



12 January 2024

Filed online

Marc Morin  
Secretary General  
CRTC  
Ottawa, ON K1A 0N2

Dear Secretary General,

**Re: *The Path Forward – Working towards a modernized regulatory framework regarding contributions to support Canadian and Indigenous content, BNoC 2023-138 (Ottawa, 12 May 2023) – Procedural request asking the CRTC to publish all requests for information which it makes in this proceeding and to publish all such requests in both official languages at the time the requests are made***

## I. Introduction

- 1 On 21 December 2023 CRTC staff e-mailed an English-language letter and a French-language letter in connection with the above-noted proceeding, saying that the letters were from the CRTC.<sup>1</sup> The two letters set out different requests for information and identified different respondents for each RFI.
- 2 The CRTC staff letters were directed to 75 e-mails in relation to 79 parties, including four program-production funding bodies that did not appear at the CRTC public hearing and that the CRTC was adding as parties:

... the Commission is also posing questions of certain entities who are not parties to the proceeding (non-parties) as this information will facilitate the Commission's consideration of the issues.<sup>2</sup>
- 3 The letters said that responses to the RFIs were due by Thursday, 18 January 2023, then four weeks away.

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<sup>1</sup> “Veuillez trouver ci-joint une lettre du CRTC à votre attention ;” and “Please find attached a letter from CRTC for your attention;”.

<sup>2</sup> CRTC Executive Director of Broadcasting, *Requests for information regarding the Contributions proceeding initiated by The Path Forward – Working towards a modernized regulatory framework regarding contributions to support Canadian and Indigenous content, Broadcasting Notice of Consultation CRTC 2023-138, 12 May 2023, (Ottawa, 21 December 2023)*, unnumbered paragraph 3.

- 4 On 4 January 2024 the CRTC's staff also sent an English-language letter and a French-language letter to the same parties with respect to the 2023-138 proceeding. Apart from the letter's date, the deadline – now Friday 26 January 2024 (three weeks later) – and a typographical error in one of the parties' names (“Communispotty Radio Fund”) the letters appear identical.
- 5 FRPC has been provided with copies of the 21 December 2023 and 4 January 2024 letters (the letters) by a non-CRTC source.
- 6 After determining that the letters were not posted on the CRTC's 2023-138 public record pages or elsewhere on the CRTC's website, FRPC sent an e-mail to the attention of the Secretary General ([marc.morin@crtc.gc.ca](mailto:marc.morin@crtc.gc.ca)) on 9 January 2024, requesting that the letters be placed on either the public record of the 2023-138 proceeding (1011-NOC2023-0138 [[English-language page](#)]; [French-language page](#)), or on the CRTC's Letters page for 2024 ([English-language page](#); [French-language page](#)). This e-mail is provided in Appendix 1.
- 7 FRPC received neither an acknowledgment of receipt nor a response from the Secretary General's office to this e-mailed request. We received instead an e-mail from a member of the Commission's staff on 10 January 2024. Referring to FRPC's 9 January e-mail, this e-mail said,

... all questions and responses will be published on the Commission's website when they are received. The due date for responses is 26 January. The Commission will also issue a dash [amendment to the 2023-138 notice of consultation] announcing the date for a final reply in upcoming weeks. Please watch the website for updates.

(Appendix 1)
- 8 The letters both added that “[a]ll parties will have the opportunity to provide comments on the responses to these questions when they submit final written submissions” and that the CRTC had not yet set a deadline for these final replies. FRPC notes that the CRTC's staff response does not state whether the CRTC intends to publish the responses it receives to its RFIs as soon as it receives such answers or *en masse* on a single date.
- 9 The CRTC's decision not to publish its staff's four letters and their RFIs raises several concerns:
  - the creation of a two-tier approach to interveners,
  - the failure to publicly announce the re-opening of a major proceeding
  - the forewarning regarding final-reply deadlines granted to some but not all participants
  - the fact that the French-language and English-language letters ask different questions and that, altogether, 18 of the 28 RFIs are not provided in both official languages
  - the creation of an incomplete and misleading public record, and
  - the question of whether the CRTC's *Rules of Practice and Procedure* apply to the 2023-138 proceeding.
- 10 These concerns are set out in the remainder of this letter, along with requests that the CRTC amend the procedures it is now using in the 2023-138 proceeding to ensure its openness and transparency.

