

**Bill C-10 and the CRTC:  
Ensuring procedural fairness**

**Forum for Research and Policy in Communications (FRPC)**

**Research Note**

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## Bill C-10 and the CRTC: Ensuring procedural fairness (January 2021)

### Research paper by Forum for Research and Policy in Communications (FRPC) - Synopsis

In November 2020 the Minister of Canadian Heritage submitted Bill C-10 to the House of Commons. If approved C-10 would give the CRTC new authority to regulate online programming services and to levy administrative monetary penalties for breaches of its requirements.

The CRTC's responsibilities have already grown since the enactment of the current *Broadcasting Act* in 1991 and the *Telecommunications Act* in 1993. It now also regulates telemarketing, spam and electoral fairness. Since 1991 its expenditures and staff have grown by 95.4% (\$2002) and 20.7%, respectively.

Bill C-10 offers no new guidance for the CRTC to exercise its current or proposed powers, apparently assuming that the CRTC will implement its existing and new responsibilities fairly and reasonably. The CRTC's operations and processes have not been reviewed in any detail since the early 1980s.

The Forum for Research and Policy in Communications (FRPC), an independent and non-partisan public-interest organization focussed on communications analysis and policy, reviewed the CRTC's approach to procedural fairness with respect to broadcasting applications that it receives. We found that the CRTC no longer publishes the numbers of applications, interventions and representations it receives and that it has effectively delegated complaints about broadcast programming and distribution to industry-established organizations.

As for the fairness of its procedures, the CRTC currently measures this by counting the number of times courts in a given year overturn a CRTC decision due to unfair process; in 2019 there were none. Measuring procedural fairness by numbers of court cases offers little meaningful information, however: courts evaluate the procedural fairness in the specific CRTC cases they hear rather than some, most or all CRTC decisions; parties that perceive the CRTC's procedures to be unfair may not launch court cases due to lack of time, resources or other reasons; and as the cases that are filed may take more than a year to resolve, a court decision that the CRTC procedures were unfair in any given year may reflect practices of a prior year.

Other factors can be used to measure procedural fairness. Immigration, Refugees and Citizen Canada (IRCC) – another institution that, like the CRTC, hears and makes thousands of decisions about the applications it receives – has published a list of criteria for procedural fairness in its proceedings. When applied these help to ensure that regardless of the outcome of their applications, applicants are heard rather than ignored, that applicants' requests are assessed using stated procedures, that decisions about applicants' requests are made in a timely way, that such decisions are made by those legally empowered to make them, and that decision-makers not just are, but are perceived by applicants to be, fair and impartial.

Results from analyzing broadcasting applications submitted to the CRTC in 2019 in terms of these criteria regarding fair process are summarized below:

#### 1. **Applicants' right to be heard – not met consistently**

The CRTC's 2010 *Rules of Practice and Procedure (Rules)* state that it will post all 'Part 1' applications it receives when these comply with the *Rules*, implying that it will consider such requests.

In response to access-to-information requests the CRTC said that it does not consider some applications even when they comply with its *Rules*. It explained that it does this because it thinks the applications are "inconsistent" with its current policies or because it feels these applications should be considered through another procedure.

While it is known that the CRTC ignored a Part 1 application made in 2018 by a union asking the CRTC to review its Digital Media Exemption Order, and in 2020 ignored a Part 1 application by a public-interest organization asking it to review contact-tracing apps for mobile phones, the CRTC does not have a written process for dealing with applications it does not want to consider, does not necessarily inform applicants that it will not consider their applications and does not track the number of applications it treats in this manner. The absence of written decisions about their applications prolongs applicants' uncertainty about the status of their applications and limits their legal remedies (as it is difficult to appeal a decision that is not made).

It appears that the CRTC is not granting an unknown number of applicants their right to be heard.

## **2. Applicants' right to expect that stated procedures will be followed – not met consistently**

The *Broadcasting Act* requires the CRTC to hold a public hearing before it issues, suspends or revokes licences, before it issues a mandatory order, or if it sets requirements for Canadian programming. It may hold a public hearing to amend or renew licences when it believes the hearing would serve the public interest.

A Broadcast Applications Report (BAR) published by the CRTC for 2019 lists 484 broadcasting applications and the process applied to them. The 2019 BAR shows that the CRTC held 9 public hearings of which 5 were “non-appearing” – the CRTC did not invite either applicants or interveners to attend the hearing. Among the 35 applications that the CRTC considered in these non-appearing hearings were 7 applicants seeking new licences, and 11 broadcasting undertakings up for renewal whose operations had raised serious non-compliance concerns (including 4 that had previously breached mandatory orders); two of the non-appearing applications resulted in new mandatory orders being issued.

The CRTC's *Rules* also state that it will post all ‘Part 1’ applications it receives which follow Part 1 of its 2010 *Rules of Practice and Procedure (Rules)*. Yet of the 484 applications listed in the CRTC's 2019 BAR 39 (8%) were not published until or after the CRTC issued ‘Letter Decisions’ (also not published) about the applications.

It appears that the CRTC is not consistently following its stated procedures and may be using the device of ‘non-appearing hearings’ to meet the wording rather than the spirit of the *Broadcasting Act's* requirements for hearings before issuing new licences or mandatory orders.

## **3. Decisions issued on a timely basis – not met consistently**

The CRTC's *Departmental Plan 2018-2019* said that it “expects to deliver its decisions in a ... timely manner” and that by March 2019 it issued decisions about 81% of an unstated number of Part 1 broadcasting and telecom applications within 4 months of the close of record in the proceedings.

The date of the ‘close of record’ is set by the CRTC when it decides to publish applications for public comment. The Forum added the date when applications were signed and therefore likely to have been submitted to the CRTC to the one hundred Part 1 applications listed in the 2019 BAR which were unrelated to the routine process of licence renewals (time constraints prevented our analyzing the 301 Part 1 [paper] proceedings used by the CRTC to renew broadcasting licences in 2019).

The CRTC posted 80% of these applications within one month of their submission; of the remaining 20 applications, just over half (11) were posted within four months, while 4 took nine months to post and 5 took fourteen months to post: in other words, even if decisions were issued within 4 months of being posted, the applications may have been submitted to the CRTC a year or before then. Analysis of the time between applications' submission and the CRTC decision found that the CRTC issued decisions for 51% of the applications within four months of their submission. Decisions were issued for 10% of the

applications from five to eleven months after submission, while for 16% of the applications decisions were made from twelve to sixteen months after submission. Just over a fifth (23%) of the applications listed (submitted from June to December 2019) did not show a decision at the time of writing (December 2020). It should be noted that the CRTC may have made decisions in these matters but did not include them in its Broadcast Applications Report for 2019; time constraints prevented our double-checking each application lacking a decision.

The timeliness of decision-making with respect to broadcasting applications unrelated to licence renewal proceedings is difficult to ascertain from the information posted by the CRTC on its website, although the available evidence suggests that in 2019 the CRTC took more time to issue decisions about broadcasting applications than its own metric suggests.

#### **4. Decisions made by those authorized to do so – not met consistently**

The *Broadcasting Act* empowers panels of at least three CRTC Commissioners to make decisions on behalf of the CRTC. Parties may appeal such decisions to the Federal Court of Appeal (section 31(2)) or, in the case of new licences, licence renewals or licence amendments, may petition the Governor in Council (Cabinet) to intervene (section 28(1)).

The Federal Court of Appeal held in 2000 and in 2008 that letters from an Executive Director and a Commissioner (Vice-Chair of Broadcasting) of the CRTC, respectively, which purported to respond to applicants' concerns were not CRTC decisions (and were therefore not subject to the *Broadcasting Act's* appeal provisions). Although in each case the court advised the CRTC to explain its decision-making processes and remedies to parties affected by its decisions, the CRTC's Secretary General in November 2020 responded to a Part 1 application without specifically identifying his legal authority to do so – and only provided a formal decision about the application on behalf of the CRTC after the applicant asked the Minister of Canadian Heritage to intervene.

It is unclear whether all applicants receive determinations from persons authorized by statute to make decisions on behalf of the CRTC.

#### **5. Impartiality of CRTC decision-makers in fact and in appearance – may not be met consistently**

The IRCC criterion for impartiality explains that applicants have the right to fair and impartial decision-makers and that the perception of bias must be avoided.

An unknown number of applicants have met (and may still meet, via Zoom) with CRTC officials to discuss their applications before submitting these. At least one of the parties that in January 2018 submitted an application asking the CRTC (under the *Telecommunications Act*) to block certain Internet websites presented detailed policy and legal arguments about the proposal to the CRTC in September 2017 while stating an intention to file an application about the proposal to the Commission. This pre-application meeting was not disclosed to the Commissioner of Lobbying or in the CRTC's ultimate decision on the application. In mid-2020 the Canadian Association of Broadcasters submitted a Part 1 application to the CRTC for urgent regulatory relief from the Covid-19 pandemic's impact – following what the CAB itself described as “months of discussion” with the CRTC's staff.

Once the CRTC decides to consider a matter, the CRTC Commissioners appointed to the panel that hears the matter make a decision on behalf of the CRTC by majority vote. As CRTC decisions are not signed, the identity of the Commissioners who make these decisions can only be determined by reviewing transcripts of the CRTC's hearings. The Forum reviewed 231 CRTC transcripts of its hearings from 1998 to 2016 and found that CRTC Commissioners did not have an equal chance of being appointed to CRTC hearing panels: some Commissioners were appointed to hear and make decisions on behalf of the Commission six and seven times more frequently than their colleagues appointed to the CRTC in the

same period. The *Broadcasting Act* gives the CRTC's Chairperson the authority to appoint the members of these panels; changes in the person appointed as Chairperson of the CRTC coincided with changes to the chances of individual Commissioners' being appointed to hearing panels.

It is unclear whether private meetings between applicants and CRTC officials and the appointment of some CRTC Commissioners to hearing panels more often than their colleagues support both the fact and the perception of impartiality in decision-making.

To summarize the findings of the Forum's research, the CRTC has not been independently reviewed in terms of its performance since the early 1980s. Its approach to its legislated responsibilities is less transparent, timely and fair than a first glance might suggest. The degree to which its processes are fair is time-consuming to evaluate empirically, as so much of its applications process is obscure and requires detailed knowledge and research. The CRTC's own measures of its efficiency and fairness are misleading and unreliable. It has acknowledged denying consideration of some applications for unknown reasons, while also permitting its officials to meet with certain applicants to discuss matters later submitted to the CRTC for its approval. CRTC Commissioners do not have the same chances of being appointed to the panels that make decisions on behalf of the full Commission, and Commissioners' chances of being appointed change depending on the CRTC's Chairperson who appoints them to hearing panels. These empirical results provide grounds for concerns about applicants' right to both the fact and the appearance of impartial decision-makers.

## Recommendations

- |                  |  |
|------------------|--|
| Recommendation 1 | Before granting the CRTC significant new powers, review its actual practices and performance in meeting its responsibilities under its enabling statutes   |
| Recommendation 2 | Amend section 15 of the <i>Broadcasting Act</i> to require the CRTC to report to Parliament each year on all submissions it receives, including but not limited to complaints, representations, applications or interventions  |
| Recommendation 3 | Amend section 21 of the <i>Broadcasting Act</i> to permit the CRTC to make rules regarding interventions, guidelines and matters of broadcasting policy  |
| Recommendation 4 | Amend section 18(3) of the <i>Broadcasting Act</i> to enable the CRTC to review the performance of bodies that administer complaints about programming and distribution services   |
| Recommendation 6 | Amend section 20(1)(a) of the <i>Broadcasting Act</i> to authorize the Chairperson of the Commission to appoint members to panels when panels would otherwise lack quorum or would include members with conflicts of interest. |

# Bill C-10 and the CRTC: Ensuring procedural fairness

## Summary

### I Introduction: amending Canada's 1991 Broadcasting Act

In November 2020 the Minister of Canadian Heritage proposed changes to Canada's 1991 *Broadcasting Act*. If approved by Parliament they would expand the CRTC's authority to include the regulation of online programming services and the ability to levy administrative monetary penalties for breaches of its requirements.

Bill C-10 does not address the manner in which the CRTC exercises or should exercise its authority, the transparency of its procedures or the degree to which it should be accountable to Parliament and Canadians. Where the current legislative framework for broadcasting prohibits unlicensed broadcasting and empowers the CRTC to grant, renew or revoke licences using specified procedures, Bill C-10 simply implies that online services should somehow be registered.

The silence in Bill C-10 about the regulation of online services effectively delegates responsibility for a new online registration framework to the CRTC. Although it is as yet unknown whether the CRTC has estimated the resources required to establish and implement this framework, it is known that from 1992 to 2019 the Commission's expenditures increased by 95.4% in real (\$2002) terms (to \$50 million in \$2002) while its staff numbers grew by 20.7% to 454 full-time or equivalent positions.

Deciding to leave responsibility for all aspects of online registration to the Commission appears to assume that it will implement its new responsibilities in a fair, transparent and accountable manner – even though this assumption lacks support from any recent and independent research.

The performance of the CRTC, now nearly 53 years old, was last reviewed in detail in the early 1980s, when it had been in operation for 15 years. That review of the CRTC's operations occurred nearly a decade before the current 1991 *Broadcasting Act* was proclaimed. The performance of Canada's broadcasting system, by contrast, has been reviewed at least five times since the early 1980s.

Lack of transparency means that little is known about how the CRTC implements Parliament's broadcasting and telecommunications policies. It is in particular unclear how the CRTC applies current Canadian law on procedural fairness.

1986 Task Force on Broadcasting Policy [Caplan-Sauvageau]
1992 Standing Committee on Communications and Culture [ <i>Ties that Bind</i> ]
1995 Information Highway Advisory Council [ <i>Connection, Community and content</i> ]
2003 Standing Committee on Canadian Heritage [ <i>Our Cultural Sovereignty</i> ]
2020 Broadcasting and Telecommunications Legislative Review Panel [ <i>Canada's communications future</i> ]

Fair process is a critical element of today's administrative decision-making. In 2008 the Supreme Court of Canada held in *Dunsmuir v. New Brunswick* that procedural fairness is "central to the notion of the 'just' exercise of power" by administrative tribunals. Rather than addressing the CRTC's position on substantive policy questions, this research paper analyzes the information published in its Broadcast Applications Report for 2019 to study the Commission's adherence to several basic elements of procedural fairness: applicants' legitimate expectations, opportunities for parties to be heard, timeliness in CRTC decision-making and the impartiality of decision-makers.

## **II Procedural fairness and the CRTC**

This part of the paper reviews elements of procedural fairness in Canadian administrative decision-making, statutory requirements for procedural fairness at the CRTC, and objective criteria for evaluating procedural fairness.

### **A Elements of procedural fairness**

The requirements of procedural fairness vary from one administrative tribunal to another. While the CRTC has not clearly stated its understanding of procedural fairness in broadcasting matters, Immigration, Refugees and Citizenship Canada (IRCC) – a government department that resembles the CRTC in that it also hears and makes thousands of decisions concerning applicants seeking its approval of their requests – sets out seven elements of procedural fairness that its decision-makers must follow. These elements consider procedures primarily from applicants' perspective:

- 1 Applications should be processed without undue delay
- 2 Applicants have the right to know the case they must meet and to have a fair opportunity to respond
- 3 Applicants assured by statutes or regulations that a particular procedure will be followed are entitled to that procedure
- 4 Applicants have the right to fair and impartial decision-makers, and the avoidance of the possibility or perception of bias
- 5 Whoever hears the applicants must decide
- 6 Decisions must be based on the institution's enabling statute and its regulations, and
- 7 Applicants have the right to understand decisions, through precise, clear and understandable reasons that show the evidence and facts on which the decision-maker has relied.

### **B Procedural requirements in the CRTC's enabling statutes**

Under the *Broadcasting Act* parties have four routes to ask the CRTC to exercise its authority: representations, interventions, complaints and applications. Neither the *Broadcasting Act* nor

the *Telecommunications Act* defines these terms and while the former refers to complaints the latter does not. The *Broadcasting Act* does not state whether complaints are limited in any way but says in section 3(1)(g) that “the programming originated by broadcasting undertakings should be of high standard”.

The 1991 *Broadcasting Act* offers some guidance on the procedures the CRTC must use. The CRTC must publish the applications it receives, notices of public hearing and decisions in relation to licences. It must hold public hearings for some but not all matters; and it must provide reasons for certain types, but not all, of its decisions. Panels of at least three CRTC Commissioners named to the panels by the CRTC’s Chairperson, hear and decide all matters before the Commission. Fines may be imposed following prosecution for breaching the CRTC’s regulations, the *Act* or broadcasters’ conditions of licence, and the 1991 *Act* also empowers the CRTC to issue non-compliant broadcasters mandatory orders after public hearings.

### **C      *Procedural fairness and the CRTC Rules of Practice and Procedure***

Before revising its then-decades-old procedural requirements the CRTC invited comments on the new *Rules of Practice and Procedure* it was proposing. CRTC Notice of Consultation 2010-509 said its new *Rules* were intended in large part to harmonize telecommunications and broadcasting procedures, to promote efficiency and to ensure predictability and certainty.

The resulting 2010 *Rules* set requirements for the form and content of applications and interventions (but not complaints or representations) as well as deadlines (for interveners and respondents, and for applicants making replies). The CRTC’s 2018-2019 *Departmental Plan* clarified that its “proceedings do not seek to be efficient at the expense of fairness, transparency or accessibility.”

### **III      *How the CRTC evaluates its procedural fairness***

This part of the paper reviews the information published by the CRTC about its proceedings as well as the single measure the CRTC currently uses to evaluate the fairness of its procedures.

It then evaluates CRTC broadcasting proceedings using three elements of procedural fairness identified by Immigration, Refugees and Citizenship Canada: applicants’ legitimate expectations, delays in processing applications and the appearance of unbiased decision-making at the CRTC.

#### **A      *CRTC publishes few statistics about its proceedings***

The CRTC provided statistics about its proceedings including the numbers of applications, interventions and complaints until the early 1990s in its annual reports to its responsible Minister. The Commission began to issue reports about broadcasting and telecommunications in 2000, and shifted to a single *Communications Monitoring Report* in 2008; these reports

included annual statistics about complaints submitted to the CRTC about communications-related matters.

In the past 2 years neither the *Monitoring Reports* nor the CRTC's *Departmental Results Reports* have set out any information about the numbers of complaints, applications, interventions or representations it received.

The CRTC may no longer be reporting the numbers of complaints it receives because it has effectively delegated the 'administration' of broadcasting complaints to several organizations established and funded by industry stakeholders – the Canadian Broadcast Standards Council (CBSC), the Commission for Complaints for Telecom-television Services (CCTS) and the Advertising Standards Canada (ASC). Even if the CRTC has not expressly delegated complaint-handling to third parties – by reserving the right to review complaints if it so chooses – the Forum notes that it is unclear whether Parliament intended its delegate to delegate its responsibilities elsewhere.

### ***B CRTC's single measure of its procedural fairness is invalid and unreliable***

In 2016 the federal government announced a *Policy on Results* which requires federal institutions to provide performance information to 'enhance understanding' of the results the government wants to achieve and then achieves. The CRTC's 2018-2019 *Departmental Results Report* set out targets for several results all of which it described as being the outcome "of processes that are efficient and fair" – the creation of Canadian content, Canadians' connection to world-class communications services and the protection of Canadians within the communications system.

To measure the degree to which "[p]roceedings related to the regulation of the communications system are ... fair", the CRTC counted the number of its "decisions overturned on judicial appeal related to procedural fairness", finding none in 2019.

Evaluating procedural fairness by the number of judicially overturned decisions yields unreliable results that are unlikely to measure the fairness of the CRTC's proceedings. A court decision that the CRTC's procedures in a specific matter were unfair is not a valid measure of the CRTC's procedural fairness in general because the decision applies only to the specific matter considered by the Court – not to all matters considered by the CRTC in a given period.

For instance, in 2019 the CRTC issued nearly 400 (398) decisions, orders and policies with respect to broadcasting, telecommunications and compliance/enforcement of the do-not-call and anti-spam regimes. Very few of such outcomes would be challenged in any given year as parties affected by the outcomes lack the money, time and/or expertise to launch court challenges. The small fraction of court decisions finding the CRTC's procedures in a matter in a given year were unfair is also an unreliable measure of fairness because the procedures used by the CRTC in the matters considered by those decisions could have occurred one or more years before the courts issued their decisions. Finally, even if a court held that the CRTC's procedures

in a specific matter were unfair, it is highly unlikely that the court would itself evaluate the CRTC's procedures for dealing with all the applications it receives in any given period.

Valid and reliable measures of procedural fairness would require identification of the criteria for procedural fairness by administrative decision-making bodies such as the CRTC and the development of reliable and valid statistics to measure such criteria in respect to of CRTC proceedings over a given period or periods.

### **C      *Evaluating procedural fairness of the CRTC***

The *Broadcasting Act* sets out few specific procedural requirements, instead permitting the CRTC to set its own rules of procedure.

The Forum considered procedural fairness in CRTC matters in terms of the seven characteristics of fair process set out by Immigration, Refugees and Citizenship Canada (IRCC), as this Federal department also receives and makes determinations about many applications. We found CRTC data relevant to five of the IRCC indicia: applicants' legitimate expectations that the CRTC follows its stated procedures, opportunities for applicants to be heard, the number of applicants experiencing delays in the CRTC's processes, the apparent independence of the CRTC Commissioners who are empowered to make decisions on behalf of the CRTC and the degree to which those within the CRTC who respond to applicants and others act with its authority.

We began by looking for quantitative information published by the CRTC about the number of requests made to the CRTC, specifically the complaints, representations, applications and interventions it receives in relation to broadcasting. In light of Covid-19's disruption of government operations since March 2020 we focussed our attention on matters in the 2019 calendar year.

Annual reports now issued by the CRTC contain no quantitative information about the numbers of different requests it receives. Neither its 2018/19 nor its 2019/20 *Communications Monitoring Reports* mentions complaints or representations. While its *Departmental Results Reports* for 2018/19 and 2019/20 mention 'complaints' they do not state the numbers of complaints the CRTC received or their treatment, and do not mention representations. The CRTC's search engine disclosed few decisions mentioning representations and these did not include numbers; the decisions only rarely mentioned numbers of complaints and of 246 decisions listed by the search engine as having been published by the CRTC in 2019 only 5 mentioned numbers of complaints: these had to do with Canada's *Do Not Call* rules, a production fund and undue disadvantage rather than with the *Broadcasting Act's* requirement for programming of high standard.

Annual reports issued by the CRTC in 2018/19:  
[Communications Monitoring Report 2019](#)  
[Departmental Results Report 2018-19](#)  
[Departmental Plan 2018-2019](#)  
[2018 to 2019 Fees Report](#)  
[Official Languages Report on Results 2019-2020](#)  
[Privacy Act – CRTC Annual Report – 2018-2019](#)

While the *Broadcasting Act* only mentions 'interventions' in a section related to orders issued by Cabinet and the *Telecommunications Act* does not mention interventions at all, the CRTC

often invites public comment on the broadcasting and telecommunications matters it considers, describing these as interventions. Neither the CRTC’s *Communications Monitoring Report* nor its *Departmental Results Report* for 2018/19 states how many interventions the CRTC received or considered, however. Determining the number of interventions received by the CRTC in a given year would require a review of each proceeding listed on more than a dozen (15) different CRTC website pages for its broadcasting, telecommunications and enforcement activities, a time-consuming endeavour.

In the absence of statistical or summary information about complaints, representations and interventions the Forum analyzed the CRTC’s procedures for dealing with applications, focussing primarily on the 2019 calendar year due to the impact of the Covid-19 global pandemic on Federal government operations in 2020. In December 2020 the CRTC published a “Broadcast Applications Report” of “publicly available applications” for the years from 2011 to 2020, and a “Telecom Applications Report” for the years from 2016 to 2020.

The two Applications Reports provide different information, limiting comparisons of the two sectors. Only the Broadcast Applications Report included information about the dates when applications were posted online and identified outcomes (decisions). The Forum therefore focussed its analysis on the applications listed in the CRTC’s Broadcast Applications Report for 2019.

Information published by the CRTC in its 2019 Applications Reports	
Broadcasting	Telecom
Process	Application Date
Applicant	Title/Subject
Application Number	File Number
Subject	
Posted to Web	
Decision Date Status	
“Total records: 484”	2019: “671 application(s) found”

The 2019 Broadcasting Applications Report provided information about four types of process through which it considered the 484 “publicly available” applications listed in the Report: 39 administrative matters (decided by Letter Decisions), 9 public hearings of 44 applications, 100 Part 1 applications and 301 Part 1 renewal applications. The applications came from 186 applicants, all current or prospective licensees.

**Administrative matters** – identified by the 39 Letter Decisions issued by the CRTC in 2019 – do not involve CRTC hearings or public comment. In 2019 the CRTC described these matters as involving extensions of time (17), licence amendments (11), changes in ownership (8) and the deletion of transmitters (3). The Letter Decisions cannot be accessed through the Broadcast Applications Report or the CRTC’s lists of Letters issued by the Commission or its staff, and after November 2013 the CRTC discontinued its practice of announcing Letter Decisions via Information Bulletins. The applications addressed by 13 of these Letter decisions were posted the day the decisions were issued; the remaining 26 applications were posted from 1 to 25 days after that date. Interventions about such matters could not have been filed until after the CRTC made its decisions.

**Public hearings** – were announced by 9 CRTC notices of consultation in 2019 which were published in the *Canada Gazette* and newspapers serving affected communities. They invited the public and interested parties to submit interventions on 44 applications submitted to the CRTC. Four of these hearings permitted five applicants that submitted 9 applications to appear before the CRTC hearing panels to make their case. (A hearing of several CBC applications was postponed to January 2021.). The CRTC's remaining five hearings were "non-appearing": the CRTC did not invite 25 parties that submitted 35 applications – including 11 applications whose operations had raised serious non-compliance concerns including 4 in relation to breaches of previous mandatory orders – to appear before the CRTC hearing panels.

**Part 1 applications** – which consisted of 301 applications to renew licences and 100 other applications in 2019 posted on the CRTC's website – are not published in the *Canada Gazette* or newspapers but are open for public comment: 150 applicants submitted 401 written applications and responded to CRTC questions in writing.

The CRTC's use of administrative decisions, non-appearing hearings and Part 1 processes means that just nine (2%) of the 484 applications listed in the CRTC's 2019 Broadcast Applications Report were literally heard by CRTC hearing panels. The remaining 475 applications were considered based solely on written evidence.

## **1 Parties' legitimate expectations**

The seven characteristics of procedural fairness described by Immigration, Refugees and Citizenship Canada (IRCC) include the idea that applicants are entitled to expect that IRCC will follow its stated procedures as well as Canadian law, a principle known as "legitimate expectations". In the CRTC's case applicants may also have legitimate expectations that the CRTC follows its stated procedures and the requirements of the *Broadcasting Act*. Analysing the CRTC's approach to the 484 applications that the CRTC said it received in 2019 raised four concerns.

### **(a) 'Non-appearing' public hearings skirt *Broadcasting Act's* requirements**

The *Broadcasting Act* requires the CRTC to hold public hearings before issuing, suspending or revoking licences and also before issuing mandatory orders.

Of the 484 applications listed in its 2019 Broadcast Applications Report the CRTC Commissioners scheduled 44 (9%) for 9 public hearings. Ten of these applications were presented in person to CRTC hearing panels of Commissioners; the CRTC postponed the hearing of 4 applications by the CBC until January 2021. To put this another way, the CRTC literally 'heard' 2% of the 484 applications listed in its 2019 Broadcast Applications Report; the remaining applications were decided based on a written record.

The other 30 applications listed in the public hearing announcements were 'non-appearing': none of the fifteen applicants or interveners was invited to make their submissions in person.

The ‘hearings’ were held in the CRTC’s offices, attended only by CRTC Commissioners, CRTC staff and a Court reporter. Among the 30 applications considered at these non-appearing hearings were 8 applications for new broadcasting licences and four licence renewal applications in which the CRTC had identified serious regulatory non-compliance that might result in mandatory orders: all matters that the *Broadcasting Act* requires to be considered at public hearings. (The CRTC subsequently issued mandatory orders with respect to two of the applications.)

***(b) Public-interest rationale for not holding public hearings left unstated***

The *Broadcasting Act* permits the CRTC not to hold public hearings to amend or renew broadcasting licences provided it believes the public interest is not served by the hearing.

The CRTC’s 2019 Broadcast Applications Report included 301 applications to renew broadcasting licences that were not considered through public hearings but through the CRTC’s ‘Part 1’ process. The CRTC publishes such applications on its website and interested parties may submit interventions. The CRTC then publishes decisions about the applications.

The CRTC’s decisions do not explain the basis for using the Part 1, paper-only process to renew hundreds of broadcasting licences, and do not explain why the public interest would not be served by public hearings, and its 2019 Broadcast Applications Report provides little information about the renewal applications it lists. The Forum therefore reviewed 140 applications listed on a separate CRTC webpage for 2019 Part 1 Renewal proceedings\*; this webpage includes references to licensees’ performance in their current and previous licence terms. Of the 140 applications heard without public hearings – appearing or non-appearing – 32 (23%) involved one or more instances of “apparent non-compliance”. The CRTC’s decision not to hear these applications ‘in person’\*\* imply that alleged breaches of the *Broadcasting Act* and/or the CRTC’s regulations are not matters of public interest.

[ \* For unknown reasons the CRTC’s 2019 Broadcast Applications Report and the 2019 Part 1 applications report list different applications]

[ \*\* Parties have appeared before CRTC hearing panels since 1968 and for the last several decades have also ‘appeared’ through audio-visual hookups; since the Covid-19 pandemic applicants and interveners have made their submissions to the CRTC using Internet-based audio-visual connections.]

***(c) Some administrative processes not disclosed until CRTC issues decisions***

The *CRTC Rules* state that it will post all applications that it receives but provides no timeframe for this step.

The 2019 Broadcast Applications Report included 39 applications resulting in CRTC Letter Decisions and included the dates of all but one of these decisions. Where the other 445 applications in the 2019 Broadcast Applications Report were available for public review and comment the 39 applications for which the Letter Decisions were issued were not posted until

or after the decisions were issued. These applications involved licence amendments, requests to delete transmitters and for extensions of time – and also changes in ownership. The Letter Decisions are not available for public review. The posting of applications after decisions have been made and the absence of the decisions themselves makes it difficult for parties whose interests might be affected by the decisions to apply to Cabinet or the Federal Court of Appeal for a legal remedy, and make the CRTC's processes less transparent.

The CRTC's responses to two access-to-information requests (A-2020-00034 and A-2020-00046) also listed another 26 applications that the CRTC received in 2019 and did not post: 5 applications remain 'active' before the CRTC but are not posted; 21 were returned to or withdrawn by applicants. As neither the applications nor the CRTC's comments about these applications area posted it is not clear why the CRTC

It appears, therefore, that the CRTC received at least 510 broadcasting applications, of which 87% (445) were made public before the CRTC issued decisions, 7% (39) were made public when or after the CRTC issued decisions, and of which 5% have not been made public.

## **2 Opportunities to be heard**

The *CRTC Rules* state that it will post all applications that it receives (although no timeframe is provided) and that it will return deficient applications so that applicants may correct them.

In the last several years, however, the CRTC has received applications that it has neither posted nor returned. Examples include an early 2018 Part 1 application by the Syndicat canadien de la fonction publique (SCFP) asking the CRTC to review its Digital Media Exemption Order and an early 2020 Part 1 application by the Public Interest Advocacy Centre (PIAC) asking the CRTC to investigate Covid-19 tracing applications. The CRTC did not grant either application process and did not post them.

Results from several access-to-information requests show that from January 2016 to September 2020 the CRTC received and assigned application numbers to 62 Part 1 broadcasting applications but did not post these on its website. Of these 62 applications, 54 were returned to the applicants. It is unclear from the CRTC's access-to-information answers what became of the remaining eight numbered but unposted applications. Both the posted and unposted applications originate from existing or would-be broadcast licensees – apart from the SCFP and PIAC applications it is unknown whether or how many non-licensees have attempted unsuccessfully to submit Part 1 applications to the CRTC as the CRTC does not track all Part 1 applications it receives.

The CRTC does not track the number of applications to which it denies process. In an access-to-information response it said that

[i]n some situations applications may be returned prior to being assigned an application number because they are considered to be inconsistent with a Commission policy or they

are more appropriately dealt with under another procedure. Such applications are not retained or tracked.

A subsequent request for information about the process used by the CRTC to decide not to grant applications consideration – asking who makes such decisions, whether and how applicants are notified about this decision and whether the CRTC gives reasons for its decision – resulted in ‘no documents’ being found within the CRTC about this information. Finally, the Forum also asked the CRTC for the minutes of any meeting of the Commission, of its standing committees or of any special committees authorized to make decisions on behalf of the CRTC, in which decisions were made not to grant process to applications submitted under Part 1 of its Rules or to delegate such responsibility to CRTC staff; the CRTC’s response was that it had no such documents.

Apart from the fact that both the responsibility and decision-making process for deciding which applications the CRTC will or will not consider is unclear, the CRTC’s acknowledgment that it does not track the applications that it chooses not to hear means that the numbers it publishes in its Telecommunications and Broadcasting Applications Reports are unreliable.

As the grounds set out by the *CRTC Rules* for denying process to an applicant do not include either consistency with CRTC policy or appropriateness the denial of process to an unknown number of applications. These results also suggest that the legitimate expectations of an unknown number of unknown applicants that the CRTC will follow the procedures stated in its *Rules* may not have been met.

### **3** *Timeliness of CRTC decision-making*

The *Broadcasting Act* does not set any limitations periods for CRTC decision-making, but an element of procedural fairness identified by the IRCC noted that applicants have a right to decisions about their applications which are not unduly delayed. The Forum reviewed the information published by the CRTC in its 2019 Broadcast Applications Report with respect to the timing of CRTC decisions about applications.

According to the CRTC’s *Departmental Results Report* it issued decisions about 81% of the Part 1 broadcasting and telecom applications it considered from April 2018 to March 2019 within four months of the ‘close of record’. The close of record is generally understood as the last date on which the CRTC accepts submissions for the public record and which is set by the CRTC. The CRTC’s Broadcasting Applications reports do not provide that date, but often provided the date when the CRTC posted the applications. Decisions were made about 16% of the applications from 5 to 11 months after the applications were posted, and about 6% of the applications from 12 to 15 months after posting. At the time of writing in December 2020 no decision was shown for 31% (137) of 445 broadcasting applications listed in the 2019 Broadcast Applications Report.

Lack of time precluded an analysis of each of the 301 Part 1 renewal applications in the Report, but the Forum downloaded each of the 100 Part 1 applications (unrelated to renewals) it listed, so as to add the date when each was signed. We assumed that the applications were submitted within a month of signing.

Decisions for half (55%) of the 100 Part 1 broadcasting applications listed by the CRTC for 2019 were issued within four months of their submission. Decisions for another 25% of the 2019 broadcasting applications were issued within 5 to 15 months of the applications' being filed. Decisions for nearly a quarter (23%) of the applications could not be located at the time of writing in December 2020.

While the Covid-19 pandemic obviously affected the CRTC's operations, 18 of the 23 broadcasting applications without decisions in December 2020 were submitted six months or more before March 2020 when Federal government operations were disrupted.

#### **4      *Appearance of impartial decision-makers***

Under the *Broadcasting Act*, responsibility for assigning the three or more members required for any CRTC panel that hears applications rests with the CRTC's Chairperson. Neither the *Telecommunications Act* nor the *CRTC Act* assigns responsibility for appointing members of CRTC telecommunications hearing panel, but in 2016 the Federal Court of Appeal held that in general the CRTC's Chairperson also has the authority to appoint Commissioners to telecommunications hearing panels.

The Forum considered the issue of procedural fairness in the context of decision-makers' impartiality. The Immigration, Refugees and Citizenship Canada criteria for procedural fairness noted that applicants have the right to fair and impartial decision-making and that both the possibility and the perception of bias must be avoided. Private meetings with decision-makers with some but not all parties in a matter may support a reasonable apprehension of bias that threatens the integrity and reputation of the Commission.

##### ***(a) CRTC officials meet with applicants about matters later addressed by their applications***

The CRTC does not publish information about private meetings it has with those it regulates and other stakeholders before they file applications. For example, before filing an application in January 2018 which proposed Internet website blocking one of the applicants made a presentation to the CRTC in September 2017 setting out the policy and legal arguments for the proposal, repeating these in its application four months later. Similarly, before applying to the CRTC in July 2020 for regulatory relief due to the Covid-19 pandemic the Canadian Association of Broadcasters (CAB) had months of discussions with CRTC staff who informed the CAB about some of the Commission's preferences for the application. None of these meetings appeared in a search of the communications reports made to Canada's Commissioner of Lobbying.

The absence of any mention of prior meetings between applicants and the CRTC or its staff raises concerns about non-transparency and the reasonable apprehension of bias.

***(b) CRTC Chairperson appoints the Commissioners who make decisions on behalf of the CRTC***

Until 1991 decisions of the CRTC were made by majority vote of all CRTC Commissioners. Little is known about who makes decisions at the CRTC as its decisions are not signed by those who heard the matters addressed by the decisions and made the decisions. The only way to determine which Commissioners hear which matters is to review the transcripts published by the CRTC of these proceedings and posted online from 1998 on.

A 2018 study by the Forum of the transcripts of all CRTC hearings from 1998 to 2018 found that CRTC Commissioners do not have an equal chance of being appointed to CRTC hearing panels. Some Commissioners are appointed to hearing panels far more often than others; one CRTC Commissioner was appointed to six times more panels than another of his colleagues, for example. While it is true at the CRTC that ‘those who hear, decide’, it may also be true that ‘those who choose those who hear, decide’ – leaving both the possibility and the impression of a potential for partiality rather than impartiality in decision-making.

Insofar as the applications to which the CRTC denies any process are concerned, the absence of any documents stating who is responsible for or makes such decisions lacks transparency and leaves open the possibility of perceived bias.

**5 Authority to decide**

The *Broadcasting Act* empowers panels of CRTC Commissioners to make decisions on behalf of the Commission.

On at least three occasions, however, documents have issued from within the CRTC purporting to make decisions about applications – which were in fact not decisions of the Commission.

In 2000 the CRTC’s Executive Director of Broadcasting answered a complaint alleging the broadcast of abusive programming that contravened the CRTC’s regulations and industry self-regulatory codes, to say that the programming did not breach the CRTC’s requirements: the Federal Court of Appeal held that the Executive Director’s letter was not a ‘decision’ of the CRTC.

In 2008 the Vice-Chair of Broadcasting answered a complaint alleging that a broadcaster’s shift to centralized program production had breached the terms and conditions of its licences, to say there was no breach and that no further action was required: the Federal Court of Appeal held that the Vice-Chair’s letter was not a ‘decision’ of the CRTC.

In 2020 the CRTC’s Secretary General responded to an application asking the CRTC to investigate the CBC’s use of branded content or to add the issue to the CRTC’s January 2020 hearing of CBC’s renewal applications, with e-mails that purported to but did not respond to

the applicant's request: the applicant only received a formal answer from the Commission about its application after seeking confirmation of the Secretary General's authority to respond.

Lack of transparency in decision-making authority brings the administration of justice by the CRTC into disrepute.

Overall, the lack of summary statistics published by the CRTC about the requests it receives and its decisions about those requests has two negative consequences: it complicates analysis of the CRTC's administration of its responsibilities and it diminishes the transparency and accountability of the Commission to Parliament.

## Conclusions

Many may expect the CRTC's procedures to be fair in light of its statement in its 2018-2019 [Departmental Results Report](#) that it "is an administrative tribunal that is responsible for regulating and supervising Canada's communications system in the public interest." The research presented in this paper raises concerns about due process at the CRTC, and led the Forum to draw the following conclusions.

1. The CRTC does not provide Parliament with the data it needs to understand how Canadians engage or attempt to engage with the CRTC, including annual statistics on the numbers of complaints it receives (including those it has effectively delegated to external, industry-created bodies<sup>1</sup>), or the numbers of representations, interventions or applications it also receives.

The CRTC's measure of 'fair process' in its decision-making is fatally flawed: counting the number of court decisions that find the CRTC's process to be unfair in a single case says nothing about the CRTC's procedural fairness in all of its proceedings and even if it did, the measure is unreliable as court cases that end in any given year may well have begun in previous years.

Reviewing the limited information set out by the CRTC's annual listings of broadcasting applications is time consuming and, in any event, yields inaccurate results: the CRTC does not post all applications that it receives, does not grant process to an unknown number of applications, and its lists of applications do not include the date that is likely most relevant to applicants – the time between the applicant's filing of an application and the date when the CRTC issues a decision.

