" Once again, Mr Spicer was spared from answering a difficult question from Mr McTeague by the committee's chair. Mr Godfrey interrupted the proceedings at this precise moment to adjourn the parliamentary committee for a month.

Media coverage of legal case

While I contacted numerous journalists during that May and June, there was virtually no interest in covering my case or the related public interest issues. Finally, *Toronto Star* journalist Antonia Zerbisias stepped up. My legal case was reported as the *Toronto Star's* front-page lead story (Zerbisias, 9 July 1995a). In that same newspaper, there was also a feature story covering some of the issues related to Regulation 18(6.3) (Zerbisias, 9 July 1995b).

Global Television anchor Peter Kent (later a cabinet minister in the Harper government) subsequently reported that I was expanding my "crusade against some of the most powerful vested interests in the country" (Kent, 7 August 1995).

Despite the damning nature of the well-documented affair that implicated some of Canada's largest media proprietors, the *Toronto Star* was the only newspaper that reported my case on its front page – and it only did so once.

Donations used to reduce corporate tax liability

Rogers Cablesystems Ltd. retained one of the top lawyers in the country from McCarthy Tétrault to defend itself against my lawsuit – Thomas G. Heintzman, Q.C., then president of the Canadian Bar Association.

As part of the discovery process for the legal proceeding, information was obtained that raises a question about whether Rogers Cablesystems Ltd. was properly accounting for Regulation 18(6.3) to Revenue Canada. During cross-examination one of my lawyers asked a company executive to clarify exactly how the company was accounting for the 'voluntary donations' being made to subsidize the production companies under Regulation 18(6.3). He did not answer that specific question at that time. Subsequently, a lawyer from McCarthy Tétrault confirmed that the cable television company's accounting department was recording the payments "as an operating expense, in the cost of sales and services" in its general ledger (McCarthy Tétrault, 3 October 1995).

That Rogers Cablesystems Ltd. was recording these 'voluntary donations' as a business expense to reduce its corporate tax liability is interesting, as the Cable Production Fund was not a charity, nor was the CRTC requiring the company to donate this money to the Fund. Therefore, it is not clear whether such donations were a legitimate tax deduction under the existing legislation.

In summary, while Canadians were being forced to pay the cost of Regulation 18(6.3), as well as being charged GST and PST on top of the cost of Regulation 18(6.3), Rogers Cablesystems Ltd. was not only being unjustly enriched by Regulation 18(6.3), the corporation was also getting a tax deduction in the process.

Motion to stop court from ruling on merit of case

Furthermore, the corporation did not want the court to rule on the legal case. Rather than defending the case on its merits, Rogers Cablesystems Ltd. filed a motion to stop the Ontario Court from ruling on the matter on a technicality. Its legal counsel raised the argument that the court did not have jurisdiction to hear the case as the CRTC had exclusive jurisdiction to review such a complaint. In a precedent-setting decision on jurisdiction, Justice Sharpe ruled in favour of the corporation on this technical legal point in early October 1995:

> *"In my view, the task of deciding this case has been specifically assigned by Parliament to the C.R.T.C. Assumption of jurisdiction by this court would not only evade the C.R.T.C., it would also remove the case from the authority of the Federal Court of Appeal which is mandated to review the C.R.T.C."* (Mahar v. Rogers Cablesystems Ltd., 1995, p. 701).

In other words, Justice Sharpe determined that the CRTC had exclusive jurisdiction to first consider a complaint about whether or not Rogers Cablesystems Ltd. had violated the law by not providing notice of Regulation 18(6.3) to me. If I did not agree with a future decision made by the CRTC in relation to this legal issue, I then had the right to appeal such a decision by the CRTC to the Federal Court of Appeal.

Justice Sharpe made it clear in his ruling that he had not determined whether or not Rogers Cablesystems Ltd. had broken the law by collecting Regulation 18(6.3) fees without notice. He stated: "I express no opinion as to the merit or lack thereof in the substantive claim of the applicant."

Precedent-setting ruling on costs

The company subsequently requested that the court order me to pay nearly $55,000 for its legal costs. My legal team argued that I was a public interest litigant and that costs should not be awarded against me. In a precedent-setting decision on costs made later that October, Justice Sharpe designated me as a public interest litigant, ruling that my case "raised a genuine issue of law of significance to the public at large". As a consequence, he did not find me liable for any of the costs incurred by the corporation.

> *"There will always be debate about what is in the public interest, but it is fair to characterize this proceeding as a public interest suit. ...In my view, it is appropriate in this case to exercise my discretion in favour of the applicant and to make no order as to costs. The issue raised was novel and certainly involved a matter of public interest. While I decided the jurisdictional point against the applicant, I am satisfied that the application was brought in good faith for the genuine purpose of having a point of law of general interest resolved... An unrelenting application of [cost] rules to public interest litigants will have the result of significantly limiting access to the courts by such litigants. Such a consequence would be undesirable with respect to proceedings such as the present one which was, in my view, brought on a bona fide basis and which raised a genuine issue of law of significance to the public at large"* (Mahar v. Rogers Cablesystems Ltd., 1995, pp. 703-705).

This ruling in my favour by Justice Sharpe continues to shape costs jurisprudence in public interest litigation cases in Canada and elsewhere.

Failure by media to cover the issue

Still, Canadian journalists generally ignored my requests to cover the issue in the mainstream media. In fact, Toronto publication *NOW* listed my case as one of the top under-reported stories of the year.

> "*Media coverage of Mahar's case was hit and miss. While the Star gave him the most play, the rest of the print media demonstrated only a passing interest.*
>
> *Maclean's, part of the Rogers media empire, has yet to utter a single word about the case. The Rogers-controlled Financial Post could muster up only one story"* (Anderson, 28 December 1995).

While I was waiting to learn whether or not I had to pay the corporation's legal costs, *Catholic New Times* published a story about my campaign that included an illustration depicting me as a super hero in a costume similar to Superman (Slobodian, 22 October 1995).

Before long, it would be quite obvious that I am no Superman.

Chapter 6. Complaint alleges unlawful activities

> *"We are in receipt of the complaint filed by Cable Watch, an organization founded by Keith Mahar, a cable subscriber from Ontario.*
>
> *Mr. Mahar's complaint sets out a number of allegations concerning the decision made by the CRTC following the Structural Public Hearing for the cable industry in June of 1993. These allegations raise issues as to the procedural correctness of the decision which are serious and potentially important for the cable industry as a whole, and cable consumers.*
>
> *While we advance no position with respect to the merits of the jurisdictional concerns contained in the complaint, we believe they are of such importance that the government should swiftly take steps to initiate an independent review of Mr. Mahar's complaints and to take appropriate action if necessary"* (PIAC, 30 November 1995).

Although the Ontario Court's ruling on jurisdiction was disappointing, the judgment left open the argument that corporations had acted unlawfully by collecting Regulation 18(6.3) fees without notice. At the same time, the Federal Court of Appeal had not been given an opportunity to rule whether the CRTC had broken the law in relation to adopting the wealth redistribution scheme in the first place.

Meanwhile, millions of Canadians had still not been provided with written notice about Regulation 18(6.3), and had not been properly informed by journalists about the affair. Therefore, citizens were not in a position to hold corporate executives, politicians or CRTC officials accountable.

Mr Leafloor offered to continue his pro bono legal assistance so that I could pursue the matter to its conclusion. This meant first submitting a complaint directly to the CRTC for its decision on the legal right of Canadians to notice by their cable television companies about Regulation 18(6.3). Given the conduct of the CRTC to date, I did not expect an impartial decision in response to such a complaint. Consequently, while drafting the complaint, we anticipated that it might be necessary to challenge the CRTC's future decision in the Federal Court of Appeal. As a result, we structured the complaint to also address the behaviour of the federal regulator and its officials in relation to enacting the Regulation 18(6.3) scheme.

Complaint alleges unlawful activities

On 28 November 1995, Cable Watch Citizens' Association (Cable Watch) filed a complaint with the CRTC under section 12 of the *Broadcasting Act* (Cable Watch, 28 November 1995). Cable Watch was a consumer advocacy group I established some months earlier as part of my broader campaign to collectively address Regulation 18(6.3) and lobby for an investigation into the CRTC affair (Zerbisias, 27 September 1995).

The Cable Watch complaint alleged that the CRTC and cable television companies had acted unlawfully in introducing Regulation 18(6.3) and collecting its fees without notice, respectively.

Cable Watch alleged that the CRTC:

- did not have the legal authority to enact a regulation that required cable television subscribers to pay fees to maximize contributions to a production fund;
- had failed to properly notify cable television subscribers of its introduction of Regulation 18(6.3); and
- had failed to properly inform cable television subscribers of the cost to them of Regulation 18(6.3).

In addition, Cable Watch submitted that cable television companies that had collected fees from subscribers under Regulation 18(6.3) without notifying them of the regulation had failed to meet their legal obligations to these consumers.

Cable Watch requested that the CRTC order cable television companies to refund subscribers all fees collected unlawfully under Regulation 18(6.3) since 1 January 1995, and to require the companies to reduce their rates for basic cable service accordingly.

Furthermore, Cable Watch requested that the CRTC implement new notification processes to ensure that cable television subscribers were meaningfully informed of changes to the regulations, and that the federal regulator hold a public hearing in Toronto to consider the issues raised by the complaint.

2nd Parliament Hill press conference

On the same day that the Cable Watch complaint was submitted to the CRTC,

Mr McTeague, Mr Leafloor and I addressed the complaint for journalists in the Canadian Parliamentary Press Gallery. Three press releases were distributed on that day – one by Cable Watch, one by Mr McTeague, and one by Mr de Jong, then the Heritage Critic for the New Democratic Party.

Mr McTeague's press release stated that Parliament had not granted the CRTC the legal authority to enact Regulation 18(6.3), and that the federal government had "an obligation to investigate what has occurred between the Canadian Radio-television and Telecommunications Commission (CRTC) and the cable television industry (McTeague, 28 November 1995).

In his press release, Mr de Jong called on the Heritage Minister to "make the CRTC a genuinely responsive and democratic institution." The MP stated: "The matters Mahar has raised have serious implications for cable subscribers and carriers, consumer advocates and government... By continuing to pretend that the CRTC – as it exists – is meeting contemporary market needs, this government is denying consumers their rights (de Jong, 28 November 1995).

In response to the Cable Watch complaint of unlawful activities by the CRTC and corporations, individuals at the federal regulator opened a specific file in relation to the matter: CRTC file 1000-121.

Request for independent review of complaint

Days later, the Ottawa-based Public Interest Advocacy Centre (PIAC) made a request to the Heritage Minister Michel Dupuy that the Chrétien government "swiftly" establish an independent review of the issues raised in the complaint due to their importance (PIAC, 30 November 1995).

In the same correspondence, PIAC stated that Regulation 18(6.3) was "distinctly out of synch with the way in which the Information Highway was supposed to evolve", referring to public policy principles articulated by the Information Highway Advisory Council in their report *Connection, Community and Content: The Challenge of the Information Highway*. In addition, PIAC noted that Regulation 18(6.3) was not consistent with the CRTC's recent decision to ensure that telephone subscribers were not "saddled with cross subsidies" for the telephone companies' extensive broadband plans.

PIAC concluded that Regulation 18(6.3) was giving cable television companies an unfair advantage over their telephone competitors, and that it was not fair to force cable television subscribers to pay "for future service capabilities which they may neither want nor need." PIAC copied CRTC Chairman Keith Spicer and the Hon. John Manley, Minister of Industry, into the correspondence.

I subsequently informed Ministers Dupuy, Manley and Martin of the Cable Watch complaint, to ensure that the Chrétien government was well apprised of the affair, but there was never any independent review as requested by PIAC.

Despite the public nature of the complaint, the accompanying Parliament Hill press conference, the support of two MPs, and the advocacy of PIAC, only the *National Post* reported the issue, and the article was brief and omitted key information (Toulin, 29 November 1995).

During the fourth week of 1996, Mr Dupuy acknowledged the allegations against the CRTC, but declined to intervene in the matter. He stated in his correspondence to me: "The CRTC has procedures in place for considering and responding to complaints such as yours, and I am confident that the Commission will give full consideration to this matter" (Dupuy, 24 January 1996).

Michel Dupuy ejected from cabinet

As it turns out, notifying me of his decision not to intervene in the CRTC affair was one of Mr Dupuy's final acts as Minister of Canadian Heritage. Mr Dupuy, who had been involved in controversies related to the CRTC and also fundraising, lost his ministry the day after he signed his correspondence to me.

> "*Certainly his ejection from cabinet has long been expected. Opposition members targeted Dupuy after only a few months in office, because he had approved the sellout of government-owned book publisher Ginn back to its U.S. owner Viacom.*
>
> *They renewed the call for Dupuy's resignation in October, 1994, after it was revealed that he'd written a letter to the CRTC – which falls under his ministry – on behalf of a constituent seeking a Montreal radio license.*
>
> *But the howls reached a crescendo when it was revealed that in the fall of 1994 Dupuy had attended a $2,000-a-plate dinner held in a private home. The problem was that all the guests, who were being asked to help pay off Dupuy's 1993 campaign debts, later received contracts or grants through Dupuy's department"* (Crew, 26 January 1996).

In the cabinet shuffle, the Department of Canadian Heritage was added to responsibilities of Canada's Deputy Prime Minister, the Hon. Sheila Copps.

Complaint addressed at industry conference

Days after the cabinet shuffle, and while the Cable Watch complaint was still before the CRTC, Mr McTeague, Mr Leafloor and I were guest speakers at 'The Changing Role of the CRTC' (a one-day industry conference on 30 January 1996, organized by *Insight Information* and *The Globe and Mail)*. The CRTC's vice-chairman of broadcasting Fernand Bélisle and vice-chairman of telecommunications David Colville were also guest speakers at the event, which was recorded for broadcast by the Cable Parliamentary Channel (CPaC).

After our respective presentations, the conference included a question and answer session with the CRTC officials, which I used to raise questions about Regulation 18(6.3). I asked: "When are you going to have cable companies provide full notification to their subscribers about the cost implications of this regulation in accordance with statutory rights, or is the CRTC willing to go to Federal Court to hide the cost of this public scheme from the public" (CPaC, 30 January 1996, tape 4).

In response to my question, Mr Bélisle stated that the CRTC disagreed with my interpretation of subscriber notification and also disagreed with my assertion that the process used to adopt Regulation 18(6.3) was illegitimate. He stated that we would probably end up in Federal Court "to decide who is right and wrong."

> "*Well Mr Mahar I think that you know that we disagree on your interpretation of notification to the subscribers.*
>
> *You have gone in front of the courts to show that the commission is wrong. I think that you want, ah you will probably go in front of the Federal Court to see if the process we followed and the public notification and the public hearings that we had in terms of amending the regulation which created the cable fund is valid. And I think that we disagree on the methods used.*
>
> *You don't believe that we followed the proper rules. The commission feels that it followed the proper rules in amending the regulation and since* [sic] *we would* [sic] *probably end up in Federal Court to decide who is right and wrong"* (CPaC, 30 January 1996, tape 4).

Mr McTeague queried Mr Bélisle on his statement, and the fact that the CRTC official's response implied that the commission had already made its decision regarding the Cable Watch complaint that I had initiated two months earlier, and that if we wanted to challenge the enactment of Regulation 18(6.3) we would have to appeal the decision to the Federal Court. Mr Bélisle stated:

> "*I think that there is no other option if you want to re-fight the 93 decision is* [sic] *probably to go to the Federal Court to see if the commission's amendments of its regulation was valid or not"* (CPaC, 30 January 1996, tape 4).