## II. Concerns raised by the CRTC staff’s unpublished letters and RFIs

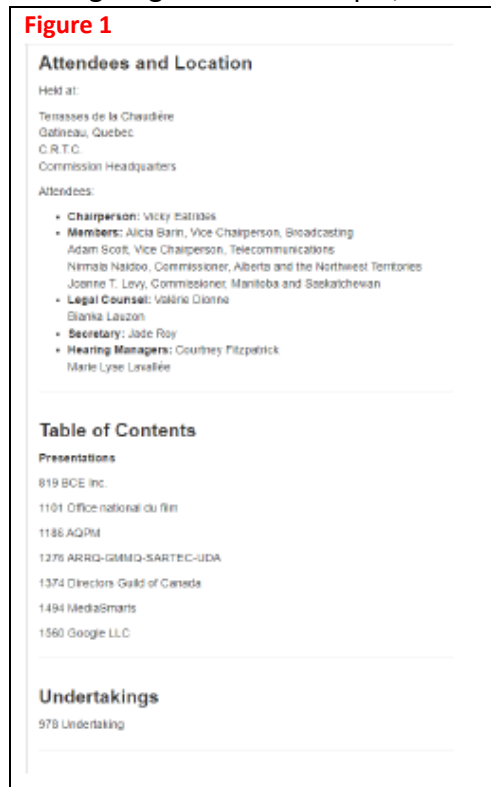
### A. Non-publication of RFIs and associated deadlines leaves all but 79 parties in the dark

11 On 8 December 2023, the last day of the CRTC 2023-138 public hearing, the Public Hearing/Audience publique section of the CRTC notified FRPC – and, we assume as the list of e-mail addressees was not provided, all other appearing interveners – by e-mail that Commission staff would be “sending specific Requests for Information (RFIs) to some interveners”. The e-mail said that undertakings made at the public hearing would be merged with this RFIs, leaving it unclear when this would take place or whether new questions would be included in the RFIs that were not directed at the interveners when they appeared before the CRTC’s 2023-138 hearing panel.

12 Undertakings made by appearing interveners at the CRTC’s 2023-138 public hearing were published in the 15 volumes of CRTC transcripts of this proceeding. Figure 1 for example, shows a single undertaking for the listing of undertakings (“Undertakings”) that follows the Table of Contents in the CRTC’s 21 November 2023 written transcript of the hearing. The undertaking was made by BCE. Such undertakings could apply only to the interveners who appeared at the hearing (as parties that did not appear could not be asked at the hearing to make undertakings).

13 The CRTC’s publication of its transcripts and the undertakings they include serves the public interest. Anyone consulting this public record can identify undertakings made at the hearings and the parties responsible for completing these. The 21 November transcript does not show any undertakings for Google, for instance, which also appeared before the hearing panel that day, but the CRTC’s 4 January 2023 letter asked it to respond to several RFIs.

14 By not publishing the CRTC’s letters and the RFIs they set out the CRTC has created two groups of interested parties: the 79 recipients of the RFIs who know what information the CRTC is seeking and from whom the information is being sought, and all other parties that participated in or are following the proceeding who have not been informed about the RFIs. Moreover, even if the questions are later published – say, in different respondents’ answers – the fact that the RFI respondents will have had roughly a month to consider the implications of the RFIs posed by the CRTC denies all other parties this time and the advantages of this knowledge. Equally concerning, continued use of a two-track or -tier system to its proceedings suggests that the Commission is effectively privatizing steps in the



major public process it is undertaking to modernize Canada’s broadcasting system, by making that which has been and should be public, private.

- 15 FRPC therefore requests that the Commission publish all four letters on the 2013-138 consultation pages to provide all parties with time to consider the questions and issues the CRTC through its staff has decided to raise after the end of the public hearing.

**B. CRTC has re-opened the 2023-138 record without public notice**

- 16 FRPC also notes that each of the CRTC’s staff letters said that their purpose was to let the CRTC “further develop the record” in response to comments received during the November-December public hearing, to update certain information and to “address any other gaps in the record collected to date: Table 1.

**Table 1**

**English-language letters**

**21 December 2023**

...

