



# The CRTC and 21<sup>st</sup> century expectations of openness, transparency and accountability: a month of comments on how Parliament’s delegate performs its responsibilities

## 13: Transparency means disclosing ‘dealings’, including meetings

13 March 2023

This is the thirteenth of a series of comments by FRPC about the openness, transparency and accountability of the Canadian Radio-television and Telecommunications Commission (CRTC). Parliament established the CRTC on 1 April 1968 and delegated responsibility to it for implementing Parliament’s broadcasting and telecommunications policies for Canada.

The Ministers of Canadian Heritage and Innovation, Science and Economic Development wrote Chairperson Eatrudes in early February 2023 to offer congratulations on her appointment to the Commission<sup>1</sup> and also to “inform her of the Government’s vision and priorities with respect to Canada’s broadcasting and telecommunications system”.<sup>2</sup> The Ministers said they had “consistently heard” that the CRTC “falls short in “openness and transparency” and were confident in the new Chairperson’s ability to see to the CRTC’s “to being more ... transparent ....”

Transparency can refer to several aspects of the work of an organization like the CRTC, including the degree to which it explains or describes its plans, the ‘dealings’ it has with other parties, its operations or processes, and the information it makes available about its work. This note deals with the degree to which the CRTC’s dealings with other parties are transparent.

The [CRTC website page devoted to transparency](#) sets out 11 headings that touch on its financial transactions, personnel matters and audits, evaluations and requests made under Canada’s information and privacy laws. None of the headings concerns meetings held between the CRTC’s Commissioners or its senior staff, and non-CRTC parties: Figure 1

Figure 1

**Transparency**

We are committed to providing open and transparent information about our operations and resources to the public so that Canadians and Parliament are better able to hold the government and public sector officials accountable.

- [Departmental plan](#)  
Performance goals for the future
- [Departmental results report](#)  
Performance targets met by the organization last year
- [Quarterly financial reports](#)  
Quarterly spending by the organization
- [Travel and hospitality expenses](#)  
Details on the costs incurred by the Chairperson, Vice Chairpersons, Commissioners and senior level employees
- [Contracts awarded](#)  
View details of contracts over \$10,000
- [Position reclassifications](#)  
Positions that have been reclassified at CRTC
- [Access to information and privacy requests](#)  
Find summaries of completed access to information and privacy requests
- [Open data](#)  
Search open data from the CRTC
- [Briefing documents](#)  
Briefing notes prepared for the Chairperson
- [Audits and evaluations](#)  
Reports of audits and evaluations
- [Parliamentary appearances](#)  
Briefing packages for parliamentary committee appearances

You might also be interested in:

The “Briefing documents” link – which might include notes to CRTC Commissioners or senior staff about prospective or past meetings – sends users to a government of Canada page – “[Briefing Note Titles and Numbers](#)” – that discloses 199 records associated with “CRTC”. (Searching for “Canadian radio-television and Telecommunications Commission” resulted in “Found 0 records”.)

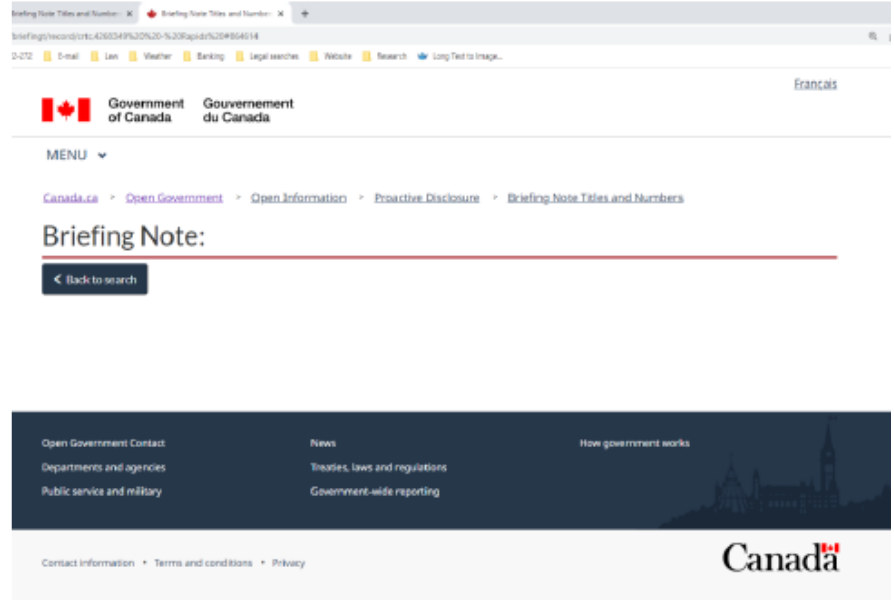
<sup>1</sup> CRTC, “[Meet Vicky](#)”(accessed 1 March 2023).

