



9 September 2025

Marc Morin
Secretary General
CRTC
Ottawa, ON K1A 0N2

Dear Secretary General,

Re: *Call for comments – A new approach to funding public interest participation in Commission proceedings*, [Broadcasting and Telecom Notice of Consultation 2025-94](#) (Gatineau, 12 May 2025)

- 1 The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established a decade ago to undertake research and policy analysis about communications, including telecommunications, and to advocate on behalf of the public interest.
- 2 The Forum's comments concerning the above-noted proceeding are attached. FRPC reserves the right to respond to other parties' comments in greater detail in its reply (for which the CRTC's deadline is currently 9 October 2025).

Monica L. Auer, M.A., LL.M.
Executive Director
Ottawa, Ontario
www.frpc.net

execdir@frpc.net



***Streamlining participation
in CRTC proceedings
in the 21st century***

**Comments by the
Forum for Research and Policy in Communications (FRPC)**

In response to

***Call for comments – A new approach
to funding public interest participation
in Commission proceedings***

**[Broadcasting and Telecom Notice of Consultation 2025-94](#)
(Gatineau, 12 May 2025)**

9 September 2025

Monica L. Auer, M.A., LL.M.
Executive Director
Ottawa, Ontario
execdir@frpc.net

Contents

Executive Summary	1
I. Supporting public-interest participation in CRTC proceedings	1
II. Two statutes, two directives and two costs systems	5
A. Telecom (since 1976)	6
B. Broadcasting (since 2012)	7
III. Public-interest participation in CRTC proceedings: challenges	14
A. Decision-making timeliness	15
1. Telecom process	15
2. Broadcasting process	17
B. Rates for telecom and broadcast cost applications set in 2007	18
C. CRTC decisions to deny process to some applications	20
IV. Impact of legislative change, Cabinet <i>Directions</i> and CRTC process	22
A. Legislative change and a new public-interest participation Fund	22
B. <i>Cabinet Directions</i>	25
C. Changes in CRTC process	26
V. Communications Participation Fund: a proposal	28
A. Legislative authority	29
B. Eight principles underlying financial support of public-interest participation	31
C. Communications Participation Fund	33
1. Purpose	34
2. Establishment	40
a. Expedited process	41
b. Routine process	41
3. Structure / Organization	43
4. Funding	45
5. Eligibility	50
6. Rates	51
7. Types of costs	53
8. Timeliness	54
9. Accountability	55

Tables

Table 1	Applicants for public-interest costs in seven or more years from 2013 to 2025	4
Table 2	Legislative authority regarding costs in telecommunications	6
Table 3	BPF-FPR applications by year and turnaround time, 2013-2024	18
Table 4	Public-interest costs in Canada's telecommunications and broadcasting statutes	24
Table 5	Sequence of Parliament's public-interest participation requirements	29
Table 6	Steps in deciding cost applications	30
Table 7	Timing of decision to establish proposed CPF/FPC	42
Table 8	Proposed Board structure for CPF/FPC	45
Table 9	Changes in total cost order amounts claimed, 2013-2024	47
Table 10	Current (2007) and proposed scale for public-interest participation costs	52

Figures

Figure 1	CRTC website Home Page [Accessed 3 September 2025]	2
Figure 2	CRTC invites Canadians to "have their say" [Accessed 3 September 2025]	2
Figure 3	Canadians' knowledge of public consultations in May 2024	3
Figure 4	Participants seeking costs, 2013-2025	5
Figure 5	CRTC Telecom Cost Orders, 2000-September 2025: number and timing	16
Figure 6	CRTC Telecom Cost Orders, 2013-Sept/25: waiting time for cost decisions	17
Figure 7	Reduction in value of legal-service rates from 2007 to 2025	20
Figure 8	Cost awards/orders in broadcasting and telecom, 2013-2025	44
Figure 9	BPF-FPR expenditures, 2013-2024	46

Appendices

Appendix 1	Answers to the CRTC's questions	1
Appendix 2	List of seven CRTC practice notes on its website	17
Appendix 2	Unavailability of CRTC Legal Directorate's 24 April 2007 <i>Practice Note</i>	18
Appendix 3	<i>Re: Review of the Rates set out in Appendix A of the Legal Directorate's</i> Guidelines for the Taxation of Costs, [CRTC] Practice Note (Ottawa, 24 April 2007)	19
Appendix 4	The development of caselaw regarding public-interest participation	27
Appendix 5	The development of the CRTC telecom costs process	39
Appendix 6	Sepulveda Consulting Inc., <i>Recommendations for CRTC Intervener Cost Award Rate Structures and Levels</i> , Report (Toronto, 9 September 2025)	50

Executive Summary

I Introduction

- ES 1** The Forum for Research and Policy in Communications (FRPC) is a not-for-profit corporation established in late 2013 to undertake legal, policy and empirical research about issues related to telecommunications and broadcasting in Canada.
- ES 2** FRPC appreciates the CRTC's publication of [BNoC 2025-94](#) as the Commission's decision in this proceeding may address long-standing problems with respect to support for public-interest participation which include (but are not limited to) the nine months that public-interest participants currently wait on average for a CRTC decision about telecom cost applications as well as a rate structure for public-interest participation that has not changed in 18 years.
- ES 3** FRPC's intervention begins by acknowledging the CRTC's efforts to encourage more public participation in its proceedings, but notes that in 2024 62% of Canadians said they did not really know how to participate in a public consultation.
- ES 4** While in rare proceedings such as the CBC's licence renewal thousands of people express their views to the Commission, for the most part it falls to specialized participants to file interventions or comments that reflect the public interest. Very few are able to participate consistently over the long term. Of the 76 public-interest parties that applied for the reimbursements of their costs in CRTC proceedings from 2013 to 2025, just eight (8) participated in proceedings in seven or more of the years in that period.

II Context: two statutes, two directives and two systems

- ES 5** Part II of FRPC's comments sets out the legislative approach to public-interest participation costs. We show how Parliament amended the CRTC's enabling statute in telecommunications in 1993 to simplify the language previously used regarding the payment of costs in these proceedings. The Commission now has the discretion to decide or to have another party decide public-interest participants' costs of participation, and to order a specific party or parties to pay those costs.
- ES 6** The Forum then describes the CRTC's innovative decision in 2011 to accept a proposal that it establish an independent third party – the Broadcasting Participation Fund (BPF), Inc./Le fonds de participation à la radiodiffusion (FPR) – to reimburse public-interest participants' costs in CRTC broadcasting

proceedings, by requiring four payments to be made to the BPF-FPR through the Commission's ownership-related tangible benefits policy.

ES 7 FRPC then shows how unstable funding due to the CRTC's belief that it lacked jurisdiction to grant costs related to public-interest participation in broadcasting led the Board of Directors of the Fund to devote more and more of their time to pleading for financial assistance – and also to the Board's decision in three separate years to withhold 25% of the costs it awarded to applicants to keep the Fund afloat. While these 'holdbacks' were ultimately paid to applicants, they did not receive interest in exchange for what was effectively an involuntary loan to the BPF-FPR.

III Supporting public participation means reducing financial barriers

ES 8 The CRTC's current approaches to supporting public-interest participation in telecommunications and broadcasting impose three barriers to public-interest entry in the CRTC's proceedings:

- a. No compensation for the loss in the value of cost reimbursement when decisions about their cost applications are delayed for months or years (as in 2020 and 2022, when the average time from cost application to telecom cost order was 1.2 and 1.1 years, respectively); potential public-interest participants cannot be expected to assume significant financial costs without a reasonable expectation of timely payment;
- b. Public-interest participation rates or tariffs have not changed in 18 years, forcing public-interest participants to either limit the time they devote to CRTC proceedings (to pursue better-compensated work in other areas) or to ask their staff, consultants and experts effectively to donate some of their time (as they will not be paid current rates for their work); and
- c. CRTC-based rules prevent public-interest participation by limiting the reimbursement of CRTC costs to the date when the CRTC formally announces consultations and applications, even when the CRTC has announced the proceedings weeks, months or years in advance – enabling all other parties to plan their work and gather evidence more efficiently and reducing their last-minute expenses; while the companies may challenge public-interest participants' cost applications in the CRTC's costs process, public-interest participants are not reimbursed for any time they spend responding to such challenges.

IV Impact of change in legislation, Cabinet *Directions* and CRTC process

- ES 9** The 1993 *Telecommunications Act*, the April 2023 *Broadcasting Act* and the 2023 Cabinet *Directions* regarding telecommunications and broadcasting give the CRTC discretion and also impose constraints.
- ES 10** While they use different wording, the Commission's two enabling statutes now each give it the discretion to order parties to make payments to other parties with the objective of funding public-interest participation in CRTC proceedings along with new, objective research and development initiatives to increase and strengthen their expertise.
- ES 11** That said, Parliament has stated explicitly that public-interest participation funding made available under the *Broadcasting Act* cannot be paid to the CRTC or to a fund administered by the CRTC. Consequently if a single funding mechanism is desirable – and FRPC believes it is as an organization focussed on one task can operate more efficiently and agilely than an organization such as the CRTC which is focussed on matters related to broadcasting, telecommunications, online news, electronic spam as well as elections.
- ES 12** Cabinet's *Directions* with respect to telecommunications and broadcasting policy tell the CRTC to “consider how its [telecommunications] decisions would promote ... consumer interests and innovation” and to “consider the need for sustainable and predictable funding to support” public-interest participation in broadcasting proceedings. Cabinet's broadcasting *Direction* also requires the Commission to make any changes needed to implement to its regulatory framework for broadcasting and Cabinet's *Direction* before 9 November 2025.

V Communications Participation Fund / Fonds pour la participation aux communications

- ES 13** Over the last half century Parliament enacted new broadcasting and new telecommunications legislation – and Canada itself changed. In the late 1960s and 1970s Parliament established the Commission to ensure that reliable communications services were available to all and to ensure that Canadians were reflected to themselves and the world.

Parliament wants more public-interest participation in CRTC proceedings

- ES 14** The needs Parliament identified for telecommunications and broadcasting almost half a century ago remain today – and have been supplemented by Canadians' right to be able to hold governments to account through transparency and decision-making that serves the interests of Canadians and

Canada. In amending its 1991 *Broadcasting Act* and the 1993 *Telecommunications Act* Parliament has expressed its intention that the Commission broaden rather than limit or narrowly interpret its support for public-interest participation in its proceedings

Eight principles must be considered

ES 15 FRPC sets out 8 principles that should be considered before the Commission decides the matters in 2025-94:

- How establishing an independent and neutral third-party organization that enables participants to make their case in support of the public interest, including consumer interests, more effectively, lends **legitimacy** to the CRTC's decisions.
- How a clearly stated **purpose** of a new public-interest funding mechanism – say, a Communications Participation Fund / Fonds pour la participation aux communications (CPF/FPC) enables this mechanism to reimburse public-interest participants' advance, interim and/or final costs in CRTC proceedings and – just as importantly - to provide financial support for public-interest participant initiatives to strengthen their participation through research and development.
- How the participation of **qualified public-interest participants** whose submissions are relevant, reflect Parliament's goals and/or reflect Canadians' concerns and made in a professional manner increases the information and ideas available to the Commission.
- Whether a new funding mechanism is itself funded to provide the structure and organizational **capacity** to meet its purpose effectively and in a businesslike manner.
- The imperative for consistent, **stable** funding that keeps pace with inflation, its purpose and public-interest participants' needs
- A requirement for decision-making based on a 60-day **timeliness** standard to decide and pay public-interest participants' costs .
- The need for **efficient** operations including the processing and decision-making of applications, the design of cost applications and more frequent meetings with cost applicants to elicit their concerns (if any), and
- **Accountability** for applicants, public-interest participants, the Commission, the companies and Parliament through transparent operations, published decisions and quarterly reports.

Use the BPF-FPR as a base for a new Communications Participation Fund / Fonds pour la participation aux communications

- ES 16** FRPC proposes that the CRTC leverage the existing structure of the Broadcasting Participation Fund (BPF), Inc./Le fonds de participation à la radiodiffusion (FPR) to establish a new participation fund to support and strengthen public-interest participation in broadcasting and telecommunications: the Communications Participation Fund / Fonds pour la participation aux communications (CPF/FPC).
- ES 17** The CPF/FPC would reimburse the costs of qualified public-interest participants' participation in CRTC broadcasting and telecom proceedings, in an efficient, timely and businesslike manner, and – similar to organizations such as FACTOR – would provide financial support to these parties to undertake research about matters within the CRTC's jurisdiction and to develop their expertise through activities such as conferences.

If CRTC accepts CPF/FPC concept, next steps and timing

- ES 18** If the Commission approves of the idea of using incremental changes to the BPF-FPR to create a new Fund, its decision in this proceeding (2025-94) should invite the BPF-FPR to develop draft *Articles of Incorporation* and *By-laws* for the Commission's review, and subsequently publish these for public comment. FRPC recommends that the By-laws state explicitly that public-interest applicants may apply for advance, interim and/or final costs, and that the Fund must also be used to support development of public-interest participants' expertise.
- ES 19** Given the broadcasting *Direction* on the timing for implementing the *Online Streaming Act* and the fact that the BPF-FPR has announced it will not accept cost applications after this October (next month), **expeditious decision-making by the Commission is required**. It may be possible for the CRTC to issue its 2025-94 determination and complete the steps needed for the CPF/FPC to launch either before the end of January 2026 using a slightly expedited CRTC consultation process, or by mid-February 2026 if the Commission uses its conventional, 30-day comment process. (These estimates take the CRTC's *Rules* for timing between December and January into account and offer seven scenarios for the time to issue the 2025-94 decision, ranging from 4 to 10 weeks after the 9 October 2025 replies are submitted.)

Decision-making Board of CPF/FPC

- ES 20** The BPF-FPR currently consists of a three-member board consisting of a neutral Chairperson, an industry representative and a consumer representative who are experienced but not currently employed or working in broadcasting. As the

number of applications that the CPF/FPC would process would at least double, and given the technical nature of telecom proceedings, the CPF/FPC's Board should consist of seven members: a neutral Chair with legal experience (as with the Copyright Board of Canada), three members with previous experience in telecom and three with previous experience in broadcasting. The telecom and broadcasting members would make up telecom and broadcasting Committees of the CPF/FPC:

BPF-FPR	CPF/FPC	
Neutral Chair	Neutral chair with legal experience	
Industry representative	Telecom Committee	Broadcasting Committee
Consumer representative	<u>3 telecommunications members:</u> 1 industry representative 1 consumer interest representative 1 public-interest participant representative	<u>3 broadcasting members:</u> 1 industry representative 1 consumer interest representative 1 public-interest participant representative

Administrative support for CPF/FPC Board

- ES 21** The BPF-FPR has operated with one part-time costs officer and one part-time accountant, accounting for \$1.23 million of its expenses from 2013 to 2024, and it has retained external services each year (annual legal costs year since 2013 total \$488,381).
- ES 22** It is unlikely that the CPF/FPC would be able to function efficiently and in a business-like manner with part-time support. The Board of a new Fund must formalize more timely notification requirements, publish its decisions and report quarterly. More documentation will need to circulate among its members, potentially under deadlines. (The proposed CPF/FPC may not require a formal [and costly] office, but may need a budget to rent meeting space so that its Board and staff can interact.) The CPF/FPC should have an annual budget to pay for a full-time Executive Director, a full-time technical advisor to the Board with experience in telecom (and if possible, broadcasting) and either a full- or part-time accountant to track applications and meet reporting requirements.
- ES 23** Full-time support should enable the Board to issue decisions and payments within a maximum of 60 days, while also notifying applicants when their applications will be considered, considering cost applications, notifying applicants promptly of Board costs decisions and implementing formal accountability mechanisms. (The absence of these procedures has created significant uncertainty among applicants.) The CPF/FPC should publish its decisions, to avoid leaving public-interest participants in the dark as to what is or is not acceptable to the Board.

- ES 24** Back-of-the-envelope calculations offer an idea (not a formal estimate of any kind) of the expenses involved in operating a new mechanism like the CPF/FPC:

Expenses related to Board and staff	Hypothetical annual cost*
7 Board members at \$1,000/month	\$84,000
Executive Director	\$150,000
Costs Officer	\$100,000
Audit	\$80,000
Total	\$330,000
* Excludes ancillary costs such as benefits; assumes that the costs will increase with annual inflation	

- ES 25** This estimate is based, however, on the existing public-interest participants that applied for costs – so that if the CRTC were to change its eligibility criteria to encourage more participants, the figures above would be underestimated, necessitating recalculation.

Funding the CPF/FPC

- ES 26** The purpose of the CPF/FPC would be to administer a Fund that would receive annual and predictable funding. The central challenge is that it is somewhat difficult to estimate in a current year the number, types and public-interest-participation costs of CRTC proceedings that will be undertaken going forward. As the table below shows, one year's proceeding at times could result in anywhere from two to four times the dollar-amount of costs of proceedings in the previous year:

Year of order	Broadcasting	Telecom	Total	Current year's amount divided by previous year
2013	\$355,811	\$596,467	\$952,278	
2014	\$808,127	\$370,261	\$1,178,388	1.24
2015	\$347,088	\$527,151	\$874,239	0.74
2016	\$ 1,073,597	\$275,457	\$1,349,054	1.54
2017	\$894,069	\$1,572,891	\$2,466,959	1.83
2018	\$162,096	\$614,846	\$776,942	0.31
2019	\$191,328	\$709,387	\$900,715	1.16
2020	\$284,704	\$70,297	\$355,002	0.39
2021	\$904,569	\$498,427	\$1,402,996	3.95
2022	\$123,072	\$287,318	\$410,390	0.29
2023	\$246,860	\$349,418	\$596,279	1.45
2024	\$560,195	\$403,272	\$963,468	1.62

ES 27 To meet the principle of stability, however, the CPF/FPC must be able to cope with unexpected increases and decreases from one year to the next. The risk of underfunding could be minimized by ensuring that the Fund always has access to at least three times the amount allocated to public-interest participants in a previous year. If the Commission agreed to increase the rates for participation that it set in 2007 – say, by an average factor of 52.7% [the overall Benchmark factor, developed in the independent benchmarking analysis undertaken for this proceeding] – one could make some back-of-the-envelope calculations.

ES 28 This back-of-the-envelope analysis suggests that the total first-year costs for the CPF/FPC's operations, cost claims and research/development expenditures could amount to \$7.1 million:

Expenditure components	Hypothetical annual cost in Year 1*
Expenses related to Board and staff	\$330,000 x 2 (estimated benefits) = \$660,000
2024 cost claims	\$963,468
2024 cost claims X 52.7% (Benchmark factor average)	\$1,471,215
Subtotal, Board expenses + cost claims with Benchmark factor	\$2,131,215
Research and development	\$250,000
Subtotal, annual operating and claims expenses	\$2,318,215
Total Fund, Year 1: annual subtotal of operating and claims X 3 (current + 2-year reserve for unexpected increases)	\$7,143,645
* Going forward forecast budgets would have to provide for the annual CPI increases that the Benchmark analysis recommends	

Source of CPF/FPC funding

ES 29 According to the CRTC's Open Data files, Canadian telco and conventional broadcasting revenues totalled \$74,322 million in 2023.

	\$ millions
Conventional Canadian broadcasters	\$14,700
Telcos	\$59,622
Total	\$74,322
X 75% (assumes 5 largest companies in each sector make payments)	\$55,742
CPF/FPC operating and claim expenses – year 1 estimate	\$7.14
As % of total large Canadian companies' revenues	0.013%
1 % of the large Canadian companies' revenues:	\$557.4

ES 30 If roughly three-quarters of Canadian telco and conventional broadcasting revenues go to the three or four largest companies in each of broadcasting and telecom, the largest companies' revenues would amount to \$55.7 billion.

- ES 31** In its first year the total operating and expenses of the proposed Communications Participation Fund / Fonds pour la participation aux communications would be *approximately* \$7.14 million – or 0.013 % of the large Canadian companies’ combined broadcasting and telecom revenues.
- ES 32** By way of perspective, 1% of the large Canadian companies’ total revenue in 2023 was \$55.4 million (or nearly 80 times what the CPF/FPC may require).
- ES 33** Consequently the impact of a strengthened public-interest participation fund such as the CPF/FPC would be *de minimus*, and it may be unnecessary to seek supplementary financial support from the federal government (Unless the unexpected were to happen and cost claims from one period to the next quadrupled or more).

Scale of costs for services

- ES 34** A benchmarking study commissioned to provide independent expert analysis reviewed the current rates for services set by the CRTC in 2007 and the rates established by four provincial regulatory authorities (from BC, Alberta, Ontario and Quebec) in 2007 and in 2025 (Appendix 7). The study’s recommendations regarding rates are summarized in the following table; a second recommendation is that the rates increase automatically each year based on the Consumer Price Index measure of inflation.

Guidelines for the Taxation of Costs, Revised as of 24 April 2007				Benchmarking report		
Legal Fees (Outside Counsel) – Hourly rates				External counsel		Benchmark report comments
Service Provider	Completed Years of Practice	Hourly Rate		Proposed compl’d years of practice	Proposed rates	Rates should increase by 55.7%
Legal Assistant	-	\$35		0 to 5	\$265	
Articling Student	-	\$70				
Legal Counsel	0-2	\$135				
Legal Counsel	3-5	\$165				
Legal Counsel	6-10	\$206		6 to 10	\$335	
Legal Counsel	11-19	\$250		11 to 19	375	
Legal Counsel	20+	\$290		20 +	425	
Expert Witnesses						
Service provided		Rate	Est'd hourly rate (~ 7 hour day)	Proposed compl’d years of practice	Proposed rates	Rates should increase 60%
Attendance at an oral hearing in order to testify		\$1650/day	\$236		\$360	
Other Services		\$225/hour				
Hourly						



Guidelines for the Taxation of Costs, Revised as of 24 April 2007				Benchmarking report		
Consultant and Analyst Fees – Hourly rates				Rates should increase 43.9%		
Service Provider	Completed Years of Practice	Hourly Rate				
Analyst/Consultant	0-4	\$110				
Intermediate Analyst/Consultant	5-8	\$165				
Senior Analyst/Consultant	9+	\$225				
				20 +	\$360	
In-house Fees – Daily rates						
Service Provider	Completed Years of Practice	Daily Rate		Proposed compl'd years of practice	Proposed rates	71.3% increase
Legal Assistant	-	\$175		0 to 5	\$106	
Articling Student	-	\$235		6 to 10	\$134	
Legal Counsel	0-8 years	\$600	\$86	11 to 19	\$150	
Legal Counsel	over 8 years	\$800	\$114	20 +	\$170	
Analyst/Consultant	-	\$470	\$67	0 to 5	\$72	
				6 to 10	\$100	
				11 to 19	\$124	
				20 +	\$144	

ES 35 The study also recommends that Commission consider reviewing its approach to establishing its rates scale in five to eight years.

Responses to 2025-94 questions

ES 36 FRPC's responses to the CRTC questions in 2025-94 are set out in Appendix 1.

I. Supporting public-interest participation in CRTC proceedings

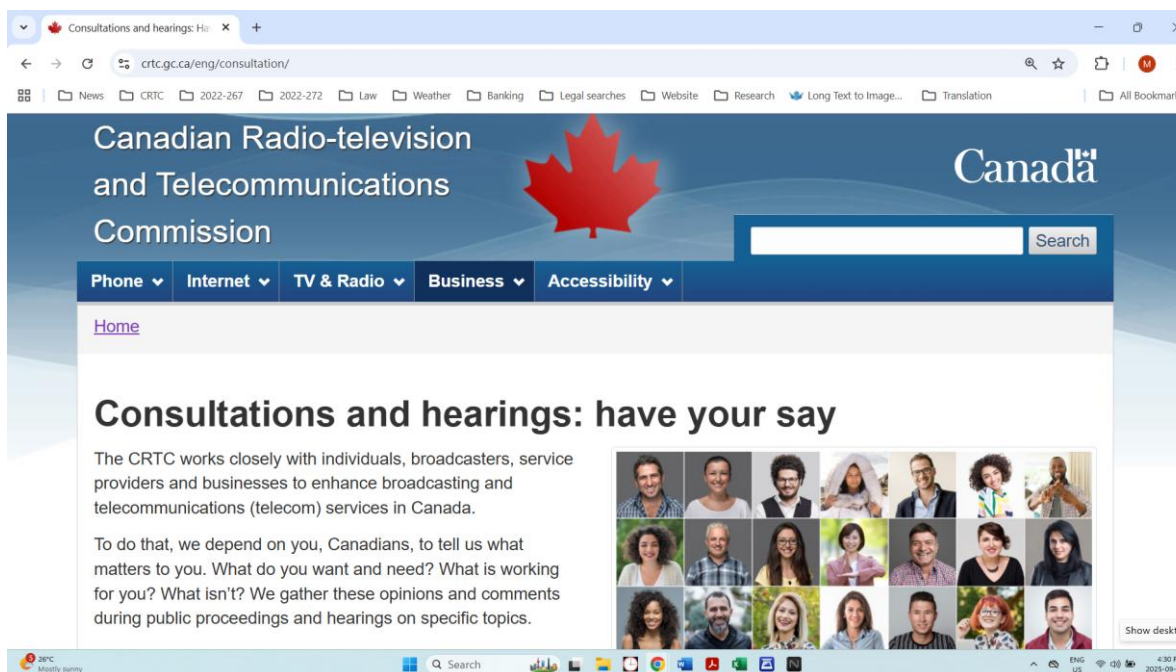
- 3 The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization whose work is focussed on supporting the public interest in broadcasting and telecommunications, as defined by Parliament in its 2023 *Broadcasting Policy for Canada* and its 1993 *Telecommunications Policy for Canada*.
- 4 FRPC welcomes this proceeding as it may address long-standing problems that include the **average of nine months that public-interest participants wait for a CRTC decision** after they apply for their costs in its telecommunications proceedings, and the current, **18-year old public-interest rate structure** on which public-interest participation must base their costs applications. Solving these problems will strengthen public engagement in the CRTC's proceedings.
- 5 Strengthening public participation in CRTC proceedings will therefore help the Commission to meet Parliament's objectives. These include requisites that Canada's telecommunications and broadcasting systems serve the needs of Canadians, and that the public play an important role to in the systems' regulation.
- 6 For example, the *Broadcasting Act* declares that Canada's broadcasting system must "be effectively owned and controlled by Canadians" (section 3(1)(a)), uses "radio frequencies that are public property" (3(1)(b)) and should "serve the needs and interests of all Canadians" (3(1)(d)(iii)). The *Telecommunications Act* states Parliament's objectives that "Canadians in both urban and rural areas in all regions of Canada" have access to affordable and reliable telecommunications services (section 7(b)), that "the economic and social requirements of users of telecommunications services" are met and that their privacy is protected (7(i)).
- 7 Each statute also empowers the CRTC to consult with the public, either through hearings or written proceedings, and the CRTC's Home Page today explains that it holds "public consultations" and that the Commission makes "decisions based on the public record": Figure 1 (next page).