These RFIs will allow the Commission to further develop the record in relation to comments it received during the hearing held from 20 November to 8 December 2023, update certain information, and address any other gaps in the record collected to date. The RFIs focus on the three matters being examined as part of Phase 1 (applicability, initial base contributions and funds). ...

**4 January 2024**

...

These RFIs will allow the Commission to further develop the record in relation to comments it received during the hearing held from 20 November to 8 December 2023, update certain information, and address any other gaps in the record collected to date. The RFIs focus on the three matters being examined as part of Phase 1 (applicability, initial base contributions and funds). ...

**French-language letters**

...

Ces demandes de renseignements permettront au Conseil d’ étoffer davantage le dossier en fonction des observations reçues lors de l’ audience qui s’ est déroulée du 20 novembre au 8 décembre 2023, de mettre à jour certains renseignements et de combler d’ autres lacunes dans le cadre du dossier constitué à ce jour. Ces demandes de renseignements portent sur les trois questions examinées au cours de la Phase 1 (applicabilité, contributions initiales de base et fonds). ...

...

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- 17 In so doing, the CRTC appears to have re-opened the record of the 2023-138 proceeding to admit new evidence from both appearing and non-appearing interveners.

- 18 The CRTC’s letters go on to say that

All parties will have the opportunity to provide comments on the responses to these questions when they submit final written submissions. Note that the Commission has not yet set a date for parties to submit final written submissions – it will be announced later, in early 2024.<sup>3</sup>

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<sup>3</sup> CRTC Executive Director of Broadcasting, *Requests for information regarding the Contributions proceeding initiated by The Path Forward – Working towards a modernized regulatory framework regarding contributions to support*

- 19 The CRTC's practice to this point in its broadcasting proceedings has been to enable all interested parties to reply to new information placed on the record after the initial close of that record, following which parties may (if they wish) submit final replies. This two-step process serves the public interest by providing interested parties with the time to consider the implications of new evidence and, if necessary to gather the information necessary to challenge or support that evidence. This ensures all parties are able to review a complete record before they submit their final replies in the proceeding.
- 20 This current RFI process would now require all parties (including those currently unaware of the RFIs' contents) to consider the respondents' answers to the RFIs while writing their final reply. The public interest is not served by denying the majority of CRTC interveners in this proceeding the head start the CRTC's staff letters have granted to the RFI recipients.
- 21 To provide all interveners (and interested members of the public) with an equivalent playing field in terms of understanding the 2023-138 process, FRPC requests that the CRTC publish its four letters on its website forthwith, and at the same time issue a "2023-238-2" notice advising parties that the proceeding's record has been re-opened.

**C. *Forewarning regarding final-reply deadline not offered to all***

- 22 The CRTC staff's 21 December letter set out 18 January 2024 as the deadline for replies to RFIs, while its 4 January letter set 26 January 2024 as the reply deadline.
- 23 While the final reply deadline was never made clear in the 2023-138 proceeding or its public hearing, the 79 recipients of the RFIs now have more information about the potential timing of the final reply deadline in the 2023-138 proceeding than all other interveners and interested parties: the deadline can be no earlier than 29 January 2024 and may well be later (assuming that the RFIs require more than one business day of the CRTC hearing panel's time to review and assess).
- 24 FRPC requests that the CRTC publish the deadline for final replies in this proceeding forthwith along with the four RFI letters, ideally through the mechanism of a 'dash-2' notice ('2023-138-2'). If the CRTC is unable to disclose the final-reply deadline, publishing the RFI letters will at least provide all interested parties with a better understanding of the CRTC's thinking.

**D. *English-language and French-language letters ask different questions***

- 25 A side-by-side review of the CRTC staff's English-language and French-language letters of 4 January 2024 by FRPC found that the letters are not translations of each other. They instead provided the 79 parties with two different sets of questions: 22 questions in the English-language letter and 6 in the French-language letter. Footnotes to each of five questions in each letter directed readers to the number associated with that question set out in the other, different-language letter. For instance, the critical issue of thresholds at which contributions

will apply and the application of such thresholds to different types of broadcast holdings appears as RFI number 3 in the French-language letter, and as RFI number 12 in the English-language letter:

- 26 The English-language letters set out 17 questions not provided in the French-language letters, and the French-language letters provided one question not set out in the English-language letters, for a total of 23 different questions. The letters have altogether five questions in common: Table 2.