The lack of transparency about CRTC processes has at least three consequences. First, the absence of any information about types of issues being raised by applications leaves Parliament blind when it comes to understanding and responding to Canadians' concerns about

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<sup>1</sup> The Canadian Broadcast Standards Council, the Commissioner of Complaints for Telecommunications and television Services and the Advertising Standards Council. The *Broadcasting Act* does not explicitly authorize the CRTC to delegate the handling of the complaints it receives.

broadcasting, telecommunications and the communications system in general. Second, the lack of information about how the CRTC operates and who finally decides which matters are or are not heard may diminish Canadians' trust in the CRTC, especially when they learn that some but not all applicants are granted the opportunity to brief CRTC Commissioners and/or staff about their plans and applications before they actually submit their applications. Third, by not tracking the applications that it decides not to consider the CRTC again leaves both Canadians and Parliament in the dark as to new concerns being raised by such applications.

2. The 2010 *CRTC Rules* represented a positive step for the CRTC as they consolidated its broadcasting and telecommunications procedural regulations into one set of regulations. This consolidation may also have created confusion because the telecommunications and broadcasting statutes use different definitions and empower the CRTC to act in different ways insofar as procedural fairness is concerned.

3. Although the 1991 *Broadcasting Act* says that broadcast programming should be of high standard, enables the CRTC to investigate complaints that it receives and establishes the CRTC as the sole authority in Canada responsible for regulating broadcasting, the CRTC has approved the establishment of several industry-established and -funded organizations\* to receive and deal with complaints about broadcasting and telecommunications issues. The CRTC appears to redirect nearly all the complaints it receives to these organizations. Insofar as broadcast licensing is concerned, the CRTC does not appear in general to consider the complaints addressed by these other organizations when it evaluates broadcasters' performance. In light of Parliament's statements that a single regulatory authority is to regulate and supervise a single broadcasting system, did Parliament intend that its delegate – the CRTC – should in turn delegate its responsibilities to others?

[\* Advertising Standards Canada {ASC}, Canadian Broadcast Standards Council {CBSC} and the Commission for Complaints for Telecom-television Services {CCTS}]

4. The CRTC has not been independently reviewed in terms of its performance since the early 1980s. The results of the research in this paper suggest that the CRTC's approach to its responsibilities is less transparent, timely and fair than a first glance might suggest. The Forum recommends that Parliament review the performance of the CRTC before granting it more authority and more power.

5. A study of all CRTC broadcasting and telecom hearings from 1998 to 2018 found that CRTC Commissioners do not have the same chances of being appointed to the panels that make decisions on behalf of the full Commission, and these chances change depending on the CRTC's Chairperson whose authority includes the power to select the Commissioners who make up hearing panels. These results provide grounds for concerns about the fact and the appearance of impartiality in CRTC decision-making.

## Recommendations

- Recommendation 1            Amend section 15 of the Broadcasting Act to require the CRTC to report to Parliament each year on all submissions it receives, including but not limited to complaints, representations, applications or interventions            88
- Recommendation 2            Amend Broadcasting Act to include the definition of ‘decision’ used in Telecommunications Act            89
- Recommendation 3            Amend section 21 of the 1991 Broadcasting Act to also permit the CRTC to make rules regarding interventions, guidelines and matters of broadcasting policy<sup>90</sup>
- Recommendation 4            Amend section 18(3) of the Broadcasting Act to enable the CRTC to review the performance of bodies that administer complaints about programming and distribution services            92
- Recommendation 5            Review the CRTC’s procedures and practices, as well as its actual performance in meeting its responsibilities under its enabling statutes            92
- Recommendation 6            Amend section 20(1)(a) of the Broadcasting Act to authorize the Chairperson of the Commission to appoint members to panels when panels would otherwise lack quorum or would include members with conflicts of interest.            93

## I. Introduction: amending the *Broadcasting Act* and the CRTC

The introduction by the Minister of Canadian Heritage on 3 November 2020 of changes to the 1991 *Broadcasting Act* may lead to more attention being focussed on the Canadian Radio-television and Telecommunications Commission (CRTC), its regulation and supervision of broadcasting in Canada and its procedures for administering its responsibilities in a transparent and accountable manner.

Bill C-10<sup>1</sup> proposes to expand the CRTC's authority to regulate Canadian and non-Canadian online<sup>2</sup> programming services through orders<sup>3</sup> and to levy administrative monetary penalties (AMPs) when its broadcast regulations and orders are breached.<sup>4</sup> It adds a new Part II.2 with 24 sections detailing the AMPs regime. Yet the Minister's proposals are otherwise silent regarding the CRTC's approach to administering its responsibilities to implement Parliament's policies for Canadian broadcasting and telecommunications, and the approach it should follow if it begins to impose fines and/or to regulate foreign online broadcasting undertakings.

Bill C-10's silence about the CRTC is somewhat surprising, for several reasons. First, the three main statutes that govern the regulation of electronic communications are aging, having been enacted from between 27 to 44 years ago.<sup>5</sup> While C-10 addresses the growth since the late 1990s of CRTC-delivered programming services it does not appear to reflect any other changes, such as the evolution of Canadian law regarding administrative tribunals. The 1991 *Broadcasting Act* requires the CRTC to give reasons only when it suspends or revokes licences,<sup>6</sup> for example, although the Supreme Court of Canada has for the past decade said that administrative tribunals' decisions in general must provide sufficient reasons to enable a reviewing court to "understand why the tribunal made its decision and permit it to determine

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<sup>1</sup> See the House of Commons First Reading version here: <https://parl.ca/DocumentViewer/en/43-2/bill/C-10/first-reading>.

<sup>2</sup> Bill C-10, s. 1(3) redefines broadcasting undertakings to include 'online undertakings', which are then defined in s. 1(2) as undertakings "for the transmission or retransmission of programs over the Internet for reception by the public by means of broadcasting receiving apparatus".

<sup>3</sup> S. 43(1) of Bill C-10 will give the CRTC the discretion to "make orders imposing conditions on the carrying on of broadcasting undertakings that the Commission considers appropriate for the implementation of the broadcasting policy ...."; a November 2015 briefing document by Heritage Canada (*Summary: Amendments to the Broadcasting Act*) appears to refer to such requirements at page 15 as "conditions of service".

<sup>4</sup> Bill C-10, s. 23 adds a new Part II.2 entitled Administrative Monetary Penalties.

<sup>5</sup> The *CRTC Act* was enacted 44 years ago in 1976; the *Broadcasting Act* was enacted 29 years ago in 1991 and the *Telecommunications Act* was enacted 27 years ago in 1993.

<sup>6</sup> *Broadcasting Act*, s. 24(3):

A copy of a decision of the Commission relating to the suspension or revocation of a licence, together with written reasons for the decision, shall, forthwith after the making of the decision, be forwarded by prepaid registered mail to all persons who were heard at or made any oral representations in connection with the hearing held under subsection (1), and a summary of the decision and of the reasons for the decision shall, at the same time, be published in the Canada Gazette and in one or more newspapers of general circulation within any area affected or likely to be affected by the decision ....

whether the conclusion is within the range of acceptable outcomes ....”<sup>7</sup> Should this understanding apply to the CRTC’s decisions to issue, amend or renew broadcast licences, to decisions about changes in broadcast ownership as well as to determinations set out in CRTC policies and guidelines that are treated as decisions in its telecommunications jurisdiction but as something else in broadcasting?

Second, Bill C-10 would explicitly expand the CRTC’s current authority<sup>8</sup> beyond the Canadian broadcasting and telecommunications companies that earn more than \$70 billion in annual revenues<sup>9</sup> to include foreign online undertakings. Yet where Parliament set out a complete framework for licensing in the 1991 *Broadcasting Act* – mandating the requirement to hold broadcasting licences unless exempted from that requirement by making it an offence to broadcast without a licence unless exempted, authorizing the amendment, renewal, suspension and revocation of licences, enabling thC-10 appears to leave development of a similar framework for ‘regulating’ online services by leaving requirements for such services entirely to the discretion CRTC. While the CRTC’s expenditures appear to have almost doubled since 1991 (94.5% increase in real terms) and its staff numbers have increased by a fifth (20.7% increase), does this mean that the CRTC has the capacity to meet this new legislative challenge?

After all, although its role has been addressed several times since its establishment<sup>10</sup> and most recently in January 2020 by the Broadcasting and Telecommunications Legislative Review Panel,<sup>11</sup> the CRTC’s actual exercise of its administrative authority has not been evaluated for

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<sup>7</sup> *Newfoundland and Labrador Nurses’ Union v. Newfoundland and Labrador (Treasury Board)*, [2011] 3 SCR 708, 2011 SCC 62 (CanLII), per Abella J. for the Court, at ¶¶15-16:

[15] In assessing whether the decision is reasonable in light of the outcome and the reasons, courts must show “respect for the decision-making process of adjudicative bodies with regard to both the facts and the law” (*Dunsmuir*, at para. 48). This means that courts should not substitute their own reasons, but they may, if they find it necessary, look to the record for the purpose of assessing the reasonableness of the outcome.

[16] Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion (*Service Employees’ International Union, Local No. 333 v. Nipawin District Staff Nurses Assn.*, [1973 CanLII 191 \(SCC\)](#), [1975] 1 S.C.R. 382, at p. 391). In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.

<sup>8</sup> The CRTC has had the power to regulate foreign broadcasters for several decades, because section 4(2) of the 1991 *Broadcasting Act* granted the CRTC authority over broadcasting undertakings operating in whole or in part in Canada. The CRTC’s ability to exercise this authority is limited by the *Direction to the CRTC (Ineligibility of Non-Canadians)*, SOR/97-192, issued by the Governor in Council (GIC) and prohibiting the CRTC from licensing broadcasting services owned or controlled by non-Canadians.

<sup>9</sup> CRTC, *Communications Monitoring Report 2019*, at 101, Figure 3.1 (Telecommunications and broadcasting revenues (\$ billion)).

<sup>10</sup> Special Senate Committee on Mass Media, *Report* (Ottawa, 1970); Task Force on Broadcasting Policy, *Report*, (Ottawa, 1986) [Caplan-Sauvageau]; House of Commons Standing Committee on Canadian Heritage, *Our Cultural Sovereignty: The Second Century of Canadian Broadcasting*, (Ottawa, 11 June 2003) <http://publications.gc.ca/collections/Collection/CH44-48-2005E.pdf>

<sup>11</sup> Broadcasting and Telecommunications Legislative Review Panel, *Canada’s Communications Future: Time to Act*, (ISED Citizen Services Centre, Ottawa: January 2020), “1. Renewing the Institutional Framework”, at 39-60.

forty years – the last focussed reviews having taken place in the early 1980s:<sup>12</sup> should Parliament expand the responsibilities of this important institution when it knows so little about the CRTC's actual performance in achieving Parliament's policy objectives since its 1991 and 1993 statutes came into force?

Third, Canadian broadcasting and telecommunications are already highly concentrated in terms of ownership, raising concerns that have long been expressed about the CRTC with respect to the 'captured agency' syndrome:<sup>13</sup> should Parliament grant the CRTC new powers and the authority to regulate even larger foreign online programming services in the absence of any research establishing that it demonstrably grants fair process to all who seek its assistance?

**This research note** provides information about the CRTC's current approach to parties asking it to exercise its authority. It focusses on broadcasting applications submitted to the CRTC in 2019. **Part II** begins by setting out some basic elements of procedural fairness in the content of administrative tribunals. It then reviews Parliament's procedural requirements in the CRTC's enabling statutes, the CRTC's 2010 rules for practices and procedures and the impact of those new rules. **Part III** describes the CRTC's approach to evaluating the fairness of its procedures, sets out additional statistics about the CRTC's treatment of the requests it receives and presents new information about the CRTC's approach to non-licensing applications. **Part IV** sets out conclusions and makes recommendations concerning due process of the CRTC.

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As the Panel noted, this chapter explored the CRTC's structure, powers and funding; its responsibilities compared to other government institutions, and public interest funding – but did not evaluate the CRTC's performance of its responsibilities:

In this chapter, we explore three main themes. First, we take an in-depth look at the approach, composition, and enforcement powers of the communications regulator, as well as the creation of a sustainable source of financial support for the Canadian Radio-television and Telecommunications Commission (CRTC or Commission). Second, we examine the appropriate allocation of responsibilities among the various government bodies involved in regulating or overseeing the communications sector, and we recommend changes that are better suited to an era of constant and rapid technological change. Finally, we look at how to encourage greater participation by public interest groups in proceedings under the statutes we are reviewing.

....  
(At 39)

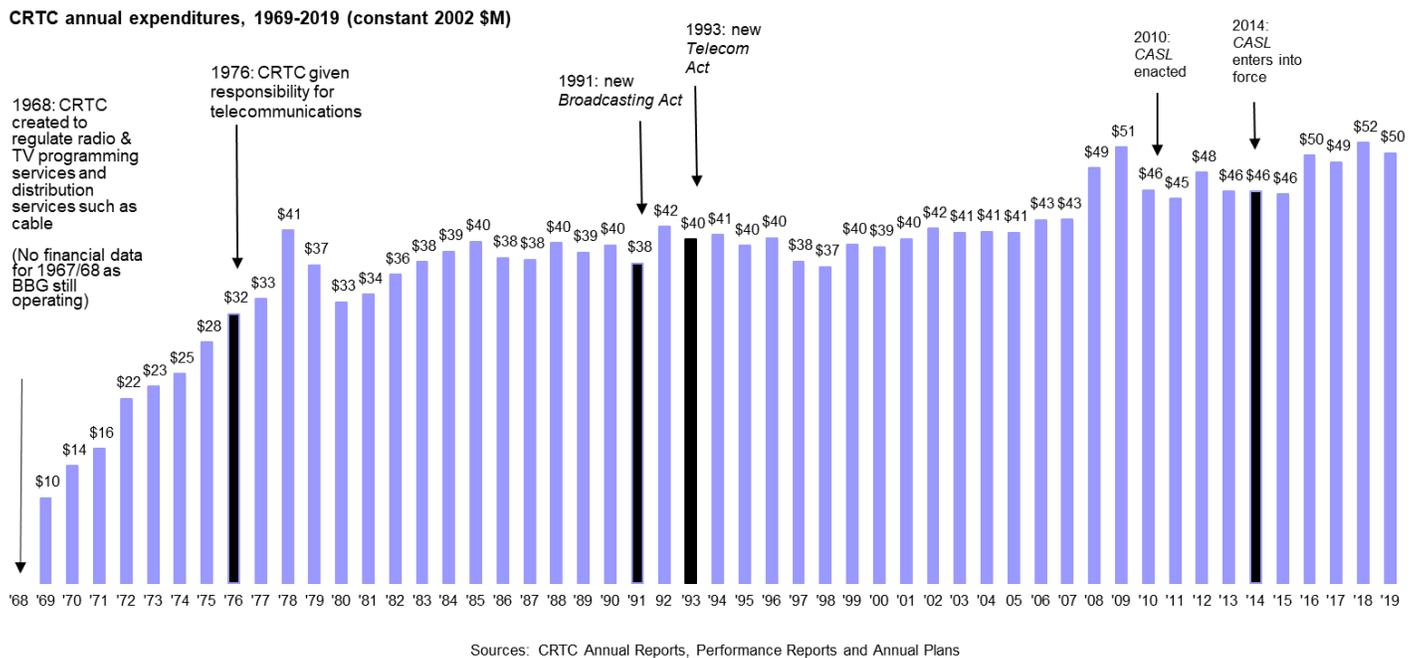
<sup>12</sup> Chris C. Johnston, *The Canadian Radio-television and Telecommunications Commission : a study of administrative procedure in the CRTC*, prepared for the Law Reform Commission of Canada (Ottawa, 1980); John Charles Clifford, *Content Regulation in Private FM Radio and Television Broadcasting: A Background Study about CRTC Sanctions and Compliance Strategy*, (October 1983: Ottawa, Ontario).

<sup>13</sup> See e.g. Bruce Doern, *The Regulatory Process in Canada*, (Toronto, MacMillan: 1978); Liora Salter, "Reconceptualizing the Public in Public Interest Broadcasting" in R. Lorimer and D. Wilson (eds), *Communication Canada: Issues in Broadcasting and New Technologies*, (Toronto: Kagan and Woo, 1988); Marc Raboy, "Influencing Public Policy on Canadian Broadcasting" *Canadian Public Administration* 38:3 (1995), 411-432; Paul AudJey, "Cultural Industries Policy: Objectives, Formulation and Evaluation" *Canadian Journal of communication* 19: 3/4 (1994), 317-352.

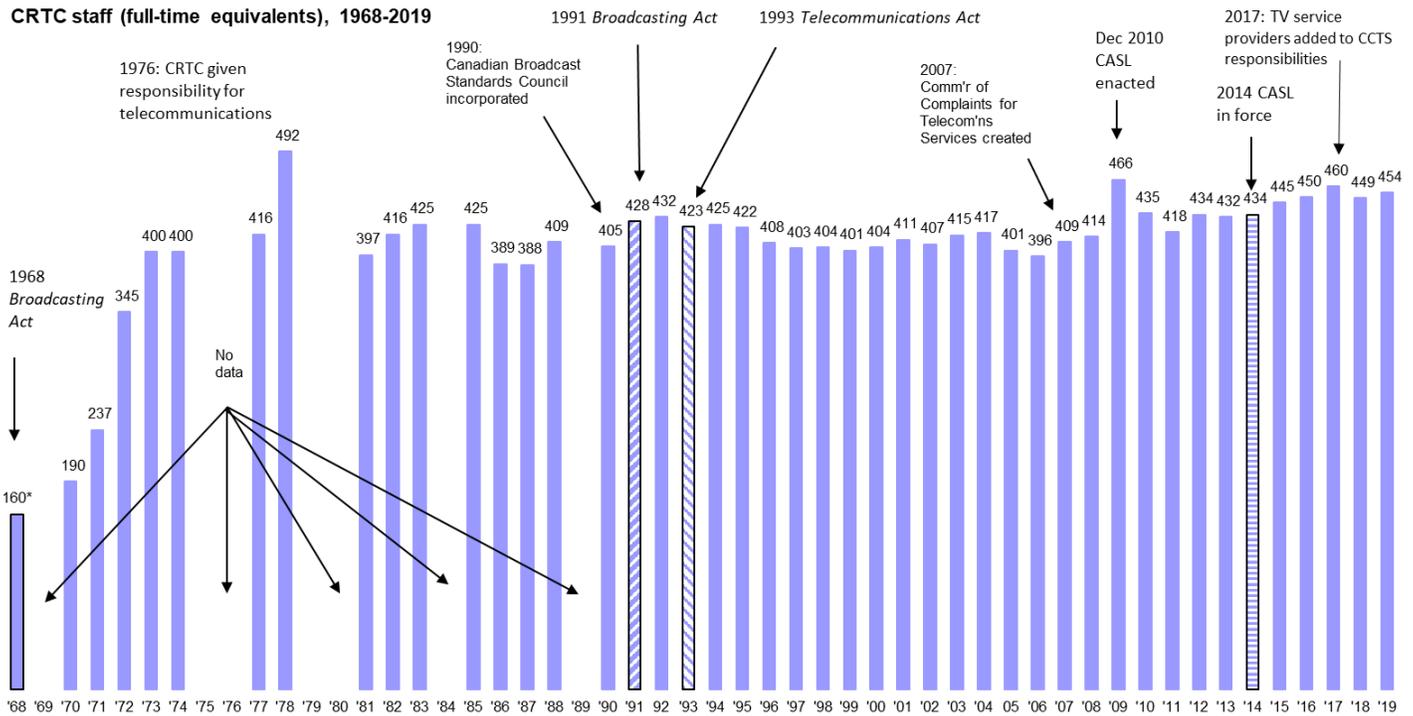
## II. CRTC process and procedural fairness

The CRTC was established in 1968, replacing the Board of Broadcast Governors (itself established in 1958 to replace the CBC's Board of Governors as Canada's broadcast regulatory authority). Figures 1 and 2 (next page) show the Commission's expenditures and staffing levels, respectively, since the late 1960s. Since the 1991 *Broadcasting Act* was enacted the CRTC's expenditures have almost doubled (increasing by 95.4% -) and its staff numbers have increased by a fifth (20.7% increase).

**Figure 1 CRTC annual expenditures in constant (2002) millions of dollars, 1968/69 – 2018/19**



**Figure 2 CRTC staffing levels, 1967/68 – 2018/19**



Source: CRTC Annual Reports, Performance Reports, Part III Estimates and three-year plans  
 \* Staff transferred from other government departments

The CRTC has been described as a quasi-judicial tribunal,<sup>14</sup> a term that has no fixed meaning<sup>15</sup> except to suggest that such tribunals' functions include the adjudication of matters involving

<sup>14</sup> *Bell Canada v. 7265921 Canada Ltd.*, 2018 FCA 174 (CanLII), [2019] 2 FCR 414, at ¶152, per Rennie J.A. (dissenting):

Reasonableness also applies, without differentiation, across a wide range of decisions made by a broad spectrum of decision makers: ad hoc arbitrators, quasi-judicial tribunals, permit and licensing authorities and large specialized standing quasi-judicial tribunals supported by professional staff, such as the CRTC, the National Energy Board and the Canadian Transportation Agency, for example.

The CRTC, meanwhile, describes itself as having “the quasi-judicial powers of a superior Court with respect to the production and examination of evidence and the enforcement of its decisions.” CRTC, *2018-19 Departmental Results Report*, at 7.

<sup>15</sup> In 2003 McLachlin C.J. and Bastarache J. noted for the Court in *Bell Canada v. Canadian Telephone Employees Association*, 2003 SCC 36 (CanLII), [2003] 1 SCR 884 at ¶22 that

To say that tribunals span the divide between the executive and the judicial branches of government is not to imply that there are only two types of tribunals — those that are quasi-judicial and require the full panoply of procedural protections, and those that are quasi-executive and require much less. A tribunal may have a number of different functions, one of which is to conduct fair and impartial hearings in a manner similar to that of the courts, and yet another of which is to see that certain government policies are furthered. In ascertaining the content of the requirements of procedural fairness that bind a particular tribunal, consideration must be given to all of the functions of that tribunal. It is not adequate to characterize a tribunal as “quasi-judicial” on the basis of one of its functions, while treating another aspect of the legislative scheme creating this tribunal — such as the requirement that the tribunal follow interpretive guidelines that are laid down by a specialized body with expertise in that area of law — as though this second aspect of the legislative scheme were external to the true purpose of the tribunal. All aspects of the

competing interests and that participants in its proceedings will be afforded some level of procedural fairness.<sup>16</sup>

‘Procedural fairness’ is an invisible but vital element of the rule of law to which Canada adheres thanks to the 1982 *Constitution*.<sup>17</sup> In 2008, the Supreme Court held that

... procedural fairness has grown to become a central principle of Canadian administrative law. Its overarching purpose is not difficult to discern: administrative decision makers, in the exercise of public powers, should Act fairly in coming to decisions that affect the interests of individuals. In other words, “[t]he observance of fair procedures is central to the notion of the ‘just’ exercise of power” (Brown and Evans, at p. 7-3).

(*Dunsmuir v. New Brunswick*, 2008 SCC 9 (CanLII), [2008] 1 SCR 190, at ¶90)

The ‘just’ exercise of power is also related to political legitimacy, as Professor Hudson Janisch observed in 2012<sup>18</sup> in addressing the idea that the governed believe that those who govern behave in a lawful and legitimate manner. The degree to which decision-making is and is also perceived as lawful and legitimate may be a concern for many democratically-elected governments at a time when authoritarianism and attitudes favoring authoritarianism appear to be expanding around the world.

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tribunal’s structure, as laid out in its enabling statute, must be examined, and an attempt must be made to determine precisely what combination of functions the legislature intended that tribunal to serve, and what procedural protections are appropriate for a body that has these particular functions.

<sup>16</sup> Bell Canada v. Canadian Telephone Employees Association, 2003 SCC 36 (CanLII), [2003] 1 SCR 884, at

¶121:

As this Court noted in *Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, [2001] 2 S.C.R. 781, 2001 SCC 52, administrative tribunals perform a variety of functions, and “may be seen as spanning the constitutional divide between the executive and judicial branches of government” (para. 24). Some administrative tribunals are closer to the executive end of the spectrum: their primary purpose is to develop, or supervise the implementation of, particular government policies. Such tribunals may require little by way of procedural protections. Other tribunals, however, are closer to the judicial end of the spectrum: their primary purpose is to adjudicate disputes through some form of hearing. Tribunals at this end of the spectrum may possess court-like powers and procedures. These powers may bring with them stringent requirements of procedural fairness, including a higher requirement of independence [citation omitted].

<sup>17</sup> The preamble to the *Canadian Charter of Rights and Freedoms* states that “... Canada is founded upon principles that recognize the supremacy of God and the rule of law”: *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11. <https://laws-lois.justice.gc.ca/eng/const/page-15.html>.

<sup>18</sup> Hudson N. Janisch, “The Relationship Between Governments and Independent Regulatory Agencies: Will We Ever Get it Right?”, *Alberta Law Review* 49:4 (2012), at 796. Professor Janisch described the changes made to what was then Bill C-62 and which became the 1993 *Telecommunications Act* by the Senate Committee on Transportation and Communications:

... the Senate Committee rejected the notion of a highly discretionary ministerial licencing regime favoured by officials at the Department of Communications in favour of open and transparent regulation by an independent regulatory agency. I was greatly impressed at the level of commitment shown by industry, business, user groups, and consumer representatives alike to the need for independent regulation. Here was clear support for the concept of legitimacy through open process.

## A. Elements of procedural fairness

Neither the 1991 *Broadcasting Act* nor the 1993 *Telecommunications Act* sets out a complete set of procedures for the CRTC to use when considering parties' requests that it exercise its authority. Despite the foundational importance of due process, moreover, there is at present no single set of 'procedural fairness' requirements in Canadian law.

Procedural requirements instead vary from one case to the next and from one tribunal to another.<sup>19</sup> Although "as a general common law principle, a duty of procedural fairness [lies] on every public authority making an administrative decision which is not of a legislative nature and which affects the rights, privileges or interests of an individual",<sup>20</sup> some aspects of the law on procedural fairness are currently unsettled.<sup>21</sup> Perhaps this is because procedural fairness is just one aspect of "natural justice", described decades ago as "fair play in action".<sup>22</sup>

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<sup>19</sup> The "requirements of procedural fairness .... will depend on the circumstances of each case": *Eddington v. Surrey (District of)*, [1985] B.C.J. No. 1925 at ¶24 (C.A.) (Q.L.) – and under current law will also vary depending on the type of nature of the tribunal involved. In 2003 McLachlin C.J. and Bastarache J. noted for the Court in *Bell Canada v. Canadian Telephone Employees Association*, 2003 SCC 36 (CanLII), [2003] 1 SCR 884 at paras. 21 and 22 that

The requirements of procedural fairness — which include requirements of independence and impartiality — vary for different tribunals. As Gonthier J. wrote in *IWA v. Consolidated-Bathurst Packaging Ltd.*, 1990 CanLII 132 (SCC), [1990] 1 S.C.R. 282, at pp. 323-24: "the rules of natural justice do not have a fixed content irrespective of the nature of the tribunal and of the institutional constraints it faces". Rather, their content varies. ...

To say that tribunals span the divide between the executive and the judicial branches of government is not to imply that there are only two types of tribunals — those that are quasi-judicial and require the full panoply of procedural protections, and those that are quasi-executive and require much less. A tribunal may have a number of different functions, one of which is to conduct fair and impartial hearings in a manner similar to that of the courts, and yet another of which is to see that certain government policies are furthered. In ascertaining the content of the requirements of procedural fairness that bind a particular tribunal, consideration must be given to all of the functions of that tribunal. It is not adequate to characterize a tribunal as "quasi-judicial" on the basis of one of its functions, while treating another aspect of the legislative scheme creating this tribunal — such as the requirement that the tribunal follow interpretive guidelines that are laid down by a specialized body with expertise in that area of law — as though this second aspect of the legislative scheme were external to the true purpose of the tribunal. All aspects of the tribunal's structure, as laid out in its enabling statute, must be examined, and an attempt must be made to determine precisely what combination of functions the legislature intended that tribunal to serve, and what procedural protections are appropriate for a body that has these particular functions.

[text's original underlining omitted]

<sup>20</sup> *Cardinal v. Director of Kent Institution*, 1985 CanLII 23 (SCC), [1985] 2 SCR 643, per Le Dain J., at ¶14, <<http://canlii.ca/t/1ftwk>>, retrieved on 2020-10-27. Mr. Justice Le Dain went on to note at ¶15 that the "question, of course, is what the duty of procedural fairness may reasonably require of an authority in the way of specific procedural rights in a particular legislative and administrative context and what should be considered to be a breach of fairness in particular circumstances."

<sup>21</sup> "The standard of review for procedural fairness issues is currently in dispute in this Court ... and the Supreme Court has not given any guidance on this in its recent decision in [*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, 441 D.L.R. (4th)]." *CMRRA-SODRAC Inc. v. Apple Canada Inc.*, 2020 FCA 101, per Stratas J.A. for the Court (CanLII), <http://canlii.ca/t/j82gf>, at ¶15.

<sup>22</sup> The case of *Ridge v Baldwin* [1964] AC 40 was heard in the United Kingdom by the House of Lords and dealt with an employment law matter related to individuals' rights to be aware of the case they must meet and the

One way of thinking about procedural fairness from the perspective of ‘fair play in action’ is to consider how individuals can apply to responsible institutions to have their needs and concerns addressed. For instance, parties may submit matters to the attention of Canada’s Federal Courts by bringing ‘applications’ or ‘actions’, specific types of proceedings described by the *Federal Court Rules*.<sup>23</sup> Applications consist of requests for judicial review, proceedings brought by application under specific statutes as well as appeals;<sup>24</sup> and actions that are proceedings but “that are not applications or appeals”.<sup>25</sup> Other government institutions similarly publish and explain their procedures.

The website of the department responsible for immigration to Canada, for example, currently sets out seven ‘primary elements of procedural fairness’ which are to be followed “throughout the decision-making process” involving applications to immigrate to Canada.<sup>26</sup> These relate to timing, impartiality, the manner in which applicants are heard and the provision of reasons to support determinations:

- Primary elements of procedural fairness
- Processing without undue delay
- 

right to be heard. Lord Morris of Borth-y-Gest described the principles of natural justice as “only fair play in action”.

<sup>23</sup> *Federal Court Rules*, Part 5, “Applications”, s. 61:

- (1) Subject to subsection (4), a proceeding referred to in rule 169 shall be brought as an action.
- (2) Subject to subsection (4), a proceeding referred to in rule 300 shall be brought as an application.
- (3) A proceeding referred to in rule 335 shall be brought as an appeal.
- (4) Where by or under an Act of Parliament a person is given the option of bringing a proceeding referred to in rule 169 or 300 as either an action or an application, the person may commence the proceeding as an action or as an application.

<sup>24</sup> S. 300:

This Part applies to

- applications for judicial review of administrative action, including applications under section 18.1 or 28 of the Act, unless the Court directs under subsection 18.4(2) of the Act that the application be treated and proceeded with as an action;
- proceedings required or permitted by or under an Act of Parliament to be brought by application, motion, originating notice of motion, originating summons or petition or to be determined in a summary way, other than applications under subsection 33(1) of the Marine Liability Act;
- appeals under subsection 14(5) of the Citizenship Act;
- appeals under section 56 of the Trademarks Act;
- references from a tribunal under rule 320;
- requests under the Commercial Arbitration Code brought pursuant to subsection 324(1);
- proceedings transferred to the Court under subsection 3(3) or 5(3) of the Divorce Act; and
- applications for registration, recognition or enforcement of a foreign judgment brought under rules 327 to 334

<sup>25</sup> *Federal Court Rules*, s. 169:

This Part applies to all proceedings that are not applications or appeals, including

- references under section 18 of the Citizenship Act;
- applications under subsection 33(1) of the Marine Liability Act; and
- any other proceedings required or permitted by or under an Act of Parliament to be brought as an action.

<sup>26</sup> Immigration, Refugees and Citizenship Canada, “Procedural fairness”, <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/service-delivery/procedural-fairness.html> (accessed 27 October 2020).

- The right to fair and impartial decision-making
- The applicant’s right to be heard
- Whoever hears must decide
- Legitimate expectation
- Decisions must be based on the [enabling statute and accompanying regulations] [and]
- The right to reasons

....

When applied such procedural requirements help ensure that, regardless of outcome, applications are assessed rather than ignored, that the assessment is made fairly and without bias, that applicants are informed of decision-makers’ concerns and that applicants have a meaningful – as opposed to meaningless – opportunity to respond to concerns about their applications.<sup>27</sup>

### B. Procedural requirements in the CRTC’s enabling statutes

The current procedural requirements set out by Parliament for the CRTC in broadcasting and telecommunications address publication, comment, hearings and the content of decisions. The CRTC must publish any regulations it proposes and the applications it receives and must give interested parties opportunities to comment on these matters. In certain cases, it must hold public hearings and must provide reasons: see Table 1. For example, the CRTC must provide reasons when it suspends or revokes licences, suggesting that it need not necessarily provide reasons in other matters.

**Table 1 Parliament’s statutory requirements for CRTC procedures**

Statutory requirements*	1991 <i>Broadcasting Act</i>	1993 <i>Telecommunications Act</i>
Publish regulations for comment	Regulations proposed under CRTC. 10 (Regulations) and 11 (Fees) must be published in <i>Canada Gazette</i> and affected and interested parties to have reasonable opportunity to make representations (10(3), 11(5))	Regulations proposed under CRTC. 67 (Regulations) and 68 (fees and debts to the Crown) must be published in the <i>Canada Gazette</i> at least 60 days before they become effective, and parties must be given a reasonable opportunity to make representations (69(1)) CRTC to publish any Do-Not-Call-List regulations re Fees (41.21(3))
Publish applications, decisions and notice of public hearings	In <i>Canada Gazette</i> and newspapers in areas affected for any - application to issue, amend or renew licences (19(a))	CRTC to set form and manner of publishing Canadian carriers’ tariffs or making them available for public inspection (25(3))

<sup>27</sup>

*ibid.*

Statutory requirements*	<b>1991 <i>Broadcasting Act</i></b>	<b>1993 <i>Telecommunications Act</i></b>
	- decision to issue, amend or renew licences (19(b)), or to suspend or revoke licences (19(3), 24(3)) and any  - public hearing it must hold (19(c))	
Must hold public hearings	To issue, suspend, revoke licences 18(1)(a),(b) To set objectives for licensee performance including Canadian programming 18(1)(c)  To make a mandatory order (CRTC 12(2), 18(1)(d))	To exempt any class of Canadian carriers from the Act (s. 9(1))
Provide reasons	In decisions to suspend or revoke licences (CRTC. 19(3), 24(3))	Provide written reasons for not approving or disallowing a tariff within 45 days of its being filed (s. 26(c)) In decisions to suspend or revoke international telecommunications service licences (s. 16.4(1))

\* The statutes may also impose requirements on the Minister(s) or other parties

Reasons each broadcasting undertaking shall contribute to the implementation of the objectives of the broadcasting policy set out in this subsection in a manner that is appropriate in consideration of the nature of the services provided by the undertaking;

The statutes also set out mechanisms for parties to challenge some CRTC outcomes. In broadcasting, parties may apply to the Federal Court of Appeal or petition the Governor in Council concerning decisions to issue, amend or renew licences. In telecommunications, parties may apply to the CRTC itself, the Federal Court of Appeal and the Governor in Council regarding any telecommunications decision. Appellate mechanisms for other outcomes – policies and guidelines, for instance – are not clearly identified: Table 2.

**Table 2 CRTC outcomes with and without appellate mechanisms.**

<b>Mechanisms for appealing CRTC ‘determinations’</b>	
<b>Broadcasting</b>	
Decisions – if to issue, amend or renew licences (9(1))	28(1) Cabinet (GIC) may set aside or have CRTC reconsider decisions to issue, amend or renew licences 31(2) Federal Court of Appeal may hear appeals of CRTC decisions
Orders (12(2))	12(2): parties may apply to CRTC to reconsider any decision or finding of the hearing panel 31(2) Federal Court of Appeal may hear appeals of CRTC orders
Decisions to suspend (9(1)(e)) Decisions to revoke (9(1)(e)) Decisions to vary (12(3)) Decisions to rescind (12(3)) Guidelines (s. 6) Statements (s. 6) Information bulletins Regulatory policies Expectations* Encouragements* Commitments*	None
<b>Telecommunications</b>	
Decisions	62 CRTC may review, vary or rescind any decision made by it, or may re-hear any matter before rendering a decision 64(1) Federal Court of Appeal may hear appeals of CRTC decisions 12(1) Cabinet may vary, rescind or refer decisions of the CRTC
Guidelines (58) Statements (58)	None

\* See e.g. English-language AM radio station in Montréal, [Broadcasting Decision CRTC 2012-621](#) (Ottawa, ), Appendix to Broadcasting Decision CRTC 2012-621, “Terms, conditions of licence, commitment, expectation and encouragement for the English-language commercial AM radio programming undertaking in Montréal, Quebec”:

Conditions of licence

1. The licensee shall adhere to the conditions set out in Conditions of licence for commercial AM and FM radio stations, Broadcasting Regulatory Policy CRTC 2009-62, 11 February 2009.

Commitment

The licensee commits to ensuring that all of its programming (100%) broadcast during each broadcast week is local programming.

Expectation

The Commission expects the licensee to ensure that its open-line programs meet the Commission’s policy regarding open-line programming at all times.

Encouragement

Employment equity

In accordance with Implementation of an employment equity policy, Public Notice CRTC 1992-59, 1 September 1992, the Commission encourages the licensee to consider employment equity issues in its hiring practices and in all other aspects of its management of human resources.

As for asking the CRTC to exercise its authority, the *Broadcasting Act* and the *Telecommunications Act* set out four routes or mechanisms available to interested parties: applications, representations, interventions and complaints: Table 3. Neither statute defines

these terms<sup>28</sup> nor uses them consistently: complaints are mentioned only in the *Broadcasting Act*, for instance, in the context of the CRTC's broadcasting authority to set rules and also to investigate matters. While this investigatory authority exists in telecommunications, it involves applications. As for interventions, submitted to the CRTC in nearly every proceeding, these are not mentioned in the *Telecommunications Act*, and in the *Broadcasting Act* are mentioned just once, in connection with Cabinet's power to issue directions to the CRTC.<sup>29</sup>

**Table 3** References to applications, interventions, representations and complaints in the broadcasting and telecommunications statutes

Broadcasting	Telecommunications
<b>Applications to the CRTC mentioned 12 times in relation to</b> Issue, amend, renew, suspend or revoke broadcasting licences sections 9, 19, 21, 24, 26	Issue, amend, renew, suspend or revoke international telecommunications service licences sections 16, 18 Grant full or partial relief section 60 Orders to carriers/distributors about transmission lines/routes section 44
Reconsider decisions or findings when a panel issues an order after any inquiry section 12	Re-hear any matter before deciding section 62 Review, rescind or vary decisions section 62 Provide advice section 59 <i>Inquire into &amp; make determinations about anything prohibited, required or permitted under Part II or the Accessible Canada Act</i> section 48
<b>Interventions for the CRTC mentioned once in relation to</b> Licensing matters section 7	
<b>Representations to the CRTC mentioned 17 times in relation to CRTC's regulations, licensing,</b> Proposed regulations sections 10, 11 <i>Request that CRTC hold public hearing, report, issue decision and give any approval</i> section 18 Licence suspension or revocation section 24	Proposed regulations section 69  International telecommunications service licences before these are suspend or revoked section 16.4 Decisions later appealed to Cabinet section 12
Decisions after public hearing ordered by Cabinet after CRTC made licensing decision section 29	Notices of violation and penalties sections 72.005, 72.007, 72.009, 72.08

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<sup>28</sup> The online version of *Black's Law Dictionary* does not define complaint but does define application, intervention and representation: it links applications to the making of requests; interventions are understood in terms of joining parties to a law suit between other persons, while representations have to do with the making or allegation of facts in the context of contract formation (see **Error! Reference source not found.**).

<sup>29</sup> S. 7 (Policy directions):

(1) Subject to subsection (2) and section 8, the Governor in Council may, by order, issue to the Commission directions of general application on broad policy matters with respect to

(a) any of the objectives of the broadcasting policy set out in subsection 3(1); or

(b) any of the objectives of the regulatory policy set out in subsection 5(2).

...

(4) No order made under subsection (1) may apply with respect to a licensing matter pending before the Commission where the period for the filing of interventions in the matter has expired unless that period expired more than one year before the coming into force of the order.