Figure 1 CRTC website Home Page [Accessed 3 September 2025]



8 The CRTC itself obviously strives to encourage the public to participate in its work: Figure 2.

Figure 2 CRTC invites Canadians to “have their say” [Accessed 3 September 2025]



- 9 In May 2024, however, CRTC-commissioned survey research found that 57% of Canadians do not have the information needed “to make informed decisions on whether to participate in public consultations”¹: Figure 3.

Figure 3 Canadians’ knowledge of public consultations in May 2024

Figure 11: Perceptions of CRTC work and public engagement



- 10 Six out of ten (62%) people in Canada either do not believe or specifically disagree that they “know how to participate in public consultation [sic]”.
- 11 It is also unclear if many Canadians know that that the CRTC’s enabling statutes do not automatically require it “to serve the public interest” – Parliament defines the Commission’s roles as being the “single independent public authority” that regulates and supervises the Canadian broadcasting system² and as performing “the duties” it has under the *Telecommunications Act*.³ In 1999 the Federal Court of Appeal described the CRTC’s work to implement the *Broadcasting Policy for Canada* as

¹ Ipsos Limited Partnership, [Public opinion research tracker: Wave 2 - Report of findings](#), Contract Number: CW2343098 Delivery Date: May 10, 2024 (Registration Number: POR102-23), at page 21, Figure 11.

² *Broadcasting Act*, s. 3(2):

It is further declared that the Canadian broadcasting system constitutes a single system and that the objectives of the broadcasting policy set out in subsection (1) can best be achieved by providing for the regulation and supervision of the Canadian broadcasting system by a single independent public authority.

³ *Canadian Radio-television and Telecommunications Commission Act*, s. 12(2):

The full-time members of the Commission and the Chairperson shall exercise the powers and perform the duties vested in the Commission and the Chairperson, respectively, by the *Telecommunications Act* or any special Act, as defined in subsection 2(1) of that Act, or by *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications*

...a polycentric adjudication process, involving numerous participants with opposing interests, with a view to implementing the broadcasting policy set out in the Act.⁴

- 12 It is fair to say that the CRTC’s proceedings include a variety of participants. The most recent renewal of CBC’s broadcasting licences attracted “over 10,500 interventions and a petition with over 10,400 signatures”⁵ and several dozen groups. Experienced participants include the staff, consultants and experts who are employed by the broadcasters and telecommunications companies regulated by the CRTC (the Companies); unions, guilds and industry associations; and organized groups including the Forum which have developed expertise in broadcasting and telecommunications and intervene on behalf of the public (public-interest participants) or subsets of the public (consumers, sector-specific or interest-specific organizations).
- 13 It is unknown how many public-interest participants regularly engage in the CRTC’s proceedings. Of 76 parties that applied for reimbursement of their CRTC costs in the thirteen years from 2013 to 2025, just 8 (10.5%) participated in proceedings in half or more of those years: Table 1. (By way of comparison, a 2009 review of the CRTC’s cost award practices was triggered by an application submitted by ten telecommunications companies;⁶ if some public-interest participants feel eclipsed by telecommunications and broadcasting companies, it is because they are: these large companies have the resources and duty to protect their owners interests.)

Table 1 Applicants for public-interest costs in seven or more years from 2013 to 2025

Public-interest participants that applied for costs from 2013 to 2025	Years
Public Interest Advocacy Centre (PIAC) (2013-2025)	12
Forum for Research and Policy in Communications (2014-2025)	11
CACTUS (2013-17, 2019-21, 2023-24)	10
Union des consommateurs (2013-22)	10
Media Access Canada (2013-2018; 2020-21)	8
Canadian National Institute of the Blind (2015-19; 2020-21)	7
Deaf Wireless Canada Committee (2017-19; 2021-25)	7

Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act.

⁴ *Société Radio-Canada v. Métromédia Cmr Montréal Inc.*, [1999 CanLII 8947 \(FCA\)](#), per Létourneau, J.A. for the Court, at paragraph 5.

⁵ [Canadian Broadcasting Corporation – Various audio and audiovisual services – Licence renewals](#), Broadcasting Decision CRTC 2022-165 (Ottawa, 22 June 2022), at paragraph 6.

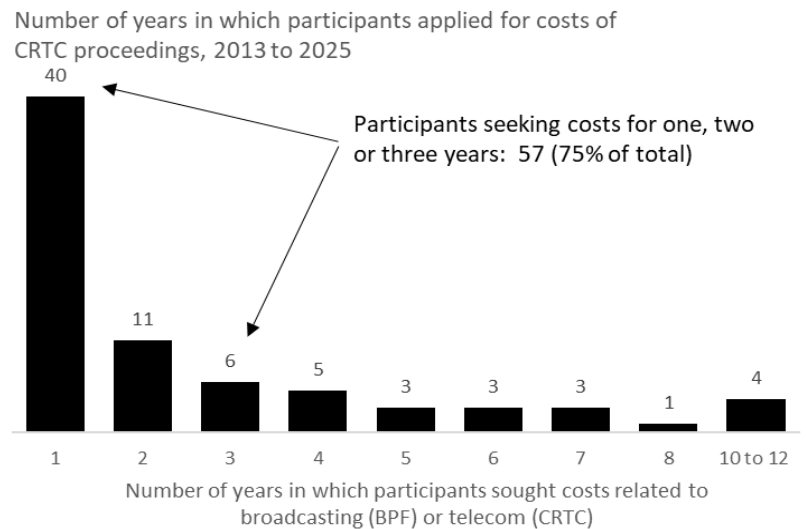
⁶ Barrett Xplore Inc.; Bell Aliant, Regional Communications, Limited Partnership; Bell Canada; Cogeco Cable Inc.; Northwestel Inc.; Rogers Communications Inc.; Saskatchewan Telecommunications; Shaw Communications Inc.; Télébec, Société en commandite, and TELUS Communications Company, *Part VII Application to request a review of the procedures for the awarding of costs* (25 September 2009).

Public-interest participants that applied for costs from 2013 to 2025	Years
First Mile Connectivity Consortium (2014-15; 2017-19; 2021-25)	7

Figure 4 Participants seeking costs, 2013-2025

14 Three-quarters (75%) of the 76 organizations filed CRTC-related cost applications in three or fewer years, with 53% (40 organizations) participating in just one year: Figure 4.

15 FRPC therefore welcomes the CRTC's decision to invite comments "on how to better support public participation" (paragraph 3).



16 The next section of this submission sets out the legal context of the CRTC's current discretion to award costs for public-interest participation. Part III describes the challenges confronting public-interest participants in the CRTC's proceedings. The impact of legislative change on the CRTC's ability to provide financial support to public-interest participants is addressed in Part IV. A proposal for a new approach to supporting public-interest participation is set out in Part V. The Forum's answers to the questions raised by the CRTC in 2025-94 are set in Appendix 1.

II. Two statutes, two directives and two costs systems

17 Parliament's intention – as set out in the wording it has used to enable the CRTC to provide financial support to public-interest participants in its telecom and broadcasting proceedings - is central to this proceeding.⁷³

18 This section describes the evolution of Parliamentary intention concerning financial support for public-interest participation in telecom and broadcasting.

A. Telecom (since 1976)

- 19 Parliament had specifically empowered the Commission's regulatory predecessor in telecommunications – the Canadian Transport Commission – to order the payment of costs in its proceedings under the 1967⁷ *National Transportation Act*.⁸
- 20 The CRTC began to address this issue within three months of acquiring jurisdiction over telecommunications.⁹ It set out its process for public-interest participants' applications for reimbursement of their participation costs in its telecom proceedings in 1979¹⁰ (and the Supreme Court upheld its approach in 1986¹¹). (
- 21 Parliament then enacted specific legislation for telecommunications in 1993. A side-by-side comparison of the 1967 and 1993 statutes regarding the CRTC's jurisdiction of costs shows that each statute empowered the CRTC to order the payment of costs – Table 2. – and that each enabled the CRTC to require that costs be taxed.

Table 2 Legislative authority regarding costs in telecommunications

1967 <i>National Transportation Act</i>		1993 <i>Telecommunications Act</i>	
Bold font	Differences between Acts	Green shading	Shared wording
73. (1) The costs of and incidental to any proceeding before the Commission, except as herein otherwise provided, are in the discretion of the Commission, and may be fixed in any case at a sum certain, or may be taxed.		56 (1) The Commission may award interim or final costs of and incidental to proceedings before it and may fix the amount of the costs or direct that the amount be taxed.	
(2) The Commission may order by whom and to whom any costs are to be paid, and by whom they are to be taxed and allowed.		(2) The Commission may order by whom and to whom any costs are to be paid and by whom they are to be taxed and may establish a scale for the taxation of costs.	
(3) The Commission may prescribe a scale under which such costs shall be taxed.			

⁷ Joseph P. Dion, Science and Technology Division, Parliamentary Research Branch, [The Report of the Canada Transportation Act Review](#), Library of Parliament (4 October 2001), at page 2.

⁸ Today, the *Canada Transportation Act*, [S.C. 1996, c. 10](#).

⁹ In July 1976 it announced a public hearing for fall 1976: *Telecommunications Regulation – Procedures and Practices*, Statement of the CRTC in preparation for a public hearing at the Chateau Laurier Hotel in Ottawa Commencing September 27, 1976 (Ottawa, 20 July 1976).

¹⁰ *CRTC Telecommunications Rules of Procedure*, SOR/79-554 (27 July 1979), sections 44 and 45.

¹¹ *Bell Canada v. Consumers' Assoc. of Canada*, 1986 CanLII 49 (SCC), [1986] 1 SCR 190, <<https://canlii.ca/t/1ftvd>>, [28 February 1986], aff'g *Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission)*, 1983 CanLII 4959 (FCA), [1984] 1 FC 79, <<https://canlii.ca/t/g9gkx>>, (31 March 1983).

- 22 From 1976 to 1992 Parliament gave the CRTC the discretion to consider “costs of and incidental to any proceeding”, to fix or decide the total cost and to order who would ‘tax’ or review the costs in detail.
- 23 In 1993, however, Parliament for the first time gave the CRTC the discretion to award not just “costs” but “interim or final costs”, and to award costs not for “any proceeding” but for “proceedings” more generally. Parliament also clarified that it was empowering the CRTC to award costs and that rather than fixing the costs “in any case at a sum certain” the CRTC could simply “fix the amount of the costs”.
- 24 Parliament also reduced the complexity of the taxing process. From 1976 to 1992 the legislation appeared to provide for at least four steps: the CRTC could identify who would tax the costs, fix the costs or have the costs taxed by that party, have the taxed costs “allowed”, then order a party or parties to pay the costs. Since 1993 the process appears to provide for two steps: the CRTC is able to decide the costs of proceedings or appoint another party to tax the costs, and then order the costs to be paid.
- 25 In 2000 the Commission moved from appointing ‘taxing officers’ to review cost applications with applicants (and sometimes with telecom companies that challenged the applicants), apparently line item by line item, to a system in which it fixed participation expenses for individual applicants in each proceeding and ordered the company in that proceeding to remit approved expenses to applicants. Its goal was to simplify and streamline its costs process. When more than one company was involved in a proceeding the CRTC directed the companies to pay a percentage of the public-interest costs awarded, based on the companies’ share of telecommunications operating revenues (TOR).
- 26 This system remains largely in place, although the CRTC from time to time requires companies other than those directly engaged in specific proceedings to also pay a share of public-interest cost awards.

B. Broadcasting (since 2012)

- 27 The approach for dealing with public-interest participation costs in CRTC broadcasting proceedings followed a different route that began in 2011
- 28 At that time the 1991 *Broadcasting Act* was in force and did not refer explicitly to public-interest participation costs. It did, however, give the CRTC the discretion to enact

regulations and to impose conditions of licence on individual broadcasters ('broadcasting companies') depending on each licensee's¹² circumstances.¹³ The CRTC has used its regulations to require broadcasting companies to include Canadian programming in their broadcast schedules and also to provide financial support for Canada's cultural sector through funding mechanisms such as the Canadian Media Fund, FACTOR and MusicAction.

29 In late September 2010 the CRTC was beginning to consider an application by BCE Inc. to acquire effective control of then-CTVglobemedia Inc. and on 9 December 2010 it scheduled a public hearing in February 2011 to consider the application.¹⁴ Two weeks later – on 23 December 2010 – the CRTC issued its conclusions in its year-long review of its telecom costs award practices and procedures.¹⁵

30 Part of BCE's application involved so-called 'tangible benefits' that the CRTC has required broadcast-asset purchasers to provide since the mid-'80s to generate additional financial support for Parliament's *Broadcasting Policy for Canada*.¹⁶ The CRTC has generally¹⁷

¹² In other words, not based on individual undertakings but on the entity that held a broadcasting licence or licences.

¹³ As the CRTC throughout the 1990s and 2000s imposed identical conditions of licence on nearly all private broadcasters with respect to the *Children's Code of Advertising*, and the CAB's *Gender Portrayal Guidelines* it is unclear how closely the Commission hewed to the individual-licensee circumstances requirement.

¹⁴ Bell filed its application on 24 September 2010; the CRTC issued *Notice of hearing*, [Broadcasting Notice of Consultation CRTC 2010-926](#) some three months later, on 9 December 2010.

¹⁵ See e.g. *Revision of CRTC costs award practices and procedures*, [Telecom Regulatory Policy CRTC 2010-963](#) (Ottawa, 23 December 2010).

¹⁶ In 1977 the CRTC denied the transfer of effective control of a broadcaster on the ground that in large ownership transactions in broadcasting "there must be significant and unequivocal benefits demonstrated to advance the public interest.": Decision CRTC 77-456 (Ottawa, 28 July 1977). It began to develop and apply what became known as its 'tangible benefits policy' in 1986, a key part of which was that ownership transfers should generate "significant and unequivocal benefits" to the broadcasting system.

¹⁷ But not consistently. The CRTC has issued four decisions that address tangible-benefits payments to the BPF-FPR, none of which incorporated condition of licence terminology, instead using unenforceable terms such as "directs", "expects", "requires" and "condition of approval":

Change in effective control of CTVglobemedia Inc.'s licensed broadcasting subsidiaries, [Broadcasting Decision CRTC 2011-163](#) (Ottawa, 7 March 2011), paragraph 58:

..., the Commission **directs** BCE to allocate its benefits contribution as set out in Appendix 1. Further, given the magnitude of the benefits, the Commission **directs** BCE to submit with its annual return for each of the next seven years a detailed report on the manner in which these tangible benefits have been spent."

Astral broadcasting undertakings – Change of effective control, [Broadcasting Decision CRTC 2013-310](#) (Ottawa, 27 June 2013), paragraphs 157-158:

As set out in Public Notice 1999-97, for transfers of ownership or control involving television programming undertakings, the Commission generally **expects** applicants to make clear and unequivocal commitments to provide tangible benefits. ... the Commission has calculated the tangible benefits package to be \$175,400,000,

imposed conditions of licence¹⁸ on those acquiring broadcast programming assets to remit a percentage of the assets' value to recipients specified by the Commission. These tangible benefits have enabled the CRTC to say that changes in ownership have yielded "significant and unequivocal benefits" for the Canadian broadcasting system, serving the public interest.¹⁹

- 31 PIAC seized the opportunity of the 2009/10 BCE-CTVgm proceeding to propose the establishment of "an independent fund to represent non-commercial consumer interests before the Commission in its broadcasting proceeding".²⁰ Initial funding would be provided by BCE as a tangible benefit of the transaction. The CRTC hearing panel agreed that PIAC's proposal merited development.
- 32 In 2011 the Commission used its tangible-benefits approach to approve the establishment of a Broadcast Participation Fund whose Board of Directors would consider applicants' cost-reimbursement requests.

as indicated in the table set out in paragraph 153 above. The Commission **directs** BCE to file by no later than 29 July 2013 a revised tangible benefits package with a value of \$175,400,00 that reflects the Commission's determinations set out below.

Tangible benefits proposal by Sirius XM Canada Inc., [Broadcasting Decision CRTC 2018-91](#) (Ottawa, 16 March 2018), at paragraph 38:

... approves Sirius XM's proposal to contribute \$1 million to the BPF paid in two equal installments of \$500,000 in year 1 and 2 ... [and] **directs** Sirius XM ... to contribute an additional \$596,666 to the BPF expended in equal amounts over five consecutive broadcast years starting in year 3

Shaw Communications Inc. – Change of ownership and effective control, [Broadcasting Decision CRTC 2022-76](#) (Ottawa, 24 March 2022), at paragraphs 68 and 69:

... the Commission **requires** Rogers to propose a revised tangible benefits package that allocates \$725,439 each to the BPF and the BAF. In addition, the Commission requires Rogers to make these payments over three consecutive broadcast years instead of the usual seven given the funds' current circumstances and the significant role that they will be called on to play in the near future.

...

... the Commission **requires** Rogers, **as a condition of approval**, to file by no later than 25 April 2022, an application to amend the conditions of licence for all of the television programming undertakings currently operated by a Rogers-related entity to require it to report annually on its tangible benefits expenditures stemming from this transaction.

¹⁸ S. 9(1) of the 1991 *Broadcasting Act* empowered the CRTC to impose conditions on broadcasters' licences as were "related to the circumstances of the licensee" and which the Commission deemed "appropriate for the implementation of the broadcasting policy set out in subsection 3(1)".

¹⁹ CRTC, *Application of the Benefits Test at the Time of Transfers of Ownership or Control of Broadcasting Undertakings*, [Public Notice CRTC 1993-68](#) (Ottawa, 26 May 1993).

²⁰ *Change in effective control of CTVglobemedia Inc.'s licensed broadcasting subsidiaries*, [Broadcasting Decision CRTC 2011-163](#) (Ottawa, 7 March 2011), at paragraph 47.

- 33 The CRTC ultimately approved the establishment of the Broadcasting Participation Fund (BPF), Inc./Le fonds de participation à la radiodiffusion (FPR) in 2012²¹ using (initially) a \$3 million payment by BCE when it acquired CTVgm and a \$2 million payment by BCE when it acquired Astral in 2013.²² It has ‘required’ two other broadcasters to make additional payments to the BPF-FPR since then, for a total of \$7.5 million.

Decision	Broadcaster	Purchase of	Tangible benefits	BPF as % of tangible benefits
2011-163 ²³	BCE	CTV	\$245 million	\$3,000,000 (1.2%)
2013-310 ²⁴	BCE	Astral	\$247 million	\$2,000,000 (0.8%)
2018-91 ²⁵	Sirius XM	Sirius FM	\$28.7 million	\$1,596,666 (5.6%)
2022-76 ²⁶	Rogers	Shaw TV services	\$247.6 million	\$725,439 (0.3%)
Total	3 broadcasters	4 transactions	\$768.3 million	\$7,322,105 (0.9%)

- 34 From 2012 to 2017 the CRTC also denied at least six separate proposals that it direct ownership-related tangible benefits to the BPF-FPR:

- the 2012 change of ownership of discretionary programming services involving BCE and Astral;²⁷
- Shaw’s 2013 acquisition of Corus’ discretionary programming services;²⁸
- Corus’ 2016 acquisition of Shaw’s discretionary programming services;²⁹

²¹ *Broadcasting Participation Fund*, [Broadcasting Regulatory Policy 2012-181](#) (Ottawa, 26 March 2012), later amended by *Broadcasting Participation Fund – Amendments*, [Broadcasting Regulatory Policy CRTC 2012-181-1](#) (Ottawa, 7 August 2012).

²² *Astral broadcasting undertakings – Change of effective control*, [Broadcasting Decision CRTC 2013-310](#) (Ottawa, 27 June 2013).

²³ *Change in effective control of CTVglobemedia Inc.’s licensed broadcasting subsidiaries*, [Broadcasting Decision CRTC 2011-163](#) (Ottawa, 7 March 2011), at paragraphs 46 and 48.

²⁴ *Tangible benefits proposal by Sirius XM Canada Inc.*, [Broadcasting Decision CRTC 2018-91](#) (Ottawa, 16 March 2018), at paragraph 38.

²⁵ *Astral broadcasting undertakings – Change of effective control*, [Broadcasting Decision CRTC 2013-310](#) (Ottawa, 27 June 2013), at Appendix 3.

²⁶ *Shaw Communications Inc. – Change of ownership and effective control*, [Broadcasting Decision CRTC 2022-76](#) (Ottawa, 24 March 2022)

²⁷ *Leafs TV, Gol TV, NBA TV Canada, Mainstream Sports and Live Music Channel – Change in effective control*, [Broadcasting Decision CRTC 2012-443](#) (Ottawa, 16 August 2012).

²⁸ *Notice of hearing*, [Broadcasting Notice of Consultation CRTC 2013-448](#) (Ottawa, 5 November 2013).

²⁹ *Notice of application received*, [Broadcasting Notice of Consultation CRTC 2016-22](#), as amended (Ottawa, 21 January 2016) – Application 2016-0055-2 by Shaw Communications Inc. on behalf of Shaw Media Inc. and its licensed subsidiaries. Intervention of PIAC, at paragraph 27; *Various television services and stations - Corporate reorganization (transfer of shares)*, [Broadcasting Decision CRTC 2016-110](#) (Ottawa, 23 March 2016), at paragraph 25.

- BCE's 2016 application to acquire MTS' BDU and other assets;³⁰
- Bell Media's 2017 application to acquire two of Corus' discretionary TV programming services³¹ and
- Bell's 2020 acquisition of V Interactions.³²

35 As a result, public-interest participants have been made aware in 7 of the past 13 years that the BPF-FPR may end operations.

2017	"Based on the historical rate of disbursements from the Fund (anticipated five year average of \$621,000), and if no additional funding contributions are forthcoming, the Board currently projects that the Fund could be materially depleted by early 2018, to the point that it is anticipated that funding of cost awards from the Fund could cease in whole or in part prior, on or around such time" ³³
2020	<p>"Without further funding, the Fund will likely be exhausted by 2022."³⁴</p> <p>"A letter was sent to the Minister of Canadian Heritage underlining that, by the end of 2022, the BPF would be unable to fulfill its mandate which would likely result in its probable termination.</p> <p>...</p> <p>A similar submission was sent to Ian Scott, Chair of the CRTC as well as Stephen Guilbeault, Minister of Canadian Heritage, and Philippe Champagne, Minister of Innovation, Science and Economic Development. The submission was sent to all members of the Standing Committee on Canadian Heritage with a request to the Committee Clerk to appear before the Standing Committee in its study of Bill C- 10. In the context of the pre-budget consultations, a</p>

³⁰ Notice of application received, [Broadcasting Notice of Consultation CRTC 2016-349](#) (Ottawa, 30 August 2016), Application 2016-0602-1: Application by MTS Inc. (MTS) for authority to effect a change in the ownership and effective control of the terrestrial broadcasting distribution undertaking (BDU) serving Winnipeg and surrounding areas, Manitoba, currently licensed to MTS, to Bell Canada (Bell), pursuant to section 4(4)(a) of the Broadcasting Distribution Regulations. See *Terrestrial broadcasting distribution undertaking serving Winnipeg and surrounding areas – Change of effective control*, [Broadcasting Decision CRTC 2016-487](#) (Ottawa, 20 December 2016), at paragraph 32.

³¹ Notice of application received, [Broadcasting Notice of Consultation CRTC 2018-95](#) (Ottawa, 20 March 2018), Application 2017-1060-9: Application by Bell Media Inc. (Bell), on behalf of Corus Entertainment Inc. (Corus), for authority to effect a change in the ownership and effective control of 8504644 Canada Inc. (8504644) and 8504652 Canada Inc. (8504652), the respective licensees of the French-language discretionary services Historia and Séries+.

³² *V Interactions inc. – Change in ownership and effective control*, [Broadcasting Decision CRTC 2020-154](#) (Ottawa, 19 May 2020), at paragraph 170.

³³ BPF-FPR, *Annual Report 2017*, at section 6.0.

³⁴ BPF-FPR, *Annual Report 2020*, p. 4.

		submission outlining the Fund’s financial situation and requesting bridge financing was made to the Minister of Finance.” ³⁵ “The fourth of 7 installments from Sirius XM in the partial amount of \$89,499 was deposited to the BPF bank account (a reduction of 25% due to the Covid pandemic)”. ³⁶
2021	October	25% holdback introduced ³⁷
2022		“... the BPF Board’s energies continued to be focused in 2022 on the fund’s depletion” ³⁸ 25% holdback reintroduced ³⁹
2023	January	“Board members discussed a potential hiatus given the Fund’s finances.” ⁴⁰ 25% holdback continues “Reimbursement of claims to remain at \$0.75 on the dollar until significant new funds are received.” ⁴¹
	April	“25% holdback on claims to remain” ⁴² “...the BPF Directors continued to wrestle with the depletion of the Fund.” ⁴³ In April 2023 the BPF-FPR “issued a press release outlining the BPF’s perilous financial situation, and that the 2023 Rogers’ payment would be insufficient to support the requests anticipated by the Fund’s this year....” ⁴⁴
	August	“In its efforts to stabilize the Fund, the BPF explored the possibility of bridge financing, and spoke with our bank to inquire about obtaining financing. Even with the tangible benefits coming from Rogers over the next three years, the bank determined that it was too far outside their lending parameters to offer some kind of financing without an additional layer of security. The Business Development Bank of Canada (BDC) was approached and it reiterated that the cash flow and reliance on the Rogers payments were issues for their organization as well.” ⁴⁵
	September	“A note was sent out to the Stakeholders reporting receipt of the first payment of the Rogers tangible benefits payment in the amount of

³⁵ *Ibid.*, “Report from the Board of Directors”.

³⁶ *Ibid.*, “CHRONOLOGY OF KEY EVENTS”.

³⁷ BPF-FPR, *Annual Report 2024*, page 2.

³⁸ *Ibid.*

³⁹ BPF-FPR, *Annual Report 2021*, page 6.

⁴⁰ BPF-FPR, *Annual Report 2023*, page 18.

⁴¹ *Ibid.*

⁴² BPF-FPR, *Annual Report 2023*, page 18.

⁴³ *Ibid.*, page 3.

⁴⁴ *Ibid.*, page 4.

⁴⁵ *Ibid.*, page 5.