**Table 2**

<b>General subject</b>	<b>English-language version of RFIs - numbers</b>	<b>French-language version of RFIs - numbers</b>
Marketing/promotion of marginalized groups	3	1
Dedicated funding streams for Indigenous, racialized, OLMCs and other equity-seeking groups	5	5
Reporting of received funding	8	2
Applicability of thresholds levels (% of annual Canadian gross revenues) and application (to groups owning only audio, only audiovisual or audio and audiovisual undertakings)	12	3
More details about new funds party proposed	13	4

- 27 Of the six questions set out in the French-language letters, one is not a translation of a question in the English-language letters. In the English-language letter RFI number 6 asked about FACTOR’s emergency fund programs while in the French-language letter RFI number 6 asked Musicaction / Fonds RadioStar about types of funding made available for equity-seeking groups: Table 3.

**Table 3**

<b>English-language letter</b>	<b>French-language letter</b>
6. Please provide details of the “Emergency Fund” programs for the Live Sector that FACTOR referenced in its intervention. Please include information on the eligibility criteria used for the fund, eligible applicants and expenditures.	6. Veuillez svp a) confirmer si Fonds RadioStar offre des volets de financement s’adressant spécifiquement aux catégories d’artistes suivantes, et b) fournir une ventilation détaillée des montants pour chacune des 3 dernières années financières accordés en appui à: <ul style="list-style-type: none"> <li>• La commercialisation/promotion de musique d’artistes autochtones</li> <li>• La commercialisation/promotion de musique d’artistes racisés</li> <li>• La commercialisation/promotion de musique d’artistes provenant des CLOSM</li> <li>• La commercialisation/promotion de musique d’artistes provenant d’autres groupes en quête d’équité (par ex. 2ELGBTQI+)</li> </ul>

- 28 Moreover, while the majority of the RFIs in the CRTC’s English-language letter were not provided in the French-language letter, one of the unilingual English RFIs addressed

expenditures on French-language programming commissioned from official-language minority communities outside Quebec:

21 As discussed at the hearing, the Commission is interested in better understanding the activities of non-Canadian online undertakings with respect to original Canadian French- language programming and the acquisition of the rights of pre-existing Canadian French- language programming. Please provide the following additional information on your programming expenditures of the past 3 broadcast years:

a) the portion of your Canadian content (as it is currently defined by CAVCO, the CRTC and under the various co-production treaties administered by Telefilm) in relation to pre-existing Canadian French-language content;

b) the portion of your Canadian content (as it is currently defined by CAVCO, the CRTC and under the various co-production treaties administered by Telefilm) spent on original Canadian French-language and commissioned from (i) Quebec creators and (ii) official language minority communities outside Quebec.

29 Due to its status as a federal quasi-judicial agency established to supervise and regulate broadcasting on behalf of Parliament,<sup>4</sup> the CRTC is subject to the [Official Languages Act](#).<sup>5</sup> This statute – ascribed quasi-constitutional status due to its special purpose by a unanimous Supreme Court of Canada in 2002<sup>6</sup> – states in section 12 that

[a]ll instruments directed to or intended for the notice of the public, purporting to be made or issued by or under the authority of a federal institution, shall be made or issued in both official languages.

30 As the Supreme Court’s 2002 case explained, the *Official Languages Act* “must be so interpreted ‘as to advance the *broad* policy considerations underlying it’” [italics added].<sup>7</sup>

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<sup>4</sup> Subsection 3(1) of the *Canadian Radio-television and Telecommunications Act* establishes the Commission, section 4 requires members of the Commission to devote their time to performing the duties of the *CRTC Act* while subsection 12(1) defines the objects of the Commission in broadcasting to be those set out in the [Broadcasting Act](#). Subsection 5(1) of the *Broadcasting Act* requires the Commission to implement the subsection 3(1) broadcasting policy while having regard to the subsection 5(2) regulatory policy.