### Complaints mentioned twice

*Request that CRTC hold public hearing, report, issue decision and give any approval in connection with a matter within its jurisdiction* <sup>section 18</sup>

CRTC may make rules about applications, representations and complaints <sup>section 21</sup>

The two statutes provide few details about the procedures the CRTC should use for considering applications, and no details at all about the procedures it should use for complaints, representations and interventions. It delegates responsibility for delineating such procedures to the CRTC.<sup>30</sup>

### C. CRTC's 2010 procedural regulations

The CRTC's current regulations for its procedures in broadcasting and telecommunications have evolved from the 1970s to the early 2000s (see **Error! Reference source not found.**). In 2009 the CRTC completely rewrote its procedural rules to meet several objectives focussed on harmonization and efficiency,<sup>31</sup> and it enacted these at the end of 2010.<sup>32</sup> These *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*<sup>33</sup> (CRTC Rules) apply to most CRTC proceedings.<sup>34</sup>

The Commission explained that its new procedural regulations – constituting “significant change both for itself and for participants in Commission proceedings” – would meet the needs

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<sup>30</sup> Section 21(a) of the *Broadcasting Act* permits the CRTC to make rules “respecting the procedure for making applications for licences, or for the amendment, renewal, suspension or revocation thereof, and for making representations and complaints to the Commission”; section 67(1)(b) of the *Telecommunications Act* permits the CRTC to establish “rules respecting its practice and procedure”.

<sup>31</sup> *Call for comments on new draft regulations concerning CRTC Rules of Practice and Procedure*, Broadcasting and Telecom Notice of Consultation CRTC 2009-602 (Ottawa, 30 September 2009), <https://crtc.gc.ca/eng/archive/2009/2009-602.htm>; *Converged Rules of Procedure*, Broadcasting and Telecom Notice of Consultation CRTC 2010-509 (Ottawa, 23 July 2010), <https://crtc.gc.ca/eng/archive/2010/2010-509.htm>, at paras. 1-2:

1. To harmonize its broadcasting and telecommunications rules in light of increasing convergence between the two sectors
2. To eliminate repetition and outdated rules
3. To establish uniform rules for CRTC proceedings as much as possible
4. To “modernize and simplify the rules ...”
  - a. “by making electronic means the preferred method of filing applications”
  - b. “by putting more emphasis on the Commission’s website as the interface between the Commission and parties”
  - c. “by removing unnecessary forms and schedules” and by introducing “streamlined processes particularly as they relate to licence applications in broadcasting”.

<sup>32</sup> *Implementation of new Rules of Practice and Procedure*, Broadcasting and Telecom Regulatory Policy CRTC 2010-958 (Ottawa, 23 December 2010), <https://crtc.gc.ca/eng/archive/2010/2010-958.htm>. The new Rules entered into force on 1 April 2011: *ibid.*, at para. 2.

<sup>33</sup> SOR/2010-277, <https://laws.justice.gc.ca/eng/regulations/SOR-2010-277/index.html>.

<sup>34</sup> Regulatory Policy 2010-958, at para. 8.

of convergence, competition and rapid process.<sup>35</sup> The CRTC also pointed to the importance of ensuring “regulatory predictability and certainty”, explaining that it had included “deadlines for the filing of review and vary applications” for that reason.<sup>36</sup> It added that it considered it “important that the Rules of Procedure be applied on a consistent basis across its proceeding to minimize the length and confusion of the transition” from its then-current rules to the 2010 *Rules*.<sup>37</sup>

The current *CRTC Rules* generally<sup>38</sup> address complaints, interventions and applications<sup>39</sup> but not representations. As shown in Table 4, Part 1 of the *Rules* sets out general rules that apply to all proceedings, describes the requirements for interventions and applications, and governs complaints filed by public interest and industry associations as well as applications filed by telecommunications service providers and broadcasters for assistance with dispute resolution.

Part 2 of the *Rules* sets out the procedures for consumers to make complaints about the services they receive from telecommunications or broadcasting companies, and for alternative dispute resolution procedures available to licensees and companies.

Part 3 of the *Rules* describes the procedures for broadcasters to apply for new licences, licence renewals or changes in ownership, while Part 4 sets out rules governing telecom matters with respect to ownership, tariffs, costs in telecom proceedings and interrogatories.

**Table 4 The four parts of the CRTC’s 2010 Rules of Practice and Procedure**

Parts (and their regulatory sections)	Complaints	Applications	Interventions	Representations
Part 1: general rules applicable to all CRTC proceedings, and for consumer advocacy groups/industry associations to file complaints on behalf of others through a part 1 proceeding				
ss. 4-44 Broadcasting and Telecommunications	8: complaints must comply with Rules 9. CRTC must not dismiss complaints due to defect in form	8: applications must comply with Rules 9. CRTC must not dismiss applications due to defect in form	21(2): CRTC must set out deadline for intervening in notices of consultation	Not mentioned

<sup>35</sup> CRTC, *Departmental Results Report for the period ending March 31, 2011*, at 10. The Commission said that its new procedures strengthen its ... ability to meet the needs of a converging and increasingly competitive industry. As part of the change, the CRTC redesigned its online intervention form for certain applications to ensure that information submitted by applicants is complete. Such a change will require less follow up by staff and represents a significant benefit to applicants whose requests will be processed more quickly.

<sup>36</sup> *Broadcasting applications that do not require a public process*, Broadcasting Information Bulletin CRTC 2010-960 (Ottawa, 23 December 2010), <https://crtc.gc.ca/eng/archive/2010/2010-960.htm>, at para. 6.

<sup>37</sup> *Ibid.*, at para. 18.

<sup>38</sup> Information Bulletin 2010-960, at para. 3: “This information bulletin deals only with applications that do not require a public process and that the Commission will deal with using the administrative approach. These applications are exempt from the provisions of the Rules of Procedure by virtue of section 2, with the exception of certain rules for confidentiality ....”

<sup>39</sup> See **Error! Reference source not found.**

Parts (and their regulatory sections)	Complaints	Applications	Interventions	Representations
		22(2) must use CRTC form or meet stated application requirements 23 CRTC must post applications that meet section 22 requirements 24 applications cannot be amended or supplemented after posted on CRTC's website 25 answers to applications	26: intervention deadline, content 27: reply to interventions	
Part 2: ss. 45 - 52 Complaints and dispute resolution	45: Form and content of complaints 46: CRTC may require complainant to file complaint as application or intervention 47: if CRTC considers complaint it must send to subject of complaint 48: subject of complaint may respond 50 CRTC may place copy of complaint against licensee and licensee's response on licensee's file for consideration at licence renewal 51: complaint seeking emergency relief in telecom can be made verbally	52: application for ADR must follow Information Bulletin 2013-637		
Part 3: ss. 53-57 Certain broadcasting applications		53: CRTC must post notice of consultation re issuance of broadcast licence or change in its ownership/control 56: if CRTC initiates s. 12 broadcast proceeding to inquire into, hear & determine matter, licensee is an applicant in respect of ss. 27 [Trade agreements], 35 [Part III definitions of CBC] & 40 [CBC accountability to Parliament]	54: competing applications for licence may be considered intervention about other applications	
Part 4: ss. 58-76 Certain Telecommunications Applications		58: Canadian ownership & control of telecommunications common carriers 60-64: interim costs application 65-70: final costs applications 71: appl'n to review, rescind or vary CRTC decision under s. 62 of T'ns Act		

### III. Evaluating procedural fairness at the CRTC

The CRTC publishes information related to its processing of applications in annual reports and on its website.

#### A. Annual reports by the CRTC

The CRTC provided some information about its work until the early 1990s. For instance, according to its 1986/87 *Annual Report* the CRTC

- Heard 301 broadcasting applications in public hearings<sup>40</sup>
- Heard 10,143 interveners at broadcasting hearings<sup>41</sup>
- Considered 3,079 broadcasting applications (to issue, amend, renew radio, television and distribution undertakings or to change their ownership)<sup>42</sup>
- “received over 14,000 calls from the public concerning both broadcasting and telecommunications”<sup>43</sup> and
- Answered “1,940 verbal and 3,038 written complaints and requests for inquiries [sic] about telecommunications”<sup>44</sup>

The 1987 *Annual Report* also offered a detailed breakdown of the 3,079 broadcasting applications it processed in 1986/87: Figure 3.

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<sup>40</sup> CRTC, *Annual Report 1986-1987*, at 84.

<sup>41</sup> *Ibid.*, at 84.

<sup>42</sup> *Ibid.*, at 72.

<sup>43</sup> *Ibid.*, at 38. The Commission added, “Telephone complaints are useful as indicators of the level of public satisfaction with the quality of service they receive. However, for the Commission to address a concern formally, the complaint must be in writing.”

<sup>44</sup> *Ibid.*, at 38. Insofar as broadcasting complaints were concerned, the CRTC wrote, Comments or complaints may be sent by letter to anyone [sic] of the CRTC’s five offices. There is a valid reason for requiring written complaints. It is a way of getting an accurate statement of the complaint and the signature of the person making it. The organization against which the complaint is directed has a right to know the specific nature of the complaint and the identity of the person making it, as well as the right to reply.”  
*Ibid.*, at 38.

**Figure 3 CRTC statistics about applications from its 1987 Annual Report**

Appendix 1

# Statistical tables

**Table 1 Applications processed**

Number of applications approved or denied, by type, category, and region, as of 31 March 1987

Type and category	Region															Total		
	Pacific			Prairies			Ontario			Quebec			Atlantic			a	d	t
	a	d	t	a	d	t	a	d	t	a	d	t	a	d	t			
<b>AM</b>																		
New	2	—	2	1	—	1	2	—	2	2	1	3	2	1	3	9	2	11
Amendments	31	—	31	8	—	8	24	1	25	24	—	24	6	—	6	93	1	94
Renewals	1	—	1	—	—	—	32	—	32	13	—	13	31	—	31	77	—	77
<b>Total</b>	<b>34</b>	<b>—</b>	<b>34</b>	<b>9</b>	<b>—</b>	<b>9</b>	<b>58</b>	<b>1</b>	<b>59</b>	<b>39</b>	<b>1</b>	<b>40</b>	<b>39</b>	<b>1</b>	<b>40</b>	<b>179</b>	<b>3</b>	<b>182</b>
<b>FM</b>																		
New	28	1	29	6	—	6	14	7	21	14	27	41	8	3	11	70	38	108
Amendments	15	—	15	10	—	10	20	1	21	18	1	19	16	—	16	79	2	81
Renewals	4	—	4	7	—	7	24	—	24	37	1	38	11	—	11	83	1	84
<b>Total</b>	<b>47</b>	<b>1</b>	<b>48</b>	<b>23</b>	<b>—</b>	<b>23</b>	<b>58</b>	<b>8</b>	<b>66</b>	<b>69</b>	<b>29</b>	<b>98</b>	<b>35</b>	<b>3</b>	<b>38</b>	<b>232</b>	<b>41</b>	<b>273</b>
<b>TV</b>																		
New	16	—	16	5	1	6	31	5	36	4	—	4	5	—	5	61	6	67
Amendments	23	—	23	7	—	7	10	—	10	11	—	11	5	2	7	56	2	58
Renewals	—	—	—	1	—	1	5	—	5	12	—	12	2	—	2	20	—	20
<b>Total</b>	<b>39</b>	<b>—</b>	<b>39</b>	<b>13</b>	<b>1</b>	<b>14</b>	<b>46</b>	<b>5</b>	<b>51</b>	<b>27</b>	<b>—</b>	<b>27</b>	<b>12</b>	<b>2</b>	<b>14</b>	<b>137</b>	<b>8</b>	<b>145</b>
<b>Off-air Cancom retransmitters</b>																		
Unscrambled signals																		
New	6	—	6	4	—	4	—	—	—	—	—	—	—	—	—	10	—	10
Amendments	—	—	—	1	—	1	—	—	—	1	—	1	—	—	—	2	—	2
Renewals	—	—	—	1	—	1	—	—	—	1	—	1	—	—	—	2	—	2
<b>Total</b>	<b>6</b>	<b>—</b>	<b>6</b>	<b>6</b>	<b>—</b>	<b>6</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>2</b>	<b>—</b>	<b>2</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>14</b>	<b>—</b>	<b>14</b>
Scrambled signals																		
New	1	—	1	1	—	1	—	—	—	—	—	—	14	—	14	16	—	16
Amendments	4	—	4	21	—	21	—	—	—	—	—	—	14	—	14	39	—	39
<b>Total</b>	<b>5</b>	<b>—</b>	<b>5</b>	<b>22</b>	<b>—</b>	<b>22</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>28</b>	<b>—</b>	<b>28</b>	<b>55</b>	<b>—</b>	<b>55</b>
<b>CATV</b>																		
New	8	—	8	28	4	32	28	1	29	66	4	70	31	6	37	161	15	176
Amendments	159	15	174	352	5	357	392	8	400	269	2	271	275	5	280	1,447	35	1,482
Renewals	7	—	7	1	—	1	22	—	22	28	—	28	32	—	32	90	—	90
Approvals*	28	2	30	47	23	70	113	—	113	95	1	96	37	3	40	320	29	349
<b>Total</b>	<b>202</b>	<b>17</b>	<b>219</b>	<b>428</b>	<b>32</b>	<b>460</b>	<b>555</b>	<b>9</b>	<b>564</b>	<b>458</b>	<b>7</b>	<b>465</b>	<b>375</b>	<b>14</b>	<b>389</b>	<b>2,018</b>	<b>79</b>	<b>2,097</b>
<b>Securities</b>																		
Minor	14	—	14	11	—	11	15	—	15	12	—	12	9	—	9	61	—	61
Assets	4	2	6	14	—	14	20	1	21	13	—	13	7	—	7	58	3	61
Control	24	—	24	31	—	31	18	—	18	18	2	20	17	—	17	108	2	110
<b>Total</b>	<b>42</b>	<b>2</b>	<b>44</b>	<b>56</b>	<b>—</b>	<b>56</b>	<b>53</b>	<b>1</b>	<b>54</b>	<b>43</b>	<b>2</b>	<b>45</b>	<b>33</b>	<b>—</b>	<b>33</b>	<b>227</b>	<b>5</b>	<b>232</b>
<b>Network</b>																		
New	4	—	4	5	—	5	9	2	11	4	—	4	—	—	—	22	2	24
Amendments	3	1	4	4	—	4	7	—	7	8	—	8	11	1	12	33	2	35
Renewals	1	—	1	1	—	1	14	—	14	3	—	3	3	—	3	22	—	22
<b>Total</b>	<b>8</b>	<b>1</b>	<b>9</b>	<b>10</b>	<b>—</b>	<b>10</b>	<b>30</b>	<b>2</b>	<b>32</b>	<b>15</b>	<b>—</b>	<b>15</b>	<b>14</b>	<b>1</b>	<b>15</b>	<b>77</b>	<b>4</b>	<b>81</b>
<b>Total</b>	<b>383</b>	<b>21</b>	<b>404</b>	<b>567</b>	<b>33</b>	<b>600</b>	<b>800</b>	<b>26</b>	<b>826</b>	<b>653</b>	<b>39</b>	<b>692</b>	<b>536</b>	<b>21</b>	<b>557</b>	<b>2,939</b>	<b>140</b>	<b>3,079</b>

\*Approvals issued by the Commission in accordance with the new Cable Television Regulations announced in Public Notice 86-182 of 1 August 1986.

a: approved; d: denied; t: total of a + d

Source: CRTC Secretariat

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The CRTC has not published this type of information since 1993.<sup>45</sup> In 2000, it published the first of eight annual *Broadcast Policy Monitoring Reports*<sup>46</sup> and in 2001, the first of seven annual reports “addressing the Status of Competition in Canadian Telecommunications Markets and the Deployment and Accessibility of Advanced Telecommunications Infrastructure and Services.”<sup>47</sup> In 2008, the CRTC combined the two reports and published its first annual *Communications Monitoring Report*. The CRTC’s 2018/19 *Monitoring Report* as well as this year’s 2019/20 *Report* did not include any information about complaints, interventions, applications or representations: **Error! Reference source not found..**

We looked for statistics about requests received by the CRTC in its monitoring reports and its *Departmental Results Reports* for 2018/19 and 2019/20. They did not provide statistics about the numbers of complaints, representations, interventions or applications submitted to the CRTC, nor did they provide any information about due process or procedural fairness in connection with these types of requests that the CRTC exercise its authority.

## 1. Complaints

The CRTC’s 2019 *Departmental Results Report* refers to complaints, but only in the context of mentioning “the increasing number of complaints about Internet services”. The CRTC’s *Communications Monitoring Reports* for 2018/19 and 2019/20 did not provide any statistical information (or references) to ‘complaints’ it received in 2019 or any other year.

It is unclear why the CRTC’s current and previous *Communications Monitoring Reports* provide no information about the complaints it receives about broadcasting and telecommunications, as it published this information from 2008 to 2018: Table 5. An example of the information provided by the CRTC is set out in **Error! Reference source not found..**

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<sup>45</sup> The *Broadcasting Act* does not require the Commission to submit an annual report to the Minister or to Parliament; the *Telecommunications Act* requires the CRTC to submit an annual report on the operation of the national do not call list (s. 41.6(1)); the *CRTC Act* requires the Commission to submit an annual report:

13 (1) The Commission shall, within three months after the end of each fiscal year, submit to the Minister a report, in such form as the Minister may direct, on the activities of the Commission for that fiscal year, and the Minister shall cause a copy of the report to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the Minister receives it.

(2) The report must include information about the following in respect of the fiscal year, including their number:

(a) inquiries conducted under subsection 12(1) of the *Broadcasting Act* in relation to the identification, prevention and removal of barriers;

(b) inquiries conducted under that subsection in relation to sections 42 to 44 of the *Accessible Canada Act*;

(c) orders made under subsection 12(2) of the *Broadcasting Act* in relation to the identification, prevention and removal of barriers; and

(d) orders made under that subsection in relation to sections 42 to 44 of the *Accessible Canada Act*.

<sup>46</sup> CRTC, *Broadcasting Policy Monitoring Report 2000*, (Ottawa, November, 2000).

<sup>47</sup> CRTC, *Status of Competition in Canadian Telecommunications Markets Deployment/Accessibility of Advanced Telecommunications Infrastructure and Services*, Report to the Governor in Council (Ottawa, September, 2001).

**Table 5 CRTC Communications Monitoring Reports and complaints**

Year	Dissatisfaction (complaints): number of tables, charts and infographics			
	Broadcasting	Telecom	Communications	Total
2008	4			4
2009	4			4
2010	4			4
2011	4			4
2012	4	1		5
2013	7	2		9
2014	10	2		12
2015	9	2	1	12
2016	9	2	1	12
2017	9	3	1	13
2018	9	3	1	13
2019	0	0	0	0
2020	0	0	0	0
Total	73	15	4	92

The Forum notes that the CRTC’s 2017/18 *Report* stated that more than 20,000 complaints were made about broadcasting and telecom matters. The CRTC apparently did not consider any of these complaints, but redirected the 684 complaints it said it received to industry organizations whose establishment it approved: **Error! Reference source not found.**

As the CRTC’s 2018/19 and 2019/20 *Communications Monitoring Report* offered no information about complaints, we searched for CRTC decisions that addressed complaints it received about the matters within its jurisdiction. The CRTC’s search engine identified more than 3,600 English-language decisions that used the term ‘complaint’: “[a]bout 1,260 results” for ‘complaint’ involving broadcasting decisions for the years from 2003 to 2020,<sup>48</sup> and “about 2,345 results for ‘complaint’” involving telecommunications decisions for the years from 1982 to 2020. We then limited the results to decisions made solely in 2019.

Of 246 CRTC decisions issued in 2019 29 used the term, “complaints”. Of these 29 decisions 5 referred to specific numbers of complaints received by the CRTC. These decisions mentioned 285 complaints made to the CRTC, of which 282 involved unsolicited telecommunications:

- Two decisions mentioned complaints made to the CRTC about violations of the *Unsolicited Telecommunications Rules* (282 complaints)<sup>49</sup>

<sup>48</sup> The results included telecommunications decisions, however, such as Telecom Decision CRTC 99-10, a determination involving inside wiring’s demarcation points and refers to customer complaints.

<sup>49</sup> *Ontario Consumers Home Services Inc. – Violations of the Unsolicited Telecommunications Rules*, Compliance and Enforcement Decision CRTC 2019-318, <https://crtc.gc.ca/eng/archive/2019/2019-318.htm> - mentions 74 complaints submitted to the CRTC; *Blue Dream HT Ltd. – Violations of the Unsolicited*

- One broadcasting decision mentioned a complaint about the Bell Fund, and two mentioned complaints involving undue preference or disadvantage.<sup>50</sup>

(None of the 12 decisions issued from January to November 2020 addressed complaints from members of the public, mentioning instead complaints from other broadcasters or the CRTC's requirement that broadcasters retain recordings of the programming they broadcast for several weeks so that the CRTC may request those logs to investigate complaints from the public.)

## 2. Representations

The CRTC has not published any information about the number of representations it received in its *Communications Monitoring Reports* or its *Departmental Results Reports*.

The CRTC's current search engine sets out CRTC broadcasting decisions mentioning "representations" generally but none in connection with section 18(3) of the *Broadcasting Act*, which permits the CRTC to

... hold a public hearing, make a report, issue any decision and give any approval in connection with any ... representation made to the Commission or in connection with any other matter within its jurisdiction under this *Act* if it is satisfied that it would be in the public interest to do so.

## 3. Interventions

The CRTC often invites public participation as it considers regulatory policies, regulations or certain licensing matters.<sup>51</sup> Although the concept of 'intervention' only appears in the *Broadcasting Act* in the context of orders issued by Cabinet,<sup>52</sup> the CRTC also invites interventions in its telecommunications proceedings. In announcing a *Review of the approach to rate setting for wholesale telecommunications services* in April 2020, for instance, the CRTC set a deadline "for submission of interventions" and mentioned the "interventions" it had

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*Telecommunications Rules*, Compliance and Enforcement Decision CRTC 2019-317,

<https://crtc.gc.ca/eng/archive/2019/2019-317.htm> – mentions 208 complaints submitted to the CRTC.

<sup>50</sup> [Complaint against the Bell Fund relating to its governance and the funding guidelines of its TV Program](#), Broadcasting Decision CRTC 2019-1 (Ottawa, 8 January 2019), at para. 1 (1 complaint); [Blue Dream HT Ltd. – Violations of the Unsolicited Telecommunications Rules](#), Compliance and Enforcement Decision 2019-317 (Ottawa, 9 September 2019), at para. 1 (208 complaints); [Ontario Consumers Home Services Inc. – Violations of the Unsolicited Telecommunications Rules](#), Compliance and Enforcement Decision 2019-318 (Ottawa, 9 September 2019), at para 1 (74 complaints); [CINQ-FM Montréal – Licence renewal](#), Broadcasting Decision CRTC 2019-393 (Ottawa, 3 December 2019) at para. 2 ("several complaints"); [Complaint by Bell Media against Videotron alleging undue preference regarding the packaging of Super Écran](#), Broadcasting Decision CRTC 2019-429 (Ottawa, 19 December 2019) at para. 3 (1 complaint); [Complaint by Quebecor, on behalf of TVA, against Bell, represented by BCE, alleging undue preference regarding the packaging of TVA Sports](#), Broadcasting Decision CRTC 2019-427 (Ottawa, 19 December 2019) at para. 7 (1 complaint).

<sup>51</sup> It does not invite public consultation about its guidelines and information bulletins.

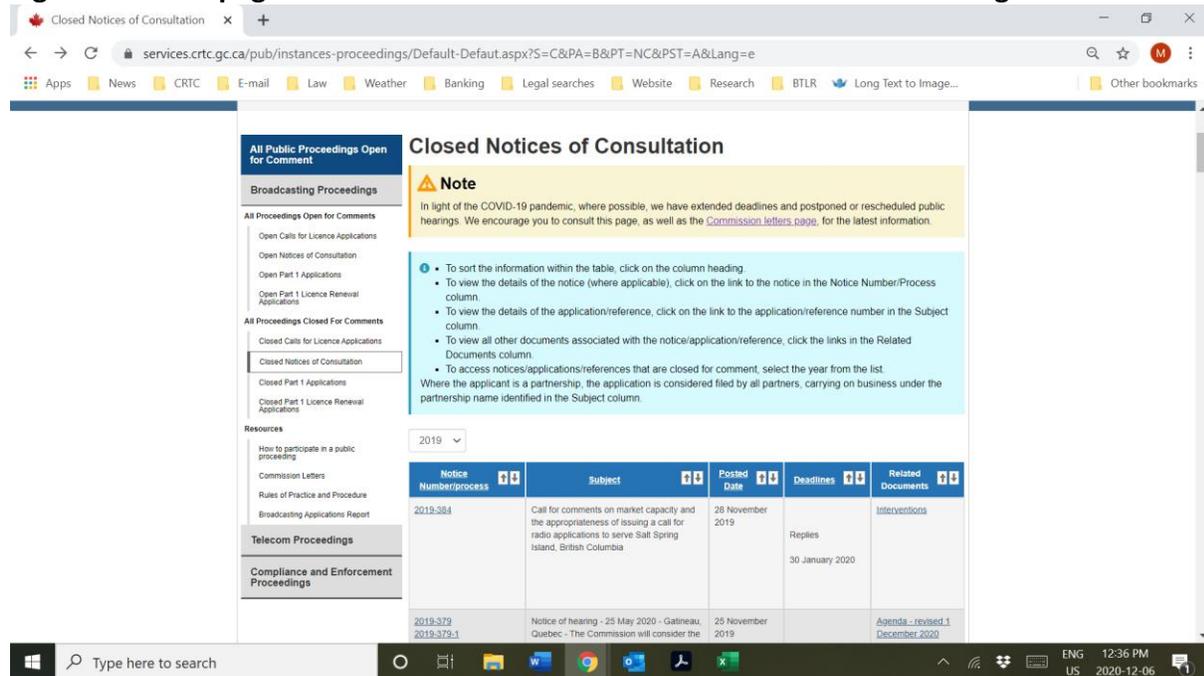
<sup>52</sup> Broadcasting Act, s. 7(4).

“received on the record of various [other] wholesale service rate -setting proceedings”.<sup>53</sup> Publication of the numbers of interventions received and considered by the CRTC and the other venues it has now adopted (online townhalls and consultations) over time would provide an indication of the degree to which the public is aware of and exercises their right to provide the CRTC with their views, evidence and recommendations.

Neither the CRTC’s 2019 *Communications Monitoring Report* nor its 2018/19 *Departmental Results Report* state the numbers of interventions received by the CRTC in its different proceedings.

As it happens, the CRTC’s website permits users to review interventions received by the CRTC about proceedings that are currently underway or which have ended (since 2010 in broadcasting and since 2005 in telecommunications): see Figure 4.

**Figure 4 First page of CRTC’s 2019 Notices of Consultation in broadcasting**



Determining the total number of interventions submitted to the CRTC in 2019 would require visits to each separate proceeding listed on 15 different CRTC website pages, to determine the number of interventions filed in each of the proceedings listed: Table 6.

<sup>53</sup> *Call for comments – Review of the approach to rate setting for wholesale telecommunications services*, Telecom Notice of Consultation CRTC 2020-131 (Ottawa, 24 April 2020), <https://crtc.gc.ca/eng/archive/2020/2020-131.htm>, at para. 13.

**Table 6 15 CRTC website pages related to matters it is considering or has considered**

Broadcasting	Telecom	Compliance and Enforcement
Open for comments		
1. Open Calls for Licence Applications 2. Part 1 Applications Open for Comment 3. Part 1 Licence Renewal Applications Open for Comment	4. Part 1 Applications Open for Comment 5. Tariff Applications Open for Comment	6. Part 1 Applications Open for Comment
Closed for comments		
7. Part 1 Applications Closed for Comment 8. Part 1 Licence Renewal Applications Closed for Comment	9. Part 1 Applications Closed for Comment 10. Tariff Applications Closed for Comment	11. Part 1 Applications Closed for Comment
Other proceedings		
	12. Part VII Applications 13. Tariff Applications 14. Agreement Applications 15. International Licence Applications	

While interventions to the CRTC are available for review, the summary numbers of interventions and interveners for broadcasting and telecommunications are not readily accessible.

### **B. Federal Policy on Results**

The 2016 *Policy on Results* sets out “the fundamental requirements for Canadian Federal departmental accountability for performance information and evaluation ...”<sup>54</sup> to “[i]mprove the achievement of results across government” and to “[e]nhance the understanding of the results government seeks to achieve, does achieve, and the resources used to achieve them.”<sup>55</sup> The expected results from the *Policy* are that:

Departments are clear on what they are trying to achieve and how they assess success;

Departments measure and evaluate their performance, using the resulting information to manage and improve programs, policies and services;

Resources are allocated based on performance to optimize results, including through Treasury Board submissions, through resource alignment reviews, and internally by departments themselves; and

<sup>54</sup> Canada, *Policy on Results*, <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=31300>.

<sup>55</sup> *Ibid.*, “3. Objectives and expected results”, at paras. 3.1.1 and 3.1.1.2.

Parliamentarians and the public receive transparent, clear and useful information on the results that departments have achieved and the resources used to do so.<sup>56</sup>

Agencies such as the CRTC<sup>57</sup> were expected to ‘establish, implement and maintain’ a “Results Framework” setting out their core responsibilities, results, and result indicators,<sup>58</sup> and to begin implementing the *Policy* by November 2017.<sup>59</sup> The results reported by the CRTC for its 2018/19 fiscal year were the first under the new *Policy*, and it has also reported results for its 2019/20 fiscal year.

Given the anomaly of the 2019/20 calendar year due to the Covid-19 pandemic, this research note focusses on the CRTC’s 2018/19 reported results.

### 1. CRTC’s *Departmental Results Report* - ‘efficient’ and ‘fair’ process

The CRTC’s 2018-2019 [Departmental Results Report](#) stated that it “is an administrative tribunal that is responsible for regulating and supervising Canada’s communications system in the public interest.”<sup>60</sup> It said that its core responsibility is to “Regulate and Supervise the Communications System”,<sup>61</sup> and referred to several results, all resulting from “efficient and fair” processes:

Departmental Results 1 and 4: “Canadian content is created” **as a result of processes that are efficient and fair**

...

Departmental Results 2 and 4: “Canadians are connected to world-class communications services” **as a result of processes that are efficient and fair**

...

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<sup>56</sup> *Ibid.*, at para. 3.2.

<sup>57</sup> The *Policy* *exe*

<sup>58</sup> *Ibid.*, at para. 4.3.1. Note that small agencies credited with less than \$300 million/year in the Federal estimates – such as the CRTC (for which \$12.8 million are allocated by the 2020-21 Main Estimates; see Treasury Board Secretariat, Estimates by Organization, “2020-21 Main Estimates”) – are exempted from some of the *Policy*’s requirements.

<sup>59</sup> *Policy on Results*, at paras. 1.3, 1.5 and 1.6.

<sup>60</sup> The CRTC appears to be inferring that its mandate under the *Broadcasting Act* and *Telecommunications Act* is to regulate and supervise in the public interest, as neither statute refers to this duty. Courts have held, however, that the CRTC is not required to serve the public interest *per se*, or to place public-interest considerations first. Its responsibility in broadcasting is to consider Canada’s broadcasting policy for Canada and the opposing interests of many participants – see *Société Radio-Canada v. Métromédia Cmr Montréal Inc.*, [1999 CanLII 8947 \(FCA\)](#), at para. 5:

... the *Act* (s. 3) identifies about forty sometimes conflicting objectives which must guide the CRTC in exercising its powers. This leads to a polycentric adjudication process, involving numerous participants with opposing interests, with a view to implementing the broadcasting policy set out in the *Act*.

<sup>61</sup> CRTC, [2018-2019 Departmental Results Report](#), at 6.

Departmental Results 3 and 4: Canadians are protected within the communications system **as a result of processes that are efficient and fair**<sup>62</sup>

[highlighting added]

The accompanying text for Departmental Results 1, 2, 3 and 4 does not explicitly address procedural fairness, but a table in the *Departmental Results Report* (reproduced in Figure 5, below) shows that the indicators used to measure ‘fair and efficient process’ involve timing (months taken to issue decisions after close of process) and successful judicial appeals related to procedural fairness.<sup>63</sup>

**Figure 5 CRTC’s 2018-2019 Departmental Results Report, pages 12-13**

2018–19 Departmental Results Report

Results achieved

Departmental results	Performance indicators	Target	Date to achieve target	2018–19 Actual results	2017–18 Actual results	2016–17 Actual results
Canadian content is created	Total investment in Canadian television programming production	Between \$4.0 and \$4.5B	March 2019	\$4.21B	Not available <sup>4</sup>	Not available <sup>4</sup>
...						
Proceedings related to the regulation of the communications system are efficient and fair	% of decisions on Part 1 applications issued within four months of the close of record <sup>13</sup>	At least 75%	March 2019	81%	74%	73%
	Number of decisions overturned on judicial appeal related to procedural fairness	0	March 2019	0	Not available	Not available

Note: Some data in the table above are not available because the departmental result indicators are new and the CRTC started reporting data on these indicators in this report.

<sup>62</sup> *Ibid.*, at 7, 9 and 10.

<sup>63</sup> *Ibid.*, at 13.

The CRTC’s 2018-2019 *Departmental Results Report* then referred<sup>64</sup> to the Federal government’s InfoBase<sup>65</sup> for more [information](#) about the CRTC’s departmental results.

## 2. Federal InfoBase

The online InfoBase sets out information about the CRTC in an ‘Infographic’.<sup>66</sup> A PDF of the pages in the InfoBase that address the CRTC’s 2018-2019 “Results” appears in **Error! Reference source not found..**

Where the CRTC’s 2018-2019 *Departmental Results Report* listed 4 results and 9 indicators, the InfoBase Infographic lists “7 results ... measured by 13 indicators” as well as quantitative targets.<sup>67</sup> (While the InfoBase Infographic lists 7 results, results 1 and 7, 2 and 5, and 3 and 6 are identical – leaving the 4 results noted by the CRTC’s *Departmental Results Report*.) Result 4 deals with the efficiency and fairness of CRTC proceedings:

Table 7 CRTC’s ‘efficient’ and ‘fair’ processes in 2018-19, from the federal InfoBase

‘Result’		‘Indicators’
4	Proceedings related to the regulation of the communications system are efficient and fair	8: % of decisions on Part 1 Applications issued within four months of the close of record
		9: Number of decisions overturned on judicial appeal related to procedural fairness
Source: Canada, InfoBase, “Canadian Radio-television and Telecommunications Commission”, <a href="https://www.tbs-sct.gc.ca/ems-sgd/edb-bdd/index-eng.html#orgs/dept/93/infograph/results">https://www.tbs-sct.gc.ca/ems-sgd/edb-bdd/index-eng.html#orgs/dept/93/infograph/results</a>		

As for outcomes, the CRTC said that it had achieved the result expected for the efficiency and fairness of its proceedings: Table 8.

Table 8 CRTC’s 2018-2019 performance results for regulating and supervising Canada’s communications system

CRTC’s 2018-2019 Departmental Results Report – results, indicators, targets and outcomes				
Results	Indicators	Target	Outcome	Actual
4 Proceedings related to the regulation of the communications system are efficient and fair.	8: % of decisions on Part 1 Applications issued within four months of the close of record	75%	Met: 81%	Met
	9: Number of decisions overturned on judicial appeal related to procedural fairness	0	Met: 0	Met

<sup>64</sup> On page 14: “Financial, human resources and performance information for the CRTC’s Program Inventory is available in the GC InfoBase.”

<sup>65</sup> . The InfoBase explains that all Federal organizations “migrated to a new results reporting structure” in April 2018 which sets out each organization’s ‘core responsibilities’ and the indicators they developed to measure results in achieving these responsibilities.

<sup>66</sup> Canada, “Infographic for Canadian Radio-television and Telecommunications Commission”, Infobase, <https://www.tbs-sct.gc.ca/ems-sgd/edb-bdd/index-eng.html#orgs/dept/93/infograph/intro>.

<sup>67</sup> *ibid.*

### 3. CRTC's measure of 'fair process' – numbers of court cases

The CRTC measured the fairness of its proceedings by counting the “Number of decisions overturned on judicial appeal related to procedural fairness” and aimed for a result of zero – that is, that none of its decisions had been overturned on judicial appeal due to procedural fairness. No Federal Court decision overturned a CRTC decision due to procedural unfairness and the CRTC declared that its target for fair proceedings was met in 2018-2019.

A finding by a Canadian court that the procedures used by the CRTC to reach a specific decision are unfair would establish as a matter of public record that the CRTC procedures involved in that decision were unfair. It provides no other information about the fairness of the CRTC's processes in general, however, because using court decisions to measure procedural fairness is both invalid and unreliable.

Valid measures accurately reflect the characteristics of the concept: hair colour, for instance, provides no information about an individual's height. Reliable measures consistently return the same value for categories of the same concept: a ruler that randomly stretched and contracted would yield unreliable measures of height.

The number of court cases with findings about procedural fairness is not a valid measure of procedural fairness in CRTC proceedings. First, a Court's duty is to consider the evidence in the individual cases it hears, not to evaluate procedural fairness with respect to all CRTC decisions in a given year or fiscal period. The numbers of court cases in any year which draw conclusions about procedural fairness therefore provide no information about the degree of procedural fairness in all other CRTC processes. For example, in 2019 the CRTC issued 398 decisions, orders and policies: Table 9. The Forum located 31 court cases mentioning the CRTC for the same year of which only one - *Bell Canada v. Canada (Attorney General)*, [2019 SCC 66 \(CanLII\)](#) – challenged the CRTC directly: it involved a single CRTC order (regarding simultaneous substitution).

**Table 9** Decisions, Orders and Policies issued by CRTC in 2019

Type of decision	Broadcasting	Telecommunications	Compliance and Enforcement	Total
Decisions	185	61	8	254
Orders	6	124	1	131
Policies	6	7		13
Total	197	192	9	398

Source: Data for decisions, orders and policies downloaded from CRTC, “Decisions, Notices and Orders – Indexes”, <https://crtc.gc.ca/eng/dno.htm>, for 2019

Second, even if the processes used by the CRTC in many matters were unfair, these matters may never be considered by Canadian courts: the parties affected by such CRTC outcomes may not appeal the outcomes due to costs or time, because they missed filing deadlines, because

they lacked legal counsel or because they decided instead to petition the Governor in Council. Measuring fair process by counting numbers of court cases involving procedural issues yields invalid results.

The number of court cases in a given year as an indicator of fair process in that year is also not a reliable measure, because legal proceedings do not consistently begin and end in the same CRTC fiscal period. Cases that involve fair process at the CRTC may begin in one fiscal year and conclude in the next: The 2019 *Bell Canada* case heard by the Supreme Court<sup>68</sup> addressed a CRTC order that emerged from a public consultation that began in 2013, was issued in 2016 and entered into effect in 2017. Measuring due process in one year using information about a previous year (or years) is unlikely to yield consistently reliable results.

In brief, evaluating the degree to which the CRTC’s processes are fair using Court cases related to procedural fairness cannot yield meaningful results. Alternatives to this measure are set out below, along with results from an analysis of data describing the 2019 calendar year.<sup>69</sup>

### C. Other measures of fair process: broadcast applications submitted to the CRTC

Measuring ‘fair process’ is a two-step process that begins by identifying elements of procedural fairness and continues by measuring these elements. As mentioned previously while there are no set criteria for evaluating due process, several have been set out by Immigration, Refugees and Citizenship Canada (IRCC), an institution that resembles the CRTC in that it receives and considers thousands of applications seeking its approval.

Comparing the IRCC procedural fairness elements with the CRTC’s 2010 objectives for its *Rules* shows similarities but also gaps, particularly with respect to decision-making, the legal foundation for decisions and the inclusion of reasons in decisions:

Immigration, Refugees and Citizenship Canada, “Procedural fairness” <sup>70</sup>	<i>Guidelines on the CRTC Rules of Practice and Procedure</i> <sup>71</sup>
Legitimate expectation (in terms of following stated procedures)	Provide a comprehensive set of rules applicable in most CRTC proceedings, while maintaining the flexibility necessary to address the specific circumstances of each proceeding Ensure the efficient, transparent and predictable conduct of CRTC proceedings
The applicant’s right to be heard	Enable informed and effective public participation in CRTC

<sup>68</sup> *Bell Canada v. Canada (Attorney General)*, 2019 SCC 66.

<sup>69</sup> Time limitations prevented an analysis of data using the CRTC’s April-March fiscal years. (The CRTC makes data available in calendar-year increments; undertaking an analysis of the fiscal year would require two years of calendar data to be downloaded, the elimination of the first year’s first three months of data and the elimination of the second year’s last nine months of data.)

<sup>70</sup> <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/service-delivery/procedural-fairness.html> (accessed 27 October 2020).