Mr Bélisle's comments came as a surprise because nobody at the CRTC had informed Mr Leafloor or myself that the commission had made its decision on the Cable Watch complaint. However, obviously it was not possible to challenge such a decision in the Federal Court of Appeal before it was actually released by the federal regulator.

A written CRTC decision to the Cable Watch complaint alleging unlawful activities by the federal regulator and corporations was to be produced five months later.

Chapter 7. CRTC decision made behind closed doors and not published

> *"The CRTC is constrained by various laws and legal principles, yet at times it appears to act as if it is not bound by these laws. At times, the CRTC appears to act as if it is omnipotent and above the law"*
> (Leafloor, 30 January 1996).

In response to the Cable Watch complaint, the CRTC made a damning decision in 1996 relating to the legal rights of Canadians, corporations and itself. Yet CRTC officials were to deny in 2008, and again in 2012, that this decision was ever made (after a lawyer at the federal regulator acknowledged its existence in 2007).

Following is an account of the controversial decision that public officials do not want to be accountable for nearly two decades later.

On the same day that Mr Bélisle implied at the Toronto conference that the CRTC had already made its decision against the Cable Watch complaint, the executive director of the Consumers' Association of Canada (CAC) contacted the commission's chairman to inquire as to the status of the complaint, addressed Cable Watch's request for a public hearing into Regulation 18(6.3) and informed Mr Spicer: "The issues raised merit a full review [and] we join with Cable Watch in asking the Commission to respond expeditiously" (CAC, 30 January 1996).

CRTC alleges that no decision has yet been made

On 8 March 1996, the coordinator of the Alliance of Seniors to Protect Canada's Social Programs, a group consisting of 19 organizations and representing more than 500,000 Canadians, faxed a letter to the CRTC chairman requesting confirmation of the status of the Cable Watch complaint; opposing Regulation 18(6.3); stating that the process employed to enact the subordinate legislation was not democratic; and supporting the request for a CRTC public hearing into the issue (Alliance, 8 March 1996). This correspondence was also sent to the Prime Minister, Heritage Minister and Industry Minister.

That same afternoon, the CRTC's secretary general notified Rogers Cablesystems Ltd., Canadian Cable Television Association (CCTA), Mr Leafloor and the CAC that the commission had not yet made its decision on the "significant matters raised" in the complaint by Cable Watch:

> *"The Commission has carefully reviewed the contents of Cable Watch's complaint and has decided that prior to rendering its determinations on the significant matters raised in the letter, it should first seek comments from the cable operator originally involved in the litigation process mentioned in Cable Watch's letter as well as from the Canadian Cable Television Association"*
> (CRTC, 8 March 1996).

Not only did this information from the CRTC contradict Mr Bélisle's representations at the earlier conference, the process employed by the CRTC to determine the legal rights of millions of Canadians was extraordinarily biased because while Rogers Cablesystems Ltd. and the CCTA were to be provided with an opportunity to comment on the complaint, no funded consumer group was to be provided with the same opportunity. The CRTC was only allowing Cable Watch – which was basically me, assisted by the free legal counsel of Mr Leafloor – the opportunity to comment.

Submissions

Canada's largest cable television company subsequently submitted a response to the Cable Watch complaint as requested by the CRTC (Rogers Cablesystems Ltd., 29 March 1996). Not surprisingly, it was the position of the company that neither the corporations involved nor the CRTC had acted unlawfully. Rogers Cablesystems Ltd. contested all of Cable Watch's allegations, and claimed that a public hearing was "certainly not required and would not be in the public interest." The company defended the actions of the CRTC in its submission, arguing that the federal regulator had the authority to enact Regulation 18(6.3) and that there was "no statutory or common law obligation on the Commission to provide more notice than was actually provided." Furthermore, Rogers Cablesystems Ltd. alleged that cable television companies were not required to notify their subscribers about Regulation 18(6.3), arguing that the "decision was arrived at after a public process in which subscribers were given notice and invited to participate."

An hour and a half after Rogers Cablesystems Ltd. provided its response, the CCTA forwarded its comments regarding the Cable Watch complaint (CCTA, 29 March 1996). The industry association submitted it had been "afforded the opportunity to review the comments of Rogers" and was in agreement with the corporation, which was CCTA's largest member. In addition, the CCTA rejected Cable Watch's assertion that improvements were required to the CRTC's notice procedures. The CCTA's chief lobbyist, Richard Stursberg, alleged that the complaint was unsubstantiated and that the CRTC should dismiss it.

After receiving the comments of Rogers Cablesystems Ltd. and the CCTA, Mr Leafloor filed a comprehensive legal submission to the CRTC in response, on behalf of Cable Watch (Cable Watch, 15 April 1996).

CRTC officials testify before parliamentary committee

Ten days later, Mr Spicer, Mr Bélisle, Mr Colville and the CRTC's secretary general Allan J. Darling, appeared before the House of Commons Standing Committee on Canadian Heritage as part of its regular business. Mr Spicer announced that it was probably his last time before the parliamentary committee because he was finishing his term at the CRTC (HCCD, 25 April 1996). During his opening presentation, he stated that the CRTC had "been an exceptionally useful and successful instrument of public policy and nation-building" and a "guardian of government policy, and defender [of] the public interest." Mr Spicer added that "Canadians have a great deal of interest in the public, open and consultative way in which our deliberations take place."

Unfortunately, Mr McTeague was no longer a member of the parliamentary committee, and therefore not in a position to question the CRTC officials. However, I had been in contact with Reform Party MP Jim Abbott regarding Regulation 18(6.3) and the Cable Watch complaint. Consequently, Mr Abbott put a number of questions to Mr Spicer. Mr Abbott suggested to Mr Spicer that cable television subscribers were "totally unaware" of the commission's scheme and its impact to their monthly rates. He asked Mr Spicer: "Why has the CRTC not required cable companies to notify their subscribers about the cable production fund policy and its impact on their basic cable rate?" Mr Spicer evaded the question by stating that the Regulation 18(6.3) scheme had created more Canadian programming.

Mr Abbott then asked Mr Spicer to confirm his understanding that cable television companies were keeping 50 cents for every dollar collected under Regulation 18(6.3). Mr Spicer's response – that the companies only retained 50 percent of the Regulation 18(6.3) revenue "if they use it for capital" – was false. Mr Colville intervened with this convoluted qualification: "It's every dollar that was collected for a specific program, their capital expenditure. So if there was a rate increase specifically related to capital program [sic], then half of that money is kept by the cable operator and half goes into the cable production fund. But it's not the whole basic cable rate." The clear and accurate response would have been: "Yes – cable television companies do keep 50 cents for every dollar collected under Regulation 18(6.3) and these companies do not have to account to the CRTC for how this revenue is used." Mr Abbott, who was new to this issue and apparently confused, did not pursue this line of questioning, despite the fact that understanding where the money was going was critical to demonstrating the malfeasance of the wealth redistribution scheme.

Mr Abbott then asked Mr Spicer about his testimony of 16 May 1995 to the parliamentary committee, when the CRTC chairman claimed that Canadians had been notified about Regulation 18(6.3). Mr Abbott requested verification of Mr Spicer's claim, stating: "I suggest that we don't seem to be able to find any record that Canadian cable subscribers have been notified by the CRTC or by cable companies of the impact of the cable production fund on their bill." Rather than explain his own prior statement, Mr Spicer asked Mr Bélisle to explain it for him. Mr Bélisle responded that the CRTC believed it had given "notice to all interested parties," and that when Mr Spicer had previously stated that notice had been given to Canadians, he was "referring to the public process" that was conducted by the commission.

Mr Abbott then noted that Mr Bélisle had said at the Toronto conference that the CRTC would not require subscriber notification about Regulation 18(6.3) by cable television companies unless the commission was ordered to do so by the Federal Court. Mr Abbott requested that the CRTC make a commitment to the parliamentary committee that it would direct cable television companies to notify their subscribers about Regulation 18(6.3) and its monthly cost. Mr Bélisle responded:

> *"Mr. Mahar disagrees that the commission followed proper procedure in creating the production fund. He is taking legal action against the commission to determine if the production fund was legally constituted. The commission's position is that it was; that we followed all proper procedure in the public notice we ran at that time; that at that time it fell under our rules and regulations from the Broadcasting Act; that we gave proper notice. There's a fundamental area of disagreement with Mr. Mahar and the commission on that, and he is challenging the commission in court"* (HCCD, 25 April 1996).

Mr Bélisle's information to the parliamentary committee was false. I was still waiting for the CRTC to make its decision regarding the Cable Watch complaint. It is perplexing that Mr Bélisle again implied that the CRTC had made its decision regarding the complaint, and also erroneously implied to the MPs that I was taking legal action against the CRTC prior to it actually rendering a written decision on the complaint.

Most telling, the CRTC officials refused to make a commitment to the parliamentary committee to require cable television companies to notify their subscribers about Regulation 18(6.3). Mr Bélisle simply told Mr Abbott that the CRTC would "consider" his request to require cable television companies to notify their subscribers about the regulation. Mr Abbott pressed for a date when the CRTC would report back on its consideration. Mr Bélisle stated that the CRTC would report back by the end of that June. It is not clear whether the CRTC ever reported back to the House of Commons Standing Committee on Canadian Heritage as promised. However, cable television companies at no time subsequently notified their subscribers about Regulation 18(6.3) and its monthly cost.

CRTC proposes to modify the wealth redistribution scheme

A few weeks later, while the Cable Watch complaint was still underway, the CRTC issued a public notice proposing to replace the *Cable Television Regulations, 1986* with new regulations – the *Broadcasting Distribution Regulations* (CRTC, 17 May 1996). The proposed new regulations did not include Regulation 18(6.3).

Was this the end of the unjust corporate enrichment scheme? Had my campaign finally prompted the CRTC to act in the public interest? Unfortunately not. The new proposed regulations simply modified the existing wealth redistribution scheme – arguably making it more difficult to identify, quantify and scrutinize the money trail to the corporations.

Under the existing Regulation 18(6.3) scheme, the largest cable television companies had the option of overcharging consumers if half the premium was transferred to the Cable Production Fund. In lieu, under the proposed new regulations, the CRTC would require cable television companies to contribute a minimum of 5% of their gross revenues to the "creation and presentation of Canadian programming" (subsidies to private production companies, as well as towards the costs of community channels owned and operated by the cable television companies themselves). However, the CRTC was not proposing to require the companies to stop charging the amount of the Regulation 18(6.3) fees presently being charged to millions of Canadians.

Moreover, the CRTC was also proposing to deregulate the monthly rate for basic cable service if a competitor was merely available in 10% or more of a cable television company's service area.

In other words, the CRTC was proposing to let cable television companies charge subscribers what they wanted at the first hint of competition, which would also give them the opportunity to increase their rates to cover the required subsidies proposed to the production companies, while also allowing the companies to continue to collect the amount currently being collected under Regulation 18(6.3).

The effect of the CRTC's proposed changes was to remove the current avenue of redistributing wealth from ordinary citizens to subsidize cable television and production companies, and substitute an alternative avenue of redistributing wealth to subsidize the private corporations. However, the CRTC did not explicitly address this issue in its public notice. Furthermore, some cable television companies would be more unjustly enriched under this proposed scheme than under Regulation 16(8.3). And once again, Rogers Cablesystems Ltd. was poised to be the largest and disproportionate beneficiary.

Additional submission made to the CRTC

Three days after the CRTC proposed its new regulations, and while we were still waiting for the commission's written decision to the Cable Watch complaint, Mr Leafloor filed a further submission to the CRTC related to the complaint (Cable Watch, 20 May 1996). This document contained the material from the earlier submission plus additional facts that we also wanted available to the Federal Court of Appeal in the possible future legal case against the CRTC and corporations.

A month later, The British Columbia Public Interest Advocacy Centre notified the CRTC chairman that it fully supported the Cable Watch complaint, and that in the event of a public hearing it intended to intervene and participate in the proceedings on behalf of its clients (BC PIAC, 24 June 1996). However, this advocacy group was not afforded the opportunity to address the interests of its clients in the CRTC's decision-making process. Nor were any other government-funded consumer groups, or the millions of other citizens paying to unjustly enriching and subsidize the private corporations.

The CRTC's unpublished decision

On 25 June 1996, the CRTC finally mailed its written decision on the Cable Watch complaint to Mr Leafloor (CRTC, 25 June 1996).

According to the CRTC, neither itself nor the corporations involved had done anything unlawful in relation to Regulation 18(6.3). In its written decision, the CRTC alleged that:

- Parliament had granted the CRTC legal authority to require cable television subscribers to subsidize corporations in this fashion;
- citizens had been given all the information that they were legally entitled to receive about Regulation 18(6.3);
- cable television subscribers were not legally entitled to notice about Regulation 18(6.3) and its monthly cost from their cable television companies;
- the public notice procedures used by the CRTC were adequate for Canadians; and
- no public hearing was required because the Cable Watch complaint was without merit.

In other words, it was the CRTC's absurd position that Parliament had given it the legal right to enact Regulation 18(6.3), and that corporations had the legal right to collect Regulation 18(6.3) fees from their subscribers, but that the Canadians paying the Regulation 18(6.3) fees did not have a legal right to written notice about Regulation 18(6.3) and its monthly cost to them.

In addition, despite the facts showing that Canadians had been effectively excluded from the public hearing process prior to the introduction of Regulation 18(6.3), the CRTC agreed with the industry position that its notice procedures were adequate and did not warrant improvement.

After Mr Leafloor received the CRTC decision on 3 July 1996 by regular mail, he contacted me to inform me about the decision and advise me to prepare for a legal appeal, as it was exactly the type of decision that warranted a review by the Federal Court of Appeal.

It is essential to emphasize that the CRTC did not make its outrageous decision available to the Canadian public. Given that this decision was not published by the CRTC, the six million citizens being required to subsidize the private corporations each month due to Regulation 18(6.3) were not in a position to be aware of this CRTC decision in respect to their legal rights – and were not able to challenge the matter.

Unfortunately, by this time I was in no position to challenge the CRTC and corporations in the Federal Court of Appeal. I was at the start of a bigger battle. Six weeks earlier I had been diagnosed with bipolar disorder, while suffering from an episode of severe depression that nearly ended in suicide.

Chapter 8. An enlightening government-industry partnership surfaces

> *"Sheila Copps, Minister of Canadian Heritage, announced in Toronto yesterday that the long-awaited Canada Television and Cable Production Fund will total $200-million a year, with contributions of $50-million from the two-year-old Cable Production Fund and an additional $50-million from Telefilm Canada's broadcast development production fund"* (Enchin, Harris and Renzetti, 10 September 1996).

While CRTC commissioners proposed to modify the wealth redistribution scheme in May 1996, and the federal government subsequently entered into an enlightening partnership with the corporations collecting Regulation 18(6.3) fees under false pretences from citizens, I was unable to focus all of my energy on raising awareness of collusion between the federal regulators, media proprietors and politicians in relation to the highly unorthodox and regressive scheme.

By the start of that year, I had become increasingly concerned about my mental health. I had lost a considerable amount of weight and was having difficulty sleeping. More problematic, my mind was frequently racing and I was periodically experiencing distorted thinking.

There is a history of mental illness in my family. My paternal grandfather died six months before I was born while being treated for mania at a Montreal psychiatric facility, and my father had also been diagnosed with bipolar disorder. Although I was sufficiently worried to go to my doctor for a physical, I did not specifically tell the doctor, nor anyone else, about the extent of my mental health concerns. The truth is that I suspected that I was in trouble but I was determined to see my CRTC campaign through to the end. I didn't want anything to get in the way of that task, including objections from those closest to me.