<sup>5</sup> *Official Languages Act*, R.S.C., 1985, c. 31 (4<sup>th</sup> Supp.) as am., s. 3(1):

...  
**federal institution** includes any of the following institutions of the Parliament or government of Canada:  
... (e) any board, commission or council, or other body or office, established to perform a governmental function by or pursuant to an Act of Parliament or by or under the authority of the Governor in Council ...

<sup>6</sup> *Lavigne v. Canada (Office of the Commissioner of Official Languages)*, 2002 SCC 53 (CanLII), [2002] 2 SCR 773, at paragraphs 23 and 25.

<sup>7</sup> *Ibid.* at paragraph 23, citing two Federal Court decisions:

The 1988 *Official Languages Act* is not an ordinary statute. It reflects both the Constitution of the country and the social and political compromise out of which it arose. To the extent that it is the exact reflection of the recognition of the official languages contained in subsections 16(1) and (3) of the *Canadian Charter of Rights and Freedoms*, it follows the rules of interpretation of that *Charter* as they have been defined by the Supreme Court of Canada. To the extent also that it is an extension of the rights and guarantees recognized in the Charter, and by virtue of its preamble, its purpose as defined in section 2 and its taking precedence over other statutes in accordance with subsection 82(1), it belongs to that privileged category of quasi-constitutional

31 FRPC celebrates the CRTC’s adherence to the legislation’s goals, evidenced in part by its receipt “of two Awards of Excellence and Leadership in Official Languages Committee [sic] as part of the 50<sup>th</sup> anniversary of the *Official Languages Act*.”<sup>8</sup> When it invited comment with respect to the review it was undertaking of its commercial radio policy in 2020, for example, the CRTC said in the notice of consultation that it must take that statute’s section 41 objectives into account:

The *Broadcasting Act* reflects the Canadian government’s commitment to a Canadian broadcasting system that serves as a standard-bearer for maintaining, developing and expressing Canadian linguistic duality, in addition to supporting and enriching the Canadian cultural fabric and remaining attentive to changes in public demand. The *Broadcasting Act* also indicates that, despite their commonalities, French- and English-language broadcasters operate under different conditions and may have different requirements. As a federal institution, **the Commission must take into consideration the objectives set out in section 41 of the *Official Languages Act* when reviewing and applying existing policies.**<sup>9</sup>  
[bold font and underlining added]

32 In late 2022 the CRTC re-affirmed its commitment “to the principles of the *Official Languages Act* and to having meaningful and ongoing consultations with groups that represent official language minority communities (OLMCs)” in a submission to the Standing Senate Committee on Transport and Communications.<sup>10</sup>

33 FRPC notes that the purpose of BNoC 2023-138 is not simply to review an existing CRTC policy, but to begin the establishment of an entirely new framework to support Canada’s broadcasting system<sup>11</sup> that will serve all people in Canada, whether they use either or both of Canada’s official languages. Yet as noted above most of the RFIs in the CRTC staff letters are set out in English only, including a question regarding OLMCs outside of Quebec.

34 FRPC also notes that each of the CRTC staff’s letters asked those responding to the RFIs to “repeat the Commission’s questions before answering them” and “[v]euillez répéter les questions du Conseil avant d’y répondre” – presumably by copying the questions into their written responses. (The CRTC does not suggest that the respondents translate the CRTC’s questions for the benefit of any unilingual readers and in any event such a requirement could yield inconsistent translations.)

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legislation which reflects “certain basic goals of our society” and must be so interpreted “as to advance the broad policy considerations underlying it.” [Emphasis added by Gonthier J.]

<sup>8</sup> *Infra*, note 8.

<sup>9</sup> *Call for comments – Commercial radio policy framework review*, [BNoC 2020-374](#) (Ottawa, 12 November 2020), at paragraph 65.

<sup>10</sup> CRTC, [BRIEF – CRTC POSITION ON SUBSECTION 5.2\(2\) OF BILL C-11](#), Submission to the Senate Standing Committee on Transport and Communications (Ottawa, 16 November 2022).

<sup>11</sup> BNoC 2023-138, para. 2:

[i]n the present notice, the Commission is launching Step 1 of a three-step process to establish a modernized contribution framework to support the Canadian broadcasting system, including Canadian and Indigenous content. This framework, once implemented, will set out the contributions that broadcasting undertakings, including online audio and video undertakings (online undertakings), will be required to make to support the creation, distribution, promotion and discoverability of Canadian and Indigenous audio and video content. ...



