



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

26: Accountability means public performance evaluations showing whether Parliament's communications laws are being implemented

26 March 2023

This is the twenty-sixth 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 Eatrides 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). 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).

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. Apart from demonstrating that it is successfully implementing the objectives established by Parliament in the [Broadcasting Act](#), the [Telecommunications Act](#), the [Canada Elections Act](#), the [Accessible Canada Act](#) and the [Official Languages Act](#), information about its processes and their outcomes permits its performance to be evaluated.

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).



One way of evaluating the CRTC's approach to its responsibility to implement Canada's communications-related statutes would be to assess its approach to regulatory non-compliance. In the 1980s the CRTC often described broadcasters' performance in its licensing decisions:

CFCF Inc., [Decision CRTC 85-359](#) (Ottawa, 22 May 1985)

At a Public Hearing in Montreal on 25 March 1985, the Commission considered an application by CFCF Inc. for the renewal of the broadcast licence for CFQR-FM Montreal. The new Promise of Performance submitted proposed a percentage of hits of 49 % rather than the presently authorized 15 %, and a vocal/instrumental ratio of 75:25 rather than 45:55.

An analysis of CFQR-FM's musical programming conducted by the Commission on 5 December 1984 revealed a significant shortfall between the vocal/instrumental ratio at the time (60:40) and the ratio contained in the current Promise of Performance (45:55), which gives the station a different musical format, MOR (Middle-of-the-Road) rather than Easy Listening.

A self-analysis of CFQR-FM's programming, conducted by the licensee during the entire week of 28 January to 3 February 1985 at the request of the Commission, confirmed the situation which the Commission had noted in December 1984, revealing a vocal/instrumental ratio of 57.9:42.1. At the hearing, the licensee did not deny these findings.

Similarly, the CRTC formerly set out evidence about broadcasters' actual performance in their just-ending licence term, before renewing their licences.

In 1989, for example, the CRTC renewed the licence of CFTO-TV, and described the station's achievements in matters affecting implementation the key goals of Parliament's broadcasting policy:

CFTO-TV Limited, [Decision CRTC 89-93](#) (Ottawa, 6 April 1989)

...

In terms of audience size, CFTO-TV is the largest station in its market, a position it has held for the past 17 years. It is also the largest of the 18 CTV network affiliates and has played a leading role in that organization over the years. Under the terms of the CTV Television Network Ltd. shareholders agreement, the licensee's financial contribution to the CTV network is even greater than its audience size would suggest. The licensee estimates that its share of the network's Canadian program obligation during the network's current licence term will amount to more than \$74 million. The Commission notes the licensee's continuing commitment to ensure "... that CTV has the resources necessary to produce excellence in Canadian programming in the interest of the Canadian broadcasting system."

With respect to its local programming, over the current licence term CFTO-TV has increased the amount of original local programs broadcast on the station from approximately 19.5 hours to more than 27 hours per week. This includes an increase in the amount of weekly local news over the past few years from 8 hours 25 minutes to 15 hours 15 minutes. This amount includes the new weekday "News at Noon" program, added this season (1988/89) at a first-year cost estimated by the licensee to be a minimum of \$800,000. Other additions to CFTO-TV's local program schedule have included two co-operatively produced public affairs programs ("Sunday Edition" and "Sounding Board") and two co-operatively produced children's programs ("Polly Wog" and "Marie Soleil"). During the current season, CFTO-TV has become involved in another five programs produced co-operatively with other Baton-owned stations, such as CJOH-TV Ottawa and CKCK-TV Regina.

....

The equivalent decisions today offer little or no information about broadcasters' actual performance of their programming requirements over the previous licence term.



Bell Media Inc. – Licence renewals for English-language television stations and services, [Broadcasting Decision CRTC 2017-149](#) (Ottawa, 15 May 2017)

The Commission renews the broadcasting licences for the various English-language television stations and services that will form the Bell Media Group in the next licence term, from 1 September 2017 to 31 August 2022.

...