I appreciate in hindsight that my mental health had been deteriorating for some time. In the 18 months prior to my collapse, I hadn't been sleeping well. In addition, I had also experienced a heightened sense of personal power and motivation prior to my decision to quit my job and challenge Rogers Communications Inc.'s takeover of Maclean Hunter Ltd. As the scope and intensity of the campaign increased to address the wealth redistribution scheme, and its duration extended, my life became more hectic and stressful.

Stressful period made more stressful

In addition to the normal stress of not being employed and relying upon savings, the personal demands of lobbying against industry and government for an extended period of time was quite taxing, as was the legal case against Rogers Cablesystems Ltd. Moreover, there had been some others stressors at play.

For example, the Friday of the same week that I initiated my lawsuit against Rogers Cablesystems Ltd., I arrived home to discover that my cable television service was not working. I initially considered the service interruption to be a juvenile form of harassment, so I did not bother to notify the company to request a service call. But on the next day – a Saturday – a Rogers employee arrived uninvited at my front door, asking to enter my house under the pretence of fixing my service. After I refused him entry, he simply went around the side of the house, fixed my cable television service in a matter of minutes and left the property. However, I was living with a girlfriend at that time and I felt sufficiently uncomfortable after that event to spend money to improve my home security.

More pressure resulted when some of the individuals who stood to lose from proper public scrutiny of the affair adopted a smear campaign to discredit me personally. The *Toronto Star* reported that I had been characterized as "nuts" and "a fanatic" by my industry opponents, while journalist Antonia Zerbisias publicly rejected these depictions of me.

> "*Keith Mahar is not nuts.*
>
> *Nor is he a fanatic or a secret agent for the telephone companies who are allegedly paying him to sabotage the cable industry.*
>
> *These are the ways he has been characterized by his opponents, mostly in the cable industry"* (Zerbisias, 9 July 1995b).

Journalist John Haslett-Cuff also addressed the smear campaign and felt warranted to defend me for challenging the cable television industry and the CRTC in his column in *The Globe and Mail*.

> "*Predictably, Mahar has been characterized variously as a "crank" and a "fruitcake" by his opponents, but I think he's something much more rare, namely, an angry consumer who's fed up with being victimized by monopolistic capitalism and a compliant, business-friendly government regulatory agency. In fact, I'd almost think the 32-year-old Mahar was an American, if I didn't know better, because he's managed to overcome the sort of apathy that immobilizes most consumers and is charging headlong into battle with two of the most powerful opponents in the country"* (Haslett-Cuff, 11 July 1995).

In addition, CHUM Ltd. vice-president David Kirkwood, my former boss, offered some positive commentary during that time about my tenure at the corporation, quoted in the *Toronto Star* stating: "He was smart, worked hard, had a good sense of humour [and] was really a vital guy" (Zerbisias, 9 July 1995b).

Furthermore, MP Dan McTeague also defended me in a story broadcast on *Global Television*. The parliamentarian stated that he and his office had carefully reviewed my allegations related to Regulation 18(6.3) and that I was "dead on" (Mallen, 7 August 1995).

Additional stress resulted when I starting receiving death threats one night, shortly after I was a guest on a Toronto radio program to discuss the CRTC affair. While these disturbing telephone calls stopped within a short period of time, they were unsettling as our home address was listed in the Toronto telephone book. I am not asserting that these calls were made by anyone in the industry – being a public voice sometimes does result in unwanted attention. However, had politicians properly investigated this well-documented case, I might have avoided these death threats. In fact, I established Cable Watch partly in response to this unwanted attention and the smear campaign. I thought continuing the campaign as a group would better emphasize its public interest premise and take the focus off the perception that my work was simply an 'individual crusade', while also reducing the damage done by the smear campaign.

I also had the extremely bad luck of being selected for jury duty while I was working long hours with my legal counsel on the Cable Watch complaint. As a result, I had to spend five days at a Toronto court office in April 1996, waiting to see if I was needed for a jury, while also working at night with lawyer Christopher Leafloor on the comprehensive submission that he subsequently filed to the CRTC (Cable Watch, 20 May 1996).

Although I was experiencing symptoms of mental illness during this time, my objections to Regulation 18(6.3) were based on documented evidence, facts and basic mathematics – as Mr McTeague had asserted on *Global Television*, I was "dead on". The industry's smear campaign to undermine my legitimacy and divert attention from the public interest issues raised and the CRTC's dishonest tactics to evade accountability for the wealth redistribution scheme, were entirely unacceptable. Moreover, these dirty tactics served to increase my motivation. I was determined to continue campaigning until there was a public inquiry into the scheme and evidence of systemic corruption at the CRTC.

Diagnosis of bipolar disorder

However, I discovered my breaking point in May 1996, experiencing severe depression for the first time in my life. Feelings of courage and hope were suddenly replaced by terror, futility and pure misery. One day I found myself on the bedroom floor, curled up in the foetal position, struggling to cope with the agony of the moment and intense thoughts of suicide. In that state, I knew that like my father, and grandfather, I had bipolar disorder. On reflection, some symptoms of heightened mood had periodically been present over the length of my campaign. However, these symptoms had become more prevalent as the campaign dragged on, and on, until I was totally physically and mentally exhausted.

I managed to go to my doctor that day and he agreed with my self-diagnosis of bipolar disorder. It was extremely poor timing to be so unwell, as I was scheduled to appear before the House of Commons Standing Committee on Canadian Heritage three days later in Ottawa to comment on Bill C-216, a private member's bill introduced by parliamentarian Roger Gallaway. The bill sought to amend the *Broadcasting Act* to address negative-option billing by cable television companies. While I had been invited to address the proposed legislation, I also planned to use the opportunity to talk about the Regulation 18(6.3) affair on the public record. But I was in shockingly poor shape. My doctor told me that there was absolutely no way I would be able to go to Ottawa to testify before the parliamentary committee at that time, and he was right.

Plan of suicide

Although my doctor wanted to admit me to hospital that same day due to my high risk of suicide, I pleaded not to go. He agreed on the condition that a friend of mine come to his office and drive me home. The doctor advised my friend that I was not to be left alone over the coming days and he was right to be concerned. In addition to the extreme agony of the depression itself, I felt deeply ashamed of having a severe mental illness. Everything felt totally hopeless and futile, including my challenge against the CRTC and the corporations.

Sleep over the next few weeks was extremely difficult and thoughts of suicide dominated my waking hours. I came up with a plan of how and where to end my life, but I struggled against acting on this plan. (I went on to discuss this experience of suicidal depression years later in various public forums, including on a program broadcast by the Australian Broadcasting Corporation (Kimball, 2 August 2013)).

Given the serious nature of my symptoms at that time, my doctor referred me to a psychiatrist straightaway. I told that psychiatrist that I had to return to my campaign. However, he informed me that it was "impossible" for me to be an activist any longer because I had a severe mental illness and stress is a major trigger to relapse.

Consequently, when Mr Leafloor telephoned me to inform me of the CRTC's decision regarding the Cable Watch complaint, I explained that I was not able to proceed to the Federal Court of Appeal as planned. Despite all of his time and effort – donating tens of thousands of dollars' worth of free legal services to me over nearly a year and a half – he did not pressure me to change my mind. Mr Leafloor was supportive and accepted my decision.

Return to the campaign

But I felt emasculated by both the experience of depression and also my inability to finish my campaign against the federal regulator and corporations. I hated feeling weak and I wanted to prove something to myself, and others. More importantly, as a result of standing up to the government and industry, I had discovered my own political voice and it was a truly empowering experience. I didn't want those in industry and government to avoid accountability for their actions simply because I had a severe mental illness. Thoughts of suicide and thoughts of returning to my campaign were diametrically opposed, and competed against each other for a period of time; until one was sufficiently dominant to result in action.

The day before Mr Leafloor's telephone call, *The Globe and Mail* reported that Mr Spicer's tenure as CRTC chairman had ended a few days earlier. His replacement was the former head of Radio-Canada, Françoise Betrand – described in the column as "yet another transparently political appointee" (Haslett-Cuff, 2 July 1996). While I did not think that I was up to the stress of another legal battle, I thought that it might be worthwhile to notify Ms Betrand of the Regulation 18(6.3) issues, and also put some more information on the public record. An upcoming public hearing provided an opportunity to do just this.

A few days before my diagnosis of bipolar disorder, the CRTC had issued a public notice proposing to replace the *Cable Television Regulations, 1986* with the *Broadcasting Distribution Regulations* – in effect, replacing Regulation 18(6.3) with a modified wealth redistribution scheme (CRTC, 17 May 1996). While the proposed regulations were to remove the power granted to businessmen under Regulation 18(6.3) to coerce Canadians to subsidize private corporations, the *Broadcasting Distribution Regulations* were going to cost cable television subscribers exactly the same amount as Regulation 18(6.3); the only thing that was really changing was the split of money between the cable television companies (unjust corporate enrichment subsidies) and the television production companies (non-repayable grant subsidies). The deadline for written submissions to the federal regulator was 16 July 1996, with a public hearing that October.

With difficulty, I managed to write and file a submission to the CRTC by its deadline, requesting standing to appear at the public hearing (Cable Watch, 16 July 1996). In that submission, I identified that the CRTC's proposed new regulations were unfair and inefficient in terms of supporting Canadian programming through the Cable Production Fund. I also pointed out that the proposed changes to the regulations would provide an additional windfall to the companies charging the highest Regulation 18(6.3) fees. Furthermore, I used the example of Newmarket, Ontario – with data I had obtained directly from the CRTC's secretary general – to demonstrate that the mathematics of the proposed regulations were going to permit Rogers Cablesystems Ltd. to retain an even larger unjustified corporate enrichment than under the existing Regulation 18(6.3).

But my return to the issue came with a high price. My mental health started to deteriorate again. Symptoms of both mania and depression surfaced and played a tug of war with my mind. I felt trapped and thought suicide was a likely outcome in my future. Moreover, my personal life was rapidly unravelling, but I had stopped caring to an unhealthy degree. I was determined to appear at the CRTC public hearing that October.

The announcement of a 'government-industry partnership'

A month before the CRTC's public hearing, and after my window of opportunity to challenge the regulator's unpublished decision in the Federal Court of Appeal had closed, Deputy Prime Minister and Minister of Canadian Heritage Sheila Copps made a most illuminating announcement. Not only did the government ignore earlier calls from MPs, the Public Interest Advocacy Centre and myself for an investigation into the Regulation 18(6.3) affair, Ms Copps actually entered into "a government-industry partnership" with the cable television companies (Canadian Heritage, 9 September 1996); a partnership relying upon the fees being collected under false pretences by the corporations.

The partnership resulted in the creation of the Canada Television and Cable Production Fund, designed to subsidize production companies with $200 million per year. Taxpayers were to pay $150 million of this amount, with approximately $50 million more coming from cable television subscribers through the Regulation 18(6.3) scheme (Enchin, Harris and Renzetti, 10 September 1996).

According to Professor Joel Bakan, author of *The Corporation*, such public-private partnerships are a threat to the democratic process. He states: "Though corporations have a place in representing their concerns to government and cooperating with government on policy initiatives, the special status they currently enjoy as "partners" with government endangers the democratic process" (Bakan, 2004, pp. 162-163).

In any event, the Chrétien government, CRTC and cable television industry were now all involved in the highly regressive and unethical wealth redistribution scheme. Furthermore, both Regulation 18(6.3) and the modified unjust enrichment scheme that the CRTC was proposing to incorporate into the new regulations were in violation of government policy. Order in Council P.C. 1994-1689 mandated that cable television companies were to make "equitable" contributions to the production and distribution of Canadian content and that CRTC regulations were to "foster fair competition" (Government of Canada, 11 October 1994). However, both Regulation 18(6.3) and the unjust corporate enrichment scheme in the proposed *Broadcasting Distribution Regulations* were grossly inequitable in terms of cost, and also served to foster unfair competition.

Furthermore, Regulation 18(6.3) was also violating the Chrétien government's own policy framework on convergence. In addition to tasking the CRTC with equitably funding Canadian programming and fostering fair competition, the Chrétien government had announced that it was also policy that the commission's regulations should prevent cross subsidies from monopoly services and that "regulation must ensure that the gross revenues from broadcasting activities are fully identified and accounted" (Government of Canada, 6 August 1996). However, through Regulation 18(6.3), the CRTC was actively permitting cable television companies to cross subsidize other commercial ventures from their monopoly cable television service, and the commission was not requiring these same corporations to account for the 50 percent of revenue retained from Regulation 18(6.3). Similarly, the proposed *Broadcasting Distribution Regulations* were also going to violate the government's policy on convergence if adopted by the CRTC.

CRTC public hearing

A month after the government-industry partnership was announced, I appeared at the CRTC public hearing with parliamentarian Dan McTeague (Keeley, 15 October 1996, pp. 1532-64).

I argued that it was not sound policy to simply ignore the inherent problems of Regulation 18(6.3) and incorporate a modified unjust corporate enrichment scheme into the new regulations. I also emphasized that Regulation 18(6.3) and its proposed replacement were in violation of government policy and that the adoption of the *Broadcasting Distribution Regulations* would lead to a greater opportunity for Rogers Cablesystems Ltd. to cross-subsidize other commercial activities using revenue obtained from its subscribers.

Mr McTeague stated that the CRTC's hearing was "unbalanced and biased" as Canadians were "precluded from fully participating" in the regulatory process as they were still not aware of Regulation 18(6.3). This meant that citizens were neither in a position to understand the potential consequences of the proposed changes, nor able to exercise their statutory right of representation in the proceeding. Mr McTeague recommended that citizens be notified immediately by the CRTC to allow their participation in the next phase of the regulatory process.

At the hearing, the CRTC feigned ignorance of the previous controversy surrounding Regulation 18(6.3). Commissioners did not robustly engage with the facts and issues that we raised. It was clear to me that the CRTC yet again viewed the public hearing as a formality to facilitate introducing its new regulations, including the modified wealth redistribution scheme.

Immediately after the hearing I attempted to write a comprehensive submission to send to both Minister Copps and Minister Manley, despite evidence from past experience suggesting that such an approach to these politicians would be unproductive and in all likelihood ignored. In any event, I pushed myself far too hard to get this task accomplished, and was unable to complete it.

Costly experience of psychosis

Symptoms of mental illness became more and more problematic. Making a critical error in judgment, I abruptly stopped taking my prescribed medication – an incredibly foolish decision, born out of impaired thinking due to my illness, ignorance, anger and ego. In short order I was propelled into the stratosphere of acute psychosis, where logic and reason totally abandoned me.

On 14 November 1996, in the midst of this episode of psychosis, I handed out hundred dollar bills to panhandlers in Toronto, convinced that I was somehow responsible for their plight. Though I am not a religious person, as I walked down Toronto's Yonge Street that afternoon, I thought that God wanted me to demonstrate my faith that the truth was the only thing required to change the world, by walking the earth naked for the rest of my life. I thought that this action would somehow eradicate poverty and end human suffering in the world. With this mission in mind, I set off for RCI's head office hoping to have another meeting with Ted Rogers and find a solution to the CRTC affair. Unfortunately, changing the world is not quite so simple. Unfortunately, an RCI employee witnessed my 'March for Freedom', ensuring catastrophic damage to my reputation that same afternoon. (A journalist would later describe this sequence of events in the following manner: "His psychiatrist warned against returning to his role as an activist but Mahar went back into the fray and experienced that life-altering episode of psychosis" (Cronin, 27 November 2010)).