- 35 In a licensing proceeding it is practical to ask respondents to include the CRTC’s questions before their answers for two reasons. First, it is easier to understand responses when one knows what questions they answer. Second, most licensing proceedings involve relatively few applicants, and very few indeed include more than a dozen RFI respondents: this makes it comparatively simple to compare a small number of applicants’ answers to what is often a limited number of questions about a narrow range of issues.
- 36 The 2023-138 proceeding is significantly different not just because the CRTC has sent 28 different RFIs to more than six dozen (79) respondents, but also because the CRTC has directed different respondents to answer different RFIs.
- 37 In fact, none of the 28 English-language and French-language questions was asked of all respondents. The maximum number of respondents was 37 for English-language RFI question 12 and French-language RFI question 3. Fifteen other questions were addressed to just a single party: Table 4. (In other words, to fifteen different parties.)

**Table 4 Number of respondents to each RFI**

<b>CRTC RFIs of 4 January 2024</b>			
<b>RFIs sent to more than one party</b>		<b>RFIs sent to a single party</b>	
EQ12	37	EQ2	1
FQ3	37	EQ3	1
EQ13	32	EQ5	1
FQ4	32	EQ6	1
EQ8	20	EQ7	1
FQ2	20	EQ9	1
EQ20	6	EQ10	1
EQ21	6	EQ11	1
EQ22	6	EQ14	1
EQ17	4	EQ16	1
EQ1	3	EQ18	1
EQ4	2	EQ19	1
EQ15	2	FQ1	1
Notes: EQ – English-language RFI FQ – French-language RFI		FQ5	1
		FQ6	1

- 38 What this means is that interveners and members of the public who want to know all the questions the CRTC asked of the parties (including parties that did not appear at its public hearing) would have to review each of the answers of 15 respondents who were asked only one question, would have to determine which 2 respondents answered question 4, which respondents answered question 1, and so on.
- 39 Requiring all interested parties to read all the responses by all the respondents simply to determine whether the RFIs themselves are relevant to the parties’ concerns is an inefficient

use of time and resources.<sup>12</sup> It would be far more efficient for the CRTC to simply publish its staff's RFI letters, now, so that parties may plan their approach to reviewing RFI responses once these are posted.

- 40 As well, as at least one question related to OLMCs program expenditures outside of Quebec is in English only, those interested in this issue will need to be bilingual or to have the question translated, and will need to know which six parties received and answered that RFI.
- 41 Many of the largest parties in this proceeding were asked to respond to the CRTC staff's RFIs and therefore may already have prepared to deploy bilingual staff to review other respondents' answers. All other parties, including those who are not bilingual, are placed at a disadvantage because it will take them time to determine what the CRTC's RFIs were, whose answers they wish to review<sup>13</sup> and whether the questions and answers require translation (even if only undertaken through a free online translation application).
- 42 It is generally acknowledged that the CRTC is under enormous pressure to implement the *Online Streaming Act* as quickly as possible. The sudden and unexpected release of new materials in the 2023-138 proceeding may lead to the Commission's receiving additional procedural requests to grant interested parties time to respond to the new information, especially if the deadline for final replies is set out at the same time. This could be avoided.
- 43 FRPC asks the CRTC to direct that the four staff letters setting out RFIs be placed on the 2023-138 public record forthwith, so that all parties can now begin to plan the time and resources they will require to gather and review the new information requested by the Commission. We also request that all other correspondence between the CRTC, its staff and the parties in this important proceeding be posted on the public record by the end of the CRTC's next working day.
- 44 Moreover, and simultaneous with the posting of the CRTC's four staff letters, the CRTC should publish translations of the 17 questions asked only in English, and the one question asked only in French (question 6, which differs from question 6 in the English RFIs). This will enable the CRTC to comply with the *Official Languages Act* as Parliament intended: by giving language rights "a large, liberal and purposive interpretation" and by ensuring the "substantive equality" of Canadians' language rights.<sup>14</sup>

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<sup>12</sup> According to the CRTC's website, 366 parties intervened in the 2023-138 proceeding of which 211 identified themselves in terms of an organization. Say only half the organizations spent half an hour reading through all 79 parties' responses to identify the questions of interest to them and to determine which respondent answered the questions: the total time used collating questions (not analyzing responses) would amount to just over a week (6.25 days).