Small market stations

Bell Media proposed to maintain the lower local programming requirements for some smaller market stations (CICC-TV Yorkton, CIPA-TV Prince Albert, CFCN-DT-5 Lethbridge and CFRN-TV-6 Red Deer), which are currently set at 2.5 hours per week. ***[Did these stations meet these requirements? The decision is silent on this point.]*** Bell Media argued that it would not be financially feasible to increase the number of hours of local programming for these stations.

In addition, Bell Media requested an exception to the locally reflective news and information exhibition requirement of at least three hours per week for non-metropolitan markets. Instead, it proposed that the above stations be required to broadcast a minimum of one hour per week of locally reflective news and information programming.

Commission's analysis and decisions

In Broadcasting Regulatory Policy 2016-224 (the Local TV Policy), the Commission adopted measures to ensure continued local reflection, including requiring that local television stations maintain historical exhibition levels for locally reflective news and information as well as maintaining the current overall exhibition levels for local programming. ***[How much news and information did the stations provide during their current licence term? The CRTC's decision is silent on this point.]***

Maintaining existing local programming exhibition requirements for the regional and small market stations, albeit lower than the standard seven hours of local programming required for non-metropolitan markets, would maintain the level of local programming received by these communities and would be consistent with the Local TV Policy. The Commission therefore approves Bell Media's request for an exception to the standard exhibition requirements for local programming for the stations listed above. Conditions of licence to this effect are set out in Appendix 3 to this decision.

In addition, the Commission considers it appropriate to allow for a similarly reduced requirement with respect to the amount of locally reflective news and information programming that Bell Media's regional and small market stations are required to offer. The Commission approves Bell Media's request for an exception to the standard exhibition requirement for locally reflective news and information programming for some stations. Conditions of licence to this effect are set out in Appendix 3 to this decision.

The Commission is imposing these requirements by condition of licence to reinforce the importance of local programming and locally reflective news and information programming and to better ensure that viewers receive this programming.

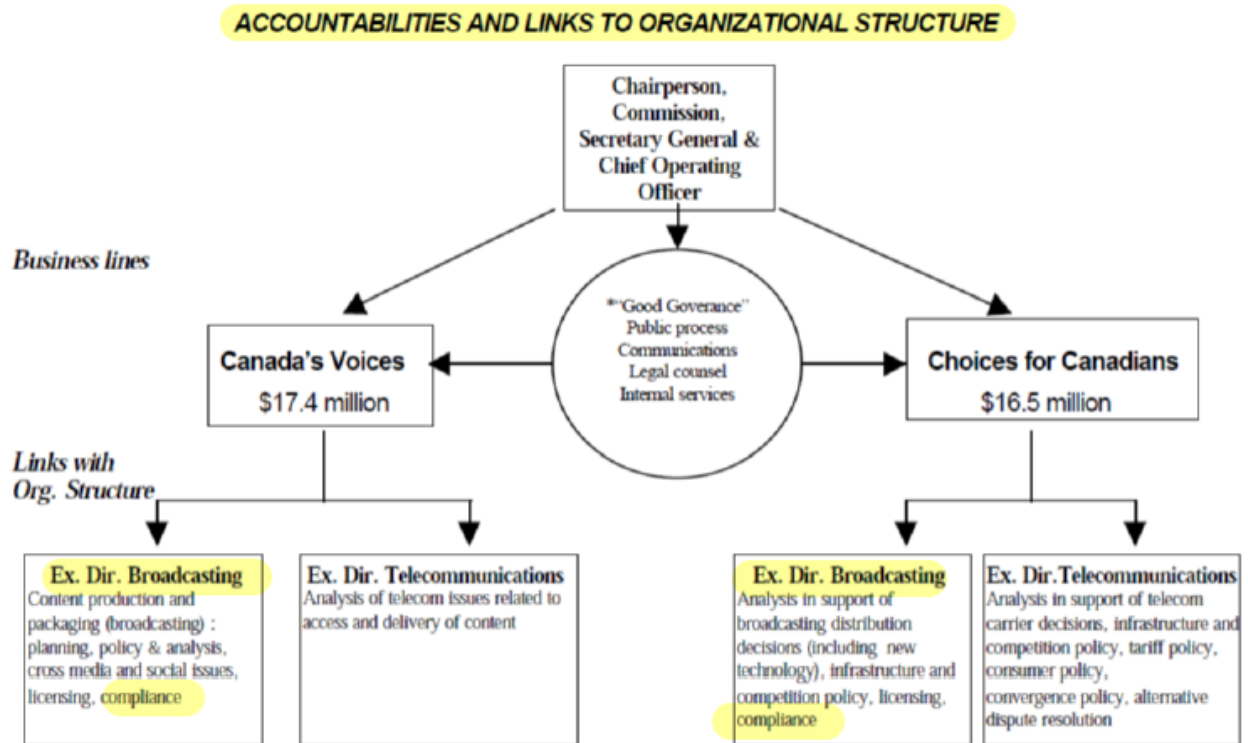
....