<sup>71</sup> *Guidelines on the CRTC Rules of Practice and Procedure*, Broadcasting and Telecom Information Bulletin CRTC 2010-959 (Ottawa, 23 December 2010), <https://crtc.gc.ca/eng/archive/2010/2010-959.htm>, at para. 3.

	proceedings
Processing without undue delay	Eliminate unnecessary costs and delays in the regulatory process
The right to fair and impartial decision-making	<i>Not addressed</i>
Whoever hears must decide	
Decisions based on the enabling statute and accompanying regulations	
The right to reasons	

The IRCC criteria for procedural fairness can be restated in the context of the CRTC, and specifically in the context of requests that the CRTC exercise its authority.

<b>Procedural fairness – criteria and application to the CRTC</b>		
<b>IRCC criteria</b>	<b>Application to the CRTC</b>	<b>Application to requests to the CRTC</b>
Legitimate expectations of individual applicants:	Applicants may presume that the CRTC will follow its stated procedures	CRTC will treat applications as stated in its <i>Rules of Practice and Procedure</i>
Opportunity to be heard:	Applicants have the right to be heard by the CRTC	Parties requesting CRTC assistance about matters within CRTC jurisdiction may apply to the CRTC for that assistance
Timeliness:	The CRTC processes requests without undue delay	Applications made to the CRTC will be heard in a reasonable time frame
Decision-makers decide:	Those who hear applications on behalf of the CRTC make decisions on those applications	Authorized decision-makers at the CRTC will make decisions
Impartiality:	CRTC decision-makers make decisions on the basis of evidence rather than due to their pre-existing views	Evidence filed in relation to applications will be considered by decision-makers who neither are nor appear biased
Lawfulness:	CRTC decisions are made based on governing laws and subordinate legislation (regulations)	CRTC decision-makers will make decisions based on <i>Broadcasting Act, Telecommunications Act and other governing statutes</i>
Reasons:	Applicants – and Canadians in general – have a right to reasons, not only to establish that the CRTC heard the applicants and their evidence, but so that others may learn about its interpretation of its responsibilities	Determinations issued by the CRTC about applications they will receive will include reasons

As shown by Table 10, below, the Forum reviewed the CRTC’s performance in terms of five of the IRCC’s seven criteria for procedural fairness. These relate to applicants’ legitimate expectations, parties’ opportunities to be heard, timely consideration of applications, impartiality in decision-making and decision-makers’ authority to decide.

Table 10 Applying IRCC procedural fairness criteria to the CRTC

<b>Procedural fairness – criteria and application to the CRTC</b>		
<b>IRCC criteria</b>	<b>Application to requests to the CRTC</b>	<b>Approach to measurement</b>
<b>Legitimate expectations of</b>	CRTC will treat applications as stated in its <i>Rules of Practice and Procedure</i>	Whether applications processed according to the CRTC’s <i>Rules of Practice and Procedure</i> absent a

Procedural fairness – criteria and application to the CRTC		
IRCC criteria	Application to requests to the CRTC	Approach to measurement
<b>individual applicants:</b>		finding by the CRTC that the procedures should be varied for reasons of fairness or the public interest
<b>Opportunity to be heard:</b>	Parties requesting CRTC assistance about matters within CRTC jurisdiction may apply to the CRTC for that assistance	Numbers of applications, complaints, representations and interventions made by requestors to the CRTC
<b>Timeliness:</b>	Applications made to the CRTC will be heard in a reasonable time frame	Days from submission, to decision
<b>Decision-makers decide:</b>	Authorized decision-makers at the CRTC will make decisions	Identification of those who made decisions
<b>Authority to decide</b>	CRTC decision-makers will make decisions based on <i>Broadcasting Act, Telecommunications Act and other governing statutes</i>	CRTC’s authority is properly vested in those responding on behalf of the Commission
Impartiality:	Evidence filed in relation to applications will be considered	<i>[Evidence submitted by applicants and interveners is given the same consideration by the CRTC – not analyzed for this research]</i>
Reasons:	Determinations issued by the CRTC about applications they will receive will include reasons	<i>[CRTC decisions about applications include reasons and relevant evidence – not analyzed for this research]</i>

The Forum focussed on the procedures used by the CRTC to respond to applications it received from broadcasters and non-broadcasters: unlike the complaints, interventions and representations the CRTC receives (or does not receive) the CRTC posts lists of applications by calendar year which can be downloaded and analyzed.

Users may download annual CRTC reports of “publicly available”<sup>72</sup> broadcasting applications and of telecommunications applications. The CRTC’s broadcasting applications page does not clarify what it means by “publicly available” and does not state whether broadcasting applications that are not publicly available will ever be made available for review or whether a mechanism exists to challenge the complete confidentiality apparently afforded to certain applicants whose applications are not posted by the CRTC.

A summary line at the top of each of the CRTC’s annual broadcasting and telecom reports appears to state the total applications listed in each report. The two 2019 reports show a total of 1,155 applications: 484 or 42% of the total were publicly available broadcasting applications<sup>73</sup> and the remaining 671 or 58% were telecom applications.<sup>74</sup> (In its second year of

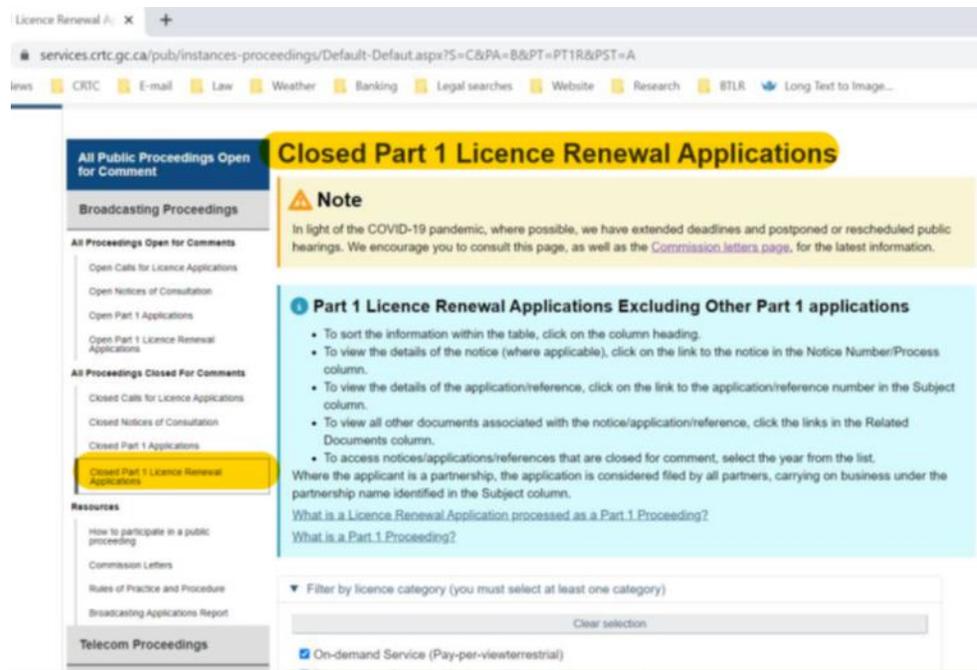
<sup>72</sup> CRTC, “Broadcasting Applications Report”, “Information”, <https://services.crtc.gc.ca/pub/demradbroadappl/Default-Default.aspx>: “To view a list of publicly available applications select the year the application was received from the drop down menu. ...”

<sup>73</sup> CRTC, Broadcasting Applications Report (All applications), <https://services.crtc.gc.ca/pub/demradbroadappl/Default-Default.aspx>.

<sup>74</sup> CRTC, Telecom Applications Report: [https://services.crtc.gc.ca/pub/DemTelAppl/Default-Default.aspx?Lang=e&\\_ga=2.215503263.945037777.1606837636-1211976415.1582553073](https://services.crtc.gc.ca/pub/DemTelAppl/Default-Default.aspx?Lang=e&_ga=2.215503263.945037777.1606837636-1211976415.1582553073).

operation in 1969/70 the CRTC reported that it had “received applications and announced decisions on” 849 broadcasting applications.<sup>75)</sup>

The CRTC also posts other lists of applications, including “Closed Part 1 Licence Renewal Applications”, for which it is possible to select specific years. Where the 2019 Broadcasting Applications Report lists 301 renewal applications the 2019 list of Closed Part 1 Renewal



Applications provides information about 140 applications including whether the CRTC considered the licence had demonstrated “apparent non-compliance”<sup>76</sup> It is not clear why different numbers of Part 1 renewal applications appear in the 2019 Broadcasting Applications Report and the Part 1 Renewal applications listing.

Of the 140 applications in the listing for 2019, all but two appear to have been filed in 2018: their nine-digit application numbers begin with “2018-“. One application begins with 2016 and another with 2019. (Each application is associated with a decision issued in 2019, but none appears in the listing of applications in the 2019 Broadcast Applications Report.) Faced with uncertainty about the information provided in each report the Forum chose to focus on the applications set out in the CRTC’s Broadcast Applications Report for 2019.

Although the CRTC revised its procedural rules in part to meet the needs of broadcast-telecommunications convergence<sup>77</sup> its reports on broadcasting and telecom applications set

<sup>75</sup> CRTC, *Annual Report 1969-1970*, at 108. This figure included 184 television licence renewal applications – likely for transmitters rather than originating television programming stations. Excluding the transmitter applications indicates that the CRTC issued decisions on 665 broadcasting applications.

<sup>76</sup> The 2019 list included 32 references to “apparent non-compliance” – 23% of the 140 applications listed.

<sup>77</sup> CRTC, *Departmental Results Report for the period ending March 31, 2011*, at 10. The Commission said that its new procedures strengthen its ... ability to meet the needs of a converging and increasingly competitive industry. As part of the change, the CRTC redesigned its online intervention form for certain applications to ensure that information submitted by applicants

out different information about each sector and for different years. Publicly available applications are listed for the broadcasting sector for the eleven years from 2010 to 2020, while applications for the telecommunications sector are listed for the six years from 2015 to 2020. The CRTC’s broadcasting report sets out the applicant’s name, an application number, the date when the CRTC posted the application online and “Decision Date Status”, while its telecom report sets out the date of each application and a file number: Table 11. This number of inconsistencies between the two sets of reports hinders analysis of both sectors; due to time limitations the Forum limited its review in this research note to broadcasting applications.

Table 11 CRTC applications reports – information provided

Information set out by CRTC in its broadcasting and telecom applications reports	
<a href="#">Broadcasting Applications Report</a>	<a href="#">Telecom Applications Report</a>
Process	
Applicant	
Application Number	File Number
Subject	Title/Subject
Posted To Web	
Decision Date Status	
	Application Date
2019: “Total records: 484”	2019: “671 application(s) found”

The Forum downloaded the list of applications in the CRTC’s Broadcasting Applications Report for 2019, and used the data in these lists to create an Excel spreadsheet to measure outcomes related to legitimate expectations, timely decision-making, the appearance of fairness and the proper exercise of authority. We also submitted access-to-information requests to the CRTC about applications that might not be included in the CRTC’s applications reports.

**1. Legitimate expectations and opportunities to be heard: types of process accorded to applications**

In Canada parties are entitled to expect that government institutions will follow Canadian laws and regulations when they consider the parties’ applications. The *Broadcasting Act* mandates a specific type of process in some cases, while granting the CRTC the discretion to decide on the process it uses in others: parties may legitimately expect the CRTC to adhere to mandated processes, while it exercises its discretion in others. For example, the CRTC must hold public hearings to issue licences, but not to renew or amend licences: Table 12. It must also hold public hearings when it considers issuing mandatory orders, a new power granted by Parliament in the *1991 Act*. The *Broadcasting Act* does not, however, define ‘public hearing’.

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is complete. Such a change will require less follow up by staff and represents a significant benefit to applicants whose requests will be processed more quickly.

Table 12 *Broadcasting Act* and public hearings – required or discretionary

Public hearings under the <i>Broadcasting Act</i> – required or discretionary	
Required	Discretionary
Issue licence (except temporary network licence) (s. 18(1)(a)) Suspend or revoke licence (s. 18(1)(b)) Set performance objectives for licensees (s. 18(1)(c)) Making mandatory order (s. 18(1)(d)) Upon order of the Governor in Council (s. 28(1)) Upon request of the Governor in Council (s. 15(1))	Amend or renew licence if CRTC is satisfied that hearing is not required in the public interest (s. 18(2)) In connection with any complaint, representation or matter in its jurisdiction if this serves the public interest (s. 18(3))

The CRTC's 2019 Broadcast Applications Report lists four types of process accorded to applications: notices of consultation, administrative Letter Decisions, Part 1 applications and Part 1 renewal applications – see Table 13.

Table 13 Type of process accorded to broadcasting applications

Number of broadcasting applications, by type of CRTC process: 2019					
Type of broadcast process	Hearing with appearing parties	Hearing with appearing & non-appearing parties	Non-appearing hearing	No hearing	Total
<b>Notice of consultation</b>					
<b>One appearing hearings</b>					
2019-379 (renewal [CBC])	4				4
<b>Three hearings with appearing and non-appearing applicants</b>					
2020-75 (renewals involving non-compliance)		10			10
2019-303 (renewals involving non-compliance)		15			15
** 2019-358 (ownership change)		5			5
<b>Five non-appearing hearings</b>					
* 2020-54 (new licences)			5		5
* 2019-72 (new licences; changes in conditions of licence, owner's p			1		1
* 2019-127 (renewals involving non-compliance)			2		2
* 2019-225 (renewals involving non-compliance)			1		1
* 2019-341 (ownership change)			1		1
<b>Paper-based processes</b>					
<b>Administrative (resulting in CRTC Letter Decisions)</b>				39	39
<b>Part 1 - renewal</b>				301	301
<b>Part 1</b>				100	100
Total	4	30	10	440	484
Percent of total	0.8%	6.2%	2.1%	90.9%	100.0%
* Announces non-appearing public hearing – CRTC held 'hearing' at its offices but did not invite parties to appear					
** Announces appearing and non-appearing items for hearing					

All 484 publicly available broadcasting applications listed for 2019 originated with applicants who were or wanted to become broadcasters. Table 14 sets out the numbers of broadcasting applications listed by the CRTC in its applications report for 2019 by type of process and the subject of the applications. **Error! Reference source not found.** lists the applications.

Table 14 Processes used by CRTC for different types of applications

2019 – broadcasting						
CRTC description	Notice of consultation	Administrative (Letter decisions)	Part 1 Renewal	Part 1	Total	% of total
<b>Process – one of four types</b>						
Amendment to licence	10	11	1	98	120	24.8%
Renewal of licence	14		300	1	315	65.1%
Revocation of licence	1			1	2	0.4%
Change in ownership		8			8	1.7%
<b>Process – one of four types</b>						
Ownership - Control	3				3	0.6%
Ownership - Assets	5				5	1.0%
Ownership - Minor	1				1	0.2%
New licence	7				7	1.4%
Exempt to Licensed /Regional Merge	3				3	0.6%
Extension of time		17			17	3.5%
Delete transmitter		3			3	0.6%
<b>Total applications</b>	<b>44</b>	<b>39</b>		<b>401</b>	<b>484</b>	<b>100.0%</b>
% of total	9.1%	8.1%		82.9%	100.0%	

*a ‘Non-appearing hearings’ skirt the Broadcasting Act’s public-hearing requirement for issuing licences*

The *Broadcasting Act* requires the CRTC to hold a public hearing when it issues, suspend or revokes licences, before issuing a mandatory order or if it intends to set requirements for Canadian programming.<sup>78</sup> The Commission need not hold a public hearing to amend or renew licences when it believes that hearing would not serve the public interest.<sup>79</sup>

The CRTC’s website explains the purpose of its hearings:

A hearing, announced in a notice of consultation, is a meeting where people can voice their opinions on the topic. A hearing is often used for new broadcasting licence applications, major policy issues or amendments to its broadcasting and telecommunications regulations. You can send written comments, and you can make a request to speak at the hearing.<sup>80</sup>

In 2019 the CRTC announced nine hearings to consider 44 applications submitted by 24 applicants: Table 15.

<sup>78</sup> *Broadcasting Act*, ss. 12, 18(1).

<sup>79</sup> S. 18(2); see Table 12.

<sup>80</sup> CRTC, “Public Hearings”, <https://crtc.gc.ca/eng/ph-ap.htm>.

Table 15 Broadcasting applications and applicants in 2019, by type of process

Type of CRTC process	Applications		Applicants	
	Number	%	Number	%
Administrative (Letter Decisions)	39	8.1%	31	16.7%
Nine hearings:				
Appearing items (2019-75, -303, -358)	5	1.0%	4	2.2%
Appearing item (2019-379: CBC – Jan/21)	4	0.8%	1	0.5%
Non-appearing items (2019-54, -72, -127, -225, -341)	35	7.2%	20	10.8%
<i>Subtotal, hearings</i>	44	9.1%	24	12.9%
Part 1 renewal applications	301	62.2%	119	64.0%
Part 1 applications	100	20.7%	52	28.0%
<b>Total</b>	<b>484</b>	<b>100.0%</b>	<b>186</b>	<b>100.0%</b>

Though its website does not say so, the CRTC holds three types of public hearings. These are helmed by CRTC Commissioners chosen by the CRTC’s Chairperson and one of whom is designated the hearing panel Chairperson, and assisted by CRTC staff: appearing hearings attended by applicants and interveners; appearing and non-appearing hearings where some applicants and interveners appear but not others; and non-appearing hearings attended solely by CRTC Commissioners and staff.<sup>81</sup>

In 2019 9 applicants were invited to appear before two CRTC hearing panels to address 10 applications – this includes a hearing announced in 2019, scheduled to take place in May 2020 and later re-scheduled to January 2021, to hear CBC’s 4 applications to renew its licences and to maintain existing CRTC exemption orders regarding its online services.

Briefly, then, of the 484 applications submitted by 186 applicants and listed in the CRTC’s 2019 Broadcast Applications Report, 10 were presented to CRTC hearing panels (by 9 applicants) in 2019:

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<sup>81</sup> As well as a legal reporter responsible for each hearing’s transcript.

Process and matter considered	Appearing	Appearing CBC (Jan/21)	Non-appearing	Administrative & Part 1 applications	Total
<b>Notices of consultation of nine public hearings</b>					
Change of ownership]	2		1		3
Application for new licence]			8		8
Application for ownership change	3		5		8
CBC applications (transmitters etc.)			12		12
CBC January 2021 renewal		4			4
Regulatory breaches					
Regulations			1		1
Regulations & mandatory order	1				1
Regulations, condition of licence	1		3		4
Regulations, col & mandatory order	3				3
<b>Subtotal, notices of consultation</b>	<b>10</b>	<b>4</b>	<b>30</b>		<b>44</b>
<b>Administrative (Letter Decisions)</b>				<b>39</b>	<b>39</b>
<b>Part 1</b>				<b>100</b>	<b>100</b>
<b>Part 1 - renewal</b>				<b>301</b>	<b>301</b>
<b>Total</b>	<b>10</b>	<b>4</b>	<b>30</b>	<b>440</b>	<b>484</b>

The remaining applicants and their applications were not actually ‘heard’ by the Commission: 34 applications were scheduled as items for five non-appearing CRTC hearings. Applicants and interveners wishing to attend a non-appearing hearing had to explain why:

In the event that an application to be considered during the non-appearing phase of the hearing is brought to an oral phase of the hearing, and if parties wish to appear, they must provide reasons why their written interventions or answers are not sufficient and why an appearance is necessary. Parties requiring communication support must state their request on the first page of their intervention. Only those parties whose requests to appear have been granted will be contacted by the Commission and invited to appear at the public hearing.<sup>82</sup>

Non-appearing hearings are brief because CRTC Commissioners do not ask any questions, as shown by a transcript from a typical hearing of this kind which lasted ten minutes on 11 July 2019: Figure 6.

**Figure 6** CRTC hearing transcript of 11 July 2019

Opening of Hearing at 11:00 a.m.

Chair: Order please.

Good morning ladies and gentlemen and welcome to this hearing of the Commission. My name is Christianne Laizner, Vice-Chairperson for Telecommunications, and I will chair

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<sup>82</sup> *Notice of Hearing*, Broadcasting Notice of Consultation CRTC 2020-75 (Ottawa, 26 February 2020), “Procedure”, <https://crtc.gc.ca/eng/archive/2020/2020-75.htm>

this hearing. With me on the panel are my colleagues, Christopher MacDonald, Commissioner for the Atlantic Region and Nunavut, and Joanne T. Levy, Commissioner for Manitoba and Saskatchewan. Lynda Roy will be the Hearing Secretary and Chigbo Ikejiani will be our Legal Counsel. Madame Secretary, what are the items on the agenda for today?

Secretary: Thank you Madam Chair.

On 3 May 2019, the Commission published Broadcasting Notice of Consultation CRTC 2019-127. The Commission also published 2019-127-1 on 26 June 2019. The applications referenced in these notices are being considered today without the appearance of the parties.

The Commission has received interventions for some of the applications and they have been placed on the public file for this hearing.

Thank you Madam Chair.

Chair: Thank you. Any questions from the panel members?

Christopher MacDonald: No questions Madam Chair.

Joanne T. Levy: No questions Madam Chair.

Chair: Je dois préciser que le Comité d'audition fera un examen approfondi des questions à l'ordre du jour et que les décisions seront prises en temps opportun après consultation des membres du Conseil. Ceci met un terme à l'audience d'aujourd'hui. J'aimerais remercier mes collègues, de même que le Conseiller juridique et la Secrétaire d'audience, pour leur assistance. L'audience est maintenant levée. .

Secretary: Merci madame la Présidente.

The hearing adjourned at 11:10 a.m.<sup>83</sup>

Five of the ten applications listed in the 2019 Broadcast Applications Report and 'heard' by CRTC hearing panels in "non-appearing hearings" involved applications for new licences. As the *Broadcasting Act* requires the CRTC to hold public hearings before issuing broadcasting licences the CRTC's use of non-appearing hearing means that applicants and interveners who legitimately expected to have an opportunity to address the Commission were effectively denied their right to an actual rather than a non-appearing hearing. Conceivably, however, the CRTC determined that no substantive issues existed regarding these applications which necessitated a public hearing.

Table 16 CRTC Broadcasting Notices of Consultation in connection with applications addressed in 2019

Type of hearing: Notices of consultation	Applications			
	Appearing	Non-appearing	Total	%
Appearing items only				

<sup>83</sup> CRTC, *Transcript*, (Gatineau, Quebec: 11 July 2019), <https://crtc.gc.ca/eng/transcripts/2019/tb1107.htm>.

Type of hearing: Notices of consultation	Applications			
	Appearing	Non-appearing	Total	%
2019-379	4		4	9.1%
<b>Appearing &amp; non-appearing items</b>				
2020-75	5	5	10	22.7%
2019-303	2	13	15	34.1%
2019-358	3	2	5	11.4%
<b>Non-appearing</b>				
2020-54		5	5	11.4%
2019-72		1	1	2.3%
2019-127		2	2	4.5%
2019-225		1	1	2.3%
2019-341		1	1	2.3%
<b>Total applications, all notices of consultation</b>	<b>9</b>	<b>35</b>	<b>44</b>	<b>100.0%</b>
Total, as % of appearing / non-appearing	20.5%	79.5%	100.0%	

The rationale for the CRTC to consider matters at an ‘appearing’ or ‘non-appearing’ hearing is not clear from the CRTC’s descriptions of the applications it considered in 2019. Twenty-four applications involving “frequency modulation” were heard at both appearing and non-appearing hearings, for example – the CRTC may have invited parties to appear when applicants’ proposals could affect other local broadcasters, but each notice would have to be reviewed separately to determine whether this is the case.

The *Broadcasting Act* also requires the CRTC to hold a public hearing before issuing mandatory orders, a new power granted by Parliament in 1991 to address broadcasters that do not comply with legislative and regulatory broadcasting requirements.<sup>84</sup> According to an information bulletin issued by the CRTC in 2014, it also calls radio licensees to public hearings based on “the quantity, recurrence and seriousness of the non-compliance”.<sup>85</sup>

It is unclear how the CRTC weighs the quantity, recurrence and seriousness of non-compliance. While time limits precluded the review of all CRTC decisions involving non-compliance to determine whether the CRTC held appearing or non-appearing hearings, a search (using the CRTC’s search engine) for mandatory orders issued by the CRTC in 2018 identified a total of five decisions. Though all five involved renewal applications with recurrent non-compliance over three or more licence terms, only one station’s licensee actually appeared at a CRTC public hearing. In fact, the CRTC renewed the licence of a radio station that had not only breached the CRTC’s regulations for four consecutive terms but had also already breached mandatory orders

<sup>84</sup> *Broadcasting Act*, s. 18(1)(d): “Except where otherwise provided, the Commission shall hold a public hearing in connection with ... the making of an order under subsection 12(2).”

<sup>85</sup> *Update on the Commission’s approach to non-compliance by radio stations*, Broadcasting Information Bulletin CRTC 2014-608 (Ottawa, 21 November 2014), at para. 8.

issued in two previous hearings: following a non-appearing hearing the CRTC issued the station a third set of mandatory orders.

**Table 17 CRTC mandatory orders issued in 2018, by type of hearing held by CRTC**

<b>Licence renewals in 2018 in which non-compliance led to mandatory orders</b>			
<b>CRTC decision</b>	<b>Duration of non-compliance</b>	<b>Opposing interventions</b>	<b>Type of hearing</b>
CICR-FM Parrsboro <a href="#">Broadcasting Decision CRTC 2018-110 and Broadcasting Orders CRTC 2018-111 and 2018-112</a>	Three consecutive licence terms involving non-compliance	Yes	Non-appearing
<a href="#">Broadcasting Decision CRTC 2018-168 and Broadcasting Orders CRTC 2018-169, 2018-170 and 2018-171</a>	Three consecutive licence terms involving non-compliance	Yes	Non-appearing
CJMS Saint-Constant <a href="#">Broadcasting Decision CRTC 2018-172 and Broadcasting Orders CRTC 2018-173, 2018-174 and 2018-175</a>	Three consecutive licence terms involving non-compliance	Yes	Non-appearing
CKWR-FM Kitchener <a href="#">Broadcasting Decision CRTC 2018-444 and Broadcasting Order CRTC 2018-445</a>	Three consecutive licence terms involving non-compliance	No	Appearing
CKMN-FM Rimouski/Mont-Joli <a href="#">Broadcasting Decision CRTC 2018-468 and Broadcasting Orders CRTC 2018-469, 2018-470, 2018-471, 2018-472, 2018-473 and 2018-474</a>	Four consecutive licence terms involving non-compliance, including breaches of mandatory orders issued in 2011 and 2015	No	Non-appearing

We also reviewed the nine notices of consultation announcing public hearings which were mentioned in the CRTC’s 2019 Broadcast Applications Report, to determine whether the applications they addressed involved non-compliance. (The Broadcast Applications Report does not include information about regulatory non-compliance.) Four of the nine applications scheduled for public hearings and which involved regulatory non-compliance were scheduled as non-appearing items: Table 18.

**Table 18 Appearing vs non-appearing applications and non-compliance**

<b>Non-compliance mentioned in nine CRTC notices of consultation (2019-72, 2019-303, 2019-127, 2019-225, 2019-341, 2019-358, 2019-379, 2020-54, 2020-75)</b>	<b>Appearing hearings</b>	<b>Hearings with appearing and non-appearing items</b>		<b>Non-appearing hearings</b>	<b>Total</b>
		<b>Appearing items</b>	<b>Non-appearing items</b>		
[None - change of ownership]		5	1	5	11
[None - new licence]			3	5	8
[CBC matters]			12		12
[CBC 2021 renewal]	4				4
<b>Subtotal – non-compliance not mentioned</b>	<b>4</b>	<b>5</b>	<b>16</b>	<b>10</b>	<b>35</b>
<b>Non-compliance mentioned with respect to:</b>					

Non-compliance mentioned in nine CRTC notices of consultation (2019-72, 2019-303, 2019-127, 2019-225, 2019-341, 2019-358, 2019-379, 2020-54, 2020-75)	Appearing hearings	Hearings with appearing and non-appearing items		Non-appearing hearings	Total
		Appearing items	Non-appearing items		
Regulations			1		1
Regulations and mandatory order		1			1
Regulations and conditions of licence		1	3		4
Regulations, conditions of licence and mandatory orders		3			3
<b>Subtotal – non-compliance mentioned</b>		<b>5</b>	<b>4</b>		<b>9</b>
<b>Total applications</b>	<b>4</b>	<b>10</b>	<b>20</b>	<b>10</b>	<b>44</b>
% of total	9.1%	11.4%	56.8%	22.7%	100.0%

At the 11 July 2019 non-appearing public hearing whose transcript is reproduced above (Figure 6) the CRTC considered the licence renewal application of a radio station that had breached the CRTC’s requirements in four consecutive licence terms.<sup>86</sup> The CRTC subsequently issued that station two new mandatory orders requiring compliance with CRTC regulations.<sup>87</sup>

The CRTC’s decisions to hold non-appearing public hearings attended only by CRTC Commissioners and staff and to schedule applications involving regulatory non-compliance as non-appearing items have two effects. First, non-appearing public hearings mean the denial of the legitimate expectations for due process of parties who anticipate a ‘true’ CRTC public hearing where they may set out their evidence and arguments about issues of serious concern to them and engage with the CRTC hearing panel.

Second, the use of non-appearing “public hearings” that are effectively closed to the public when non-compliance and mandatory orders are under consideration obscure the degree to which the CRTC considers non-compliance and mandatory orders to be serious matters. Using non-appearing hearings to process non-compliance serious enough to warrant mandatory orders suggests a belief that public-hearing scrutiny of licensees’ performance is less important

<sup>86</sup> *Notice of Hearing*, Broadcasting Notice of Consultation CRTC 2019-127 (Ottawa, 3 May 2019), Item 3: “Should the Commission determine that the licensee is in non-compliance in the current licence term, this would be *the fourth consecutive licence term in which CJSO-FM has been found in non-compliance with its regulatory requirements.*” [italics in original text].

<sup>87</sup> *CJSO-FM Sorel-Tracy – Licence renewal and issuance of mandatory orders*, [Broadcasting Decision CRTC 2019-408 and Broadcasting Orders CRTC 2019-409 and 2019-410](#) (Ottawa, 11 December 2019), at paras. 24-25:

24. In addition, pursuant to section 12(2) of the Broadcasting Act (the Act), the Commission imposes mandatory orders requiring CJSO-FM to comply with the following:

section 9(3)(a) of the Regulations relating to the filing of an accurate self-assessment report;  
 section 9(3)(b) of the Regulations relating to the filing of complete and accurate music lists;  
 the new condition of licence 3 requiring the broadcast of an announcement, set out in Appendix 1 to this decision.

25. The mandatory orders regarding compliance with the above-noted sections of the Regulations and condition of licence are set out in Appendices 3 and 4 of this decision. Pursuant to section 13 of the Act, the orders will be filed with the Federal Court and will become orders of that court.

....

than matters heard at appearing hearings – including five applications to change ownership of broadcasting services.<sup>88</sup> The result, however, is that licensees that are non-compliant from one licence term to the next are hidden from public view by paper-based proceedings that attract little attention, and have little deterrent value.

The CRTC's use of non-appearing hearings to administer penalties for non-compliance also raises a question about the future of regulatory enforcement in broadcasting. If the CRTC considers that serial non-compliance does not warrant a public hearing, will it take the same approach to the administrative monetary penalties regime now proposed as an addition to the *Broadcasting Act* by Bill C-10?

*b Public interest rationale for not holding public hearings unclear*

The *Broadcasting Act* also permits the CRTC not to hold a public hearing to amend or renew licences when it believes the hearing would not serve the public interest.<sup>89</sup>

Three-quarters (301) of the 401 applications submitted under Part 1 of the CRTC's *Rules* and listed in the CRTC's 2019 Broadcast Applications Report involved licence renewals. In these cases, the CRTC publishes the applications and interested members of the public may submit interventions. The CRTC then publishes its decisions about the applications.

The basis for the CRTC's decisions to consider their applications through a paper-only process is not clear. The CRTC's Broadcast Applications Report distinguishes between the four types of categories noted previously but does not otherwise comment on the applications to mention, for instance, why the public interest would not be served by a public hearing.

The Forum considered whether licensees' compliance or non-compliance with the Commission's regulatory requirements serves as a proxy for the public interest: the public interest might be well-served if non-compliant licensees' applications to renew their licences are heard through public hearings, while 'compliant' licensees' renewal applications could be considered through a paper process.

While the 2019 Broadcast Applications Report provides no information about licensees' compliance, a separate CRTC page for Part 1 Renewal proceedings<sup>90</sup> refers to this issue. Just over a fifth (32 or 23%) of the 140 Part 1 renewal applications listed on that page for 2019 and processed without hearings involved "apparent non-compliance" by the licensee in one or more of 12 categories:

Add/amend/delete condition of licence

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<sup>88</sup> The other matter scheduled for an appearing hearing involved CBC's applications to renew its licences and maintain the exemption order for its digital services.

<sup>89</sup> S. 18(2).

<sup>90</sup> CRTC, "Closed Part 1 Licence Renewal Applications", <https://services.crtc.gc.ca/pub/instances-proceedings/Default-Defaut.aspx?S=C&PA=B&PT=PT1R&PST=A&lang=en>.

- Annual Returns
- Canadian content
- Canadian Content Development Contributions
- Closed Captioning
- Emergency Alert Messages and the National Public Alerting System (NPAS)
- Financial Statements
- Local Programming
- Other Programming Requirements
- Radio Monitoring Materials
- Renewal of licence
- Other.

Regulatory non-compliance *per se* does not, therefore, appear to determine whether renewal applications are ‘heard’ at public hearings or through Part 1 paper proceedings.

*c Administrative processes that are not disclosed until decisions are rendered*

The *Broadcasting Act* requires the CRTC to notify the public about applications asking it to issue, renew or amend broadcasting licences using the *Canada Gazette* and general-circulation newspapers in areas likely to be affected by the application.

The CRTC’s 2010 *Rules* then more broadly require it to post online all applications that meet its requirements for filing, service, form and content<sup>91</sup> while also enabling it to ignore or change the *Rules* when it “is of the opinion that considerations of public interest or fairness”<sup>92</sup> so permit.

In 2010 the CRTC explained that it issued decisions in the form of letters in regard to applications that “do not raise concerns with respect to Commission policies, regulations or conditions of licence”.<sup>93</sup> The CRTC’s reasons for its lack of “concerns” about administrative decisions is not always clear. In 2012, for instance the CRTC used the administrative process of an information bulletin to approve a change in the effective control of Vista Radio Ltd from Vista’s Board to Westerkirk Capital Inc., controlled by Thomson Investments Limited.<sup>94</sup> According to the CRTC the transaction – the sale and purchase of 24 radio stations and 14

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<sup>91</sup> These requirements are detailed in s. 22.

<sup>92</sup> S. 7.

<sup>93</sup> *Guidelines on the CRTC Rules of Practice and Procedure*, [Broadcasting and Telecom Information Bulletin CRTC 2010-959](#) (Ottawa, 23 December 2010), “Ownership reviews”, at para. 43.

<sup>94</sup> *Applications processed pursuant to streamlined procedures*, Broadcasting Information Bulletin CRTC 2012-662 (Ottawa, 4 December 2012), <https://crtc.gc.ca/eng/archive/2012/2012-662.htm>, Item 2, “APPROVED – Change to the effective control of Vista Radio Ltd. from a control exercised by its board of directors to a control exercised by Westerkirk Capital Inc., a corporation controlled by Thomson Investments Limited. Vista Radio Ltd. is the licensee of radio programming undertakings located in British Columbia, Alberta and the Northwest Territories.”

rebroadcasting transmitters<sup>95</sup> valued at \$36.4 million<sup>96</sup> -- was a 'routine application that did not raise concerns' even though, apart from its size and potential impact on the communities served by the stations, the CRTC's process for this single application included six rounds of questions<sup>97</sup> from the CRTC's staff. (Such questions are made to obtain answers that correct deficiencies in applications and are sometimes referred to as deficiency questions – six rounds of CRTC deficiency questions suggest that the application raised serious concerns that may have engaged the public interest.)

Neither the *Broadcasting Act* nor the *CRTC Rules* state a clear requirement for the CRTC to publish applications before it issues decisions, which may explain why the CRTC posted some of the applications it considered in 2019 after issuing its decisions. Of the 484 applications listed in the CRTC's 2019 Broadcast Applications Report, 39 were treated using an administrative, paper-only (no hearing) process that resulted in a CRTC Letter Decision: 13 applications were posted on the date the CRTC issued its decision and 25 were posted after the date of its decisions. (One application did not include the date of a letter decision; as the CRTC does not post its letter decisions the date could not be determined.) The 39 applications involved, among other things, requests to amend licences and to change ownership:

- 11 decisions involving licence amendments
- 8 changes in ownership
- 3 requests to delete transmitters and
- 17 requests for extensions of time.

Although the CRTC notified the public about these Letter Decisions in Information Bulletins that it issued from 2009 to 2013<sup>98</sup> the CRTC does no longer does so. Nor does it appear to publish or post these decisions.

The CRTC did not post the 2019 applications for which it issued Letter Decisions before issuing the decisions and therefore did not permit public comment on the applications. The Letter Decisions are not posted on the CRTC's website<sup>99</sup> (making it difficult and/or time-consuming<sup>100</sup>

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<sup>95</sup> Vista Radio Ltd., *Supplementary Brief*, DM#1674907 – 2012-0182-1 – APPLICATION – Document 3 Westerkirk Vista Application.pdf, at 1.

<sup>96</sup> *Ibid.*, at 4.

<sup>97</sup> The CRTC sent the applicant requests for information on 7 March 2012, 22 March 2012, 11 April 2012, 13 April 2012, 20 April 2012 and 23 May 2012.

<sup>98</sup> From 2009 to 2013 the CRTC published "lists of applications that did not require a public process and that it processed ... pursuant to its streamlined procedures", involving "transfers of ownership and changes in the effective control of broadcasting undertakings, as well as applications for amendments or for extensions of deadlines." [Applications processed pursuant to streamlined procedures](#), Broadcasting Information Bulletin CRTC 2013-274 (Ottawa, 5 June 2013).

<sup>99</sup> The CRTC's "Decisions 2019" page lists 186 broadcasting Decisions, 8 Compliance and Enforcement Decisions and 61 Telecommunications Decisions issued in 2019, but does not include 'Letter Decisions'

<sup>100</sup> Presumably the CRTC would provide copies of its Letter Decisions upon request or pursuant to the *Access to Information Act*.

either to review or challenge their contents to Cabinet or the Federal Court of Appeal). The CRTC's decision to not post applications until or after it renders decisions means that parties who legitimately relied on the CRTC's *Rules* and closely monitored its website to learn of applications affecting their interests would have lost their right to a hearing and, perhaps, to appellate review.

## 2. Opportunities to be heard: applications that the CRTC chooses and chooses not to process

As a quasi-judicial tribunal empowered by statutes enacted over four decades – the 1978 *CRTC Act*, 1991 *Broadcasting Act*, 1993 *Telecommunications Act*, 2000 *Canada Elections Act*<sup>101</sup> and Canada's 2010 anti-spam law<sup>102</sup> -- the precise limits to the CRTC's discretion are sometimes difficult to discern. Even if it is assumed that the CRTC has and should exercise a great deal of discretion in carry out its responsibilities, however, it is still subject to different principles of the rule of law:

... the more discretion that is left to a decision-maker, the more reluctant courts should be to interfere with the manner in which decision-makers have made choices among various options. However, though discretionary decisions will generally be given considerable respect, that discretion must be exercised in accordance with the boundaries imposed in the statute, the principles of the rule of law, the principles of administrative law, the fundamental values of Canadian society, and the principles of the Charter.<sup>103</sup>

While none of its enabling statutes mandate that the CRTC hear each and every application it receives, its 2010 *Rules* state that it will post applications that meet its requirements for filing, service, distribution, form and content:

23 The Commission [*sic*] must post on its website all applications that comply with the requirements set out in section 22.<sup>104</sup>

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<sup>101</sup> *Canada Elections Act*, S.C. 2000, c. 9; the sections related to the CRTC have been amended over time.

<sup>102</sup> *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act* (S.C. 2010, c. 23).

<sup>103</sup> *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999 CanLII 699 \(SCC\)](#), [1999] 2 SCR 817, at para. 56.

<sup>104</sup> *CRTC Rules*, s. 22:

(1) An application must be

(a) filed with the Commission;

(b) served on any respondent and any other persons that the Commission directs; and

(c) accompanied by a list of the persons on whom the application is served and the email address of each, if any.

Marginal note: Form and content of application

(2) An application must be made using the appropriate form listed in Broadcasting and Telecom Information Bulletin CRTC 2010-453, as amended from time to time. If none of the forms listed in the Bulletin is appropriate, the application must

In fact a Part 1 proceeding cannot even begin until the CRTC posts the application: “A Part 1 proceeding always begins when an application is posted on the Commission’s website under ‘Public Proceedings.’”<sup>105</sup>

The CRTC may, however, vary or ignore any of its *Rules* in the public interest or to be fair:

7 If the Commission is of the opinion that considerations of public interest or fairness permit, it may dispense with or vary these Rules.

