



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

15: Transparency means operational clarity regarding applications

15 March 2023

This is the fifteenth 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 way in which the CRTC's operations are transparent.

Parliament's broadcasting and telecommunications statutes give the CRTC three main operational responsibilities requiring planned activities: to respond to Ministerial requests to take action, to process applications and to consider complaints from the public. As the CRTC has effectively delegated its complaints-consideration responsibilities to organizations such as the Canadian Broadcast Standards Council (CBSC), the Commission for Complaints for Telecom-television Services (CCTS) and Ad Standards Canada (ASC), this note briefly examines the CRTC's procedures for dealing with orders in council and applications.

Process used for orders in council

Ministerial requests take the form of Orders in Council (Cabinet directions) requiring the CRTC to report on matters within its jurisdiction. The orders-in-council [search engine](#) identified 16 orders from 1994 to the present which were directed at the CRTC: 12 for broadcasting and 4 for telecommunications. The CRTC's website no longer has a site plan and its [A-Z Index](#) does not mention orders in council (its reference to 'Orders' links to orders issued by the CRTC itself).

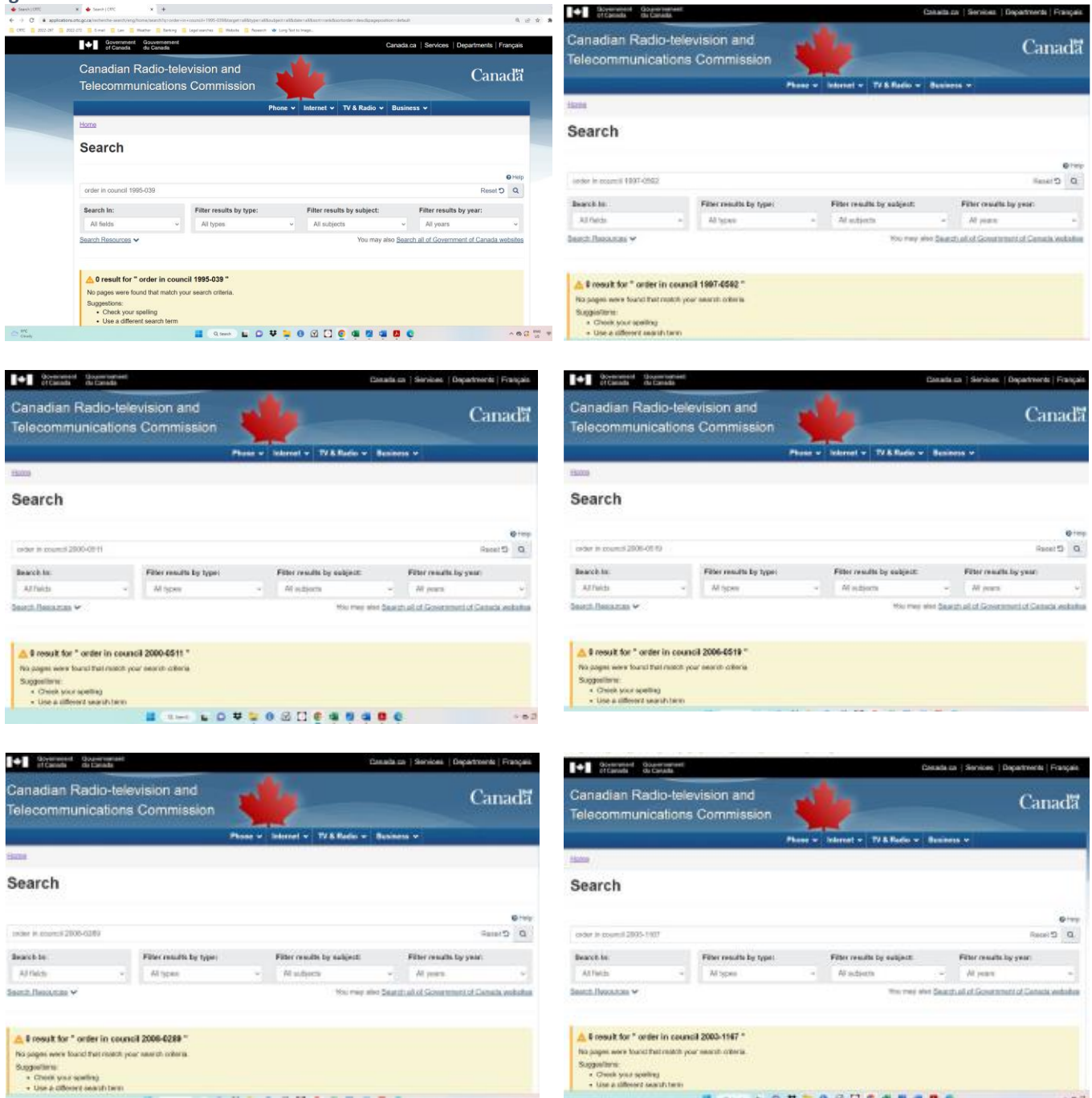
Information about the CRTC's response to ten of these orders was obtained from the CRTC's Search tool using this expression: 'order in council 1994-1689'). No results appeared for the remaining six orders: Figure 1.