The CRTC's decision dealt efficiently with Bell Media – but provided no information about any of the Bell Media stations' actual implementation of Parliament's programming requirements. It is unclear, for instance, whether the CRTC actually evaluated the Bell Media stations' broadcast logs – and if it did, whether all of the Bell Media stations complied with the CRTC's requirements. The difficulty for Parliament and Canadians is that the information provided by the CRTC about regulatory compliance is inconsistent over time.



Twenty years ago the CRTC linked “accountabilities” with the matter of compliance, as in its 1998 *Departmental Performance Report* (page 10): Figure 1.

Figure 1



Like others, this report did not set out any information about the number of Canadian broadcasters that met or did not meet its regulatory requirements.

For several years, in fact, the CRTC evaluated its own performance with respect to its duties to Parliament in terms of Canadians’ opinions about the Commission, not broadcasters or telecommunications companies’ regulatory compliance. In its 2017 and 2018 *Departmental Results Reports* the CRTC evaluated its enforcement of communications laws and regulations “by the percentage of Canadians who consider that the CRTC is taking measures to enhance their safety and protection in the communications system.” (2017 report, page 16; 2018 report, page 18). After the CRTC’s data showed that this percentage dropped from 66% in 2014/15 to 60% in 2017/18, the CRTC stopped reporting results using this measure.

Actual results	2014/15	2015/16	2016/17	2017/18
% of Canadians who consider that the CRTC is taking measures to enhance their safety and protection in the communications system	66%	66%	60%	60%
Performance report year and page	2017, page 17			2018, page 20



The CRTC’s 2018/19 *Departmental Results Report* did not discuss broadcasters’ actual compliance or non-compliance. It has mentioned for the past three years – 2019/20 to 2021/22 – that it is developing “a digital system for monitoring programming compliance in the radio market, which will also improve business processes and data analytics, and will be accompanied by a music database available to the public; ...” (2019/20; page 7). It now expects to enter the testing stage of its “digital monitoring system for testing ... in late 2023” (page 7, 2021/22 report).

As the CRTC’s website does not set out summary information about the compliance or non-compliance of the broadcasters and telecommunications companies it regulates, we used the CRTC’s online search engine to look for CRTC decisions that use the phrase, “in non-compliance”, a phrase the CRTC appears to use when it identifies regulatory non-compliance in both broadcasting and telecommunications:

Broadcasting Decision CRTC 2018-266	Telecom Decision CRTC 2022-160
<i>Shaw – Licence renewal for various terrestrial broadcasting distribution undertakings</i>	<i>Imposition of an administrative monetary penalty on Bell Canada in relation to the processing and granting of access permit applications for support structures in accordance with its National Services Tariff</i>
<p>41. As noted above, based on the information provided on the record of this proceeding, Shaw misinterpreted the definitions of access and local programming set out in the Regulations and the Community Television Policy. As a result, for several of its undertakings, Shaw failed to devote a minimum of 60% of the programming broadcast during each broadcast week to local programming and a minimum of 50% to access programming. More generally, Shaw also failed to provide information at a sufficient level of detail that would permit an accurate evaluation of whether a particular community program qualified as access or local programming for a significant portion of its community channels. The Commission therefore finds Shaw in non-compliance with its obligations regarding the exhibition of access and local programming and the requirement to provide information to the Commission related to its regulatory obligations pursuant to sections 31(1), 31(2)(a) and 11(2) of the Regulations</p>	<p>72. Bell Canada has implemented measures to streamline access to its support structures and further minimize the potential of its FTTH deployment being completed in non-compliance with applicable construction standards. Despite having some concerns as to the efficacy of these measures, the Commission considers that they should, at least in some cases, reduce delays in accessing poles and reduce, to some extent, the likelihood of future non-compliance.</p> <p>73., Accordingly, the measures implemented by Bell Canada suggest that a lower AMP amount would be appropriate.</p> <p>74. The Commission considers that it should arrive at an AMP amount that would be sufficient to promote compliance and deter future non-compliance. Therefore, in light of the above factors, the Commission considers that an AMP of \$2.5 million for each of Bell Canada’s three violations would be appropriate, for a total AMP amount of \$7.5 million.</p>

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The Commission issued 197 decisions that used the phrase, “in non-compliance” over the five years from 2016/17 to 2021/22 and, during that time, the CRTC’s *Departmental Results Reports* did not provide any statistics about regulatory non-compliance (or regulatory compliance).

Decisions mentioning "in non-compliance"			
Calendar year	Broadcasting	Telecom	Total
2017	31		31
2018	51	1	52
2019	38		38
2020	30		30
2021	35		35
2022	4	7	11
Total, 2017-22	189	8	197

These decisions typically referred to non-compliance with respect to one or more broadcasting or telecommunications undertakings.

Of course, the mere fact that the CRTC used the words, “in non-compliance” may not mean that it found non-compliance, meaning that the 197 figure may overestimate the number of broadcasting and telecommunications undertakings that actually were non-compliant.

The more important ‘fact’ is that the CRTC publishes so little coherent information about its own performance in assessing broadcasters’ and telecommunications companies’ regulatory performance that neither Canadians nor Parliamentarians have any idea of whether the CRTC is actually enforcing Canada’s communications laws and regulations – or, indeed whether it actually wants to enforce these requirements. Today the CRTC appears to have adopted a do-it-yourself approach to accountability. When asked for information about a table on its website that summarized the programming performance of Canadian radio stations, the Commission advised that it had removed the table but that Canadians could undertake such programming research for themselves: Figure 2:

Figure 2: CRTC ATIP A-2021-00007 (10 May 2021)

This letter is further to your request of April 9, 2021, to obtain:

“The CRTC said in Broadcasting Regulatory Policy CRTC 2014-554 at para. 67 that it “will publish annual lists of radio stations in compliance and non-compliance with the Commission’s regulations and their conditions of licence.” Please provide a link to these lists. ”

I regret to inform you that the lists to which you refer are no longer available on our web site. A decision was made to remove them because it was not possible to have accurate, up to date information always available.

However, license renewal or ownership decisions that highlight non-compliance are available on our web site. As an example, if you are looking for radio stations found in non-compliance through a 2020 renewal, carry out the following steps:

- Search the term Radio
- Filter results by type ‘decisions’,
- Filter results by subject ‘compliance’,
- Filter results by year ‘2020’.

Any non-compliance will be explained in the body of the decision under a special section. For an example, see Broadcasting Decision 2020-239 <https://crtc.gc.ca/eng/archive/2020/2020-239.htm>.

Consider that in 2018, the CRTC granted one broadcaster’s request to operate as an exempted programming service despite the broadcaster’s failure “throughout its licence term” to file its annual



returns and program logs by the required deadline ([Broadcasting Decision CRTC 2018-412](#)). Having found the broadcaster in non-compliance not once or twice but for several consecutive years, the CRTC merely reminded it that

... as an operator of an exempt service, it must at all times comply with the criteria set out in Broadcasting Order 2015-88 Failure to adhere to the criteria set out in Broadcasting Order 2015-88 at all times may result in the undertaking being found to be operating without a licence contrary to the Act, and the Commission will consider all of its regulatory options to address such non-compliance.