<sup>13</sup> As, for example, the CRTC's English-language and French-language letters often used different versions of the names of parties when specifying respondents to the RFIs: "Telefilm" and "Téléfilm Canada", for instance. Such minor differences may be of little consequence for those planning to review the documents only in Word or PDF format – but are significant impediments to those interested in collating the answers in a spreadsheet (as these will treat any difference in a name's characters – even missing periods in abbreviations such as "Inc" – as if there is more than one name).

<sup>14</sup> [Official Languages Act](#)

3.1 For the purposes of this Act,

(a) language rights are to be given a large, liberal and purposive interpretation;  
(b) language rights are to be interpreted in light of their remedial character;  
(c) the norm for the interpretation of language rights is substantive equality; and

### **E. Failure to publish all CRTC correspondence creates misleading public record**

- 45 FRPC notes that the 4 January 2024 CRTC staff letter that changed the deadline set out in the staff's 21 December 2023 letter does not refer to the earlier letter.
- 46 The absence of any reference in the 4 January 2024 letter to the 4 December letter heightens the possibility of confusion in a proceeding that is already complex. Parties unfamiliar with the CRTC's practices may believe incorrectly that the CRTC first issued its RFIs on 4 January instead of three weeks earlier on 21 December.
- 47 The absence of any explanation for re-issuing the 21 December 2023 letter (with a different date and deadline) is also confusing. The second letter implies that all parties have been granted the same time to submit their answers; this is only correct if all of the parties who received the 4 January letter also received the 21 December letter: if this were the case, what led to the same letters' being sent twice?
- 48 Publishing only the most recent (4 January) staff letter also implies incorrectly that the post-hearing public record consists only of the 4 January 2024 letter. A misleading public record does not serve the public interest for several reasons. First, it implies that the Commission, a federal quasi-judicial tribunal, is indifferent to the correctness of the records of its proceedings, thereby bringing the administration of justice into disrepute. This, of course, cannot be the CRTC's intention.
- 49 Second, misleading statements have the potential to misdirect other parties that, in the future, may wish to review this record. The 1991 *Broadcasting Act*, for example, provided a right of appeal to the Federal Court of Appeal with respect to "decisions" of the Commission, a term inevitably introducing uncertainty because the CRTC uses different terms for its determinations including "Decision", "Public Notice" and "Regulatory Policy" and "Order". In 2023, however, the *Online Streaming Act* clarified this issue by defining 'decision' using the same broad language in the *Telecommunications Act* – namely, as including (but not being limited to) any 'determination' issued by the Commission. As a result, any 'Regulatory Policy' flowing from the CRTC's Regulatory Modernization initiative may more easily be challenged before the Federal Court of Appeal. Clarifying the status of the CRTC's 21 December and 4 January letters in this proceeding will alleviate the burden that would otherwise exist for any review in the future to attempt to understand the process followed by the CRTC in the 2023-138 proceeding whether before, during or after its public-hearing component.<sup>15</sup>
- 50 To limit current and future misunderstanding and confusion in this proceeding FRPC requests that the CRTC publish all four of the its staff's letters on the 2023-138 proceeding forthwith, along with its rationale for issuing the 4 January 2024 letter.

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(d) language rights are to be interpreted by taking into account that French is in a minority situation in Canada and North America due to the predominant use of English and that the English linguistic minority community in Quebec and the French linguistic minority communities in the other provinces and territories have different needs.

<sup>15</sup> Parties may, for instance, file documents with the CRTC Secretary of its hearings, while such hearings are "in progress": [Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure](#), section 13(2).

**F. Rules of Practice and Procedure *re contact with Commission disregarded or set aside***

- 51 As noted above, FRPC received neither an acknowledgment of receipt nor a response from the office of the Secretary General to FRPC's 9 January 2024 e-mailed request regarding the publication of the four RFI letters. It received instead an e-mail from a member of the Commission's staff on 10 January 2024.
- 52 Subsection 13(1)(b) of the Commission's 2010 *Rules of Practice and Procedure*<sup>16</sup> sets out the process parties such as FRPC must use to file documents with the CRTC:

Filing of documents

13 (1) A document must be filed with the Commission

(a) in the case of an application, by sending the document to the Office of the Secretary General by any electronic means that permits its intelligible reception, as set out in Broadcasting and Telecom Information Bulletin CRTC 2010-453, as amended from time to time; and

(b) in the case of any other document, by delivering it by hand to the Office of the Secretary General, or sending it to the Office by mail or any electronic means that permits its intelligible reception.