		\$241,813. In light of this funding, the BPF Board moved at its Sep 5. 8th meeting to halt the 25% holdback on claims and to pay out deferred holdbacks to all affected applicants.” ⁴⁶
	Fall	“... several discussions were held with officials at the CRTC and the Department of Canadian Heritage about the financial situation of the BPF.” ⁴⁷
	December	“The Department of Canadian Heritage advised the BPF that it was working on a Contributions Agreement to provide \$650,000 in funding for 2023-2025.” ⁴⁸
2024	January	Canadian Heritage and BPF-FPR sign \$650,000 Contributions Agreement ⁴⁹
	September	Rogers 2 nd payment received
	End of year	“At year’s end, it became apparent that the BPF will have expended the \$650,000 from the Contributions Agreement by March 31, 2025. In light of the postponement of the CRTC consultation and that the BPF has forecasted that its funds will be exhausted by Q2 2026, a meeting with Department of Canadian Heritage officials was requested to extend the Contributions Agreement. ...” ⁵⁰
2025	September	“September 2nd, 2025 Please be advised that, in an effort to better manage fund exhaust, the Board of the BPF has voted to no longer accept interim claims effective September 2, 2025. “Additionally, the Board notes that until new funding has been identified, the next and final intake date for cost award claims will be October 24, 2025. We encourage all applicants to plan accordingly and ensure any final submissions are made within these timelines.” ⁵¹

36 In 2021, 2022 and 2023 the BPF-FPR held back 25% of approved cost claims, as a way of extending its existence until the payment of a tangible benefit amount; these holdbacks were eventually returned, though without compensation (such as interest).

37 In July 2022 FRPC learned through the CRTC’s answer to access-to-information request A-2021-00031 that the Commission’s staff thought “it is not clear that the CRTC has the jurisdiction to make such contributions more stable and mandatory under the current

⁴⁶ *Ibid.*, at page 5.

⁴⁷ *Ibid.*, at page 5.

⁴⁸ *Ibid.*, at page 6.

⁴⁹ BPF-FPR, *Annual Report 2024*, at page 3.

⁵⁰ *Ibid.*, at page 5.

⁵¹ BPF-FPR, “[September 2nd, 2025](#)”.

Act” through regulations.⁵² It is unclear whether this lack of clarity also explains the CRTC’s decision not to grant the BPF-FPR financial stability through the Commission’s tangible benefits policy.

- 38 A critical result in the BPF-FPR’s case is that the lack of stable funding created serious uncertainty for public-interest participants regarding the Fund’s continued existence, since 2020.

III. Public-interest participation in CRTC proceedings: challenges

- 39 Since its establishment in late 2013 FRPC has participated in more than 140 CRTC proceedings – primarily in broadcasting, though also in telecommunications and with respect to the *Online News Act*. We undertake original quantitative, policy and legal research about broadcasting and telecommunications in Canada, making this available for the public record of the CRTC’s proceedings.
- 40 In our experience, three aspects of the current public-interest participation financial-support system do not support but rather create financial barriers to public-interest organizations’ informed participation in the CRTC’s proceedings.
- 41 First, public-interest participants are not compensated for the loss in the value of their costs when decisions about their cost applications are delayed by more than one month. Untimely decision-making literally costs public-interest participants money.
- 42 Second, as the CRTC has not changed the rates on which public-interest participants base their cost applications in 18 years, public-interest participants must allocate more of their own time and their non-financial resources to attract and retain qualified employees, consultants and experts who are willing to work at below-industry rates, or ask for the donation of this time.
- 43 Third, restrictions on timing handcuff public-interest participants by limiting reimbursement of their CRTC costs to the date when the CRTC announces consultations and applications; while other parties begin planning, preparing and gathering evidence public-interest participants must either donate this time or race to the deadline once the CRTC publishes its proceedings.

⁵² Nanao Kachi, e-mail to CRTC Commissioners (5 July 2021, 4:07 PM), page 46 of the CRTC release package.

A. *Decision-making timeliness*

44 In May 2021 Prime Minister Carney issued a new mandate letter to his Ministers, stating that his government must exercise “a disciplined focus on core priorities and new approaches to governing.”⁵³ In FRPC’s view the concept of ‘disciplined focus’ incorporates timely decision-making.

1. *Telecom process*

45 Timeliness matters to the CRTC. By 1998 it was trying to streamline the telecom cost process and to be fair to all parties involved.⁵⁴ It wanted to eliminate “unnecessary process” to expedite “the process for both the Commission and the parties”.⁵⁵

46 FRPC undertook quantitative research about the timeliness of the CRTC’s decision-making regarding public-interest participation cost applications in 2017⁵⁶ and 2018,⁵⁷ using data about CRTC telecom costs decisions that it issued from January 2013 to December 2018.⁵⁸ FRPC updated its cost-applications data for this proceeding by adding CRTC telecom cost-award data from January 2019 to 5 September 2025.

47 FRPC’s analysis of the 329 telecom cost orders located on the CRTC’s website found that the time between the submission of public-interest cost applications and the CRTC’s cost-order decisions – in other words, not payment itself – increased by 159% from 2013 to September 2025: from 3.7 months to 9.6 months in 2018. Figure 5 provides updated CRTC cost-order timing information, up to 6 September 2025.

⁵³ Office of the Prime Minister, [Mandate Letter](#) (Ottawa, 21 May 2025).

⁵⁴ General Counsel, Telecommunications, CRTC, [Re: Guidelines for the Taxation of Costs, Reference Letter regarding Guidelines for the Taxation of Costs](#) (Ottawa, 15 May 1998)

⁵⁵ *Ibid.*

⁵⁶ [Research Note: The CRTC’s cost-orders process in telecommunications](#) (Ottawa, 22 November 2017).

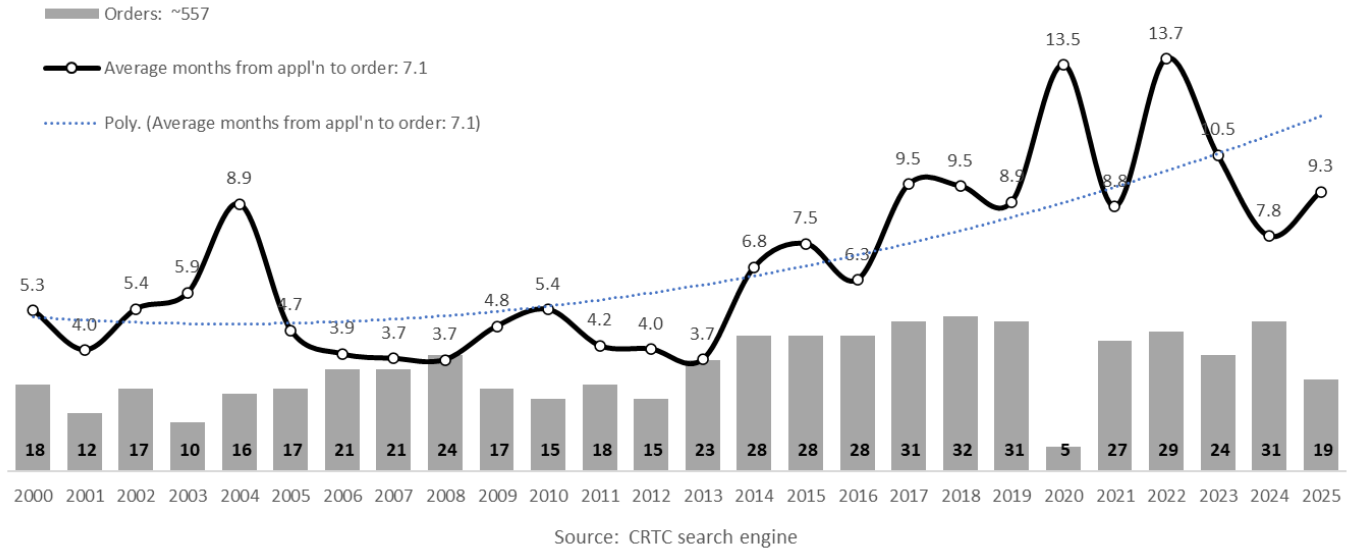
⁵⁷ [The CRTC’s cost-orders process in telecommunications: a year later](#), Research Note (Ottawa, 3 December 2018)

[FRPC 2018 Costs Research].

⁵⁸ FRPC 2018 Costs Research, pages 7-8.

Figure 5 CRTC Telecom Cost Orders, 2000-September 2025: number and timing

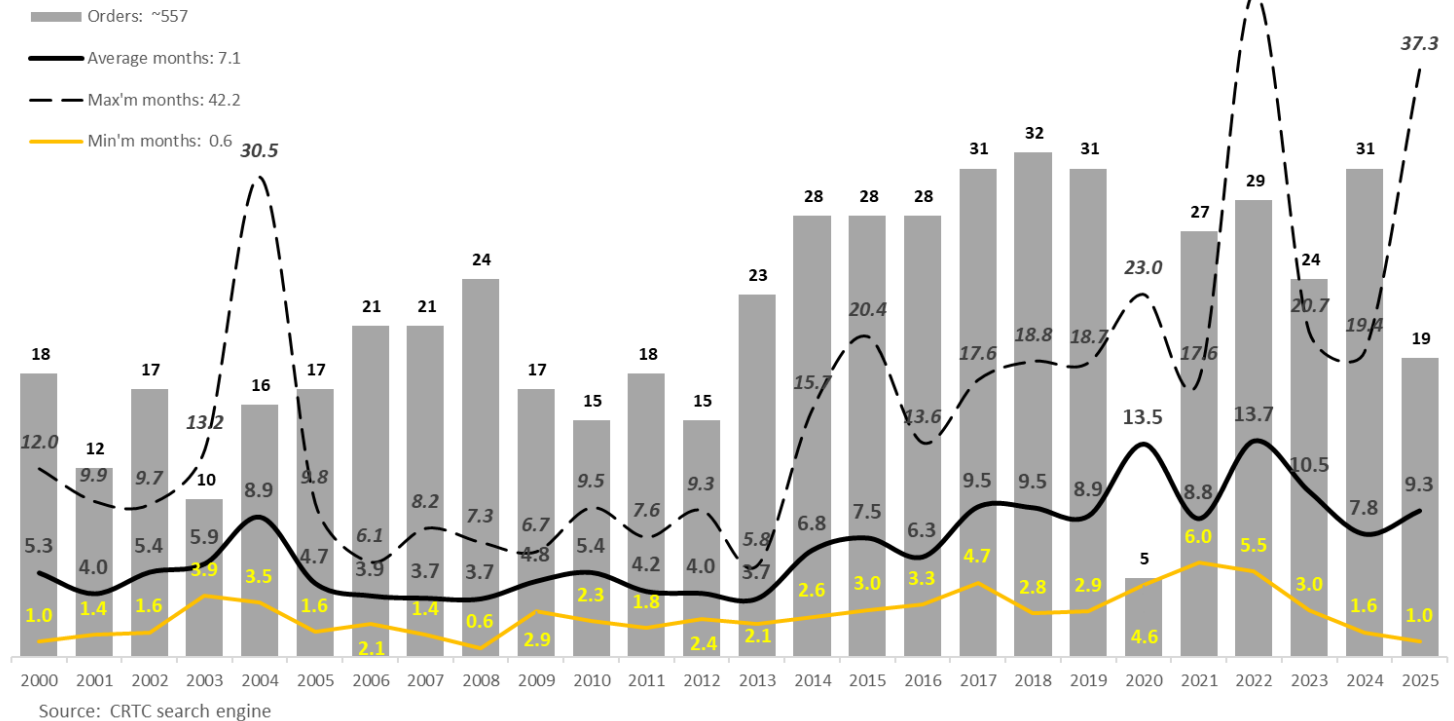
CRTC Telecom cost orders, 2000 to September 2025: number and timing



- 48 As Figure 5 shows, in the first eight months of 2025 the average time taken by the CRTC to decide 19 public-interest cost applications – 9.3 months – was one and three-quarters higher than the average of 5.3 months taken by the CRTC in 2000 years ago to issue almost as many (18) decisions. Based on a polynomial trend (generated by Excel), the time taken by the CRTC to issue cost orders regarding its telecom proceedings appears to be trending up over time.
- 49 The use of averages obscures the range of timing in CRTC cost-award decisions. Figure 6 shows the minimum and maximum number of days between the filing of a cost application and the CRTC's decision, showing also the years in which the CRTC's orders were issued.
- 50 But for two periods (2004), the maximum time between cost applications and cost orders from 2000 to 2012 was well below a year. From 2013 to September 2025 the maximum time between application and cost order was consistently greater than a year.

Figure 6 CRTC Telecom Cost Orders, 2013-Sept/25: waiting time for cost decisions

CRTC Telecom cost orders, 2000 to 2025: number and time from application to decision



51 A cost-decision process that takes close to a year on average and at times several years places those waiting for cost payments at a financial disadvantage in three ways. First, as the CRTC awards the costs sought and does not grant monthly compound interest on these amounts, inflation erodes payments' purchasing power. Second, participants that are waiting for payment for past CRTC work are denied the opportunity to apply these funds to new CRTC work. Last, as slow decision-making creates uncertainty and as the CRTC's internal processes are not transparent, the risk of uncertainty becomes a factor that has led some public-interest participants to allocate their scarce resources away from CRTC proceedings altogether and to other sectors where they face lower financial uncertainty. Also, in case it needs mentioning, few not-for-profit public-interest participants are in a position to borrow money – and even if lenders consider their loan applications, the obvious unpredictability of CRTC payments and the uncertainty of outcome leads to loan requests' denial.

2. Broadcasting process

52 Our evidence is that while significantly faster than the costs processes of the CRTC, the BPF-FPR's processes have also slowed somewhat: Table 3.

- 53 In its first year of operations the BPF-FPR’s “turnaround time for receiving, process, and paying a claim was between 60 and 90 days”⁵⁹ while from 2014 to 2017 it was half that timespan (30 to 45 days). In 2024 the BPF-FPR adopted new Service Level Standards,⁶⁰ though these were not specified in its annual report.

Table 3 BPF-FPR applications by year and turnaround time, 2013-2024

Year	Days	# of applications	BPF-FPR annual report and page #
2013	60 to 90	29	2013, p. 4
2014	30 to 45	43	2014, p. 3; 2016, p. 4;
2015	30 to 45	44	2015, p. 3; 2016, p. 4;
2016	30 to 45	41	2016, p. 4
2017	30 to 45	24	2018, p. 3; 2024, p. 8
2018	60	16	2018, p. 3; 2024, p. 8
2019	45 to 60	6	2019, p. 3; 2024, p. 8
2020	45 to 60	18 21	2020, p. 3; 2024, pp. 8 and 12; 2021, p. 8
2021	45 to 60	16 23	2021, p. 5; 2024, pp. 8 and 12
2022	45 to 60	7 11	2022, p. 5 and 8; 2024, pp. 8 and 12
2023	45 to 60	17	2023, p. 10
2024	45 to 60	57	2024, p. 9 and 12

- 54 The BPF-FPR’s *Annual Reports* do not explain the increase in its processing time from 2017 to 2018 and the change does not appear to be connected to the volume of applications.

B. Rates for telecom and broadcast cost applications set in 2007

- 55 Broadcasting and Telecom Notice of Consultation CRTC 2025-94 notes that the Commission’s “rules for funding public interest participation in its proceedings have not been reviewed in over 10 years” (paragraph 1) and that the rates for eligible costs “that can be claimed” were also reviewed in 2010 (paragraph 12).
- 56 It is true that the CRTC reviewed its costs process ten years ago in *Revision of CRTC costs award practices and procedures*, [Telecom Regulatory Policy CRTC 2010-963](#) (Ottawa, 23 December 2010). It is also true that the CRTC reviewed the rates that public-interest participants were then able to claim in telecom proceedings and found “no compelling evidence on the record indicating that the rates listed in the Guidelines are out of step

⁵⁹ BPF-FPR, *Annual Report 2013*, page 4 (“5.2 Timely Service”).

⁶⁰ BPF-FPR, *Annual Report 2024*, page 9, section 5.2 (“Timely Service”).

with market rates”.⁶¹ The CRTC said that “a full-scale review of the rates should be done at a later date, as necessary.”⁶²

57 What Telecom Regulatory Policy CRTC 2010-963 did not clearly state is that the rates it reviewed had been set in 2007 by the Commission’s Legal Directorate through a practice note issued in April: *Guidelines for the Taxation of Costs*, (Revised as of 24 April 2007). While other CRTC practice notes are available from the CRTC’s website (Appendix 2) including one from 28 February 1997, the 2007 practice notice is not available (and is set out in Appendix 3). A PDF copy of the Practice Note is set out in Appendix 4.

58 The 2007 Practice Note seems to be the foundation of a second CRTC document with the same title as the practice note: [*Guidelines for the Taxation of Costs*](#), (Revised as of 24 April 2007) [2007 CRTC Taxation of Costs Guidelines]. The 2007 Practice Note sets out in “Revised Appendix A” the fees now used by the CRTC in its telecom costs proceedings.

59 Rates that are almost two decades old limit – if they do not geld – public-interest participants’ ability to hire the expertise they sometimes need to provide the Commission with evidence-based arguments. The 2007 Practice Note explained this issue as follows:

... the goal of awarding costs to public interest interveners is to ensure public interest parties have the same opportunity to present their arguments as private parties and to ensure the best evidence is before the Commission. Staff believes that adopting the Companies’ suggestion that rates be based on an average of the actual costs incurred by public interest interveners, which they argue are lower than market rates, would unfairly tie the hands of interveners seeking qualified experts and consultants to assist them; staff is of the view that public interest interveners should have access to the same experts, legal counsel and consultants as do private companies.⁶³

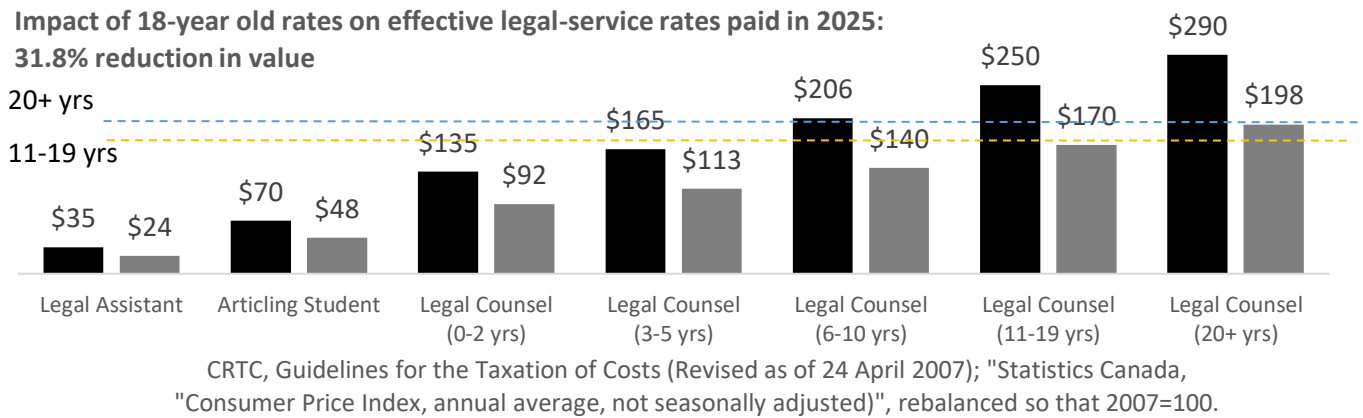
60 The Forum agrees with the CRTC’s 2007 Practice Note’s analysis and conclusions. FRPC estimated the impact of the CRTC’s static 2007 participation rate structure by re-indexing Statistics Canada’s Consumer Price Index in which 2002=100 to make 2007 the base. As Figure 7 shows, legal practitioners have lost just under a third of the value of the hourly rates they were able to charge in 2007.

61 [Telecom Regulatory Policy CRTC 2010-963](#), at paragraph 35.

62 *Ibid.*, at paragraph 35.

63 2007 Practice Note, at page 2 (Appendix 4), [bold font added].

Figure 7 Reduction in value of legal-service rates from 2007 to 2025



- 61 To put this change another way, under the CRTC's rates a lawyer with 11 to 19 years of experience is today being paid in 2025 the rate that a lawyer with a third of that experience was being paid in 2007.
- 62 The requirement that FRPC submit its costs applications to the CRTC with respect to telecom and to the BPF-FPR with respect to broadcasting based on rates that are 18 years old and which are very strictly limited to billed costs in individual proceedings has had three impacts on the Forum. First, it means that nearly a third of the time it expends on CRTC proceedings is effectively unpaid. Second, it means that the Forum has no means of increasing our human resources to strengthen our ability to intervene. Third, it means that FRPC's ability to undertake relevant, empirical research is limited by the CRTC's deadlines in its proceedings.

C. *CRTC decisions to deny process to some applications*

- 63 The Commission announces proceedings in different ways. Apart from the activities it says it will undertake in its annual *Departmental Plans*, for example, CRTC Commissioners sometimes discuss upcoming-but-still-unannounced proceedings in speeches. As well, the CRTC has published a *Regulatory Plan to modernize Canada's broadcasting system* on 8 May 2023⁶⁴ and, while it has changed nearly monthly, the *Plan* provided sufficient detail to enable parties to begin work on the consultations it announced. The CRTC also publishes notices of consultation and may publish

⁶⁴ The plan has since then been amended more than thirty times.

applications that can be filed by any party: in fact, its *Rules* stipulate that it must publish applications that meet its requirements for content and style.⁶⁵

- 64 The CRTC's current processes – used by the BPF-FPR – prevent public-interest participants from being reimbursed for any work on a CRTC proceeding until the CRTC decides to publish a notice of consultation or an application from an applicant.⁶⁶ Consequently, public-interest participants (along with any consultants, experts or lawyers they engage) cannot be reimbursed for any work regarding the CRTC consultations listed in the CRTC's *Plan* – until the CRTC announces the consultations.
- 65 As for applications, it is unclear whether public-interest participants can file applications that the CRTC will treat as applications. While neither the *Telecommunications Act* nor the *Broadcasting Act* defines 'application' or 'applicant', the CRTC said in a 2010 information bulletin that "[a]n applicant is someone who asks the Commission to make a decision, whether on a matter specific to its circumstances, like a new licence or a tariff, or on a more general policy issue."⁶⁷
- 66 According to the CRTC, however, an application about "a more general policy issue" cannot be an application if it raises "a wide range of policy matters". In 2024 the Commission wrote that its bulletin's statement means that an applicant must request that the CRTC "exercise a statutory authority based on its deliberations, which is the core attribute that defines an application".⁶⁸
- 67 Consequently an applicant cannot seek a review of a CRTC policy that the CRTC views "as a request to initiate a broad proceeding on a wide range of policy matters rather than an application" because the CRTC says that its *Rules*, "in particular regarding applications, do not authorize persons to request the issuance of such a notice of consultation".⁶⁹ As the CRTC does not publish all applications it receives, public-interest participants that prepare and file unpublished applications will not be reimbursed for their costs.

⁶⁵ *Rules*, section 23: "The Commission [*sic*] must post on its website all applications that comply with the requirements set out in section 22."

⁶⁶ *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*, s. 21(1).

⁶⁷ *Guidelines on the CRTC Rules of Practice and Procedure*, [Broadcasting and Telecom Information Bulletin CRTC 2010-959](#) (Ottawa, 23 December 2010) at paragraph 56.

⁶⁸ CRTC, Subject: [Secretary General Letter – Letter submitted by FRPC regarding emergency alerts and the National Public Alerting System](#), Broadcasting Letter (Ottawa, 9 October 2024).

⁶⁹ *Ibid.*

IV. Impact of legislative change, Cabinet *Directions* and CRTC process

68 While Canadian law’s conceptualization of the role of public-interest participation has changed gradually over the last two centuries (see *e.g.* Appendix 5), changes to statutory language in broadcasting and telecommunications have been more recent and have had a more direct impact on financial support for public-interest participation.

A. *Legislative change and a new public-interest participation Fund*

69 Though trite to say, the Internet’s introduction in the late 1990s has profoundly affected life in the 21st century. Along with the Internet’s impact on telecommunications, it was clear from the outset that Canadians’ access online to what was then considered to be broadcast programming would require deft legislative and regulatory footwork.

70 The federal government began to indicate its interest in revising Canada’s 1991 broadcasting legislation in the mid-2010s⁷⁰ and within five years had appointed the Broadcasting and Telecommunications Legislative Review Panel (BTLR). The CRTC participated in the BTLR process.

71 In its submission to BTLR the CRTC acknowledged that the Companies “generally have substantial internal resources and can afford to retain external consultants and lawyers, as well as to commission research to put forward their views and evidence in a proceeding.” It was also aware that “[c]onsumer groups and public interest organizations are typically not-for-profit, volunteer-run organizations with limited monetary resources to develop similarly sophisticated submissions.”

72 The CRTC also acknowledged that the telecom and broadcasting cost-awards processes “limit the ability of public interest organizations to develop expertise based on stable funding”. It noted three issues: uncertainty – cost applicants do not know whether their applications will be approved or when they will be paid; impact of unstable funding – public-interest participants cannot “develop a depth of expertise and experience”; and

⁷⁰ Daniel Leblanc, “[Everything’s on the table](#)”, *Globe and Mail* (23 April 2016); the Department of Canadian Heritage began to hold in-person consultations in September 2016 – “[Canadian Heritage held the first of six in-person cross-country consultations](#)” *Broadcasting Dialogue* (29 September 2016)).

unfairness – as it “may not be fair in broad policy proceedings to put the burden of costs solely on participating companies”.⁷¹

- 73 The Commission therefore recommended stable, predictable funding for qualified public-interest participants to participate in its proceedings and to build their expertise outside of its proceedings:

The CRTC recommends adopting a model for supporting public participation with stable, predictable public funding for qualified public interest participants both for participation in proceedings and for building expertise outside the context of a proceeding.²³

CRTC, *Written Public Submission to the Legislative Review Panel* (Ottawa, 2019) at p. 19

- 74 BTLR’s January 2020 report agreed that public-interest groups’ resource constraints of [p. 55] “limit the effectiveness of their participation and their contribution to the overall quality of the proceeding in question.”⁷² It noted “a **significant disparity in the resources available to these groups relative to industry participants in CRTC proceedings. This affects the public interest groups’ ability to undertake research, retain experts, and develop in-house expertise**” because “[n]either process provides funding of cost awards outside the context of CRTC.” BTLR acknowledged that the two public-interest costs processes “are not aligned in terms of process, source of funds, timeliness, administrative burden, or legislative basis.”⁷³
- 75 BTLR recommended that Parliament amend the *Broadcasting Act* “to provide the CRTC with explicit authority to award costs, similar to the authority granted under subsections 56(1) and 56(2) of the *Telecommunications Act*”.⁷⁴ It recommended that “to eliminate lengthy and adversarial processes, the new process ... be administered either by CRTC staff directly or delegated to an independent organization modelled along the lines of the Broadcasting Participation Fund.”⁷⁵

⁷¹ CRTC, *CRTC written public submission to the Legislative Review Panel* (Ottawa, 2019), Cat. No.: [BC92-102/2019E-PDF](#), at pages 17 to 19.

⁷² Broadcasting and Telecommunications Legislative Review Panel, *Canada’s Communications Future: Time to Act*, Final Report (Ottawa, January 2020), page 55.

⁷³ *Ibid.*, page 55.

⁷⁴ *Ibid.*, page 21.

⁷⁵ *Ibid.*, page 22, at paragraph 14.

