



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

24: Accountability means transparency about dispute-resolution outcomes

24 March 2023

This is the twenty-fourth 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 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 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 21st to 30th 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. 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".

In Canada, accountability is facilitated by the 'open court principle', described almost thirty years ago by the [Supreme Court in 1996](#) as "deeply embedded in the common law tradition" (paragraph 21). In that case - *Canadian Broadcasting Corp. v. New Brunswick (Attorney General)* – the Court referred to the 1913 English case of [Scott v. Scott](#), quoting the passage in which Lord Shaw of Dunfermline recites the thinking of Jeremy Bentham, including the latter's comment that "[p]ublicity is the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity. It keeps the judge himself while trying under trial."" (paragraph 21). The Court affirmed that "ensuring that justice be done openly ... has now become 'one of the hallmarks of a democratic society' and... acts as a guarantee that justice is administered in a non-arbitrary manner, according to the rule of law" (paragraph 22). In [2021](#) the Supreme Court reaffirmed 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).

Although the CRTC is not a Court but a [quasi-judicial administrative tribunal](#), publicly available information about its processes is also important to its accountability to enable Canadians to monitor the Commission, its operations and its outcomes. [Comment 3](#) in this series gave examples of applications

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

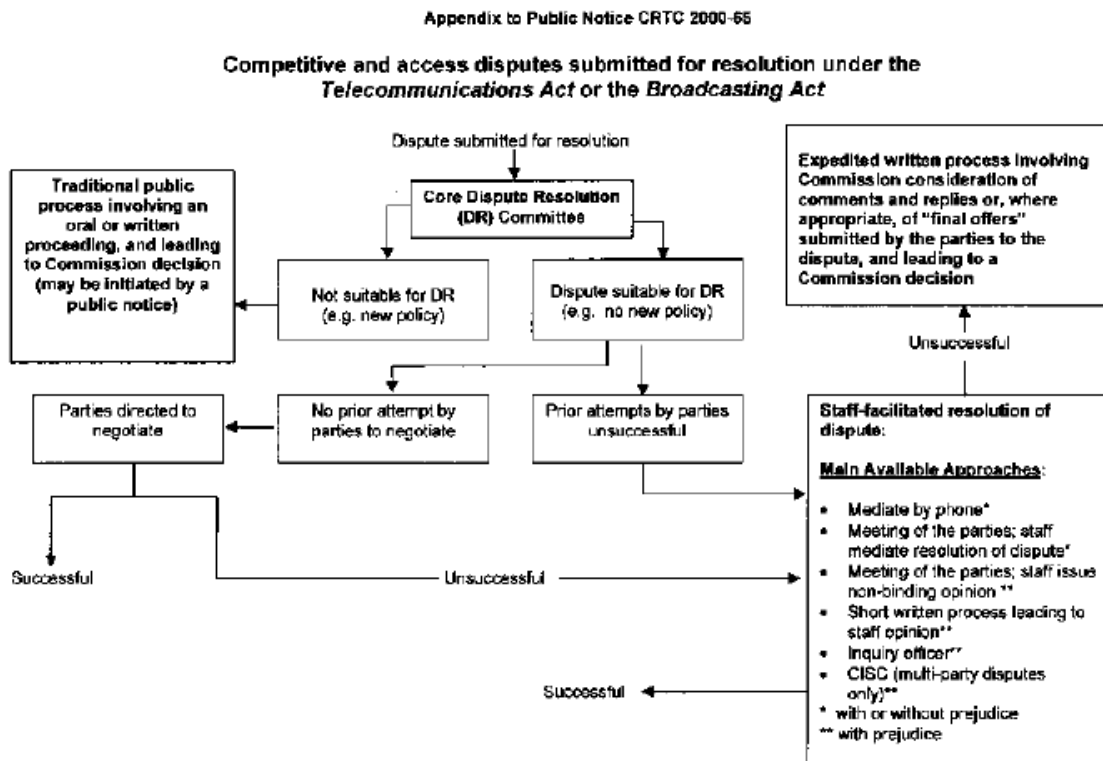
² Department of Canadian Heritage, "[New CRTC Chair's Leadership Will Help Shape the Future of Canada's Communication System](#)", News release (Gatineau, 6 February 2023).



that are not made public until the CRTC issued decisions about them, as well as decisions that remain inaccessible to the public after the CRTC made them. A third area in which the information about the CRTC's operations is limited involves its role in alternative dispute resolution.

