



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

### 6: Openness means knowing who sets the CRTC's agenda

6 March 2023

*This is the 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 Eatrudes 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 referred to "a perception among many that access to CRTC processes is unequal" for the public and civil-society organizations. Among other things the Ministers expressed confidence in the new Chairperson's ability to see to the CRTC's "to being more open ...".*

While those who are aware of the CRTC's existence may imagine it as some monolithic building in Ottawa filled with civil servants making decisions about the programming they can watch and/or hear or about the prices they pay for their wireless and landline telephones, the CRTC actually consists of up to 13 people appointed as Commissioners of the CRTC by the federal Cabinet.<sup>3</sup> Yet the Commissioners' roles and impact are largely unknown, partly because Parliament defined the Chairperson of the CRTC as its "chief executive officer", and gave the Chairperson responsibility for supervising and directing the Commission's work and staff and for presiding at meetings of the Commission.<sup>4</sup> The Chairperson appears before the House of Commons and the Senate on behalf of the Commission and also signs the Commission's [annual reports on its plans for the coming fiscal year](#), for improving from [2023 to 2025 the accessibility of the CRTC](#) for those who are Hard of Hearing, Deaf, have difficulty seeing or are Blind.

The CRTC's [current annual plan](#) sets out a number of matters that the Commission planned to address from April 2022 to March 2023. Apart from improving its own accessibility, the CRTC planned to address options for implementing new broadcasting legislation, to introduce three-digit dialing for mental-health crisis and suicide prevent services, to engage with all Canadians and Indigenous peoples so as "promote full and representative participation in its proceedings" ([2022-23 report](#), page. 5).<sup>5</sup> A review of the CRTC's [open](#) proceedings and [closed](#) notices of consultation<sup>6</sup> shows that the CRTC also considered another general broadcast policy matter in 2022/23, this one initiated by the CRTC's decision to consider the application filed in January 2022 by Bell, Bragg, Cogeco and Sasktel. The four companies applied to the CRTC for permission to raise the maximum price they may charge their

---

<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)

<sup>3</sup> *Canadian Radio-television and Telecommunications Commission Act*, s. 3(1): "There is established a commission, to be known as the Canadian Radio-television and Telecommunications Commission, consisting of not more than 13 members, to be appointed by the Governor in Council."

<sup>4</sup> *Canadian Radio-television and Telecommunications Commission Act*, s. 6(2): "The Chairperson is the chief executive officer of the Commission, has supervision over and direction of the work and staff of the Commission and shall preside at meetings of the Commission."

<sup>5</sup>

<sup>6</sup> The CRTC's website does not appear to have an equivalent single website page for all 'closed proceedings'.



subscribers per month for the basic (television) service from \$25 to \$28; the CRTC subsequently invited comments on this proposal in September 2022.

What is largely unknown is how the CRTC decides what issues matter in today's broadcasting and telecommunications environment, whether to launch proceedings to examine these issues to solicit the public's concerns and then whether or when to address such concerns through its powers under Canada's broadcasting and/or telecommunications laws. Of course, Cabinet and the Ministers of Canadian Heritage and of Innovation, Science and Economic Development may always direct the CRTC to investigate and report on matters they consider important. While the motivation for such directions may not always be clear, the *source* of the CRTC's decision to proceed as directed is at least clear. It is otherwise less clear what other factors motivate the Commission to undertake specific activities.

It seems unlikely that waves of complaints from the public about broadcast programming or telecommunications service provides factor into the CRTC's agenda-setting, as the CRTC long ago delegated the administration of complaints about broadcasting and telecommunications to two non-governmental organizations – the Canadian Broadcast Standards Council (CBSC) and the Commissioner of Complaints for Television and telecommunications Services (CCTS), respectively. The CRTC no longer even reports on the complaints that it receives each year.

