

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

31 Last but not least – summarizing FRPC's Ides-of-March series

31 March 2023

Parliament established the CRTC 55 years ago on 1 April 1968, delegating responsibility to it for implementing Parliament's broadcasting and telecommunications policies for Canada. In January 2023 the government appointed a new Chairperson to head the CRTC: the Ministers of Canadian Heritage and Innovation, Science and Economic Development subsequently wrote.chairperson.eatrides.in.early February.2023 to offer congratulations on her appointment to the Commission. The Ministers noted "that public confidence and trust in the CRTC has waned in recent years" and emphasized the Chairperson's role in leading the CRTC to become more modern, "open, transparent, efficient, and effective".

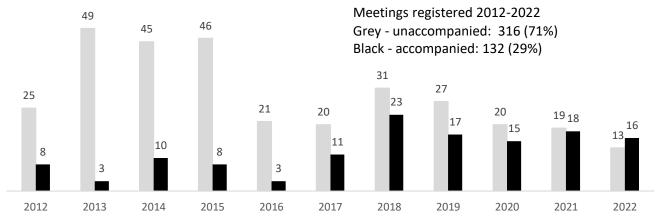
While trust is a concept that is likely well understood, <u>measuring</u> trust or the factors that establish trust is more difficult. The following table summarizes quantitative aspects of trust with respect to the CRTC, using information about the CRTC's administrative processes which was discussed and described in the 30 comments published by the Forum from 1 March to 30 March 2023, about the openness, transparency and accountability of the Canadian Radio-television and Telecommunications Commission (CRTC).

Aspects of the CRTC's administrative processes related to trust in its decision-making		
Concern	March	Issues
It is unclear whether the CRTC complies consistently with mandatory requirements set by the Broadcasting Act and Telecommunications Act	#30	Broadcasting Act requirements Section 9(4) says the CRTC "shall" exempt broadcasters that cannot contribute materially to Parliament's broadcasting policy for Canada while some online broadcasters can and do (Netflix) contribute to implementation of Parliament's broadcasting policy, CRTC has declined to consider or even publish (post) applications asking it to reconsider its digital media exemption order Section 18(1) says the CRTC "shall" hold a "public hearing" before it issues mandatory orders – the CRTC today issues mandatory orders without public hearings (2022, 2018-110, -168, -172 and -468) Section 25(1) says the CRTC "shall" report CBC's regulatory non-compliance to the Minister – neither CRTC nor the Department of Canadian Heritage has copies of CRTC reports of the non-compliance of CBC identified in CRTC Decisions 2000-1, 2004-531 & 2013-263 Section 29(3) says the CRTC "shall" maintain a public register of all Cabinet petitions re CRTC broadcasting decisions – neither the CRTC's search engine nor its A-Z Index shows the location of this public register
It is not known how CRTC decides what matters to consider each year and why it decides not to consider some applications at all	#6 #8 #1 #15	Commissioner of Lobbying data show CRTC met with registered lobbyists 449 times from mid-2012 to Jan/2023, and of 176 reported meetings with Chairperson Eatrides' two predecessors, 109 (62%) were held without presence of any other CRTC or government officials; after issuing its "Native Broadcasting Policy" (now the Indigenous Broadcasting Policy) in 1990, CRTC is today still assessing that policy
CRTC is not transparent about Cabinet orders-in-council and petitions that Cabinet has granted about CRTC matters	#15	No public registry of petitions No site page for orders in council – of 16 orders issued about broadcasting and telecom matters, no information about 6 on CRTC's website



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CRTC does not publish information	<u>#4</u>	Of 452 meetings from 2012 to 2022 involving CRTC and which were reported to
about its meetings with	<u>#12</u>	Commissioner of Lobbying, 351 (78%) were with regulated companies or their
broadcasters concerning matters	<u>#13</u>	industry associations
they later present as applications	#18	'Sun TV' & 'Fairplay' applications filed months after private meetings between
	#22	applicants and CRTC about these matters
	#23	