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).



Figure 1 No search results for 6 orders in council



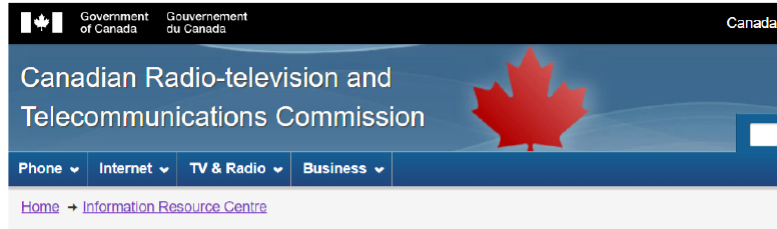
Briefly, the CRTC's website made it possible to follow the process used by the CRTC to respond to ten (62.5%) of the sixteen orders in council issued to the Commission from 1994 (the earliest report listed by the OIC search engine) to the present. It took the CRTC an average of 53 days to publish notices announcing the process it would follow to comply with those ten Cabinet Directions (with the number of days ranging from 12 to 172). It is unclear what process the CRTC used for the remaining six orders in council. A more recent example suggests more lengthy delays in the CRTC's compliance with a direction from Cabinet: the CRTC has yet to publish its approach and timing to reconsider the CBC's licence renewal applications as [Cabinet directed on 16 September 2022](#), 180 days ago (today).



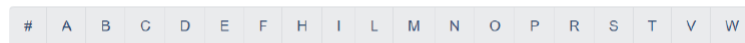
Process used for applications

Parties wanting the CRTC to exercise its broadcasting and/or telecommunications powers submit applications to the CRTC. The CRTC's [A-Z Index](#) provides a link to broadcasting applications, but not to telecommunications applications:

Figure 2 No 'Applications, telecommunications' in CRTC's A-Z Index



A-Z Index



#

- [10-digit dialing](#)
- [900 / 976 numbers](#)
- [9-1-1 services](#)

A

- [About the CRTC](#)
- [Accessibility Phone](#)
- [Accessibility TV](#)
- [Advertising](#)
- [Agreement applications](#)
- [Applications broadcasting](#)
- [Ask a question or make a complaint](#)

The CRTC's [Rules of Practice and Procedure](#) provide limited information about the CRTC's process for dealing with applications, in particular explaining how applications are to be made:

- Applications must be made using the required form or meeting specific style and substance requirements (section 22(2))
- Applications must be sent to the CRTC's Secretary General (section 13)
- The CRTC "will" return applications that do not meet its *Rules* (section 8)
- The CRTC "must post on its website all applications that comply with the requirements set out in section 22" (section 23)
- Applicants may – or may not – reply to other parties (section 27)
- If the CRTC considers applications at a public hearing, it must issue a notice of consultation setting out the matters under consideration, intervention and reply deadlines, as well as the hearing's date, time and place (section 21(2)) and
- Applicants whose applications are being heard at a public hearing must provide information about the hearing on their website or through their broadcasts (section 35).

The CRTC does not apply its *Rules* in the same way to all applicants, however. In answering access-to-information requests A-2020-00034 and A-2020-00046 the CRTC listed 64 applications that it had received but did not post. Other applications that the CRTC received but did not process include the [13 February 2018 application](#) by the Syndicat canadien de la fonction publique (SCFP) asking the CRTC to review its digital-media exemption order, and the [21 April 2021](#) application filed by the Public Interest Advocacy Centre and FRPC about stabilizing the funding of



the Broadcast Participation Fund. The CRTC's responses to applicants provided no clear reasons from the CRTC itself (rather than its staff) for choosing not to publish the applications it had received.

There may be many more applications that vanish into the ether of the CRTC. A CRTC note confirmed in 2021 that it does not retain information about applications to which it does not assign application numbers. What this means in turn is that even if the CRTC lists [broadcasting](#) and [telecommunications](#) applications it has received, the lists may be incomplete.

Even apart from the fact that the CRTC does not post all applications it receives even if they comply with its style and substance requirements, the CRTC's *Rules* are also silent in four key areas:

- Deadlines for the CRTC to consider the process granted to applications it has received
- Positions of the decision-makers involved in deciding how the CRTC will approach the applications it has received
- The factors considered in the CRTC's determinations to consider (or not) the applications it has received, and
- The timing established for processing the applications it decides to consider.

Experienced broadcasting and/or telecommunications companies may well have the expertise and familiarity with the CRTC's Commissioners and staff to make inquiries about these issues informally. That said, maintaining the CRTC's current non-transparent approach to explaining its processes effectively grants experienced broadcasting and telecommunications companies yet further important but ephemeral regulatory advantages in time and knowledge.

Recommendations:

The CRTC should update its administrative processes for the 21st century by adhering to its own *Rules* and by providing more information to applicants and the public alike about the applications it has received and how it will process them.

Maintaining the *status quo* – in which the CRTC may but also may not be applying its *Rules* – 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](#)

15 March 2023: Transparency means operational clarity