The federal Department of Justice explains that "[Alternative dispute resolution](#) ... refers to the wide variety of methods used to resolve conflicts and disputes outside the courtroom. It includes both informal, consensual processes such as negotiation as well as formal rights-based processes such as litigation." The Department notes the potential for alternative dispute resolution approaches to settle disputes "in ways that are more informal, less expensive, and often quicker than formal court proceedings".

The Commission has been providing dispute-resolution assistance for almost a quarter of a century. In [2000](#) it explained that competition and "[t]he costs and risks associated with competitive markets increase the need for speed and certainty in decision-making and dispute resolution" in both telecommunications and broadcasting (paragraph 2). It explained that new procedures it developed "have the objective of enabling affected parties and the Commission to work in a more efficient and, hopefully, a swifter manner towards resolution of competitive and access disputes" (paragraph 4). The Commission described its dispute resolution framework as follows:



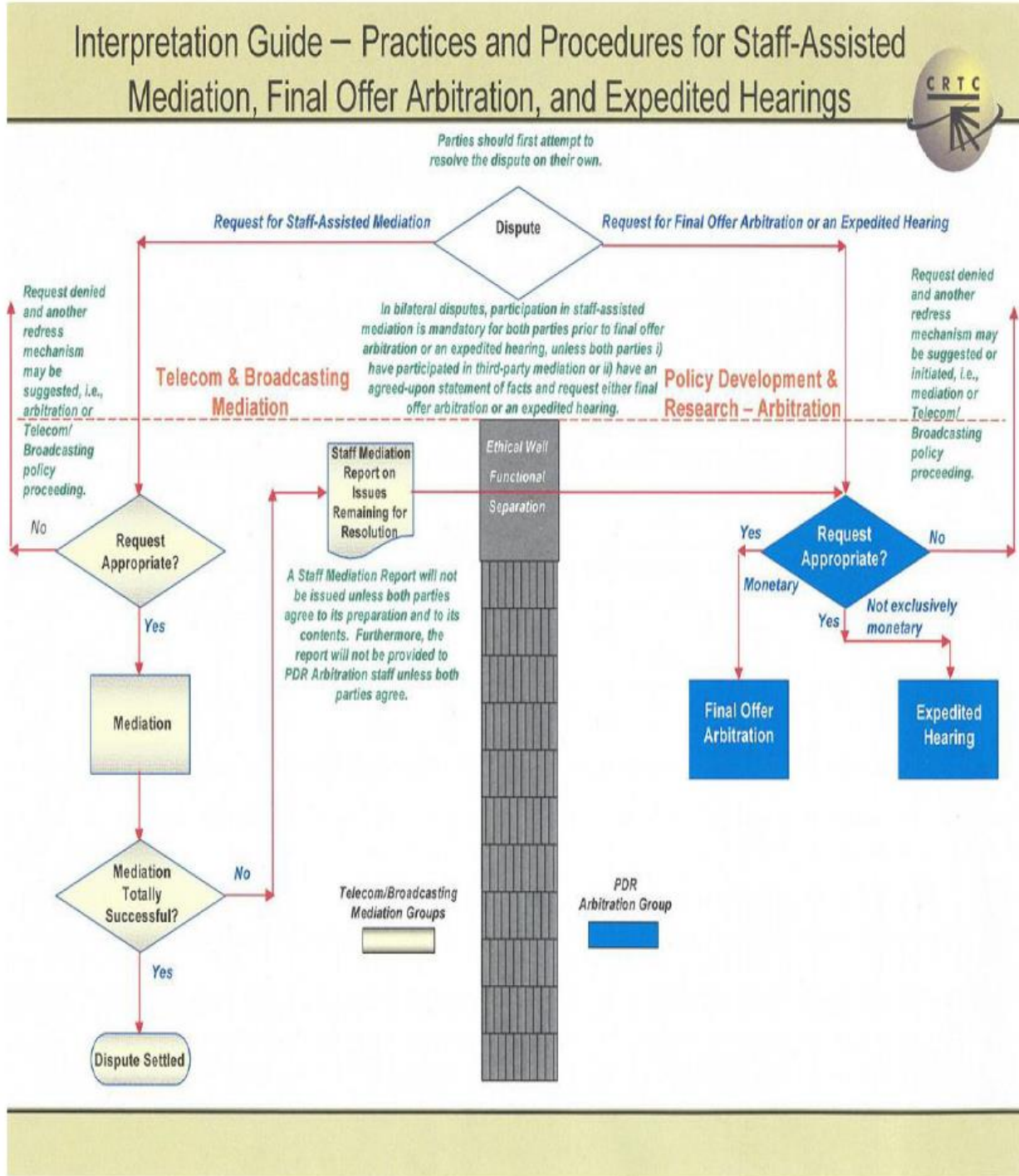
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[“??”s in the original html document: <https://crtc.gc.ca/eng/archive/2000/pb2000-65.htm>]