Although the CRTC's [Rules of Practice and Procedure](#) say that the CRTC "must post on its website all applications that comply with" its requirements for filing, service, form and content access-to-information requests have disclosed that it does not post dozens of applications (see "[Openness means not hiding applications from public view](#)" from 1 March 2023), and apparently does not even record certain applications so as to be accessible under the *Access to Information Act* (as, for instance, applications known to have been filed by civil-society organizations do not appear in its responses). The CRTC's reasons for 'granting process' – to include applications it receives in its decision-making agenda – are unknown because along with not publishing applications it receives, the CRTC does not publish decisions about what it decides to consider or not to consider or why.

Moreover, as the CRTC does not solicit comments annually from the public or other interested parties on the matters it should set as priorities, any reasons that it gives for proceeding with a specific consultation could be interpreted as after-the-fact justification rather than pre-decision rational planning to address important concerns of the public.

More briefly, it is difficult to conceive of the CRTC as being open in terms of its agenda. Bearing in mind that the *Telecommunications Act* and the *Broadcasting Act* grant the CRTC the powers of a Superior Court (sections 55 and 16, respectively), however, it is interesting that [in 2010 the Ontario Superior Court of Justice](#) addressed judges' inherent powers to manage their proceedings (in this case, a criminal trial; at paragraph 33), citing Justice Casey Hill:

Originally cast in terms of inherent authority to control the processes of the court and prevention of abuse of the process, it is today recognized that [page656] a trial judge has a duty to manage the trial process balancing fairness to the parties as well as efficient and orderly discharge of court process. Judicial management of litigation recognizes that "there is more at stake than just the interests of the accused". Management involves control, direction and administration in the conduct of a trial. This power, settled within a broad discretion, relates to the entirety of the trial proceeding extending beyond the scope of pre-trial case management rules designed for "effective and efficient case management". . . .

The CRTC is different from a court, however, in that it often must consider matters of general policy rather than just adjudicative processes to make decisions between competing claims of applicants.



The question that remains unanswered is just how the CRTC set its priorities from one year to the next: what motivates its choices to consider – or not to consider – specific matters?

In today's environment it may no longer be tenable for the Commission to simply issue what may loosely be described as edicts about its decision-making choices, as lack of reasons as well as its practice of not inviting comment from the public about its agenda from one year to the next may simply solidify concerns about lack of openness on the CRTC's part. Those concerned about openness may find support for such concerns in the Commissioner of Lobbying's monthly communications reports data. They show that while the CRTC is holding fewer and fewer hearings where members of the public may address the Commission in person, the Commission's public office-holders met an average of 4 times per month with registered lobbyists from mid-2012 to January 2023 – or 449 times in total. They show that of the 176 reported meetings involving the last two CRTC Chairpersons – responsible for managing the CRTC's work – and 50 parties (ranging from regulated companies to public-interest organizations), 109 (62%) were held in the absence of any other CRTC or government officials.

If reports of closed-room meetings between the CRTC Chairperson and those whose interests are affected by the CRTC's decisions matter to the perception of how the Commission administers its responsibilities, the CRTC should take the initiative to become more open to the public in setting its agenda.

### **Recommendation**

The CRTC should either formally invite comments from the public on the matters it should consider each year, or invite a range of interested parties to meet and provide their views on issues of key concern and subsequently publishing information about those in attendance and the minutes of such meetings.

Maintaining the *status quo* – setting an agenda each year without explaining how the matters chosen for consideration either address the public interest or advance the implementation of Parliament's broadcasting and telecommunications policies for Canada – would surely contradict the concern raised by the Ministers to whom the CRTC reports.

~ Forum for Research and Policy in Communications (FRPC)

*Other comments in this series*

1 March 2023: [Openness means not hiding applications from public view](#)

2 March 2023: [Openness means not just describing but explaining the CRTC's process and proceedings](#)

3 March 2023: [Openness means 'real' public hearings, published decisions and published meeting schedules](#)

4 March 2023: [Openness means publishing information about CRTC meetings with those it regulates](#)