Meetings in which CRTC public-office holders were or were not accompanied by other CRTC publicl-office holders, 2012-2022



Source: Analysis of monthly communications reports from Commissioner of Lobbying

CRTC's approach to scheduling	<u>#9</u>	After Cabinet ordered CRTC to reconsider its decision renewing CBC (2022-165) on
matters is unclear	<u>#12</u>	16 Sept/22 CRTC staff met in Oct/22 to discuss next steps – but 196 days (28
	<u>#15</u>	weeks) later, CRTC has not yet said when or whether it will hold a public hearing
	<u>#17</u>	on CBC's renewal
	<u>#18</u>	CRTC does not publish weekly lists of applications received, or decisions with
	<u>#27</u>	reasons about which applications it will or will not consider
CRTC has no single online page to	<u>23</u>	CRTC's "Today's releases" page does not announce decisions about all broadcast
publish the applications and	#27	or all telecom applications and does not announce its "Letter decisions"
processes it publishes daily		
CRTC requires broadcasters to file	<u>#28</u>	Two-thirds (35% or 73) of the 209 reports that CRTC required 87 broadcasters to
reports on different aspects of		file and which it posts on its website date from 2003 to 2013
their performance but many are		
out of date		
CRTC's standards for processing	<u>#16</u>	From 2018 to 2022 CRTC met its self-assigned standards for 'processing' 466
broadcasting and telecom		applications 6 out of 60 times and in 2021-22 met its objectives once
applications are inconsistent and		
are not being met for all		
applications		
CRTC's website lacks coherent plan	<u>#15</u>	CRTC's public information about applications leads to dead ends (in case of
		telecom)
CRTC decisions about the	<u>#18</u>	CRTC does not collect information such as <u>telecommunications companies'</u>
information it will or will not collect	<u>#19</u>	<u>underlying costs of their international roaming services</u> has previously said that it
limits evaluation of its	<u>#22</u>	does not collect information about
implementation of Parliament's		- Employment opportunities for Canadians,
broadcasting and telecom policies		- Number of radio &/or TV news bureaus operated by Canadian radio/TV
and Information Commissioner's		stations
office has found mistakes in CRTC's		