<sup>2</sup> Department of Canadian Heritage, “[New CRTC Chair’s Leadership Will Help Shape the Future of Canada’s Communication System](#)”, News release (Gatineau, 6 February 2023).



The records that might be of interest in the context of CRTC officials’ meetings with third parties are not accessible from the listing of 199 records of Briefing Note Titles and Numbers. For example, a link on the Briefing page to the CRTC’s 2021-2022 Ombuds Report (31 October 2022) led to the page shown in Figure 2:

Figure 2



Other links on the CRTC’s Transparency page are stale. The most recent of the “Parliamentary Appearances” is nearly two years old, from 7 April 2021, although the CRTC appeared five times before three Parliamentary Committees in 2022: Table 1.

Table 1



House of Commons Standing Committee on Industry (INDU)  
[8 February 2022](#)

House of Commons Standing Committee on Canadian Heritage (CHPC):  
[18 May 2022](#)  
[18 October 2022](#)

Senate Standing Committee on Transport and Communications (TRCM):  
[22 June 2022](#)  
[16 November 2022](#)

The CRTC’s Transparency page is also silent about meetings between the CRTC’s senior officials and those with whom it has ‘dealings’ in that they represent companies regulated by the CRTC under the *Broadcasting Act* and/or the *Telecommunications Act*. In a [posting from June 2017](#) Professor Michael Geist recalled being shocked when, after participating in a 2006 panel discussion at the invitation-only Telecommunications Invitational Summit, he walked “into the venue to see senior telecom executives shooting billiards and having a drink with CRTC Commissioners.”

In 2012 a *CRTC Code of Conduct* began to apply to all CRTC employees, including the CRTC’s Chairperson. At the time it was published this *Code* defended “[f]ormal and informal contacts with parties with an interest in the



communications industry” as being “essential to maintaining and enhancing our expertise and knowledge” (page 12). The *Code of Conduct* went on to say that the Commission needs to protect “confidential information”, to ensure fairness to and to maintain the CRTC’s impartiality – including ensuring that it meets “with representatives of the range of interests dealt with by the Commission, which allows us to keep an even hand as between the various players” (page 12). It was unclear how impartiality would work if – hypothetically – a range of industry representatives met with the CRTC or its officials not to discuss a specific issue such as ‘Canadian content regulations’ but to discuss a more general issue such as industry representatives’ desire for less regulation across the board of areas within the CRTC’s jurisdiction.

The *Code of Conduct* also noted that, if so requested, Commission staff were free to give their opinions “on issues” if the staff acted “with due diligence to ensure the correctness of the views” and clarified they were providing a “staff opinion” that “does not bind the Commission in any way”. ‘Commission determinations’, the *Code* clarified, could also be provided. The CRTC’s *Code of Conduct* is no longer posted on or downloadable from the CRTC website, making its status or validity within the CRTC a matter of speculation, but [remains available elsewhere](#).

After the CRTC’s *Code of Conduct* became effective, the CRTC’s then-Senior Legal Counsel made a [PowerPoint presentation](#) in April 2014 which addressed meetings between the CRTC’s Commissioners and others. Like the 2012 *Code of Conduct*, the 2014 *FCM Presentations and Stakeholder Meetings* document noted the benefits of CRTC Commissioner “[m]eetings with stakeholders and licensees”, as “a useful way for Commissioners to gain knowledge on the issues that are affecting the communication industry”. The April 2014 presentation also listed six concerns about CRTC Commissioners’ private meetings: the “appearance of special access”, the “opportunity to influence”, “*ex parte* basis” of meetings, appearance of predisposition by CRTC Commissioners, Commissioners’ unequal access to the same information and lack of proof about what was or was not said during a meeting. A ten-point list of “best practices for meeting requests” appears to say that private meetings between CRTC officials and others are acceptable if