Following measures added in [2004](#) and [2005](#) the CRTC [amended its alternative dispute resolution framework in 2009](#), mentioning that it had “consistently sought to implement practices and procedures that bring about the timely resolution of issues arising under the *Broadcasting Act* and the *Telecommunications Act*” (footnote 2). It pictured its new framework as follows:



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2009-01-29



In [2011](#) the CRTC developed a new regulatory framework for vertically integrated ownership involving the common ownership of broadcast programming and distribution services. The Commission decided it would “now publish the determinations of all dispute resolution applications considered by the Commission”, while permitting parties to redact confidential information (paragraph 124). The CRTC explained that

... the accessibility and transparency of the regulatory system must be maximized to promote learning and information sharing and to build public trust in the quality of Canadian regulation and the integrity of regulatory processes. Policy objectives should be clearly defined. Regulators must explain their priorities and decisions, show why and how these decisions are in the public interest, and be subject to public scrutiny. Information on regulatory programs and compliance requirements should be readily available in print and electronic formats. The regulatory system should also be predictable and provide certainty to those regulated. Citizens and businesses should participate through active consultation and engagement.

The Commission revised its alternative dispute resolution procedures again in [2013](#). It continued to state that “well-designed and timely dispute settlement mechanisms for broadcasting and telecommunications matters that come under its regulatory purview” ([paragraph 1](#)).

The CRTC’s current alternative dispute resolution practices are set out in a [2019 Information Bulletin](#) in which the Commission repeated that “it is important to have well-designed and timely dispute settlement mechanisms in place for the resolution of disputes arising under either the Broadcasting Act or the Telecommunications Act” (paragraph 1). As Table 1 shows, the Commission’s notices, circulars, policies and bulletins have tended to use similar terms to describe its dispute settlement mechanisms.

Table 1

Public Notice CRTC 2000-65	Circular 2005-463	Broadcasting and Telecom Information Bulletin 2009-38	Broadcasting Regulatory Policy CRTC 2011-601	Broadcasting and Telecom Information Bulletin CRTC 2019-184
Staff-assisted opinion		Staff-assisted opinion		
Staff-assisted dispute resolution		Staff-assisted mediation	Staff-assisted mediation	Staff-assisted mediation
		Final offer arbitration	Final-offer arbitration	Final offer arbitration
Expedited Commission determination				
	Expedited hearings	Expedited hearing	Expedited hearings	Expedited hearings
			Non-binding staff opinion	Non-binding staff opinion
Consensus-based problem-solving			Consensus-based problem solving.	Consensus-based problem solving.

While the CRTC said in 2000 that its alternative dispute resolution would provide more certainty and greater speed in resolving disputes, little is known about the operation of the CRTC’s dispute-resolution mechanisms. None of the CRTC’s six *Departmental Results Reports* from 2016-17 to 2021-22 provides



any information about the number of disputes its processes resolved or the time taken to complete these processes. The CRTC’s [A-Z Index](#) does not include a link to “Alternative dispute resolution” (Under A, D or R [as the Index has no “M”, users cannot search the Index for “Mediation”].)

The link to the “Reports and Publications” page in the CRTC’s [A-Z Index](#) leads to “[Plans and Reports](#)”, none of which appears to offer statistics on the CRTC’s operations in general (such as time to renew broadcasting licences, for example) or about its alternative dispute resolution mechanisms in particular. The CRTC’s *Departmental Results Reports* from 2016-17 to 2021-22 sometimes mention ‘dispute’ resolution but provide no statistics about these operations.

Searching for “alternative dispute resolution” with the CRTC’s search engine yielded 387 results, the first few pages of which did not appear to contain links to statistics about the CRTC’s alternative dispute resolution mechanisms. A link on the CRTC’s “[Consultations and hearings](#)” page sets out a list of “[Expedited Public Hearings and Final Offer Arbitrations](#)” from 2009 to 2023 but does not include a link to any statistics about these matters.

