



The CRTC and 21st century expectations of openness, transparency and accountability: a month of comments on how Parliament's delegate performs its responsibilities

14: *Transparency means clear process*

14 March 2023

This is the fourteenth 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 Commission¹ and also to "inform her of the Government's vision and priorities with respect to Canada's broadcasting and telecommunications system".² 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 processes in broadcasting are transparent.

Let's pretend. Or rather, using 21st century terminology, let's engage in a thought experiment:

Sean grew up with the Internet and for several years has streamed a few hours daily of conversations Sean has with interesting guests, interspersed with a few minutes of tidbits about the things happening in Sean's small town. Sean also likes to stream music composed and played live by Sean and several friends, and enjoys interacting with people who have streamed Sean's tidbits, conversations and music. In a wellness-visit one day with Sean's senior-citizen parents, Sean notices they have their radio station turned on (they refuse to use the phones Sean gave them, feigning ignorance of the technology required) and that they are listening to the only local radio station in the area, the one that has been there since before Sean was born. Knowing about the time Sean is devoting to online streaming, Sean's parents ask when Sean will stop wasting time online and find real employment.

Sean later wonders idly whether it would be possible to make a living by offering informative, enlightening and entertaining content to a larger audience, especially since this content is (from Sean's perspective) utterly different from that offered by the town's only station. After discussing the idea with a few friends, Sean decides to launch the town's second radio station.

Pretending – or for the sake of the experiment, stipulating – that Sean knows about the CRTC and that only the CRTC is involved in radio-station licensing (rather than the [Department of Innovation, Science and Economic Development](#)), how clear will the CRTC's licensing process be to Sean?

Step 1 Sean finds and visits the [CRTC's home page](#) and learns that the CRTC regulates and supervises "broadcasting and telecommunications in the public interest." While the CRTC home page "Services and

¹ CRTC, "[Meet Vicky](#)" (accessed 1 March 2023).

² 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).