As mentioned previously, the CRTC’s website provides lists of “publicly available” broadcasting applications by calendar year<sup>106</sup> but does not clarify what applications are or are not “publicly available” or that are not ‘publicly available’.

The Forum therefore asked the CRTC under the *Access to Information Act* about applications that were not posted on the CRTC’s website. The CRTC disclosed that from 2016 to September 2020 it received

- 8 Part 1 broadcasting applications that it did not post on its website,
- 54 Part 1 broadcasting applications that it did not post on its website and returned to the applicants, and
- An unknown number of broadcasting and telecommunications Part 1 applications that the CRTC received, did not post on its website, to which it did not assign application numbers and which it did not process.

**Error! Reference source not found.** sets out the 62 Part 1 Applications (8 received and not posted, and 54 received, not posted and returned to the applicants) that the CRTC received from 2016 to fall 2020 but did not post to its website. While the CRTC may have given its reasons for not posting these applications, time limitations precluded research into the 8

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- (a) set out the name, address and email address of the applicant and any designated representative;
  - (b) set out the applicant’s website address or, if the application is not posted on their website, the email address where an electronic copy of the application may be requested;
  - (c) be divided into parts and consecutively numbered paragraphs;
  - (d) identify the statutory or regulatory provisions under which the application is made;
  - (e) contain a clear and concise statement of the relevant facts, of the grounds of the application and of the nature of the decision sought;
  - (f) set out any amendments or additions to these Rules proposed by the applicant; and
  - (g) include any other information that might inform the Commission as to the nature, purpose and scope of the application, and be accompanied by any supporting documents.

<sup>105</sup> *Guidelines on the CRTC Rules of Practice and Procedure*, Broadcasting and Telecom Information Bulletin CRTC 2010-959 (Ottawa, 23 December 2010), <https://crtc.gc.ca/eng/archive/2010/2010-959.htm>, at para. 44.

<sup>106</sup> CRTC, “Broadcasting Applications Report”, <https://services.crtc.gc.ca/pub/demradbroadappl/Default-Default.aspx> [underlining added].

individual applications that were not posted and not returned, along with the 54 applications returned to the applicants.

As for ‘unknown’ Part 1 applications that the CRTC did not process and that it did not make publicly available, the Forum became aware of two Part 1 applications that had been submitted to the CRTC that were neither posted on the CRTC’s website nor returned to the applicants to correct deficiencies.

The first unprocessed application was a Part 1 application by the Syndicat canadien de la fonction publique (SCFP) asking the CRTC to review its 2012 *Digital Media Exemption Order* which SCFP submitted to the CRTC on 13 February 2018.<sup>107</sup> The second was a Part 1 application submitted by the Public Interest Advocacy Centre (PIAC) to the CRTC on 4 May 2020 asking the CRTC to review “all Canadian telecommunications service providers’ involvement in potential or actual pandemic contact-tracing for public health purposes.”<sup>108</sup>

The CRTC did not initially acknowledge receipt of the applications, post them or write the applicants to advise that the CRTC would not post the applications due to consideration of the public interest and/or fairness. When the applicants inquired about the status of their applications, each was told by the CRTC’s staff that the applications would not be processed, again without reference to public-interest or fairness considerations. When the applicants inquired further, they received written confirmation that the applications would not be processed.

The Forum therefore asked the CRTC about applications it had received, to which it had not assigned application numbers and which it had not posted. We received an informal response in mid-October 2020 as follows:

All applications are considered and processed as appropriate. In some situations applications may be returned prior to being assigned an application number because they are considered to be inconsistent with a Commission policy or they are more appropriately dealt with under another procedure. Such applications are not retained or tracked.

It was somewhat unclear from this response whether inconsistency with a Commission policy or appropriateness of another procedure constitutes reasons related to the public interest or fairness for the CRTC.

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<sup>107</sup> CRTC, *Objet: Demande de la Partie 1 visant le réexamen de l’Ordonnance d’exemption relative aux entreprises de radiodiffusion de médias numériques (CRTC 2012-409)*, (Montréal, 13 February 2018), [https://CRTC.qc.ca/wp-content/uploads/2018/03/2018-02-13\\_Demande\\_R%C3%A9examen\\_Exemp\\_MediaNum\\_CPSC\\_CRTC\\_CRTC2012-409.pdf](https://CRTC.qc.ca/wp-content/uploads/2018/03/2018-02-13_Demande_R%C3%A9examen_Exemp_MediaNum_CPSC_CRTC_CRTC2012-409.pdf).

<sup>108</sup> PIAC, *Re: Application Regarding Pandemic Contact-Tracing at Application and Network Levels*, (Ottawa, 4 May 2020), <https://www.piac.ca/wp-content/uploads/2020/05/PIAC-Part-1-App-CRTC-Contact-Tracing-Apps-and-Tools-FINAL-Website.pdf>.

The Forum therefore asked about the process used by the CRTC for dealing with 'unnumbered applications'. Specifically, on 23 October 2020 we asked the Commission to

1. Provide the names and positions of those who currently decide when applications are "unnumbered applications" and state whether these names have changed since January 1, 2016
2. State whether the applicants who submitted the "unnumbered applications" are notified that their applications are not being given an application number, and if they are notified, how this is done - by e-mail, written letter or telephone call,
3. State whether, if applicants are notified, the notification includes reasons
4. Provide the actual or estimated time that the CRTC typically takes to return or not further consider "unnumbered applications", and
5. Provide a copy of any written documentation describing the process by which "unnumbered applications" are to be treated, and if there is such documentation, where it is located on the portion of the CRTC website that is accessible to the public.

On 23 November 2020 the CRTC answered this request and said that it had no documents about these matters.

On 15 December 2020 the Forum asked the Commission for the minutes of any meeting of the Commission, of its standing committees or of any special committees authorized to make decisions on behalf of the CRTC, in which decisions were made not to grant process to applications submitted under Part 1 of its *Rules* or to delegate such responsibility to CRTC staff, from January 2015 to mid-December 2020; the CRTC on 15 January 2021 said it had no such documents.<sup>109</sup>

It seems, therefore, that while the CRTC from time to time decides not to consider applications that it has received it does not have a written set of procedures for dealing with applications it does not want to process. No CRTC committees or subcommittees make such decisions and no CRTC staff have been delegated this responsibility. The CRTC's decision not to track the applications to which it does not grant process also means that the numbers reported by the CRTC in its lists of broadcasting and telecommunications applications are unreliable, as they exclude an unknown number of applications received by the CRTC and not included in its Broadcast Applications Reports. It appears, for example, that the Broadcast Applications Report excludes Part 1 applications submitted by unlicensed stakeholders such as public interest organizations.

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<sup>109</sup> CRTC, 2021 01 15 signed response letter A-2020-00053.pdf (Ottawa, 15 January 2021).

It is unclear how the CRTC is exercising its discretion to consider the applications it receives.

### 3. Timeliness: the issue of delays

In addition to addressing the ‘fairness’ of its proceedings the CRTC’s 2019 *Departmental Results Report* set out a measure of their ‘efficiency’ – the percentage of Part 1 applications in which decisions were issued within four months of the close of the record in the proceeding. (The CRTC said that in 2018/19 its result was 81% - see Figure 5, above.) Its [Departmental Plan 2018-2019](#) explained its expectation of issuing determinations in a timely fashion in relation to each application’s “close of record” and the outcome of the application:

The CRTC expects to deliver its decisions in a procedurally fair and timely manner. In some cases, where proceedings are particularly complex or precedent-setting, or garner a large number of interventions, the CRTC’s service objectives for efficiency may not be met because more significant analysis is required, which prolongs **the period between the close of record and the decision in the proceeding**. The CRTC must also respond to occasional unanticipated requests that place additional demands on its existing resources. CRTC proceedings do not seek to be efficient at the expense of fairness, transparency or accessibility.

[bold font added]

While the *CRTC Rules* do not mention or define the ‘close of record’ in CRTC proceedings, the record of a CRTC proceeding generally closes the day after applicants make their last submissions to the CRTC.

The CRTC’s measure of the time between the close of the record in a proceeding and a CRTC decision in the matter may measure ‘efficiency’ from the perspective of the CRTC but does not measure ‘undue delays’: what may matter most to an applicant is the time from when an application was filed, to the time when the CRTC renders a final decision.

When it issued *Guidelines* in 2010 for its new procedural *Rules*, the CRTC appeared to be aware of applicants’ concerns. It noted among other things that its new procedural regulations would eliminate unnecessary delays in the regulatory process.<sup>110</sup> It is not known how the CRTC

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<sup>110</sup> *Guidelines on the CRTC Rules of Practice and Procedure*, Broadcasting and Telecom Information Bulletin CRTC 2010-959 (Ottawa, 23 December 2010), <https://crtc.gc.ca/eng/archive/2010/2010-959.htm>:

3. In recognition of the significant changes in the industries it regulates and in the technology available to conduct its proceedings, the Commission initiated a public proceeding to establish the new Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure (the Rules of Procedure).[5] The objectives of the Rules of Procedure are to:

- enable informed and effective public participation in Commission proceedings;
- ensure the efficient, transparent and predictable conduct of Commission proceedings;
- eliminate unnecessary costs and delays in the regulatory process; and
- provide a comprehensive set of rules applicable in most Commission proceedings, while maintaining the flexibility necessary to address the specific circumstances of each proceeding.

distinguishes between necessary and unnecessary delays, or what contributes to the CRTC’s decisions about whether or when to make applications available for public comment.

As for the CRTC’s own evaluation of its ‘efficiency’, it is impossible to confirm its findings without reviewing each of the 1,155 applications listed in its 2019 broadcasting and telecommunications applications reports.<sup>111</sup> Each application would have to be downloaded and reviewed because the CRTC’s reports on telecommunications applications do not include any information about the date when the CRTC’s process closed, the outcome or the date of the outcome for individual applications. Its reports on broadcasting application do not include any information about the dates when applications were submitted or the CRTC’s process was closed.

As for CRTC Letter Decisions, applicants’ submissions are not posted either before or after the CRTC’s close of process or decision. In fact, of the 39 Letter Decisions issued about broadcasting applications in 2019, a third (13) were posted the same date on which the CRTC issued its Letter Decision was issued, and two-thirds (25, or 64%) were posted after the decisions were issued: Table 19. Excluding the 39 letter decisions, no decision was shown (at the time of writing in December 2020) in the 2019 Broadcast Applications Report for 31% (137) of 445 broadcasting applications.

**Table 19** Decisions in the CRTC’s 2019 Broadcasting applications report

Broadcasting report, 2019	Letter decisions		Notices of consult’n		Part 1 renewals		Part 1 (other)		Total	
	Appl’ns	%	Appl’ns	%	Appl’ns	%	Appl’ns	%	#	%
Decision but no date	1	3%	40	91%	197	65%	71	71%	309	64%
No decision & no dec’n date			4	9%	104	35%	29	29%	137	28%
Posted after decision	25	64%							25	5%
Posted day of decision	13	33%							13	3%
<b>Total</b>	<b>39</b>	<b>100%</b>	<b>44</b>	<b>100%</b>	<b>301</b>	<b>100%</b>	<b>100</b>	<b>100%</b>	<b>484</b>	<b>100%</b>

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<sup>111</sup> See previous Table 13Table 13.

We also analyzed the Part 1 broadcasting applications unrelated to licence renewals which the CRTC listed for 2019, to determine the time between applications' submission and final CRTC determinations. We downloaded the applications of each of the 100 Part 1 applications (see Table 13) to determine the date when applications were signed (and assumed the applications were then actually submitted to the CRTC within one month of signing).<sup>112</sup>

We began by comparing the date of posting to the date on which decisions, if any, were issued. As Figure 7 shows, decisions were issued within 4 months of being posted for 55% of the applications.

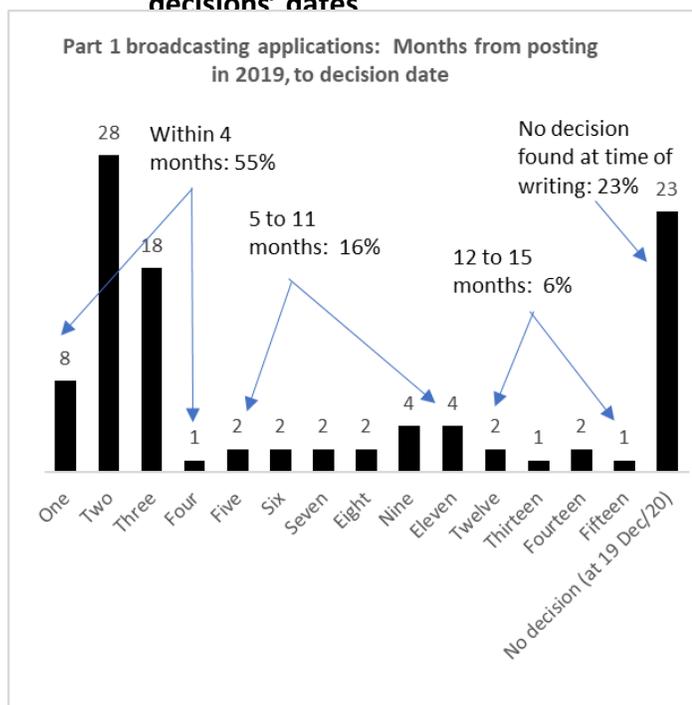
Decisions were issued after five to fifteen months for 22% of the applications. We were unable to locate decisions for 23% of the 2019 applications in early December 2020.

We then considered timing and delays from the perspective of applicants.

Two-thirds of the Part 1 applications listed in the CRTC's 2019 Broadcasting Applications Report were posted within a month of being submitted: Table 20.

Posting occurred from three to 14 months after filing for nearly a fifth – 18% - of the applications. Applications filed with the CRTC in the same month (and year) were not necessarily also posted in the same month; large differences appeared between applications filed in August and November 2019.

**Figure 7 Part 1 applications posted in 2019 and CRTC decisions' dates**



**Table 20 Comparison of date when Part 1 applications were filed, with CRTC's posting date**

Application filing dates: signatures' month and year	Posting date less signature date (in months)							Total Applications
	Less than one month	One month	Two months	Three months	Four months	Nine months	Fourteen months	
Jan 19	5*							5
Feb 19	5	2						7
Mar 19	2	1						3
*Five applications filed in January 2019 were posted within one month of filing								
Apr 19	9							9

<sup>112</sup> From time to time the applications could not readily be located – the CRTC suspended an application filed by Newfoundland Broadcasting Company Limited on 10 July 2019, for instance, which we could not locate.

Application filing dates: signatures' month and year	Posting date less signature date (in months)							
	Less than one month	One month	Two months	Three months	Four months	Nine months	Fourteen months	Total Applications
May 19	5	8	1					14
Jun 19	5							5
Jul 19	14	1						15
Aug 19	4			5		4	5	18
Sep 19	3							3
Oct 19	4	1	1					6
Nov 19	5	1			4			10
Dec 19	5							5
Total	66	14	2	5	4	4	5	100

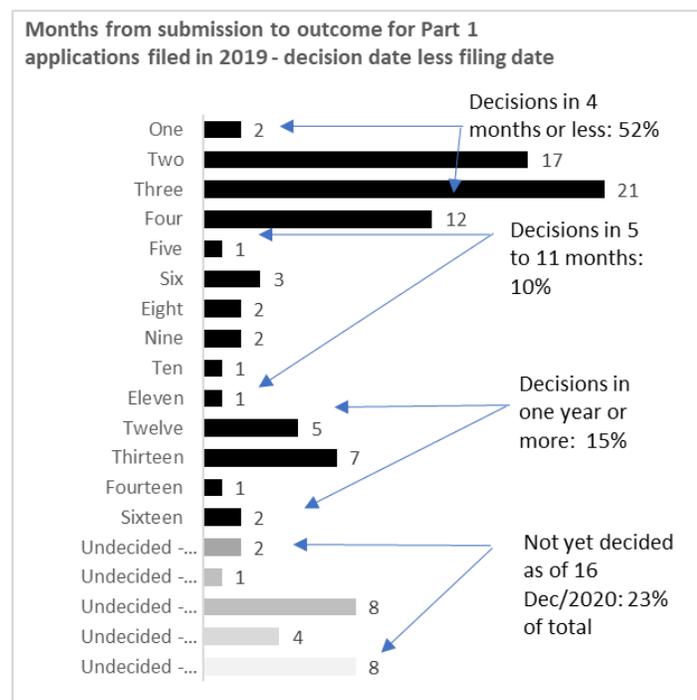
We also compared the time when applications were submitted to the date of CRTC decisions: Figure 8.

The CRTC issued decisions for 52% of the applications within 4 months of their submission. It issued decisions for 10% of the applications from 5 to 11 months after they were submitted. Decisions were issued for another 25% of the applications a year or more after submission.

We could not locate decisions for almost a quarter – 23% - of the applications, all of which had been submitted a year or longer before the date of this writing – and of which 18 had been submitted six months or more before March 2020 when Federal government operations were disrupted by the Covid-19 pandemic.

More briefly, while the CRTC issued decisions about half (52%) of the Part 1 applications not having to do with renewals within 4 months of the applicants' filing their submission, 15% of applicants waited a year or more for a decision and no decisions could be located for another 23% of applications including the 18% of applications filed half a year or more before Covid-19 affected the CRTC's operations.

**Figure 8 Part 1 applications submitted to the CRTC in 2019: months from submission to CRTC decision**



#### 4. The appearance of fair and impartial decision-making of the CRTC

The IRCC criteria refer to the right to fair and impartial decision-making. The *Broadcasting Act* currently establishes that while Commissioners appointed to hear matters may consult with the

‘full Commission’, responsibility for making decisions about matters they hear lies with the members of each CRTC hearing panel. Two concerns exist about the CRTC’s current decision-making process concerning transparency and impartiality.

*a CRTC officials meet with applicants before they file applications*

While members of a “quasi-judicial” tribunal are expected to bring some of their experience to bear on the decisions they make, a basic element of procedural fairness is the idea that parties to a matter are entitled to be heard and to know the case they must meet.<sup>113</sup> Conflicts may arise between tribunal members’ desire to be informed about the area over which they have jurisdiction, the desire of parties affected by the tribunal’s decisions to obtain policy outcomes they want and the necessity when adhering to the rule of law and the requirements of due process to ensure that the appearance of preferential treatment is avoided.<sup>114</sup>

Some applicants may meet with CRTC officials about matters addressed by applications that they subsequently file, raising concerns related to an apprehension of bias and threatening “the integrity and reputation of the CRTC”.<sup>115</sup> The Supreme Court set out the legal test for bias in 1978, focussed on whether, when informed, reasonable persons would think decisions were made fairly or unfairly:

... the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. ... [The] test is “what would an informed person, viewing the matter realistically and practically—and having thought the matter through—conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly.”<sup>116</sup>

On 29 January 2018 a coalition of broadcast stakeholders<sup>117</sup> submitted a Part 1 application under the *Telecommunications Act* which the CRTC posted for comment on 30 January 2018. In

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<sup>113</sup> Sometimes referred to by the latin phrase, *audi alteram partem*.

<sup>114</sup> France Houle and Lorne Sossin, “Tribunals and Policy-making: From Legitimacy to Fairness”, *Essays in Administrative Law and Justice* (2001-2007), at 138:

... tribunals often will lack the expertise and resources to undertake significant consultations as part of its policy-making function. Even where such expertise and capacity exist, consultations raise the question of the policy preferences and political goals of tribunals. In other words, the policy-making mandates of tribunals will often have an impact on the allocation of scarce public resources. There is an inherently political dimension to the decision to prefer the interests of some groups over other. Where tribunals have a mandate to make decisions (or issue non-legislative rules) in the public interest, how should a tribunal decide between who will benefit and who will be burdened by its policy choices? Is it appropriate for affected groups to lobby tribunals for more favorable policy outcomes according to their perspectives? Is the legal, administrative and institutional environment of tribunals not well suited, in general, to the development and implementation of policy?

Are tribunals accountable for these choices?

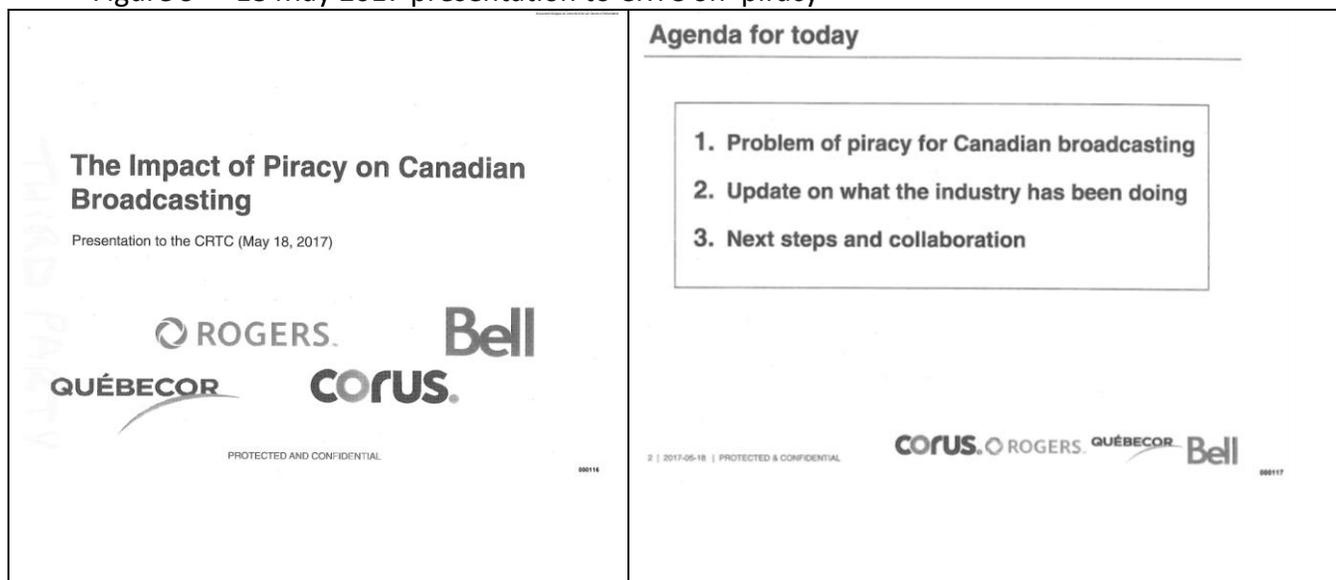
<sup>115</sup> *Shoan v. Canada (Attorney General)*, 2018 FC 476 (CanLII), at para. 113.

<sup>116</sup> *Committee for Justice and Liberty et al. v. National Energy Board et al.*, 1976 CanLII 2 (SCC), [1978] 1 SCR 369 at 386.

<sup>117</sup> Including vertically integrated licensees such as Bell and Rogers, as well as associations, guilds and broadcast licensees: Academy of Canadian Cinema and Television, Alliance of Canadian Cinema, Television and Radio Artists (ACTRA), Association québécoise de l’industrie du disque, du spectacle, et de la video (ADISQ), Asian

response to an access-to-information request<sup>118</sup> the CRTC provided PDF copies of documents related to the ‘Fairplay’ application. One document entitled “The Impact of Privacy on Canadian Broadcasting: Presentation to the CRTC (May 18, 2017)” included a 3-part agenda whose third part referred to “Next Steps and Collaboration”: Figure 9. The Registry of the Commissioner of Lobbying shows a communications report for 19 May 2017 from Corus Entertainment Inc., between Corus and the CRTC’s Executive Broadcasting Director in relation to “Broadcasting”.

Figure 9 18 May 2017 presentation to CRTC on ‘piracy’



Bell made another presentation “dated September 21, 2017 that provided a detailed preview of the filing, complete with policy and legal arguments supporting the proposal”: the company “argued for site blocking and an anti-piracy agency, claiming the proposal is consistent with other countries and fits within the CRTC’s mandate. The final submission months later employed the same arguments and data.”<sup>119</sup> A representative of Bell emailed the CRTC’s Acting

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Television Network (ATN), Association québécoise de la production médiatique (AQPM), Bell Canada, Bell Expressvu, Bell Media, Canadian Association of Film Distributors and Exporters (CAFDE), CBC / Radio-Canada, Les Cinémas Ciné Entreprise Inc., Cinémas Guzzo, Cineplex, Canadian Media Producers Association (CMPA), Cogeco Connexion, Corus, Directors Guild of Canada (DGC), DHX Media, Entertainment One, Ethnic Channels Group, Fairchild Media Group, International Alliance of Theatrical Stage Employees (IATSE), Landmark Cinemas, Maple Leaf Sports and Entertainment (MLSE), Movie Theatre Association of Canada (MTAC), Québecor Média Inc., Rogers Media, Television Broadcasts Limited (TVB), TIFF, and Union des artistes (UDA).

<sup>118</sup> [A-2017-00033](#), “Communications between the Commission and members of the “FairPlay Canada” coalition regarding copyright infringement and website blocking for the period of 1 January 2016 to 16 February 2018.”

<sup>119</sup> Michael Geist, “Fair Play for FairPlay?: Bell Presented Its Site Blocking Plan to the CRTC Months Before It Became Public”, (Ottawa, 16 May 2018), <https://www.michaelgeist.ca/2018/05/bellcrtccaccessfairplay/>.

Senior General Counsel/Executive Director two days before the presentation, noting that a coalition of Bell and others “will soon file an application with the CRTC under ss 24 and 36 of the Telecom Act asking the Commission to require ISPs to block access to egregious piracy web sites” – see Figure 10.

**Figure 10 21 September 2017 e-mail re site-blocking application**

<b>From:</b>	Millington, Stephen
<b>Sent:</b>	September-21-17 8:22 AM
<b>To:</b>	Wilson, James
<b>Subject:</b>	FW: For Thursday's discussion
<b>Attachments:</b>	CRTC Site Blocking Slides - Final - MB Revisions.pdf

Stephen Millington  
Avocat général principal / Directeur exécutif par intérim  
A/Senior General Counsel / Executive Director  
Secteur juridique / Legal Sector  
Conseil de la radiodiffusion et des télécommunications canadiennes /  
Canadian Radio-television and Telecommunications Commission  
CRTC, Ottawa, Ontario K1A 0N2  
Tel: 819-953-0632  
BB: 613-878-6789  
Fax: 819-953-0589  
stephen.millington@crtc.gc.ca

**From:** Malcolmson, Robert [mailto: [REDACTED]@bell.ca]  
**Sent:** September-19-17 12:42 PM  
**To:** Millington, Stephen <stephen.millington@crtc.gc.ca>  
**Subject:** For Thursday's discussion

Steve, attached is a short deck that explains what we are coming to see you about. As you will see a coalition comprised of Bell, Videotron, Rogers, CBC, Asian television Network and others (and supported by members of the creative community) will soon file an application with the CRTC under ss 24 and 36 of the Telecom Act asking the Commission to require ISPs to block access to egregious piracy web sites. Content piracy is a growing problem that is harming our industry— [REDACTED] Canadians visited pirate sites 1.88 billion times in 2016 and increasingly Kodi set top boxes are being sold pre loaded with live streams of CRTC licensed channels, causing Canadians to disconnect from the regulated system in favour of pirated content.

We will talk more on Thursday but that's the background behind what is driving this project. Look forward to speaking to you about it.

Regards, Rob.

Note: yellow highlighting added; grey shading shows redaction by CRTC's access-to-information office

The 21 September 2017 meeting was not reported to the Commissioner of Lobbying.<sup>120</sup> The CRTC decision denying the Fairplay application – due to lack of jurisdiction, rather than disagreement with the application itself – did not mention the 2017 meeting with Bell. Yet as

<sup>120</sup> *ibid.*

Dr. Michael Geist noted, by “granting Bell a private audience with CRTC officials, the company was able present its case without counter-arguments or a public airing.”<sup>121</sup>

Similarly, the Canadian Association of Broadcasters submitted a Part 1 application under the *Broadcasting Act* to the CRTC in mid-July 2020 seeking urgent regulatory relief for broadcasters due to the Covid-19 pandemic<sup>122</sup> and with respect to which the CRTC invited public comment in mid-September 2020.<sup>123</sup> The CAB had “months of discussions with Commission staff”<sup>124</sup> before the application was made public for comment, and “Commission staff informed the CAB that the Commission would prefer to receive and [*sic*] application from the CAB, rather than hundreds of individual applications from broadcasters.”<sup>125</sup> The CRTC’s notice of consultation did not mention the months of discussions of its staff with the CAB before it issued the notice; at the time of this writing it had not yet rendered a decision on the CAB’s application. Nor does the Registry of the Commissioner of Lobbying include statistics about such meetings. Regardless, as the meetings between the CRTC and CAB were held in private, other interested parties were denied an opportunity to hear – and perhaps contest – any evidence and/or arguments presented to the Commission.

Meetings arranged between CRTC officials and/or Commissioners and stakeholders that subsequently file applications about matters requiring CRTC determinations could simply be viewed as providing the Commission with additional information, thereby adding to its understanding of the sectors it regulates and strengthening its expertise. If that were the case, what prevents the Commission from posting information about such meetings either before or immediately after the meetings are held?

The absence of any mention of prior meetings in the CRTC’s notices of consultation and/or decisions leads to concerns about transparency.

### ***b CRTC Chairperson appoints panel members***

Under the present *Broadcasting Act*, responsibility for assigning the three or more members required for any CRTC panel that hears applications rests with the CRTC’s Chairperson:

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<sup>121</sup> *Ibid.*

<sup>122</sup> Canadian Association of Broadcasters, *Re: Emergency application to address extraordinary impacts of COVID-19 on private broadcasters – Request for clarification of CRTC emergency regulatory flexibility and forbearance for the broadcast year ending August 31st, 2020* (Ottawa, 13 July 2020).

<sup>123</sup> *Call for comments on an application by the Canadian Association of Broadcasters requesting regulatory relief for Canadian broadcasters in regard to the COVID-19 pandemic*, Broadcasting Notice of Consultation [CRTC 2020-336](#) (Ottawa, 17 September 2020).

<sup>124</sup> General Manager, Westman Radio Ltd., RE: Potential COVID-19 induced non-compliance with conditions of licence and/or regulations for the 2019-2020 and 2020-2021 broadcast years., Intervention filed in response to Broadcasting Notice of Consultation CRTC 2020-336, (22 September 2020, Brandon [Manitoba]), at 1.

<sup>125</sup> *Ibid.*

20 (1) The Chairperson of the Commission may establish panels, each consisting of not fewer than three members of the Commission, to deal with, hear and determine any matter on behalf of the Commission.

(2) A panel that is established under subsection (1) has and may exercise all the powers and may perform all the duties and functions of the Commission in relation to any matter before the panel.

(3) A decision of a majority of the members of a panel established under subsection (1) is a decision of the panel.

(4) The members of a panel established under subsection (1) shall consult with the Commission, and may consult with any officer of the Commission, for the purpose of ensuring a consistency of interpretation of the broadcasting policy set out in subsection 3(1), the regulatory policy set out in subsection 5(2) and the regulations made by the Commission under sections 10 and 11.

Neither the *Telecommunications Act* nor the *CRTC Act* assigns responsibility for appointing members of CRTC telecommunications hearing panels, but in 2016 the Federal Court of Appeal held that the CRTC's Chairperson has the authority to appoint members of telecommunications panels,<sup>126</sup> quoting from an administrative law text to the effect that implicit in the Chairperson's position and responsibilities<sup>127</sup> is the Chairperson's authority "to assign cases and members to cases (particularly, but not exclusively, where the statute refers to the Chair as the Chief Executive Officer or as having the general management of the agency)."<sup>128</sup>

The IRCC criteria for procedural fairness noted that applicants have the right to fair and impartial decision-makers, and that the possibility or even the perception of bias must be avoided. The absence of transparency and clarity about CRTC decision-making makes it difficult for applicants to know of and understand this right, and to evaluate its application.

Insofar as transparency is concerned, CRTC Decisions issued by the CRTC's Secretary General for the Commission are not signed (although Commissioners who dissent from individual decisions are identified). The fact that decisions are not signed does not, of course, automatically imply that decision-making is partial – but knowing whether specific CRTC Commissioners are or are not likely to be appointed to panels empowered to make decisions in certain matters might well carry that implication. The Forum undertook a study in 2018 to determine empirically whether all CRTC Commissioners have an equal opportunity of participating as members of CRTC hearing panels.

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<sup>126</sup> *Shoan v. Canada (Attorney General)*, 2016 FCA 261 (CanLII), <<http://canlii.ca/t/gvds3>>, retrieved on 2018-04-25, see ¶¶1, 6-8 and 10.

<sup>127</sup> The Court quoted from s. 6(2) of the *Canadian Radio-television and Telecommunications Commission Act*, noting that "... the Chairperson 'is the chief executive officer of the Commission, has supervision over and direction of the work and staff of the Commission and shall preside at meetings of the Commission'."

<sup>128</sup> *Shoan v. Canada (Attorney General)*, [2016 FCA 261](#) (CanLII), at ¶6 (citation omitted).

The Forum reviewed the CRTC's transcripts of hearings from 1998 to 2017, dealing with broadcasting and telecommunications matters, to determine which CRTC Commissioners heard which matters. Our quantitative analysis of this information found that CRTC Commissioners appointed from 1996 to 2017 did not have an equal chance of being appointed to CRTC hearing panels. For example,

- During her term from 1996 to 2001 Chairperson Bertrand appointed Commissioner Wylie to 18 hearing panels and Commissioner Langford (whose term overlapped that of Commissioner Wylie) to 5 hearing panels
- During his term from 2002 to 2007 Chairperson Dalfen appointed Commissioner Pennefather for 20 hearing panels and Commissioner Grauer (whose term overlapped much of the term of Commissioner Pennefather) for 3 hearing panels, and
- During his term from 2007 to 2012 Chairperson von Finckenstein selected Commissioner Katz for 36 hearing panels and Commissioner Morin (whose term overlapped much of the term of Commissioner Katz) for 6 (non-appearing) hearing panels.

Unsigned CRTC decisions raise obvious concerns about transparency, but even more importantly limit the public's ability to assess and evaluate the impartiality of CRTC decision-making.

## 5. Lack of clarity over authority to decide

The IRCC criteria include the idea that those who make decisions about applications are lawfully authorized to make such decisions. The *Broadcasting Act* establishes that decisions are made by the majority of CRTC Commissioners assigned to hear and decide matters on behalf of the CRTC. CRTC officials and Commissioners have, however, issued documents that may have misled recipients into believing that they had received CRTC decisions. This appears to have happened at least three times in the last twenty years:

- a in November 1999 a complaint was filed with the CRTC alleging that a program broadcast on a cable television community channel was abusive or discriminatory and that it breached the CRTC's television regulations as well as industry self-regulatory codes. In August 2000 a letter from the CRTC's Executive Director of Broadcasting said the program did not breach the CRTC's requirements. The Federal Court of Appeal held in December 2000 that the Executive Director's letter "was not a 'decision' of the 'Commission' ....".<sup>129</sup> It added that the Executive Director's letter "did not itself explain the right of a complainant to ask that the complaint be put before the Commission", and the Court agreed "that it would be better if this were brought to the attention of a

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<sup>129</sup> *Centre For Research-Action On Race Relations v. Canadian Radio-Television and Telecommunications Commission*, [2000 CanLII 16685 \(FCA\)](#), at para. 6.

complainant when staff send a letter indicating that they do not think a complaint has been made out.”<sup>130</sup>

- b in February 2008 the Vice-Chair of Broadcasting at the CRTC answered a complaint from the Communications, Energy and Paperworkers Union of Canada (CEP) asking the CRTC to hold a hearing under section 18(3) of the *Broadcasting Act* to investigate changes being made by Canwest to its television undertakings which breached their terms and conditions.<sup>131</sup> The Vice-Chair’s letter said that Canwest was not in breach of its conditions of licence and the issue should be raised at Canwest’s 2009 licence renewal. As a result, the “complaint was not put on the agenda of a meeting of the CRTC or of any of its delegates authorized to make binding decisions, and no further action was taken on it.”<sup>132</sup> The Federal Court of Appeal held that the Vice-Chair’s letter was not a decision of the CRTC,<sup>133</sup> adding that “... the CRTC could do a much better job than it has in ensuring that complainants understand the effect of the kind of letter written by Mr. Arpin, the CRTC’s administrative processes and procedures for dealing with complaints, and who may make decisions in its name.”<sup>134</sup>
- c on 13 November 2020 more than two dozen former CBC staff filed a Part 1 application asking the CRTC to investigate CBC's past, current and planned broadcast of branded

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<sup>130</sup> *Ibid.*, para. 8.

<sup>131</sup> S. 18(3), *Broadcasting Act*:

Where public hearing in Commission’s discretion

The Commission may hold a public hearing, make a report, issue any decision and give any approval in connection with any complaint or representation made to the Commission or in connection with any other matter within its jurisdiction under this Act if it is satisfied that it would be in the public interest to do so.

<sup>132</sup> *Communications, Energy and Paperworkers Union of Canada v. CanWest MediaWorks Inc.*, [2008 FCA 247 \(CanLII\)](#), at paras. 3-4.

<sup>133</sup> *Ibid.*, at paras. 17-19:

[17] It is clear from these provisions that no single member of the CRTC, including the Vice Chairman, Broadcasting, has the authority to exercise the statutory powers of the CRTC, including the power in subsection 18(3) respecting a complaint. Consequently, the Arpin letter cannot be a “decision of the Commission” for the purpose of subsection 31(2) of the *Broadcasting Act*.

[18] CEP also says that, unlike the letter considered in *Centre for Research-Action*, the Arpin letter does not state that it was not a decision of the CRTC, nor does it indicate that it is merely expressing the personal opinion of the author. In my view, these considerations cannot clothe the Vice Chairman, Broadcasting, with a legal authority that he does not possess, so as to convert the Arpin letter into a “decision of the Commission”. Similarly, the Arpin letter is not rendered a “decision of the Commission” because the CRTC’s Rules of Procedure and “Fact Sheet” may not adequately explain the process and procedure by which the CRTC handles complaints, and Commission By-Law No. 26 delegating to the Broadcasting Committee the exercise of the CRTC’s power under subsection 18(3) to hold a public hearing is not available to the public.

....

<sup>134</sup> *Ibid.*, para. 19: “... The fact that the experienced counsel retained by CanWest did not question the legal status of the Arpin letter is further evidence that the CRTC needs to ensure that its processes are better understood both by those it regulates and by interested members of the public.

content.<sup>135</sup> When they received no response to their letter they wrote a second letter on 23 November 2020<sup>136</sup> and a third letter on 27 November 2020<sup>137</sup> asking the CRTC to post their application. On 27 November 2020 the CRTC's Secretary General sent the applicant two or more e-mails that did not respond to the applicant's request on behalf of the CRTC. The employees wrote to the Minister of Canadian Heritage on 7 December 2020 to ask that Cabinet request the CRTC to investigate CBC's branded-content activities. On 10 December 2020 the Secretary General wrote to the employees on behalf of the Commission to confirm that the branded-content issue may be addressed at the CRTC's January 2021 public hearing on CBC's applications, and that the employees' letter would be added to the proceeding's public record.<sup>138</sup>

One issue raised by the first two examples is that in 2000 and in 2008 the courts effectively encouraged the CRTC to clarify its decision-making processes and avenues of appeal. By 2020, however, the CRTC's Secretary General did not convey that information to the applicant.

A second issue raised by these three examples has to do with accountability and the appropriate exercise of authority. The only reason the examples came to light is because in two cases the applicants went to court while in the third case the applicant made its concerns known publicly. It is unknown whether other applicants have received responses from within the Commission's walls which left them with the impression that the responses were made under the CRTC's express authority so that the applicants chose not to pursue their applications before the Commission. If so, such applicants may have been denied due process and Parliament may again have been denied access to information about public concerns about communications.

In brief, insofar as procedurally fair decision-making is concerned there are grounds to be concerned about the transparency, impartiality and misleading assumption of authority by the CRTC and its officials. CRTC staff and Commissioners have met with applicants before the latter filed their submissions in an unknown number of cases. The power of the CRTC's Chairperson to select Commissioners to hear specific matters has led to some Commissioners playing a role disproportionate to their number. Despite suggestions made in *obiter* by the Federal Court of Appeal in 2000 and again in 2008 that the CRTC should clarify which decision-makers act with its authority, in late 2020 an applicant for CRTC assistance still received e-mails from one of its

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<sup>135</sup> *Re: CBC's Carriage of Branded Programming*, Part 1 application, ([13 November 2020](#)), at para. 20.

