



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

### **23: Accountability means Information-Highway approach to due process**

23 March 2023

*This is the twenty-third 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 Eatrdes 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 sensed "that public confidence and trust in the CRTC has waned in recent years", pointing to undue delays in its decision-making, unequal access to its processes and the insufficient reasoning, evidence and data in the CRTC's determinations ("decisions").*

The 21<sup>st</sup> to 30<sup>th</sup> commentaries in this series consider the 'accountability' of the CRTC. As noted above, the Heritage and ISED Ministers are concerned that public trust and confidence in the CRTC has been decreasing. At the same time the Ministers emphasize the CRTC's independence: it was referred to nine times in their letter to Chairperson Eatrdes. Of course, the CRTC is not entirely independent: the statutes that set out its mandate and powers also empower Cabinet to direct the CRTC to exercise its [telecommunications](#) and [broadcasting](#) duties in specific ways.

What the Ministers' letter elides, however, is the degree to which the CRTC is accountable for its performance, and whether it should be more accountable as it (to quote the Ministers) "implements the laws and regulations set forth by Parliament in the public interest". The degree to which the CRTC's processes are open is one way of ensuring the Commission's accountability. The Supreme Court set out this position almost thirty years ago, in the 1996 case of [Canadian Broadcasting Corp. v. New Brunswick \(Attorney General\)](#):

The principle of open courts is inextricably tied to the rights guaranteed by s. 2(b). Openness permits public access to information about the courts, which in turn permits the public to discuss and put forward opinions and criticisms of court practices and proceedings. While the freedom to express ideas and opinions about the operation of the courts is clearly within the ambit of the freedom guaranteed by s. 2(b), so too is the right of members of the public to obtain information about the courts in the first place.

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<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).



In [2021](#) the Supreme Court again stated clearly that “Court openness is protected by the constitutional guarantee of freedom of expression and is essential to the proper functioning of our democracy” (paragraph 30), while acknowledging that “[l]imits on openness in service of other public interests have been recognized, but sparingly and always with an eye to preserving a strong presumption that justice should proceed in public view” (*ibid.*). Today openness – or its absence – is the CRTC’s [Achilles heel](#), from start to finish in its proceedings.

CRTC proceedings do not all begin the same way. In some cases the CRTC publishes a notice of consultation. On 1 September 2010, for example, the [CRTC issued a public notice to announce it was considering an application](#) for a national, English-language discretionary TV service to be known as Sun TV News, and parties could file interventions. In other cases, parties monitoring the CRTC’s broadcasting or telecom applications pages might come across a request by one or more parties for the CRTC to exercise its powers, such as the [application filed on 29 January 2018 and posted on 30 January 2018](#) asking that Canadians’ access to “piracy websites” be disabled.

Yet it might be argued that these proceedings actually began earlier. The Sun TV applicants began private discussions with CRTC Commissioners on 29 March 2010 ([see FRPC’s 22 March 2023 posting](#)); some of the Fairplay applicants made private presentations to the CRTC on 20 June 2016 and on 21 September 2017 (Figure 1).

Figure 1: A-2017-00033, p. 137 (date at bottom left of page)

## Next steps

### 1 Continue Legal Action

The parties intend to vigorously pursue sellers of illegal pre-loaded STBs using the approach set out in the Federal Court’s decision

- Shut down as many as possible
- Educate consumers

### 2 Copyright Act

Is an update required to address this type of piracy as it continues to grow and adapt?

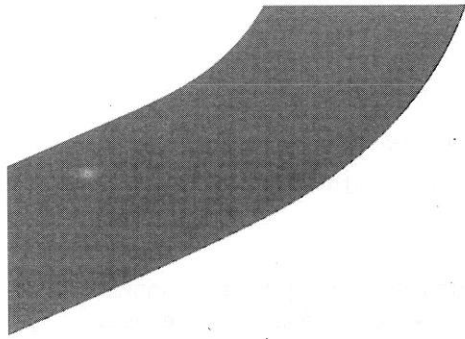
- Downloading vs. streaming
- Devices and inducement

### 3 CRTC’s Role

Is there a role for the CRTC in coordinating/convening or otherwise supporting the industry on this challenge?

- Impacts content creators, broadcasters, distributors, and consumers

**We intend to work proactively with all stakeholders to address the negative effects of piracy on creators, broadcasters, distributors, and consumers**



# Anti-Piracy Coalition: Site Blocking Proposal

September 21, 2017

Restricted & Confidential

**Bell**

Should these two proceedings be considered 'open' and therefore accountable, when the CRTC's materials published about them did not disclose the meetings the CRTC had already held with the applicants?