- 76 In November 2020, the federal government brought forward Bill C-10, [An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts](#). It proposed to add a new section to the *Broadcasting Act* to give the CRTC the explicit discretion to make regulations about broadcasters' expenditures, including regulations regarding financial support for public-interest participation. The House of Commons passed C-10 on 21 June 2021, but an election was called before C-10 could receive third reading in the Senate⁷⁶ and its consideration by Parliament ended.
- 77 The government subsequently brought forward Bill C-11, [An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts](#), and included C-10's provisions regarding financial support for public-interest participation. Bill C-11 ultimately received Royal Assent on 27 April 2023, with the provision for financial support for public-interest participation intact.⁷⁷
- 78 Both the *Broadcasting Act* and the *Telecommunications Act* now give the CRTC the discretion to order individual or groups of entities to make payments to specific parties in the context of its broadcasting and telecommunications proceedings: Table 4. Neither statute expressly provides for an adversarial process to be used; the current process in telecom may have developed simply because those seeing the reimbursement of their costs were defined as making applications for costs that telcos would have to pay – a context in which it would be reasonable for telcos to challenge applicants' submissions.

Table 4 Public-interest costs in Canada's telecommunications and broadcasting statutes

1993 <i>Telecommunications Act</i>	April 2023 <i>Broadcasting Act</i>
56 (1) The Commission may award interim or final costs [French: frais] of and incidental to proceedings before it and may fix the amount of the costs or direct that the amount be taxed.	11.1(1)(d)(1) The Commission may make regulations respecting expenditures [French: dépenses] to be made by persons carrying on broadcasting undertakings for the purposes of ... (c) supporting participation by persons, groups of persons or organizations representing the public interest in proceedings before the Commission under this Act; or
(2) The Commission may order by whom and to whom any costs are to be paid and by whom they are to be	(2) The Commission may make an order respecting expenditures to be made by a particular person carrying

⁷⁶ Senate of Canada, "[Calendars & Events](#)", June 2021. Although the bill completed second reading in the Senate, the Chamber adjourned on 29 June 2021 and a federal election was called in August 2021, meaning that the bill had to be reintroduced in the next Parliament. Bill C-11, the *Online Streaming Act*, received first reading in the House of Commons on 2 February 2022 and eventually received Royal Assent on 27 April 2023. (LEGISinfo, C-11, 44th Parl., 1st Sess., [Historical Information](#).)

⁷⁷ "[Canadian Heritage held the first of six in-person cross-country consultations](#)", *Broadcast Dialogue* (29 September 2016).

1993 <i>Telecommunications Act</i>	April 2023 <i>Broadcasting Act</i>
taxed and may establish a scale for the taxation of costs.	on a broadcasting undertaking for any of the purposes set out in paragraphs (1)(a) to (d). ... Application of regulations (4) A regulation made under this section may be made applicable to all persons carrying on broadcasting undertakings or to all persons carrying on broadcasting undertakings of any class established by the Commission in the regulation. Recipients (5) Regulations and orders made under this section may provide that an expenditure is to be paid to any person or organization, other than the Commission, or into any fund, other than a fund administered by the Commission.
Rules, orders and regulations 57 The Commission may make rules, orders and regulations respecting any matter or thing within the jurisdiction of the Commission under this Act or any special Act.	Criteria (6) Regulations and orders made under this section may provide for expenditures to be calculated by reference to any criteria that the Commission considers appropriate, including by reference to (a) the revenues of the persons carrying on broadcasting undertakings; (b) the performance of the persons carrying on broadcasting undertakings in relation to objectives established by the Commission, including objectives for the broadcasting of Canadian programs; and (c) the market served by the persons carrying on broadcasting undertakings.

- 79 In heeding BTLR’s recommendations regarding a new funding mechanism, Parliament could have used the language of the *Telecommunications Act*, implying an understanding that Parliament wanted the CRTC to continue to use its apply-answer challenges-and-wait process. It did not: it empowered the CRTC instead to direct funding into a fund administered by a third party to support public-interest participation – something resembling the current BPF-FPR..

B. Cabinet Directions

- 80 In 2023 Cabinet exercised its discretion under the CRTC’s two enabling statutes to issue directions to the Commission about telecommunications and broadcasting policy. In February it explained that “the telecommunications market and its regulation have changed since 2019” when the CRTC last issued a direction in telecommunications.⁷⁸

⁷⁸ [Order Issuing a Direction to the CRTC on a Renewed Approach to Telecommunications Policy](#), SOR/2023-33, Registration on 10 February 2023, preamble.

- 81 Cabinet therefore directed the CRTC generally to “consider how its decisions would promote ... consumer interests and innovation” particularly insofar as this enhanced and protected “the rights of consumers in their relationships with telecommunications service providers....”⁷⁹ It also said that the CRTC “should ensure that its proceedings and decisions are transparent, predictable and coherent”,⁸⁰ that it should “base its decisions on sound and recent evidence ...”⁸¹ and that it “should conduct proceedings and issue decisions in a timely manner, in recognition of the need for market clarity.”⁸²
- 82 Then, following the enactment of the *Online Streaming Act* in April 2023 Cabinet directed the CRTC to “consider the need for sustainable and predictable funding to support participation by persons, groups of persons or organizations representing the public interest in proceedings before the Commission under the Act”.⁸³
- 83 Cabinet also set a time limit, directing the CRTC “to make any changes to its regulatory framework [for broadcasting] that are necessary for the purposes of the implementation of this Order within two years after the day on which it comes into force” – which was the day it was registered,⁸⁴ namely 9 November 2023.⁸⁵
- 84 Now is the appropriate time – to comply with Cabinet’s November 2023 *Direction* – for the CRTC to amend its current cost practices by requiring a third—party organization to enable the Commission to meet its new legislative responsibilities.

C. *Changes in CRTC process*

- 85 In addition to the changes brought about Parliament and Cabinet, the CRTC has also changed its approach to its proceedings over time. For instance, while the CRTC still permitted cross-examination in its telecom proceedings in the early 1990s, that ended, consequently increasing the importance for public-interest participants to provide more

79 *Ibid.*, s. 2(d).

80 *Ibid.*, s. 3 (“Transparency, predictability and coherence”).

81 *Ibid.*, s. 6 (“Decisions based on sound and recent evidence”).

82 *Ibid.*, s. 7 (“Timely proceedings and decision”).

83 [*Order Issuing Directions to the CRTC \(Sustainable and Equitable Broadcasting Regulatory Framework\)*](#), SOR/2023-239, s. 12(h) (“Regulations and orders – section 11.1 of the Act”) underlining added.

84 *Ibid.*, s. 20.

85 *Ibid.*, title page.

and stronger evidence – at a time when a great deal of relevant evidence is filed in confidence and is therefore inaccessible to public-interest participants.

- 86 The CRTC has also gradually reduced the intervention period in some of its proceedings. In 2000, for example, it shortened the minimum notice for an application considered at a public hearing from 50 to 30 days, allowing “the Commission to shorten the processing time for certain types of applications, especially for those not required to appear at oral hearings [now most applicants] and many ownership applications.”⁸⁶
- 87 The ‘conventional’ discovery tools available in conventional court-based litigation are not available through the CRTC, due in part to the expansive manner in which it grants confidentiality to broadcasters and telcos. The CRTC’s consultation notices – that in the 1970s and 1980s offered information about the matters it was considering – now simply state questions: the problem for public-interest participants is that, as they do not know the case they must meet (because the CRTC’s notices simply pose questions), they are forced to undertake research to locate relevant evidence – all the while knowing that the CRTC may well have that research already.
- 88 While it does so rarely, the CRTC also sometimes uses an expedited public process that shortens its regular deadlines by half or more. This dramatically increases the burden on under-resourced public-interest participants.
- 89 Very few intervenors engage in both telecom and broadcasting proceedings – but when they do they tend to expect that such proceedings will run concurrently. In the last decade, however, it has become common for several CRTC processes to be underway in the same sector simultaneously. Vertically integrated companies may employ regulatory specialists for broadcasting and for telecom; few, if any, public-interest participants have the capacity to do so. And as the CRTC’s tariffs have not increased in the past 18 years it is difficult to engage consultants and experts able to tackle more than one proceeding

⁸⁶ Canadian Radio-television and Telecommunications Commission, *Performance Report For the period ending March 31, 2000*, (Ottawa, 2000), Catalogue No. BT31-4/29-2000 ISBN 0-660-61423-5, at pages 27-28:

The timeliness of CRTC decisions directly affects business decisions and the public. In a highly competitive environment, the CRTC’s ability to respond quickly and effectively to applications and requests is a key component of a strong and healthy Canadian communications sector. As applications vary widely in complexity, so does the time spent in rendering decisions on them.

An amendment to the CRTC Rules of Procedure to shorten application processing time is currently being proposed. The minimum notice for an application going to a public hearing is proposed to be shortened from 50 to 30 days. This will permit more flexibility and allow the Commission to shorten the processing time for certain types of applications, especially for those not required to appear at oral hearings and many ownership applications.

simultaneously. Concurrent deadlines in the same regulated sector increases the burden of participation on under resourced public-interest participants.

90 Over the past twenty years, the CRTC has also either suspended or has re-opened proceedings: the Commission’s review of the regulatory framework for French-language vocal music began in July 2015 with a deadline for comments of 3 September 2015; by 1 December 2016 the Commission invited interested parties to update their mid-2015 comments and in January 2020 the Commission announced the proceeding’s resumption in the context of its *Commercial radio policy framework review*.⁸⁷ (Interim funding’s being unavailable at that time from the BPF-FPR, some public-interest participants waited five years to be paid for their work in 2015.) The CRTC invited comments on an application by broadcasting distribution companies to increase the maximum retail price of basic service on 28 September 2022, with an intervention deadline of 14 November 2022;⁸⁸

91 While the CRTC must have the flexibility to implement its telecom and broadcasting mandates as Parliament requires, these changes in approach effectively exclude public-interest participants that do not have extensive staff resources or that cannot quickly retain external support when the CRTC’s timelines change.

V. Communications Participation Fund: a proposal

92 The Forum is proposing that the CRTC use the BPF-FPR as a template for a new non-government organization that the Commission would require to process public-interest participants’ applications for costs in and incidental to CRTC proceedings: a Communications Participation Fund / Fonds pour la participation aux communications (CPF/FPC). We begin by setting out the legislative authority for our proposal and the principles that should govern the new Fund’s organization and operations. We then

⁸⁷ Review of the regulatory framework for French-language vocal music applicable to the French-language commercial radio sector, [Broadcasting Notice of Consultation CRTC 2015-318](#) (Ottawa, 20 July 2015); [Broadcasting Notice of Proceeding CRTC 2020-25](#) (Ottawa, 28 January 2020).

⁸⁸ Call for comments on an application by Bell Canada, Cogeco Communications Inc., Bragg Communications Incorporated, carrying on business as Eastlink, and Saskatchewan Telecommunications regarding the increase of the maximum retail price of the basic service, [Broadcasting Notice of Consultation CRTC 2022-267](#) (Ottawa, 28 September 2022); it reopened the proceeding on 20 February 2023: Call for comments on an application by Bell Canada, Cogeco Communications Inc., Bragg Communications Incorporated, carrying on business as Eastlink, and Saskatchewan Telecommunications regarding the increase of the maximum retail price of the basic service – Additional information added to the public record and new deadline for the receipt of interventions and the filing of replies, [Broadcasting Notice of Consultation CRTC 2022-267-3](#) (Ottawa, 20 February 2023).

describe its purpose and operational structure. Last, we make proposals for financing the CPF/FPC.

A. *Legislative authority*

- 93 Parliament has provided mechanisms for funding public-interest participation in the *Telecommunications Act* and *Broadcasting Act*. The mechanisms do not operate in synch. As Table 5 shows, subsection 56(1) empowers the CRTC to award any costs in its telecom proceedings although it cannot know the amount of these costs until it has had someone ‘tax’ the costs under subsection 56(2). Section 11.1 of the *Broadcasting Act*, on the other hand, establishes that the CRTC may make regulations to fund public-interest participation, that it may then make orders for specific expenditures, and last that it may direct these expenditures to specific organizations and funds. (Then the organizations or funds make decisions of their own, depending on their mandate and, if incorporated, their Articles and By-laws.)

Table 5 **Sequence of Parliament’s public-interest participation requirements**

1993 <i>Telecommunications Act</i>	April 2023 <i>Broadcasting Act</i>
<p>56 (1) The Commission may award interim or final costs of and incidental to proceedings before it and may fix the amount of the costs or direct that the amount be taxed => must follow CRTC decisions about who is to tax costs, who is to receive => must be preceded by CRTC’s establishment of a scale for the taxation of costs</p> <p>(2) The Commission may order by whom and to whom any costs are to be paid and by whom they are to be taxed and may establish a scale for the taxation of costs. => must precede CRTC’s decision about who fixes/taxes costs and who receives costs</p>	<p>11.1(1)(d)(1) The Commission may make regulations respecting expenditures to be made by persons carrying on broadcasting undertakings for the purposes of ... (c) supporting participation by persons, groups of persons or organizations representing the public interest in proceedings before the Commission under this Act; ... (2) The Commission may make an order respecting expenditures to be made by a particular person carrying on a broadcasting undertaking for any of the purposes set out in paragraphs (1)(a) to (d). ... Application of regulations (4) A regulation made under this section may be made applicable to all persons carrying on broadcasting undertakings or to all persons carrying on broadcasting undertakings of any class established by the Commission in the regulation. Recipients (5) Regulations and orders made under this section may provide that an expenditure is to be paid to any person or organization, other than the Commission, or into any fund, other than a fund administered by the Commission.</p>

- 94 A more reasonable approach to the public-interest participation cost provisions in the *Telecommunications Act* is to consider the decision-making steps needed to decide

public-interest participants' applications for costs. These steps are shown below, based on the idea set out in 2025-94, question 2, regarding the involvement of an independent third party: Table 6.

Table 6 Steps in deciding cost applications

Telecom cost applications	Broadcasting cost applications
<p>Step 1: establishing an independent third-party public-interest fund The CRTC may order</p> <ul style="list-style-type: none"> the companies to pay costs (56(2): "may order by whom ... any costs are to be paid") to an independent third party that operates a fund (56(2): "may order ... to whom any costs are to be paid"). <p>Step 2: directing independent third-party fund to review cost applications using the CRTC's scale The CRTC may order an independent third party</p> <ul style="list-style-type: none"> to receive and review public-interest participants' telecom applications (56(2): "The Commission may order by whom ... [any costs] are to be taxed"), and to use the costs scale that the CRTC devises (56(2): "establish a scale for the taxation of costs"). <p>Step 3: directing independent third-party to make payments as decided by the Commission The CRTC then</p> <ul style="list-style-type: none"> orders the funding organization to make recommendations to the CRTC about appropriate interim and final costs (56(1): "The Commission may award interim or final costs"; 56(2): "The Commission may order ... by whom they are to be taxed") approves or varies the funding organization's recommendations (52(2): The Commission may order ... to whom any costs are to be paid"), and orders the funding organization to make the payments approved by the CRTC to the public-interest participant applicants (56(2) "The Commission may order by whom and to whom any costs are to be paid") 	<p>The Commission may make a regulation or order that requires</p> <ul style="list-style-type: none"> all broadcasters, some broadcasters or a broadcaster (11.1(4)) to pay expenditures to reimburse public-interest participants for their CRTC-broadcast-proceeding related expenditure (11.1(5)) <ul style="list-style-type: none"> to the BPF-FPR from the date of its 2025-94 decision until the day before a new third-party independent organization is established to make decisions regarding all CRTC proceeding related expenditures and from the date a new third-party independent organization is established , to that organization.

B. *Eight principles underlying financial support of public-interest participation*

- 95 As outlined in sections II, III and IV, times have changed since the CRTC first developed a costs regime in telecommunications in the mid-1970s. At that time, it relied on the examples of the Ontario Energy Board and the Alberta Public Utilities Board (APUB).⁸⁹ As set out in Appendix 6, however, the Alberta Court of Appeal vacated a key decision elaborating the APUB's approach in 1975 over the course of 10 years. for reasons having to do with fairness and transparency. Several years later the Federal Court of Appeal also established ground rules for CRTC telecom cost decisions, later affirmed by the Supreme Court.⁹⁰
- 96 Public-interest participants have lived through changes in Canada's constitutional foundations, changes by Parliament in the CRTC's enabling statutes, changes in public-interest law, changes in the perspective to be adopted towards legislation with social purposes, attitudinal shifts towards government and significant inflationary pressures. These changes should be reflected in any new CRTC regulatory approach to public-interest participation.
- 97 The Forum submits that in 2025 any new approach to financial support for public-interest participation should flow from the following eight principles:
1. **Legitimacy:** The legislature must ensure that Canadians have confidence in the Commission's decisions⁹¹ and the CRTC's enabling of an independent and neutral non-governmental organization to provide public-interest participants with the financial resources needed to make such submissions helps to ensure the Commission's legitimacy and integrity;
 2. **Purpose:** The purpose of financial support for public-interest participation must be to enable and strengthen informed, evidence-based participation by qualified participants in CRTC proceedings;

⁸⁹ See Appendix 6, page 42 of 49.

⁹⁰ *Bell Canada v. Consumers' Assoc. of Canada*, 1986 CanLII 49 (SCC), [1986] 1 SCR 190, <<https://canlii.ca/t/1ftvd>>, [28 February 1986], at paragraph 19, aff'g *Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission)*, 1983 CanLII 4959 (FCA), [1984] 1 FC 79, <<https://canlii.ca/t/g9gkx>>, (31 March 1983); see Appendix 6, pages 46-48 of 49.

⁹¹ Broadcasting and Telecommunications Legislative Review, *Canada's Communications Future: Time to Act* (Ottawa, January 2020), at page 17 ("Overview"): "Greater participation by public interest groups is vital if Canadians are to have confidence that the institutions are working in their best interest."

3. **Qualified participants:** Financial support for public-interest participation must be directed to qualified applicants that provide the Commission with relevant arguments and evidence, that represent or reflect the views of Parliament (through its telecommunications and broadcasting statutes), Canadians or subscribers, and that perform their work and roles in a professional manner;
4. **Capacity:** Informed, evidence-based participation by public-interest participants can only take place if the CRTC ensures that the CPF/FPC has the financial and human resources it needs to perform its role each year;
5. **Stability:** public-interest participants must be able to plan their work and the resources they will need to undertake this work, and consequently must be able to assume that the rates they may charge increase in line with inflation – and must also know that the operational and cost-award Fund of the CPF/FPC will keep pace with their needs and inflation so that it can meet its purpose;
6. **Timeliness:** To ensure efficient and timely decision-making by the CPF/FPC, it must establish and report publicly on a quarterly basis on how it is meeting 60-day processing/decision-making/payment standards;
7. **Efficiency:** A new CPF/FPC based on the BPF-FPR will be able to leverage the latter's experience to begin operations quickly, and to process and make determinations about public-interest participants' costs applications in an efficient manner; and
8. **Accountability:** Clear descriptions of requirements, notification of decision-making stages, timely publication of determinations made by the CPF/FPC, an annual meeting by the CPF/FPC with public-interest participants, the companies and the Commission, and a more detailed annual report by the CPF/FPC will ensure that the CPF/FPC is accountable to public-interest participants, the Commission and the companies.

98 The Forum is recommending that the existing BPF-FPR be used as a base to establish the Communications Participation Fund / Fonds pour la participation aux communications or CPF/FPC.

99 The CPF/FPC would then accept, review and decide public-interest participants' applications for costs in CRTC telecom and broadcasting applications, make determinations about them and make payments as determined.

C. Communications Participation Fund

- 100 The history of the BPF-FPR offers guidance as to the steps for establishing the Communications Participation Fund / Fonds pour la participation aux communications that FRPC is proposing.
- 101 After the Commission agreed with PIAC's proposal for a public-interest participation fund in March 2011,⁹² PIAC and BCE filed a proposal for the Fund in May 2011.⁹³ The CRTC called for comments about the proposal on 24 August 2011.⁹⁴ The CRTC accepted an amended version of the BPF-FPR proposal in March 2012.⁹⁵
- 102 In other words, CRTC approval of the BPF-FPR idea took approximately one calendar year after it was first placed before the Commission, and ten months from the time a specific proposal was made to approval of that specific proposal.
- 103 Implementing the Communications Participation Fund / Fonds pour la participation aux communications that FRPC is proposing will require decisions to be made on matters that range from how the CPF/FPC would be established to the new organization's accountability. The BPF-FPR has already again warned that it will be ending its operations in 2025, and the CRTC in 2025 has so far taken an average of 9.3 months to issue decisions after receipt of telecom cost applications. Moreover, the Commission has been directed by Cabinet "to make any changes to its regulatory framework" in broadcasting regarding funding to support public-interest participation before 9 November 2025.⁹⁶
- 104 The Forum has set out its proposals for the Communications Participation Fund / Fonds pour la participation aux communications below.

⁹² *Change in effective control of CTVglobemedia Inc.'s licensed broadcasting subsidiaries*, [Broadcasting Decision CRTC 2011-163](#) (Ottawa, 7 March 2011), at paragraphs 48.

⁹³ *Call for comments on the Canadian Broadcasting Participation Fund*, [Broadcasting Notice of Consultation 2011-524](#) (Ottawa, 24 August 2011), paragraph 4.

⁹⁴ *Ibid.*

⁹⁵ *Broadcasting Participation Fund*, [Broadcasting Regulatory Policy 2012-181](#) (Ottawa, 26 March 2012)

⁹⁶ [Order Issuing Directions to the CRTC \(Sustainable and Equitable Broadcasting Regulatory Framework\)](#), SOR/2023-239, ss. 12(h) ("Regulations and orders – section 11.1 of the Act") and 19 ("Implementation").

1. Purpose

- 105 The CRTC should set out the purpose of the Communications Participation Fund / Fonds pour la participation aux communications in its decision about the 2025-94 proceeding.⁹⁷

The CRTC's January 2020 public comment to the Broadcasting and Telecommunications Legislative Review Panel called for funding that would enable public-interest participants to participate in its proceedings and to build expertise outside of the Commission's proceedings.

The current costs awards processes (both under the Telecommunications Act and the BPF) are proceeding based and limit the ability of public interest organizations to develop expertise based on stable funding. ...

CRTC, *Written Public Submission to the Legislative Review Panel* (Ottawa, 2019) at p. 18

- 106 The CRTC therefore recommended funding for participation and for developing expertise:

The CRTC recommends adopting a model for supporting public participation with stable, predictable public funding for qualified public interest participants both for participation in proceedings and for building expertise outside the context of a proceeding.²³

CRTC, *Written Public Submission to the Legislative Review Panel* (Ottawa, 2019) at p. 19

- 107 FRPC agrees with the Commission, and considers that the purpose of the CPF/FPC should be to strengthen public-interest participation in the CRTC's proceedings, by
- Reimbursing in a timely and efficient manner the costs of qualified public-interest participants' participation in CRTC proceedings, and
 - Issuing grants to qualified public-interest participants to undertake empirical research about broadcasting and telecommunications matters within the jurisdiction of the CRTC.

⁹⁷ *Capital Cities Communications Inc. et al. v. Canadian Radio-Television Commission et al.* (1977), 81 D.L.R. (3d) 609, [1978] 2 S.C.R. 141, 18 N.R. 181, per Laskin C.J.C. at 629:

[a]n overall policy is demanded in the interests of prospective licensees and of the public under such a regulatory regime as is set up by the Broadcasting Act. Although one could mature as a result of a succession of applications, there is merit in having it known in advance.

- 108 That said, the Forum also recommends that the Commission should consider its approach to financial support for the cultural sector. For example, the CRTC has for many years facilitated financial support for the not-for-profit organizations of Foundation to Assist Canadian Talent on Records (FACTOR)⁹⁸ and the Fondation MusicAction. (These not-for-profit organizations were established in the early 1980s with the help of private broadcasters, artists and federal government to support the production of Canadian audio programming content.)
- 109 From the late 1980s on it required those acquiring control of broadcasting services to ensure that “significant and unequivocal benefits” flowed to the Canadian broadcasting system, thereby serving the public interest.⁹⁹ The CRTC directed such “tangible benefits” to the Radio Starmaker Fund and Fonds Radiostar when these were established in 2000 “to fill the role of the music marketing and promotion fund”.¹⁰⁰ When television programming services are involved the CRTC similarly requires purchasers to direct as portion of their payments to the Canadian Media Fund, the Independent Local News Fund and other funds.
- 110 These funds have a somewhat broader mandate than was set for the Broadcasting Participation Fund (BPF), Inc./Le fonds de participation à la radiodiffusion (FPR). FACTOR, for example, describes itself as a “a private non-profit organization dedicated to providing assistance toward the growth and development of the Canadian music industry. ... FACTOR supports many facets of the infrastructure that must be in place in order for artists and music entrepreneurs to progress into the international arena.”¹⁰¹ More specifically, FACTOR funds “a range of activities to support” the commercialization of “Canadian artists and music companies”:

... This includes marketing and promotion, touring and showcasing, producing videos, and creating digital content.

We fund music industry infrastructure through programs that support domestic and international business development. Through our Collective Initiatives program we work with non-profit organizations to create market opportunities and educational events through the country. FACTOR is also a major contributor to regional music

⁹⁸ Brian Chater & Christopher Moore, [FACTOR](#), *The Canadian Encyclopedia* (11 August 2006; last edited 15 December 2013).

⁹⁹ CRTC, *Application of the Benefits Test at the Time of Transfers of Ownership or Control of Broadcasting Undertakings*, [Public Notice CRTC 1993-68](#) (Ottawa, 26 May 1993).

¹⁰⁰ *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158 (Ottawa, 15 December 2006), at paragraph 43.

¹⁰¹ FACTOR, [“Our Mandate”](#) [Accessed 8 September 2025].

events like the East Coast Music Awards and BreakOut West, as well as large-scale industry events like The Polaris Prize, the International Indigenous Music Summit, the JUNO Awards, Prism Prize, Pop Montreal, MUTEK, The Canadian Country Music Awards, and many others.¹⁰²

- 111 Similarly, the CRTC's broadcasting regulations currently require broadcasting distribution undertakings (BDUs) each year to remit 4.7% of their gross broadcasting revenues in the previous year to Canadian programming, and to ensure that at least 80% of this amount be made to the Canadian Media Fund.¹⁰³ The CRTC's radio regulations¹⁰⁴ also require

102 FACTOR, "[What We Fund](#)" [Accessed 8 September 2025].

103 [Broadcasting Distribution Regulations](#), SOR/97-555

1.

...

Canadian production fund means the Canada Media Fund or its successor. (fonds de production canadien)

...