After being transported by police to a Toronto psychiatric hospital, I was treated with medication and discharged two weeks later. But the most damaging consequences of the episode were not readily visible. My prolonged campaign had placed considerable strain on my relationship, a situation that was made significantly worse by my symptoms of mental illness and uncharacteristic behaviour. By the time I was discharged from hospital, my 10-year relationship was over. Furthermore, my reputation was destroyed. I was publicly humiliated, privately ashamed, and suffering from profound feelings of grief and loss. My self-esteem, confidence and self-respect were at rock bottom. In effect, I no longer knew who I was, and I had absolutely no idea how to go on.

I was totally lost.

I wanted to disappear, so I did. I drifted for a period of time in a dark mood, spending that Christmas by myself in the Dominican Republic. I spent the next Christmas alone in South Africa. In between I travelled in the United States, Europe and Africa, thinking about life and death, while trying in vain to make sense of how things had gone so wrong. While I kept moving during that time, anxiety always managed to find me.

During that time, I was unable to envision a future that was worth living. My savings were not going to last forever and I was convinced that I was never going to work or enjoy life again.

Fortunately, I was wrong.

Chapter 9. Long distance return to unfinished business

> "*SEVEN YEARS AGO, Keith Mahar moved from the top of the world (Canada) to the bottom (Australia) in an attempt at anonymity after his prior high profile social campaign ended in major psychosis*"
> (Like Minds, 2009).

While I was out of Canada, the CRTC introduced the *Broadcasting Distribution Regulations*. Commissioners simply ignored the evidence I had presented that their subordinate legislation would violate government policy, foster unfair competition and allow cable television companies to siphon money out of the broadcasting system. The CRTC also ignored MP Dan McTeague's request for Canadians to be notified about Regulation 18(6.3) and to be actively engaged in the process of considering these regulations.

The *Broadcasting Distribution Regulations* came into force on 1 January 1998 (CRTC, 22 December 1997). Although the new regulations no longer granted businessmen the authority to unjustly enrich their companies if voluntary donations were made to the television production fund, cable television subscribers were still being overcharged in order to subsidize production companies and also unjustly enrich cable television companies. While the *Broadcasting Distribution Regulations* eliminated Regulation 18(6.3) in name, its monthly cost to millions of Canadians was maintained. As a result, citizens continued to unjustly enrich cable television companies and subsidize private production companies through inflated rates for their basic cable service. However, the exact split between cable television companies and production companies of the revenue obtained from subscribers was modified, as cable television companies were now required by the CRTC to "contribute a minimum of 5% of their gross annual revenues derived from broadcasting activities to assist in the creation and presentation of Canadian programming" (production funds and community channels). However, the effect of this accounting change meant that the *Broadcasting Distribution Regulations* were providing an even greater unjust corporate enrichment than the former *Cable Television Regulations, 1986* for those companies that had been charging subscribers the highest rates for 18(6.3) – primarily Rogers Cablesystems Ltd.

In addition to violating government policy by incorporating a modified unjust corporate enrichment scheme, the *Broadcasting Distribution Regulations* also put in motion a simple process for cable television companies to no longer be rate-regulated by the CRTC for basic cable service in the future.

Legislation proposed to reform the CRTC

Days after the *Broadcasting Distribution Regulations* came into effect, I returned to Toronto from London for what I thought would be a brief visit to see family and friends. Shortly after returning, Mr McTeague requested my input into Bill C-381, a private member's bill that he was drafting which would propose to amend the *Canadian Radio-television and Telecommunications Commission Act* in the public interest. Given that he was aware of my episode of psychosis, I greatly appreciated his vote of confidence in my ability

Mr McTeague's draft bill was to require the CRTC to have regard for the rights and interests of Canadian consumers and to adopt cost-effective means while pursuing its objectives and exercising its powers in relation to enhancing Canadian broadcasting. I recommended that the proposed legislation also require the CRTC to identify how its commissioners voted in relation to decisions, in order to address its secret voting policy and increase transparency and accountability. In addition, I recommended that the bill address the CRTC's compositional bias, in order to better protect the interests of Canadian consumers, by requiring that consumer advocates be appointed as commissioners. Mr McTeague agreed and appropriate clauses were added to his private member's bill.

Mr McTeague subsequently introduced Bill C-381 to Parliament (Hansard, 18 March 1998). Unfortunately, the proposed legislation later died on the order paper when Prime Minister Jean Chrétien called an early federal election.

Funding extended by the Hon. Sheila Copps

The Hon. Sheila Copps renewed taxpayer funding for the Canada Television and Cable Production Fund in early 1998 to continue subsidizing private production companies. As a result, the minister was described as a "champion of the industry" (McKay, 14 February 1998) and applauded by "TV moguls".

> "*CANADA'S top TV moguls gave Heritage Minister Sheila Copps a hearty round of applause yesterday as she announced the Canada Television and Cable Production Fund will be extended to the year 2001. "Nothing is sweeter to the ears of television people than to hear that the fund is being renewed," Copps said to the approving crowd on the set of the Atlantis Communications TV series Traders"* (*Canadian Press*, 14 February 1998).

Despite the fact that the Fund was being financed by taxpayers and cable television subscribers, industry members referred to the funding as "Sheila's money" (Zerbisias, 19 April 1998). Interestingly, an Angus Reid poll conducted during that period suggests that Minister Copps' support for subsidizing the private Canadian production companies was not shared by the millions of citizens being required to pay for the subsidies.

> "*When an Angus Reid poll commissioned by The Globe and Mail last week asked Canadians what they'd like to see the federal surplus spent on, funding for film and television productions came in last, below job creation, health care, child-poverty assistance, education, debt and tax reduction, highway improvement and military spending. Only 12 per cent of Canadians showed an interest in cultural funding - a number that is unlikely to capture the fancy of Finance Minister Paul Martin"* (Saunders, 14 February 1998).

Canada Television and Cable Production Fund controversy

When extending taxpayer support for the Fund, Minister Copps stated that the Canada Television and Cable Production Fund was a "proven success" and that "Canadian television programming is essential to our identity, culture and our understanding of ourselves and each other" (Zerbisias, 14 February 1998). However, within two months the Fund was involved a funding crisis that threatened to bankrupt a number of independent television producers in the country. Importantly, it came to light that a significant amount of the grants provided to production companies were not being used to subsidize programs with content related to Canada for Canadian audiences. Rather grants had been "grabbed by a record number of Canadian producers of programs made in Canada largely for foreign markets – known in the industry as "industrial" Canadian programs" (Quill, 26 April 1998).

> "*The irony is that successful "indigenous" dramas - that boast Canadian locations and storylines - are in jeopardy while productions regarded as "industrial" such as The Outer Limits, made here with U.S. cable audiences in mind, appear to have their government financing in place"* (Zerbisias, 20 April 1998).

Following public exposure of this issue, the Canada Television and Cable Production Fund was re-branded as the Canadian Television Fund.

Submission to the Liberal Caucus Group on the CRTC

At the same time that Mr McTeague had requested my input into Bill C-381, he also commissioned me to research how to reform the federal regulator. We jointly submitted the resulting report – *A View to Democratizing the CRTC* – to the Liberal Caucus Group on the CRTC (McTeague and Mahar, 19 April 1999).

Our report highlighted numerous problems with the CRTC, including that:

- existing conflicts of interest at the CRTC sacrificed the federal regulator's integrity
- the degree of interaction between industry lobbyists and CRTC commissioners warranted monitoring
- the CRTC appointment process was not satisfactory
- the CRTC suffered from two serious types of bias related to the composition of the commission itself and also from its inconsistent administration functions
- the *Broadcasting Act* afforded consumers no recognition or protection
- there were serious questions regarding the effectiveness of the CRTC to protect both Canadian culture and consumer interests
- public hearings were conducted in such a way that they favoured industry input and interests.

In addition, we made several recommendations in regard to the CRTC, including:

- a comprehensive public review of the CRTC, its regulations, its mandate and its conduct
- enforcement of government policy regarding competitive safeguards through basic rate reductions for cable television
- legislation to raise revenue from CRTC licensees to create and fund an independent public interest organization to assist individuals to fully participate in the regulatory process
- the appointment of an independent ombudsman, charged with protecting the rights of citizens in the CRTC's regulatory process
- adoption of Bill C-381
- legislation to facilitate debate with regard to CRTC regulatory matters in the House of Commons
- legislation to address corporate lobbying, create better rules of procedure, and require a more effective public notice process.

Decision to leave Canada

Although I had only intended to return to Canada for a short period of time in 1998 to visit family and friends, that plan changed when I met an Australian woman residing in Toronto; my current partner Gail.

Living in Toronto again revived my sense of injustice in relation to the CRTC and broadcasting corporations, and provided the opportunity to contribute my knowledge to Mr McTeague's efforts to address the commission and industry. However, I was tentative about more actively pursuing the matter because of my damaged reputation, embarrassment and the potential risk to my mental health.

During this period of time, I was fortunate to find a good psychiatrist who increased my understanding of bipolar disorder.

By coincidence, RCI's new head office was visible from the apartment that I shared with my partner. This view served as a daily reminder of both my fall from grace and failure to finish my campaign. It was as though I was unable to go back and finish the matter, while also unable to effectively go forward in life without finishing it. Feeling defeated, directionless and worried that I might bump into someone from my former life, I stagnated in the city. Since my unhappiness was adversely affecting our relationship, Gail and I decided to try to make a fresh start by moving to Australia.

When Bill C-381 died on the order paper as a result of the early election, I was still in Toronto and in the process of obtaining a visa to reside in Australia. To a degree, I felt like I was running away from the CRTC affair by leaving Canada, and I had viewed the private member's bill as a type of consolation prize. With that benefit gone, the feeling that I was running away increased to a more uncomfortable level. I again tried to return to challenge the outstanding government corruption. This attempt was unsuccessful and culminated in another episode of psychosis and I admitted myself into hospital for a few days in early 2001. Once the psychosis ended, I descended into another problematic period of depression with thoughts of suicide. However, the symptoms of both the psychosis and depression were far less severe than those I experienced in 1996.

In October 2001, Gail and I moved to Australia.

Advocacy and mental health recovery

While I had planned to hide my mental illness and experience from as many people as possible in Australia, I fundamentally changed my mind in early 2002 when I saw a poster for Mental Illness Education ACT (MIEACT, with the 'ACT' referring to the Australian Capital Territory) on a bulletin board at the University of Canberra. The non-profit organization needed volunteers to share their stories of living with mental illness to high school classes. I found the idea of using my story to try to help young people and reduce the stigma of mental illness appealing. Consequently, I joined MIEACT as a volunteer educator, a decision that proved an instrumental step in my recovery. Meeting other people with mental health issues who I respected also helped me to accept my own experience and put it into its proper context. Importantly, I felt productive and part of a community again, and new doors started opening.

In September 2003, I was invited to be an inaugural member on a bipolar disorder reference group for Beyond Blue, Australia's national depression initiative. Two months later I was elected President of MIEACT. A few months later I began a part-time job at the Mental Health Council of Australia, 9 years after I left the broadcasting industry.

As a result of these roles, I started to feel more and more like my old self, with the added benefit of being more secure in who I was than ever before. I no longer felt ashamed to be a person diagnosed with bipolar disorder and my ability to imagine a worthwhile future returned. At the same time, my plans for the future did not totally exclude the past. I had not stopped thinking about the unresolved Canadian scandal and how I might sustainably re-involve myself in the campaign to address the ongoing systemic corruption.

Breaking the 'psychosis barrier'

As my mental health improved, I considered various ways to get traction around the outstanding CRTC issue. A reasonable opportunity presented itself in early 2004 when Canada's auditor general identified a major political scandal that came to be called the "Sponsorship scandal". Companies with close ties to the Liberal Party of Canada had been unjustly enriched by more than $100 million. Although the scandal was not directly linked to the CRTC, the public outrage at the issue provided a good point of leverage for talking about the wider problem of corruption in Canada.

Paul Martin had become Canada's prime minister months earlier, after Jean Chrétien resigned from office, and he had introduced a reform package "to address the democratic deficit" (*Vancouver Sun*, 5 February 2004). I decided to test Prime Minister Martin's purported commitment to democracy.

By coincidence, during that same period of time journalist Ian Jack reported that the CRTC had only just ended its long-standing practice of permitting corporations it regulates to pay for wining and dining its commissioners and senior staff at private dinners, where no minutes were taken to account for what was discussed (Jack, 20 March 2004).

Once again, however, symptoms of mental illness started to surface in mid 2004 after I began writing a submission related to the CRTC affair. The result was a period of psychosis followed by depression. However, this time I did not require any hospital care, only medication, rest and time. Furthermore, the duration and intensity of the psychosis and depression was less than in 2001, and far less severe than compared to 1996.

It was clear to me that I was getting close to breaking through my 'psychosis barrier' that had to date stopped me from returning to the CRTC affair. Consequently, I resumed my efforts with a more sustainable approach – rather than trying to make the submission perfect, I simply aimed to get it done to a satisfactory standard. This strategy reduced my stress and it worked. I finished writing the submission a couple of months later, a task that had evaded me since 1996.

Submission to Prime Minister Paul Martin

On the tenth anniversary of the day I left my broadcasting career, I sent the submission by courier to Prime Minister Paul Martin (Mahar, 6 September 2004). Included were copies of a number of documents related to the corruption at the CRTC, including the federal regulator's unpublished decision (CRTC, 25 June 1996). I requested the establishment of a parliamentary sub-committee to review the conduct of the CRTC in relation to the wealth redistribution scheme.

Less than two weeks later, a staff member from the Office of the Prime Minister sent me a letter, assuring me that my submission and accompanying documents had been "carefully reviewed" (PMO, 16 September 2004). I was advised that copies of the documents had been forwarded to the Hon. Liza Frulla, Minister of Canadian Heritage; the Hon. Ralph Goodale, Minister of Finance; and the Hon. David Emerson, Minister of Industry. However, I wasn't holding my breath that the submission would result in action being taken. Indeed none of these politicians publicly addressed the well-documented case of systemic corruption. But there was a paper trail related to the affair and I felt like a huge weight had been lifted from my shoulders.

During that same month, Friends of Canadian Broadcasting released a research report it had commissioned that was highly critical of the appointment process used for the CRTC. The report noted that the process used to appoint commissioners "remains under the direct and exclusive control of the Prime Minister" and evidence suggests that a large number of such appointments "were simply patronage appointments" (Friendly, 2004, p.1).

Transformation

Since the Office of the Prime Minister acknowledged receipt of my submission in 2004, I have not experienced another episode of psychosis. As a result, I have been able to focus the vast majority of my time and energy on rebuilding a satisfying life for myself in Australia.

I returned to university in 2005 to study social work and completed my degree at the end of 2007, becoming a member of the Australian Association of Social Workers. After working as a case manager in youth justice for the territory government, I accepted an offer in 2009 to work in community mental health, where I am presently employed today.

Since immigrating to Australia, I've been involved in local, national and international mental health initiatives. Over the past decade, I've conducted a number of presentations at mental health conferences, including one at the 2007 World Psychiatric Association International Congress on my own recovery (Mahar, 1 December 2007). I was surprised in 2011 to be acknowledged in the Australian Senate by Senator Carol Brown (Hansard, 15 June 2011, p. 2935). A year later I was appointed by Mark Butler, Minister for Mental Health at that time, to a reference group for a national mental health project (Butler, 22 June 2012). The Australian Broadcasting Corporation subsequently featured my story of experiencing severe mental illness and recovery in one of its television programs (Kimball, 2 August 2013).