Moreover, even if the CRTC makes it easy to find some proceedings, it makes it more difficult to find others.

The CRTC's "Today's releases" page – accessible through its "whatsnew" link <https://crtc.gc.ca/eng/whatsnew.htm> – provides links to some of its consultations and decisions each day.

Yet this page is incomplete in two ways. First, some CRTC proceedings are not announced on this page but through one of the four links shown at the bottom of the page, under "Applications". In other words, the CRTC's "what's new" page does not itself address [applications about broadcasting that have not been decided](#), [some broadcast renewal applications](#), [some telecom applications](#) or some [decisions about administrative applications about broadcasting](#). Second, the CRTC's "what's new" page is incomplete because it does not mention that the [CRTC also makes decisions in letters](#), of which some are unavailable to the public. For example, the CRTC's Broadcasting Applications Report for 2022 lists two decisions –



2022-57 and 2022-56 [red squares in Figure 2, below] – that do not have hyperlinks and do not appear on the CRTC’s [list of decisions for 2022](#). Moreover, the applications about which the CRTC made decisions were themselves made public *after* the CRTC made its decisions: the dates shown by ovals shown when the applications were “Posted to Web”, the dates in the squares shown the “Decision Date”.

**Figure 2**

Administrative	Applicant	Application Number	Description	Posted to Web	Decision Date
Administrative	Cogeco Connexion Inc.	<a href="#">2022-0957-7</a>	Deletion of licensed areas under broadcasting licences - Kingston, Ontario	2022-12-21	2022-57 2022-12-20 Approved
Administrative	Peace River Broadcasting Corporation Ltd.	<a href="#">2022-0715-9</a>	Change to the ownership and effective control of Peace Radio Network Ltd. (Peace Radio) and Peace River Broadcasting Corporation Ltd. The shares of Peace Radio will be held by the Babiy Family Trust (28%), Bablooski Holdings Inc. (36%) and Three Little P's Holdings Inc. (36%). Effective control will be exercised jointly by Terrance Babiy, Cynthia Babiy, Jonathan Babiy and Lindsay Parenteau.	2022-11-22	2022-56 2022-11-16 Approved
Administrative	Northern Native	<a href="#">2022-0907-2</a>	Extension of the	2022-11-15	2022-55

Many of the CRTC’s proceedings or parts of proceedings are inaccessible to the public, from applications that are published after decisions are made, to evidence provided in support of the applications, to decisions themselves.

Another problem is that the validity of some information in applications is uncertain. While the CRTC is sometimes asked to take specific actions through an application made under Part 1 of its 2010 *Rules of Practice and Procedure* (hence, Part 1 applications), most applications are made using the CRTC’s own forms (shown under “Applications”, not “Forms” in the CRTC’s [A-Z Index](#)). (As well, while some of the forms are accessible to the public – others are not: Form 310, the CRTC’s radio licence renewal form, appears to be available only to broadcasters with an account, and is therefore only available for public review when it is posted to the CRTC’s website as part of an application.) The application filed by Rogers to renew its CHBN radio licence included text stating that a report on on-air presence was available upon request: Figure 3.



Figure 3: CHBN-FM CM#4233948, App 2022-0777-9

### **3. Employment equity / On-air presence**

Information relating to employment equity is available in Implementation of an employment equity policy, Public Notice CRTC 1992-59, 1 September 1992, and Amendments to the Commission's Employment Equity Policy, Public Notice CRTC 1997-34, 2 April 1997.

The Commission requires that the applicant respond to questions regarding employment equity on behalf of the undertaking as a whole, with reference to all of its employees in aggregate; that is, employees of all undertakings for which it holds licences.

Information relating to on-air presence and voice-overs is set out in Consultations Regarding On-air Job Categories to be Included in the Employment Equity Plans of Broadcasters, Public Notice CRTC 1994-69, 10 June 1994, and Amendment to Reporting Requirements for Employment Equity in On-air Positions, Public Notice CRTC 1995-98, 19 June 1995.

**Please select one of the following:**

The licensee is subject to the Employment Equity Act (applicable to federally-regulated employers with 100 or more employees). The licensee keeps a record of the total number and percentage of on-air employees (full-time, part-time and temporary), including voice-overs, from each designated group, as well as the total number of all on-air employees who were employed in the last year. **A copy of this record is available upon request.**

It was therefore surprising that Rogers – having ‘solemnly declared’ on 31 August 2022 that the statements made in its renewal application including those above in Figure 3 were true in all respects’ (see Figure 4) subsequently denied they were true.