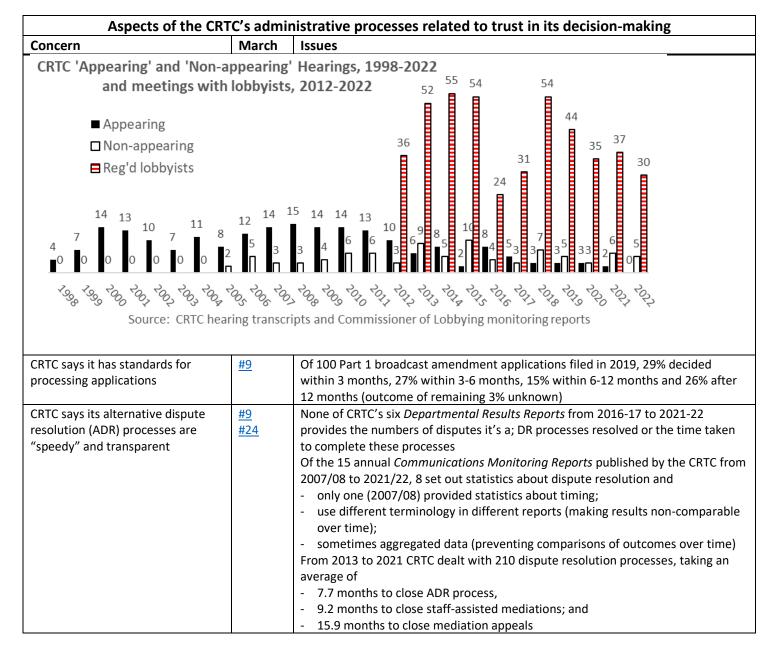


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handling of access-to-information		- Number of distributors offering subscribers basic service of TV channels free of
requests		charge
CRTC's parsimonious approach to	<u>#19</u>	When FRPC asked CRTC for information about CBC's 2022-175 decision CRTC
access-to-information requests		claimed months-long extension – and only disclosed the information after its
suggests differential approach to		answer to another request for the same information was tweeted
those requesting information		
While about to celebrate its 55 th	<u>#5</u>	Of the 43 datasets published by the CRTC on the Open data portal, 30% provide 2
birthday, CRTC publishes little	<u>#17</u>	years of data, 44% provide from 4 to 7 years of data and 26% provide 8 or more
historical or current information	<u>#19</u>	years of data
about broadcast performance,	<u>#20</u>	CRTC's 2022 Communication Market Report provided a table about "radio station
structure or compliance	<u>#22</u>	expenditures on news programming" – disclosing for the first time that it has such
	<u>#26</u>	information
CRTC destroys its own data after 10	<u>#28</u>	CRTC publishes little or no information about regulated companies' compliance
years, including data describing		and non-compliance although
broadcasters' programming and		- After it said in 2014-554 that it "will publish annual lists of radio stations in
does not fully disclose the		compliance and non-compliance with the Commission's regulations and their
information it has		conditions of licence", it removed a table summarizing programming
		performance of radio stations
		- in response to an access-to-information request CRTC report studying radio
		stations' non-compliance found 48% of radio stations non-compliant in 2018
		Moreover,
		- CRTC reported "in non-compliance" in 197 decisions from 2016/17 to 2021/22
		but its <i>Departmental Results Reports</i> in this period did not provide any statistics
		about regulatory compliance or non-compliance
		- Its TV log data are inaccessible due to complexity
		- Its radio log data entirely inaccessible because they are not published online
		- Its Point-in-time ownership charts prevent historical overview
		- Its aggregated financial summary forms yield different information about large
		broadcasters' TV and radio services' programming and
		- After publishing information about local programming broadcast by Canadian
		radio stations in 2005, it confirmed in 2009 that it no longer had the data
		- The non-redacted portion of 306 pages of its own analysis of cable and satellite
		TV distributors' compliance showed that the CRTC focussed on gaps in required
CDTC and blick as a sinformation	420	expenditures
CRTC publishes no information about complaints it receives and	<u>#20</u>	CRTC's current <i>Communications Markets</i> reports do not include information about
does not discuss complaints made		complaints (and its previous <i>Communications Monitoring Reports</i> rarely provided this information)
about broadcasters in context of		this information)
their licence renewals		
CRTC notices of consultation do not	#18	When CRTC invited Canadians to comment on large cable and satellite companies'
provide members of the public	#18 #26	proposal to raise the price of basic service from \$25/month to \$28/month, it had
with relevant evidence that CRTC	#20	already collected but did not publish information showing that some distributors
has, such as information about		had already increased the price they charged for basic service between 2019 and
broadcasters' past performance		2020
CRTC creates a 'catch 22' by	#7	CRTC declined to add CBC's broadcast notifications to public record without
requiring parties seeking evidence	# <u>/</u> #18	evidence that CBC had breached the notification requirements (20% of the
to first prove the evidence'	#10	broadcast notifications that CBC claimed to have made may not have been made
contents, or to evaluate		& 28% of the times shown for the notifications were incorrect), and (some years
broadcasters' compliance		ago) in 2020 told ADISQ to verify licensees' radio programming itself
themselves		ago, in 2020 told ADIOQ to verify necrosees Tadio programming itself
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Concern	March	nistrative processes related to trust in its decision-making Issues
CRTC Rules of Practice and Procedure say CRTC "must" post applications that meet its requirements – but it does not	#1 #27	CRTC did not post applications by <u>FRPC-PIAC</u> or by <u>SCFP</u> and has confirmed it did neither posted nor considered another 64 applications (see <u>FRPC's 12 Sept/22 submission to Senate</u> , Appendix 4)
CRTC process for regulating complaints made under the National Do Not Call List is unclear	#25	In 2021 CRTC said it had no records of "warning letters" sent from 2017 to 2021 to those alleged to have breached its Unsolicited Telecommunications Rules, and its CRTC Enforcement Actions database also showed no warning letters – but its National Do Not Call List reports say it issued 458 warning letters over this period
CRTC's default-setting appears to be that disclosing information about those it regulates threatens their existence, redacting some evidence to the point of absurdity	<u>#7</u>	In the 2022-267 proceeding the CRTC granted some broadcasters' requests for nearly-complete redaction while other broadcasters in same proceeding redacted very little, and only provided aggregated information after process deadlines had begun (reducing time available to interveners)
CRTC says it welcomes new applicants in broadcasting	#2 #14 #23	 In case of radio station applications, CRTC requires applicants' familiarity with more than six dozen CRTC policy and regulatory documents CRTC application form is only available to broadcasters with an account CRTC renewal application form is out of date
CRTC says it welcomes public participation in its proceedings	#2 #5 #8 #23	CRTC's calls for comments are sometimes dozens of pages long, with dozens of questions, but without relevant information and evidence that CRTC and regulated entities both possess In its 2016 TV licence renewal process CRTC published no information about broadcasters' programming performance, gave interveners 41 business days to review the past performance and future plans of 5 companies' 148 TV services – and then published a "Working document for discussion" nearly 3 months after the deadline for interventions CRTC uses lack of evidence (that often only it has) to disregard interveners' arguments; CRTC published its first notice of consultation in American Sign Language (ASL) and Lange des Signes Québecoise (LSQ) in 2013 and "many" but apparently not all of its decisions and information bulletins; CRTC now planning to live stream public hearings with English-language and French-language closed captioning In March 2023 none of CRTC's OpenData datasets describe programming broadcast by CRTC licensees CRTC does not publish radio stations' logs, and the TV logs it publishes are difficult to use and often contain errors that make them unusable
CRTC says its proceedings are public	#3 #4 #10	Of 193 broadcasting or telecom hearings held from 2005-2002, 46% (89) were non-appearing (did not invite any parties to appear) making its hearings more like Kabuki theatre than a meaningful public process From Sep/17 to Jan/23, 13 of the CRTC's 40 'public hearings' allowed the public to appear, and of the 284 interveners invited to appear at the appearing hearings, just 51 (18%) were individuals unconnected to broadcasters, industry associations, guilds or civil-society organizations