In 2008, however, the CRTC began publishing consolidated reports on broadcasting and telecommunications; it had previously published separate reports for these two sectors from the late 1990s to 2007. Eight of the fifteen annual *Communications Monitoring Reports* from 2007/08 to 2021/22 set out statistics about dispute resolution: Table 2. It is unclear, however, whether the data are comparable because the CRTC’s tables used different terminology: of the eight tables with alternative dispute resolution statistics, three referred to the dispute resolution process for each of broadcasting and telecommunications. Different terms were used in other years. The monitoring reports for 2017/18 and 2018/19 then aggregated the dispute-resolution information for broadcasting and telecommunications, reducing the amount of information provided by the data and limiting detailed comparisons over time.

Table 2

<i>Communications Monitoring Report</i> statistics about alternative dispute resolution	
2007/08, p. 57 Telecom CRTC Interconnection Steering Committee Third-party mediation Staff-assisted dispute resolution Expedited procedures Broadcasting: Fact-finding meetings Mediation Staff opinions Final offer selection processes Informal dispute files	2008/09 Telecom Disputes/mediation Final Offer Arbitration/Expedite Broadcasting Disputes/mediation Final Offer Arbitration/Expedite
2009/10 No information	2010/11 Telecom Disputes/Mediation Final Offer Arbitration/Expedite Broadcasting Disputes/Mediation Final Offer Arbitration/Expedite
2011/12, p. 14	2012/13



Communications Monitoring Report statistics about alternative dispute resolution	
Broadcasting Disputes/mediation Final Offer Arbitration/Expedite [sic] Part 1 applications Formal mediations Informal staff interventions Telecommunications Disputes/mediation Final Offer Arbitration/Expedite [sic] Formal mediations Informal disputes	No information
2013/14 No information	2014/15 No information
2015/16, p. 201 Broadcasting only Staff-assisted Mediation Formal Final Offer arbitration Informal intervention	2016/17, p. 208 Broadcasting only Staff-assisted mediation Final offer arbitration Informal intervention
2017/18, p. 270 (not disaggregated by sector) Informal dispute resolution Formal dispute resolution Staff assisted mediation Final offer arbitration	2018/19, p. 215 270 (not disaggregated by sector) Informal dispute resolution Formal dispute resolution Staff assisted mediation Final offer arbitration
2019/20 No information	2020/21 No information
2021/22 No information	

Surprisingly – given the CRTC’s statement in 2000 that alternative dispute resolution mechanisms would provide faster solutions for those needing the CRTC’s intervention on a less formal basis – only one of the CRTC’s *Communications Monitoring Reports* provided any statistics about timing. The 2007-2008 report showed the average number of days needed “to resolve disputes” (at page 60).

Instead of reporting on the time taken to resolve disputes, the CRTC’s *Monitoring Reports* tended instead to report on the number of dispute files it had received in broadcasting and in telecommunications: see Figure 1 (next page). In this case, the CRTC referred in Table 2.2.7 to “Informal Staff Interventions” in broadcasting, and in Table 2.2.8 to

Statistical Information - Simplifying regulation and dispute resolution

Table 2.6.1 Number of dispute files received in 2007/08

Dispute issues	Formal dispute files			Informal interventions
	Type of disputes			
	Undue preference or disadvantage (2)	Dispute resolution (3)	Total	Total
Building access	1	1	2	-
Distribution / programming	3	1	4	6
Total	4	2	6	6

(1) 1 April 2007 to 31 March 2008
 (2) Section 9 of the *Broadcasting Distribution Regulations*
 (3) Sections 12 to 15 of the *Broadcasting Distribution Regulations*

Table 2.6.2 Fiscal year comparisons of the average number of days to resolve disputes

Disputes	2005 / 06	2006 / 07	2007 / 08
Undue preference	135	89	106
Sections 12 to 15	86	53	68
Section 9(1)(h)	-	-	-

Notes: Excludes informal interventions. Files commenced in one year but concluded in another are included in the calculation for the year of closure. Files can be suspended for various periods of time in order to permit the parties to negotiate. Suspension times are not included in these calculations.



“Informal disputes”. Without more information from the Commission, however, it is difficult to determine if these are, in fact, the same type of dispute mechanism, applied to both sectors.