It is fair to say that I've found my feet as a mental health advocate in my adopted country. Nonetheless, I am still determined to address the ongoing scandal in Canada. The issue serves as a valuable case study on several fronts, including regulatory capture, undue corporate influence on government, principles of administrative law and processes, and the problems associated with highly concentrated media ownership. There is evidence that the CRTC remains plagued by institutionalized corruption, and the situation continues to warrant a public inquiry. To be honest, I also consider that challenging the wealth distribution scheme as a person diagnosed with a severe mental illness offers a unique opportunity to raise awareness of recovery and reduce stigma.

In fact, my story of experiencing depression and psychosis while campaigning for an investigation into the CRTC affair was recently published in *Coming Out Proud to Erase the Stigma of Mental Illness: Stories and Essays of Solidarity* (Corrigan, Larson and Michaels, 2015). One of the book's editors is Professor Patrick Corrigan, a world-leading authority on the stigma of mental illness. Former U.S. First Lady Rosalynn Carter has stated: "*Coming Out Proud* is a seminal work that confronts stigma head on and replaces it with acceptance and inclusion."

As I addressed in my chapter in that same book, I've returned to my campaign against the outstanding case of systemic corruption in Canada (Mahar, 2015).

Chapter 10. Prime Minister Stephen Harper's broken promise

> *"We promised to stand up for accountability and to change the way government works," said Prime Minister Stephen Harper. "Canadians elected this government to deliver on that commitment and today the Federal Accountability Act has received Royal Assent. From this day on, accountability in government is the law and we can all be proud of that fact"* (PMO, 12 December 2006).

The 2006 Canadian federal election appeared to be a golden opportunity to address the outstanding case of corruption at the CRTC, as the election platform of the Conservative Party of Canada – *"Stand Up For Canada"* – was leveraged on cleaning up government corruption.

Stephen Harper promised that a Conservative government would "bring political accountability to Ottawa" and "clean up government." He stated: "We need a change of government to replace old style politics with a new vision. We need to replace a culture of entitlement and corruption with a culture of accountability. We need to replace benefits for a privileged few with government for all" (Harper, 2006).

Several months before the election was called, I was preparing for the next stage of my CRTC campaign and contacted Paul Armarego, an experienced lawyer in Canberra. After reviewing some key material, he offered to assist me at no charge to pursue the CRTC affair.

In early January 2006, Mr Armarego submitted background information on the wealth redistribution scheme to the attention of Mr Harper and other party leaders, informed these politicians that activities involving the CRTC were potentially unlawful, advised them of the unpublished decision made by the commission on 25 June 1996 in relation to the Cable Watch complaint, and specifically referenced the existence of CRTC file 1000-121 (Armarego, 5 January 2006).

The Conservatives won the federal election later that month. During Mr Harper's first day as Canada's prime minister, he appointed former CRTC commissioner Beverley Oda as Minister of Canadian Heritage (the portfolio that oversees the CRTC). Since Ms Oda was one of the three commissioners known to have voted against enacting Regulation 18(6.3) in 1993, the appointment gave me hope that the Harper administration was in fact going to walk its talk. However, there was no response to the facts provided by my lawyer to Mr Harper. Consequently, I opted to wait for another opportunity to pursue the matter.

The *Federal Accountability Act* was passed at the end of 2006, with Mr Harper claiming that in Canada "accountability in government is the law" (PMO, 12 December 2006). However, nobody had taken any action to hold federal regulators, media proprietors or politicians accountable for the wealth redistribution scheme.

Conflict opens door for campaign

In that same period of time, the cable television and production industries became entangled in a conflict over subsidies related to the Canadian Television Fund. Jim Shaw (the son of J.R. Shaw, founder of Shaw Communications Inc.) informed the chair of the Fund that payments were being withheld due to "dissatisfaction with the performance, operations and governance" of the Fund (Shaw, 20 December 2006). Mr Shaw stated that "Shaw has contributed over $350 million in direct subsidies to the Canadian production industry" but that the Fund had "become nothing more than a means of subsidizing broadcasters, pay and specialty services and independent producers to produce Canadian television programming that few watch and has no commercial or exportable value."

One of Mr Shaw's complaints was that the fund had no accountability to Shaw Communications Inc. on the use of the subsidies. Mr Shaw's complaint regarding the lack of accountability was highly ironic given that the corporation under his father's control had avoided public accountability for its unjust enrichment under Regulation 18(6.3). However, I welcomed Mr Shaw's antics as the controversy served to draw attention to the Canadian Television Fund, which provided me with a new opportunity to again try to bring the broader problems of CRTC corruption related to corporate subsidies to public attention.

Exclusive story offered to *Toronto Star*

In early 2007, I contacted journalist Antonia Zerbisias, who subsequently wrote a column for the *Toronto Star* that voiced some of my objections to the television production fund (Zerbisias, 6 February 2007).

A few days later, Ms Zerbisias notified her editor by email that the story behind my opposition to the fund appeared to be "MUCH bigger than the sponsorship scandal" (Zerbisias, 14 February 2007). To put this statement into context, Prime Minister Harper had previously described the sponsorship scandal as "the biggest scandal in Canadian history" while he was opposition leader (Hansard, 3 February 2005).

Despite the experienced media columnist's assessment of the CRTC affair and my offer of an exclusive, the *Toronto Star* did not pursue the story. Ms Zerbisias only wrote one more related column on the issue (Zerbisias, 16 February 2007). Months later her assignment changed and she was no longer covering the federal regulator, and journalist Rita Trichur was instead given that responsibility. Unfortunately, Ms Trichur decided that the CRTC affair did not warrant a story.

No opportunity granted to testify

Nonetheless, both the House of Commons Standing Committee on Canadian Heritage and the Standing Senate Committee on Transport and Communications announced hearings into the Canadian Television Fund fiasco in early 2007. Through Mr Armarego, I made requests to testify these hearings (Armarego, 14 February 2007; Armarego, 16 March 2007). However, I was not permitted to testify – the parliamentary committee did not even respond. Senator Lise Bacon, chair of the senate committee, acknowledged my allegations of corruption in a letter to my legal counsel, but stated that the issue did not "fall within the scope of our present work" (Bacon, 9 May 2009). Senator Bacon suggested that I might consider raising the issue with "appropriate authorities". Who these authorities might be, if not the committees tasked with reviewing a fund brought into being by the CRTC, remains unclear. At the same time, Senator Bacon copied her correspondence to all of the senators on the committee.

In any event, the CRTC subsequently established a task force to review the industry controversy. During April and May 2007, I notified CRTC chairman Konrad von Finckenstein, and the commission's senior legal counsel John Keogh, of my long-term interest in the issue and requested an opportunity to appear before its task force (Mahar, 5 April 2007; Mahar, 15 April 2007; Mahar, 1 May 2007). However, my requests were denied.

CRTC process undermines transparency and accountability

CRTC officials subsequently adopted a behind-closed-door process related to the wealth redistribution scheme, which permitted oral submissions from industry but did not record the specific content of these interactions. The Canadian Conference of the Arts was extremely critical of the process in terms of its transparency and public accountability.

In its submission, the Canadian Conference of Arts stated:

> *"It is our position that the behind-closed-door "negotiations" engineered by the CRTC with the full blessing of the government is not the proper way to deal with an issue which affects the public interest and is of concern to all Canadians. To our knowledge, it is the first time that the CRTC has set up a Task Force which will operate totally behind closed doors. There may indeed be a need for some closed door sessions, but as a minimum, the CRTC must hold public hearings once its Task Force has presented its report. Yet, if the main purpose of the CRTC Task Force itself is to achieve a consensus among the major players, of what utility will a public hearing after such a consensus is reached behind closed doors actually be? And exactly where is the transparency and public accountability in this process?"*
> (CCA, 23 February 2007, p. 5).

Submission to CRTC – *'Profiteering in the Name of Culture'*

Following the CRTC task force's unusual closed-door process, a report was written and the commission called for comments (CRTC, 29 June 2007). Although I had no faith that my comments would actually be taken into account by the federal regulator, I filed a submission titled 'Profiteering in the Name of Culture', once again explaining some of the problems with the fund and the overall scheme that it operated within (Mahar, 20 July 2007).

One of my objectives was to establish a paper trail with respect to the corruption. Consequently, I not only made clear references to the CRTC's unpublished decision of 25 June 1996 in my submission, I actually provided a copy of the unpublished decision to the commission as part of my submission. While the CRTC had destroyed its own copy of the unpublished decision – after Mr Harper was specifically notified of its existence and its connection to this case of corruption by my lawyer – I still had the original copy of the decision that the federal regulator had sent to my legal counsel in 1996. For more than a decade, through all of various challenges that I had faced, I had safely stored a copy of that unpublished CRTC decision and other key documents related to the affair, because I understand their potential value as a catalyst for democratic reform. At that time, I was not aware that CRTC file 1000-121 had been destroyed, I simply wanted a copy of the illuminating unpublished CRTC decision placed on the federal regulator's public file.

CRTC confirms existence of the unpublished decision

At the end of August 2007, I travelled from Canberra to Ottawa as a delegate at the International Initiative for Mental Health Leadership. I decided to use this opportunity to review a number of documents at the CRTC's head office. Prior to my trip, I contacted CRTC secretary general Robert Morin and requested information related to Regulation 18(6.3) and also access to review specific documents (Mahar, 7 August 2007). I also requested information about the CRTC's unpublished decision of 25 June 1996 in respect of the Cable Watch complaint that I had initiated and which alleged unlawful activity by the commission and corporations, and I further requested the opportunity to review the related documents stored in CRTC file 1000-121 (Mahar, 20 August 2007).

In response, CRTC legal counsel Shari Fisher notified me by email that CRTC file 1000-121 had been destroyed (CRTC, 24 August 2007). Ms Fisher confirmed in the same correspondence that the commission does make unpublished decisions, and also verified that the commission had made an unpublished decision in relation to the Cable Watch complaint. In fact, the CRTC lawyer stated, "the Secretary General at the time, Allan J. Darling, signed the 25 June 1996 Decision."

CRTC declines to provide information relating to File 1000-121

Upon my request for additional information, Ms Fisher confirmed that CRTC file 1000-121 had been destroyed on 27 March 2006 (CRTC, 10 October 2007). Consequently, CRTC file 1000-121 was destroyed weeks after Mr Harper became Prime Minister, and after Mr Armarego had forwarded information to Mr Harper connecting this same file to my allegations of corruption. Interestingly, Ms Fisher copied her email to me to six CRTC officials, including Mr Morin and Mr Keogh.

I subsequently requested the CRTC legal counsel to confirm why CRTC file 1000-121 had been destroyed on 27 March 2006 and who authorized its destruction (Mahar, 11 October 2007). However, Ms Fisher declined to provide the information I had requested. Instead, Ms Fisher simply asserted that the commission had the authority to destroy the file and documents at that particular time. Despite the failure to answer my specific questions, the lawyer stated that she believed that she had answered my questions and notified me that the federal regulator now considered that my matter was closed. Again, the lawyer felt it necessary to share her response to me with senior bureaucrats. Ms Fisher copied this email to CRTC Chairman Konrad von Finckenstein and six other officials at the commission (CRTC, 12 October 2007).

CRTC public hearing related to Canadian Television Fund

I subsequently saw an opportunity to call for accountability on the public record when the CRTC announced that it was to hold a public hearing related to the Canadian Television Fund, commencing 4 February 2008 (CRTC, 5 November 2007).

I notified Mr Morin that I intended to appear at the hearing and stressed that it was critical for the CRTC to fully understand the "unpublished CRTC decision of 25 June 1996" and its implications for the Canadian Television Fund. Moreover, I specifically addressed the case of CRTC corruption in relation to the Regulation 18(6.3) affair. In addition, I also included a copy of the prior correspondence from my legal counsel to Mr Harper and the other politicians addressing the matter and allegations of corruption (Mahar, 7 December 2007). The CRTC confirmed receipt of my correspondence and notified me that the document from my legal counsel – alleging evidence of CRTC corruption – was "out of process" and was not going to be placed on the "public record" (CRTC, 13 December 2007). Nonetheless, I was to be permitted to appear at the CRTC's public hearing on 7 February 2008.

Meeting with RCMP

At around this time, I also explored other options for holding the government officials and corporate executives to account. The ongoing failure of politicians to address the issue, and the recommendation of Senator Lise Bacon, led me to contact the Royal Canadian Mounted Police to determine whether the CRTC and corporations had violated any criminal law.

Early on the morning of 7 February 2008, I met with RCMP Inspector Jo Ann Smith and Sergeant Jean-François Arbour from the Commercial Crime Section in Ottawa to provide a brief overview of the issue and provide a number of related documents for their examination, including my copies of several documents that had been stored in CRTC file 1000-121 and destroyed two years earlier by the federal regulator. It was my expectation that the RCMP would be in contact for further details once they had time to review that material.

CRTC denies existence of its unpublished decision

Several hours later, I appeared at the CRTC public hearing on the Canadian Television Fund. Despite the high-profile nature of the proceeding, Mr von Finckenstein – a former federal judge appointed as CRTC chairman by Mr Harper – had decided not to be part of the panel. Instead, he had selected Commissioner Rita Cugini to chair the important public hearing in his place.

After my brief oral submission to the CRTC, Commissioner Cugini claimed ignorance of the prior controversy related to Regulation 18(6.3). She also denied the existence of an unpublished CRTC decision in respect of the Cable Watch complaint, despite the fact that I had provided a copy of this same document to the commission as part of my written submission months earlier. Ms Cugini instead focused on the semantics of my reference to the federal regulator's decision as "unpublished" (although CRTC lawyer Shari Fisher had also referred to it in this same exact manner months earlier). Consequently, Commissioner Cugini managed to evade any discussion of the substance of my submission:

> *"Thank you, Mr. Mahar, for your submission and your presentation here today. For the record, you do refer to this unpublished decision a number of times, both in your presentation and here this afternoon. An unpublished decision is not a decision. A decision is not a decision until it is published. None of us was* [sic] *at the Commission in 1996, so I don't know what the genesis of this letter is, or why this decision was never published, but it is not a decision until it is published"* (Mediacopy, 7 February 2008).

Ms Cugini's statement that current CRTC commissioners shouldn't be expected to know anything about the "genesis" of the issue that culminated in the Cable Watch complaint was quite odd. First of all, as part of my written submission to the commission, I had included a copy of the document submitted by Mr Leafloor on 20 May 1996 to the federal regulator, which provided a comprehensive account of the controversy surrounding the regulation that had established the original production fund. Moreover, the transcript of the 1993 Structural Hearing identifies John Keogh as CRTC legal counsel for that quasi-judicial proceeding (StenoTran, 1 March 1993, p.1). Since Mr Keogh was the commission's senior legal counsel at the time of that 2008 CRTC public hearing, one of Ms Cugini's colleagues was more than aware of the "genesis" of the issue.

Questions in the House of Commons

Later that same day, I wrote a press release addressing Prime Minister Stephen Harper's failure to address the ongoing wealth redistribution scheme, which was distributed by CNW (formerly Canada NewsWire).

> *"Canadian Prime Minister Stephen Harper was notified more than two years ago of questionable activities amongst industry and government officials and has not taken action on this issue. At stake is more than $C1.2 billion in fees collected from millions of Canadian consumers under a misleading pretence"* (Mahar, 7 February 2008).

CNBC, Forbes, Reuters and several other international news services then covered my press release online. Once again, Canada's mainstream media did not pursue the issue involving Canadian media companies and their owners. However, less than 24 hours after my appearance at the public hearing, the CRTC issue was raised in the House of Commons for only the second time in the 15 year history of the wealth redistribution scheme. MP Libby Davies of the NDP raised the Regulation 18(6.3) issue, stating that Canadians were owed "more than $1.2 billion".