Aspects of the CRTC's administrative processes related to trust in its decision-making March Concern Issues CRTC dispute resolution data for broadcasting, 2016-2021: average days to close dispute from year opened 329.6 255.7 238.0 214.3 209.3 209. 47 38 35 22 17 11 10 2015 2016 2017 2018 2021 Source: CRTC A-2021-00078 Disputes ——Average days CRTC says it values public Time taken by CRTC to decide civil-society organizations' telecom costs #9 participation #27 applications more than doubled from 2013 to 2021 (3.7 months to 8.8 months) In 2022 CRTC published 683 of 752 decisions online, but left 69 of these decisions inaccessible because they lacked an HTML link In 2022 CRTC made decisions about 57 applications but posted the applications about which it made the decisions either the day of or after the day it published the decisions CRTC says its decisions are public #3 Of 752 CRTC decisions, letters, information bulletins, notices of consultations, #20 orders, regulatory policies and enforcement actions, 69 (9.2%) are not made #27 public and no reasons are provided for their not being published CRTC's "Broadcasting Applications Report" lists some decisions without HTML links, making the decisions inaccessible and identifies some public and non-public decisions about different matters with the same number CRTC provides no information about complaints it has received about broadcasters or telecommunications companies in its annual reports CRTC does not publish some of its decisions about telecommunications complaints (made under its Do-Not-Call rules) CRTC does not publish decisions made by its Broadcasting Committee, its Broadcasting sub-committee for routine and non-contentious matters or its Telecommunications Committee CRTC decisions are public 27 Most (though not all) CRTC decisions are published – but they are not signed. The Commission's practice of not signing decisions of the Commission began in 1968 when all decisions were voted on by the full Commission. Yet since 1991 when the Broadcasting Act has empowered panels of Commissioners to make decisions on behalf of the CRTC, decisions of the Commission still remain unsigned, leaving the misleading impression that all Commissioners participated in decision-making when in many cases panels of Commissioners made the decisions In 2022 431 (39%) of CRTC decisions about 1,098 matters were not signed CRTC is responsible for #20 CRTC today publishes no information about complaints made about broadcasters implementing Parliament's #22 and telecommunications companies and when it previously published such data, broadcasting and #29 changed presentation (and therefore comparability) from one year to the next) telecommunications policies #30 In 2008 and 2009 CRTC had no research about local news broadcast by Canadian radio or TV stations