Figure 1

Statistical Information - Dispute resolution

Table 2.2.6 Number of dispute files received

	Disputes/mediation		Final Offer Arbitration/Expedite	
	2010/2011	2011/2012	2010/2011	2011/2012
Broadcasting	20	20 ¹	2	2
Telecommunications	25	30	2	2
Total	45	50	4	4

• For the period 1 April 2010 to 31 March 2011.
 1. The Distribution Regulatory Policy group handled 4 of these files
 Source: CRTC internal tracking

Table 2.2.7 Number of formal broadcasting dispute files received (2011/2012)

	Part I Applications	Formal Mediations	Informal Staff Interventions
Building access	0	0	0
Distribution/programming	8 ¹	3	9
Total	8	3	9

• For the period 1 April 2010 to 31 March 2011.
 1. The Distribution Regulatory Policy group handled 4 of these files
 Source: CRTC internal tracking

Table 2.2.8 Number of Telecommunications dispute resolutions (2011/2012)

	Formal mediations	Informal disputes	Total
Service / access availability	0	14	14
Service issues	0	11	11
Service cancellation	0	4	4
Accessibility	1	0	1
Total	1	29	30

• For the period 1 April 2011 to 31 March 2012
 Source: CRTC internal tracking

Absent consistent published information from the Commission about the numbers of dispute resolution mechanisms and average time to ‘close’ such disputes, the CRTC was asked in June 2022 under the *Access to Information Act* for “an excel spreadsheet of the CRTC’s formal and informal dispute resolution cases”



in broadcasting, for each calendar year from 2016 to 2021, showing when the case was opened and closed, which type of resolution approach was used and certain other information.

The CRTC answered this request on 15 September 2022 by providing a 43-page 8.5” x 14” PDF of an excel spreadsheet that was last updated in May 2022: Figure 2. FRPC then entered the data into its own spreadsheet.

Figure 2

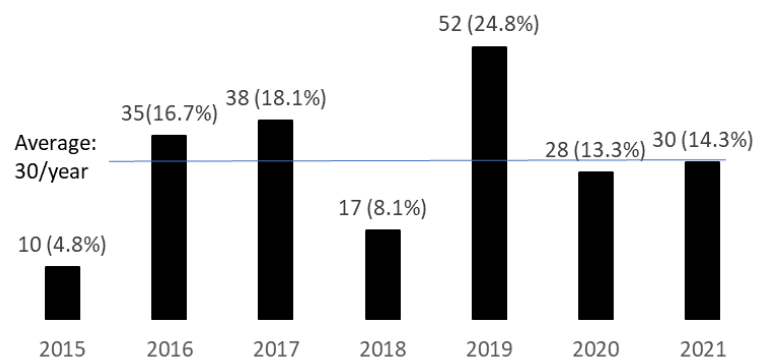
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The CRTC’s *Access to Information Act* response provided information about 210 alternative dispute resolution matters.

According to these data, the CRTC dealt with an average of 30 broadcast dispute resolution matters per year, with the highest level in the 2019 calendar year.

The CRTC’s data also included the ‘opening file date’ for each of the 210 matters, and ‘closing file’ dates for 158 (75%) of the matters: the ‘opening file date’ information for the remaining 52 matters was either absent, redacted or listed as “Open”. Deducting the CRTC’s ‘opening-file’ date from its ‘closing-file’

CRTC - 210 dispute resolution cases in broadcasting, 2015-2021

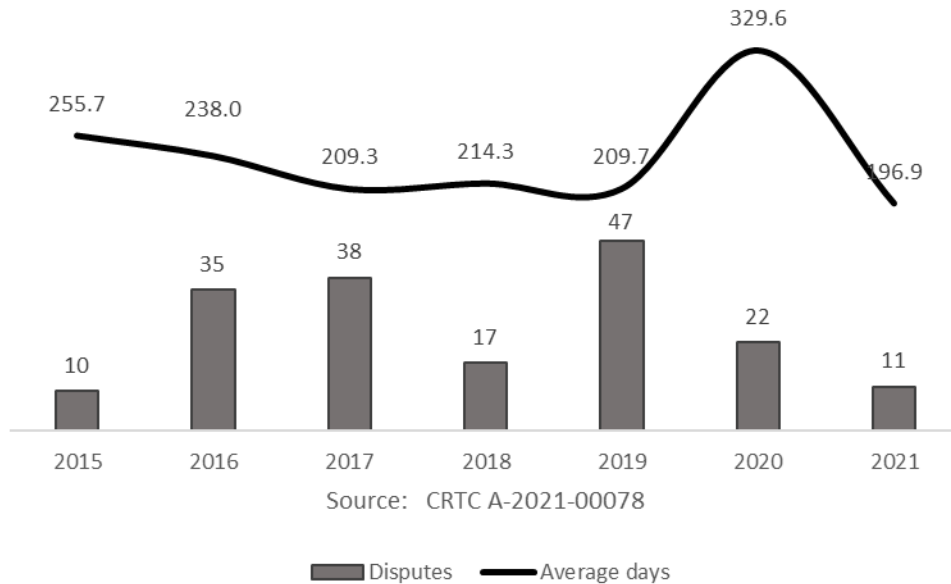


Source: CRTC access to information release package (A-2021-00078)



date yielded an estimate of the total calendar (not business) days to close a matter: an average of 232.8 days over the seven-year period. The eleven disputes in 2021 took an average of 196.9 days (or 6.5 months); the disputes the year before took an average of 329.6 days (or 10.8 months):

