



17 November 2022

Ian Scott  
Chair  
CRTC  
Ottawa, ON K1A 0N2

By registered mail  
and e-mail: [ian.scott@crtc.gc.ca](mailto:ian.scott@crtc.gc.ca)

Dear Mr. Scott,

**Re: Unpublished CRTC decisions and non-appearing public hearings, 2017-2022**

During the CRTC's 17 November 2022 appearance before the Senate Standing Committee on Transport and Communications, Senator Manning asked you about concerns raised by witnesses regarding the CRTC's transparency and accountability:

Senator Manning: ...

One of the concerns we have heard here is the CRTC's own lack of transparency and accountability. We had someone from Canada's Forum for Research and Policy in Communications, who said:

When we say that the CRTC is transparent, it is simply not. It is holding public hearings without witnesses. . . .

Every year, it's publishing dozens of decisions that you can't see . . . .

Do you acknowledge that those are serious concerns, especially for smaller players in the broadcasting system, and will also be for digital creators, in particular going forward? Second, what plans does the CRTC have to address those shortcomings that those people have put forward? Do you have any plans to address them?

In your response you mentioned that the CRTC holds all of its proceedings publicly, and that it publishes everything it decides with the exception of information granted confidentiality:

Mr. Scott: I am going to confess, I'm perplexed and confused by the statement. ... We hold all of our proceedings publicly. The only things that are held confidential ... principally relate to business-confidential matters. ... Otherwise, everything we decide upon is a matter of public record.

So I'm not sure what they're addressing. If they mean our meetings, our deliberations are private, as is any quasi-judicial or judicial body, but the decisions or results of those deliberations are entirely transparent and public. Frankly, I am at a loss to understand where the lack of transparency might be.

....

Insofar as public hearings are concerned, the Forum agrees that the CRTC publishes information about its public hearings.

The challenge for members of the public is that of the 36 public hearings held about broadcasting during your just-concluded five-year term, 25 were "non-appearing hearings", meaning that members of the public were specifically excluded. The most recent of these took place last month, on October 13, 2022. A copy of the entire transcript from that meeting appears on the next page.

The screenshot shows two browser windows. The left window displays the CRTC website's 'Transcripts 2022' page, which includes a navigation menu, a search bar, and a table of transcripts. The right window shows a detailed transcript for an electronic hearing held in Gatineau, Quebec, on October 13, 2022.

**Transcripts 2022**

Date	Location and Description
2022-10-13 <a href="#">Volume 1</a>	Gatineau, Quebec 13 October 2022 To consider the broadcasting applications listed in Broadcasting Notice of Consultation CRTC 2022-201
2022-05-12 <a href="#">Volume 1</a>	Gatineau, Quebec 12 May 2022 To consider the broadcasting applications listed in Broadcasting Notice of Consultation CRTC 2022-52, 2022-52-1
2022-03-31 <a href="#">Volume 1</a>	Gatineau, Quebec 31 March 2022 To consider the broadcasting applications listed in Broadcasting Notice of Consultation CRTC 2022-10
2022-09-08 <a href="#">Volume 1</a>	Gatineau, Quebec 8 September 2022 To consider the broadcasting applications listed in Broadcasting Notice of Consultation CRTC 2022-183

Date modified: 2022-09-08

**Location and Attendees**

Location:  
Gatineau, Quebec

Attendees:

- Chairperson: Alicia Barin
- Members: Claire Anderson and Nirmala Naidoo
- Legal Counsel: James Wilson
- Secretary: Sonia Gravelle
- Hearing Manager: Isabelle Jacques

**Transcript**

Gatineau, Quebec  
13 October 2022

Opening of Hearing at 11:00 a.m.

**Chairperson:** À l'ordre s'il vous plaît.

Bonjour et bienvenue à cette audience du Conseil. Je m'appelle Alicia Barin. Je suis la Vice-présidente, Radiodiffusion, et je présiderai cette audience. Les autres membres du Comité d'audition sont mes collègues Claire Anderson, conseillère pour la province de la Colombie-Britannique et le Territoire du Yukon et Nirmala Naidoo, conseillère pour la province de l'Alberta et pour les Territoires du Nord-Ouest. Sonia Gravelle sera la secrétaire de cette audience, et James Wilson, le conseiller juridique. J'invite la Secrétaire d'audience à présenter les articles à l'ordre du jour.

**Madame la secrétaire.**

**Secretary:** Merci.

Le 2 août 2022, le Conseil a publié l'avis de consultation de radiodiffusion CRTC 2022-201. Les demandes inscrites à cet avis sont examinées aujourd'hui sans la comparution des parties.

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

Thank you.

**Chairperson:** Any questions from the panel members?

**Claire Anderson:** No questions.

**Nirmala Naidoo:** No questions.

**Chairperson:** Thank you. I should emphasize that the matters that forms part of the Agenda will be given full consideration by the hearing panel and decisions will be released in due course after consultation with the full Commission. This therefore concludes today's hearing. I wish to thank my colleagues, Legal Counsel and the Hearing Secretary for their assistance. The hearing is now adjourned.

