
The Problem of Confidentiality of Committee Reports

by Douglas Fisher

On February 11, 1999, the Standing Committee on Procedure and House of Affairs began investigating the problem of confidential committee reports being leaked to the media prior to being presented in the House of Commons. It held several meetings and heard from witnesses such as: Robert Marleau, Clerk of the House of Commons, Rob Walsh, Clerk Assistant and General Legislative Counsel; Diane Davidson, General Legal Counsel; Bill Graham, MP, Chair of the Liaison Committee; Jules Richer, President of the Canadian Parliamentary Press Gallery, Joseph Maingot former Law Clerk and Parliamentary Counsel, and Derek Lee, MP. Another witness was Douglas Fisher.

Let me make my point about the issue of leaked committee reports by way of three anecdotes based on my years as a Member of Parliament.

Dynamics of *In Camera* Meetings

My first tale deals with the political dynamics of *in camera* meetings. When I first came to the House of Commons, Parliament was not all focused around Question Period. Debates, particularly debates in the evening, were quite important. You might get as many as a hundred MPs listening to a debate. That was fantastic. There was very little committee work done. There were really no more than four or five committees active during a year, and I suppose the only one that was big and tended to make big news regularly was the transport committee, because every year they dealt with Air Canada and the CNR. Another lively one was the broadcasting committee, which dealt with the CBC.

Douglas Fisher is a member of the Parliamentary Press Gallery and columnist with the Ottawa Sun. He was a member of the House of Commons from 1957-1965. This article is based on his testimony to the Committee on February 18, 1999.

The Diefenbaker Government was elected in 1957, determined to change the broadcasting system. The CBC not only ran the CBC; it ran broadcasting. The Conservatives were going to bring in a new regime, and they did. It was called the Board of Broadcast Governors. The Liberals fought it, and our party, which was then the CCF, was against it. But the *Broadcasting Act* was changed, and we created this board which was really the ancestor of the CRTC.

In 1959 a movement developed in the Conservative Party, led in the west by the very marvellous-talking MP — Art Smith from Calgary. Art provided the persuasiveness, and another fellow — a Tory MP by the name of Jack McIntosh from Swift Current — provided what you might call the muscle. They decided they were going to do something serious about the CBC and the cost of the CBC to the taxpayers.

They had the idea that CBC television should go out and get a lot of revenue from commercials. They brought it to the broadcasting committee and they were determined to get a recommendation for it. Stop and think about that if you get tired of all those commercials on *Hockey Night in Canada*. Way back then, the CBC was not making any money, to speak of, out of television commercials.

This issue came out in the committee scrutiny of the CBC and we went through the whole budget. I always went out of my way to offer to write the report for the chairman of every committee I was on, because most of the committee clerks at that time disliked writing reports. I was first author in drafting many of them. The two government MPs on the broadcasting committee were Dick Bell and Marcel Lambert (who later became a Speaker of the House, and even later, the Tory finance critic).

Working with those two, I drafted the thing very carefully and there was no recommendation about the CBC going out and making money. I took it around to Liberal Jack Pickersgill. He was the only other opposition MP on the committee. The opposition was very small back then. Pickersgill seemed to agree with it. So I said, "Jack, we're going to meet *in camera*, and this is what we're going to talk about. I hope you can go with it." He nodded his head. I said, "You see what it does. It gets us past this insistence by Smith and McIntosh that the CBC go out and make money." Jack nodded his head, and as far as I was concerned, that was it, I had his approval.

We came into the *in camera* meeting and we barely got going when there was an opportunity for Jack to open his mouth, and he said something really snarky to McIntosh, who began to bridle. Then Bell, who was chairing the meeting, got me to start reading this draft report. I could see Smith and McIntosh beginning to get angry, and Smith said something. Right away Pickersgill cut him to ribbons. Within 30 seconds this *in camera* meeting was in an uproar. They were cursing at Jack, and Jack was cursing at them. Jack turned to me and said, "I do not know if you can stay here, but I cannot stay to see these stupid fellows carve up one of the greatest assets this nation has ever had. What they are going to do by this is destroy the CBC, and they are going to destroy private broadcasters, too." Then he started walking out the door. There was nothing in my draft to justify what he said, but he just stormed out.

My report was ripped up right there, and the militant Tory MPs wrote a tougher one. The reason the CBC made this major change in policy regarding TV commercials was the recommendation inserted in the committee report by Smith and McIntosh. The corporation went out and began to get more and more dollars from advertisers.

Of course, after the meeting was over and I had given up on trying to mollify the Tories over the insults they had had from Pickersgill, I went up to Jack's office on the fourth floor and I said, "Jack, why did you do that? I thought we had an understanding." He said, "I do not know what you understood. Look, Fisher, get something into your head. Politics is a form of warfare, particularly electoral politics, and as far as I'm concerned, this is a

war. We have to defeat those bastards and get them out before they ruin this country and organisations like the CBC. Now, you can go with your compromises and think you're fiddling. I say let them do it, and then we'll hang them for it."

Since that day I have not believed that *in camera* meetings were a good way to draft public policy.

Timing is Everything

The point of my second story is that what is reported by the press often depends less on whether the meeting is public or private and more on completely unrelated circumstances.

