



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

9: *Openness means timeliness*

9 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 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 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 ..."

A little-known aspect of openness in the CRTC's proceedings is the important role that delay plays in obscuring how and on whose behalf the CRTC performs its responsibilities.

Delay is an important legal concept, one of a cluster of 'fundamental elements of natural justice'. Its importance flows from the idea that 'justice delayed, is justice denied'.³ In 2000 a divided Supreme Court noted on the one hand that "modern administrative law is deeply averse to unreasonable delay"⁴ and on the other that those "exercising statutory authority are bound" by the [Canadian Charter of Rights and Freedoms](#) despite their independence from government.⁵ (Section 7 of the *Charter* involves the concept of timeliness in that it grants everyone "the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.")

The CRTC has published studies undertaken to evaluate its compliance with legislated requirements over financial management,⁶ privacy,⁷ and access to information⁸ and these show or claim full compliance with timing requirements in those areas. Since the CRTC does not publish a single or even a few annual lists of its proceedings

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).

³ In 1646 John Musgrave printed a pamphlet entitled, *Another Word to the Wise, Shewing that the Delay of Justice, is Great Injustice*. Cited by Fred Shapiro, Yale Law Librarian in "[You can quote them](#)", *Yale Alumni Magazine* (Sep/Oct 2010).

⁴ [Blencoe v. British Columbia \(Human Rights Commission\)](#), 2000 SCC 44 (CanLII), [2000] 2 SCR 307, per Lebel J. (for the minority), at para. 156.

⁵ *Ibid.*, Bastarache J., for the majority, at para. 5. As an administrative agency responsible for implementing the *Broadcasting Act* and the *Telecommunications Act*, as well as [CASL](#) and the [Accessible Canada Act](#), the CRTC cannot "escape *Charter* scrutiny" (*Ibid.*, per at para. 37).

⁶ An October 2016 "[core control audit](#)" by the Office of the Comptroller General reviewed Commission's core controls over financial management.

⁷ According to the [Privacy Act - CRTC Annual Report - 2021-2022](#) at section 2.6, the CRTC completed all six requests made "within their legislative timelines."

⁸ [Access to Information Act - CRTC Annual Report - 2021-2022](#): "3.6.1 Number of requests closed within legislated timelines During the reporting period, of the 42 requests closed, 31 were closed within their legislative timelines." At section 3.7.1 the CRTC commented that because "74% of requests were closed on time. This demonstrates the CRTC's commitment to ensuring timely access to records."

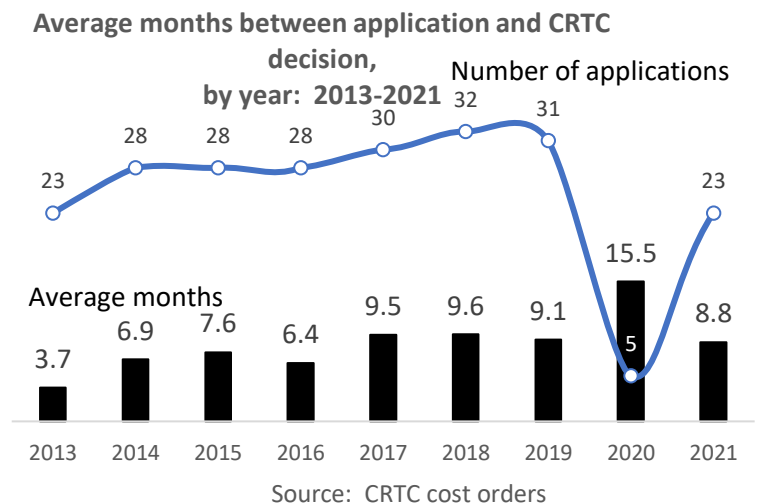


showing when they begin and end, however, there is no easy way to assess the CRTC's timeliness in performing its responsibilities.