> *"Mr. Speaker, when it comes to sticking up for consumers, the Conservatives cannot be trusted. We saw it on ATM fees, on cellphone charges and on credit card rates.*
>
> *Now we learn that at CRTC hearings, for two years the government failed to take action to protect consumers from cable company overcharge. We are talking about more than*
>
> *$1.2 billion owed to Canadians.*
>
> *Would the government tell us why ordinary Canadians are overpaying for cable services and why the government has done diddly-squat to stop it?"* (Hansard, 8 February 2008).

The Hon. Jim Abbott misleads Parliament

MP Davies then asked why the Harper government was not taking action to address this issue. The Hon. Jim Abbott, Parliamentary Secretary for Canadian Heritage, deflected the question by stating that he was "very proud of the actions by our government and our minister on the issue of the cable funds" and claimed that the Harper government had already referred the matter to the CRTC and was "looking forward to its report when it is finalized." However, the CRTC has not addressed the wealth redistribution scheme in any subsequent report – and there is no evidence, other than Mr Abbott's statement to that effect, that the Harper government had in fact referred the matter to the federal regulator.

If the Harper government had truly referred the matter to the CRTC, as alleged by Mr Abbott, Ms Cugini's purported ignorance of the issue a day earlier would have been even more incredible. In any event, I personally brought the Regulation 18(6.3) issue to the attention of Mr Abbott in 1996 (when he was a member of the Reform Party), and again in 2005 and also 2007. Clearly Mr Abbott was aware of the issue and in a position to answer questions about it in the House of Commons. He simply chose not to do so.

Despite being elected on a platform to change a culture of entitlement and corruption in government, the Harper government proved to be treating this case of systemic corruption at the CRTC in the same way as previous governments – dismissively.

RCMP closes file 2008-457967

Days later, I returned to Canberra to start my social work career as a case manager in youth justice for the Australian Capital Territory government. I informed the RCMP that the CRTC matter had been raised in the House of Commons as a result of my campaign. However, the police did not contact me for any further information about the matter, which I considered odd.

RCMP superintendent Stan Burke subsequently notified me that the file into the CRTC affair had been closed (RCMP, 1 May 2008). In his letter advising me of the decision to close RCMP file 2008-457967, Mr Burke stated that several investigators in the Financial Integrity section reviewed my documents and had determined that the issue was a civil law matter. In addition, Mr Burke stated: "unethical conduct does not necessarily mean criminal wrongdoing." I was puzzled that the collection of hundreds of millions of dollars from citizens under false pretences by corporations would not amount to criminal fraud, or at least result in some interest by the investigating officers. Yet the letter was silent on the actions of these corporations. As a result, I am unsure whether or not the police turned their minds to this key aspect of the unjust enrichment scheme.

Complaint to CRTC Chairman Konrad von Finckenstein

Two weeks after the RCMP closed its file, I filed a complaint directly to CRTC Chairman Konrad von Finckenstein in relation to Commissioner Cugini's false implication on the public record that the federal regulator had not made a decision in respect of the Cable Watch complaint (Mahar, 14 May 2008).

Mr Keogh replied on behalf of Mr von Finkenstein. The CRTC lawyer confirmed that the Cable Watch complaint had been received and reviewed. However, he alleged that the commission's response had been a 'letter' not a 'decision', simply because the CRTC had not assigned it a "Decision or Public Notice number" (CRTC, 4 June 2008). The importance of the distinction, considering that the time for appealing the decision had elapsed, is unclear. However, it is apparent that the CRTC was attempting to downgrade the significance of the whole affair and confuse the substantive issues. In any event, it was the third different version of the matter offered by the federal regulator in a matter of months.

My last attempt to engage the public in further scrutiny of the CRTC during this period was an article I wrote and which *Canada Free Press* subsequently published online (Mahar, 13 June 2008).

The renewed effort to address the affair in 2007 and 2008, including trips to Canada, while also completing a university degree and starting my social work career, had taken a toll on me. I ended up experiencing heightened anxiety, followed by a period of depression. As a result, I opted to take a break and direct my time and energy to work and mental health advocacy, including trying to develop a concept to establish an online mental health community development initiative: Mentalympians® (Mahar, 10 October 2009).

The death of Ted Rogers

On 2 December 2008, Ted Rogers died of heart failure at his home at the age of 75. Prime Minister Stephen Harper, former Prime Minister Brian Mulroney and more than 2,000 other people attended his funeral in Toronto. The subsequent annual report by Rogers Communications Inc. addressed that Mr Rogers "was memorialized by many as the greatest Canadian entrepreneur of the 20th century" (RCI, 2009, p. 2). In the same year, RCI was Canada's largest media, wireless and cable television company, earning more than $11 billion and with a stock value in excess of $20 billion.

While Mr Rogers appears to have been the single largest beneficiary of the original unjust corporate enrichment scheme adopted by federal regulators in 1994, the CRTC affair was not over, as the related 'government-industry partnership' established by the Hon. Sheila Copps in 1996 has a life of its own.

Canada Media Fund established by Harper government

Despite the well-documented case of long-term corruption, the Harper government opted to extend its partnership with the cable television industry related to the subsidization of private production companies. In March 2009, Heritage Minister James Moore announced that the Canadian Television Fund and the Canada New Media Fund were being transformed into the Canada Media Fund. In the related press release, Mr Moore offered that the government recognized the challenges facing the industry, stating: "The most important thing the Government can do is ensure that the policies in place are not impediments to the changes required in the media industry" (Canadian Heritage, 9 March 2009). Apparently the Harper government did not consider that it was important to inform Canadians how they were being required to pay to subsidize the private media companies, as this information was not forthcoming.

Request to Prime Minister Stephen Harper in 2010

I resumed my CRTC campaign the following year, during a public inquiry related to former Prime Minister Brian Mulroney accepting more than $200,000 in thousand-dollar-bills stuffed in envelopes from an arms dealer (Oliphant Commission, 31 May 2010). Given the public mood, I considered this to be a good opportunity to again raise the CRTC issue.

At the end of May 2010, my lawyer sent a letter and a number of documents directly to the attention of Prime Minister Stephen Harper, again addressing the long-term case of corruption at the CRTC (Armarego, 31 May 2010). In addition, it was noted that his colleague Mr Abbott had misled Parliament in relation to this matter in 2008. My lawyer requested that Mr Harper grant me the opportunity to testify on the public record about the matter.

The Prime Minister's Office acknowledged receipt of the letter and documents, but I was not offered an opportunity to testify on the matter as requested. In fact, Mr Harper's office simply forwarded a copy of the correspondence and documents to Tony Clement, Minister of Industry (PMO, 9 June 2010).

Mr Clement then simply forwarded a copy of the material to James Moore, Minister of Canadian Heritage. Mr Moore subsequently informed my legal counsel to direct the matter to a bureaucrat, the clerk of the House of Commons Standing Committee on Canadian Heritage (Moore, 25 August 2010). I recognized this as the usual handballing and obfuscation, and I did not waste my energy following up with the clerk at that time.

CNW refuses to distribute press release

During June 2010, I issued three press releases through CNW to ensure Canadian journalists were aware of the CRTC issue and the fact that Prime Minister Harper had been notified about it (Mahar, 10 June 2010; Mahar, 14 June 2010; Mahar, 21 June 2010). However, the government and media companies were not held to account for their actions by journalists.

Although Canadian media ignored the press releases, there was public interest in the issue and several online forums started engaging with my campaign as a result of the press releases distributed, and it appeared that the issue was gaining traction. Unfortunately, CNW refused to distribute my planned fourth press release. I addressed this refusal by CNW in a press release distributed through the Australian Associated Press (Mahar, 25 June 2010). Further to my complaint to CNW, I was informed by an executive at the company that my proposed press release contained "inflammatory and potentially defamatory statements" and that any press releases of the same or similar nature would not be distributed in the future by the company (CNW, 23 July 2010).

Once again, campaigning on this issue had started taking a toll on my mental health, so I stopped to focus on my work and mental health advocacy. During this time I was waiting for another strategic opportunity to return to the CRTC affair.

Increased interest in relationship between media proprietors and politicians

The Leveson Inquiry in the United Kingdom increased international public interest in the relationship between media proprietors and politicians, so I again resumed my campaign in 2012. As previously recommended by Minister Moore, I contacted the clerk of the House of Commons Standing Committee on Canadian Heritage, Christine Holke David, and requested an opportunity to appear before the parliamentary committee to address the CRTC and industry affair (Mahar, 14 June 2012).

There was no response to my request from the parliamentary committee. However, there was a paper trail. Furthermore, CNW had lifted its embargo against me (after I had notified Professor Noam Chomsky of the matter, he had agreed to store several scanned documents related to the wealth redistribution scheme and I had copied him into an email that I sent to a CNW executive). In any event, the company distributed a press release that I wrote addressing my request to testify before the parliamentary committee (Mahar, 21 June 2012).

PM appoints new CRTC Chairman

Days before my request to the parliamentary committee, Prime Minister Harper had appointed a new CRTC chairman – Jean-Pierre Blais. Mr Harper stated that Mr Blais was well qualified for the position, "having held high-level positions at the Treasury Board Secretariat, the Department of Canadian Heritage and the CRTC" (PMO, 8 June 2012).

Given Mr Blais' former experience at the CRTC, I had little confidence that he would be willing to tackle the corrupt culture at the federal regulator. However, I wanted to give him an opportunity to address the outstanding scandal, or at least bear witness to his investment in its cover up. Consequently, I contacted the CRTC chairman directly by email, providing background on the affair and requesting information from him in regard to the destruction of CRTC file 1000-121 and also the unpublished decision by the commission on 25 June 1996 (Mahar, 12 August 2012).

To add pressure and generate a public paper trail, I issued a press release through CNW to publicly address that I had requested this information from Mr Blais (Mahar, 14 August 2012).

Mr Blais made his position clear by having Ms Fisher respond to my request for information (CRTC, 15 August 2012). The CRTC legal counsel's response included recanting her earlier confirmation that the commission had made its unpublished decision on 25 June 1996 regarding the Cable Watch complaint. The lawyer alleged that she had made an error in her earlier correspondence and the federal regulator had not made a decision related to the complaint that I had initiated. Ms Fisher also did not provide the additional information that I had requested regarding the destruction of CRTC file 1000-121, and she copied her email to Mr Blais and three other bureaucrats at the federal regulator.

I again contacted Mr Blais directly by email and asked him to confirm why the CRTC destroyed the file and all of the stored documents on 27 March 2006, and to identify who at the commission authorized the destruction of this CRTC file 1000-121 (Mahar, 22 August 2012).

Once again, Mr Blais did not personally reply. Once again, he had Ms Fisher respond to my request for information. Once again, Ms Fisher was not forthcoming in providing the information that I had requested. The CRTC lawyer simply stated that the file "was destroyed in accordance with the Commission's Retention and Destruction Policy". Moreover, instead of identifying who at the federal regulator authorized the file's destruction as requested, Ms Fisher simply stated that the "Commission authorized the destruction of File 1000-121 in accordance with the Policy" (CRTC, 22 August 2012).

A few months later, Mr Blais made a speech reminiscent of those made by Mr Harper in the 2006 federal election campaign, assuring his audience that he takes accountability seriously. He stated: "It's important to listen to Canadians. I will be listening myself to find out what they think about the job we're doing. When it comes to accountability, I actually walk the walk" (CRTC, 29 October 2012).

I don't know what Prime Minister Harper's and Chairman Blais' definitions of accountability are – but they certainly aren't mine.

Directive by RCMP

In 2012, I notified the RCMP that I wished to provide additional information regarding my previous contact with them about the CRTC. One of the police officers that I had met with in Ottawa in 2008 requested that I not forward any additional documents to the RCMP. Instead, he wanted me to provide allegations for each individual, what evidence supported my allegations, a list and description of the new documents that I wanted reviewed, and identify the origin of these documents and how I obtained them (RCMP, 9 July 2012). The original investigation process used by the RCMP had left me with considerable doubt about the Mounties' commitment to properly reviewing this matter. The nature of this latest correspondence served to increase my doubt.

Several years earlier, an article in *Maclean's* alleged that the RCMP was walking away from serious investigations. According to journalist Charlie Gillis: "Detectives in federal units say they're being forced to ignore intelligence of criminal wrongdoing because they simply can't muster the manpower to investigate" (Gillis, 30 January 2006, p. 12). The Bank of Canada governor was quoted in that magazine article saying that Canada was at risk of turning into a "safe haven" for white collar crime:

> "*The issue seems all the more timely as high-stakes crime reclaims its place at the centre of the national conversation. Finance ministers in both Ottawa and Queen's Park have been drawn into market enforcement investigations over the past year, while the Gomery inquiry exhumed a network of political operatives defrauding the public with apparent impunity. Last fall, Bank of Canada governor David Dodge warned in a speech to RCMP brass that Canada risks becoming "a safe haven for opportunistic criminals who deal in white collar crime." These are matters the Mounties are specifically mandated to handle. Dodge for one is urging them to get busy*" (p. 13).

In fact, one constable is quoted in the same article claiming that the RCMP was looking for ways to close files as quickly as possible, saying: "Instead of investigating a case, they're looking for ways out. They want to kill that file as soon as possible" (p. 14).

Origin of case study and its objective

This case study that you are presently reading emerged as I started to write an explanation of the relevance of the additional documents and information that I wanted reviewed by the RCMP, as well as how I obtained the documents. However, as that explanation became longer and more detailed, I made the decision to write for two different audiences – ordinary citizens and academics.

The required research, writing, website construction and creation of online database of related documents took longer than I originally anticipated, and the process was also delayed by family, mental health advocacy and work issues along the way, but I am satisfied with the outcome.

I trust that this case study will help to make visible the exploitation that has occurred over the last two decades, empowering Canadians to hold CRTC officials, politicians and media proprietors accountable. Clearly, this is not a case study about the rates for cable television service. It is emancipatory research into the relationship between money, power and politics - which I hope will act as a catalyst for democratic reform.

> "*The job of the emancipatory researcher is to uncover the myths, beliefs and social constructions that contribute to the continuation of the status quo, in order to reveal how power relations are really operating to control the powerless. In the process, emancipatory researchers aim to liberate, enlighten or empower those people who are subjugated*" (Alston and Bowles, 2003, p. 14).

To that end, this research is a work in progress that I will continue to address online at www.onemedialaw.com.

Part C: Conclusion

> *"If democracy is someday to regain control of capitalism, it must start by recognizing that the concrete institutions in which democracy and capitalism are embodied need to be reinvented again and again"* (Piketty, 2014, p. 570).

A public inquiry is warranted into the regulatory capture of the Canadian Radio-television and Telecommunications Commission, evidence of long-term systemic corruption and the failure of cabinet ministers in successive administrations to address the identified wealth redistribution scheme, including Prime Minister Stephen Harper.

The terms of reference for such a public inquiry should be designed to hold individuals and corporations accountable for their actions and, more importantly, identify democratic reforms required to decrease the undue influence by special interests, increase transparency and accountability, and improve the process used to enact subordinate legislation in Canada.