In other words, after finding that a broadcaster breached the requirement set by order the CRTC proceeded to exempt the broadcaster from regulatory requirements, while warning that it might “consider” regulatory options if the broadcaster does anything else wrong.

At its core the concern about the CRTC’s approach to regulatory enforcement is related to the question of whether Parliament’s communications laws are being respected and implemented. Giving most regulatory breaches little more than a slap on the wrist may suggest that the regulator is indifferent as to the actual implementation of Parliament’s law, or that it is implementing them solely with respect to expenditures. For example, when asked for documents that track compliance or non-compliance of Canada’s broadcasting distribution undertakings (BDUs), the only tables summarizing compliance in the 306 pages of heavily redacted material involved a gap of \$38.4 million in required expenditures: Figure 3

Figure 3: ATIP A-2020-00025 (306 pages, heavily redacted)

Summary of Compliance findings		Summary of TV Non-Compliance					
	Amount						
BDU	30,257,414	Company	Access Communications	Super Channel			Total
Radio	3,093,638	Source	BD 2018-481	BD 202-205			
TV	5,113,570	Date	18-Dec-18	29-Jun-20			
Total	38,464,622		VOD - Cdn. Prog.	Discretionary			
		Amount due	\$66,441	\$5,047,129			\$5,113,570
		Date due	31-Aug-19	Twice yearly - until 2024			
		Proof of Payment due	30-Nov-19	30 days after each payment			
		Paid	No	No			

New communications laws now before Parliament will enable the CRTC to shift broadcasters from its current licensing framework to a framework that gives the CRTC new data-collection powers, more regulatory flexibility and more administrative monetary penalties. In reference to Bill C-11 (the *Online Streaming Act*), then- CRTC Chairperson Ian Scott told the Senate Standing Committee on Transport and Communications that



First, it builds on the existing Broadcasting Act to clarify the CRTC's jurisdiction regarding online broadcasters. It would give the CRTC new regulatory powers to deal with online broadcasting services, including non-Canadian ones. **These powers include giving us the ability to obtain data from online broadcasters.**

Second, **it would give us a flexible approach to regulation.** The current Broadcasting Act does not specify how traditional players in the Canadian broadcasting system must contribute to the Act's policy objectives. That is left to the CRTC's discretion. Bill C-11 would allow us to make similar determinations regarding online broadcasters and put in place the regulatory frameworks to support those goals.

Finally, it would modernize the CRTC's enforcement powers. Although the Telecommunications Act **allows us to impose administrative monetary penalties to address non-compliance,** no such provisions exist in the Broadcasting Act.

Some have expressed concerns about the CRTC's ability to implement new legislation quickly. Yet based on its own past performance, the more important questions are first, whether the CRTC will implement the new laws at all and second, whether anyone will know about that implementation. Bill C-11, for example, will give official-language minority communities the right to seek information from the CRTC about its approach to decisions affecting them – but official-language *majority* communities will not have the same right. How then, will anyone but the CRTC know if large – and likely foreign – streaming services are actually implementing Parliament's requirements?

Briefly, the CRTC's decision in recent years to turn its attention away from the specific ways in which broadcasters and telecommunications companies are or are not implementing Parliament's communications policies towards their finances leaves Parliament without any way of knowing whether its laws are being met or, if they are not being met, what is being done to correct shortcomings.

Recommendations

To be truly accountable, the CRTC should publish (and retain on its site) searchable, annual evaluations of communication companies' implementation of key aspects of Parliament's communications policies.

Maintaining the *status quo* – in which CRTC no longer reports on past performance at all while disregarding regulatory non-compliance – 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](#)
- 23 March 2023: [Accountability means an Information-Highway approach to due process](#)
- 24 March 2023: [Accountability means transparency about dispute-resolution outcomes](#)
- 25 March 2023: [Accountability means well-designed data collection to evaluate policy](#)
- 26 March 2023: Accountability means public performance evaluations showing whether Parliament's communications laws are being implemented