That said, the CRTC is apparently still assessing its 1990 "[Native Broadcasting Policy](#)" – now the [Indigenous Broadcasting Policy](#) – after announcing its review nine times in the last fifteen years.⁹ Almost a decade has passed since the last uncontested renewal of the CBC's licences (in May [2013](#)) and in the more than five months since [Cabinet ordered the CRTC to reconsider](#) the determinations it made about the CBC [in late June 2022](#) the CRTC has not yet announced its process for that reconsideration. While in June 2016 the Commission described [local news as being "of central importance" as "a key part of the Canadian democratic system"](#) it took the Commission until [January 2016](#) to deal with complaints filed in May and June 2015 that Rogers' OMNI TV service had cancelled all third-language newscasts: though a 7.7 month delay in addressing this issue might not have mattered in any other year, a federal election was called on [4 August 2015](#); despite the importance of news the CRTC seemed indifferent to the loss of local television news on third-language communities whether in general or in the midst of a national election.

It is doubtless true that the Covid-19 pandemic affected the CRTC's operations. That said, FRPC's review of 100 "Part 1" broadcasting applications concerning technical amendments which broadcasters submitted to the CRTC during the 2019 calendar year found that the CRTC took an average of 8.5 months from the date the applications were filed to issue a decision, with 29% of the applications being decided within 3 months, 27% within 3 to 6 months, 15% within 6 to 12 months, 26% after a year or more and 3% not clearly indicating whether they have ever been decided formally.¹⁰

And while delays in approving frequency or contour changes may be inconvenient rather than harmful, actual harm might result from delays in enabling broadcasters to resolve competitive and access disputes. The CRTC even said in [2000](#) that processes enabling "speedy resolution of such disputes are essential ... to achieve its objective of fair and sustainable competition." As the CRTC publishes no summary information about disputes in which it is involved FRPC asked for these data under the *Access to Information Act* and received a 43-page PDF of a spreadsheet listing 210 dispute-resolution processes and showing their opening and closing dates. Based on the CRTC's data its ADR processes took an average of 7.7 months to close: staff-assisted mediations closed in an average of 9.2 months and cases in the 'mediation appeals program' took more than a year (15.9 months) to close. Are these timelines fair to all participants? The answer to this question is especially relevant as Parliament is even now considering the CRTC's involvement in mediating disputes between digital news intermediaries and news businesses. Whose interests are served if smaller entities feel compelled to settle disputes simply because their finances cannot support a



⁹ In its 3-year Plans for 2008-2011 (p. 9), 2012-2015 (p. 5), 2013-2016 (p. 9), 2014-2017 (p. 10), 2015-2018 (p. 9), 2016-2019 (p. 12), 2017-2020 (p. 10), 2020-2021 (at pp. 5, 8), 201-22 (p. 8) and in 2022-2023 (np).

¹⁰ Since the CRTC's published Part 1 applications report shows the dates it posted applications but not the date the applications were filed, each application had to be downloaded and opened to locate the date the applications were signed (which FRPC interpreted as the filing date, given that most if not all applications were filed online).



mediation-appeals process that lasts more than a year?

Delays may also be harmful in the case of CRTC decisions about civil-society organizations' applications for the reimbursement of their CRTC participation costs. As the CRTC does not publish readily usable information about this issue, FRPC – itself once a telecom-costs applicant – reviewed 228 cost applications submitted to the CRTC from 2013 to 2021. In 2013 the CRTC took an average of 3.7 months after receiving an application to make a decision; in 2015, 7.6 months and in 2021, 8.8 months.

Related to the ability of members of the public to participate in the CRTC's proceedings is the matter of its deadlines. Can this participation be effective when broadcasters or telecommunications companies spend months refining proposals to the CRTC, while the public is then granted a standard month by the CRTC to review, evaluate, find evidence and submit interventions dealing with the details of documents that are sometimes hundreds or even thousands of pages long? Even if some civil-society organizations have practice in dealing with lengthy applications, not every organization does.

Recommendation

Rather than awaiting directions from Cabinet or Parliament about the necessity for timeliness in its decision-making, the CRTC should set its own requirements for timeliness, as it has done in the past – but should also report on its ability to meet its own timing requirements, across all of its responsibilities. It could begin by adding a column to its 'Applications report' showing not just when it decides to post applications it has received, but when it received those applications.

Maintaining the *status quo* – leaving applicants wondering for months when or whether their applications will finally be determined by the Commission – would surely contradict the concern about openness 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](#)

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