34 (1) If a licensee is required under this section to make a contribution to Canadian programming, it shall contribute

(a) to the Canadian production fund at least 80% of its total required contribution; and

(2) Except as otherwise provided under a condition of its licence or subsection (3), a licensee shall, for each broadcast year, contribute to Canadian programming an amount equal to 4.7% of its gross revenues derived from broadcasting activities in the previous broadcast year less any allowable contribution to local expression made by the licensee in the current broadcast year to a maximum of an amount equal to 1.5% of its gross revenues derived from broadcasting activities in the previous broadcast year.

....

104 *Radio Regulations, 1986:*

15(1) ...

....

FACTOR means the not-for-profit organization known as The Foundation Assisting Canadian Talent on Recordings. (FACTOR)

MUSICACTION means the not-for-profit organization known as MUSICACTION. (MUSICACTION)

...

total revenues means the total broadcast revenues reported by an A.M. licensee, F.M. licensee or digital radio licensee in its annual returns for the previous broadcast year. (*revenus totaux*)

...

(2) Except as otherwise provided under a condition of its licence that refers expressly to this subsection and subject to subsection (3), an A.M. licensee, F.M. licensee or digital radio licensee that is licensed to operate a commercial station or ethnic station shall, if the licensee's total revenues are more than \$1,250,000, contribute annually to eligible initiatives \$1,000 plus one half of one percent of those revenues that are in excess of \$1,250,000.

(3) If a condition of licence imposed prior to June 1, 2007 requires the licensee to make a contribution to the development of Canadian content or Canadian talent that is other than that referred to in subsection (2), the amount that the licensee is required to contribute under that subsection is reduced by the amount that the licensee is required to contribute under the condition of its licence.

...

(5) Except as otherwise provided under a condition of its license, a licensee whose total revenues are more than \$1,250,000 shall make

(a) at least 15% of the contribution referred to in subsection (2) to the Community Radio Fund of Canada; and

(b) at least 45% of the contribution referred to in subsection (2) to FACTOR or MUSICACTION, however, if the licensee is licensed to operate an ethnic station or spoken word station, the licensee may instead make that percentage of the contribution to any eligible initiative that supports the creation of ethnic programs or programming from content category 1, as the case may be.

large radio broadcasters to provide financial support to FACTOR, MusicAction and the Community Radio Fund of Canada.

- 112 A small proportion of a new CPF/FPC could be allocated to the public-interest equivalent of educational events, such as conferences that facilitate the presentation and discussion of new empirical research results, legal developments related to public-interest issues and participation, and new policy proposals from Parliament, government or the Commission.
- 113 However these purposes evolve, it will be critical for the CRTC and public-interest participants to be able to review them before they are finalized through Articles of Incorporation and By-laws.
- 114 FRPC also notes that [BTNoC 2025-94](#) states that its general purpose is how the Commission “can better support people, including public interest groups, to participate in its proceedings”.¹⁰⁵ It has not, however, clarified how it understands the main term used 70 times in the consultation notice: “costs”. Nor does it clearly define the difference between costs and ‘expenses’ (used seven times in 2025-94).¹⁰⁶
- 115 The concept of costs has a wide range of meanings beginning with the idea of ‘value’ in 1200 AD¹⁰⁷ and ‘expenses or charges’ in the late 1300s,¹⁰⁸ to the concept of ‘amount charged’ from the Latin “constare” (“to stand at’ or ‘to be priced at’”)¹⁰⁹ and fees in the early 1800s (“[f]ees charged by a court to cover its expenses”¹¹⁰).
- 116 This range of meanings – from ‘value’, ‘expenses’ ‘charges’ and ‘fees’ – explains why those discussing matters related to costs at times at times may talk past each other by using the same word but meaning different things. The passage of time, moreover, has

¹⁰⁵ [BTNoC 2025-94](#), “Summary”.

¹⁰⁶ 2025-94 explains that “a party seeking funding can claim for different types of expenses, including disbursements” and refers to “operational expenses, such as photocopies and travel” in paragraph 2, refers to “total expenses” in the context of “costs awards at paragraph 18 and refers to “proceeding expenses” in the context of “how to apply for costs” at paragraph 50.

¹⁰⁷ Etymonline, “[Origin and history of cost](#)” [Accessed 18 August 2025].

¹⁰⁸ [Oxford English Dictionary](#): c 1390 – “Costs, in cost. In plural. The expenses or charges”

¹⁰⁹ “[Etymology of costs](#)”, thesaurus.now/another-word-for costs/, [Accessed 17 August 2025].

¹¹⁰ [Oxford English Dictionary](#): “1811 – court costs, n. Fees charged by a court to cover its expenses”

also changed the understanding of costs and expenses in legal and quasi-judicial proceedings.

- 117 Legal proceedings in courts tend to concern active disputes¹¹¹ between parties. These are known as ‘*lis inter partes*’ – or disputes between parties.¹¹² Disputes between parties almost always result in legal costs, consisting of legal fees and related disbursements. (Legal fees “are the costs of a range of professional services provided by lawyers, ranging from advice and drafting of documents to preparation and representation in work”.¹¹³ Disbursements are a subset of costs and can be awarded separately from costs in general. They consist of “specific expenses spent on preparing for ... proceedings, such as filing fees.”¹¹⁴)
- 118 Courts’ enabling statutes must empower¹¹⁵ them to permit one party to recover some of its legal costs from another.¹¹⁶ In ordering costs, Canadian courts tend to follow the “English Rule” in which ‘unsuccessful’ litigants make payments to successful litigants,¹¹⁷ a practice known as costs in the cause¹¹⁸ (also known as “costs in the action” and “costs to

¹¹¹ Some described as “*lis*”: “... a live issue means a *lis* – an active dispute between the parties before the Court: *Woodbine Entertainment Group v. Horsemen’s Benevolent and Protective Association*, 2004 FC 1554 (CanLII), <<https://canlii.ca/t/1j30d>>, retrieved on 2025-08-18 at paragraph 23.

¹¹² That said, some proceedings are expressly excluded from *British Columbia (Public Safety and Solicitor General) (Re)*, 2010 BCIPC 20 (CanLII), <<https://canlii.ca/t/2b29s>>, retrieved on 2025-08-21 at para. 21: “...an inquest is considered inquisitorial and not adversarial and there is no charge, accused or *lis inter partes* [dispute between parties]”

¹¹³ Peter Bowal and John Rollett, *The Law of Costs and the Cost of Law*, “Legal fees” (30 August 2016) [Accessed 17 August 2025].

¹¹⁴ Tax Court of Canada, *Court Costs*, “[Overview of Fees](#)”, tcc-cci.ca [Accessed 17 August 2025].

¹¹⁵ *Re Regional Municipality of Hamilton-Wentworth and Hamilton-Wentworth Save the Valley Committee, Inc. et al.*, 1985 CanLII 1957 (ON SC), <<https://canlii.ca/t/g1j56>>, retrieved on 2025-08-18.

¹¹⁶ *British Columbia (Minister of Forests) v. Okanagan Indian Band*, 2003 SCC 71 (CanLII), [2003] 3 SCR 371, <<https://canlii.ca/t/1g5kv>>, retrieved on 2025-08-15, at para. 19: by the late 1200s “English common law courts “were given the power by statute to order costs in favour of a successful party.”

¹¹⁷ Under the ‘American Rule’, “each party pays its own costs regardless of the litigation’s outcome”: Lara Friedlander, “Costs and the Public Interest Litigant” (1995) 40 *McGill L.J.* 55, at 59.

¹¹⁸ Lara Friedlander, “Costs and the Public Interest Litigant” (1995) 40 *McGill L.J.* 55, at 59.

the successful party in the cause”.¹¹⁹).¹²⁰ Sometimes described as an ‘indemnity’,^[121] costs have typically been used to reimburse some (but not all) costs, promote early settlement, deter abusive behaviour¹²² and to ensure access to justice. They were not to be imposed as a punishment on the party who pays them, nor given as a bonus to the party who receives them.”¹²³ Moreover, courts did not generally order unsuccessful parties to pay the successful parties’ full costs, but rather their partial costs (“partial indemnity costs”¹²⁴ or ‘party-and-party costs’ of legal fees¹²⁵) using “a predetermined scale or tariff” rather than the court’s discretion.¹²⁶

119 This “modified loser-pay model”¹²⁷ is based on the idea that in suits between private parties an unsuccessful party should not bear an undue financial burden.¹²⁸ Consequently, full indemnity or solicitor-and-client costs that reflect the actual cost of legal service are very rarely awarded. A court may order a party that “has shown bad

¹¹⁹ *Samuda v. Recipco and Fierro*, 2008 BCSC 192 (CanLII), <<https://canlii.ca/t/1vrl0>>, retrieved on 2025-08-19, at para. 36, citing Orkin (at 105.1).

¹²⁰ *Northern Engineering and Development Company (Re)*, 1930 CanLII 274 (MB CA), <<https://canlii.ca/t/g9xht>>, retrieved on 2025-08-18; *Re Regional Municipality of Hamilton-Wentworth and Hamilton-Wentworth Save the Valley Committee, Inc. et al.*, 1985 CanLII 1957 (ON SC), <<https://canlii.ca/t/g1j56>>, retrieved on 2025-08-18:

- (1) ... are an award to be made in favour of a successful or deserving litigant, payable by the loser.
- (2) Of necessity, the award must await the conclusion of the proceeding, as success or entitlement cannot be determined before that time.
- (3) They are payable by way of indemnity for allowable expenses and services incurred relevant to the case or proceeding. [and]
- (4) They are not payable for the purpose of assuring participation in the proceedings.

¹²¹ An indemnity is “protection against possible damage or loss, especially a promise of payment, or the money paid if there is such damage or loss”: *Cambridge Dictionary*, “indemnity” [Accessed 18 August 2025].

¹²² *Re Regional Municipality of Hamilton-Wentworth and Hamilton-Wentworth Save the Valley Committee, Inc. et al.*, 1985 CanLII 1957 (ON SC), <<https://canlii.ca/t/g1j56>>, retrieved on 2025-08-18; *Air Canada v Thibodeau*, 2007 FCA 115 at para 24.

¹²³ *Harold v. Smith* (1860), 5 H. & N. 381, at p. 385, 157 E.R. 1229.

¹²⁴ Justin A. Villeneuve, “[Navigating Partial Indemnity Costs Ontario](#)” WGB Law Group (25 July 2024).

¹²⁵ Tax Court of Canada, *Court Costs*, “[Overview of Fees](#)”, tcc-cci.ca [Accessed 17 August 2025]; see also *Canada (Attorney General) v. Chrétien*, 2011 FCA 53 (CanLII), 2011 FCA 53 (CanLII), <<https://canlii.ca/t/2frq1>>, paragraph 3(e).

¹²⁶ *Green v. Public Utilities Board* (1979), 94 D.L.R. (3d) 641 at 657, 1979 CanLII 2771 (AB CA), <<https://canlii.ca/t/gbdnk>>, [19 January 1979].

¹²⁷ Peter Bowal and John Rollett, [The Law of Costs and the Cost of Law](#), “Legal fees” (30 August 2016) [Accessed 17 August 2025].

¹²⁸ *Calwell Fishing Ltd. v. Canada*, 2016 FC 1140 (CanLII), <<https://canlii.ca/t/gvck6>>, retrieved on 2025-08-18, at para. 33.

faith or inappropriate, reprehensible, scandalous or outrageous conduct”¹²⁹ to pay the other side their full legal bill.¹³⁰ Courts have, however, also ordered full indemnity costs if this serves the public interest: these orders “can be justified in the public interest when the case ‘raise[s] an issue that is novel or otherwise extends beyond the immediate interests of the parties.’”¹³¹

- 120 The idea of funding public-interest participation in legal proceedings has in fact only fully emerged in the last 50 years, beginning at about the time Parliament transferred jurisdiction over telecommunications to the CRTC (1975). Parliament replaced old-fashioned language concerning cost awards used in the 1967 *National Transportation Act* with easier to understand language in the 1993 *Telecommunications Act* – and even easier language in the 2023 *Broadcasting Act*.

2. *Establishment*

- 121 If the CRTC approves the concept of the CPF/FPC it should formally request that the BPF-FPR develop draft *Articles of Incorporation* and *By-laws* for the Commission’s review, and subsequently for public comment. The CRTC could then issue its determination.
- 122 FRPC has developed two proposals for timing that affects the establishment of a new public-interest participation Fund, one using a partially expedited process and one using a more ‘routine’ process. Each proposal sets out seven options with respect to the timing for the CRTC to issue its decision about 2025-94 after the 9 October 2025 deadline for final replies: the CRTC timing options range from four to ten weeks. These options are modelled in **Revised** Table 7 showing the estimated dates and revised dates to take into account the CRTC’s regulation that “the period beginning on December 21 in one

¹²⁹ *Canada (Attorney General) v. Chrétien*, 2011 FCA 53 (CanLII), <<https://canlii.ca/t/2frq1>>, retrieved on 2025-08-18, at para. 3; the Federal Court defined these terms in 2024 in *Jahazi v. Canada (Citizenship and Immigration)*, 2024 FC 2072 (CanLII), <<https://canlii.ca/t/k8h9r>>, retrieved on 2025-08-18, at para. 45:

“Reprehensible” behaviour is that deserving of censure or rebuke; blameworthy. “Scandalous” comes from scandal which may describe a person, thing, event or circumstance causing general public outrage or indignation. Among other things, “outrageous” behaviour is deeply shocking, unacceptable, immoral and offensive.

¹³⁰ Justin A. Villeneuve, “[Navigating Partial Indemnity Costs Ontario](#)” WGB Law Group (25 July 2024).

¹³¹ *Shanks v. Salt River First Nation #195*, 2023 FC 931 (CanLII), <<https://canlii.ca/t/jz4jm>>, at para. 15, Citing (*Bird v Peter Ballantyne Cree Nation*, [2023 FC 431](#) at para [14](#), citing *Cowessess First Nation No 73 v Pelletier*, [2017 FC 859](#) at para [23](#)).

year and ending on January 7 in the following year must not be included in the computation of a time period”.¹³²

a. Expedited process

- 123 If the CRTC approves the CPF/FPC proposal ten weeks after the intervention deadline, grants interested parties two weeks to comment and issues a decision two weeks after that, the CPF/FPC decision could be issued by **22 January 2026**.

b. Routine process

- 124 If the CRTC approves the CPF/FPC proposal ten weeks after the intervention deadline, grants interested parties four weeks to comment and issues a decision four weeks after that, the CPF/FPC decision could be issued by **12 February 2026**.
- 125 This would, of course, only enable the new Communications Participation Fund / Fonds pour la participation aux communications to be incorporated, presumably using the current BPF-FPR members of the Board in their current roles, as the founding members of the CPF/FPC’s Board.
- 126 The same 2025-94 decision could also initiate a new proceeding to establish the specific broadcasting regulations needed to implement the CPF/FPC and to establish new *Guidelines* or a Regulatory Policy in telecom to explain the approach it will use in that sector.
- 127 It may be necessary for the CRTC to make a short-term regulation or order (under both statutes) for what would be a first, transitional year to provide the BPF-FPR/CPF/FPC with enough funding to enable it to begin considering cost applications in 2026 . (The alternative may leave broadcasting matters unfunded, which cannot be what Parliament intended having enacted the new public-interest participation funding mechanism in April 2023 – 746 days or 24.5 months before the CRTC issued 2025-94.)

¹³² *Rules*, s. 12(1)(c):

Sections 26 to 29 of the Interpretation Act apply to the computation of a time period set out in these Rules or a decision, notice of consultation, regulatory policy or information bulletin, except that (c) the period beginning on December 21 in one year and ending on January 7 in the following year must not be included in the computation of a time period.



Revised **Table 7** **Timing of decision to establish proposed CPF/FPC**

2025-94 final replies due:	09-Oct-25	Weeks after replies that CRTC issues decision:						
If expedited (2 week public comments)		4 weeks	5 weeks	6 weeks	7 weeks	8 weeks	9 weeks	10 weeks
CRTC decision on 2025-94		06-Nov-25	13-Nov-25	20-Nov-25	27-Nov-25	04-Dec-25	11-Dec-25	18-Dec-25
New articles & by-laws	4 weeks	04-Dec-25	11-Dec-25	18-Dec-25	25-Dec-25	01-Jan-26	08-Jan-26	15-Jan-26
Call for comments	2 weeks	18-Dec-25	25-Dec-25	01-Jan-26	08-Jan-26	15-Jan-26	22-Jan-26	29-Jan-26
Final CRTC decision	2 weeks	01-Jan-26	08-Jan-26	15-Jan-26	22-Jan-26	29-Jan-26	05-Feb-26	12-Feb-26
<u>Excludes 21 Dec/25 to 7 Jan/26</u>		Weeks after replies that CRTC issues decision:						
		4 weeks	5 weeks	6 weeks	7 weeks	8 weeks	9 weeks	10 weeks
CRTC decision on 2025-94		06-Nov-25	13-Nov-25	20-Nov-25	27-Nov-25	04-Dec-25	11-Dec-25	18-Dec-25
New articles & by-laws due	4 weeks	04-Dec-25	11-Dec-25	18-Dec-25	08-Jan-26	08-Jan-26	08-Jan-26	15-Jan-26
Deadline for comments	2 weeks	18-Dec-25	08-Jan-26	08-Jan-26	22-Jan-26	22-Jan-26	22-Jan-26	29-Jan-26
Final CRTC decision	2 weeks	08-Jan-26	22-Jan-26	22-Jan-26	05-Feb-26	05-Feb-26	05-Feb-26	12-Feb-26
		Weeks after replies that CRTC issues decision:						
If 'regular' timelines (4 weeks)		4 weeks	5 weeks	6 weeks	7 weeks	8 weeks	9 weeks	10 weeks
CRTC decision on 2025-94:		06-Nov-25	13-Nov-25	20-Nov-25	27-Nov-25	04-Dec-25	11-Dec-25	18-Dec-25
New articles & by-laws due	4 weeks	04-Dec-25	11-Dec-25	18-Dec-25	25-Dec-25	01-Jan-26	08-Jan-26	15-Jan-26
Deadline for comments	4 weeks	01-Jan-26	08-Jan-26	15-Jan-26	22-Jan-26	29-Jan-26	05-Feb-26	12-Feb-26
Final CRTC decision	4 weeks	29-Jan-26	05-Feb-26	12-Feb-26	19-Feb-26	26-Feb-26	05-Mar-26	12-Mar-26
<u>Excludes 23 Dec/25 to 7 Jan/26</u>		Weeks after replies that CRTC issues decision:						
		4 weeks	5 weeks	6 weeks	7 weeks	8 weeks	9 weeks	10 weeks
CRTC decision on 2025-94:		06-Nov-25	13-Nov-25	20-Nov-25	27-Nov-25	04-Dec-25	11-Dec-25	18-Dec-25
New articles & by-laws due	4 weeks	04-Dec-25	11-Dec-25	18-Dec-25	08-Jan-26	08-Jan-26	08-Jan-26	15-Jan-26
Deadline for comments	4 weeks	08-Jan-26	08-Jan-26	15-Jan-26	05-Feb-26	05-Feb-26	05-Feb-26	12-Feb-26
Final CRTC decision	4 weeks	05-Feb-26	05-Feb-26	12-Feb-26	05-Mar-26	05-Mar-26	05-Mar-26	12-Mar-26

Note: FRPC submitted this revised version of Table 7 with the CRTC on 12 September 2025 to replace the version filed on 9 September when it was realized end of day on 11 September that several of the Excel formulae in the table were incorrect.

- 128 At that point it would be necessary to identify and invite additional members to join the Board. Assuming that happens, the Board could then begin to seek, interview and hire staff so that it could begin its work.

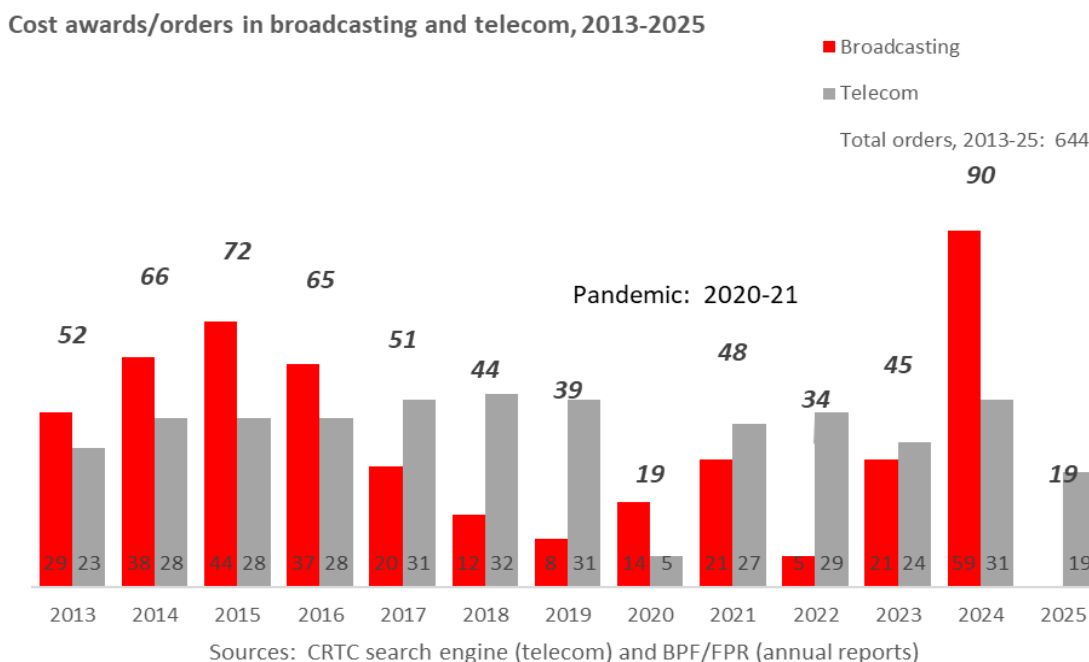
3. *Structure / Organization*

- 129 From 2012 to now the Broadcasting Participation Fund (BPF), Inc./Le fonds de participation à la radiodiffusion (FPR) has operated with a three-member Board of Directors and the support of a part-time executive director. The Board consists of a neutral Chairperson, an ‘industry’ representative and a ‘consumer’ or public-interest representative. This structure somewhat resembles the federal Court Challenges Program, an organization that is independent of the federal government and administered by the University of Ottawa (which has both Common Law and Civil Law faculties). It was reinstated in February 2017 “to bring cases of national significance related to certain constitutional and quasi-constitutional official language and human rights before the courts.”¹³³ Funding decisions for applications related to the costs of such cases are made by two panels “composed of experts”.¹³⁴
- 130 If the CRTC approves the concept of a third-party independent fund to review, process and (depending on decisions) make timely payment to public-interest applicants, the Fund will need a structural and organizational upgrade to enable it to meet its purpose, as the number of applications may more than double: Figure 8.

133 Government of Canada, [Court Challenges Program](#) [Accessed 15 August 2025].

134 Canadian Heritage, [Court Challenges Program](#), “Expert Panels”.

Figure 8 Cost awards/orders in broadcasting and telecom, 2013-2025



- 131 Moreover, while the current BPF-FPR Board has more than a decade of experience with respect to public-interest participants in broadcasting matters, it has not made any decisions regarding the CRTC telecommunications proceedings and will need to build up this expertise.
- 132 Consequently, FRPC recommends that the new CPF/FPC consist of a seven-member board: a neutral Chairperson with legal training, three members with experience in telecommunications and three members in broadcasting. Establishing a broadcasting and a telecommunications sub-Committee would give the CPF/FPC the decision-making structure it requires to operate efficiently. FRPC notes that FACTOR's Board includes a variety of representation: "We are governed by a Board of Directors with representatives from the radio broadcast and independent music sectors"¹³⁵ In other words, FACTOR's board includes representatives of those required to fund FACTOR and those who may receive funding from FACTOR – and has clearly found this sufficiently useful in terms of the Board's members being its 'guiding mind' that it retains this structure.

¹³⁵ FACTOR, "[Our Team](#)" (Accessed 9 September 2025).

- 133 The Forum therefore proposes a change in the focus of the CPF/FPC Board members compared to those of the BPF-FPR, as follows:

Table 8 Proposed Board structure for CPF/FPC

BPF-FPR	CPF/FPC	
Neutral Chair	Neutral chair with legal experience	
Industry representative	<u>3 telecommunications members:</u> 1 industry representative 1 consumer interest representative 1 public-interest participant representative	<u>3 broadcasting members:</u> 1 industry representative 1 consumer interest representative 1 public-interest participant representative
Consumer representative		

- 134 FRPC recommends that the BPF-FPR by-law provisions regarding limitations on who may serve as industry or consumer-interest representatives remain in place.

- 135 In addition to a larger Board of Directors, FRPC is recommending that the CPF/FPC have several staff. BTLR recommended that a new “cost award process ... be administered by dedicated staff with expertise in this area in order to ensure consistent claims determinations.”¹³⁶ We agree that staff with knowledge would assist the Board’s efficient functioning and consistency in its decision-making and are proposing the CPF/FPC be empowered to employ and pay for at least east three full-time staff:

- an executive director position responsible for facilitating the Board’s meetings, circulating documentation, and drafting decisions under the Board’s direction and with its final approval;
- a senior advisor position responsible for reviewing cost applications with respect to their adherence to CRTC requirements regarding relevance and evidence, and
- an accountant responsible for reviewing cost applications insofar as costs are concerned and for organizing the CPF/FPC’s annual (and more frequent) public reports.