The unorthodox wealth redistribution scheme raises civil law, criminal law and administrative law issues that Canadian citizens deserve to be fully and publicly addressed, including but not limited to the following:

- Are millions of Canadians legally entitled to retroactive rate refunds by cable television companies?
- Did the behaviour of any government official violate the law, including Section 122 of the *Criminal Code* (Breach of trust by public officer)?
- Did the manner in which cable television companies collected fees from their subscribers in relation to subsection 18(6.3) of the *Cable Television Regulations, 1986* violate any criminal law, including Section 380 of the *Criminal Code* (Fraud)?
- Did the cable television companies that reported to Revenue Canada that their voluntary donations to the production funds were operating expenses in the cost of sales and service violate any legislation, including Section 239(1)(a) of the *Income Tax Act* (False or deceptive statements in a return)?
- Did Parliament grant the CRTC the legal authority to enact subsection 18(6.3) of the *Cable Television Regulations, 1986*?
- Did Parliament grant the CRTC the legal authority to incorporate the identified unjust corporate enrichment scheme into the *Broadcasting Distribution Regulations*?
- Were the statutory rights of Canadians violated by the processes used by the CRTC to enact subsection 18(6.3) of the *Cable Television Regulations, 1986* and/or the *Broadcasting Distribution Regulations*?
- Did the failure of the CRTC to effectively inform millions of cable television subscribers that they were being required to subsidize private corporations amount to a breach of fairness and natural justice?

Furthermore, if a public inquiry determines that no laws were violated in relation to the wealth redistribution scheme, existing Canadian laws are inadequate and require amendment in the public interest.

In any event, Canadian politicians owe citizens an explanation exactly how the wealth redistribution scheme was able to operate without public accountability for more than two decades and the CRTC needs significant structural reform.

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Alliance	Alliance of Seniors to Protect Canada's Social Programs
BC PIAC	The British Columbia Public Interest Advocacy Centre
Cable Watch	Cable Watch Citizens' Association
CAC	Consumers' Association Of Canada
Canadian Heritage	Department of Canadian Heritage
CBC	Canadian Broadcasting Corporation
CCA	Canadian Conference of the Arts
CCTA	Canadian Cable Television Association
CPaC	Canadian Parliamentary Channel
CPC	Conservative Party of Canada
CRTC	Canadian Radio-television and Telecommunications Commission
DLR	Dominion Law Reports
Friends	Friends of Canadian Broadcasting
HCCD	House of Commons Committees Directorate
IMF	International Monetary Fund
OR	Ontario Reports
OECD	Organisation for Economic Co-operation and Development
Oxfam	Oxfam International
PIAC	Public Interest Advocacy Centre
PMO	Office of the Prime Minister
RCI	Rogers Communications Inc.
RCMP	Royal Canadian Mounted Police

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Appendix A: Canada Media Fund www.cmf-fmc.ca/about-cmf/overview/cmf-history

CMF FMC
Canada Media Fund | Fonds des médias du Canada

FUNDING PROGRAMS | ENVELOPE ADMINISTRATION | FUNDED PROJECTS | ABOUT

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  - CMF Accounting and Reporting Requirements (ARR) Webcast
  - CMF's Let's Talk TV Webcast
  - Webcast on Changes to the 2015-2016 Programs
  - Archives
- Industry Research
  - Crowdfunding Microsite
  - Industry Quick Facts
  - TMC Resource Kit
  - CMF Trends Newsletter
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1995:

Creation of the Cable Production Fund (CPF). The Canadian Radio-Television and Telecommunications Commission (CRTC) establishes the Cable Production Fund, a funding initiative that focuses on facilitating the production and broadcast of high-quality Canadian television programs in under-represented categories during peak viewing periods.

1996:

Creation of the Canada Television and Cable Production Fund (CTCPF). The CPF joins the Department of Canadian Heritage in a redefined public-private partnership. This new partnership is renamed the Canada Television and Cable Production Fund (CTCPF).

1998:

Creation of the Canadian Television Fund (CTF). The federal government announces a renewed contribution to the fund for three years. The CTCPF is re-branded the Canadian Television Fund (CTF).

2000:

The CTF is renewed for five years by the federal government. The emphasis is put on audience results as an evaluation factor.
2001: Creation of the Canada New Media Fund. Telefilm Canada creates the Canada New Media Fund to provide financial support for the new media industry.

2003:

The CTF is restructured into three streams of funding: (i) an English-Language Drama Stream, (ii) a Broadcaster Performance Envelope Stream, and (iii) a stream to fund Special Initiatives. The Canadian Television Fund (CTF) receives its funding from two primary sources: Canadian Heritage and broadcasting distribution undertakings (BDUs). In addition, the CTF receives revenue from recoupment on production investments made through its Equity Investment Program.

2008:

Creation of the Digital Media Pilot Program. To answer the industry's increasing demand regarding the funding of digital media projects, the CTF launches a new Digital Media Pilot Program. The program sets aside $2 million for the creation of. websites, mobile applications, webisodes, mobisodes, etc.

2009:

Creation of the Canada Media Fund. The Canadian Television Fund and the Canada New Media Fund are combined, reformed and rebranded through a renewed partnership with the industry. As a result, Canadian Heritage announces the creation of the Canada Media Fund, with the goal of supporting the sustainable production of successful, convergent television and digital media content that is accessible to Canadians through multiple platforms.

2010:

The Canada Media Fund (CMF) opens its doors for business on April 1, 2010. The CMF has two streams of funding: the Convergent Stream and the Experimental Stream.

2011:

The federal government announces that it will now provide funding support to the CMF on an ongoing basis starting April 1, 2011.

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New report on International Digital Media Coproduction
INDUSTRY RESEARCH

Appendix B: Timeline

August 1, 1986: The Canadian Radio-television and Telecommunications Commission (CRTC) introduces the *Cable Television Regulations, 1986*. As a result, cable television companies have the ability to charge subscribers a special fee in relation to the cost of equipment purchased specifically to provide 'basic cable' service (such as coaxial cable, television antennas, signal amplifiers, satellite dishes, satellite receivers, etc.). The companies are able to increase their monthly subscriber rates by an amount that permits them to recover 50% of the cost of these capital expenditures (capex), amortized over a 5-year period.

August 1987: Keith Mahar starts his corporate broadcasting career with Canadian Satellite Communications Inc., in a role requiring him to acquire knowledge of the cable television industry, CRTC and the *Cable Television Regulations, 1986*.

1989 – 1990: CRTC commissioners propose to stop cable television companies from charging these special capex fees for more than 5 years, which will result in basic cable rate reductions commencing in 1991, and subsequently. The companies object to this proposal and the federal regulator adopts different regulations that are more favourable to these companies. However, millions of cable television subscribers are legally entitled to monthly rate reductions by 1 January 1995, and subsequently: a total of $600 million in rate reductions over the initial five-year period.

February 5, 1993: Through the Canadian Cable Television Association (CCTA), cable television companies offer to donate up to $100 million to subsidize private Canadian production companies if the CRTC changes the regulations as advocated by the CCTA, including the elimination of the legal requirement for the companies to reduce their monthly rates for basic cable service by 1 January 1995, and subsequently.

March 4, 1993: In response to the industry proposal, CRTC Chairman Keith Spicer states at a public hearing that cable television companies are asking the federal regulator to "soak" subscribers in order to cross-subsidize business ventures that have nothing to do with cable television. Mr Spicer states that these Canadians "probably won't even notice it" and describes the unorthodox proposal as "a very useful and exciting path for the industry to consider."

June 3, 1993: The CRTC proposes to enact a highly unorthodox regulation; subsection 18(6.3) of the *Cable Television Regulations, 1986*. 'Regulation 18(6.3)' will permit cable television companies to avoid reducing their subscriber rates on 1 January 1995, and subsequently, if the regulated companies simply donate money to a fund to subsidize private television production companies. Specifically, the design of Regulation 18(6.3) will permit cable television companies to overcharge more than 6 million Canadians for cable television service starting in January 1995, siphon revenue out of the broadcasting system and cross-subsidize other commercial activities if the companies donate 50% of the otherwise required rate reductions to the production company subsidy fund (subsequently named the Cable Production Fund). In effect, Regulation 18(6.3) will grant several businessmen unprecedented power to redistribute wealth from ordinary citizens to their companies, and ultimately themselves, without the requirement of performing any work or service for the revenue; resulting in unjust corporate enrichment. Billionaire Ted Rogers appears to be the single largest beneficiary of the highly unorthodox wealth redistribution scheme. However, this information is not effectively conveyed by the CRTC to the public or potential ratepayers of the wealth redistribution scheme.

September 17, 1993: Friends of Canadian Broadcasting files a scathing submission to the CRTC questioning "the Commission's authority to impose such a tax" and describing Regulation 18(6.3) as "a breach of faith" with Canadians that will threaten public support for the CRTC and Canadian programming if properly understood by citizens.

January 25, 1994: Regulation 18(6.3) is enacted by the CRTC.

September 1994: Keith Mahar resigns from his position in the broadcasting industry and while appearing at a CRTC public hearing states that Canadians should be made aware of the impact of Regulation 18(6.3) on their monthly cable television rates.

October 11, 1994: Cabinet issues Order-in-Council P.C. 1994-1689, making it government policy to foster fair competition and increase reliance on market forces in the provision of facilities, products and services related to communications. Regulation 18(6.3) violates this government policy, as it will permit cable television companies to overcharge cable subscribers and siphon revenue out of the broadcasting system to cross-subsidize other commercial ventures, thereby fostering unfair competition.

January 1, 1995: More than 6 million Canadians start paying artificially inflated rates for basic cable television service due to Regulation 18(6.3). Since subscribers are not provided with direct written notice of the existence of Regulation 18(6.3), they remain totally ignorant that they are being required to subsidize private corporations in this unorthodox fashion. Given that subscribers were previously notified that these fees were for an entirely different purpose, the CRTC is sanctioning cable television companies to collect the Regulation 18(6.3) fees under false pretences from citizens.

March 8, 1995: *The Globe and Mail* reports Keith Mahar's position that Canadians are being subjected to a hidden tax agenda by the CRTC to permit cable television companies to overcharge consumers for service and cross-subsidize the development of the so-called "information highway" (the internet).

March 17, 1995: The *Toronto Star* publishes Keith Mahar's op-ed article, in which he identifies Regulation 18(6.3) and states that the CRTC is redistributing wealth from ordinary Canadians to privileged corporations and that an investigation into the affair is warranted.

March 29, 1995: Keith Mahar conducts a Parliament Hill press conference to advocate for a review of the CRTC affair by the Chrétien government. Legal counsel Christopher K. Leafloor and Neil Milton, and MPs Simon de Jong (NDP), Jan Brown (Reform), and Dan McTeague (Liberal) also participate in the press conference. In response, the CRTC issues a press release containing false and misleading information about Regulation 18(6.3).

March 30, 1995: MP Jan Brown directs questions relating to the CRTC issue to Prime Minister Jean Chrétien in the House of Commons. In response, the Hon. Sheila Finestone alleges that Parliament is unable to interfere in this CRTC affair.

March 31, 1995: The *Toronto Star* reports that MP Dan McTeague has accused the CRTC of issuing misleading information regarding the affair and is urging an investigation of the CRTC by the Chrétien government.

May 15, 1995: As a result of the failure by the Chrétien Government to act on the issue, Keith Mahar initiates a proceeding in the Ontario Court to establish the legal right of subscribers to receive written notice about Regulation 18(6.3), and their entitlement to refunds for the amount overcharged since 1 January 1995. Mr Mahar personally sues Rogers Cablesystems Ltd. in his capacity as a subscriber for the amount he has been charged under Regulation 18(6.3).

May 16, 1995: CRTC officials appear as witnesses before the House of Commons Standing Committee on Canadian Heritage to provide evidence on the Main Estimates for the fiscal year ending and CRTC Chairman Keith Spicer provides false and misleading information about Regulation 18(6.3) to the parliamentary committee.

July 24, 1995: The CRTC's secretary general provides Keith Mahar with data on the exact monthly cost of Regulation 18(6.3) to ratepayers across Canada, identifying that some subscribers of Rogers Cablesystems Ltd. are being charged 57 times more under the Regulation 18(6.3) scheme than subscribers of some other cable television companies.

August 25, 1995: Rogers Cablesystems Ltd.'s legal counsel files a motion seeking to stop the Ontario Court from ruling on the merits of the case, arguing that the CRTC has exclusive jurisdiction to make the decision on Keith Mahar's legal proceeding.

September 27, 1995: The *Toronto Star* reports the launch of Cable Watch Citizens' Association (Cable Watch), a group founded by Keith Mahar to protect the interests of consumers, increase the public accountability of the CRTC and pursue a more democratic regulatory process.

October 1995: Justice Sharpe hears the motion put forward by the legal counsel for Rogers Cablesystems Ltd. on the exclusive jurisdiction of the CRTC to make a decision on the legal matters addressed by Keith Mahar. He determines that the Ontario Court does not have jurisdiction to make a decision on the merits of the case (*Mahar v. Rogers Cablesystems Ltd.*), concluding that Parliament has granted this authority to the CRTC, subject to a review of any such CRTC decision by the Federal Court of Appeal. Consequently, the case is dismissed without a ruling on its merits. Justice Sharpe subsequently designates Keith Mahar as a public interest litigant and makes a precedent-setting ruling on costs in his favour. Mr Mahar is held not liable for the costs of $55,485 claimed by the corporation. Justice Sharpe states that the case was "brought on a bona fide basis [and] raised a genuine issue of law of significance to the public at large."

November 1995: Keith Mahar, legal counsel Christopher K. Leafloor and MP Dan McTeague hold a press conference on Parliament Hill on November 28th, where they announce that a complaint is being filed that same day by Cable Watch to the CRTC. Later that day, an official complaint by Cable Watch is submitted to the attention of CRTC Chairman Keith Spicer, pursuant to section 12 of the *Broadcasting Act*. The complaint alleges wrongdoing by both the companies collecting Regulation 18(6.3) without notice and also the CRTC. As a result, CRTC file 1000-121 is opened by the federal regulator. The Public Interest Advocacy Centre subsequently requests that the government "swiftly" initiate an independent review of Cable Watch's allegations against the CRTC in relation to Regulation 18(6.3). No such review is initiated.

December 1995: Keith Mahar requests that the Hon. Michel Dupuy, Minister of Canadian Heritage, the Hon. Paul Martin, Minister of Finance, and the Hon. John Manley, Minister of Industry, review the CRTC matter – none do. Later that same month, Toronto magazine *NOW* identifies Mr Mahar's campaign as one of the top stories missed by the media that year.

January 30, 1996: CRTC Vice-Chairman of Broadcasting Fernand Bélisle implies at a conference that the commission has already made its decision against Cable Watch's complaint. He states that the only way for Keith Mahar to "re-fight" Regulation 18(6.3) is to go to Federal Court. The CRTC has not notified Mr Mahar or his legal counsel that it has made its decision.

March 1996: Following letters of support for a public hearing into the Cable Watch complaint by the Consumers' Association of Canada and the Alliance of Seniors to Protect Canada's Social Programs, the CRTC alleges in correspondence that it has not yet decided the merits of the complaint. However, the federal regulator adopts a biased process to consider the matter, as only Rogers Cablesystems Ltd., the industry lobby group CCTA and Cable Watch (which is basically Keith Mahar and his pro bono legal support) are permitted to submit information about the complaint. Rogers Cablesystems Ltd. and the CCTA urge the CRTC to dismiss the Cable Watch complaint, alleging that it is without merit. (In contrast, MP Simon de Jong subsequently issues a press release stating that Mr Mahar's campaign is addressing important issues for consumers, industry and government, and claims that consumers are being denied their rights by the government.