**Secretary:** Thank you.

The hearing adjourned at 11:10 a.m.

Original signed by Legal Counsel and Secretary

The Forum agrees that the public can review the transcripts of CRTC-only non-appearing hearings. These may lack substance, since, as the transcript example above (and on the right) shows, non-appearing hearings last roughly five minutes.

One of FRPC's concerns is that the exclusion of the public as well as the applicant(s) from such 'hearings' effectively removes them from the "public hearings" mandated by Parliament in subsections 18(1)(a) to (d), below.

## Hearings and Procedure

### Where public hearing required

**18 (1)** Except where otherwise provided, the Commission shall hold a public hearing in connection with

- (a) the issue of a licence, other than a licence to carry on a temporary network operation;

## Audiences et procédure

### Audiences publiques : obligation

**18 (1)** Sont subordonnées à la tenue d'audiences publiques par le Conseil, sous réserve de disposition contraire, l'attribution, la révocation ou la suspension de licences — à l'exception de l'attribution d'une licence

Current to November 2, 2022  
Last amended on July 1, 2020

16

À jour au 2 novembre 2022  
Dernière modification le 1 juillet 2020

**Broadcasting**  
**PART II** Objects and Powers of the Commission in Relation to Broadcasting  
Hearings and Procedure  
**Sections 18-20**

**Radiodiffusion**  
**PARTIE II** Mission et pouvoirs du conseil en matière de radiodiffusion  
Audiences et procédure  
**Articles 18-20**

- (b) the suspension or revocation of a licence;
- (c) the establishing of any performance objectives for the purposes of paragraph 11(2)(b); and
- (d) the making of an order under subsection 12(2).

d'exploitation temporaire d'un réseau —, ainsi que l'établissement des objectifs mentionnés à l'alinéa 11(2) b) et la prise d'une ordonnance au titre du paragraphe 12(2).

Subsection 12(2), to which subsection 18(1)(d) refers, empowers the CRTC to issue 'mandatory orders' that the CRTC sometimes uses to address regulatory non-compliance by broadcasters. In 2018 the CRTC published five decisions to renew broadcast licences; the associated 'notices of hearing' included warnings the Commission might impose mandatory orders on certain of these licensees due to their serious and/or repeated non-compliance. Despite subsection 18(1)(d), which requires the CRTC to hold a public hearing before issuing a mandatory order, the CRTC made four of these decisions after holding 'non-appearing' hearings; these decisions included mandatory orders (Decisions [2018-110](#), [-168](#), [-172](#) and [-468](#)).

The Forum acknowledges the necessity for the CRTC to manage its resources effectively. Presumably it found the written evidence so compelling it did not need to question the licensees or interveners. Yet another purpose of public hearings attended by licensees and members of the public is to provide other broadcasters with an example of the consequences of failing to comply with Canada's legislative and regulatory requirements for broadcasting. The Forum respectfully submits that using non-appearing 'public hearings' to address regulatory non-compliance may unfortunately signal that the CRTC no longer considers certain types of non-compliance especially serious.

As for the CRTC's practice of publishing all of its decisions, it is true that the CRTC's "[A-Z Index](#)" lists "Decisions" and links to a page entitled "[Decisions, Notices and Orders – Indexes](#)". Those decisions are publicly accessible through HTML links along with their associated applications.

However, the CRTC also makes decisions about "Administrative applications", and these decisions can only be found by studying a CRTC page that lists "publicly available" broadcasting applications: the [Broadcasting Applications Report \(BAR\)](#).

The CRTC's BAR page includes an option to display "Administrative applications only". Selecting this option presents applications and the related CRTC decisions' number, date and decision status, for each year from 2012 to the present. No HTML links are provided for these decisions, and they do not appear when searched for using the CRTC's search engine.

According to the CRTC's BAR, during your just-concluded five-year term the CRTC issued 287 broadcasting decisions that are unavailable to the public, granting all but one of the related applications. It approved 45 applications to change broadcast undertakings' ownership, publishing three of the applications the same day it made its decisions, and the remaining 42 after the decisions were made. Canadians' inability to review applications before the CRTC makes its decisions constrains the public's ability to provide the CRTC with their perspective on such decisions. If the decisions include reasons, their unavailability denies access to potentially informative explanations of the CRTC's policies and practice. FRPC respectfully submits that the CRTC's choice since 2012 to make hundreds of such decisions inaccessible for public review is at odds with its stated commitment to transparency and accountability.

Sincerely yours,



Monica L. Auer, M.A., LL.M.  
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[www.frpc.net](http://www.frpc.net)

cc. Senator Leo Housakos, Chair, Senate Standing Committee on Transport and Communications  
Honourable Members of the Senate Standing Committee on Transport and Communications