- a. the meeting has “a clear benefit to the CRTC”
- b. there “should be no real or perceived conflict in attending the meeting”
- c. the CRTC has a budgetary limit for travel and conferences
- d. the CRTC’s Communications department reviews speaking requests
- e. the CRTC office holder checks with Senior General Counsel and the CRTC’s “relevant Executive Directors” to see if the meeting “creates a real or perceived conflict” and seeks advice “on how (if possible) the risk can be mitigated to an acceptable level”
- f. the CRTC office holder asks CRTC staff to research the party requesting the meeting
- g. the CRTC office holder asks if other CRTC Commissioners have received the same request to meet
- h. “invite a Commission employee (preferably senior) to be present at the meeting”
- i. Confirm the meeting in writing following a specified form, while
- j. Keeping “in mind that a confirmation letter is not foolproof”

(pages 12-14)

While not suggesting that private meetings are inherently inappropriate, the April 2014 presentation strongly cautioned against meetings at CRTC public hearings:

Do not at any time have private discussions with parties during an oral hearing, even outside hearing hours

If parties ask you questions during an oral public hearing, ask Commission employees to answer.

Yet as it happens, some people are concerned about meetings held in public though outside of public hearings. In December 2019 a picture showing the Chief Executive Officer of BCE having a drink with the CRTC’s Chairperson in a restaurant in Ottawa attracted public attention. Canada’s Conflict of Interest and Ethics Commissioner



[subsequently reported](#) on the meeting on [24 August 2022](#). The Commissioner concluded that he had no reason to believe that the CRTC Chairperson contravened the *Conflict of Interest Act*.

The Commissioner’s report sets out then-Chairperson Scott’s position that meetings between the CRTC and those it regulates are common. In addressing “Allegations Relating to Meetings with Stakeholders” the Commissioner quoted Mr. Scott’s explanation “that it is common for CRTC members, including the Chairperson, to meet with representatives of entities that appear regularly before the CRTC” and that “it is common for stakeholder meetings to take place in CRTC offices or at the business offices of stakeholders. One or more members of CRTC staff may be present during these meetings, though it is not always the case.” One former CRTC Chairperson refined his practice for private meetings with regulated companies: a [February 2022 article](#) by *iPhone in Canada* quotes Jean-Pierre Blais as stating in an online discussion that he “never took private inappropriate meetings without an agenda and witnesses.”

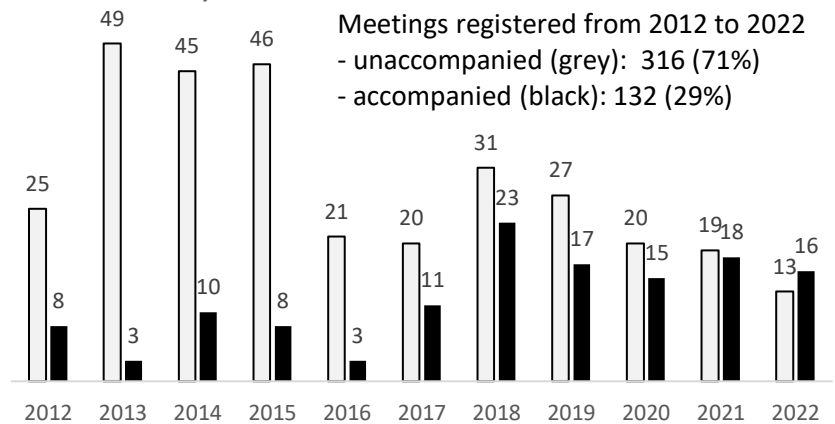
In fact, FRPC’ ongoing analysis of the monthly communications reports of registered lobbyists about meetings with CRTC public-office holders found records describing 448 meetings held with the CRTC from 2012 to the end of 2022. In more than two-thirds (316, 71%) of these meetings, the CRTC public office holder was not accompanied by any other CRTC (or government) representatives.

More than half – 192 or 61% -- of the 316 meetings involving an unaccompanied CRTC public office holder’s meeting other non-CRTC persons, the meetings and other parties involved the CRTC’s Chair or one of the CRTC’s two Vice-Chairperson.

It appears, moreover, that the tendency for senior CRTC public office holders to have private meetings unaccompanied by other CRTC officials is higher when the meetings involve six of Canada’s largest communications companies. Of the 161 meetings involving BCE, Cogeco, Corus, Rogers, Shaw or Telus, 137 or 85% involved an ‘unaccompanied’ CRTC official. More than half (94 or 68%) of these 161 meetings involved either the (unaccompanied) CRTC Chair or one of the CRTC’s Vice-Chairs. In terms of the range of interests reflected in the CRTC’s meetings, 78% involved those regulated by the CRTC or their industry associations, 21% involved parties that are not regulated but are affected by the CRTC’s decisions (unions/guilds, for example) and two meetings involved the public (the first being with an unidentified individual and the second with the Broadcast Participation Fund): in other words, meetings with the ‘regulated’ outnumbered meetings with the ‘non-regulated’ by 3.6 to 1.