April 1996: Cable Watch files a submission to the CRTC maintaining that the process used to adopt Regulation 18(6.3) was unlawful; that the CRTC lacked the legal authority to adopt Regulation 18(6.3); that subscribers had a legal right to receive written notice about Regulation 18(6.3); that subscribers were legally entitled to refunds from cable television companies that had collected Regulation 18(6.3) fees without written notice; that subscribers were entitled to rate reductions for basic cable service; and that the CRTC generally does not use effective methods to notify citizens of its matters. In addition, Cable Watch requests the CRTC hold a public hearing into the matter to permit the participation of Canadians. Ten days later, CRTC officials appear before the House of Commons Standing Committee on Canadian Heritage and provide false and misleading information about the Regulation 18(6.3) affair to the parliamentary committee. MP Jim Abbott states that subscribers are "totally unaware of the cable production fund policy" and asks the CRTC representatives to commit to requiring cable television companies to notify their subscribers about Regulation 18(6.3). However, CRTC representatives decline to make such a commitment (and subscribers are never notified about the regulation).

May 1996: Keith Mahar is diagnosed with bipolar disorder while experiencing severe depression. Days later, the CRTC proposes new regulations for the cable television industry, the *Broadcasting Distribution Regulations*. These proposed regulations seek to modify the unjust corporate enrichment scheme initiated under Regulation 18(6.3), making it even more profitable for Rogers Cablesystems Ltd. and more difficult for subscribers to identify or quantify. Cable Watch's legal counsel Christopher K. Leafloor subsequently submits additional information to the CRTC related to the Cable Watch, including legal arguments that the CRTC and cable television companies have acted unlawfully.

June 25, 1996: A written decision is finally made available by the CRTC to the Cable Watch complaint and mailed to legal counsel Christopher K. Leafloor. According to the CRTC's decision, the Cable Watch complaint is 'without merit' and a public hearing is not warranted. In effect, the CRTC has determined that it had the authority to create Regulation 18(6.3), that cable television companies are entitled to collect the Regulation 18(6.3) fees from subscribers, but that the subscribers being required to unjustly enrich and subsidize the private companies are not entitled to written notice about Regulation 18(6.3). The CRTC decision was made behind closed doors and the federal regulator does not publish its decision. All of the documents related to the Cable Watch complaint are stored in CRTC file 1000-121. [Keith Mahar's health does not permit him to appeal the CRTC decision to the Federal Court of Appeal, so it remains an open question whether or not the CRTC and companies acted unlawfully.]

September 9, 1996: Deputy Prime Minister and Minister of Canadian Heritage Sheila Copps announces the establishment of a government-industry partnership with cable television companies (the corporations collecting the Regulation 18(6.3) fees without notice to millions of Canadians) to subsidize private television production companies. The Cable Production Fund is combined with an existing subsidy program operated by Canadian Heritage. The new fund is named the Canada Television and Cable Production Fund.

October 15, 1996: Keith Mahar and MP Dan McTeague appear together at a CRTC hearing and oppose the proposed *Broadcasting Distribution Regulations*. Mr Mahar stresses that the proposed changes related to Regulation 18(6.3) will foster greater cross-subsidization, will violate government policy and will be grossly inequitable to Canadian cable subscribers.

November 14, 1996: Keith Mahar is admitted to a Toronto psychiatric hospital while experiencing acute psychosis.

1997: Keith Mahar spends the majority of 1997 in the United States, Europe and Africa.

January 1998: The *Broadcasting Distribution Regulations* come into force on January 1st. While there is no longer a Regulation 18(6.3) in name, a modified wealth redistribution scheme is entrenched which still requires millions of cable television subscribers to subsidize private companies and violates existing government policy. The adopted accounting system for cable television rates facilitates an increase in the unjust enrichment of selected corporations, primarily Rogers Cablesystems Ltd. Furthermore, the CRTC has also opened the door to deregulate the monthly rates for cable television in the future. Days later, Keith Mahar returns to Canada and contributes to the drafting of a private member's bill related to the CRTC at the request of MP Dan McTeague. The same politician also commissions Mr Mahar to undertake research into reform of the federal regulator.

March 18, 1998: MP Dan McTeague introduces Bill C-381 to Parliament: "The purpose of this enactment is to amend the *Canadian Radio-television Telecommunications Commission Act* to provide for representation of Canadian consumers on the Commission, to require reports of Commission decisions to detail the way each Commission member voted in respect of those decisions and to ensure that the Commission generally has regard to cost-effectiveness and the rights of Canadian consumers".

April – May 1998: The Canada Television and Cable Production Fund encounters controversy and it is revealed that non-repayable grants have been handed out to private production companies on a first-come, first-subsidized basis and that subsidies have been provided to prominent production companies for television series with large U.S. partners that had no Canadian storylines before supporting programming with original Canadian content. While Canadians are being required to pay for these subsidies, a significant portion of the subsidized television programs were produced primarily for foreign markets.

September 17, 1998: The Canada Television and Cable Production Fund is re-branded as the Canadian Television Fund.

April 19, 1999: MP Dan McTeague and Keith Mahar file a joint submission on how to reform the CRTC to the Liberal Caucus Group of the CRTC.

June 10, 2000: In an article published in the *National Post*, Professor Matthew Fraser alleges that the CRTC has been totally captured by corporate interests since the late 1980s and is cursed by institutionalized corruption.

October 22, 2000: Bill C-381 dies on the Order Paper as a result of Parliament being dissolved when Prime Minister Jean Chrétien calls an early election.

October 12, 2001: Keith Mahar migrates to Australia.

March 20, 2004: The *National Post* reports that there has been a long-standing practice of CRTC commissioners and senior staff attending private dinners, paid for by corporations regulated by the Commission, and without any minutes taken to account for the discussions with the corporate executives present. The CRTC states that no more private dinners will occur.

September 6, 2004: On the 10th anniversary of ending his corporate broadcasting career, Keith Mahar submits evidence of the ongoing CRTC wealth redistribution scheme to Prime Minister Paul Martin.

September 16, 2004: The Office of the Prime Minister acknowledges receipt of the submission and notifies Keith Mahar that copies of the documents have been forwarded to the Hon. Liza Frulla, Minister of Canadian Heritage; the Hon. Ralph Goodale, Minister of Finance; the Hon. David Emerson, Minister of Industry. No further action is taken by the Martin government.

September 23, 2004: Friends of Canadian Broadcasting releases research it commissioned, which suggests a large number of appointments to CRTC are simply patronage appointments, and is also critical of such appointments being vested with the prime minister.

January 2006: On behalf of Keith Mahar, lawyer Paul Armarego provides information on the history of the CRTC scheme and allegations of corruption to Canadian politicians Stephen Harper, Gilles Duceppe, Jack Layton and Jim Harris. Mr Armarego specifically notes the unpublished CRTC decision of 25 June 1996 in response to the Cable Watch complaint and the existence of CRTC file 1000-121. No response is received. Mr Harper subsequently unveils the Conservative Party platform (*Stand Up For Canada*), promising to "clean up government" and "replace a culture of entitlement and corruption with a culture of accountability." The Conservatives win a minority government.

February 6, 2006: Stephen Harper is sworn in as Canadian prime minister and appoints former CRTC commissioner Beverley Oda as Heritage Minister. Minister Oda was a CRTC commissioner when Regulation 18(6.3) was originally proposed and possesses insider information of the wealth redistribution scheme.

March 27, 2006: CRTC file 1000-121 is destroyed along with all of the documents stored in the file.

January 25, 2007: Prime Minister Stephen Harper appoints Konrad W. von Finckenstein CRTC Chairman.

February 6, 2007: The *Toronto Star* publishes a column by Antonia Zerbisias addressing some of Keith Mahar's ongoing concerns relating to the Canadian Television Fund.

February 14, 2007: The *Toronto Star* media columnist Antonia Zerbisias notifies her editor by email that Keith Mahar has offered her an exclusive to the CRTC story and the award-winning journalist states: "This is MUCH bigger than the sponsorship scandal." The *Toronto Star* does not write a feature on the CRTC story.

February 15, 2007: Lawyer Paul Armarego notifies the Chair (MP Gary Schellenberger) and Vice-Chair (MP Maka Kotto) of the House of Commons Standing Committee on Canadian Heritage of possible corruption related to the Canadian Television Fund, and requests standing for Keith Mahar to testify before the parliamentary committee. There is no response.

February 20, 2007: The CRTC announces establishment of the "Task Force on the Canadian Television Fund" with a mandate "to investigate issues related to the funding of Canadian programming and the governance of the Canadian Television Fund (CTF)."

March 16, 2007: Lawyer Paul Armarego requests standing for Keith Mahar to appear before the Standing Senate Committee on Transport and Communications, which is reviewing issues related to the Canadian Television Fund.

April 5, 2007: Keith Mahar contacts CRTC Chairman Mr von Finckenstein and requests an opportunity to address the Task Force on the Canadian Television Fund. His request is denied.

May 9, 2007: The Hon. Lise Bacon, Chair of the Standing Senate Committee on Transport and Communications, acknowledges Keith Mahar's allegations of corruption and denies his request to appear before the Committee.

June 29, 2007: The CRTC issues Broadcasting Public Notice CRTC 2007-70 and calls for comments on the Canadian Television Fund (CTF) Task Force Report.

July 20, 2007: In response to Broadcasting Public Notice CRTC 2007-70, Keith Mahar files a submission to the CRTC. He includes copies of several documents that had been stored by the federal regulator in CRTC file 1000-121 and destroyed on 27 March 2006. A copy of the unpublished CRTC decision to the Cable Watch complaint is one of these documents. At that time, he was not aware of the destruction of CRTC file 1000-121.

August 2007: Keith Mahar contacts the CRTC's Secretary General Robert Morin and requests access to CRTC file 1000-121. In response, CRTC Legal Counsel Shari Fisher informs Mr Mahar that CRTC file 1000-121 has been destroyed. The CRTC lawyer also specifically confirms that the federal regulator made the unpublished decision of 25 June 1996 related to the Cable Watch complaint.

September and October 2007: Keith Mahar requests CRTC Legal Counsel Shari Fisher to identify who authorized the destruction of CRTC file 1000-121 and also identify the date that the file was destroyed. Ms Fisher responds to Mr Mahar that CRTC file 1000-121 was destroyed on 27 March 2006, but the lawyer does identify who authorized its destruction. After Mr Mahar repeats his request for information about who authorized the destruction of CRTC file 1000-121, Ms Fisher notifies Mr Mahar that the CRTC considers his matter to be closed. The lawyer copies her email to CRTC Chairman Konrad von Finckenstein and six other bureaucrats at the federal regulator.

November 5, 2007: The CRTC announces that its public hearing on the Canadian Television Fund will commence on 4 February 2008.

December 2007: Keith Mahar conducts a presentation at the World Psychiatric Association International Congress in Melbourne, discussing his experience of acute psychosis while campaigning against the CRTC wealth redistribution scheme, his subsequent mental health recovery in Australia, and his intention to return to the outstanding matter in Canada. He subsequently notifies CRTC Secretary General Robert Morin of his intention to appear at the public hearing commencing on 4 February 2008.

February 7, 2008: Keith Mahar meets with two officers from the Royal Canadian Mounted Police (RCMP) in Ottawa in relation to the CRTC affair. Later that day, he appears at the CRTC public hearing, provides a brief overview of the Regulation 18(6.3) issue and advocates for a judicial review of the outstanding matter. In response, CRTC Commissioner Rita Cugini alleges that the CRTC has no knowledge of the issue and states that the federal regulator does not make unpublished decisions (contradicting CRTC Legal Counsel Shari Fisher's prior correspondence to Mr Mahar). Mr Mahar subsequently issues a press release addressing the failure of Prime Minister Stephen Harper to act on the information previously sent to him pertaining to this case of CRTC corruption, which is carried by several online news sources, including CNBC and Reuters.

February 8, 2008: MP Libby Davies (Vancouver East, NDP) asks questions in the House of Commons about the failure of the Harper Government to take action on the CRTC matter, stating that Canadians are owed more than $1.2 billion. The Hon. Jim Abbott alleges that the Harper government has already referred the CRTC affair to the CRTC, misleading Parliament in the process. No further action is taken by politicians.

May 2008: Keith Mahar is notified by the RCMP that the CRTC matter has been investigated, that no evidence of criminal wrongdoing has been identified, that the police force considers it to be a civil law issue and has closed its file on the matter (RCMP file 2008-457967). Mr Mahar subsequently files a complaint directly with CRTC Chairman Konrad von Finckenstein, requesting that action be taken to address Commissioner Rita Cugini's misleading comments at the public hearing.

June 2008: CRTC Senior Legal Counsel John Keogh responds to Keith Mahar on behalf of Chairman Konrad von Finckenstein. Mr Keogh acknowledges that the commission is in fact aware of the history of the issue. However, the lawyer alleges that the unpublished CRTC decision was not a decision simply because it was not assigned a decision number. Subsequently, *Canada Free Press* publishes an article by Mr Mahar about the CRTC affair in which he describes the method of collecting the Regulation 18(6.3) fees from Canadians as "government-regulated fraud" and the scheme as a case of "crony capitalism".

June 2010: A number of documents related to the CRTC affair are delivered to the Office of the Prime Minister, including a request from lawyer Paul Armarego to Prime Minister Stephen Harper to permit Keith Mahar to testify before the House of Commons Standing Committee on Canadian Heritage to address the long-term case of corruption involving the CRTC. A representative from the Prime Minister's Office acknowledges receipt of the documents and informs Mr Armarego that the material has been forwarded to Tony Clement, Minister of Industry.

August 25, 2010: Canadian Heritage Minister James Moore advises lawyer Paul Armarego that Mr Clement forwarded the material to him. Mr Moore recommends Keith Mahar contact a bureaucrat about testifying at the Standing Committee on Canadian Heritage, and does not assist Mr Mahar to address this matter.

June 2012: Prime Minister Stephen Harper announces the appointment of Jean-Pierre Blais as CRTC chairman and Keith Mahar subsequently contacts the Clerk of the House of Commons Standing Committee on Canadian Heritage, requesting the opportunity to testify about the case of long-term corruption at the CRTC. Relevant MPs are sent copies of the email and there is no response to the request.

August 2012: Keith Mahar contacts CRTC Chairman Jean-Pierre Blais directly by email to notify him of the case of CRTC corruption. Mr Mahar requests Mr Blais to provide him with information about why CRTC file 1000-121 was destroyed on 27 March 2006 and who authorized its destruction. CRTC Legal Counsel Shari Fisher responds to Mr Mahar on behalf of Mr Blais, but does not provide the information requested. In addition, Ms Fisher revokes her prior written acknowledgement to Mr Mahar that the CRTC made its unpublished decision of 25 June 1996, now alleging that no CRTC decision was made in relation to the Cable Watch complaint. Mr Mahar notifies Mr Blais that the requested information has not been provided and again requests this same information from him. Ms Fisher again responds on behalf of Mr Blais, and again does not provide the information requested.

September 2012 - May 2015: Keith Mahar concludes that he has sufficient documentary evidence to publicly address both the wealth redistribution scheme and case of long-term CRTC corruption, as well as to support the position that the Harper government and current CRTC administration are trying to cover up the affair. It is his intention to provide Canadians with the opportunity to hold politicians, federal regulators and media proprietors accountable for their actions. In addition, he wants scholars to be in a position to use the well-documented case in relation to research into regulatory capture and systemic corruption. He starts researching and writing a detailed account of the matter as a case study. He also enlists the services of several individuals, including a lawyer, strategic consultant, web developer, graphic designer, and editor in order to effectively address the matter on a website (www.onemedialaw.com), including a database for interested parties to review key documents. In May 2015, his story is included in *Coming Out Proud to Erase the Stigma of Mental Illness*, a book edited by Professor Patrick Corrigan and two of his colleagues that is described by former U.S. First Lady Rosalynn Carter as “a seminal work that confronts stigma head on”. In his chapter, Mr Mahar states that he is going to pursue the wealth redistribution scandal at the CRTC until its logical conclusion.