[underlining added]

- 53 Given the absence of any reply to the e-mail FRPC directed to the attention of the Secretary General, FRPC requests confirmation of the correct e-mail for the Office of the Secretary General so that FRPC may comply with the CRTC's *Rules* in this proceeding and others going forward.

Thank you for your time; FRPC looks forward to the Commission's response to this procedural request.



Monica Auer, M.A., LL.M.  
Executive Director  
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Appendix 1

**From:** M.L. Auer <[execdir@frpc.net](mailto:execdir@frpc.net)>  
**Sent:** Tuesday, January 9, 2024 4:25 PM  
**To:** Morin, Marc (CRTC) <[Marc.Morin@crtc.gc.ca](mailto:Marc.Morin@crtc.gc.ca)>  
**Cc:** [REDACTED] <[REDACTED]@crtc.gc.ca>; [REDACTED] <[REDACTED]@crtc.gc.ca>  
**Subject:** 2023-138 - RFIs

Dear Secretary General,

The Forum for Research and Policy in Communications (FRPC) has been participating in the CRTC's 2023-138 process since May 2023, including at the public hearing that ended 13 December 2023.

We have been reliably informed that on or around 21 December 2023 a senior member of the CRTC's staff wrote to a number of appearing interveners and non-appearing parties to request information, with a deadline for answers of 18 January 2024 and that, as some recipients did not receive the requests for information (RFIs), the RFIs were re-sent to all parties earlier this month. We had understood that the deadline for these responses remained 18 January 2024 - but have now been informed that this deadline has changed.

The nature of the information being sought by Commission staff regarding 2023-138 is relevant to parties interested in the matters raised in this proceeding, while knowing the deadline(s) involved enables parties involved to budget their time for their final replies (should they choose to do undertake these) in the process.

FRPC asks that the Commission at its earliest convenience publish all requests for information that it or its staff have made since the last day of the public hearing (13 December 2023) in relation to the 2023-138 proceeding both on the record of that proceeding (1011-NOC2023-0138 at <https://applications.crtc.gc.ca/instances-proceedings/Default-Default.aspx?lang=eng&YA=2023&S=C&PA=b&PT=nc&PST=a#2023-138>) and on its Letters page (<https://crtc.gc.ca/eng/8045/lc.htm>).

Publication of these materials would align with previous CRTC practice, will provide all interested parties and participants with the opportunity to more fully understand the issues at play in this proceeding, and will also enable parties to plan their time going forward insofar as replies are concerned. Improving parties' understanding and their ability to participate benefits the Commission and hearing panel by making it possible for interveners to file final comments on a more informed basis.

Thank you for your time,

Monica Auer, M.A., LL.M.  
Executive Director  
Forum for Research and Policy in Communications (FRPC)  
Ottawa, Ontario  
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Postscript: I have taken the liberty of copying [two CRTC staffpersons] on this e-mail as I am uncertain whether '[marc.morin@crtc.gc.ca](mailto:marc.morin@crtc.gc.ca)' will reach your office, and respectfully ask that they forward this email to you should the address used be incorrect.



[Redacted]

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**RE: 2023-138 - RFIs**

1 message

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[Redacted]@crtc.gc.ca>  
To: "execdir@frpc.net" <execdir@frpc.net>

Wed, Jan 10, 2024 at 9:50 AM

[Redacted]

Thanks for your email. I can confirm that the RFIs have been sent to parties who are required to respond. I can also confirm that all questions and responses will be published on the Commission's website when they are received. The due date for responses is 26 January. The Commission will also issue a dash announcing the date for a final reply in upcoming weeks. Please watch the website for updates.

Thanks

[Redacted]  
*Gestionnaire, Audiences publiques | Manager, Public Hearings*  
[Redacted]

\* \* \* End of document \* \* \*