Figure 4: 31 August 2022 declaration re CHBN-FM renewal application

### **1.6 Declaration of the applicant or its designated representative**

**I, solemnly declare that:**

- a. I am the designated representative of the applicant named in this application and as such have knowledge of all matters declared therein.
- b. The statements made in this application, or any document filed pursuant to any request for further information by the Commission, are (will be) to the best of my knowledge and belief true in all respects.**
- c. The opinions and estimates given in this application, or any document filed pursuant to any request for further information by the Commission, are (will be) based on facts as known to me.
- d. I have examined the provisions of the Broadcasting Act, the broadcasting regulations and policies relevant to this application.

After FRPC relied on Rogers’ statement to ask for the stated “copy of this record ... available upon request”, Rogers emailed FRPC on 16 January 2023 to say that the statement made in Figure 3 was inaccurate: “Rogers would like to note that the description of the employment equity reports found at Section 3 of Form 310 inaccurately states that they contain a breakdown of on-air employees (including those who do voice-overs). In fact, the reports that we are required to compile and file with the federal government under the Employment Equity Act do not contain, nor are required to contain, that specific breakdown.”



Assuming that an experienced broadcaster like Rogers that operates [several dozen radio stations](#) is correct, why has the CRTC not amended its renewal form that, after all, is used by several hundred commercial radio broadcasters?

As they unfurl some of the CRTC's proceedings also become less and less transparent. The CRTC's adoption of an ownership-group approach to renewing broadcast licences has changed the timing involved in such proceedings. From the 1970s to the 1990s the CRTC tended to renew licences by city – so that all the TV licences in one community would be renewed at once, for example, followed by the renewals of other TV licences in the next community. While this approach made it difficult to compare the TV services of a single broadcaster at one time, it also provided interveners with time to review applications.

The CRTC changed its approach to licensing in the 2000s, though whether it has improved the renewal process may depend on one's perspective. In 2016, for example, the CRTC began the renewal process of Canadian television programming licences on 15 June 2016. The CRTC decided to hear the renewal applications of 148 TV services controlled by five different companies, consisting of 59 TV stations and 89 discretionary TV services – Figure 5.

**Figure 5 BNoC 2016-225 (Ottawa, 15 June 2016) – 148 TV licence renewals**

Bell		Rogers		Corus	
36 Stations	35 Discretionary services	7 Stations	8 Discretionary services	5 Stations	34 Discretionary services
CFAP-DT	Animal Planet	CFMT-DT	FX	CHEX-TV	ABC Spark
CFCF-DT	Bell TV on-demand (VOD)	CHNM-DT	FXX	CHEX-TV-2	Action
CFCN-DT	Bell TV on-demand (DTH PPV)	CITY-DT	G4techTV	CKWS-DT-1	BBC Canada
CFCN-DT-5	Bell TV on-demand (PPV terrestrial)	CJCO-DT	Outdoor Life Network (OLN)	CKWS-TV	BC News 1
CFJP-DT	Book Television	CJMT-DT	Sportsnet	CKWS-TV-2	Cartoon Network
CFKM-DT	Bravo!	CJNT-DT	Sportsnet 360		CMT
CFKS-DT	Business News Network	CKVU-DT	Sportsnet One		Cosmopolitan TV
CFPL-DT	CablePulse 24		VICELAND		Crime + Investigation
CFQC-DT	Canal D				Deja View
CFRN-DT	Canal Vie	<b>Quebecor</b>			DIY
CFRS-DT	Cinépop	<b>6 Stations</b>	<b>9 Discretionary services</b>		DTOUR
CFTK-TV	Comedy Gold	CFCM-DT	AddikTV		Food Network
CFTO-DT	CTV News Channel	CFER-DT	Casa		Fyi
CHBX-TV	Discovery Channel	CFTM-DT	Illico sur demande		H2
CHRO-DT-43	Discovery Science	CHEM-DT	LCN		HGTV
CHRO-TV	Discovery Velocity	CHLT-DT	Moi & Cie		Historia
CHWI-DT	E!	CJPM-DT	Prise 2		History Television
CICC-TV	ESPN Classic		TVA Network		La Chaîne Disney
CICI-TV	Fashion Television Channel		TVA Sports	Lifetime	
CIPA-TV	Investigation		YOOPA	MovieTime	
CITO-TV	Investigation Discovery			National Geographic Channel	
CJCB-TV	M3			National Geographic Wild	
CJCH-DT	MTV (Canada)	<b>Groupe V</b>			
CJDC-TV	MTV 2	<b>5 Stations</b>	<b>3 Discretionary services</b>		
CJOH-DT	Much	CFAP-DT	Musimax	OWN	
CKCK-DT	MuchRetro	CFJP-DT	MusiquePlus	Séries+	
CKCO-DT	On Demand	CFKM-DT	Network: V Interactions	Showcase	
KKCW-DT	RDS	CFKS-DT			Slice
CKLT-DT	RDS Info	CFRS-DT			Sundance Channel
CKNY-TV	Space			TELETOON/TÉLÉTOON	
CKVR-DT	Super Écran			The Independent Film Channel	
CKY-DT	The Comedy Network			TreeHouse TV	
CTV Two Alberta	The Movie Network (TMN)			W Movies	
CTV Two Atlantic	The Movie Network Encore			W Network	
CTV2	The Sports Network (TSN)			YTV	