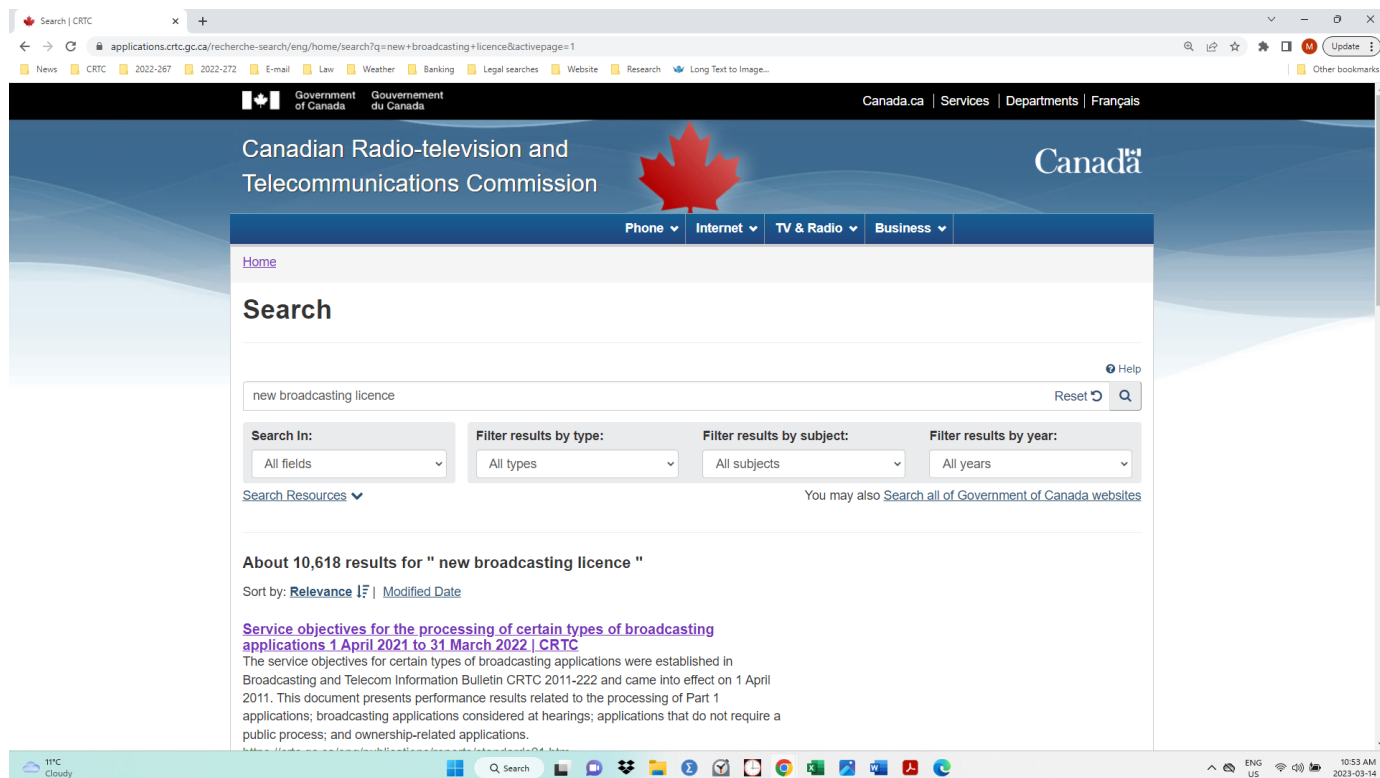


information” heading does not mention anything about how to apply for a broadcasting licence, it does refer to [“TV and Radio](#).

Step 2 The [“TV and Radio”](#) (<https://crtc.gc.ca/eng/television/services/> [yellow highlighting added]) tells Sean about existing radio services, but not how to apply to be a radio service. Sean returns to the home page and finds a link that mentions ‘applications’: [“Service performance reporting: certain types of broadcasting applications”](#).

Step 3 The CRTC’s [“Service performance reporting: certain types of broadcasting applications”](#) page informs Sean that there are “applications for new broadcasting licences” and these are considered at a public hearing. Unfortunately, there is no link to a page listing the CRTC’s broadcasting applications.

Step 4 In the absence of a link from the [“Service performance reporting”](#) page to information about applying for a radio station licence, Sean types “new broadcasting licence” into the CRTC search engine. The 10,618 results brought up by this search momentarily startle Sean:



Step 5 Going to the second page of the search results – [“How to apply for a broadcasting licence”](#) – Sean learns that operating “an over-the-air broadcasting station in Canada” requires a licence from the CRTC and that “the process”, likely referring to the process of obtaining a licence, “takes from 8 to 18 months depending on whether there is a competitive process”. Sean does not know what a competitive process is and the two other links under this heading (“The Basics”) do not link to any required forms, instead setting out the timing for broadcasting and expedited broadcasting applications.

Step 6 Sean continues reading and under the “Forms and My CRTC Account” heading learns there are application forms and information packages on the [“Broadcasting Forms”](#).



Step 7 The “[Broadcasting Forms](#)” page sets out another link to “[How to apply for a broadcasting licence](#)”, which sends Sean back to Step 3.

Step 8 Sean therefore returns to the “[Broadcasting Forms](#)” page in step 6. This page offers log-in information to “Frequent Users”, but seems inapplicable to Sean as a first-time visitor to the site. A second heading, “New Users”, warns that Sean may require “an activation code” to submit forms online, which are not available on weekends, holidays or from 5 pm to 7 am Eastern Time.

Beneath a heading entitled “Broadcasting Exemption Orders” Sean finds a table that can be filtered by topic. There are 12 Radio topics, and while the first seems promising because it refers to “New Licence”, Sean then realizes there are five more “New Licence “ forms for radio:

- Form 101: Application to obtain a broadcasting licence to operate a commercial or ethnic radio undertaking (including low-power)
- Form 103 (is there a form 102, Sean wonders?): Application to Obtain a Broadcasting Licence to Operate a Type B Native Radio Undertaking (including low-power)
- Form 111: Application to Obtain a Broadcasting Licence to Operate a Specialty Audio Programming Undertaking
- Form 114: Application to obtain a broadcasting licence to operate a campus or community radio undertaking (including low-power)
- Form 118: Application to Obtain a Broadcasting Licence for a DEVELOPMENTAL (Community or Campus) Radio Programming Undertaking (Sean wonders if the all-caps term is significant or a typographical error), and
- Form 134: Application to Obtain a Broadcasting Licence to Carry on a Religious (Church) Radio Programming Undertaking

Step 9 Taking a chance, Sean downloads Form 101 and reads the resulting 23-page Word document. It sets out a list of 20 more supporting documents to complete:

1 Doc1 - Cover Letter	11 Doc11 - Appendix 4D - Map: Low Power FM
2 Doc2 - Form 101 "Application to Obtain a Broadcasting Licence to Operate a Commercial or Ethnic Radio Undertaking (including low-power)"	12 Doc12 - Appendix 4E - Maps Required in Technical Brief
3 Doc3 - Appendix 1 - Supplementary Brief	13 Doc13 - Appendix 4F - Map - Realistic Contours
4 Doc4 - Appendix 2A - Ownership Information	14 Doc14 - Appendix 4G - Documentation - Availability of Proposed Transmitter Site(s)
5 Doc5 - Appendix 2B - Control Statement and Agreements	15 Doc16 - Appendix 5A - Letter of Financing from Third Party Institution
6 Doc6 - Appendix 2C - Corporate Documents	16 Doc17 - Appendix 5B - Statement of Net Worth [Document 15 is apparently missing]
7 Doc7 - Appendix 3 - Consolidation & Cross-Media	17 Doc18 - Appendix 5C & 5D - Financial Statements
8 Doc8 - Appendix 4A - Proof that technical documents were filed with the Department of Industry	18 Doc19 - Appendix 8A - Description of the proposed CCD initiatives
9 Doc9 - Appendix 4B - Map - Conversion from AM to FM	19 Doc20 - Appendix 8B - Sample Block Schedule
10 Doc10 - Appendix 4C - Map: Low Power AM	20 Doc21 - Appendix 8C - Sample Music List



Step 10 A column to the right of Form 101 refers to “Related Documents” and when Sean downloads these, there are 41, making a total of 62 documents with which Sean is apparently expected to be familiar:

<u>Acts, regulations and directions</u> (7)	<u>Codes for Radio and TV Broadcasters</u> (13)	Policies (17)
1 Accessible Canada Act 2 Canada’s Anti-spam Legislation 3 Canadian Radio-television and Telecommunications Commission Act 4 Bell Canada Act 5 Broadcasting Act 6 Telecommunications Act 7 Canada Elections Act (Voter Contact Registry)	13 Codes for Radio and TV Broadcasters 14 Broadcast Code for Advertising to Children 15 Ad Standards 16 CAB Code of Ethics, including the Radio-Television News Directors' Association's Code of (Journalistic) Ethics 17 CAB Equitable Portrayal Code 18 CAB Violence Code 19 Code for Broadcast Advertising of Alcoholic Beverages and Interpretation Guidelines	25 Standard requirements for television stations, discretionary services, and on-demand services (Broadcasting Regulatory Policy CRTC 2016-436) 26 English-language closed captioning quality standard related to the accuracy rate for live programming (Broadcasting Regulatory Policy CRTC 2016-435) 27 Policy framework for local and community television (Broadcasting Regulatory Policy CRTC 2016-224)
1 Canadian Radio-television and Telecommunications Commission Accessibility Reporting Regulations 2 Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure 3 Broadcasting Information Regulations 4 Broadcasting Licence Fee Regulations 5 Broadcasting Distribution Regulations 6 Conversion from Analog to Digital Television Regulations 7 Discretionary Services Regulations 8 Radio Regulations 9 Television Broadcasting Regulations	20 Digital Competitive Service Standards 21 Gender Portrayal Guidelines 22 Journalistic Independence Code 23 Letter from the Commission to Canadian Broadcast Standards Council Re: CAB Violence Code – revised title 24 Pay Television and Pay-Per-View Programming Code Regarding Violence 25 Television Service Provider Code	28 The Wholesale Code (Broadcasting Regulatory Policy CRTC 2015-438) 29 Let’s Talk TV – Navigating the Road Ahead – Making informed choices about television providers and improving accessibility to television programming (Broadcasting Regulatory Policy CRTC 2015-104)
1 Simultaneous Programming Service Deletion and Substitution Regulations		30 Let’s Talk TV – A World of Choice – A roadmap to maximize choice for TV viewers and to foster a healthy, dynamic TV market (Broadcasting Regulatory Policy CRTC 2015-96) 31 Let’s Talk TV – The way forward – Creating compelling and diverse Canadian programming (Broadcasting Regulatory Policy CRTC 2015-86)
		32 New procedures related to the evaluation of television program logs (Broadcasting Information Bulletin CRTC 2013-515) 33 Code of Best Practices for Community Television Access Programming (Broadcasting Regulatory Policy CRTC 2012-481) Measures to control the loudness of commercial message - Process for enforcing compliance by the broadcasting industry and addressing