<sup>136</sup> *Re: Procedural request submitted on 13 November 2020 with respect to BNoC 2019-379*, ([23 November 2020](#)), at 1. (The 13 November 2020 letter had proposed that if the CRTC did not wish to address concerns about CBC's branded content in a Part 1 proceeding, it could view the letter as a procedural request to add the matter to the CRTC's agenda for its January 2020 public hearing on CBC's licensing applications.)

<sup>137</sup> *Re: Procedural request submitted on 13 November 2020 with respect to BNoC 2019-379 and follow-up letter submitted on 23 November 2020*, ([27 November 2020](#)), at 1.

<sup>138</sup> *RE: CBC/SRC licence renewal – Application by former CBC employees regarding the Tandem initiative*, Broadcasting Commission Letter addressed to Former CBC employees and Talin Vartanian ([Ottawa, 10 December 2020](#)).

senior official that misleadingly appeared to offer a CRTC determination that the official was not empowered to make.

#### **IV. Summary, conclusions and recommendations**

Bill C-10 proposes to expand the CRTC's current authority by redefining the concept of broadcasting undertaking to enable it to regulate online undertakings, by permitting it to set 'conditions of service' through orders, and by allowing it to levy administrative monetary penalties (AMPs) when its broadcast regulations and orders are breached.

While Bill C-10 redefines broadcasting undertakings to include online programming services and adds 26 new sections in Part II.2 to the *Broadcasting Act*, it is otherwise entirely silent about the CRTC's general approach to administering its responsibilities to implement Parliament's policies for Canadian broadcasting and telecommunications. Yet Canadian law has changed since the current *Broadcasting Act* was established in 1991 and since the CRTC enacted its current 2010 *Rules of Practice and Procedure*. According to Canada's courts administrative tribunals such as the CRTC must ensure that the procedures it uses are fair to all parties.

The Forum reviewed several aspects of the CRTC's approach to procedural fairness, and our findings are summarized below.

##### **A. Summary of results**

###### **1. Lack of information in CRTC's current *Monitoring Reports***

The CRTC has not published an *Annual Report* setting out information about the applications it receives since the early 1990s. It now publishes information about its activities in *Departmental Results Reports* and annual *Communications Monitoring Reports*.

The CRTC's 2019 *Departmental Results* refers to "the increasing number of complaints about Internet service" but provides no statistics about complaints in general or Internet complaints in particular. Similarly, it does not set out the numbers of representations, interventions or applications received by the CRTC in 2018/19.

The CRTC's *Communications Monitoring Reports* set out statistics about complaints from 2008 to 2018; the *Monitoring Reports* published in 2018/19 and 2019/20 provide no statistical information about complaints. Neither report mentioned or provided statistics about representations, interventions or applications (made by broadcasters or in relation to broadcast services).

A search of CRTC broadcasting decisions did not locate any decisions in which the CRTC addressed complaints or representations about broadcasting from members of the public. While many CRTC decisions mention interventions, it would be difficult to determine the total numbers of interventions received by the CRTC in 2019 without reviewing each of several hundred applications posted and the interventions related to each application.

## 2. CRTC measure of 'fair process' neither valid nor reliable

The 2016 Federal *Policy on Results* required Canadian Federal departments and other institutions to establish performance measures and targets, and to measure their results based on these measures and targets. The CRTC's 2018/19 *Departmental Results Report* stated that all of its results – Canadian content creation, connection to communications services and protection within the communications system – came from “processes that are efficient and fair.”

The CRTC measures fair process by the number of judicial appeals where the courts held that the CRTC's procedures were unfair, and found there were none in 2018/19.

Statistical measures must meet two criteria to be credible. Measures must be valid – by measuring what they are supposed to measure. Measures must also be reliable – so that the same outcome over time yields the same measured value.

The measure chosen by the CRTC to evaluate the fairness of its process is neither valid nor reliable. The number of court cases with findings about the CRTC's procedures is an invalid measure of procedural fairness in CRTC proceedings for two reasons. First, a court generally considers the procedures in the single case it is considering – not in all matters considered by a tribunal like the CRTC in a given year. Second, even if the CRTC's processes in many decisions were unfair, parties may not appeal these decisions because of costs, time, lack of knowledge or because they decided instead to petition the Governor in Council.

Measuring fair process by counting numbers of court cases involving procedural issues is also unreliable because court cases can begin in one year – the year when the CRTC's procedures were allegedly unfair – and end in the next – the year after the CRTC's procedures were allegedly unfair: even if a decision were made sometime from April 2018 to March 2019 using procedures that were unfair, the time needed to appeal the result to the Federal Court of Appeal might mean the Court's decision would only be available the following fiscal year. Court cases may also proceed more quickly or even more slowly, compounding the unreliability of this measure as a way of evaluating procedural fairness. The result is that court-case results for any given year may not relate at all to CRTC procedures for that year.

The CRTC's measure of the degree to which its processes are fair using Court cases related to procedural fairness provides little or no objective information about the fairness of its procedures at any point in time

## 3. Other measures of fair process

The criteria for procedural fairness may vary from each tribunal and case to the next. The Forum adapted five criteria for due process set out by Immigration, Refugees and Citizenship Canada (IRCC): these involved applicants' legitimate expectations, applicants' opportunities to be heard, decisions' timeliness, impartiality and decision-making authority. (We therefore did not evaluate the lawfulness of CRTC decisions or whether its decisions provide reasons.) We

considered these criteria in the context of several hundred broadcasting applications processed by the CRTC under Part 1 of its *Rules* in 2019 (before the Covid-19 global pandemic affected government operations in March 2020).

*a Legitimate expectations – CRTC uses non-appearing public hearings to issue broadcasting licences, and does not consistently follow its Rules for Part 1 applications*

The *Broadcasting Act* requires the CRTC to hold hearings to issue, suspend or revoke licences and to issue mandatory orders, and otherwise permits the CRTC to hold hearings to renew licences.

Of the 9 public hearings held by the CRTC in 2019, only four permitted parties to make their case in person – the other hearings were ‘non-appearing’ in that the CRTC did not invite either applicants or interveners to appear. Among non-appearing applicants ten were applying for new broadcasting licences and five – applying to renew their licences – risked mandatory orders for breaching the CRTC’s regulatory requirements for one to three consecutive licence terms. The CRTC issued mandatory orders to one of the non-appearing applicants. Similarly, in 2018 the CRTC also issued mandatory orders to four applicants seeking to renew their licences after non-appearing hearings for breaching the CRTC’s regulatory and in one case also breaching two previous sets of mandatory orders.

Section 23 of the CRTC’s *Rules* requires it to post all applications that meet its requirements for form and content on its website while section 7 allows the Commission to ignore this rule when it “is of the opinion that considerations of public interest or fairness permit”. The CRTC’s Broadcast Applications Report lists “publicly available” broadcasting applications without explaining what applications are not publicly available. A CRTC access-to-information response stated that from 2016 to September 2020 the CRTC received, assigned application numbers to and did not post 62 Part 1 applications (8 that it retained and 54 that it returned to applicants). In 39 other cases (8.1% of the 484 applications in the 2019 Broadcast Applications Report) the CRTC did not post the applications until or after it made decisions about the applications because they did not ‘raise concerns’ for the CRTC, even when the applications involved changes in effective ownership. The CRTC does not publish such Letter Decisions.

*b Opportunities to have applications considered sometimes denied*

The CRTC’s answers to access-to-information requests also disclosed that it sometimes does not grant any process to applications it receives – not for reasons of fairness or public interest as its *Rules* provide but “because they are considered to be inconsistent with a Commission policy or they are more appropriately dealt with under another procedure”. The CRTC said that it had no written documents describing its internal procedures for not granting process to specific applications that otherwise meet its *Rules*.

As the CRTC does not track the numbers of applications it chooses not to consider, the overall numbers of applications listed in its 2019 Broadcast Applications Report and in other years are likely inaccurate.

The CRTC's decision to process but not post all applications leaves the public both unaware of and unable to comment on the unposted applications, some of which may well raise issues of concern for Canadian broadcasting policy.

### *c Timeliness – some applicants wait more than a year for decisions*

The CRTC's 2019 *Departmental Results Report* measured the efficiency of its processes by the months taken to issue decisions after 'close of process' and said that in 2018/19 81% of its decisions on Part 1 applications were made within 4 months of the close of record. The 'close of record' is a date set by the CRTC and is unrelated to the date when applicants submit their applications.

The CRTC's measurement of its efficiency cannot easily be evaluated using its Broadcasting Applications Report because although it includes the date when it posts an application, it does not include information about the close of record in the proceeding, or the date when applicants actually submitted their applications.

The Forum reviewed the applications of the 100 Part 1 applications listed in the Report for 2019. The CRTC posted two-thirds (66%) of these applications within one month of filing, but posted the remaining 34% of applications from one to fourteen months later. For example, of 18 applications filed in August 2019, 4 were posted in less than a month from filing, 5 were posted within three months of filing, 4 were posted within nine months of filing and 5 were posted within fourteen months of filing.

We also compared applications' filing date with the date of CRTC decisions. The CRTC issued decisions about 52% of the applications it received within four months of their submission, and issued decisions about 25% of the applications in 5 months or more. By mid-December 2020 decisions were still pending for 23% of the applications received by the CRTC in the preceding 12 months or more, including 18% of applications filed half a year before the Covid-19 pandemic disrupted government operations.

### *d Decision-making that is fair and impartial*

Some applicants have met with and made presentations to the CRTC's staff before filing applications related to these meetings and presentations. These meetings are not necessarily disclosed to the Commissioner of Lobbying or in the CRTC's announcements or decisions about the applications.

The *Broadcasting Act* permits (but does not require) the CRTC's Chairperson to appoint CRTC Commissioners to CRTC hearing panels (of three members or more), and the panel members decide the matters they hear on behalf of the Commission.

CRTC decisions are not signed, leaving the misleading impression that the full Commission renders each decision when the 1991 *Broadcasting Act* empowers panels of three or more Commissioners to make decisions on behalf of the full CRTC. Determining which Commissioners decide which matters requires interested parties to review the CRTC's hearing transcripts.

A study by the Forum of CRTC appearing and non-appearing panels from 1998 to 2018 found that CRTC Commissioners do not have an equal chance of being appointed to CRTC hearing panels. Some Commissioners were appointed to six times more hearings than colleagues appointed for approximately the same periods.

### *e Decision-making authority*

On three occasions parties requesting that the CRTC take action on specific matters have received letters from CRTC officials which appeared to respond on behalf of the Commission – but as the letters emanated respectively from the CRTC's Executive Director of Broadcasting, the CRTC's Vice-Chair of Broadcasting and the CRTC's Secretary General in his own right, the letters did not, in fact, constitute decisions of the CRTC. The third example happened in late 2020 – following suggestions made in *obiter* by the Federal Court of Appeal in 2000 and again in 2008 that the CRTC should clarify which decision-makers act with its authority.

## **B. Conclusions and recommendations**

The anticipated introduction by the Minister of Canadian Heritage of major amendments to the 1991 *Broadcasting Act* prompted the empirical research presented in this paper concerning the CRTC's approach to procedural fairness. Canadians might, however, already expect that the CRTC's procedures would be fair in light of its statement in its 2018-2019 [Departmental Results Report](#) that it "is an administrative tribunal that is responsible for regulating and supervising Canada's communications system in the public interest."<sup>139</sup> Indeed, when the CRTC revised its procedural *Rules* in 2010 its objectives included informed and effective public participation in its proceedings and the proceedings' efficient, transparent and predictable conduct.<sup>140</sup>

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<sup>139</sup> The CRTC appears to be inferring that its mandate under the *Broadcasting Act* and *Telecommunications Act* is to regulate and supervise in the public interest, as neither statute refers to this duty. Courts have held, however, that the CRTC is not required to serve the public interest per se, or to place public-interest considerations first. Its responsibility in broadcasting is to consider Canada's broadcasting policy for Canada and the opposing interests of many participants – see *Société Radio-Canada v. Métromédia Cmr Montréal Inc.*, [1999 CanLII 8947 \(FCA\)](#), at para. 5:

... the *Act* (s. 3) identifies about forty sometimes conflicting objectives which must guide the CRTC in exercising its powers. This leads to a polycentric adjudication process, involving numerous participants with opposing interests, with a view to implementing the broadcasting policy set out in the *Act*.

<sup>140</sup> *Guidelines on the CRTC Rules of Practice and Procedure*, Broadcasting and Telecom Information Bulletin CRTC 2010-959 (Ottawa, 23 December 2010), <https://crtc.gc.ca/eng/archive/2010/2010-959.htm>, at para. 3.

The results of our analysis – summarized above – prompt the following conclusions and recommendations.

### 1. Mandate transparency and accountability through annual reporting requirement

At first glance the CRTC seems to offer visitors to its website a wealth of information about its proceedings, listing the proceedings that remain open for comments (or closed as the deadlines have passed), as well as a “Broadcasting Applications Report” and a “Telecom Applications Report”: Figure 11.

**Figure 11** Information available about CRTC proceedings – CRTC website pages

**All Public Proceedings Open for Comment**

**Broadcasting Proceedings**

**All Proceedings Open for Comments**

- Open Calls for Licence Applications
- Open Notices of Consultation
- Open Part 1 Applications
- Open Part 1 Licence Renewal Applications

**All Proceedings Closed For Comments**

- Closed Calls for Licence Applications
- Closed Notices of Consultation
- Closed Part 1 Applications
- Closed Part 1 Licence Renewal Applications

**Resources**

- How to participate in a public proceeding
- Commission Letters
- Rules of Practice and Procedure
- Broadcasting Applications Report

**Telecom Proceedings**

**Compliance and Enforcement Proceedings**

## Broadcasting Proceedings

### Open for Comments

Submit your comments/interventions/answers:

- [All Proceedings Open for Comment](#)
- [Open Calls for Licence Applications](#)
- [Notices of Consultation Open for Comment](#)
- [Part 1 Applications Open for Comment](#)
- [Part 1 Licence Renewal Applications Open for Comment](#)

### Closed for Comments

- [Closed Calls for Licence Applications](#)
- [Notices of Consultation Closed for Comment](#)
- [Part 1 Applications Closed for Comment](#)
- [Part 1 Licence Renewal Applications Closed for Comment](#)

### Resources

- [Commission Letters](#)
- [Broadcasting Applications Report](#)
- [Rules of Practice and Procedure](#)
- [How to participate in a public proceeding](#)
- [All the resources...](#)

Date modified: 2019-08-29

(Figure 10, continued)

**All Public Proceedings Open for Comment**

Broadcasting Proceedings

**Telecom Proceedings**

All Proceedings Open for Comments

- Open Notices of Consultation
- Open Part 1 Applications
- Open Basic International Telecommunications Services (BITS) Licences
- Open Tariff Applications

All Proceedings Closed For Comment

- Closed Notices of Consultation
- Closed Part 1 Applications
- Closed Basic International Telecommunications Services (BITS) Licences
- Closed Tariff Applications

Other Proceedings

- Part VII Applications
- Agreement Applications
- Other Telecom Filings

Resources

- How to participate in a public proceeding
- Commission Letters
- Rules of Practice and Procedure
- Telecom Applications Report**
- Approved Tariffs
- Agreement Quarterly Reports

## Telecom Proceedings

### Open for Comments

Submit your intervention/comment/answer:

- [All Proceedings Open for Comment](#)
- [Notices of Consultation Open for Comment](#)
- [Part 1 Applications Open for Comment](#)
- [Tariff Applications Open for Comment](#)
- [Basic International Telecommunications Services \(BITS\) Licences Open for Comment](#)

### Closed for Comments

- [Notices of Consultation Closed for Comment](#)
- [Part 1 Applications Closed for Comment](#)
- [Tariff Applications Closed for Comment](#)
- [Basic International Telecommunications Services \(BITS\) Licences Closed for Comment](#)

### Other Proceedings

- [Part VII Applications](#)
- [Agreement Applications](#)

### Other Telecom Filings

- [Other Telecom Filings](#)

### Resources

- [Commission Letters](#)
- [Telecom Applications Report](#)
- [Rules of Procedure](#)
- [How to participate in a public proceeding](#)

Note: Yellow shading added

Yet these reports do not summarize the numbers of requests from the public – they merely list applications for specific calendar years: Figure 12.

**Figure 12** First page of CRTC's 2019 Broadcast Applications Report

Broadcasting Applications Report

services.crtc.gc.ca/pub/demradbroadappl/Default-Default.aspx

Total records: 484

Process	Applicant	Application Number	Subject	Posted To Web	Decision Date Status
2020-75	CPAM Radio Union.com Inc.	2019-0732-0	Amplitude modulation Renewal of licence	2020-02-26	2020-308
2020-75	Groupe Médias Pam Inc.	2019-0733-8	Amplitude modulation Renewal of licence	2020-02-26	2020-239
2020-75	Peace River Broadcasting Corporation Ltd.	2019-0787-5	Frequency modulation Renewal of licence	2020-02-26	2020-295
2020-75	Parrsboro Radio Society	2019-0796-6	Frequency modulation Renewal of licence	2020-02-26	2020-272
2020-75	Northern Lights Entertainment Inc.	2019-0864-1	Frequency modulation Renewal of licence	2020-02-26	2020-296
2020-75	Northern Lights Entertainment Inc.	2019-0865-9	Frequency modulation Renewal of licence	2020-02-26	2020-296
2020-75	I.T. Productions Ltd.	2019-0943-3	Amplitude modulation Renewal of licence	2020-02-26	2020-303

ENG 9:06 AM US 2021-01-08

Requiring interested parties to download the CRTC's lists and manipulate the data to create their own summaries limits transparency. It obscures the CRTC's processes in general and limits understanding of the CRTC's decisions to grant or deny process to individual applications in particular.

Nor do the CRTC's *Communications Monitoring Reports* and its *Departmental Results Reports* provide Canadians or Parliament with the relevant data describing how Canadians engage or attempt to engage with the CRTC. They do not include annual statistics on the numbers of complaints it receives (including those it has effectively delegated to external, industry-created bodies<sup>141</sup>), the numbers of representations, interventions or applications, or an analysis of the issues of concern raised by Canadians about broadcasting, telecommunications or communications in general.

We note in particular that the CRTC's so-called measurement of 'fair process' in its decision-making is fatally flawed. Counting the number of court decisions that hold the CRTC's process to be unfair is not a valid way of measuring procedural fairness because a court's duty is to assess the facts of the single case before it and not all proceedings before the CRTC. This measure is also unreliable because court cases that conclude in any given year likely began in a previous year.

While it is possible to review the limited information set out by the CRTC's annual listings of broadcasting applications this is not just time consuming but inaccurate: the CRTC does not post all applications that it receives, does not grant any process to an unknown number of applications, and its lists of applications do not include the date most relevant to applicants – the time between the applicant's filing of an application and the date when the CRTC issues a decision.

Obscuring this information has several consequences. The first is that even if the CRTC is aware of such issues, Parliament and Parliamentarians are not – making it difficult for Canadians' elected and appointed representatives to respond to Canadians' concerns, as they may wish to do when they consider proposed legislations such as Bill C-10, for example.

A second consequence of obscurity about the CRTC's processes is that gaps in published information may eventually diminish Canadians' trust in the CRTC. The CRTC's decisions to ignore otherwise-properly-presented applications for unknown reasons are relevant to Canadians' conception of basic justice, especially when it is learned that some applicants give the CRTC (either its staff, the Commissioners or both) previews of their applications before these are submitted. Almost half a century ago the Supreme Court said that

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<sup>141</sup> The Canadian Broadcast Standards Council, the Commissioner of Complaints for Telecommunications and television Services and the Advertising Standards Council. The *Broadcasting Act* does not explicitly authorize the CRTC to delegate the handling of the complaints it receives.

...the denial of a right to a fair hearing must always render a decision invalid .... The right to a fair hearing must be regarded as an independent, unqualified right which finds its essential justification in the sense of procedural justice which any person affected by an administrative decision is entitled to have. ....<sup>142</sup>

A third consequence of obscurity about the CRTC's processes, therefore, is that when applicants' submissions are not granted any process, including a formal decision by the CRTC itself (rather than informal pronouncements by its staff), no clear remedy exists. Does the CRTC's denial of all process to applications constitute a decision of the CRTC and if so, how long does the CRTC need to be silent about an application before the silence can be considered a 'decision'? If, on the other hand, silence is not a decision, applicants are left without a decision to challenge.<sup>143</sup> The CRTC's current practice of not tracking the number of applications it treats in this manner means, again, that neither Canadians nor Parliament have any idea of the issues that concern Canadians and stakeholders so much that they ask the CRTC to act.

The Forum therefore recommends that section 15 of the 1991 *Broadcasting Act*, which addresses reports required by Cabinet, be amended to mandate transparency similar to the mechanisms that currently exist in the *Telecommunications Act*. Section 41.6, for example, sets out detailed reporting requirements for the CRTC with respect to Canada's Do Not Call List:

Report to Minister

41.6 (1) The Commission shall, within six months after the end of each fiscal year, deliver a report to the Minister on the operation of the national do not call list in that fiscal year.

Marginal note: Content of report

(2) The report shall set out any costs or expenditures related to the list, the number of Canadians using the list, the number of telemarketers accessing the list, any inconsistencies in the prohibitions or requirements of the Commission under section 41 that are applicable to the operation of the list, and an analysis of the effectiveness of the list.

Marginal note: Tabling of report

(3) The Minister shall cause a copy of the report referred to in subsection (1) to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the Minister receives the report.

Parliament should require the CRTC to submit an annual report on its activities including the

- a total numbers of submissions, including applications, complaints, representations and interventions, which the CRTC receives by calendar and fiscal year
- b total numbers of submissions to which it denies process, along with its reasons

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<sup>142</sup> *Cardinal et al. v. Director of Kent Institution*, 1985 CanLII 23 (SCC), [1985] 2 S.C.R. 643; (1985), 24 D.L.R. (4th) 44.

<sup>143</sup> One remedy would be to seek a writ of *mandamus* from the courts directing the CRTC to take action, an approach that would be both time-consuming and costly.

- c total numbers of applications, complaints and representations it considers through appearing public hearings, non-appearing public hearings and document-only proceedings
- d percentage of applications, complaints and representations that it receives and for which it issues decisions within four, six, twelve or more months after the applications' submission date, and the
- e factors that prevent applications from being decided within four months of submission.

1991 <i>Broadcasting Act</i>	Proposed amendment
<p>Hearings and reports</p> <p>15 (1) <i>The Commission shall, on request of the Governor in Council, hold hearings or make reports on any matter within the jurisdiction of the Commission under this Act.</i></p> <p><i>Marginal note: Consultation</i></p> <p>(2) <i>The Minister shall consult with the Commission with regard to any request proposed to be made by the Governor in Council under subsection (1).</i></p>	<p><b>Reports</b></p> <p><b>15(1)(a) The Commission shall, within three months after the end of each fiscal year, deliver a report to the Minister on its operations and activities in that fiscal year.</b></p> <p><b>Content of report</b></p> <p><b>(b) The report shall set out information that includes its expenditures, the numbers of submissions it received including applications, registrations, representations, interventions and complaints, the types and numbers of proceedings it held and the numbers of decisions it issued.</b></p> <p><b>Tabling of report</b></p> <p><b>(c) The Minister shall cause a copy of the report referred to in subsection (1) to be laid before each House of Parliament on any of the first thirty days on which that House is sitting after the Minister receives the report.</b></p> <p><i>(2) The Commission shall, on request of the Governor in Council, hold hearings or make reports on any matter within the jurisdiction of the Commission under this Act.</i></p> <p><i>Consultation</i></p> <p><i>(3) The Minister shall consult with the Commission with regard to any request proposed to be made by the Governor in Council under subsection (2).</i></p>

Recommendation 1 Amend section 15 of the *Broadcasting Act* to require the CRTC to report to Parliament each year on all submissions it receives, including but not limited to complaints, representations, applications or interventions

## 2. Harmonize *Broadcasting and Telecommunications Acts*

The *CRTC Rules* had a positive impact by consolidating the Commission's broadcasting and telecommunications procedural regulations into a single regulation, but may also have created confusion because the telecommunications and broadcasting statutes use different definitions, embody the CRTC with different powers and set different requirements for its decisions.

**a Define ‘decisions’**

‘Decisions’ are required for all telecom tariff matters but not for all broadcasting matters. The *Telecommunications Act* clarifies what Parliament understood as ‘decisions’, while the *Broadcasting Act* does not. It is therefore not clear whether CRTC broadcast ‘guidelines’ and ‘policies’ may be appealed.

1991 <i>Broadcasting Act</i>	1993 <i>Telecommunications Act</i>
<b>Decision</b>	
Section 2: “decision” <b>Not defined</b>	Section 2: decision includes <b>a determination made by the Commission in any form;</b> décision Toute mesure prise par le Conseil, quelle qu’en soit la forme.

**Recommendation 2** Amend *Broadcasting Act* to include the definition of ‘decision’ used in *Telecommunications Act*

**b Harmonize procedural authority**

While the CRTC has broad jurisdiction to set rules for its telecom procedures, its jurisdiction is more limited in broadcasting. The *Telecommunications Act* offers the CRTC broad latitude to make “rules respecting its practice and procedure”.<sup>144</sup> The *Broadcasting Act* limits the CRTC to setting rules for licence applications, representations and complaints – but not interventions. The CRTC’s 2010 *Rules* then address interventions while ignoring representations.

The CRTC’s *Rules* also expand the use of applications to *all* matters within the CRTC’s jurisdiction, saying that “[a] matter may be brought before the Commission by an application or complaint or on the Commission’s own initiative”<sup>145</sup> without limiting ‘matter’ to cases involving broadcast licensing and/or licensees. (Note as well that matters may apparently not be brought forward by representations, and the CRTC has delegated responsibility for addressing complaints to industry-funded organizations.) The *Rules* add that the CRTC “may exercise any of its powers under these Rules at the request of a party or

<p><i>CRTC Rules</i></p> <p>Matters Before the Commission</p> <p>3 A matter may be brought before the Commission by an application or complaint or on the Commission’s own initiative.</p> <p>...</p> <p>Part I</p> <p>...</p> <p>General Rules</p> <p>Powers of the Commission</p> <p>5 (1) The Commission may exercise any of its powers under these Rules at the request of a party or interested person or on its own initiative.</p>
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<sup>144</sup> S. 67(1)(b).

<sup>145</sup> *Rules*, S. 3.

interested person or on its own initiative”.<sup>146</sup> In other words, any party – not just licensees – may ask the CRTC to act.

The Forum recommends that the *Broadcasting Act* be harmonized with the *Telecommunications Act* with respect to the matters that the Commission may address in its procedural *Rules*.

<b>1991 Broadcasting Act</b>	<b>1993 Telecommunications Act</b>
<b>Procedural rules</b>	
Section 21 The Commission may make rules (a) respecting the procedure <b>for making applications for licences, or for the amendment, renewal, suspension or revocation</b> thereof, and <b>for making representations and complaints</b> to the Commission; and (b) <b>respecting the conduct of hearings</b> and generally respecting the conduct of the business of the Commission in relation to those hearings.	Section 57: The Commission may make rules, orders and <b>regulations respecting any matter or thing within the jurisdiction of the Commission</b> under this Act or any special Act.  Section 67: (1) The Commission may make regulations ... (b) establishing rules respecting its practice and procedure;

**Recommendation 3** Amend section 21 of the 1991 *Broadcasting Act* to also permit the CRTC to make rules regarding interventions, guidelines and matters of broadcasting policy

**3. Clarify authority to delegate complaints while considering programming of high standard**

The 1991 *Broadcasting Act* says that broadcast programming should be of high standard, enables the CRTC to investigate complaints that it receives and establishes the CRTC as the sole authority in Canada responsible for regulating broadcasting.

<p>1991 <i>Broadcasting Act</i></p> <p>Section 3(1)(g): the programming originated by broadcasting undertakings should be of high standard;</p> <p>Section 18(3): The Commission may hold a public hearing, make a report, issue any decision and give any approval in connection with any complaint or representation made to the Commission or in connection with any other matter within its jurisdiction under this Act if it is satisfied that it would be in the public interest to do so.</p> <p>Section 3(2): It is further declared that the Canadian broadcasting system constitutes a single system and that the objectives of the broadcasting policy set out in subsection (1) can best be achieved by providing for the regulation and supervision of the Canadian broadcasting system by a single independent public authority.</p>
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<sup>146</sup> *Ibid.*, s. 5(1).

Little or no information is currently available about the number of complaints received and addressed by the CRTC, however. One reason for this may be due to the CRTC's tacit approval of privately funded organizations to receive and deal with complaints about broadcasting and telecommunications issues, effectively delegating the handling of such complaints outside of its figurative corridors.

The Advertising Standards Council of Canada (ASC) has addressed complaints about all advertising, including broadcast advertisements. In 1991 the Commission welcomed private broadcasters' establishment and funding of the Canadian Broadcast Standards Council (CBSC) to process complaints from the public about broadcasting. The CRTC said that it intended "to refer complaints from members of the public about programming matters that are within the Council's mandate to the CBSC for its consideration and resolution" as "a means of demonstrating its confidence in the Council..."<sup>147</sup> In 2007 – following years of complaints about mobile (cellphone) charges – the CRTC approved telecommunications companies' establishment and funding of a Commission of Complaints for Telecom-television Services (CCTS)<sup>148</sup> to assist telecommunications customers in resolving their complaints with telecommunications service providers. These bodies' long-standing existence does not explain the CRTC's recent decision to stop reporting on the numbers of complaints it receives (and those it forwards to the ASC, CBSC and CCTS) in the last two years.

The problem for Parliament is that while the 1991 *Broadcasting Act* empowers the CRTC to hear and determine complaints, the Commission's unstated practice is generally not to consider the complaints it forwards to these bodies when it evaluates broadcasters' performance. When it renews licences, for instance, the CRTC does not address complaints about licensees' programming which were received and addressed by the Advertising standards Council, Canadian Broadcast Standards Council or Commissioner of Complaints for Telecommunications and television Services. It has rarely revisited decisions of the CBSC.

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<sup>147</sup> The *Broadcasting Act* entered into force on 4 June 1991; the CRTC approved the CBSC in August 1991: *Canadian Broadcast Standards Council*, Public Notice CRTC 1991-90 (Ottawa, 30 August 1991), <https://crtc.gc.ca/eng/archive/1991/pb91-90.htm>. The CRTC noted in the notice's Conclusion that it was ... that the complaints process that has been established is a useful mechanism for resolving public concerns about the programming broadcast by private Canadian radio and television stations. As a means of demonstrating its confidence in the Council, the CRTC hereby advises that it intends to refer complaints from members of the public about programming matters that are within the Council's mandate to the CBSC for its consideration and resolution. The Council is committed to make every effort to resolve complaints at the level of the local broadcaster. If an issue is not settled to the satisfaction of all parties, a subsequent review would be conducted by the Council at the regional level and, if necessary, at the national level. Nevertheless, the Commission reiterates that the statement made in Public Notice CRTC 1988-159, that "Any interested party may, at any time, choose to approach the Commission directly", continues to apply.

<sup>148</sup> *Establishment of an independent telecommunications consumer agency*, Telecom Decision CRTC 2007-130 (Ottawa, 20 December 2007), <https://crtc.gc.ca/eng/archive/2007/dt2007-130.htm>, at ¶1: The Governor in Council's Order requiring the CRTC to report to the Governor in Council on consumer complaints, P.C. 2007-533, 4 April 2007 (the Order) states that an industry-established consumer agency, independent from the telecommunications industry, with a mandate to resolve complaints from individual and small business retail customers should be an integral component of a deregulated telecommunications market.

Nor does the CRTC regularly evaluate the performance of these third parties in ‘administering’ a complaints ‘resolution’ process. (Presumably such evaluations would introduce a legal relationship between the Commission and these industry-established bodies where none now exists.)

Regardless of the CRTC’s reasons for effectively delegating control over complaints to the ASC, CBSC and CCTS, several bodies now supervise different aspects of broadcasting in Canada without effective oversight by Parliament. The Forum recommends that section 18(3) of the current *Broadcasting Act* be amended to enable the CRTC to review the performance of industry-established organizations that ‘administer’ complaints about programming and distribution services.

<b>1991 Broadcasting Act</b>	<b>Proposed amendment</b>
<p><i>18(3) The Commission may hold a public hearing, make a report, issue any decision and give any approval in connection with any complaint or representation made to the Commission or in connection with any other matter within its jurisdiction under this Act if it is satisfied that it would be in the public interest to do so.</i></p>	<p><b>18(3)(a) The Commission may hold a public hearing, make a report, issue any decision and give any approval in connection with any complaint or representation made to the Commission or in connection with any other matter within its jurisdiction under this Act if it is satisfied that it would be in the public interest to do so.</b></p> <p><b>(b) The Commission shall review the effectiveness of bodies that administer complaints related to audio-visual programming and distribution every five years.</b></p>

**Recommendation 4** Amend section 18(3) of the *Broadcasting Act* to enable the CRTC to review the performance of bodies that administer complaints about programming and distribution services

**4. Review the CRTC**

The CRTC has not been independently reviewed in terms of its functioning and outcomes since the early 1980s. The results of the research set out in this paper suggest that the CRTC’s approach to its responsibilities is less transparent, timely and fair than a first glance might suggest. The Forum respectfully recommends that Parliament review the performance of the CRTC before granting it more authority and more power.

**Recommendation 5** Review the CRTC’s procedures and practices, as well as its actual performance in meeting its responsibilities under its enabling statutes

**5. Strengthen the perception of fair decision-making**

Following the 1982 *Charter of Rights and Freedoms* the 1991 *Broadcasting Act* implemented the ‘those who hear, decide’ principle and, as a result, decisions of the CRTC are no longer made by a majority of the full Commission but by a majority of the panel that hears a matter.

The *Act* authorizes the CRTC’s Chairperson to choose the members of all hearing panels, and a study by FRPC of CRTC hearing transcripts over two decades found that CRTC Commissioners did not have the same chances of being appointed to the different types of CRTC panels. This inequality of opportunity leads to the appearance of bias in decision-making. The Forum therefore recommends that Parliament amend the *Broadcasting Act* to refine the Chairperson’s authority.

<b>1991 <i>Broadcasting Act</i></b>	<b>Proposed amendment</b>
<p><del>20 (1) The Chairperson of the Commission may establish panels, each consisting of not fewer than three members of the Commission, to deal with, hear and determine any matter on behalf of the Commission.</del></p> <p>(2) A panel that is established under subsection (1) has and may exercise all the powers and may perform all the duties and functions of the Commission in relation to any matter before the panel.</p> <p>(3) A decision of a majority of the members of a panel established under subsection (1) is a decision of the panel.</p> <p>(4) The members of a panel established under subsection (1) shall consult with the Commission, and may consult with any officer of the Commission, for the purpose of ensuring a consistency of interpretation of the broadcasting policy set out in subsection 3(1), the regulatory policy set out in subsection 5(2) and the regulations made by the Commission under sections 10 and 11.</p>	<p>20 (1) (a) The Commission may establish panels of not fewer than three members of the Commission to deal with, hear and determine any matter on behalf of the Commission.</p> <p>(b) When a panel established by the Commission lacks quorum the Chairperson of the Commission may assign a member or members of the Commission to the panel.</p>

**Recommendation 6** Amend section 20(1)(a) of the *Broadcasting Act* to authorize the Chairperson of the Commission to appoint members to panels when panels would otherwise lack quorum or would include members with conflicts of interest.

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## Appendix 1 CRTC procedural rules, 1968-2009

In 1968 Parliament replaced the ten-year old Board of Broadcast Governors (BBG) with the CRTC. The new Commission's jurisdiction was initially limited to broadcasting, then consisting of radio and television stations, radio and television networks and "receiving undertakings" such as cable systems that received radio and television programming from over-the-air transmitters and distributed it to the systems' subscribers.<sup>150</sup>

The 1968 *Broadcasting Act* set three procedural requirements for the CRTC to perform its role, regarding public announcements, public hearings, and the publication of applications it received. Parliament required that the CRTC's regulations and amendments to regulations be published in the *Canada Gazette* and that "licensees and other interested parties" have "a reasonable opportunity" to "make representations" about them.<sup>151</sup> It also required the CRTC to hold public hearings before issuing, revoking or suspending a broadcasting licence.<sup>152</sup> Last, it required the CRTC to publish notice "of any application received by" to issue, amend or renew a broadcasting licence as well as the actual issuance, amendment or renewal of licences in the *Canada Gazette* and newspapers in communities served by affected licensees.<sup>153</sup> Parliament otherwise allowed the CRTC to make its own regulations for procedures concerning the "making of applications, representations and complaints to the Commission", public hearings and the CRTC's business.<sup>154</sup> The CRTC used the 1961 procedural regulations of the BBG<sup>155</sup> until 1972 when the CRTC's own *Rules of Procedure* came into force.

When Parliament added telecommunications carriers to the CRTC's jurisdiction in 1976 it changed the CRTC's name<sup>156</sup> and moved most of the 1968 *Act's* Part II into a separate statute,

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<sup>150</sup> S. 3(d):

"broadcasting undertaking" includes a broadcasting transmitting undertaking, a broadcasting receiving undertaking and a network operation, located in whole or in part within Canada or on a ship or aircraft registered in Canada.

'Networks' consisted of two or more broadcasting undertakings licensed to different broadcasters; including networks in the definition of broadcasting undertaking enabled the CRTC to require separate licences for these arrangements and, therefore, to assign responsibility for the programming broadcast by networks.

<sup>151</sup> S. 16(2): "a reasonable opportunity shall be afforded to licensees and other interested persons to make representations with respect thereto."

<sup>152</sup> S. 19(1).

<sup>153</sup> S. 20:

(1) The Commission shall give notice in the *Canada Gazette* of any application received by it for the issue, amendment or renewal of a broadcasting licence, other than a licence to carry on a temporary network operation, of any public hearing to be held under section 19 and of the issue, amendment or renewal of any broadcasting licence.

(2) A copy of a notice given pursuant to subsection (1) shall be published by the Commission in one or more newspapers of general circulation within the area normally served or to be served by the broadcasting undertaking to which the application, public hearing or the issue, amendment or renewal of the broadcasting licence relates.

<sup>154</sup> S. 21: "The Commission may make rules respecting the procedure for making applications, representations and complaints to the Commission and the conduct of hearings under section 19 and generally respecting the conduct of the business of the Commission in relation thereto."

<sup>155</sup> BBG Procedure Regulations.

<sup>156</sup> Now the Canadian Radio-television and Telecommunications Commission (but still the CRTC).

the *Canadian Radio-television and Telecommunications Act (CRTC Act)*. The *CRTC Act* granted the Commission the authority to exercise its powers with respect to the *Telecommunications Act*.<sup>157</sup>

The CRTC first published proposed procedures and practices for telecommunications in 1976<sup>158</sup> and adopted the *Rules of Procedure of the Canadian Radio-television and Telecommunications Commission in Regard to Telecommunications Proceedings* in mid-1979.<sup>159</sup> It separately adopted the *Rules Respecting the Procedure of the Canadian Radio-television and Telecommunications Commission* for broadcasting in 1978.<sup>160</sup>

Parliament enacted new communications legislation in the 1990s – a revised *Broadcasting Act* in 1991 and a completely rewritten *Telecommunications Act* in 1993 – in which it maintained existing requirements for public notice about some aspects of the CRTC’s work. The CRTC is still required to publish proposed regulations, licensing applications and decisions in the *Canada Gazette*.<sup>161</sup>

The 1991 *Broadcasting Act* also granted the CRTC explicit authority to set Canadian programming requirements for broadcasters, to issue mandatory orders and to exempt broadcasters from licensing. Added to this new power was the requirement for the CRTC to hold hearings before setting Canadian programming levels, before issuing mandatory orders or before issuing exemption orders.<sup>162</sup>

The *Broadcasting Act* continues to permit the CRTC to make its own rules for “making applications for licences ... and for making representations and complaints to the Commission” (s. 21(a)). The *Telecommunications Act* similarly permits the CRTC to “make rules, orders and regulations respecting any matter or thing within the jurisdiction of the Commission under this

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<sup>157</sup> S. 12(2) of the *CRTC Act* says that the CRTC’s full-time members and its Chairperson ... shall exercise the powers and perform the duties vested in the Commission and the Chairperson, respectively, by the *Telecommunications Act* or any special Act, as defined in subsection 2(1) of that Act [“an Act of Parliament respecting the operations of a particular Canadian carrier”], or by *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act* (also known as Canada’s Anti-Spam Legislation, or CASL).

<sup>158</sup> *Telecommunications Regulation – Procedures and Practices*, Statement of the CRTC in preparation for a public hearing at the Chateau Laurier Hotel in Ottawa Commencing September 27, 1976 (Ottawa, 20 July 1976). On 1 April 1976 Parliament gave the CRTC the jurisdiction over telecommunications matters formerly held by the Canadian Transport Commission, by amending the *Canadian Radio-television and Telecommunications Commission Act*, S.C. 1974-75-76, c. 49.