As noted earlier, the CRTC’s “Transparency” page does not provide any information about meetings between CRTC public-office holders and non-CRTC parties, making it difficult for the public to inform itself about this practice. Expecting Canadians to download page after page of monthly communications reports from the Commissioner of Lobbying’s registry is to place an undue burden on Canadians. Similarly, the impact of the CRTC’s 2014 ‘best practice’ of CRTC decision-makers not meeting with stakeholders if the former has or have ‘real or apparent’ conflicts of interest is also unclear, as it is likely that most CRTC regulatory proceedings will touch on the interests of Canada’s largest broadcasting and telecommunications companies – among them, BCE, Cogeco, Corus, Rogers, Shaw and Telus. Since the CRTC does not publish these best practices or its current *Code of Conduct* (assuming it

**Meetings in which CRTC public-office holders were or were not accompanied by other CRTC public-office holders, 2012-2022**



Source: Analysis of monthly communications reports from Commissioner of Lobbying



has one), it is unclear whether Canadians would generally know about these safeguards. Is it reasonable to assume that all or most or many Canadians are so familiar with both the CRTC's work and the *Access to Information Act* that they would ask the CRTC about any meetings held to discuss – say – website-blocking proposals, as FRPC did in 2017: Figure 3.

Figure 3

### Agenda for today

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## The Impact of Piracy on Canadian Broadcasting

Presentation to the CRTC (May 18, 2017)



PROTECTED AND CONFIDENTIAL

1. Problem of piracy for Canadian broadcasting
2. Update on what the industry has been doing
3. Next steps and collaboration

Source: Access to Information Request A-2017-00033

The Federal Communications Commission (FCC) – the CRTC's American counterpart – has taken a different and more transparent approach to the issue of meetings with the parties circumspectly described by Canadians as 'stakeholders'. It established [rules for regulating ex parte meetings](#) between FCC decision-makers and those involved in proceedings before the Commission, and [publishes lists of such meetings](#) along with [written presentations and other materials received](#). Anecdotes suggest that non-FCC attendees in meetings with FCC officials must consent to being recorded if the meeting is to take place.

### Recommendations:

The CRTC should develop and implement a 21<sup>st</sup> century approach to disclosing the meetings its senior public office holders have with non-CRTC parties, by making the dates, agendas and lists of such meetings, as well as the names and positions of those in attendance, available on the CRTC's website. Copies of all presentations made and documents provided to the CRTC in relation to (not simply at) these meetings should be available from this 'Meetings Held' page. To limit over-reliance on a written record, the CRTC should only meet with parties willing to agree to being recorded, and these recordings should be retained for at least ten years.

Maintaining the *status quo* – where those with an interest in the CRTC's broadcasting and telecommunications proceedings may meet in private with the CRTC's Chairperson, its Vice-Chairpersons, its Commissioners and other senior officials without disclosing either the meetings or their purpose on the CRTC's website -- would surely contradict the concern about transparency raised by the Ministers to whom the CRTC reports.

~ Forum for Research and Policy in Communications (FRPC)

*Other comments in this series*

1 March 2023: [Openness means not hiding applications from public view](#)

2 March 2023: [Openness means not just describing but explaining the CRTC's process and proceedings](#)



- 3 March 2023: [Openness means 'real' public hearings, published decisions and published meeting schedules](#)
- 4 March 2023: [Openness means publishing information about CRTC meetings with those it regulates](#)
- 5 March 2023: [Openness today means easier access to CRTC programming, ownership and financial data](#)
- 6 March 2023: [Openness means knowing who sets the CRTC's agenda](#)
- 7 March 2023: [Openness means disclosing relevant evidence](#)
- 8 March 2023: [Openness means being open to all, not just to some or most](#)
- 9 March 2023: [Openness means timeliness](#)
- 10 March 2023: [Openness means active efforts by CRTC to engage public](#)
- 11 March 2023: [Transparency means being clear \(about being transparent\)](#)
- 12 March 2023: [Transparency means clarity about planning processes](#)
- 13 March 2023: Transparency means disclosing dealings, including meetings