		<p><i>complaints (Broadcasting Information Bulletin CRTC 2012-471)</i></p> <p>34 <i>Quality standards for French-language closed captioning – Enforcement, monitoring and the future mandate of the French-language Closed Captioning Working Group (Broadcasting Regulatory Policy CRTC 2011-741-1)</i></p> <p>35 <i>Quality standards for French-language closed captioning (Broadcasting Regulatory Policy CRTC 2011-741)</i></p> <p>36 <i>Accessibility of telecommunications and broadcasting services (Broadcasting and Telecom Regulatory Policy CRTC 2009-430)</i></p> <p>37 <i>A new policy with respect to closed captioning (Broadcasting Public Notice CRTC 2007-54)</i></p> <p>38 <i>Commission’s response to the Canadian Association of Broadcasters’ final report on the presence, portrayal and participation of persons with disabilities in television programming (Broadcasting Public Notice CRTC 2006-77)</i></p> <p>39 <i>Commission’s response to the report of the Task Force for Cultural Diversity on Television (Broadcasting Public Notice CRTC 2005-24)</i></p> <p>40 <i>Ethnic Broadcasting Policy (Public Notice CRTC 1999-117)</i></p> <p>41 <i>Amendments to the Commission’s Employment Equity Policy (Public Notice CRTC 1997-34)</i></p>
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Step 11 At this point Sean’s parents may receive another visit from Sean, seeking their support for a loan to “engage the services of a broadcasting specialist” to which the CRTC’s [“How to apply for a broadcasting licence”](#) (“The Basics”) referred.

The main conclusion that one might draw at step 11 of this as yet-incomplete ‘thought experiment’ is that the CRTC’s website provides little clarity about the process that a first-time broadcast licence applicant must follow. Supposing that the experiment continued, it would also be difficult to conclude that the CRTC’s website clearly describes for first-time and experienced broadcasters alike,



- the difference between statutes, policies, regulations, decisions and bulletins
- the role of the CRTC's Rules of Practice and Procedure
- the role of market studies in deciding whether the CRTC will even consider certain applications
- the importance of the 'deficiency' process in facilitating publication of an application
- the role played by supporting and opposing interventions, and the implications of ignoring or answering interveners
- the fact that even if the *Broadcasting Act* requires the CRTC to hold public hearings before licensing an undertaking, the CRTC evades this requirement by holding a public hearing from which it excludes applicants and interveners alike
- the requirement to keep clear (electronic) records including program recordings, program logs, annual returns and in many cases, receipts (to prove required Canadian Content Development payments), and
- the necessity to ensure that the mandatory annual return is correctly completed and submitted to the CRTC by 30 November of each year (and to recall that some terms used in the annual return are not the terms used in the CRTC's policies)

Supposing that prospective radio broadcasters make it through the thorny hedge of the CRTC's licensing requirements, what are they to do if, as in [2022](#), the CRTC writes that due to its findings about "market capacity" and "consistent with its approach" in a [2014](#) policy, it "will not generally be disposed to accept applications for new commercial radio stations" in the market studied "for a period of two years" (paragraph 32): will they realize that the *Broadcasting Act* says specifically (at section 6) that no "guidelines or statement issued by the Commission are binding on the Commission"? In other words, would a novice broadcaster know that the CRTC, as it explained in a [2016 decision](#), would be committing an error of law by "fettering its discretion" and treating its policies "as binding or as having the force of law"?

How would an inexperienced broadcaster become aware, moreover, of the fact that a denial from the CRTC may be challenged – whether through the Federal Court of Appeal or to Cabinet? (Where, for example, is the "[public register](#)" of copies of each petition to Cabinet received by the CRTC, which is mandated by section 29(3) of the *Broadcasting Act*?)

There is no doubt that broadcasting in Canada today is complex and that regulation may need to be so complex if it is to meet Parliament's requirements.

The question is whether the CRTC should maintain or alleviate this complexity in the 21st century. Could it not develop a clear path for first-time broadcasters to find the information they actually need? Do first-time radio broadcasters, for instance, really need to be familiar with the *Telecommunications* and the *Bell Canada Acts*? Do they really need to review the *Pay Television and Pay-Per-View Programming Code Regarding Violence* and the *Television Service Provider Code*? Why should a novice radio broadcaster be required to be aware of the CRTC's *Standard requirements for television stations, discretionary services, and on-demand services*, the *English-language closed captioning quality standard related to the accuracy rate for live programming* or *The Wholesale Code*?

The risk of maintaining the CRTC's current approach to explaining its processes is that the approach effectively grants experienced broadcasters important but ephemeral advantages in time and knowledge.

Recommendations:

The CRTC should develop and implement a 21st century approach to publishing descriptions of its processes to facilitate less-experienced broadcasters' access to key information and to make it easier for them to use and apply that information. While the CRTC may be waiting for Parliament to enact new communications statutes such as the [Online Streaming Act](#) and the [Online News Act](#), it could begin to consult with Canadians about its existing [Rules of Practice and Procedure](#) to ensure these are both up-to-date and easy to understand.



Maintaining the *status quo* – where the CRTC’s failure to describe its processes effectively limits the ability to navigate those processes to a small group of experienced ‘players’ – 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](#)

14 March 2023: Transparency means clear process