<sup>159</sup> CRTC Telecommunications Rules of Procedure and Tariff Regulations, Public Announcement (Ottawa, 20 July 1979).

<sup>160</sup> Proposed CRTC Procedures and Practices Relating to Broadcasting Matters, (Ottawa, 25 July 1978).

<sup>161</sup> 1991 *Broadcasting Act*, s. 10(3); 1993 *Telecommunications Act*, s. 69(1).

<sup>162</sup> *Broadcasting Act*, s. 18(1)(c) and (d), and s. 9(4).

Act or any special Act.” (s. 57) and specifically authorizes it to “make regulations ... establishing rules respecting its practice and procedure” (s. 67(1)(b)).

## Appendix 2 December 2020 Federal government InfoBase – “Results”

Some things to keep in mind as you explore the data...

▼ What is the Policy on Results? Content follows, activate to collapse content

The [Policy on Results](#) sets out the fundamental requirements for federal departmental accountability for performance information and evaluation, while highlighting the importance of results in management and spending decision making, as well as public reporting. It seeks to improve the achievement of results across government and enhancing understanding of the results the government seeks to achieve, does achieve, and the resources used to so.

► How does it differ from the Policy on Management, Resources and Results Structure (MRRS)? Activate to expand content

▼ What is a Departmental Results Framework? Content follows, activate to collapse content

It describes:

- What the department does (i.e. Core Responsibility)
- What results the department is trying to achieve (i.e. Departmental Results)
- How progress will be assessed (i.e. Departmental Indicators)

▼ How do organizations measure performance? Content follows, activate to collapse content

With their Departmental Plans, organizations set or adjust what they want to achieve (results), the level they want to reach (targets) and how they will measure performance (indicators).

Organizations will then report at the end of the fiscal year through their Departmental Results Report on how they did using their indicators to measure if they have met the targets they set at the start of the year.

▼ What are Departmental Plans (DP) and Departmental Results Reports (DRR)? Content follows, activate to collapse content

To ensure clear, transparent, and accessible reporting on performance, the Government of Canada annually tables Departmental Plans and Departmental Results Reports.

These reports allow parliamentarians and the public to hold the government accountable by requiring organizations to describe how resources are allocated to each of their Programs, what

they intend to achieve with these resources, and how they will measure progress toward the results they seek to achieve over a three-year period. This is done through a reporting framework consisting of:

- Planned Resources (Spending and Full-time Equivalents);
- Intended Results for delivery; and
- Detailed Indicators to measure performance.

Note that Crown corporations, parliamentary entities, the Office of the Governor General and some departments and agencies are not required to submit Departmental Plans and Departmental Results Reports. Consequently, no results information is available for these organizations.

### Appendix 3 CRTC's commentary on its 2010 Rules of Practice and Procedure

#### Parts of the CRTC Rules

Part 1: “set out the general rules that apply to all Commission proceedings, including the Commission’s powers, how and when to file documents and the basic rules for the Commission’s written proceedings and public hearings”<sup>163</sup>

“When consumer advocacy groups or industry associations file a complaint on behalf of their members or the persons whose interests they represent, it will be addressed under a Part 1 proceeding ....”<sup>164</sup>

“... provides the basic structure for a written proceeding that is initiated by an applicant who files an application with the Commission and serves any respondents (section 22). The Commission posts these applications on its website (section 23). The public is given an opportunity to file submissions as Interveners (section 26) or Respondents (section 25) within 30 days, and the applicant is given an additional 10 days to respond (section 27). The Commission examines all of the written submissions and issues a decision. These proceedings are generally referred to as “Part 1 proceedings.”<sup>165</sup>

“[Telecommunications Service Providers, or] TSPs and broadcasters can also file an application for resolution of a dispute through a Part 1 proceeding, as described above, which allows others to participate as interveners.”<sup>166</sup>

Part 2: “rules that apply when a member of the public files a complaint against a broadcaster or a telecom provider and when a person applies to have a dispute resolved using alternative dispute resolution mechanisms”<sup>167</sup>

“Part 2 of the Rules of Procedure provides a process for a consumer to make a complaint about a regulated service provided by his or her telecommunication service provider (TSP) or a broadcaster. [T]his process is intended for members of the general public and is designed to encourage resolution of the matter in a timely and efficient manner. the [C]ommission has created pages on its website that explain how to file a complaint for both broadcasting and telecom matters.”<sup>168</sup>

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<sup>163</sup> *Guidelines on the CRTC Rules of Practice and Procedure*, Broadcasting and Telecom Information Bulletin CRTC 2010-959 (Ottawa, 23 December 2010), <https://crtc.gc.ca/eng/archive/2010/2010-959.htm>, at para. 13.

<sup>164</sup> *Ibid.*, at para. 42.

<sup>165</sup> *Ibid.*, at para. 31 (footnote omitted).

<sup>166</sup> *Ibid.*, at para. 41.

<sup>167</sup> *Ibid.*, at para. 14.

<sup>168</sup> *Ibid.*, at para. 39.

“For the resolution of disputes between TSPs and broadcasters, Part 2 of the Rules of Procedure provides for alternative dispute resolution mechanisms, including staff-assisted mediation, final offer arbitration and expedited hearings.”<sup>169</sup>

Part 3: In addition to the Part 1 rules, Part 3 rules “apply in certain broadcasting matters, such as applications for new broadcasting licences, licence renewals or the approval of a transfer of ownership and control, as well as when the Commission calls a licensee to show cause why an order should not be issued”<sup>170</sup>

Part 4: In addition to the Part 1 rules, “rules that apply in certain telecom matters, such as when the Commission reviews the ownership of telecom providers, when telecom providers apply to the Commission to approve tariffs, when parties apply to the Commission to award costs for their participation in a telecom proceeding or when the Commission issues a notice of consultation permitting parties to ask each other written questions during a telecom proceeding”<sup>171</sup>

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<sup>169</sup> *Ibid.*, at para. 40.

<sup>170</sup> *Ibid.*, at para. 14.

<sup>171</sup> *Ibid.*, at para. 14.

## Appendix 4 CRTC's "Actual Results for 2018-19"

"Detailed Results (2018-19 to 2020-21)": "Planned Results for 2019-20"

Source: <https://www.tbs-sct.gc.ca/ems-sgd/edb-bdd/index-eng.html#orgs/dept/93/infograph/results>

Core Responsibilities

Regulate and Supervise the Communications System

Departmental Results – indicators

Total investment in Canadian television programming production

% of total fixed broadband subscriptions that are high capacity network connections compared to the OECD average

In 2018-19, Canadian Radio-television and Telecommunications Commission sought to achieve 7 results through 1 Core Responsibility and 3 Programs. Progress towards meeting these results was measured using 13 indicators.

...

**Appendix 5    Contacts and complaints related to broadcasting and telecommunications,  
2016-17**

<b>Organization</b>	<b>Table number and title from the 2018 <i>Communications Monitoring Report</i></b>	<b>2016/17</b>	<b>"Complaints"</b>	<b>"Contacts"</b>	<b>Forwarded complaints</b>
<b>Radio</b>					
CRTC	Table 8.5 Number of radio-related contacts received by the CRTC, by type of issue (p. 219)	1,519		1,519	
CRTC	Table 8.6 Number of radio complaints received and number of radio complaints referred to the Canadian Broadcast Standards Council (CBSC), by subject matter (p. 219)	<b>345</b>			345
ASC	Table 8.8 Complaints handled by Advertising Standards Canada - Complaints about radio advertisements (p. 220)	81	81		
CBSC	Table 8.7 Radio complaints handled by the Canadian Broadcast Standards Council in 2017 by language and national origin (p. 220)	1,674	1,674		
<b>Television</b>					
CRTC	Table 9.4 Number of television-related contacts received by the CRTC, by type of issue 2013-2017 broadcast years (p. 255)	3,675		3,675	
CBSC	Table 9.5 Television programming complaints received by the CRTC and referred to the CBSC, by sector and issue, 2013-2017 broadcast years, "Complaints received" (p. 256)	<b>339</b>			339
CBSC	Table 9.6 Television-related complaints handled by the CBSC, by language of broadcast and origin of the program, 2017 (p. 257)	1,128	1,128		
ASC	Table 9.7 Complaints relating to digital advertising and advertising on television, handled by the ASC, 2017 - Total number of complaints (p. 257)	1,808	1,808		
ASC	Table 9.7 Complaints relating to digital advertising and advertising on television, handled by the ASC, 2017 - television advertisements (p. 257)	716			
ASC	Table 9.7 Complaints relating to digital advertising and advertising on television, handled by the ASC, 2017 - Digital advertisements (p. 257)	410			
<b>Telecom</b>					
CRTC	Table 4.2 Number of telecommunications-related contacts received by the CRTC by type of issue and subject, 2017 (p. 105)	16,805		16,805	
CCTS	Table 4.3 Summary of issues raised in telecommunications complaints handled by the CCTS (2016-2017) (p. 105)	18,448	18,448		
<b>Total</b>			<b>23,139</b>	<b>21,999</b>	<b>684</b>

## Appendix 6 CRTC's "Planned Results for 2019-20"

"Detailed Results (2018-19 to 2020-21)": "Planned Results for 2019-20"

Source: <https://www.tbs-sct.gc.ca/ems-sgd/edb-bdd/index-eng.html#orgs/dept/93/infograph/results>

Proceedings related to the regulation of the communications system are efficient and fair.

- Indicator

% of decisions on Part 1 Applications issued within four months of the close of record

Date to achieve target

March 2020

Target

At least 75%

Methodology

Rationale (i.e. how the indicator relates to the result): This indicator relates to the "efficiency" aspect of the Departmental Result. "Decision to be issued within four months of the close of record" is the CRTC's publicly stated service objective for the processing of Part 1 applications (except local forbearance applications). The indicator measures the extent to which the CRTC meets its service objective for conducting proceedings of this type.

Calculation / formula: Percentage of decisions on Part 1 Applications in a given fiscal year that are issued within four months of the close of record

Baseline: 77% (2015-16)

Target: 75%

Definition: A Part 1 Proceeding is initiated by an application filed by a member of the public under Part 1 of the Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure. It is not the subject of a notice of public consultation. For broadcasting, a Part 1 Proceeding would include applications for licence amendments, additions to the list of eligible satellite services and undue preference applications. For telecom, it would include applications related to disputes between providers (e.g. network interconnection, unjust discrimination) and requests for forbearance i.e., applications for the CRTC to forbear from the

regulation of local telephone services. (Forbearance applications are not included in the indicator.)

In this type of proceeding:

- Applications are posted on the Commission's Web site;
- In general, the public has 30 days to submit interventions relating to the applications;
- Applicants then have 10 days to reply to the interventions; and
- The Commission then examines all of the written submissions and issues a decision.

Notes: This measure covers applications filed for licence amendments, additions to the list of eligible satellite services, and undue preference applications. It does not cover local forbearance applications. The CRTC's publicly stated service objective for local forbearance applications is "Decision to be issued with 120 days of receiving a complete application," which is not the same as its service objective for other types of Part 1 applications.

The measure combines two different service objectives reported on the CRTC website (where broadcasting and telecom applications are reported separately):

- Part 1 Broadcasting Applications
- Part 1 Applications (telecom)

These service objectives were established in Broadcasting and Telecom Information Bulletin CRTC 2011-222 and came into effect on 1 April 2011.

The target for the Departmental Result Indicator is lower than the target for the CRTC's service objective, which is 100%. As stated in CRTC 2011-222, "The Commission will aim to publish all of its decisions on these types of applications within the [service objectives]," (boldface in the original).

In some cases, where Part 1 applications are particularly complex or precedent setting, or garner a large number of interventions, the service objective is not met because more significant analysis is required, which prolongs the period between the close of record and the decision in the proceeding. CRTC proceedings do not seek to be efficient at the expense of fairness, transparency or accessibility.

Two examples are illustrative:

- A Part 1 broadcasting application for an exception to the CRTC's policy on Certified Independent Production Funds garnered 61 interventions and required significant analysis of the impact of the exception on stakeholders and Canadian production. It also required a thorough analysis of the precedent it would set.

Given the complexity of the application and the analysis required, the decision was published over 7 months after the close of record.

- A Part 1 telecom application concerning the pricing practices of a mobile broadband service provider in Canada raised significant forward-looking policy questions for the Commission (for example, re. net neutrality), requiring more extensive analysis and consideration than is typically required following the close of record. A decision was ultimately issued about a year after the final interventions were received, but the Part 1 proceeding led to the CRTC's announcing a major public consultation on the broader issues it raised.

Last year's target

At least 75%

- Indicator

Number of decisions overturned on judicial appeal related to procedural fairness

Date to achieve target

March 2020

Target

At most 0

Methodology

Explanation/rationale: This indicator relates to the "fairness" aspect of the Departmental Result. It tracks the number of CRTC decisions related to the regulation of the communications system that are overturned by the Federal Court of Appeal or the Supreme Court of Canada for reasons related to the procedural fairness of the original decision. Formula/calculation: The number of CRTC decisions overturned on judicial appeal related to procedural fairness in the given fiscal year. Measurement strategy: Internal litigation reports and Federal Court records. Baseline: 0 Notes/definitions: The Federal Court of Appeal has jurisdiction to hear and determine applications for judicial appeal of decisions issued by the CRTC.

Last year's target

At most 0

**Appendix 7 InfoBase Infographic for Canadian Radio-television and Telecommunications Commission**

CRTC Departmental Plan – Results and Indicators			
7 Results	13 Indicators	Target	Outcome
1. Canadian content is created	<p>1. Total investment in Canadian television programming production</p> <p>Rationale (i.e. how the indicator relates to the result): The level of financial investment in the production of Canadian television programming speaks to the amount and value of Canadian content that is created with this support. It is measured by various funding mechanisms (mainly spending on Canadian content creation), including those within the organization’s direct control and those within its sphere of influence. These funding supports are described below and the data for each is obtained through internal databases or external sources.</p> <p>Calculation / formula: Sum of investments in Canadian programming:</p>	\$4 to \$4.5 billion	Met: \$4.21 billion
2. Canadians are connected to world-class communications services.	2. % of total fixed broadband subscriptions that are high capacity network connections compared to the OECD average	7.9%	To be achieved in the future: 7.6% (interim)
	3. % of households that have access to fixed broadband Internet access services	90%	To be achieved in the future: 85.7%
	4. % of households that have access to the latest generally deployed mobile wireless technology	100%	To be achieved in the future: 99.2%
3. Canadians are protected within the communications system	5. % of facilities-based telecommunications service providers in compliance with 911 requirements “Calculation / formula: The CRTC conducts an ongoing monitoring program to ensure that telecommunications service providers (TSPs) are meeting their 9-1-1 requirements. This involves following up on any complaints received and proactively investigating TSPs to determine their compliance. In cases of non-compliance, the CRTC takes appropriate action to address it.”	100%	Met: 100%
	6. % of organizations that remain compliant within 12 months after compliance / enforcement action is taken on unsolicited commercial communications	80%	Met: 100%
	7. % of broadcasters and wireless service providers participating in public alerting system	TBD	To be achieved in the future: 83.4% (interim)
4. Proceedings related to the	8. % of decisions on Part 1 Applications issued within four months of the close of record	75%	Met: 81%

CRTC Departmental Plan – Results and Indicators			
7 Results	13 Indicators	Target	Outcome
regulation of the communications system are efficient and fair.	9. Number of decisions overturned on judicial appeal related to procedural fairness	0	Met: 0
5. Canadians are connected to world-class communications services	10. Percentage of households that have access to fixed broadband Internet services	90%	Result to be achieved in the future: 85.7% (interim)
6. Canadians are protected within the communications system	11. Percentage of facilities-based telecommunications service providers in compliance with 911 requirements “Methodology: .... The indicator indicates the percentage of carriers that are not fully compliant with their 9-1-1 obligations after CRTC review.”	100%	Met: 100%
7. Canadian content is created	12. Percentage of examined undertakings compliant with regulatory requirements to spend and/or contribute to funds and initiatives supporting Canadian content creation “Explanation/rationale: ... A proportion of examined undertakings (combining both TV and Radio) compliant with spending and/or contribution requirements. The Financial Analysis team calculates the result based on compliance audits performed during the year. Measurement strategy: The data is collected through the CRTC’s data collection system as part of the broadcasting annual survey process. The filing of annual returns is required per various Regulations and Exemption Orders. Baseline: 92.6% Note although slightly below the baseline, the target represents a significant threshold below which would signal a need for closer examination. Notes/definitions:	90%	Met: 93%
	13. Percentage of examined undertakings compliant with regulatory requirements regarding broadcasting of Canadian programming “Result explanation There is insufficient data to calculate this indicator for the 2018-2019 reporting period. Updates to the CRTC’s monitoring software in 2017-2018 prevented the collection of any data to verify compliance on the broadcasting of Canadian television and radio programming for the 2017-2018 broadcast year.”	90%	Unavailable



Broadcasting Procedural Letter Addressed to CRTC-Québec

Ottawa, 20 April 2018

VIA E-MAIL

Denis Bolduc  
President  
CRTC-Québec  
[nblais@CRTC.qc.ca](mailto:nblais@CRTC.qc.ca)

Dear Mr. Bolduc:

RE: Request for process of Part 1 application - Review of the *Exemption order for digital media broadcasting undertakings*

The Commission is in receipt of the application filed on 13 February 2018 by the Conseil provincial du secteur des communications (CPSC) of the Syndicat canadien de la fonction publique (CRTC), requesting that the Commission review the *Exemption order for digital media broadcasting undertakings* (the Order), as well as of its request for process of the aforementioned application, dated 26 March 2018.

The Commission notes that, pursuant to section 7 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules), the Commission may dispense with or vary the Rules when considerations of public interest or fairness permit. The Commission also notes that the elements raised by the CPSC in its 13 February 2018 application are similar to those mentioned by the CPSC in response to the public proceeding initiated by Broadcasting Notice of Consultation CRTC 2017-359, *Call for comments on the Governor in Council's request for a report on future programming distribution models* (the Notice).

For example, both in its 13 February 2018 application and in its intervention in response to the Notice, the CPSC references the obsolescence of the Commission's findings from *Exemption order for new media broadcasting undertakings* – Public Notice CRTC 1999-197, the time elapsed since the last review of the Order, the fact that Internet penetration rate is now higher than the penetration rates for broadcasting distribution undertakings, the migration of advertising revenues from traditional media towards the Internet, etc. Moreover, the Commission notes that some paragraphs included in the intervention filed by the CPSC in response to the Notice are completely or almost completely replicated as part of the 13 February 2018 application.

The issue of the relevance of maintaining or amending the Order has also been raised by a number of other interveners participating in the public consultation.

Furthermore, the Commission is an independent administrative tribunal that has the mandate, *inter alia*, to supervise and regulate the Canadian broadcasting system. In furtherance

of its objects, the Commission has the discretion to determine the appropriate moment to undertake a review of one of its policies. Under the circumstances, the Commission considers that it is not appropriate to initiate a separate public proceeding to consider the application.

Accordingly, the Commission has determined that your application will not be posted nor receive further process.

Yours sincerely,

Claude Doucet  
Secretary General

## Appendix 8 *Black's Law Dictionary*, online version

### Application:

A putting to, placing before, preferring a request or petition to or before a person. The act of making a request for something. A written request to have a certain quantity of land at or near a certain specified place. *Biddle v. Dougal*, 5 Bin. (Pa.) 151. The use or disposition made of a thing. A bringing together, in order to ascertain some relation or establish some connection; as the application of a rule or principle to a case or fact. In insurance. The preliminary request, declaration, or statement made by a party applying for an insurance on life, or against fire. Of purchase money. The disposition made of the funds received by a trustee on a sale of real estate held under the trust. Of payments. Appropriation of a payment to some particular debt; or the determination to which of several demands a general payment made by a debtor to his creditor shall be applied.

<https://thelawdictionary.org/application/>

### Intervention

In international law. Intervention is such an interference between two or more states as may (according to the event) result in a resort to force; while mediation always is, and is intended to be and to continue, peaceful only. Intervention between a sovereign and his own subjects is not justified by anything in international law; but a remonstrance may be addressed to the sovereign in a proper ease. *Brown*. In English ecclesiastical law. The proceeding of a third person, who, not being originally a party to the suit or proceeding, but claiming an interest in the subject-matter in dispute, in order the better to protect such interest, interposes his claim. 2 Chit. Pr. 492; 3 Chit. Commer. Law, 033 ; 2 Ilagg. Const. 137; 3 Phillim. Ecc. Law, 586. In the civil law. The act by which a third party demands to be received as a party in a suit pending between other persons. The intervention is made either for the purpose of being joined to the plaintiff, and to claim the same thing he does, or some other thing connected with it; or to join the defendant, and with him to oppose the claim of the plaintiff, which it is his interest to defeat. Poth. Proc. Civile, pt. 1, c. 2,

<https://thelawdictionary.org/intervention/>

### Representation

In Contracts. A statement made by one of two contracting parties to the other, before or at the time of making the contract, in regard to some fact, circumstance, or state of facts pertinent to the contract, which is influential in bringing about the agreement. In insurance. A collateral statement, either by writing not inserted in the policy or by parol, of such facts or circumstances, relative to the proposed adventure, as are necessary to be communicated to the

underwriters, to enable them to form a just estimate of [the] risks. 1 Marsh. Ins. 450. The allegation of any facts, by the applicant to the insurer, or vice versa, preliminary to making the contract, and directly bearing upon it, having a plain and evident tendency to induce the making of the policy. The statements may or may not be in writing, and may be either express or by obvious implication. Lee v. Howard Fire Ins. Co., 11 Cush. (Mass.) 324; Augusta Insurance & Banking Co. of Georgia v. Abbott, 12 Md. 345. In relation to the contract of insurance, there is an important distinction between a representation and a warranty. The former, which precedes the contract of insurance, and is no part of it, need [be] only materially true: the latter is a part of the contract, and must be exactly and literally fulfilled, or else the contract is broken and inoperative. Glendale Woolen Co. v. Protection Ins. Co., 21 Conn. 19, 54 Am. Dec. 309. In the law of distribution and descent. The principle upon which the issue of a deceased person take or inherit the share of an estate which their immediate ancestor would have taken or inherited, if living; the taking or inheriting per stirpes. 2 Bl. Comm. 217, 517. In Scotch law. The name of a plea or statement presented to a lord ordinary of the court of session, when his judgment is brought under review.

<https://thelawdictionary.org/representation/>

**Appendix 9 Statutory appearances of ‘complaint’, ‘intervention’, ‘application’ and ‘representation’**

<b>Broadcasting Act</b>	<b>Telecommunications Act</b>
<b>Applications:</b> for or in connection with licences, with CRTC decisions or with accessibility	
<p>By “any person” to reconsider an order issued by a CRTC panel established under s. 20(1) (s. 12(3))</p> <p>By applicants for licences (s. 19(a))</p> <p>By licensees about conditions of licence (s. 9(1)(c)), to renew or to amend their licences (s. 19(a)), or to suspend or revoke their licences (s. 24(1) and (2))</p>	<p>By anyone, to review and rescind, or vary any decision, or re-hear any matter before issuing a decision (62)</p> <p>By any interested person to “inquire into and make a determination in respect of anything prohibited, required or permitted to be done under Part II, except in relation to international submarine cables, Part III or this Part or under any special Act .... (48(1))</p> <p>By any interested person to “... inquire into and make a determination in respect of anything prohibited, required or permitted to be done under sections 51 to 53 of the <i>Accessible Canada Act</i> (48(1.1))</p> <p>By applicants for international cable submarine licences (16.3(1))</p> <p>By persons or Canadian carriers seeking CRTC advice on conditions under which carriers provide telecommunications services (59 (1))</p> <p>By municipalities or other authorities for a CRTC order to change a transmission line’s route or construction (44(a),(b))</p> <p>By municipalities, public authorities or landowners for CRTC authorization of construction or pipe laying (45)</p> <p>By licensees of international cable submarine licences to amend conditions (16.3(3), to renew the licences (16.3(5)), to revoke the licences (16.4(2))</p> <p>By Canadian carriers or distribution undertakings, to build transmission lines (43(4))</p>
<b>Representation:</b> in connection with requests for CRTC action, proposed regulations, proposed licence classes and fees, and responses to allegations by the CRTC	
<p>By anyone asking the CRTC to “hold a public hearing, make a report, issue any decision and give any approval” regarding a matter under its jurisdiction (18(3))</p> <p>By licensees and interested parties, concerning proposed regulations (10(3)) or proposed licence classes, licence fees and overdue interest (11(5))</p>	<p>By interested persons about any proposed CRTC regulations (69(1))</p> <p>By international cable submarine licences licensees before CRTC suspends or revokes their licences (16.4(1))</p> <p>By persons believed to have committed violations subject to AMPs, concerning the violation and the penalty (72.005(2)(b))</p> <p>By persons served with notice of violation, and others as to whether the persons committed the violations (72.007(2))</p>

<b>Broadcasting Act</b>	<b>Telecommunications Act</b>
<b>Intervention:</b> in connection with licensing matters or forfeitures	
GIC orders issued by the GIC do not apply to licensing matters pending before the CRTC where the deadline for interventions has passed except if the deadline was over a year ago (7(4))	Parties notified about the forfeiture of telecommunications apparatus may make an intervention if a hearing is held about claims to the apparatus (74.1(5), (6))
<b>Complaint:</b> in connection with CRTC's broadcasting jurisdiction	
By anyone, about any matter within CRTC's jurisdiction (18(3))	[none]

## Appendix 10 Studies of the CRTC

Year	Report
1970	Special Senate Committee on Mass Media, Report [Davey committee]
1973	In March, 1973 the federal government issued a Green Paper titled, Proposals for a Communications Policy for Canada
1980	C.C. Johnson, The Canadian Radio-television and Telecommunications Commission: A Study of Administrative Procedure in the CRTC, Study Paper (Ottawa: Minister of Supply and Services, 1980).
1982	Applebaum-Hebert: Federal Cultural Policy Review Committee
1983	Department of Communications, "Towards a New National Broadcasting Policy"
	Department of Communications, "Building for the Future: Towards a Distinctive CBC"
	John Charles Clifford, Content Regulation in Private FM Radio and Television Broadcasting: A Background Study about CRTC Sanctions and Compliance Strategy, (October 1983: Ottawa, Ontario)
1984	Department of Communications, <i>From Gutenberg to Telidon</i> , (Ottawa, 1984)
1985	Neilsen report: Federal Task Force on Program Review published its recommendations on culture and communications
1986	Task Force on Broadcasting Policy, <i>Report</i> , (Ottawa, 1986) [Caplan-Sauvageau]
1987	House of Commons Standing Committee on Communications and Culture: Sixth Report
	Department of Communications, <i>Communications for the Twenty-First Century: Media and Messages in the Information Age</i> (Ottawa, 1987)
1991	Marion G. Wrobel, Library of Parliament, Telecommunications: the demise of natural monopoly and its implications for regulation, Backgrounder (Ottawa, 1991)
1992	Industry Canada. <i>Communications for the Twenty-First Century: Media and Messages in the Information Age</i> . Ottawa, 1992.
	Communications Canada, <i>A spectrum policy framework for Canada</i> (Ottawa, 1992)
	Communications Canada, <i>Telecommunications in Canada: an overview of the carriage industry</i> , (Ottawa, 1992)
1996	Daniel J. Shaw, Library of Parliament, Parliamentary Research Branch, Economics Division, <i>THE DEREGULATORY FRAMEWORK FOR TELECOMMUNICATIONS AND BROADCAST DISTRIBUTION</i> (Ottawa, November 1996), <a href="http://publications.gc.ca/collections/collection_2008/lop-bdp/bp/bp432-e.pdf">http://publications.gc.ca/collections/collection_2008/lop-bdp/bp/bp432-e.pdf</a>
	Daniel J. Shaw, Library of Parliament, Parliamentary Research Branch, Economics Division, <i>THE INFORMATION HIGHWAY: THE CONVERGENCE OF TELECOMMUNICATIONS, BROADCAST DISTRIBUTION AND MICROPROCESSING</i> , (Ottawa, June 1996), <a href="http://publications.gc.ca/collections/collection_2008/lop-bdp/bp/bp420-e.pdf">http://publications.gc.ca/collections/collection_2008/lop-bdp/bp/bp420-e.pdf</a>
	Daniel J. Shaw, Library of Parliament, Parliamentary Research Branch, Economics Division, <i>The information revolution and international telecommunications</i> , (Ottawa, July 1996), <a href="http://publications.gc.ca/collections/Collection-R/LoPBdP/BP-e/bp421-e.pdf">http://publications.gc.ca/collections/Collection-R/LoPBdP/BP-e/bp421-e.pdf</a>
	Daniel J. Shaw, Library of Parliament, Parliamentary Research Branch, Economics Division, <i>Telecommunication services and pricing: from monopoly to competition</i> , (Ottawa, 1995, revised September 1996)
	Daniel J. Shaw, Library of Parliament, Parliamentary Research Branch, Economics Division, <i>CANADIAN COMPETITIVENESS IN TELECOMMUNICATIONS AND BROADCAST DISTRIBUTION</i> , (Ottawa, November 1996), <a href="http://publications.gc.ca/collections/collection_2008/lop-bdp/bp/bp427-e.pdf">http://publications.gc.ca/collections/collection_2008/lop-bdp/bp/bp427-e.pdf</a>
1999	Standing Committee on Canadian Heritage, <i>A Sense of Place, A Sense of Being: The evolving role of the Federal government in support of culture in Canada</i> , Ninth Report (Ottawa, June 1999), <a href="http://www.ourcommons.ca/DocumentViewer/en/36-1/CHER/report-9/">http://www.ourcommons.ca/DocumentViewer/en/36-1/CHER/report-9/</a>
2001	Federal government announces the <i>Tomorrow Starts Today</i> cultural policy, to foster arts and culture, maximize Canadians' access to arts and culture, and develop partnerships

Year	Report
	Industry Canada Press Release “Minister of Industry and Minister of Justice Announce Canadian Strategy to Promote Cyber-Safety” (15 February 2001) Online: Industry Canada < <a href="http://www.ic.gc.ca/cmb/welcomeic.nsf/261ce500dfcd7259852564820068dc6d/85256779007b82f4852569f400542682!OpenDocument">http://www.ic.gc.ca/cmb/welcomeic.nsf/261ce500dfcd7259852564820068dc6d/85256779007b82f4852569f400542682!OpenDocument</a> >
2002	Department of Canadian Heritage, <i>Canadian Content for the 21<sup>st</sup> Century</i> , Discussion Paper (Ottawa, March 2002), <a href="http://publications.gc.ca/collections/Collection/CH44-29-2002E.pdf">http://publications.gc.ca/collections/Collection/CH44-29-2002E.pdf</a>
2003	Standing Committee on Industry, Science and Technology, <i>Opening Canadian Communications to the World</i> , Report, (Ottawa, April 2003), <a href="https://www.ourcommons.ca/DocumentViewer/en/37-2/INST/report-3/">https://www.ourcommons.ca/DocumentViewer/en/37-2/INST/report-3/</a> .
	Canadian Heritage, <i>Northern Native Broadcast Access Program (NNBAP) &amp; Northern Distribution Program (NDP) Evaluation: Final Report</i> (25 June 2003), <a href="http://publications.gc.ca/collections/Collection/CH44-90-2003E.pdf">http://publications.gc.ca/collections/Collection/CH44-90-2003E.pdf</a>
	Department of Canadian Heritage, <i>Canadian Content in the 21<sup>st</sup> Century in Film and Television Productions: A Matter of Cultural Identity</i> , (Ottawa, 2003) [Macerola Report]
	Lincoln report: <i>Our Cultural Sovereignty: The Second Century of Canadian Broadcasting</i> , Report of the House of Commons Standing Committee on Canadian Heritage, (Ottawa, 11 June 2003) <a href="http://publications.gc.ca/collections/Collection/CH44-48-2005E.pdf">http://publications.gc.ca/collections/Collection/CH44-48-2005E.pdf</a>
2005	UNESCO adopts <i>Convention on the Protection and Promotion of the Diversity of Cultural Expressions</i> , supported by Canada and France – Canada is the first country to accept the <i>Convention</i> and it entered into force in March 2007
	Canadian Heritage, Corporate Review Branch, Evaluation Services, <i>Summative Evaluation of the Canadian Feature Film Policy</i> , (Ottawa, September 2005)
	Standing Committee on Canadian Heritage, <i>Scripts, Screens and Audiences: A New Feature Film Policy for the 21<sup>st</sup> Century</i> , Report (Ottawa, November 2005), <a href="http://www.ourcommons.ca/DocumentViewer/en/38-1/CHPC/report-19/">http://www.ourcommons.ca/DocumentViewer/en/38-1/CHPC/report-19/</a>
2006	Standing Senate Committee on Transport and Communications, <i>Final Report on the Canadian News Media</i> (2 volumes)
	House of Commons Standing Committee on Industry, Science and Technology, Sixth Report, (Ottawa, 30 March 2007), 39 <sup>th</sup> Parl, 1 <sup>st</sup> Sess, <a href="https://www.ourcommons.ca/DocumentViewer/en/39-1/INDU/report-6/">https://www.ourcommons.ca/DocumentViewer/en/39-1/INDU/report-6/</a> :
	“Pursuant to Standing Order 108(2), the Committee has studied the deregulation of telecommunications and recommends that the Minister of Industry withdraw the order varying Telecom Decision CRTC 2006-15 and table in Parliament a comprehensive package of policy, statutory and regulatory reforms to modernize the telecommunications services industry.”
	CRTC, <i>The Future Environment Facing the Canadian Broadcasting System: a report prepared pursuant to section 15 of the Broadcasting Act</i> (Ottawa, 14 December 2006), <a href="http://publications.gc.ca/collections/Collection/BC92-60-2006E.pdf">http://publications.gc.ca/collections/Collection/BC92-60-2006E.pdf</a>
	March 22, 2006: Telecommunications Policy Review Panel, <i>Final Report</i> , (Ottawa, March 2006), <a href="https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/tprp-final-report-2006.pdf/\$FILE/tprp-final-report-2006.pdf">https://www.ic.gc.ca/eic/site/smt-gst.nsf/vwapj/tprp-final-report-2006.pdf/\$FILE/tprp-final-report-2006.pdf</a>
2007	Department of Industry, <i>Spectrum Policy Framework for Canada</i> , Gzette Notice No. DGTP-001-07 (Ottawa, June 2007), <a href="http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf08776.html">http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf08776.html</a>
	Standing Committee on Canadian Heritage, <i>The Funding Crisis of the Canadian Television Fund: Report</i> , (Ottawa, March 2007), 39 <sup>th</sup> Parl., 1 <sup>st</sup> Sess., <a href="http://www.ourcommons.ca/DocumentViewer/en/39-1/CHPC/report-17/">http://www.ourcommons.ca/DocumentViewer/en/39-1/CHPC/report-17/</a>
	L. Dunbar & C. Leblanc, <i>REVIEW OF THE REGULATORY FRAMEWORK FOR BROADCASTING SERVICES IN CANADA</i> (Ottawa, 31 August 2007), <a href="http://publications.gc.ca/collections/collection_2008/crtc/BC92-62-2007E.pdf">http://publications.gc.ca/collections/collection_2008/crtc/BC92-62-2007E.pdf</a>

Year	Report
	Standing Committee on Canadian Heritage, <i>CB/Radio-Canada: Defining Distinctiveness in the Changing Media Landscape</i> : Report, (Ottawa, February 2008) 39 <sup>th</sup> Parl., 2 <sup>nd</sup> Sess., <a href="http://www.ourcommons.ca/DocumentViewer/en/39-2/CHPC/report-6/">http://www.ourcommons.ca/DocumentViewer/en/39-2/CHPC/report-6/</a>
	CRTC, <i>Perspectives on Canadian Broadcasting in New Media - a compilation of research and stakeholder views</i> (Ottawa, May 2008) Revised June 2008, <a href="http://publications.gc.ca/collections/collection_2009/crtc/BC92-65-2008E.pdf">http://publications.gc.ca/collections/collection_2009/crtc/BC92-65-2008E.pdf</a>
	Competition Policy Review Panel, <i>Compete to Win: Final Report</i> , (Ottawa, June 2008), <a href="https://www.ic.gc.ca/eic/site/cprp-gepmc.nsf/eng/h_00040.html">https://www.ic.gc.ca/eic/site/cprp-gepmc.nsf/eng/h_00040.html</a>
2010	Convergence Policy, Policy Development and Research, CRTC, <i>Navigating Convergence: Charting Canadian Communications Change and Regulatory Implications</i> , (Ottawa, February 2010), <a href="https://crtc.gc.ca/eng/publications/reports/rp1002.htm">https://crtc.gc.ca/eng/publications/reports/rp1002.htm</a>
	Report of the Standing Committee on Industry, Science and Technology <i>CANADA'S FOREIGN OWNERSHIP RULES AND REGULATIONS IN THE TELECOMMUNICATIONS SECTOR</i> , (Ottawa, JUNE 2010) <a href="https://www.ourcommons.ca/DocumentViewer/en/40-3/INDU/report-5/">https://www.ourcommons.ca/DocumentViewer/en/40-3/INDU/report-5/</a> , 40 <sup>th</sup> Parl., 3 <sup>rd</sup> Sess.
2011	CRTC, <i>Navigating Convergence II: Charting Canadian Communications Change and Regulatory Implications</i> , (Ottawa, 2011), <a href="http://publications.gc.ca/site/eng/9.694893/publication.html">http://publications.gc.ca/site/eng/9.694893/publication.html</a>
	Standing Committee on Canadian Heritage, <i>Emerging and Digital Media: Opportunities and Challenges</i> , Report (Ottawa, February 2011), 40 <sup>th</sup> Parl. 3 <sup>rd</sup> Sess., <a href="http://www.ourcommons.ca/DocumentViewer/en/40-3/CHPC/report-7/">http://www.ourcommons.ca/DocumentViewer/en/40-3/CHPC/report-7/</a>
	Standing Committee on Canadian Heritage, <i>Impacts of Private Television Ownership Changes and the Move Towards New Viewing Platforms: Report</i> , (Ottawa, March 2011) 40 <sup>th</sup> Parl. 3 <sup>rd</sup> Sess., <a href="https://www.ourcommons.ca/DocumentViewer/en/40-3/CHPC/report-9/">https://www.ourcommons.ca/DocumentViewer/en/40-3/CHPC/report-9/</a>
2012	Report of the Standing Committee on Industry, Science and Technology, <i>E-COMMERCE IN CANADA: PURSUING THE PROMISE</i> , (Ottawa, May 2012) 41 <sup>st</sup> Parl., 1 <sup>st</sup> Sess., <a href="https://www.ourcommons.ca/DocumentViewer/en/41-1/INDU/report-1/page-5">https://www.ourcommons.ca/DocumentViewer/en/41-1/INDU/report-1/page-5</a>
2014	Standing Committee on Canadian Heritage, <i>Review of the Feature Film Industry in Canada: Report</i> , (Ottawa, June 2014), 41 <sup>st</sup> Parl., 2 <sup>nd</sup> Sess., <a href="http://www.ourcommons.ca/DocumentViewer/en/41-2/CHPC/report-14/">http://www.ourcommons.ca/DocumentViewer/en/41-2/CHPC/report-14/</a>
	Michael Dewing, Legal and Social Affairs Division, Parliamentary Information and Research Service, <i>Canadian Broadcasting Policy</i> , Pub. No. 2011-9-E (Ottawa, 23 June 2011), revised 6 Aug 2014, <a href="http://publications.gc.ca/collections/collection_2014/bdp-lop/bp/2011-39-2-eng.pdf">http://publications.gc.ca/collections/collection_2014/bdp-lop/bp/2011-39-2-eng.pdf</a>
2015	Standing Committee on Canadian Heritage, <i>Review of the Feature Film Industry in Canada: Report</i> , (Ottawa, June 2015), 41 <sup>st</sup> Parl., 2 <sup>nd</sup> Sess., <a href="http://publications.gc.ca/collections/collection_2015/parl/x61-1/XC61-1-1-412-14-eng.pdf">http://publications.gc.ca/collections/collection_2015/parl/x61-1/XC61-1-1-412-14-eng.pdf</a> .
	Standing Senate Committee on Transport and Communications, <i>Time for change: the CBC/Radio-Canada in the twenty-first century</i> , Report, (Ottawa, 2015), <a href="http://publications.gc.ca/site/eng/9.802332/publication.html">http://publications.gc.ca/site/eng/9.802332/publication.html</a>
2016	House of Commons Standing Committee on Canadian Heritage, <i>INTERIM REPORT ON MEDIA STUDY: The Impact of Digital Technology</i> , Report 3, Presented to the House: December 8, 2016
2017	Standing Committee on Canadian Heritage, <i>Disruption: Change and churning in Canada's media landscape</i> (Ottawa, 15 June 2017), <a href="http://www.ourcommons.ca/DocumentViewer/en/42-1/CHPC/report-6/">http://www.ourcommons.ca/DocumentViewer/en/42-1/CHPC/report-6/</a>
2018	Canadian Heritage, <i>Creative Canada – A Vision for Canada's Creative Industries</i> , (Ottawa, 28 September 2017), <a href="https://www.canada.ca/en/canadian-heritage/campaigns/creative-canada/framework.html">https://www.canada.ca/en/canadian-heritage/campaigns/creative-canada/framework.html</a>
2020	Broadcasting and Telecommunications Legislative Review Panel, <i>Canada's Communications Future: Time to Act: Report</i> (Ottawa, 29 January 2020), <a href="http://www.ic.gc.ca/eic/site/110.nsf/eng/00012.html">http://www.ic.gc.ca/eic/site/110.nsf/eng/00012.html</a>