**CRTC dispute resolution data for broadcasting, 2016-2021:
average days to close dispute from year opened**



The information in the CRTC’s access-to-information response also showed a wide range of alternative dispute resolution processes, and significant diversity in the time taken to close the matters (from an average of 87 days for a Part 1 application in 2016, to an average of 610 days for a Staff-assisted mediation in 2020): Table 2.

Table 3

Average days to close “Closed” alternative dispute resolution matters from the year in which the matter opened								
Type of alternative dispute resolution process	Year in which the process opened							Total
	2015	2016	2017	2018	2019	2020	2021	
1. FOA		130.0	176.5		115.7	332.7	382.5	235.7
2. Informal	275.0	206.0	189.9	426.5	98.7	123.7		191.7
3. Informal/NOC			226.0					226.0
4. Informal/NOD				100.4	14.7			68.3
5. Majority decision			211.0					211.0
6. MAP/SAM					463.9	610.3	288.5	481.9
7. MM			77.0		118.0	191.0		108.0
8. NOD		176.2	282.0		119.8	323.5	91.3	165.5
9. Part 1	131.5	87.0	162.0	195.0	365.5	333.0	175.5	241.2
10. SAM	293.8	285.1	278.3	247.2				279.7
11. Standstill					130.3	141.0	99.5	124.6
Total	255.7	238.0	209.3	214.3	209.7	329.6	196.9	232.8

Acronyms as used in the CRTC’s response



As Figure 2 (above) shows, the CRTC literally provided very little information in its access-to-information answer about its alternative dispute resolution procedures. Yet very basic analysis of the information it did provide shows two things: first, that a few of its processes are quick while others, such as staff-assisted mediation (“MAP/SAM”) are quite lengthy; and second, that the CRTC itself does not use the terminology for its alternative dispute resolution processes that it uses in its notices and circulars.

These two points likely have implications for the broadcasters that rely on such processes. First, while large companies such as Bell or Rogers have the financial capacity to wait months for disputes to resolve, smaller companies may not – and may find themselves forced to settle. Publishing more information about the time taken to resolve similar disputes may give broadcasters information necessary to make informed decisions. Second, wide variations in time to close disputes and in the terminology used to classify disputes indicates significant uncertainties in terms of the specific processes being used and their timing: again, while larger broadcasters may have gained sufficient experience to understand and evaluate the risks of such uncertainties, smaller broadcasters may be placed at a disadvantage simply due to the lack of operational certainty.

Returning to the Supreme Court’s 1996 case of *Canadian Broadcasting Corp. v. New Brunswick (Attorney General)*, the lack of information from the CRTC about an important part of its operations – resolving disputes between broadcast programmers and distributors – makes it difficult, if not impossible, to know what is ‘spurring’ the Commission to meet its mandates under the *Broadcasting Act* and *Telecommunications Act*. Nor is anything known about the degree to which the CRTC’s alternative dispute resolution results actually met the true needs of broadcasters – and in particular, broadcasters smaller than the several megalithic communications companies operating in Canada. Worse still, for the administration of justice in Canada, smaller broadcasters may find themselves unable to raise concerns about the untimeliness of the CRTC’s alternative dispute resolution processes – because of the risk of subjecting themselves to additional arbitrariness from the CRTC. This concern is likely to grow if Bill C-11, the *Online Streaming Act*, requires the Commission to intervene in disputes between online distributors and programming services.

Recommendations

To be truly accountable, the CRTC should revise its internal approach to proceedings to maximize the degree to which they are open to all. In the case of its alternative dispute resolution operations, the CRTC should publish – at least annually – a complete list of the disputes that closed, remain open or are on hold. While individual parties’ names need not be published, it may be useful to include an indication of the comparative scale of the parties: if all applications were being brought by smaller broadcasters against large distributors, such information could indicate market failure and could support a regulatory review to ensure equity between the parties.

Maintaining the *status quo* – in which the CRTC remains unaccountable for the quality of its operations because it chooses not to disclose key data – 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

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- 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](#)
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