4. Funding

- 136 As noted above, the funding mechanisms for the BPF-FPR and the CRTC’s telecom costs process are quite different. The BPF-FPR has been funded predominantly by

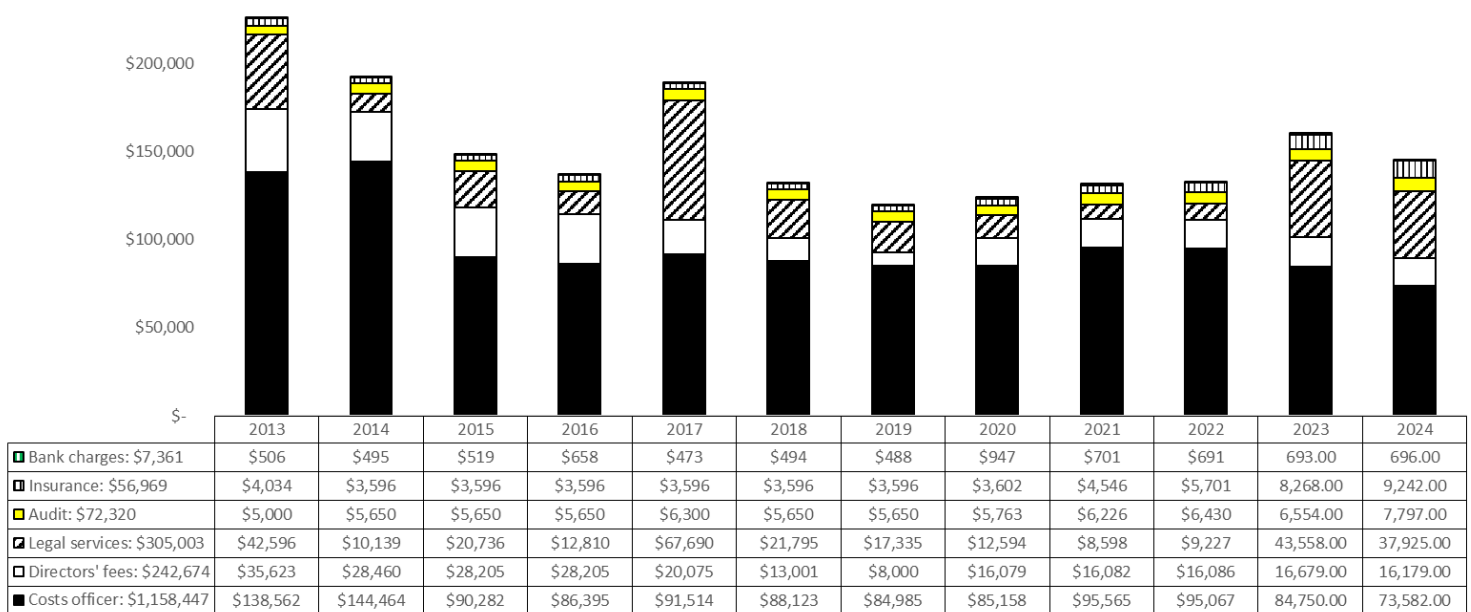
¹³⁶ Broadcasting and Telecommunications Legislative Review Panel, [Canada’s Communications Future: Time to Act](#), Final Report (Ottawa, January 2020), pages 17-18.

tangible benefits in ownership transactions, while the CRTC has generally ordered Canada's largest telecommunications companies to make cost-award payments. In each case the decisions are made proceeding by proceeding – but where the BPF-FPR pays applicants approved amounts, the CRTC directs telecom companies and others to pay percentages of the amounts.

- 137 While the CRTC's telecom cost system expenses are unknown, the BPF-FPR publishes information about its expenses in its annual reports: Figure 9. Overall, 83.2% of the FRPC's expenses were allocated to professional services for its costs officer, audit and external legal services.

Figure 9 BPF-FPR expenditures, 2013-2024

BPF/FPR expenditures, 2013-2024
\$250,000



Source: BPF/FPR Annual Reports

- 138 The BPF-FPR appears to have functioned without any full-time support: its legal and audit services were engaged as needed while its cost officer was, to the best of our knowledge, providing services on a part-time basis. Directors' fees made up a small proportion of the BPF-FPR's total expense and were essentially flat from 2020 to 2024 when the Board was faced so frequently with the prospect of the Fund's extinction that its search for stable funding consumed a significant part of its time.

- 139 Cost claims in telecom and broadcasting vary significantly from one year to the next. Table 9, for example, shows that the total amounts claimed in 2017 were 1.83 times the amount claimed in the year before, itself 1.54 times the amount claimed the year before that. The total claimed in 2021 was 3.95 times higher than the year before, while the total claims in 2023 and 2024 were each more than 1.4 times higher than the preceding years.

Table 9 Changes in total cost order amounts claimed, 2013-2024

Year of order	Broadcasting	Telecom	Total	Current year's amount divided by previous year
2013	\$355,811	\$596,467	\$952,278	
2014	\$808,127	\$370,261	\$1,178,388	1.24
2015	\$347,088	\$527,151	\$874,239	0.74
2016	\$ 1,073,597	\$275,457	\$1,349,054	1.54
2017	\$894,069	\$1,572,891	\$2,466,959	1.83
2018	\$162,096	\$614,846	\$776,942	0.31
2019	\$191,328	\$709,387	\$900,715	1.16
2020	\$284,704	\$70,297	\$355,002	0.39
2021	\$904,569	\$498,427	\$1,402,996	3.95
2022	\$123,072	\$287,318	\$410,390	0.29
2023	\$246,860	\$349,418	\$596,279	1.45
2024	\$560,195	\$403,272	\$963,468	1.62

- 140 Our point is that to meet the principle of stability, the Fund **must** be able to cope with unexpected increases from one year to the next so that it is not forced to resort to measures such as suspension of payments or the withholding of amounts granted to applicants.
- 141 FRPC believes that a new funding mechanism based on fraction of the total operating revenues of Canadian broadcasters and telecommunications companies would provide the CPF/FPC with an operational base sufficient to provide more reasonable honoraria (\$1,000 per month) for each of its seven Board members, expenses to pay for three full-time staff as well as occasional outside professional services (such as legal advice and website design and maintenance) and communications services (telephone and Internet access etc.) A hypothetical scenario for the Board and its staff might look like this:

Expenses related to Board and staff	Hypothetical annual cost*
7 Board members at \$1,000/month	\$84,000
Executive Director	\$150,000
Costs Officer	\$100,000
Audit	\$80,000
Total	\$330,000
* Excludes ancillary costs such as benefits; assumes that the costs will increase with annual inflation	

142 This estimate is based, however, on the existing public-interest participants that applied for costs – so that if the CRTC were to change its eligibility criteria to encourage more participants, the figures above would be underestimates and the figures should be recalculated, preferably using more sophisticated tools than a used envelope.

143 The CPF/FPC would also need separate funding to reimburse the costs it grants to applicants to reimburse them for their CRTC costs, research (empirical studies) and development (conferences). A hypothetical scenario for costs in 2026 might be to estimate (initially) three times the combined broadcast and telecom costs in 2024. That amount - \$963,468 – is based on rates set in 2007. Adding an additional 52.7% as proposed by Sepulveda Consulting Inc. would amount to \$1,471,215.

144 Including a hypothetical research and development amount of \$250,000 would bring the annual total for the CPF/FPC, cost claims and research and development to \$7.14 million.

	Hypothetical annual cost*
Expenses related to Board and staff	\$330,000 x 2 (estimated benefits) = \$660,000
2024 cost claims	\$963,468
2024 cost claims X 52.7% (Benchmark factor)	\$1,471,215
Board expenses + cost claims with factor	\$2,131,215
Research and development - hypothetical	\$250,000
Annual total	\$2,318,215
Stability estimate: annual total X 3 (current + 2-year reserve for unexpected increases)	\$7,143,645

145 Section 11.1(6)(a) of the 2023 *Broadcasting Act* permits the CRTC to make decisions about financial support for public-interest participation by reference to “the revenues of the persons carrying on broadcasting undertakings”. Section 56(2) of the 1993 *Telecommunications Act* permits the Commission to order companies to pay costs of and incidental to its “proceedings”.

- 146 FRPC is proposing that Canada's largest telecommunications and broadcasting companies – whose applications and participation in other proceedings amounts to at least half of the work related to CRTC broadcasting and telecom proceedings – remit a fraction of one percent of their operating revenues on January 2nd each year to pay for the CPF/FPC's operations and for cost claims.
- 147 The payments are designed to provide the Fund and public-interest participants with stability, ensuring that the Fund always has an amount sufficient to pay at least two years' worth of its previous year's operating budget and cost claims: money available in the Fund at the end of the year would roll over¹³⁷ until the Fund exceeded three times¹³⁸ without an annual payment from the companies. The CRTC should at that point suspend the application of its payment regulations or orders until the Fund fell below double the previous year's total expenses.¹³⁹
- 148 According to the CRTC's Open Data files, total telecom and total conventional broadcasting revenues in Canada in 2023 amounted to \$74 billion. If roughly three-quarters of this revenue goes to the three or four largest companies in each of broadcasting and telecom, they would earn \$55.7 billion. The total operating and expenses of the proposed Communications Participation Fund / Fonds pour la participation aux communications would be \$7.14 million – or 0.013 % of the large Canadian companies' combined broadcasting and telecom revenues. To put this amount into perspective, 1% of the large Canadian companies' total revenue in 2023 was \$55.4 million (or roughly 78 times what the CPF/FPC may require).

	Millions
Conventional Canadian broadcasters - revenues	\$14,700
Telcos - revenues	\$59,622
Total revenues	\$74,322
X 75% (assumes 5 largest companies in each sector make payments)	\$55,742

¹³⁷ But would be accounted for, so that telecommunications companies could be assured that their payments are being allocated to the costs of CRTC telecom proceedings as 'taxed' by the CPF/FPC. One impact of this could be that the CRTC might then have to allocate a greater share of the CPF/FPC expenses and cost claims at the beginning of the year to the companies' broadcast revenues, with re-calculation at the end of the year to determine what the companies' different interests have paid for.

¹³⁸ Three, rather than two, as it is difficult to predict accurately how many proceedings will be initiated by the CRTC and how many public interest participants will engage in the proceedings.

¹³⁹ If the Fund should be dissolved, the funds remaining after all expenses are paid should be returned to the payors.

CPF/FPC operating and claim expenses – stability estimate	\$7.14
As % of total large Canadian companies’ revenues	0.013%
1 % of the large Canadian companies’ revenues:	\$557.4

- 149 The funding provided in each year to the CPF/FPC by the companies for the CPF/FPC operational base should increase by the annual inflation rate for the preceding year.

5. Eligibility

- 150 The Forum notes that the *Federal Courts Rules* today enable the Federal courts to consider nearly 20 factors when exercising their discretion to award costs, (including whether to allow “more than one set of costs”).¹⁴⁰ The *Rules* also enable the Courts to consider the public interest in having a matter litigated, in the context of awarding costs *against* the party who initiates such cases when

- a) The proceeding involves issues the importance of which extends beyond the immediate interests of the parties involved.
- b) The person has no personal, proprietary or pecuniary interest in the outcome of the proceeding, or, if he or she has an interest, it clearly does not justify the proceeding economically.
- c) The issues have not been previously determined by a court in a proceeding against the same defendant.
- d) The defendant has a clearly superior capacity to bear the costs of the proceeding. [and]

¹⁴⁰ S. 400(3): (a) the result of the proceeding; (b) the amounts claimed and the amounts recovered; (c) the importance and complexity of the issues; (d) the apportionment of liability; (e) any written offer to settle; (f) any offer to contribute made under rule 421; (g) the amount of work; (h) whether the public interest in having the proceeding litigated justifies a particular award of costs; (i) any conduct of a party that tended to shorten or unnecessarily lengthen the duration of the proceeding; (j) the failure by a party to admit anything that should have been admitted or to serve a request to admit; (k) whether any step in the proceeding was (i) improper, vexatious or unnecessary, or (ii) taken through negligence, mistake or excessive caution; (l) whether more than one set of costs should be allowed, where two or more parties were represented by different solicitors or were represented by the same solicitor but separated their defence unnecessarily; (m) whether two or more parties, represented by the same solicitor, initiated separate proceedings unnecessarily; (n) whether a party who was successful in an action exaggerated a claim, including a counterclaim or third party claim, to avoid the operation of rules 292 to 299; (n.1) whether the expense required to have an expert witness give evidence was justified given (i) the nature of the litigation, its public significance and any need to clarify the law, (ii) the number, complexity or technical nature of the issues in dispute, or (iii) the amount in dispute in the proceeding; and (o) any other matter that it considers relevant; s. 400(6): “the Court may (a) award or refuse costs in respect of a particular issue or step in a proceeding; (b) award assessed costs or a percentage of assessed costs up to and including a specified step in a proceeding; (c) award all or part of costs on a solicitor-and-client basis; or (d) award costs against a successful party.”

e) The plaintiff has not engaged in vexatious, frivolous or abusive conduct.¹⁴¹

151 The CPF/FPC should ensure that applicants whose cost applications are approved are eligible public-interest participants, based on the CRTC's determinations in 2025-94. For example, the CRTC has traditionally not granted cost awards to industry associations of for-profit undertakings or persons.¹⁴² The Commission should again make this point in its 2025-94 decision.

152 The Commission should also clarify the extent to which it would want the new CPF/FPC to investigate applicants' performance, if the CRTC has already accepted applicants' interventions or other submissions for the public record. It would be helpful as well if the CRTC could provide examples of unacceptable conduct (beyond that of hate speech, for which Canadian courts have already provided guidance), such as frivolous, vexatious or abusive behaviour.¹⁴³

6. Rates

153 Appendix 7 sets out a report by Sepulveda Consulting Inc. which makes recommendations about scale of costs on which public-interest participants may base their claims for costs related to different services. The recommendations are based on the report's benchmarking analysis that compared the CRTC's 2007 rates to the 2007 rates of four provincial utility regulators (British Columbia's Utilities Commission or BCUC; Alberta's Public Utilities Board or APUB; Ontario's Energy Board or OEB, and Québec's Régie de l'énergie or Régie).

154 The report recommends rates that, if adopted, would place the Commission in a position relative to these agencies which the Commission in in 2007. It also notes

¹⁴¹ *Mcewing v. Canada (Attorney General)*, 2013 FC 953 (CanLII), <<https://canlii.ca/t/g0mpf>>, retrieved on 2025-08-18, at para. 13, citing Ontario Law Reform Commission, *Report on the Law of Standing* (Toronto: Ministry of the Attorney General, 1989).

¹⁴² *9255-2504 Québec Inc. v. Canada*, 2022 FCA 43 (CanLII), [2022] 4 FCR 437, <<https://canlii.ca/t/k0rpy>>, retrieved on 2025-08-17. When discussing costs in this case the appellants argued that "solicitor-and-client costs are awarded when reasons of public interest are at issue" (paragraph 107). The Court held at paragraph 108 th "With respect to the public interest in this case, a distinction must be made between those who represent the public interest in a case in which they have no pecuniary interest and those who pursue their pecuniary interests by invoking the public interest." [In this case the Court held the appellants did have a pecuniary interest.]

¹⁴³ *Mcewing v. Canada (Attorney General)*, 2013 FC 953 (CanLII), <<https://canlii.ca/t/g0mpf>>, retrieved on 2025-08-18, at para. 13, citing Ontario Law Reform Commission, *Report on the Law of Standing* (Toronto: Ministry of the Attorney General, 1989).

three of the four provincial regulatory authorities do not distinguish between the internal and external sources of service provision. In addition to recommending annual increases based on the Consumer Price Index that measures inflation, the report suggests that the Commission consider in several years whether a new benchmarking analysis should be undertaken.

Table 10 Current (2007) and proposed scale for public-interest participation costs

Guidelines for the Taxation of Costs, Revised as of 24 April 2007				Benchmarking report		
Legal Fees (Outside Counsel) – Hourly rates				External counsel		Benchmark report comments
Service Provider	Completed Years of Practice	Hourly Rate		Proposed compl’d years of practice	Proposed rates	Rates should increase by 55.7%
Legal Assistant	-	\$35		0 to 5	\$265	
Articling Student	-	\$70				
Legal Counsel	0-2	\$135				
Legal Counsel	3-5	\$165				
Legal Counsel	6-10	\$206		6 to 10	\$335	
Legal Counsel	11-19	\$250		11 to 19	375	
Legal Counsel	20+	\$290		20 +	425	
Expert Witnesses						
Service provided		Rate	Est'd hourly rate (~ 7 hour day)	Proposed compl’d years of practice	Proposed rates	Rates should increase 60%
Attendance at an oral hearing in order to testify		\$1650/day	\$236		\$360	
Other Services		\$225/hour				
Hourly						
Consultant and Analyst Fees – Hourly rates						
Service Provider	Completed Years of Practice	Hourly Rate		Proposed compl’d years of practice	Proposed rates	Rates should increase 43.9%
Analyst/Consultant	0-4	\$110		0 to 5	\$180	
Intermediate Analyst/Consultant	5-8	\$165		6 to 10	\$250	
Senior Analyst/Consultant	9+	\$225		11 to 19	\$310	
					\$360	
				20 +		
In-house Fees – Daily rates						
Service Provider	Completed Years of Practice	Daily Rate		Proposed compl’d years of practice	Proposed rates	71.3% increase
Legal Assistant	-	\$175		0 to 5	\$106	
Articling Student	-	\$235		6 to 10	\$134	
Legal Counsel	0-8 years	\$600	\$86	11 to 19	\$150	
Legal Counsel	over 8 years	\$800	\$114	20 +	\$170	

<i>Guidelines for the Taxation of Costs, Revised as of 24 April 2007</i>				<i>Benchmarking report</i>		
Analyst/Consultant	-	\$470	\$67	0 to 5	\$72	
				6 to 10	\$100	
				11 to 19	\$124	
				20 +	\$144	

7. Types of costs

- 155 As noted earlier the *Telecommunications Act* provides for interim and final costs. While “final costs” are awarded once a proceeding has concluded, costs have also been awarded within an interim period when participants have undertaken some work but before all stages of the CRTC process are complete. Advance costs in practice appear to be sought before public-interest participants begin to work, to enable that work to begin but as so many of the CRTC’s broadcasting proceedings have relatively short intervention deadlines – 30 calendar days – and no reply phase, few public-interest participants may decide to apply for advance costs in those proceedings.
- 156 Interim and advance costs are granted to preserve “basic principles of fairness and equity” by ensuring “that parties to [the] hearing may participate and be heard in a fair, effective and meaningful fashion”.¹⁴⁴ In the early 1990s two factors were considered to order interim costs: whether the interim-costs “applicant was in financial difficulty” and the “inability to fund an otherwise meritorious lawsuit” gives the opposing party an “advantage”.¹⁴⁵
- 157 FRPC considers that granting interim costs in CRTC proceedings today is a reasonable and responsible way to deal with the fact that many CRTC proceedings take months to complete. In our view, public-interest participants should be able to apply for costs of work they have already incurred when – after several months – a proceeding is likely to last several more months (or even, as in the case of French-language vocal music process, for years).
- 158 Making interim cost payments raises the risk that recipients may terminate their participation in the process rather than complete it. This is a factor the CPF/FPC

¹⁴⁴ *Re Regional Municipality of Hamilton-Wentworth and Hamilton-Wentworth Save the Valley Committee, Inc. et al.*, 1985 CanLII 1957 (ON SC), <<https://canlii.ca/t/g1j56>>, retrieved on 2025-08-18

¹⁴⁵ *McKay et al. v. Munro et al.*, 1992 CanLII 4553 (NS SC), <<https://canlii.ca/t/1tgt>>, retrieved on 2025-08-19, citing *Alles v. Maruice et al.* (1992) ON CJ, Gen. Div. per R.A. Blair J. at p. 6.

could monitor and, should it prove problematic, address this through future cost decisions involving those recipients.

8. *Timeliness*

- 159 In January 2020 the Broadcasting and Legislative Review Panel proposed that funding for public-interest participation “be subject to a three-month service standard with a six-month upper limit for the completion of cost awards”.¹⁴⁶
- 160 While the Forum acknowledges that a six-month maximum would be an improvement over the current decision-making process of the telecom cost process, there is no clear explanation of whether BTLR considered the BPF-FPR’s 1.5 to 2 months decision-making process.
- 161 We note as well that other sectors in the economy also sometimes wait for payment for the goods or services they sell. In fact, the construction sector was at one point known for the slow payment of subcontractors working for general contractors. In 2017 the Senate enacted Bill S-224, an *Act Respecting Payments Made under Construction Contracts*. The Honourable Senator Plett addressed the bill in its second reading before the Senate:
- [t]he fundamental cause of the late payment problem is the unequal bargaining power between contractors and their subcontractors. Contractors force subcontractors to accept late payments as part of the costs of doing business. Contractors can do this because they control the flow of work. Most trade contractors depend for their survival on subcontracting either from a general contractor or from another trade contractor. No trade contractor can afford to be struck off the bidders' list.¹⁴⁷
- 162 The House of Commons ultimately passed the *Federal Prompt Payment for Construction Work Act* in 2019 and its provisions entered into force on 9 December 2023.¹⁴⁸ It requires either the Crown or a service provider to remit payment for “any construction work that was performed by the contractor and not yet paid for by Her Majesty or that service provider.... **no later than the 28th day after the**

¹⁴⁶ Broadcasting and Telecommunications Legislative Review Panel, page 22 (recommendation 15).

¹⁴⁷ Senate of Canada, Hansard, (Vol. 150, Issue 28) 42nd Parl., 1st Sess. (Hon. Senator Plett, 19 April 2016) at 1510.

¹⁴⁸ See [Federal Prompt Payment for Construction Work Act](#), Justice Laws website, S.C. 2019, c. 29, s. 387 (Assented to 21 June 2019), “in force December 9, 2023).

- day**” when the invoice for this work is received.¹⁴⁹ It was argued by then Member of Parliament (now Leader of the Government in the House of Commons) Steven MacKinnon that “everything will be done in a smooth and orderly fashion in accordance with the principles of justice, transparency and fairness.”¹⁵⁰
- 163 The Forum proposes that – with additional support staff and more tailored Board of Directors – the Communications Participation Fund / Fonds pour la participation aux communications that we have proposed should be able to review, make decisions about and pay cost applicants within 60 days.
- 164 That said, payments received after 60 days should include both the payment approved by the CPF/FPC and compensatory, compound interest beginning on the 61st day after cost applicants file their applications (and assuming they are approved in whole or in part). The CPF/FPC’s annual report should then state how often and how much interest it has had to pay due to late processing.
- 9. Accountability**
- 165 Accountability is inextricably linked to transparency. FRPC agrees that any new costs process emerging from 2025-94 must operate transparently and must publish sufficient information to be accountable not just to public-interest participants but to Parliamentarians who may be interested to know whether their new approach in broadcasting has worked to increase public-interest participation. Those remitting payments to support public-interest participation should also be able to use such information to assure themselves that the CPF/FPC is operating responsibly.
- 166 BTLR effectively recommended and FRPC agrees that the new Communications Participation Fund / Fonds pour la participation aux communications should report “quarterly on the status of cost claims and their disposition”.¹⁵¹
- 167 The companies are always free to identify any concerns they have with the CPF/FPC’s operations – and may continue to ask that the CRTC require ‘strict

149 Sections 9(1) and (2), [bold font added].

150 House of Commons *Hansard*, [42nd Parl., 1st Sess., \(4 June 2019, 4:15 pm\)](#) then-MP Steven MacKinnon (Gatineau) at page 28510.

151 **Btlr**, page 58, Recommendation 14.

enforcement of any new guidelines':¹⁵² “any guide that sets out procedures to be followed by costs claimants, particularly with regards to proceedings that include matters outside of the Act’s jurisdiction, must be strictly enforced by the Commission.”¹⁵³ That said, it would be insufficient for companies to make such claims without evidence and if this evidence is made public, public-interest participants that respond to the companies should be able to apply for and receive their response costs from the CPF/FPC.

¹⁵² Barrett Xplore Inc., Bell Aliant, Bell Canada, Cogeco Cable Inc. Northwestel Inc., Rogers Communications Inc., Sasatchewn Telecommunications, Shaw Communications Inc., Télébec and TELUS, *Part VII Application to request a review of the procedures for the awarding of costs*, (25 September 2009), at ¶34.

¹⁵³ *Ibid.*



Appendices

Appendix 1	Answers to the CRTC's questions	1
Appendix 2	List of seven CRTC practice notes on its website	17
Appendix 2	Unavailability of CRTC Legal Directorate's 24 April 2007 <i>Practice Note</i>	18
Appendix 3	<i>Re: Review of the Rates set out in Appendix A of the Legal Directorate's Guidelines for the Taxation of Costs</i> , [CRTC] Practice Note (Ottawa, 24 April 2007)	19
Appendix 4	The development of caselaw regarding public-interest participation	27
Appendix 5	The development of the CRTC telecom costs process	39
Appendix 6	Sepulveda Consulting Inc., <i>Recommendations for CRTC Intervener Cost Award Rate Structures and Levels</i> , Report (Toronto, 9 September 2025)	50

Appendix 1 Answers to the CRTC's questions

FRPC's answers to the CRTC's questions are set out below.

"Creating one funding system to participate in Commission proceedings"

Q1. Should the application process for funding the participation of public interest groups be the same in both telecommunications and broadcasting proceedings?

Yes. A single application process ensures consistency, promotes decision-making timeliness and enables expertise to develop.

Q2. If so, should the Commission or an independent third party process the applications?

Yes. FRPC is proposing that a new, independent third party (Communications Participation Fund / Fonds pour la participation aux communications or CPF/FPC) be established based on the approach taken to the BPF-FPR to process telecom and broadcasting applications.

Q3. What are the barriers, if any, to using the same process in telecommunications and broadcasting proceedings? How can these be addressed?

FRPC assumes that Q3 is a supplement to Q2, which related to applications' processing.

The barriers to using the same applications' process in telecommunications and broadcasting are currently different because the applications are processed by different entities. Moreover, the forms designed years or decades ago for telecom fit poorly in broadcasting. (For one thing, while public-interest participants in telecom proceedings tend to be highly informed about telecommunications matters – and less about broadcasting matters, broadcasting participants are far less informed about telecom matters. Consequently each group has different expectations regarding clear and easily understood language.)

The CRTC's process is not transparent, not accountable and untimely. Lack of transparency means that public-interest applicants have no one to contact as the months and years tick by, to determine the status of their applications. This creates uncertainty and risk.

The BPF-FPR's process is far more timely (2 to 3 months, in FRPC's experience), and applicants have been able to contact its costs officer to determine the status of applications.

The barrier to using the current BPF-FPR as it now exists to handle both broadcasting and telecom applications is that it will be overwhelmed, having just 3 members to review and decide what might be double the number of applications.

FRPC has proposed that a new participation Fund be established – the Communications Participation Fund / Fonds pour la participation aux communications (CPF/FPC)

“Funding participation through an independent third-party fund”**Q4. If funding is managed by a single independent third-party fund, would the BPF be the right organization to administer funding?**

Yes: the BPF-FPR would be the right foundation to establish a new organization. Apart from a name change – and FRPC would not support any name that generates TBPF-FPRT as an acronym because it is simply too difficult to type and to say – the Communications Participation Fund / Fonds pour la participation aux communications (CPF/FPC) that FRPC has described in detail in its comment would need four more board members to review and decide applications and the establishment of 2.5 or 3 full-time persons to help administer and advise the CPF/FPC especially with respect to telecommunications (*terra incognita* currently for the BPF-FPR).

Q5. If so, what changes would be required to broaden its mandate and funding processes?

Changes to the BPF-FPR’s mandate and processes to broaden its mandate and funding processes include the following:

- A clear mandate to fund public-interest participation costs in CRTC broadcasting and telecom proceedings along with clear mandate to provide funding for research and development by public-interest participants – which will require a new incorporation application, new Articles of Incorporation and new By-laws
- Faster decision-making for decisions made under the mandate, by having a larger Board with specialized committees (one telecom, one broadcasting), supported by 2.5 to 3 full-time staff for administrative and technical advice, service standards that ensure the processing and deciding of all applications within 60 days of their receipt by the Fund, after which compound interest is levied (in favour of the applicant)

Ideally a new mandate would also include explicit authorization to consider cost applications related to the *Online News Act* – because, for example, FRPC devoted significant time to proceedings related to this statute in 2024 – but this level of change in mandate may well require legislative change from Parliament.