After first setting [2 August 2016](#) as the deadline for interventions the CRTC extended the deadline to 15 August 2016 on [28 June 2016](#). While the CRTC claimed to have “collected data throughout the licence term and has made them public”, these data did not summarize broadcasters’ programming or financial performance. They consisted of

- the CRTC’s annual *Communications Monitoring reports*,
- its long-standing financial summaries (for TV and discretionary programming services in general and for individual discretionary services),
- its annual (PDF only) financial summaries describing the six broadcasters’ programming services by language,
- the six broadcasters’ ownership charts and
- a range of reports, some monthly, addressing a range of issues.

This apparent cornucopia of data obscured the fact that the CRTC provided no information about the broadcasters’ programming performance during their just-ending licence term. How then, was the CRTC intending to evaluate these broadcasters’ implementation of Parliament’s broadcasting policy for Canada?

Those wishing to review that programming performance by – say – downloading the programming logs of 148 TV services from the beginning and end of their licence term, would have had to review at least 296 program logs during the 41 business days available to write and file interventions, while also reviewing for the past renewal period the CRTC’s annual monitoring reports, three sets of financial summaries, five broadcasters’ aggregated annual returns for their French-language and English-language TV services, five sets of ownership charts and possibly dozens of individual reports about different programming-related matters. On [2 November 2016](#), after the intervention deadline, the CRTC also published a “Working document for discussion”.

The impression left by this rushed process is that if the CRTC was not itself hustling to complete the renewal process with remarkable speed, it was certainly hustling potential interveners, placing Canadians and civil-society organizations at a disadvantage. Placing mountains of raw evidence on the public record while requiring comments to be filed in a very short time is a clever way to appear expeditious while simultaneously limiting effective public participation.

To recap, while some CRTC’s processes are open and therefore enable the Commission to be held to account, many other CRTC proceedings are not – and instead enable the CRTC to evade accountability. Bluntly put, after offering Canadians the prospect of a new, online ‘Information Highway’, many of the CRTC’s processes seem to be caught in a rut bordered on the left by inadequate information and on the right by inadequate time.

## **Recommendations**

The CRTC should revise its internal approach to proceedings to maximize the degree to which they are open to all so as to be truly accountable. All applications should be published upon their receipt by the Commission – unless the CRTC can decide with reasons that the applications in some way breach its



procedural *Rules* and in those cases, such decisions should be made and published within four weeks of the applications' being received. Applications prefaced by (otherwise undisclosed) prior meetings with CRTC Commissioners or staff should include synopses of such meetings. The CRTC should re-evaluate its timelines for proceedings, perhaps basing those timelines on the numbers of its own staff who work on applications: if the CRTC assigns a team of ten of its staff to work on a single proceeding for one month – *i.e.* 40 work weeks – it should not then expect Canadians and civil-society organizations to perform the same work in one quarter of the time (four weeks).

Maintaining the *status quo* – in which CRTC proceedings and outcomes are secretive and overly rushed – has the potential to bring the CRTC's administration of its responsibilities into disrepute.

~ 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](#)
- 16 March 2023: [Transparency means operational timeliness](#)
- 17 March 2023: [Transparency means clarity about evidence](#)
- 18 March 2023: [Transparency means access to evidence, not selective smokescreening](#)





19 March 2023: [Transparency means meaningful access to information](#)

20 March 2023: [Transparency means comparability of data over time](#)

21 March 2023: [Accountability means more meaningful consultation with Canadians](#)

22 March 2023: [Accountability means more access without the Access to Information Act](#)