### Appendix 11 References to ‘applications’, ‘representations’ and ‘complaints’ in the *Broadcasting Act* and *Telecommunications Act*

Broadcasting Act	Telecommunications Act
<p>Application: used in relation to broadcast and telecommunications licensing, and in telecommunications with respect to requests for CRTC inquiries and reconsideration of decisions or matters</p>	
<p>s. 9(1)(c): CRTC may amend conditions of licence “on <b>application</b> of the licensee ...”</p> <p>s. 12(3): “any person” affected by an order issued by a inquiry panel (under s. 20(1)) “may ... <b>apply</b> to the Commission to reconsider any decision or finding made by the panel ....”</p> <p>s. 19(a) CRTC shall publish notices in the Canada Gazette about “any <b>application</b> received by it for the issue, amendment or renewal of a licence, other than a licence to carry on a temporary network operation”</p> <p>s. 21(a) CRTC has the discretion to make rules about “the procedure for making <b>applications</b> for licences, or for the amendment, renewal, suspension or revocation thereof” and for making representations and complaints to the Commission; ...</p> <p>24 (1) CRTC shall not suspend or revoke licences unless the licensee “<b>applies</b> for” the suspension or revocation</p> <p>24(2) CRTC may not suspend or revoke a CBC licence unless it <b>applies</b> for (or consents to) the suspension/revocation</p> <p>26 (1)(c),(d) Cabinet may issue directions to the CRTC about the “classes of <b>applicants</b> to whom licences may not be issued or to whom amendments or renewals thereof may not be granted” or about the circumstances in which the CRTC may license “<b>applicants</b> that are agents of a province and are otherwise ineligible to hold a licence ....”</p>	<p>16.2 <b>Applications</b> for the CRTC to issue, renew or amend international telecommunications service licences must be made as specified by the CRTC</p> <p>16.3 (1) CRTC may issue international telecommunications service licences in response to <b>applications</b></p> <p>16.3 (3) CRTC may “on <b>application</b> by any interested person or on its own motion, amend any conditions of a licence”</p> <p>16.3 (5) Licensees may submit <b>applications</b> to renew their licences to the CRTC</p> <p>16.4 (2) CRTC may suspend/revoke licences on <b>application</b> by the licensee</p> <p>18 <b>Applications</b> to issue, renew or amend international submarine cable licences must be made as prescribed</p> <p>43(4) Canadian carrier or distribution undertaking may <b>apply</b> to the CRTC for permission to built a transmission line</p> <p>44 (a)(b) Municipalities or other authorities may <b>apply</b> to the CRTC for it to order Canadian carriers or distribution undertakings to change the route of any transmission line or prohibit the building or operation of such lines</p> <p>45 Municipalities, other public authorities or landowners may <b>apply</b> to the CRTC to authorize construction or pipe laying</p> <p>48 (1) Any interested person may <b>apply</b> to the CRTC to “inquire into and make a determination in respect of anything prohibited, required or permitted to be done under Part II, except in relation to international submarine cables, Part III or this Part or under any special Act ....”</p> <p>48(1.1) Any interested person may <b>apply</b> to the CRTC to “... inquire into and make a determination in respect of anything prohibited, required or permitted to be done under sections 51 to 53 of the Accessible Canada Act.</p> <p>59 (1) Persons or Canadian carriers may <b>apply</b> for advice from the CRTC re any conditions under which carriers must or may provide telecommunications services</p> <p>60 CRTC may grant all or some “of the relief <b>applied</b> for in any case” as well as “any other relief ... as if the application had been for that other relief”</p> <p>62 CRTC may, “on <b>application</b>” review and rescind or vary any decision, or re-hear any matter before issuing a decision</p>
<p>Interventions: used in relation to broadcast licensing matters</p>	
<p>7(4) No order made under subsection (1) may apply with respect to a licensing matter pending before the Commission where the period for the filing of interventions in the matter has expired unless that period expired more than one year before the coming into force of the order.</p>	<p>[Not mentioned in context of CRTC proceedings]</p>

Representation	
<p>10(3) When the CRTC proposes regulations “a reasonable opportunity shall be given to licensees and other interested persons to make <b>representations</b>” about the proposals to the CRTC</p> <p>11 (5) regulations proposed by CRTC shall be published and “licensees and other interested parties” shall have a “reasonable opportunity ... to make <b>representations</b>” to the CRTC</p> <p>18 (3) CRTC “may hold a public hearing, make a report, issue any decision and give any approval in connection with any ... <b>representation</b> made to” it or “in connection with any other matter within its jurisdiction under this Act”</p> <p>21(a) CRTC may make rules “...respecting the procedure ... for making representations ... to the Commission”</p> <p>24(3) Copies of CRTC decisions to suspend or revoke a licence to be mailed “to all persons who were heard at or made any oral <b>representations</b> in connection with the hearing”</p> <p>29(2) CRTC to mail a copy of any petition made about its decisions “to all persons who were heard at or made any oral representation in connection with the hearing held in the matter to which the petition relates”</p>	<p>12(3) When CRTC receives petitions it must send a copy “to each person who made any oral <b>representation</b>” to the CRTC in relation to the decision that is the subject of the petition.</p> <p>16.4 (1) CRTC must give international telecommunications service licensees a reasonable opportunity to make <b>representations</b> to the CRTC before it suspends/revokes their licences</p> <p>69 (1) interested persons must have a chance to make <b>representations</b> to the CRTC about any regulations it proposes</p> <p>72.005(2)(b) Persons believed to have committed a violation have the right to “to make <b>representations</b>” regarding the violation and the penalty and (c) the failure to make representations means the CRTC may deem the person to have committed the violation and may impose a penalty</p> <p>72.007(2) CRTC may consider <b>representations</b> from persons served with notice of violation as well as “any other representations that it considers appropriate” whether the persons committed the violations</p> <p>72.009(1)(c) <b>Representations</b> may be made about the amount of a penalty set out in a notice of violation</p> <p>72.08(2) if a person makes <b>representations</b> in accordance with a notice of violation CRTC must decide whether the person committed the violation</p> <p>72.08(3) A person’s failure to pay penalties or make <b>representations</b> means CRTC may deem the person to have committed the violation</p>
Intervention: broadcast licensing matters	
<p>7(4) No order made under subsection (1) may apply with respect to a licensing matter pending before the Commission where the period for the filing of <b>interventions</b> in the matter has expired unless that period expired more than one year before the coming into force of the order.</p>	[not used in Telecommunications Act]
Complaint: any matter in CRTC’s broadcast jurisdiction	
<p>18 (3) The Commission may hold a public hearing, make a report, issue any decision and give any approval in connection with any complaint or representation made to the Commission or in connection with any other matter within its jurisdiction under this Act if it is satisfied that it would be in the public interest to do so.</p> <p>21 (a) CRTC has the discretion to make rules “... respecting the procedure ... for making ... complaints to the Commission ....”</p>	[not used in Telecommunications Act]

## Appendix 12 Dataset on Part 1 applications – identified errors

Part 1 application number	Error	Action taken
8622-R28-202004365	This application was filed by Rogers on 17 July 2020. The 'posted date' shown on the CRTC's website is 14 August 2020, and the 'deadline' is shown as two days earlier than the posting date (12 August 2020). In fact, the 12 August 2020 appears to identify the date of the procedural letter in which the CRTC placed this proceeding on hold (pending a larger public consultation);	The 'deadline date' of 12 August 2020 was removed from the dataset.
8690-V84-201704198	The Ville de Terrebonne submitted this application to the CRTC on 12 May 2017. From September 2017 to 31 October 2018 the city asked the CRTC several times to suspend the application due to negotiations between the parties, and the CRTC did so. On 31 October 2018 the city said that several issues remained outstanding and the CRTC re-activated the file. See CRTC procedural letter (Ottawa, 6 November 2018), <a href="https://crtc.gc.ca/eng/archive/2018/lt181106.htm">https://crtc.gc.ca/eng/archive/2018/lt181106.htm</a> .	Used 31 October 2018 as the submission date, as suspensions were requested by the applicant.
8622-R28-201611781	This application was submitted by Rogers on 16 November 2016, and posted on 17 November 2016 showing a deadline of 30 January 2016. A CRTC procedural letter dated 22 December 2016 establishes 30 January 2017 as the deadline for comments ( <a href="https://crtc.gc.ca/eng/archive/2016/lt161222b.htm?ga=2.264621839.1888836314.1604845393-1211976415.1582553073">https://crtc.gc.ca/eng/archive/2016/lt161222b.htm?ga=2.264621839.1888836314.1604845393-1211976415.1582553073</a> )	Deadline date corrected to 30 January 2017.

**Appendix 13 CRTC's 2009 Communications Monitoring Report – complaints (p. 21)**

**Statistical information - Diversity and social issues (Broadcasting)**

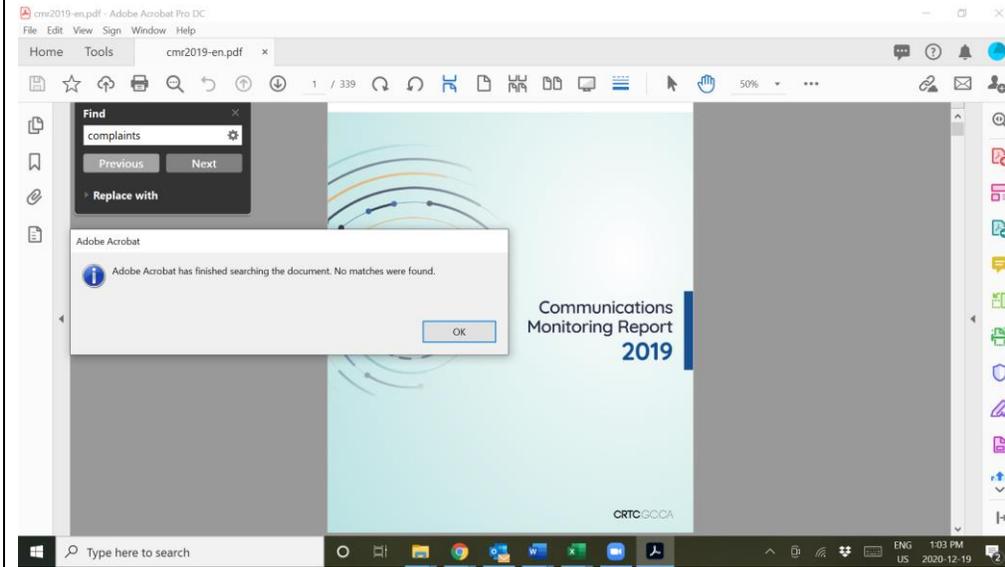
**Table 2.3.1 Broadcasting complaints by sector, by issue**

Topic	1 April to 31 March							
	2005-06		2006-07		2007-08		2008-09	
	Complaints received	Referrals to CBSC						
<b>Radio</b>								
Abusive comment <sup>a</sup>	108	57	141	64	11	-	26	10
Adult content	28	23	13	5	8	3	19	11
Alcohol advertising	2	2	3	2	-	-	6	-
Gender portrayal	2	2	3	-	-	-	1	1
Offensive comment <sup>b</sup>	250	114	204	127	89	30	397	308
Offensive language <sup>c</sup>	54	22	52	20	24	8	40	23
<b>Conventional television</b>								
Abusive comment	378	105	124	87	5	1	39	5
Adult content	245	123	132	66	84	34	111	47
Alcohol advertising	6	2	9	2	4	-	17	1
Gender portrayal	3	1	10	3	-	-	5	2
Offensive comment	563	317	154	61	107	6	455	61
Offensive language	66	28	47	19	34	14	51	20
Television violence	86	31	110	59	40	9	85	24
<b>Specialty channels</b>								
Abusive comment	15	10	10	8	2	-	10	-
Adult content	109	68	90	55	32	14	82	39
Alcohol advertising	-	-	1	1	1	-	1	-
Gender portrayal	3	2	2	-	-	-	-	-
Offensive comment	44	31	38	25	12	2	212	202
Offensive language	29	20	14	7	7	2	32	23
Television violence	19	10	16	11	14	5	20	14
<b>Pay television and pay-per-view services</b>								
Abusive comment	-	-	-	-	-	-	-	-
Adult content	5	-	14	-	4	-	402	1
Alcohol advertising	-	-	-	-	-	-	-	-
Gender portrayal	-	-	-	-	-	-	-	-
Offensive comment	-	-	-	-	-	-	2	-
Offensive language	1	-	-	-	-	-	-	-
Television violence	1	-	1	-	-	-	-	-
<b>Subscription radio (Satellite)</b>								
Abusive comment	3	3	-	-	-	-	-	-

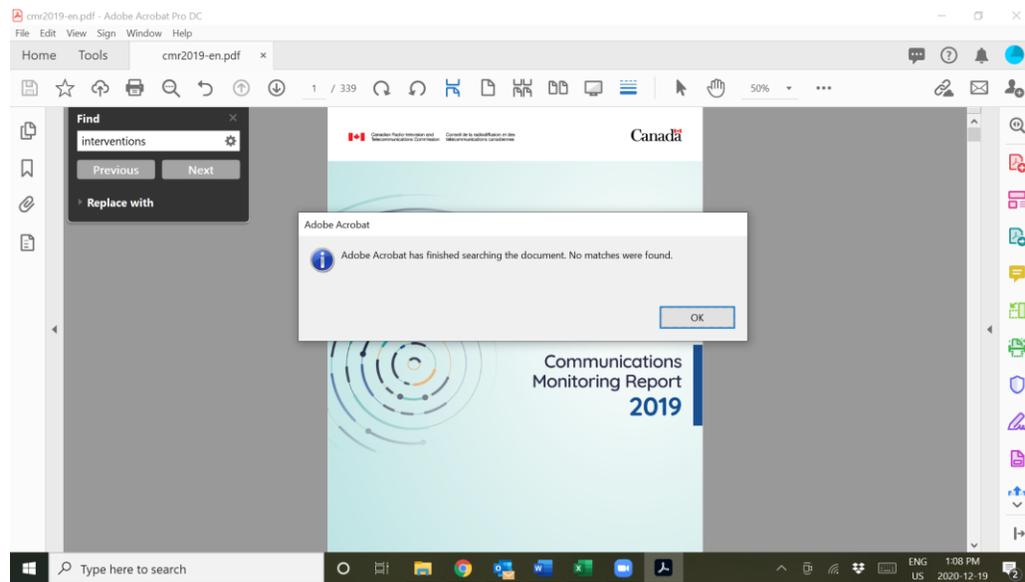
Notes: a) Where a complaint alleges that hatred or contempt was incited on-air against one of the groups identified in the television, radio, or specialty regulations  
 b) Where a complaint alleges offensive humour or other comments that do not fall under the "abusive comment" provision  
 c) Where a complaint alleges offensive language in song lyrics or in spoken word  
 Source: CRTC Correspondence Tracking System. (The Rapids tracking system counts multiple contacts from the same client on the same complaint as separate units. The actual number of complaints received should be therefore slightly lower.)

## Appendix 14 CRTC Communications Monitoring Report 2018-2019 – information about requests received by the CRTC

### Complaints: no references



### Interventions: no references



**Applications – 13 references, none concerning applications made under the CRTC Rules – see e.g.:**

The Canadian Radio-television and Telecommunications Commission (CRTC)  
 Ottawa, Ontario Canada  
 K1A 0N2  
 Tel: 819-997-0313  
 Toll-free: 1-877-249-2782 (in Canada only)  
<https://applications.crtc.gc.ca/contact/eng/library>

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## i Revenues

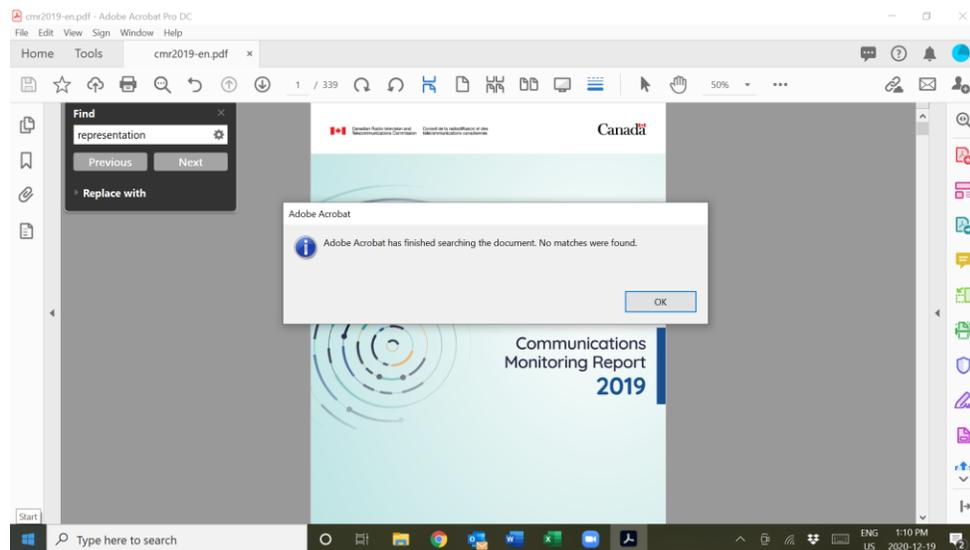
Total Canadian telecommunications revenues reached \$53.1 billion in 2018, as Canadians used ever-increasing amounts of data through both fixed Internet and mobile services. ("Data usage" includes the use of data for video streaming services such as Netflix and YouTube, as well as for audio streaming services such as Spotify and various radio applications via mobile devices or fixed Internet services.)

Table 8.3 Retail Internet service revenue (\$ millions)

Type	Subtype	2014	2015	2016	2017	2018	Growth (%) 2017-2018	CAGR (%) 2014-2018
Residential	Access	6,554	7,265	8,091	8,804	9,429	7.1	9.5
	Applications, equipment, and other Internet-related services	162	210	289	314	376	19.7	23.5
	Total	6,716	7,475	8,380	9,118	9,805	7.5	9.9
Business	Access and transport	1,320	1,394	1,442	1,502	1,576	4.9	4.5
	Applications, equipment, and other Internet-related services	378	380	356	347	385	10.9	0.5
	Total	1,698	1,774	1,798	1,849	1,961	6.1	3.7
All	Total	8,414	9,249	10,178	10,967	11,765	7.3	8.7

Source: CRTC data collection

## Representations – no references





**Appendix 15 CRTC's 2017/18 Communications Monitoring Report – complaints and contacts**

<b>CRTC, 2017/18 Communications Monitoring Report – contacts, complaints and complaints forwarded to industry organizations</b>					
<b>Sector and organization</b>	<b>Table title (page number)</b>	<b>2016/17</b>	<b>Contacts</b>	<b>Forwarded complaints</b>	<b>Complaints</b>
<b>Radio</b>					
CRTC	Table 8.5 Number of radio-related contacts received by the CRTC, by type of issue (p. 219)	1,519	1,519		
CRTC	Table 8.6 Number of radio complaints received and number of radio complaints referred to the Canadian Broadcast Standards Council (CBSC), by subject matter (p. 219)	345		345	
ASC	Table 8.8 Complaints handled by Advertising Standards Canada - Complaints about radio advertisements (p. 220)	81			81
CBSC	Table 8.7 Radio complaints handled by the Canadian Broadcast Standards Council in 2017 by language and national origin (p. 220)	1,674			1,674
<b>TV</b>					
CRTC	Table 9.4 Number of television-related contacts received by the CRTC, by type of issue 2013-2017 broadcast years (p. 255)	3,675	3,675		
CBSC	Table 9.5 Television programming complaints received by the CRTC and referred to the CBSC, by sector and issue, 2013-2017 broadcast years, "Complaints received" (p. 256)	339		339	
CBSC	Table 9.6 Television-related complaints handled by the CBSC, by language of broadcast and origin of the program, 2017 (p. 257)	1,128			1,128
ASC	Table 9.7 Complaints relating to digital advertising and advertising on television, handled by the ASC, 2017 - Total number of complaints (p. 257)	1,808			1,808
ASC	Table 9.7 Complaints relating to digital advertising and advertising on television, handled by the ASC, 2017 - television advertisements (p. 257)	716			
ASC	Table 9.7 Complaints relating to digital advertising and advertising on television, handled by the ASC, 2017 - Digital advertisements (p. 257)	410			
<b>Telecom</b>					
CRTC	Table 4.2 Number of telecommunications-related contacts received by the CRTC by type of issue and subject, 2017 (p. 105)	16,805	16,805		
CCTS	Table 4.3 Summary of issues raised in telecommunications complaints handled by the CCTS (2016-2017) (p. 107)	18,448			18,448
<b>Total – CRTC, CCTS, CBSC and ASC:</b>			<b>21,999</b>	<b>684</b>	<b>23,139</b>

**Appendix 16 Applicants and applications considered by the CRTC, by type of CRTC process**

Applications in CRTC's 2019 Broadcast Applications Report	Administrative (CRTC Letter Decisions)	Notice of consultation			Part 1 applications	Part 1 - renewal applications	Total
		Non-appearing	Appearing	Appearing - January 2021			
10070394 Canada Inc.	1						1
101056012 Saskatchewan Ltd.						1	1
101142236 Saskatchewan Ltd.						2	2
10679313 Canada Inc.						5	5
12005131 Canada Inc. [Bell Canada]			1				1
1760791 Ontario Inc.					1	1	2
3885275 Canada Inc.						1	1
4517466 Canada Inc.	1					1	2
591987 B.C. Ltd.					2		2
591989 B.C. Ltd.						8	8
629112 Saskatchewan Ltd.						1	1
7590474 Canada Inc.					1	1	2
8159203 Canada Limited					1		1
8384878 Canada Inc.						1	1
8504580 Canada Inc.						1	1
9015-2018 Québec inc.						1	1
9116-1299 Québec inc.			1				1
9188-7208 Québec inc.						1	1
9238476 Canada Inc.						1	1
Aboriginal Multi-Media Society of Alberta	1				1		2
Acadia Broadcasting Limited					3	5	8
Acadian Communications Ltd.	1					1	2
AGNI Communications inc.						1	1
Akash Broadcasting Inc.	1				1		2
Association d'Églises baptistes réformées du Québec						1	1
Atlantic Digital Networks Ltd.		1					1
Aujourd'hui l'Espoir		1					1
Aupe Cultural Enhancement Society	1						1
Aylesford Community Baptist Church						1	1

Applications in CRTC's 2019 Broadcast Applications Report	Administrative (CRTC Letter Decisions)	Notice of consultation			Part 1 applications	Part 1 - renewal applications	Total
		Non-appearing	Appearing	Appearing - January 2021			
Base Commander of Canadian Forces in Suffield					1	1	2
Bathurst Radio Inc.						1	1
Bayshore Broadcasting Corporation					2	1	3
Bell Canada					3		3
Bell Media Inc.	1				3	47	51
Bell Media Radio Atlantic Inc.						5	5
Bell Media Radio G.P.					1	1	2
Bell Media Regional Radio Partnership					1	11	12
Blackburn Radio Inc.						2	2
Blue Ant Television General Partnership					1		1
Bragg Communications Incorporated						1	1
Byrnes Communications Inc.						1	1
C.J.S.D. Incorporated						1	1
CAB-K Broadcasting Ltd.						2	2
Câblevision du Nord de Québec inc.						1	1
Campbellford Area Radio Association						1	1
Campus Radio Saint John Inc.						1	1
Canadian Broadcasting Corporation	5	12		4	19		40
Canadian Hellenic Toronto Radio Inc.	1						1
Canal Évasion inc.					1		1
Carlsbad Springs Community Association					1		1
Centre communautaire "Bon Courage" de Place Benoît	1						1
CFUR Radio Society						1	1
Chetwynd Communications Society					2		2
CHMZ-FM Radio Ltd.			1				1
CIAM Media & Radio Broadcasting Association					2	1	3
CIBM-FM Mont-Bleu Itée						1	1
CIGO Limited	1						1
CIMM-FM Radio Ltd.			1				1
CJNE FM Radio Inc.		1					1
Coast Broadcasting Ltd.	1					1	2

Applications in CRTC's 2019 Broadcast Applications Report	Administrative (CRTC Letter Decisions)	Notice of consultation			Part 1 applications	Part 1 - renewal applications	Total
		Non-appearing	Appearing	Appearing - January 2021			
Coastal Community Radio Co-operative Limited						1	1
Cobequid Radio Society						1	1
Cogeco Media Inc.						6	6
Community Radio Society of Saskatoon Inc.						1	1
Connelly Communications Corporation						1	1
Corus Entertainment Inc.					1		1
Corus Radio Inc.	2					11	13
Corus Television Limited Partnership					2		2
CPAM Radio Union.com inc.			1				1
Dauphin Broadcasting Company Limited						1	1
Dufferin Communications Inc.	1				2	3	6
Durham Radio Inc.					1	2	3
Erin Community Radio						1	1
Ethnic Channels Group					1		1
Ethnic Channels Group Limited					1		1
Fabmar Communications Ltd.		1					1
Fight Media Inc.						1	1
Golden West Broadcasting Ltd.	1					7	8
Groupe Médias Pam inc.			1				1
GX Radio Partnership						1	1
Harvard Broadcasting Inc.						6	6
Harvest Ministries Sudbury	1				1		2
Hornby Community Radio Society						1	1
Hubbards Radio Society						1	1
Humber Communications Community Corporation						1	1
Hunters Bay Radio Inc.						1	1
I.T. Productions Ltd.		1					1
Intercity Broadcasting Network Inc.					1		1
International Harvesters for Christ Evangelistic Association Inc.	1				1	1	3
JAZZ.FM91 Inc.						1	1

Applications in CRTC's 2019 Broadcast Applications Report	Administrative (CRTC Letter Decisions)	Notice of consultation			Part 1 applications	Part 1 - renewal applications	Total
		Non-appearing	Appearing	Appearing - January 2021			
Jim Pattison Broadcast Group Limited Partnership						10	10
KCVI Educational Radio Station Incorporated	1						1
Kootenay Cooperative Radio						1	1
La Co-opérative Radio Richmond limitée						1	1
La radio communautaire de Fermont inc.	1						1
La radio communautaire du comté			1				1
LE5 Communications Inc.	2						2
Leclerc Communication inc.		1					1
Lewis Birnberg Hanet, LLP					1		1
Manager, Technology Infrastructure, Government of Yukon		1					1
Maritime Broadcasting System Limited					3	7	10
Mennonite Community Services of Southern Ontario						1	1
MusiquePlus Inc.			2				2
My Broadcasting Corporation	1				1	4	6
MZ Media Inc.						1	1
Native Communication Inc.					1		1
Newfoundland Broadcasting Company Limited	1				1		2
Northern Lights Entertainment Inc.		2					2
O.K. Creek Radio Station Inc.						1	1
Ottawa Media Inc.						1	1
Parrsboro Radio Society			1				1
Peace River Broadcasting Corporation Ltd.		1					1
Perth FM Radio Inc.						1	1
Pickering College Campus Radio						1	1
Powell River Community Radio Society						1	1
Prince Edward County Radio Corporation						1	1
Prince George Community Radio Society						1	1
Quebecor Media Inc.					3		3
Quinte Broadcasting Company Limited						1	1

Applications in CRTC's 2019 Broadcast Applications Report	Administrative (CRTC Letter Decisions)	Notice of consultation			Part 1 applications	Part 1 - renewal applications	Total
		Non-appearing	Appearing	Appearing - January 2021			
Radio Bas-St-Laurent inc.		2					2
Radio Beauce inc.						1	1
Radio CFXU Club						1	1
Radio CJFP (1986) Itée						1	1
Radio CLARE Association					1		1
Radio communautaire Cornwall-Alexandria Inc.	1						1
Radio communautaire de Châteauguay CHAI-MF						1	1
Radio communautaire de Windsor et région inc.						1	1
Radio de la Baie Itée						1	1
Radio Dégelis inc.	1						1
Radio du Golfe inc.	1						1
Radio Humsafar Inc.					3	1	4
Radio Matagami						1	1
Radio MirAcadie inc.						1	1
Radio One 580 AM Ltd.	2						2
Rawlco Radio Ltd.						1	1
RNC MEDIA Inc.						1	1
Robert G. Hopkins						1	1
Rock 95 Broadcasting Ltd.						1	1
Rogers Communications Canada Inc.					2		2
Rogers Media Inc.					4	21	25
Salt and Light Catholic Media Foundation						1	1
San Lorenzo Latin American Community Centre					1		1
Saugeen Community Radio Inc.						1	1
Seventh-Day Adventist Church in Newfoundland and Labrador	1						1
Shaw Cablesystems (VCI) Limited					1		1
Sher-E-Punjab Radio Broadcasting Inc.	1						1
Société Radio Communautaire du Grand Edmonton Society					1		1
Société Radio Taïga						1	1

Applications in CRTC's 2019 Broadcast Applications Report	Administrative (CRTC Letter Decisions)	Notice of consultation			Part 1 applications	Part 1 - renewal applications	Total
		Non-appearing	Appearing	Appearing - January 2021			
Sound of Faith Broadcasting					1	1	2
South Fraser Broadcasting Inc.						1	1
St. Andrews Community Channel Inc.					1	1	2
Starboard Communications Ltd.						1	1
Stillwater Broadcasting Ltd.						1	1
Stingray Group Inc.		2				1	3
Stingray Radio Inc.		2			2	19	23
Sur Sagar Radio Inc.					1		1
Télé-Mag inc.	1					1	2
Telile: Isle Madame Community Television Association						1	1
TELUS Communications Company		1					1
The B.C. Conference of the Mennonite Brethren Churches						1	1
The Canadian Documentary Channel Limited Partnership	1						1
The GameTV Corporation						1	1
The Miracle Channel Association						1	1
The Winnipeg Campus/Community Radio Society Inc.						1	1
THEMA Canada Inc.					2		2
Thunder Bay Electronics Limited						1	1
TLN Media Group Inc.						3	3
Toronto Maple Leafs Network Ltd.						1	1
Toronto Raptors Network Ltd.						1	1
Torres Media Georgina Inc.					1		1
Touch Canada Broadcasting Limited Partnership						2	2
Trafalgar Broadcasting Limited						1	1
Trust Communications Ministries						1	1
TV Hamilton Limited						1	1
UFV Campus and Community Radio Society						1	1
United Christian Broadcasters Media Canada					7	2	9

Applications in CRTC's 2019 Broadcast Applications Report	Administrative (CRTC Letter Decisions)	Notice of consultation			Part 1 applications	Part 1 - renewal applications	Total
		Non-appearing	Appearing	Appearing - January 2021			
Utilities Consumers' Group Society		1					1
Videotron Ltd.					1		1
Vista Radio Ltd.	2				1	13	16
VMedia Inc.					1		1
Westman Radio Ltd.						1	1
Wired World Inc.						1	1
World Fishing Network ULC						1	1
World Media Ministries						1	1
Zeste Diffusion inc.					1		1
ZoomerMedia Limited						4	4
Applications, total	39	30	10	4	100	301	484
Applications as % of total	8.1%	6.2%	2.1%	0.8%	20.7%	62.2%	100.0%
Applicants, total	31	15	9	1	52	119	186
Applicants as % of total	16.7%	8.1%	4.8%	0.5%	28.0%	64.0%	100.0%

**Appendix 17 64 Part 1 applications tracked by the CRTC but not posted to its website**

<b>Access-to-information release A-2020-00046:</b>				
<b>8 Part 1 applications received by the CRTC from 1 January 2016 to 30 September 2020</b>				
<b>which the CRTC did not post on its website</b>				
<b>App. No.</b>	<b>Applicant</b>	<b>Type</b>	<b>Category*</b>	<b>Status</b>
2017-0657-4	Bell Canada**	POL	A (Amendment)	ACT
2019-0734-6	Sound of Faith Broadcasting	FM	A (Amendment)	ACT
2019-0857-6	Bell Media Regional Radio Partnership	AM	A (Amendment)	ACT
2019-0894-8	Acadia Broadcasting Limited	FM	A (Amendment)	ACT
2019-0924-3	1760791 Ontario Inc.	AM	A (Amendment)	ACT
2019-0950-9	Rogers Media Inc.	FM	A (Amendment)	ACT
2020-0372-1	Groupe TVA inc.	DIS	A (Amendment)	ACT
2020-0541-2	Byrnes Communications Inc.	FM	A (Amendment)	ACT
Total: 8 applications				
Clarification received by e-mail on 25 November 2020				
Type:				
A: "Policy"				
DIS: "Discretionary service"				
Status:				
ACT: Active				
*A= Application for amendments				
** Application resolved through Supreme Court decision without further CRTC process required.				

<b>Access-to-information release A-2020-00034:</b>					
<b>54 applications that were not posted and were returned by the CRTC from 1 January 2016 to 11 September 2020</b>					
<b>App. No.</b>	<b>Applicant</b>	<b>Call Sign</b>	<b>Location</b>	<b>Type Category</b>	<b>Status</b>
2020-0536-3	Intercity Broadcasting Network Inc,	CKFG-FM	Toronto, ON	FM A	RWCS
2020-0405-0	The B,C, Conference of the Mennonite Brethren Churches	CFEG-TV	Abbotsford, BC	TV A	RWCS
2020-0393-7	Les medias acadiens universitaires inc,	CKUM-FM	Moncion, NB	FM A	RWCS
2020-0344-0	My Broadcasting Corporation	CJMB-FM	Peterborough, ON	FM A	RWCS
2020-0130-4	La radio communautaire de LaSalle	CKVL-FM	Montreal (Lasalle), QC	FM A	RWCS
2019-1077-9	Fairchild Television Ltd,		Vancouver, BC	SPEC R	RWCS
2019-1076-1	Fairchild Television Ltd,		Toronto, ON	SPEC R	RWCS
2019-0784-1	Parrsboro Radio Society	CICR-FM	Parrsboro, NS	FM A	RWCS
2019-0723-9	Stingray Radio Inc,	CFXE-FM	Edson, AB	FM R	RWCS
2019-0720-6	Stingray Radio Inc,	CHSL-FM	Slave Lake, AB	FM R	RWCS
2019-0715-6	Stingray Radio Inc,	CKQK-FM	Charlottetown, PE	FM R	RWCS
2019-0714-8	Stingray Radio Inc,	CHTN-FM	Charlottetown, PE	FM R	RWCS
2019-0713-0	Stingray Radio Inc,	CHTN-FM	Charlottetown, PE	FM R	RWCS
2019-0712-2	Stingray Radio Inc,	CFXE-FM	Edson, AB	FM R	RWCS
2019-0705-7	Caper Radio Incorporated	CJBU-FM	Sydney, NS	FM R	RWCS

<b>Access-to-information release A-2020-00034:</b>					
<b>54 applications that were not posted and were returned by the CRTC from 1 January 2016 to 11 September 2020</b>					
<b>App. No.</b>	<b>Applicant</b>	<b>Call Sign</b>	<b>Location</b>	<b>Type Category</b>	<b>Status</b>
2019-0687-7	Stingray Radio Inc,	CKQK-FM	Charlottetown, PE	FM R	RWCS
2019-0671-0	Stingray Radio Inc,	CKXG-FM	Grand Falls, NL	FM R	RWCS
2019-0660-4	Radio Diffusion Sorel-Tracy inc,	CJSO-FM	Sorel, QC	FM A	RWCS
2019-0631-4	Stillwater Broadcasting Ltd,	CJSB-FM	Swan River, MB	FM R	RWCS
2019-0573-8	Utilities Consumers' Group Society	CJUC-FM	Whitehorse, YT	FM A	RWCS
2019-0534-0	Radio CJFP (1986) ltee	CIEL-FM	Riviere-du-Loup, QC	FM A	RWCS
2019-0401-1	Bell Media Inc,		Montreal, QC	DIS A	RWCS
2019-0346-9	8159203 Canada Limited	CKNT	Mississauga, ON	AM A	RWCS
2019-0111-6	TotalTV Inc,		Montreal, QC	CATV R	RWCS
2019-0110-9	TotalTV Inc,		Toronto, ON	CATV R	RWCS
2019-0006-9	Fabrique de la Paroisse de Saint-Gerard	VF8027	Weedon, QC	FM R	RWCS
2018-1102-6	Radio communautaire du Labrador inc,	CJRM-FM	Labrador City, NL	FM R	RWCS
2018-1066-4	Native Communications Society of the N,WT	CKLB-FM	Yellowknife, NT	FM R	RWCS
2018-0987-3	Lenape Community Radio Society	CKBK-FM	Thamesville, ON	FM R	RWCS
2018-0870-1	Radio communautaire MF Lac Simon inc,	CHUT-FM	Lac-Simon (Louvicourt), QC	FM R	RWCS
2018-0869-3	Radio communautaire MF Lac Simon inc,	CHUN-FM	Rouyn-Noranda, QC	FM R	RWCS
2018-0842-9	Corporation de Radio Kushapetsheken Apetuamiss Uashat	CKAU-FM	Maliotenam, QC	FM R	RWCS
2018-0840-4	Micmac Historical Cultural Art Society	CFIC-FM	Listuguj, QC	FM R	RWCS
2018-0839-6	Gespegewag Communications Society	CHRO-FM	Restigouche, QC	FM R	RWCS
2018-0828-9	Corporation Mediatique Teuehikan	CHUK-FM	Mashteuiatsh, QC	FM R	RWCS
2018-0619-2	General Manager, Shubie FM Radio	CIPU-FM	Micmac, NS	FM R	RWCS
2018-0408-9	Southshore Broadcasting Inc,	CFTV-DT	Leamington, ON	TV A	RWCS
2018-0317-2	Radio communautaire de Radisson	CIAU-FM	Radisson, QC	FM A	RWCS
2018-0277-8	Robert G, Hopkins	CFET-FM	Tagish, YT	FM A	RWCS
2018-0276-0	DHX Television Ltd,		Montreal, QC	SPEC A	RWCS
2018-0274-4	DHX Television Ltd,		Toronto, ON	SPEC A	RWCS
2018-0135-8	Bell Media Inc,	CFTO-DT	Toronto, ON	TV A	RWCS
2018-0113-4	Canadian Cable Systems Alliance Inc,			UP A	RWCS
2018-0055-8	Evanov Radio Group Inc,	CHSV-FM	Hudson, QC	FM R	RWCS
2018-0051-6	Ottawa Media Inc,	CJWL-FM	Ottawa/Gatineau, ON	FM R	RWCS
2018-0049-1	Dufferin Communications Inc,	CHRC-FM	Clarence - Rockland, ON	FM R	RWCS
2017-1168-0	Kosiner Venture Capital Inc,			COM A	RWCS
2017-0887-7	Dufferin Communications Inc,	CIRR-FM	Toronto, ON	FM A	RWCS
2017-0885-1	Dufferin Communications Inc,	CIDC-FM	Orangeville, ON	FM A	RWCS
2017-0819-0	RNC MEDIA inc,	CKRN-DT	Rouyn-Noranda, QC	TV R	RWCS
2017-0806-7	Small Town Radio	CFWN-FM	Port Hope, ON	FM A	RWCS
2017-0779-6	Hector Broadcasting Company Limited	CKEZ-FM	New Glasgow, NS	FM R	RWCS
2017-0773-8	King's Kids Promotions Outreach Ministries Incorporated	CKOS-FM	Fort McMurray, AB	FM R	RWCS
2017-0491-6	1486781 Ontario Limited	CFWC-FM	Brantford, ON	FM R	RWCS
Total: 54 applications					
Clarification received by e-mail on 15 October 2020:					
Category:					
A = amendment					

<b>Access-to-information release A-2020-00034:</b>					
<b>54 applications that were not posted and were returned by the CRTC from 1 January 2016 to 11 September 2020</b>					
<b>App. No.</b>	<b>Applicant</b>	<b>Call Sign</b>	<b>Location</b>	<b>Type Category</b>	<b>Status</b>
R = renewal					
RWCS: R = returned W = withdrawn at request of applicant (C and S: no longer used)					