Q6. If a different organization would be more appropriate, how could the Commission ensure that individuals and public interest groups continue to receive funding to participate in proceedings while this new organization is being established?

FRPC has acknowledged in its comments the need for an interim year in which the BPF-FPR is able to ‘become’ the CPF/FPC, and is aware of the BPF-FPR’s current financial circumstances (*i.e.*, declining to accept any new applications after 26 October 2025).

The *Telecommunications Act* and the *Broadcasting Act* empower the CRTC to issue orders for specified parties to make specified payments to specified third parties: it could require – for simplicity’s sake – the three largest vertically integrated companies to make two one-time payments

(a) the first to the BPF-FPR to enable it to continue to do its work into 2026, and

(b) the second to the CPF/FPC immediately once its its Articles of Incorporation (as a not-for-profit Corporation) and By-laws have been accepted by Corporations Canada, to enable it to begin its work in 2026.

When the BPF-FPR ceases to exist funding remaining from the first payment could be returned to the three companies on condition that the new Fund has enough money to for the remainder of its first year.

“Making funding available to more types of organizations or parties”

Q7. How can the Commission’s eligibility criteria be streamlined or improved?

One may distinguish between cost applicants in terms of their experience: first-time applicants may be unfamiliar with the CRTC and it with them, while applicants such as FRPC, PIAC, OC and CIPPIC are familiar due to their many years of making submissions.

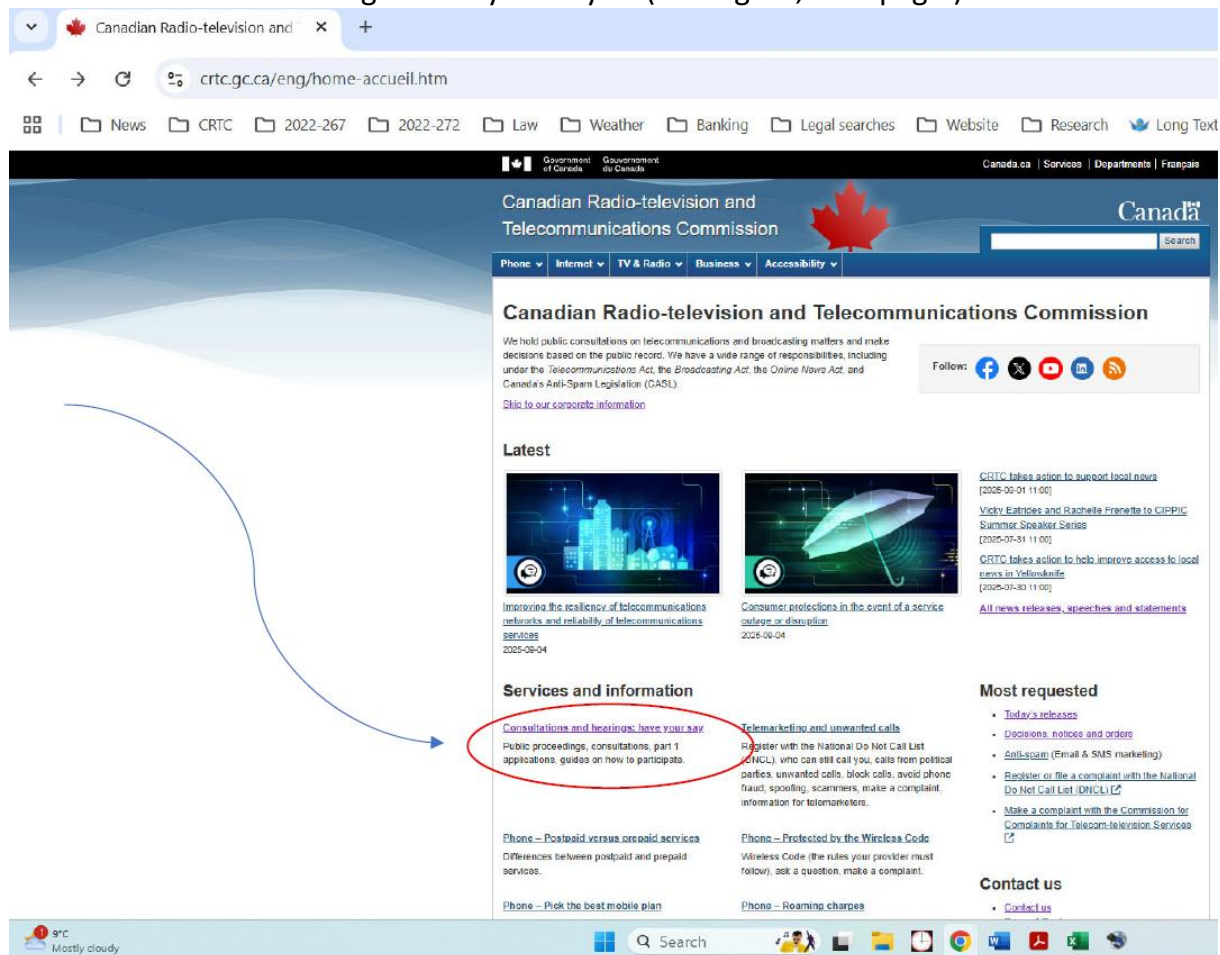
The CRTC could minimize or eliminate the requirement to review the eligibility of each applicant as follows:

First-time applicants would need to clarify who they are and who they represent, and agree to commit to a minimum level of professional responsibility (such as not expressing or supporting hate speech in or outside of CRTC proceedings, and not engaging in vexatious or frivolous conduct). This will take some time, because public-interest participants vary in terms of their membership, independence, openness, transparency and accountability: a one-size-fits-all list of criteria will be complicated to design, may be unfair and may not work as intended. That said, the bar set to exclude certain participants as being ineligible must be very high unless there is extremely clear and incontrovertible evidence of professional misconduct.

Parties with which the CRTC is familiar (after, say, three years?) should no longer have to provide such information – unless complaints are received by the CRTC about the organizations.

Q8. How can the Commission make it easier for parties that have not historically participated in Commission proceedings to participate?

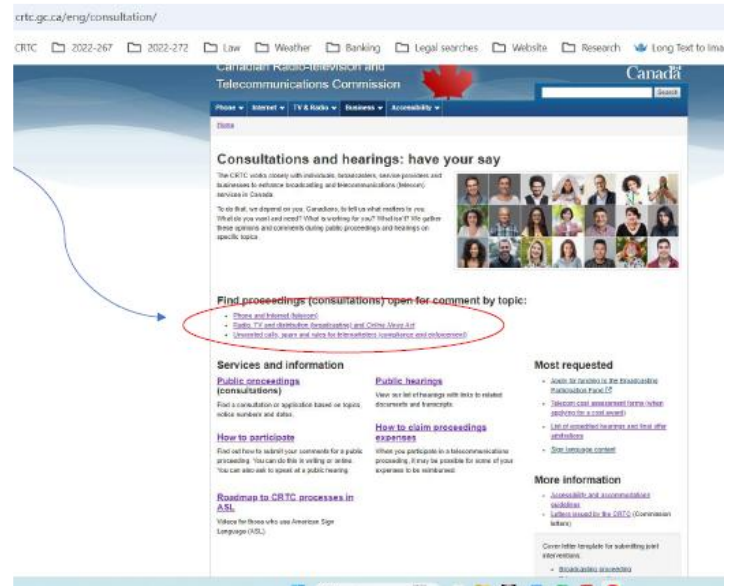
If one pretends one knows nothing about the CRTC, one's first point of access to the Commission might be its home page. The CRTC's home page includes references to its open notices of consultation and applications. The CRTC Home Page includes a link to "Consultations and hearings: have your say". (See Figure, next page.)

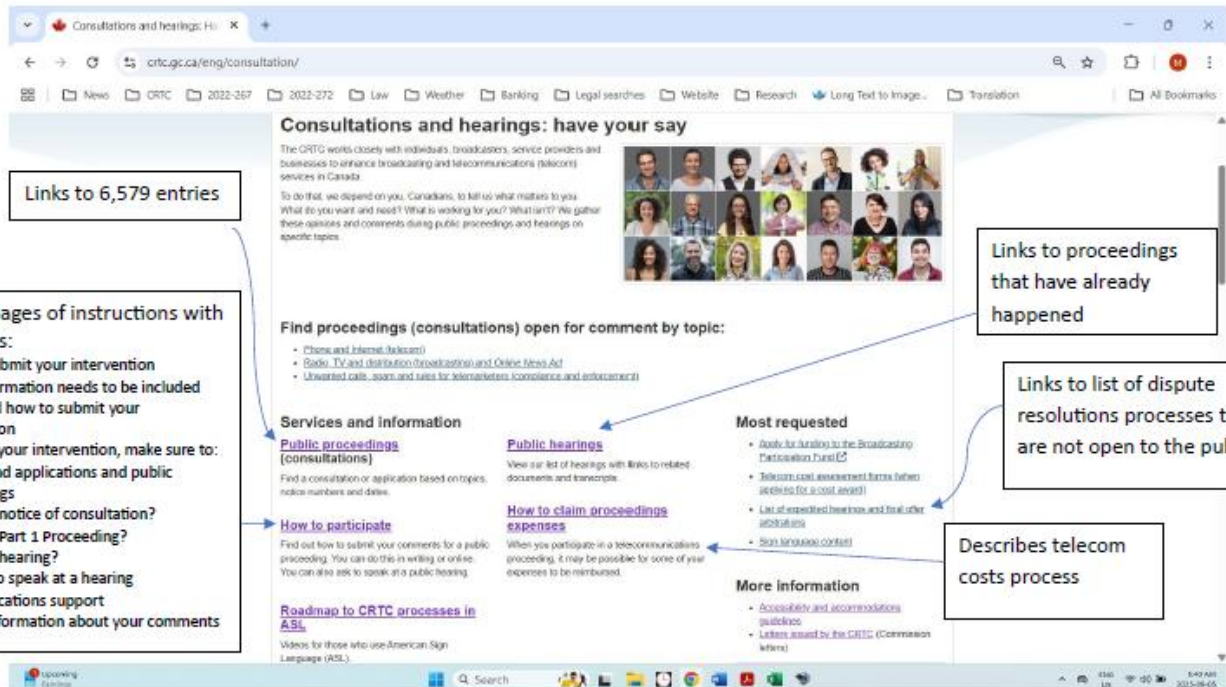


The screenshot shows the CRTC website home page. The browser address bar displays 'crtc.gc.ca/eng/home-accueil.htm'. The page header includes the CRTC logo and navigation links. The main content area features a 'Latest' section with two articles: 'Improving the efficiency of telecommunications networks and reliability of telecommunications services' and 'Consumer protections in the event of a service outage or disruption'. A red circle highlights the link 'Consultations and hearings: have your say' under the 'Services and information' section. Other links include 'Public proceedings, consultations, part 1 applications, guides on how to participate', 'Telemarketing and unwanted calls', 'Phone - Postpaid versus prepaid services', 'Phone - Protected by the Wireless Code', 'Phone - Pick the best mobile plan', and 'Phone - Roaming charges'. The 'Most requested' section lists links for 'Today's releases', 'Decisions, notices and orders', 'Anti-spam (Email & SMS marketing)', 'Register or file a complaint with the National Do Not Call List (DNCL) (C)', and 'Make a complaint with the Commission for Complaints for Telecommunications Services (C)'. The 'Contact us' section includes a link for 'Contact Us'.

Clicking on the red-circled “Consultation and hearings: have your say page” leads to another page with 14 links (see below right) including a link to public hearings that have already concluded, one to dispute-resolutions processes that are closed to the public and another that explains the costs process in telecom (but not broadcasting).

Then, of the links, one has four pages of instructions that include advice on how to fax interventions and how to “request to speak at a hearing”.





The screenshot shows the CRTC website's 'Consultations and hearings: have your say' page. The page is titled 'Consultations and hearings: have your say' and includes a grid of photos of people. The page is divided into several sections: 'Find proceedings (consultations) open for comment by topic', 'Services and information', 'Public proceedings (consultations)', 'Public hearings', 'How to participate', 'How to claim proceedings expenses', 'Most requested', and 'More information'. Annotations with arrows point to various parts of the page:

- Links to 6,579 entries**: Points to the 'Find proceedings (consultations) open for comment by topic' section.
- Links to 4 pages of instructions with 11 headings:**
 - How to submit your intervention
 - What information needs to be included
 - When and how to submit your intervention
 - If you fax your intervention, make sure to:
 - How to find applications and public proceedings
 - What is a notice of consultation?
 - What is a Part 1 Proceeding?
 - Request to speak at a hearing
 - Communications support
 - Privacy information about your comments
- Links to proceedings that have already happened**: Points to the 'Public proceedings (consultations)' section.
- Links to list of dispute resolutions processes that are not open to the public**: Points to the 'Most requested' section.
- Describes telecom costs process**: Points to the 'How to claim proceedings expenses' section.

The four-page “How to participate” page includes guidance on “Request to speak at a hearing”, but does not mention that the CRTC has largely stopped holding public hearings that the public can attend. In 2024 the CRTC held six broadcasting and one telecom hearing: only the telecom hearing was open to the public. The five broadcasting hearings were “non-appearing” and attended only by CRTC Commissioners and staff: **Error! Reference source not found.**



Calendar of Public Hearings - 2024

January

8 Feb/25: Broadcasting hearing (Not public) – CRTC Commissioners and staff only

February

February 8, 2024 - National Capital Region

To consider the broadcasting applications listed in Broadcasting Notice of Consultation CRTC 2023-

369

[View hearing documents \(2023-369\)](#)

February 12, 2024 - Gatineau, Quebec

Notice of hearing – Review of the wholesale high-speed access

of Consultation CRTC 2023-56, 2023-56-1, 2023-56-2, and 2

[View hearing documents \(2023-56\)](#)

12 Feb/25: 5-day telecom hearing to review wholesale high-speed access service framework

March

March 25, 2024 - National Capital Region

To consider the broadcasting applications listed in Broadcast

11, 2024-11-1

[View hearing documents \(2024-11\)](#)

25 Mar/25: Broadcasting hearing (Not public) – CRTC Commissioners and staff only

April

May

June

July

August

September

September 5, 2024 - National Capital Region

To consider the broadcasting applications listed in Broadcasting N

148

[View hearing documents \(2024-148\)](#)

5 Sep/25: Broadcasting hearing (Not public) – CRTC Commissioners and staff only

October

October 8, 2024 - National Capital Region

To consider the broadcasting applications listed in Broadcasting N

172 and 2024-172-1

[View hearing documents \(2024-172\)](#)

8 Oct/25: Broadcasting hearing (Not public) – CRTC Commissioners and staff only

November

November 5, 2024 - National Capital Region

Show Cause proceeding - Gill Broadcasting Ltd. - Broadcasting N

182, 2024-182-1

[View hearing documents \(2024-182\)](#)

5 Nov/25: Broadcasting hearing (Not public) – CRTC Commissioners and staff only

December

December 12, 2024 - National Capital Region

To consider the broadcasting applications listed in Broadcasting Not

231

[View hearing documents \(2024-231\)](#)

Date modified:

2024-10-23

12 Dec/25: Broadcasting hearing (Not public) – CRTC Commissioners and staff only

The only link to a page that lists the CRTC's consultations ("Public Proceedings") leads the user to a page with a daunting 6,579 entries, nearly all of which are closed to public comment as they took place as long as 14 years ago (6 January 2011).

As Mr. Klaassen (intervention 4 in this proceeding) in explains, he found the CRTC's website difficult to use:

Intervention, observation ou réponse de l'intimé / Intervention, comment or answer by respondent

Date reçu / Date Arrived: 2025-07-28

Numéro de processus public / Public Process Number: 2025-94

Numéro d'intervention / Intervention Number: 4

Demande(s) / Application(s):

Cas / Case: 334301

Demande à comparaître à l'audience publique / Request to appear at the public hearing: Non/No

Intimé / Respondent: Non/No

Commentaire / Comment

In terms of public participation: I was hoping to make a comment about how the "allowed devices" lists that providers have for 4G VoLTE is a big middle finger in the face of the spirit of the 2017 CRTC ruling on unlocked devices, but when I went to the "Public Proceedings" page I was met with over 600 proceedings to sort through. Between getting my daughter ready for school and getting to work myself, there's no way I'm going to sort through that to hopefully find the right one to make my comment on. The system is clearly set up for input from people who can do it as a full-time job, i.e. representatives of companies rather than the public. (And maybe that's why the CRTC allowed these clearly anti-consumer "allowed devices" lists to undermine its public service function.)

What I would recommend is a general feedback form/email, with a CRTC-employed human tasked full time to read through all the public responses and make sure that they reach the relevant proceedings/consultations/people within the CRTC.

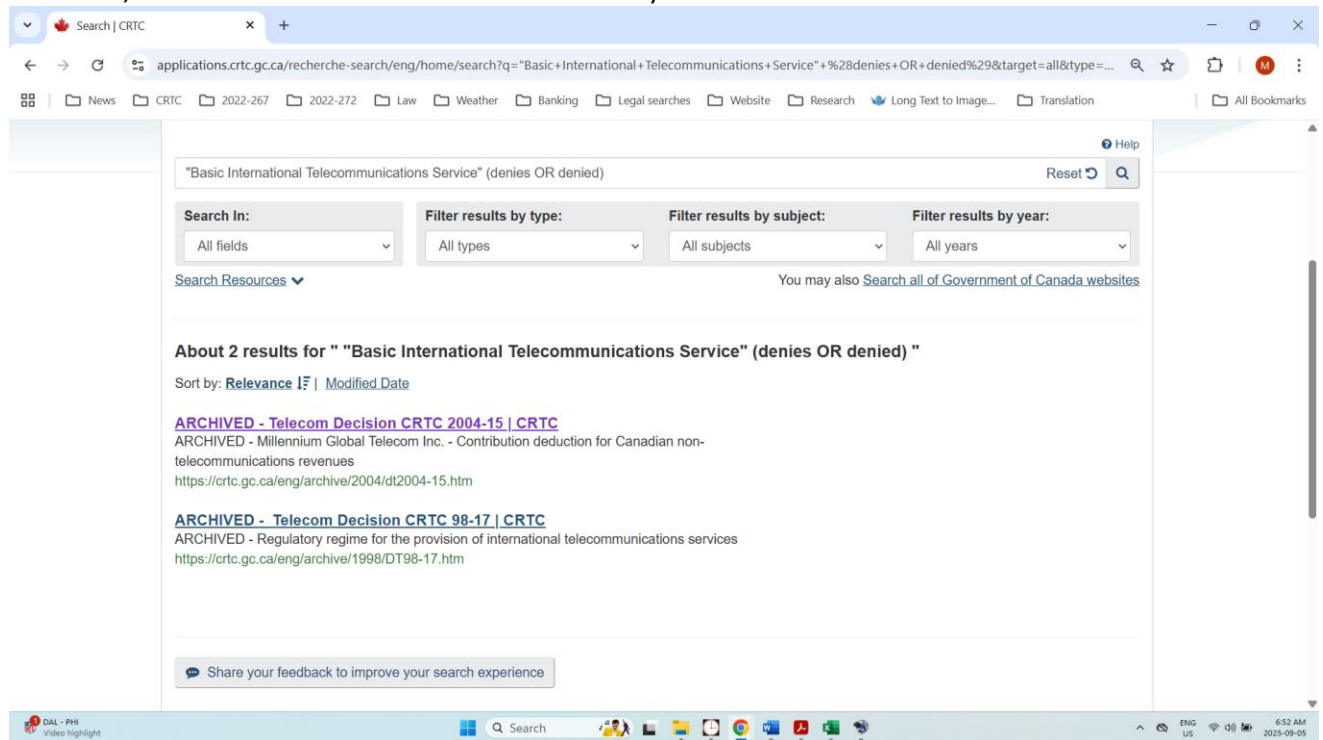
Copie envoyée au demandeur et à tout autre intimé si applicable / Copy sent to applicant and to any respondent if applicable: Non/No

Information du client / Client information

Nom / Name: Andrew Klaassen

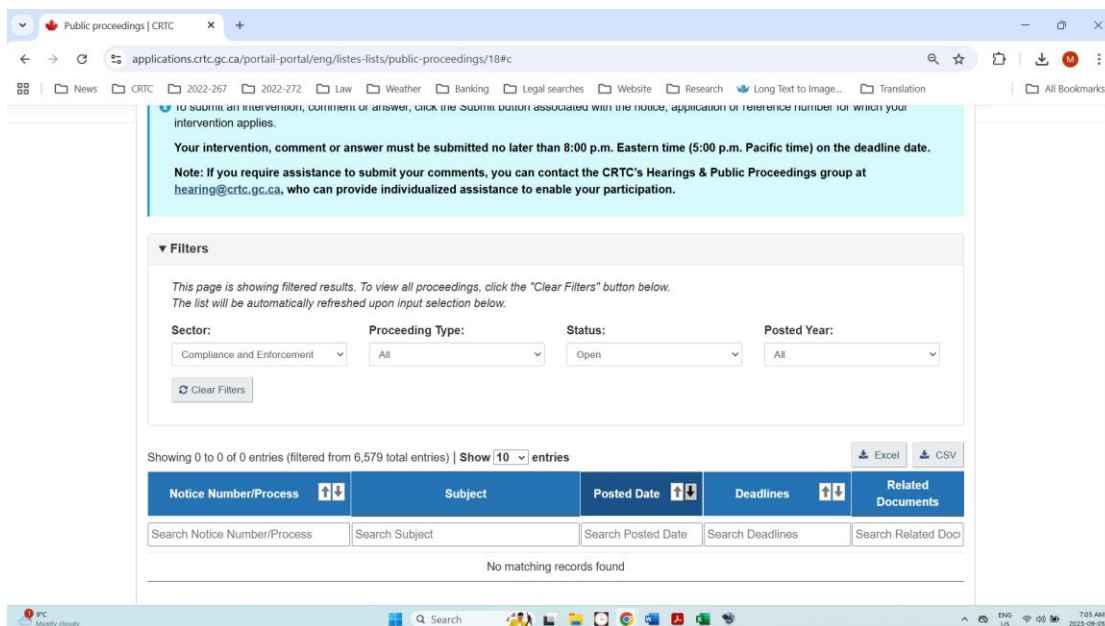
The CRTC's "How to participate" page – immediately below the "Public proceedings" link – then sends users to a page with yet another 14 links. The first three links in smaller font below "Find proceedings (consultations) open for comment by topic" deal with telecom, broadcasting and spam.

The telecom link sends users to a page that lists 55 entries including 28 for Basic International Telecommunications Services Licence applications. According to the CRTC's search engine, however, no BITS licences have ever been denied):



[Clearly this may be a problem for Parliament to resolve, rather than the CRTC – but the point remains that the CRTC's website is complex and at times leads to difficult-for-the-average-person-to-understand deadends.]

The broadcasting link leads to another page with just 2,956 entries, of which only the first six are open for comment, while the spam link leads to a page with no (zero) entries.



Public proceedings | CRTC

applications.crtc.gc.ca/portail-portal/eng/istes-lists/public-proceedings/18#c

News CRTC 2022-267 2022-272 Law Weather Banking Legal searches Website Research Long Text to Image... Translation All Bookmarks

To submit an intervention, comment or answer, click the submit button associated with the notice, application or reference number for which your intervention applies.

Your intervention, comment or answer must be submitted no later than 8:00 p.m. Eastern time (5:00 p.m. Pacific time) on the deadline date.

Note: If you require assistance to submit your comments, you can contact the CRTC's Hearings & Public Proceedings group at hearing@crtc.gc.ca, who can provide individualized assistance to enable your participation.

▼ Filters

This page is showing filtered results. To view all proceedings, click the "Clear Filters" button below. The list will be automatically refreshed upon input selection below.

Sector: Compliance and Enforcement Proceeding Type: All Status: Open Posted Year: All

Clear Filters

Showing 0 to 0 of 0 entries (filtered from 6,579 total entries) | Show 10 entries

Notice Number/Process	Subject	Posted Date	Deadlines	Related Documents
Search Notice Number/Process	Search Subject	Search Posted Date	Search Deadlines	Search Related Documents

No matching records found

The Commission, its mandate and its work are important – and they matter to Canadians.

FRPC therefore urges the Commission to rethink its current approach to inviting public interest participation. Visit the websites of other regulatory boards and tribunals to see how easy it is (or is not) to participate in their proceedings. The CRTC's current website would obviously warm the cockles of any lawyer's heart with its details and complexity – but there are very few lawyers in Canada and many more people whose views the Commission needs to hear.

(a) Are there specific considerations pertaining to equity-deserving groups, Indigenous rights holders, OLMCs, or academics?

FRPC reserves the right to respond to this question in reply, once it has had the chance to benefit from other parties' submissions.

Q9. Should individuals and public interest groups have to demonstrate that they meet the eligibility criteria every time they apply for funding? If not, at what intervals should they have to?

No, individuals and public-interest groups should not have to demonstrate that they meet the eligibility criteria whenever they apply for funding – as long as individual parties' previous submissions raised no concerns regarding professional conduct, frivolous submissions or vexation behaviour. Once such concerns have been raised, the parties should have to re-establish their compliance with the CRTC's eligibility criteria for a reasonable period of time (for, say, the next several proceedings).

Q10. Should funding be available for informal Commission activities that take place before or outside of formal Commission proceedings (for example, the CRTC Interconnection Steering Committee meetings, informal consultations, and roundtable meetings)? If so, which activities should be eligible for funding?

Yes. A basic principle should be equitable treatment: when the representatives of companies, the government or the CRTC in such non-formal CRTC proceedings are compensated for their time (by their employers or clients), public-interest participants should also be able to apply for the costs of their time.

Such costs should enable the parties to claim the time for preparing for meetings, for the meetings themselves and for any follow-up requirements. It should also include disbursements such as for transportation or (hypothetically) communications costs.

“Ensuring that the funding system covers appropriate costs”

Q11. (a) What costs should be eligible for reimbursement?

At present, FRPC has no concerns with the costs that are now eligible for reimbursement except to the extent that this listing of costs should be expanded to include other CRTC-related activities.

Otherwise, FRPC reserves the right to respond to this question in reply, once it has had the chance to benefit from other parties’ submissions.

Q11. (b) Do the Commission’s rates need to change? If so, how?