Concern		Aspects of the CRTC's administrative processes related to trust in its decision-making		
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		In 2009 CRTC confirmed it - had stopped collecting information about basic cable rates in 2006 - had no studies, analyses or research from 2000 to 2009 about the affordability of broadcast distribution undertakings' rates for basic, extended basic or discretionary services In 2010 CRTC had - no studies on the impact of the CRTC's 2008 <i>Diversity of Voices</i> policy - no records on level and percentage of debt or voting shares in Canadian broadcasting undertakings in the broadcasting system - no information or research studies on the impact of increased foreign investment in Canadian broadcasting or telecommunications, or the profitability of private TV broadcasters' local news and local programming investment of the 'efficiencies' and 'synergies' from ownership consolidated ownership - no studies or research on level of balance in news and information programming broadcast by conventional radio or TV stations - no information on the impact of partially deregulating advertising limits on conventional television - no information on number of radio stations operating without staff (automated stations) in Canada In 2012 — after reporting it would complete studies on Indigenous broadcasting in 2009/10 — CRTC said it had - no reports, studies, research, analyses, briefing materials or memos about the implementation of its 1990 Indigenous broadcasting policy In 2015 CRTC had - no information about or research studies on foreign investment in Canadian telecommunications or broadcasting, from 2010 to 2015 In 2020 CRTC had - no research from 2007 to 2020 on impact of concentrated media ownership on radio or TV news in Canada - no research about the broadcast of original local news by large broadcasters' radio stations - no documents about the broadcast of radio programming by TV stations, or the broadcast of TV programming by radio stations - no information about number of journalists employed by Canadian broadcasters In 2022-165 (para. 394) CRTC uncertain whether CBC exceeded Canadian music		

The Forum's main concern about the current state of the CRTC's administrative processes is that the processes generally work very well for large, long-established and experienced telecommunications and broadcasting companies but work poorly for smaller companies and for the Canadians whose interests the CRTC purports to serve.



Fortunately, the CRTC could address nearly all of the concerns set out in the table above internally. Though it could invite public comment on specific ideas or proposals for changing its administrative processes, it could also simply decide to publish signed rather than unsigned decisions. Its internal committees could begin to publish their decisions and reasons for hearing or not hearing specific matters. The Commission could resume its practice of the 1980s of providing information in notices of consultation, and could supplement its many datasets with information about the programming actually being broadcast by Canadian radio and TV programming services. Most importantly, the CRTC could provide Parliament with a clear and detailed account of how the Commission is actually implementing Parliament's broadcasting and telecommunications policies – because without that information, the CRTC cannot pretend to be serving the public interest: it would in fact only be serving the interests of those it regulates.

~ Forum for Research and Policy in Communications (FRPC)

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: <u>Transparency means clarity about planning processes</u>

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: <u>Transparency means operational timeliness</u>

17 March 2023: Transparency means clarity about evidence

18 March 2023: Transparency means access to evidence, not selective smokescreening



19 March 2023: <u>Transparency means meaningful access to information</u>

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

27 March 2023: Accountability means signing and publishing decisions

28 March 2023: Accountability means data about outcomes

29 March 2023: Accountability means using valid and reliable 'metrics' to measure performance

30 March 2023: Accountability requires regulator's compliance with Parliament's laws