One famous incident in Canadian committee history was the time Gilles Grégoire of the Social Credit nailed Donald Gordon, president of the CNR, for the fact that his railway had 17 vice-presidents and not one was French-Canadian. As I recall this was in 1963. When Grégoire raised the point Gordon's assistant, Ralph Vaughan, grabbed him, because Gordon was a big man and had a very bad temper. Gordon pushed Vaughan away and shouted that any vice-president of the CNR was going to be qualified, and so far he had not found a qualified French Canadian. Well, you can imagine. That night the students from the University of Ottawa were rioting in the streets and burning Gordon in effigy. All of a sudden the Government had a crisis of major size on its hands.

This took place in a committee before the committee had any chance to make recommendations about the whole question of vice-presidents. But the irony of it is that a year and a half earlier Gordon had been before the same committee and I had asked the very same question. I said to him—this was before the Social Credit people were in the House—"It seems odd to me that here you are based in Montreal, and I know that none of your executives are French-Canadians. He said, "Well, we will get to that when we find the ones who have the talent." Nothing happened; no newspaper picked it up.

About a year and half later, the same question and the same answer created a political crisis for the government.

Secrecy May Not be in the Public Interest

One day in the late 1950s I received a leak from a senior official in the port of Montreal saying, why don't you take a look at the books of the Jacques Cartier Bridge? It is a toll bridge that runs across the St Lawrence river in Montreal. So I went to Montreal and the head of the Montreal Port Authority took me in and explained why they had this peculiar situation.

There seemed to be a lot of traffic and tolls were charged, but there never seemed to be any money getting into the pot to pay not just off the cost of the operations and, in particular, the cost of building it. Then this man showed me the original agreement whereby the Government of Quebec was supposed to pay something in the neighbourhood of, let's say, \$15 million back to the federal government, which had paid all the costs of building the bridge, but Quebec had never bothered to do so.

So I got interested in it. As I began to poke around, I talked to a couple of reporters at the *Montreal Gazette*, and one of them floated a story. The next thing we know the Jacques Cartier Bridge scandal broke. Of course, the scandal was that the people who were handling the tolls, both the supervisors and the people watching the people throw their coins in, had got on to how to skim it. As to how much they skimmed, the general assumption was that they regularly skimmed over 80% of the revenues that came in. Of course this caused an enormous uproar and there were cries for an investigation.

In the House I demanded an investigation by George Hees, who was the Minister of Transport, and George said, "Right, we are going to turn a parliamentary committee loose on it." So the Transport Committee got it, and we called the officials of the port to testify.

By then the press in Montreal had uncovered tales of people who had become wealthy through having these jobs and there were pictures in the paper of some of the lovely residences built as a result of this. Obviously this kind of thing had to stop.

But when it came to a defence by the chief official of the Jacques Cartier Bridge, he said that he had hired and promoted the people on instruction by the elected federal politicians. So I said, "Let's have the evidence of this." Immediately there was an uproar and it was said, "Oh no, we must not destroy people's lives and careers."

So it was decided that a subcommittee of the committee, three people, would take a look at these letters and

memos about appointments then come back to the committee with recommendations as to whether they should be published.

I was one of the opposition members on the subcommittee. The other opposition member was a former Minister of Transport who had helped make the original deal, Lionel Chevrier, and the third was a Tory, Louis-Joseph Pigeon. I remember the three of us met upstairs in a room, and we got the file. Well, it was a block buster. A couple of MPs had written some of the most indiscreet letters you can imagine in relation to the appointment and promotion of people, etc. In other words the documents showed that this was a honey pot of patronage. There had been a tremendous battle amongst both Liberal and Conservative Montrealers, including cabinet ministers as to who was going to have the finger on it.

I remember looking at it and saying, "Boy, Lionel, what the press won't do with this." He said, "Doug, we can't let that out to the press", and Pigeon said, "No, we can't show this to the press." I said, "Come on!" Lionel said "I want to remind you, Douglas, this is in camera. This is privileged. This goes no further. We will report back and say there is a system of recommendations by political figures that has been regular and continuous and that we suggest it should be ended."

There I was. I had this marvellous story, but I observed the secrecy. I think it was years later before somebody got to some of the letters, and even then they embarrassed some still active politicians.

If there is a moral to be drawn from each of these stories I think it all boils down to one recommendation. Get rid of any reference in the standing orders to reports being confidential before they are reported to the House. Open up the discussion of reports in Committee. Let us get a sense of proportion about committees and committee work and stop pretending that any leak of a report should be considered a contempt of Parliament.

Editor's note: The Standing Committee on Procedure and House of Affairs tabled its report on April 29, 1999. It recommended:

- That committees and sub-committees continue to be able to meet in camera, but that they exercise discretion in doing so. It is appropriate to have an in camera meeting where certain types of issues are being dealt with, or where the purpose of the meeting is one that has traditionally been dealt with in private, such as the consideration of reports to the House.
- That the Chair state in public the reason for a meeting being in camera, unless the notice for the meeting has already indicated that the meeting will be in camera and the reason therefor.
- That the Standing Orders be amended to reiterate that committee reports adopted at in camera meetings are confidential until the reports have been presented to the House, and that the evidence and documents at in camera meetings are confidential.

In a dissenting opinion the Reform Party recommended:

- that committees conduct all of their business in public and that the decision to meet in camera should occur rarely and under extraordinary circumstances with the support of two-thirds of the member's on a committee.