FRPC commissioned an independent expert to benchmark the rates set by the CRTC in 2007 to determine whether they should change. The report by Sepulveda Consulting Inc. is included in FRPC’s submission in the Appendices and the firm’s recommendations regarding rates are summarized below:

Guidelines for the Taxation of Costs, Revised as of 24 April 2007				Benchmarking report		
Legal Fees (Outside Counsel) – Hourly rates				External counsel		Benchmark report comments
Service Provider	Completed Years of Practice	Hourly Rate		Proposed compl'd years of practice	Proposed rates	Rates should increase by 55.7%
Legal Assistant	-	\$35		0 to 5	\$265	
Articling Student	-	\$70				
Legal Counsel	0-2	\$135				
Legal Counsel	3-5	\$165				
Legal Counsel	6-10	\$206		6 to 10	\$335	
Legal Counsel	11-19	\$250		11 to 19	375	
Legal Counsel	20+	\$290		20 +	425	
Expert Witnesses						
Service provided		Rate	Est'd hourly rate (~ 7 hour day)	Proposed compl'd years of practice	Proposed rates	Rates should increase 60%



Guidelines for the Taxation of Costs, Revised as of 24 April 2007				Benchmarking report		
Legal Fees (Outside Counsel) – Hourly rates				External counsel		Benchmark report comments
Service Provider	Completed Years of Practice	Hourly Rate		Proposed compl'd years of practice	Proposed rates	Rates should increase by 55.7%
Legal Assistant	-	\$35		0 to 5	\$265	
Articling Student	-	\$70				
Legal Counsel	0-2	\$135				
Legal Counsel	3-5	\$165				
Legal Counsel	6-10	\$206		6 to 10	\$335	
Legal Counsel	11-19	\$250		11 to 19	375	
Legal Counsel	20+	\$290		20 +	425	
Attendance at an oral hearing in order to testify		\$1650/day	\$236		\$360	
Other Services		\$225/hour				
Hourly						
Consultant and Analyst Fees – Hourly rates						
Service Provider	Completed Years of Practice	Hourly Rate		Proposed compl'd years of practice	Proposed rates	Rates should increase 43.9%
Analyst/Consultant	0-4	\$110		0 to 5	\$180	
Intermediate Analyst/Consultant	5-8	\$165		6 to 10	\$250	
Senior Analyst/Consultant	9+	\$225		11 to 19	\$310	
				20 +	\$360	
In-house Fees – Daily rates						
Service Provider	Completed Years of Practice	Daily Rate		Proposed compl'd years of practice	Proposed rates	71.3% increase
Legal Assistant	-	\$175		0 to 5	\$106	
Articling Student	-	\$235		6 to 10	\$134	
Legal Counsel	0-8 years	\$600	\$86	11 to 19	\$150	
Legal Counsel	over 8 years	\$800	\$114	20 +	\$170	
Analyst/Consultant	-	\$470	\$67	0 to 5	\$72	
				6 to 10	\$100	
				11 to 19	\$124	
				20 +	\$144	

Q12. Should the Commission use a different way to determine how much a party should receive? If so, explain how and why.

FRPC reserves the right to respond to this question in reply, once it has had the chance to benefit from other parties' submissions.

Q13. If the current costs model is maintained, how could the process be simplified?

The current costs model of the CRTC in telecom proceedings should not be maintained due to the very untimely decision-making (by the Commission) and the uncertainty it creates, its lack of transparency and near-complete lack of accountability.

The BPF-FPR cost model cannot be maintained because it is no longer accepting applications for costs.

The CRTC should invite public-interest participants for a Chatham-House rules discussion of the telecom and broadcasting costs models.

“Determining who should be funding participation and how much funding they should provide”

Q14. If funding is collected through a third-party fund like the BPF:

(a) who should be required to contribute to the fund?

The five largest Canadian telecom and broadcasting groups – not five largest telecom and five largest broadcasters – that operate in Canada should be required to contribute to the fund, given the large scale of their operating revenues in broadcasting and telecommunications.

(Financial support for Canadian public-interest participation in Canadian regulatory proceedings that largely concern the *Broadcasting Policy for Canada* and the *Telecommunications Policy for Canada* should be provided by Canadian companies.)

FRPC’s initial calculations are that a new Communications Participation Fund / Fonds pour la participation aux communications (CPF/FPC) might require 0.013% of the large companies:

	Millions
Conventional Canadian broadcasters - revenues	\$14,700
Telcos - revenues	\$59,622
Total revenues	\$74,322
X 75% (assumes 5 largest companies in each sector make payments)	\$55,742
CPF/FPC operating and claim expenses – stability estimate	\$7.14
As % of total large Canadian companies’ revenues	0.013%
1 % of the large Canadian companies’ revenues:	\$557.4

(b) how should the Commission calculate who pays and how much they should pay?

FRPC provided some rough estimates on this point in response to Q14a, above.

Q15. If respondents are identified on a proceeding-by-proceeding basis:

(a) who should be responsible for paying the costs in each proceeding?

FRPC does not agree that the CRTC should maintain its existing approach in telecom. In our view, a BPF-FPR-like model would be more appropriate, would encourage wider public-interest participation at minimal cost and would eliminate an outdated adversarial process.

(b) could the Commission’s current process be simplified, for example, by:

(i) increasing the minimum contribution any one company must pay? (The current minimum is \$1,000.)

FRPC reserves the right to respond to this question in reply, once it has had the chance to benefit from other parties’ submissions.

(ii) establishing at the outset (for example, every year or at the beginning of each proceeding), which companies should pay, and the amounts they could be expected to pay? If so, on what basis should those amounts be calculated?

FRPC has set out a model that considers the total costs of claims (rather than amounts final granted) that shows that total costs in some years are nearly four times higher than the immediately preceding year. Even then, it is worth noting that the total costs in 2017 were only 1.83 times as high as the total costs in 2016 – but that the 2017 costs were, nevertheless the highest (\$2.5 million) over the entire period.

Year of order	Broadcasting	Telecom	Total	Current year’s amount divided by previous year
2013	\$355,811	\$596,467	\$952,278	
2014	\$808,127	\$370,261	\$1,178,388	1.24
2015	\$347,088	\$527,151	\$874,239	0.74
2016	\$ 1,073,597	\$275,457	\$1,349,054	1.54
2017	\$894,069	\$1,572,891	\$2,466,959	1.83
2018	\$162,096	\$614,846	\$776,942	0.31
2019	\$191,328	\$709,387	\$900,715	1.16
2020	\$284,704	\$70,297	\$355,002	0.39
2021	\$904,569	\$498,427	\$1,402,996	3.95
2022	\$123,072	\$287,318	\$410,390	0.29
2023	\$246,860	\$349,418	\$596,279	1.45
2024	\$560,195	\$403,272	\$963,468	1.62

This is why FRPC is proposing a funding with a built-in cushion for the rare times when total costs vary from expected trends.

“Building a system that provides funding in a timely manner”

Q16. In general, what can the Commission do to issue funding decisions more quickly?

The CRTC can decide to establish the Communications Participation Fund / Fonds pour la participation aux communications (CPF/FPC) that FRPC has proposed, issue its decision to do so before the end of November 2025, and fast-track throughout its consideration of proposals for Articles of Incorporation and By-laws.

The alternative – for the CRTC to establish, say, processing standards – is unlikely to work because

(a) the CRTC is too busy with its legal mandates to implement the *Telecommunications Policy for Canada* and the *Broadcasting Policy for Canada*, for it to begin to devote the time and resources to costs that it appears not to have devoted to costs at any point since 2007.

(b) the CRTC tends to change its performance standards rather than changing its performance, and

(c) if the CRTC had desired to issue funding decisions more quickly, it doubtless would have done so already.

Q17 Simplifying interim costs

Q17. How can the Commission simplify applications for interim costs so that applicants can obtain funding earlier in a proceeding?

The CRTC should approve FRPC's CPF/FPC proposal and ensure that it has explicit authority to issue advance costs, interim costs and final costs.

The key factor for the CPF/FPC (or the CRTC) to consider is not the financial status of the funding claimant, but the degree to which their applications and (if available) previous performance established a serious intention to participate responsibly.

“Ensuring that funding is used in the public interest”

Q18. Should the Commission require that individuals and public interest groups provide an attestation that they and anyone who worked with them during the proceeding have not engaged in hate speech?

This is already the practice or very similar to the current practice of the BPF-FPR. Perhaps the CRTC could clarify in its decision on 2025-94 the role that it expects the attestations to serve: suppose a signed attestation is made by a cost applicant and someone who worked for the attester was suddenly discovered to have behaved irresponsibly in their private life: would that third party's misdeed terminate the cost applicant's eligibility for public-interest participation funding?

Q19. What other mechanisms can the Commission put in place to ensure that public interest funding does not support hate speech?

The CRTC could undertake its own due diligence – but it is unclear whether the Commission has the resources needed to examine the *bona fides* of every intervener. Launching such examinations, moreover, would tend to suggest that interveners are being considered as guilty before any proof of that guilt is presented. The CRTC should be prepared to review public-interest participants' conduct if it receives specific evidence of misconduct.

“Supporting consultations for Indigenous groups and official language minority communities”

Q20. Should the Commission establish different processes to fund the participation of Indigenous groups, such as Indigenous organizations and governments, in Commission proceedings? If so, what should those processes be?

FRPC reserves the right to respond to this question in reply, once it has had the chance to benefit from other parties' submissions.

Q21. Should the Commission establish different processes for funding for OLMCs? If so, what should those processes be?

FRPC reserves the right to respond to this question in reply, once it has had the chance to benefit from other parties' submissions.

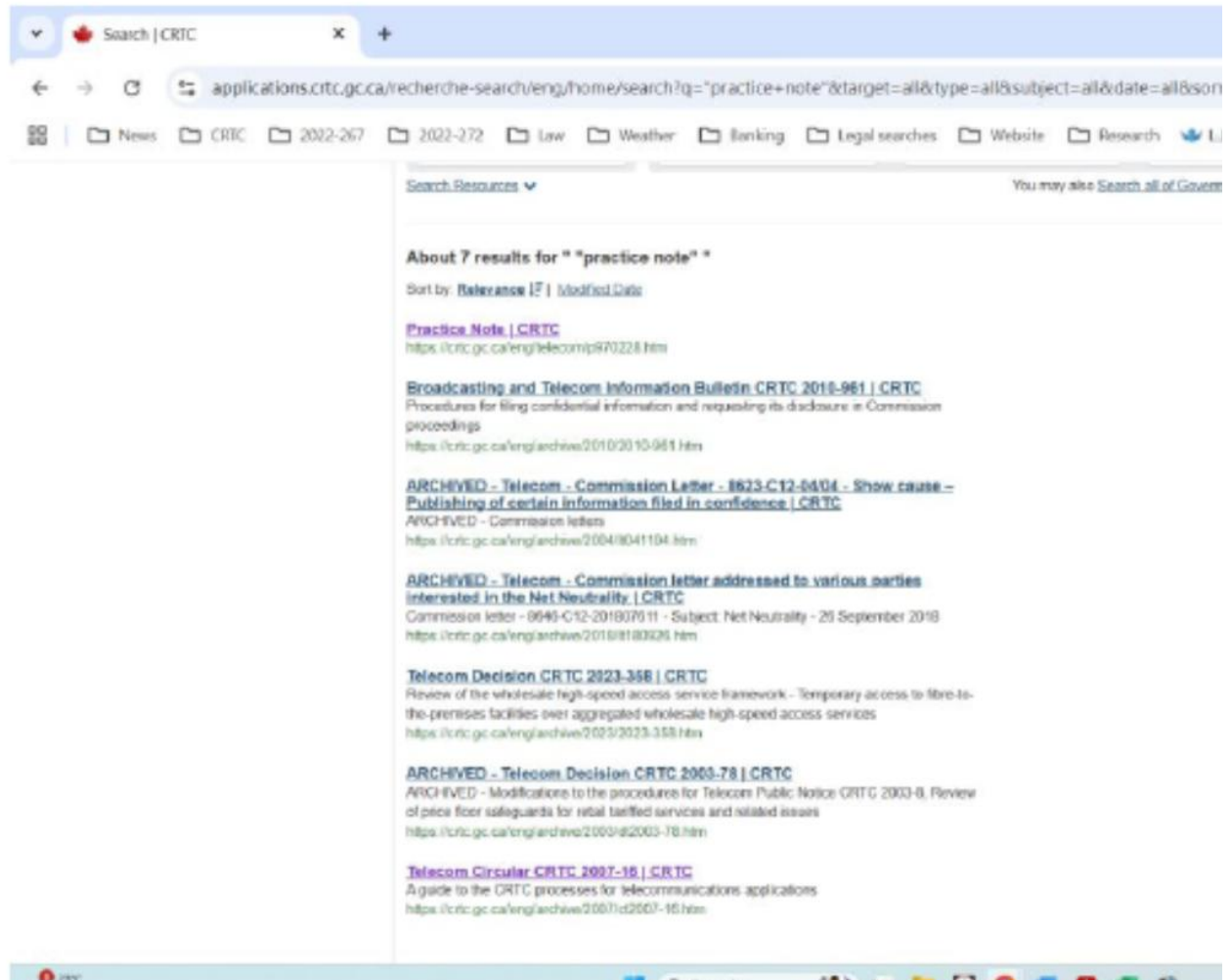
“Supporting participation in proceedings under the Online News Act”

Q22. Are there any additional matters that the Commission should consider to support participation in proceedings that take place under the *Online News Act*?

The CRTC could consider asking participants in *Online News Act* proceedings to estimate the time they devote to those proceedings, without seeking formal applications. The Commission could then have information available to provide to the government or, upon request, members of the House of Commons or the Senate if they have questions about the impact of non-remuneration of participants' costs in the online news proceedings.

Appendix 2 List of seven CRTC practice notes on its website

Accessed 5 September 2025



The screenshot shows a web browser window with the CRTC website search results for the query "practice note". The browser's address bar shows the URL: applications.crtc.gc.ca/recherche-search/eng/home/search?q='practice+note'&target=all&type=all&subject=all&date=all&son. The search results page displays "About 7 results for 'practice note'" and lists the following items:

- Practice Note | CRTC**
<https://crtc.gc.ca/eng/telecom/p970228.htm>
- Broadcasting and Telecom Information Bulletin CRTC 2018-961 | CRTC**
Procedures for filing confidential information and requesting its disclosure in Commission proceedings
<https://crtc.gc.ca/eng/archive/2018/2018-961.htm>
- ARCHIVED - Telecom - Commission Letter - 8623-C12-0404 - Show cause - Publishing of certain information filed in confidence | CRTC**
ARCHIVED - Commission letters
<https://crtc.gc.ca/eng/archive/2004/8041104.htm>
- ARCHIVED - Telecom - Commission letter addressed to various parties interested in the Net Neutrality | CRTC**
Commission letter - 0946-C12-201807011 - Subject: Net Neutrality - 26 September 2018
<https://crtc.gc.ca/eng/archive/2018/8180326.htm>
- Telecom Decision CRTC 2023-358 | CRTC**
Review of the wholesale high-speed access service framework - Temporary access to fibre-to-the-premises facilities over aggregated wholesale high-speed access services
<https://crtc.gc.ca/eng/archive/2023/2023-358.htm>
- ARCHIVED - Telecom Decision CRTC 2003-78 | CRTC**
ARCHIVED - Modifications to the procedure for Telecom Public Notice CRTC 2003-8, Review of price floor safeguards for retail tariffed services and related issues
<https://crtc.gc.ca/eng/archive/2003/d2003-78.htm>
- Telecom Circular CRTC 2007-16 | CRTC**
A guide to the CRTC processes for telecommunications applications
<https://crtc.gc.ca/eng/archive/2007/d2507-16.htm>



Appendix 3 Unavailability of CRTC Legal Directorate's 24 April 2007 Practice Note

Accessed 31 August 2025

The screenshot shows a web browser window with the address bar displaying "crtc.gc.ca/eng/telecom/p070424.htm". The browser's address bar also shows "Erreur 404/404 Error | CRTC". The page content is in French and English, indicating a "Page not found (Error 404)". The French text reads: "Désolé, nous ne parvenons pas à trouver la page que vous avez demandée. Cette page a peut-être été déplacée ou supprimée." The English text reads: "Sorry, we cannot find the page you requested. It may have been moved or may no longer exist." Below the error message, there are two columns of links. The French column lists: "Consultations et audiences", "Contenu canadien", "Décisions, avis et ordonnances", "Entreprises et licences", "Instances publiques", "Internet", "Notre organisme", "Nouvelles", "Nouvelles du jour", "Page d'accueil du CRTC", "Téléphonie", and "Télévision et radio". The English column lists: "CRTC Home page", "Business and Licensing", "Canadian Content", "Consultations and hearings", "Decisions, Notices and Orders", "Internet", "News", "Our Organization", "Phone", "Public Proceedings", "Today's Releases", and "TV and Radio". The browser's taskbar at the bottom shows the Windows logo, a search bar, and various application icons. The system clock in the bottom right corner indicates "10:34 AM 2025-08-31".

Page non trouvée (Erreur 404)
Désolé, nous ne parvenons pas à trouver la page que vous avez demandée. Cette page a peut-être été déplacée ou supprimée.
Afin de trouver ce que vous cherchez, veuillez effectuer une recherche sur le site du CRTC ou consulter une des sections suivantes :

- Consultations et audiences
- Contenu canadien
- Décisions, avis et ordonnances
- Entreprises et licences
- Instances publiques
- Internet
- Notre organisme
- Nouvelles
- Nouvelles du jour
- Page d'accueil du CRTC
- Téléphonie
- Télévision et radio

Page not found (Error 404)
Sorry, we cannot find the page you requested. It may have been moved or may no longer exist.
To find what you're looking for, try [searching the CRTC site](#) or visit one of the following sections:

- [CRTC Home page](#)
- [Business and Licensing](#)
- [Canadian Content](#)
- [Consultations and hearings](#)
- [Decisions, Notices and Orders](#)
- [Internet](#)
- [News](#)
- [Our Organization](#)
- [Phone](#)
- [Public Proceedings](#)
- [Today's Releases](#)
- [TV and Radio](#)



Appendix 4 ***Re: Review of the Rates set out in Appendix A of the Legal Directorate's Guidelines for the Taxation of Costs, [CRTC] Practice Note (Ottawa, 24 April 2007)***



Canadian Radio-television and
Telecommunications Commission

Conseil de la radiodiffusion et
des télécommunications canadiennes

Canada

Français

Today's
Releases

Industries at
a Glance

Contact Us

File, Register
and Epass

Reference
Centre

Help

Decisions, Notices and
Orders

Canadian
Content

Search

Public
Proceedings

Canada Site

Home

CISC

Statutes &
Regulations

Printable
version





Viewing Tools:
Special software
needed to read non-
HTML documents

Practice Note - 24 April 2007

Re: Review of the Rates set out in Appendix A of the Legal Directorate's Guidelines for the Taxation of Costs

On January 6, 2006, the Public Interest Advocacy Centre (PIAC) filed a request to increase the rates in Appendix A of the Legal Directorate's *Guidelines for Taxation of Costs*, issued May 15, 1998 (the Guidelines).

The Legal Directorate sent a process letter, dated February 2, 2006, calling for comments on whether and to what extent, if any, such changes should be made. The letter was sent to all parties who participated in the process which led to the current rates, as well as those parties who have participated in cost proceedings since 2002.

Alliant Telecom Inc., Bell Canada, Saskatchewan Telecommunications and Telebec, société en commandite (collectively, the Companies), filed comments on March 6, 2006. TELUS Communications Company (TELUS) filed comments on March 10, 2006. ARCH submitted a letter on March 14, 2006. PIAC replied to TELUS on March 23, 2006 and to the Companies on April 3, 2006. The Companies filed their reply comments on March 27, 2006.

For the reasons that follow, upon reviewing the submissions of all parties, the Legal Directorate has decided to amend Appendix A to the Guidelines, in large part in accordance with PIAC's request. The new rates are set out in the revised Appendix A attached to this Practice Note.

Summary of submissions

PIAC submitted that the current rate schedule in Appendix A of the Guidelines no longer reflects the market rates for the services in question. They argued that the rates for both outside and in-house legal counsel should be adjusted according to the increase in the Consumer Price Index (CPI). For experts and consultants, PIAC argued that, based on their survey of expert rates in Canada and the United States, the rates should be increased at a higher rate than the CPI. They also recommended adding two new categories of lawyers: an outside legal counsel who has completed 20 or more years of practice (with at least 10 years of relevant experience) and an in-house legal counsel who has completed over 8 years of practice.

ARCH submitted a letter which simply stated that it supported PIAC's request.

The Companies and TELUS generally opposed PIAC's request. Their main submissions are summarized below. The Companies also made numerous submissions related to the manner in which the amount of costs awards are decided based on the merit-related criteria in section 44 of the *CRTC Telecommunications Rules of Procedure* (the Rules) as opposed to the appropriateness of the rates in Appendix A; this issue is not the subject of this

process and is therefore not included in the analysis.

While the Companies support the mechanism set out in Appendix A in principle, in practice they argued that the current rates in Appendix A exceed what is necessary for interveners to recover direct and indirect costs and that the claim for an increase is based on flawed proxies rather than the actual costs of intervening. Specifically, the Companies argued that, for outside counsel, experts and consultants, the current rates are already too high as those who provide services to public interest clients will normally charge lower rates to such clients. For in-house counsel and consultants, the Companies argued that current costs awards are resulting in intervener funding, in contravention of both the *Telecommunications Act* (the Act) and the Supreme Court of Canada's findings in *Bell Canada v. Consumers' Association of Canada*¹ (the Bell case), as costs awards are essentially paying the entire salary of some employees and are resulting in a source of indirect funding for other intervener activities, which already receive significant direct funding from the government. The Companies argued that awards should be based on the actual costs incurred by interveners as opposed to on the market rates of the services provided. The Companies proposed that, if the Commission decided to amend the rate schedule in Appendix A, the Commission should reduce the rates to reflect the average of the actual costs incurred by interveners. The Companies suggested that adjusting the rates in this manner would also create an incentive for the interveners to be more selective, intervening only where the public interest truly requires such input and only to the extent that the public interest actually requires it.

While TELUS did not oppose the periodic adjustment of rates, it argued that the methods proposed by PIAC are not reasonable, for example because public interest interveners may not pay generally applicable rates. Furthermore, TELUS argued that inflation as measured by CPI does not correlate in any direct way to the market rates established for consultants and legal counsel. TELUS suggested that a valid benchmark for rates would be to survey the rate tables of other similarly constituted federal tribunals before which the public or public interest interveners regularly appear.

PIAC maintained on reply that the Supreme Court of Canada's decision in the Bell case established that market rates are a reasonable approach to assessing costs, and that public interest interveners should not be required to seek services at a lower rate simply because of their public interest standing. PIAC also submitted that, while the use of the CPI is not an ideal method, its use reflects the reasonable proposition that rates will periodically increase based on the increasing costs of doing business and personal expenses.

Staff analysis and determination

Staff notes that the Commission's jurisdiction to award costs is derived from section 56 of the Act, which states the following:

56. (1) The Commission may award interim or final costs of and incidental to proceedings before it and may fix the amount of the costs or direct that the amount be taxed.

(2) The Commission may order by whom and to whom any costs are to be paid and by whom they are to be taxed and may establish a scale for the taxation of costs.

Staff has identified three issues raised by PIAC's application:

1. Must costs awarded reflect the actual cost of intervening or can they reflect the market rate of the services?

2. Does the current rate schedule, and the request for an increase in rates, result in intervener funding as opposed to the awarding of costs?
3. Are the current rates appropriate? If not, how should an increase in the rates be calculated?

Must costs awarded reflect the actual cost of intervening or can they reflect the market rate of the services?

Staff notes the Companies' argument that intervener costs must reflect the actual costs of intervening to avoid awards that amount to intervener funding.

Staff further notes the Companies' argument that it must be the prevailing rates of expert witnesses and consultants who appear on behalf of public interest clients specifically that be considered in determining appropriate costs, as such professionals charge lower rates when appearing on behalf of public interest clients.

Staff notes that establishing a scale for the taxation of costs is a discretionary decision and the general law principles applicable to discretionary decisions apply. In making decisions on costs awards, staff notes that the Supreme Court in the Bell case held that the Commission may take a broad view of the principle of indemnification and compensation underlying the assessment of costs awards because of the nature of the proceedings before it and the financial arrangements of public interest interveners.

The Supreme Court further stated that it is reasonableness, not the actual incurrance of the costs, that is the governing principle in determining costs incurred for an intervention. Following the Bell case, staff notes that the Commission has consistently held that the taxation of costs based on market rates was a reasonable approach, explicitly dismissing arguments that actual expenses incurred should be considered.²

Staff also notes paragraph 44(6)(c) of the Rules, which states the following:

(6) Costs awarded under this section...

(c) where the Commission has prescribed a scale of costs based on prevailing market rates, shall not exceed the amounts so prescribed.

Based on the above, staff is of the view that the Commission is not bound to consider or to try to figure out the amounts actually incurred in an intervention.

The Commission must take a reasonable approach to what should be deemed to be the expenses incurred for the intervention whether or not there has been any actual out-of-pocket expense. In taking a broad view of the application of the principle of indemnification or compensation, as set out in the Bell case, staff is of the view that a market rate approach is an accepted and reasonable approach to determining the rates that parties may claim.

Staff further notes that the goal of awarding costs to public interest interveners is to ensure public interest parties have the same opportunity to present their arguments as private parties and to ensure the best evidence is before the Commission. Staff believes that adopting the Companies' suggestion that rates be based on an average of the actual costs incurred by public interest interveners, which they argue are lower than market rates, would unfairly tie the hands of interveners seeking qualified experts and consultants to assist them; staff is of the view that public interest interveners should have access to the same experts, legal counsel and consultants as do private companies.

Does the current rates schedule, and the request for an increase in rates, result in intervener funding as opposed to the awarding of costs?

Staff notes the Companies' argument that, due to the fact that many public interest interveners are already benefiting from government funding, any costs award is simply further indemnifying them for costs already covered by the government and is indicative of intervener funding.

Staff notes the distinction made in the Bell case between legal costs and intervener funding. Legal costs, or court costs, are based on merit, and are awarded to indemnify expenses incurred. By contrast, intervener funding is awarded to interveners based solely on financial need, without regard to merit. Staff notes that Section 44 of the Rules requires the Commission to consider the merits of the intervention in awarding costs. This section also requires consideration of other sources of funding in determining the amount of costs to be awarded.

Staff also notes that the Supreme Court held that the Commission was not bound to follow the practice of the courts in relation to costs and, as noted above, confirmed the broad discretion accorded the Commission in applying the principle of indemnification or compensation.

Finally, staff considers that the Companies' analysis of the salaries of PIAC employees compared to the costs awarded to PIAC is flawed. This analysis assumes that the total amount of the billed rate is given to the employee in question. Staff notes that a lawyer who charges \$115 per hour, does not make \$115 per hour and that such rates are meant to cover other resources necessary for that lawyer to perform their duties.

In light of the above, staff does not believe the current rate schedule, on its face, amounts to intervener funding. There has been no evidence presented to suggest that the rates of the current schedule are above market rates; nor, for that matter, that the rates suggested by PIAC are necessarily above current market rates taking into account inflation since 1998. As a result, so long as the Commission properly considers the criteria in section 44 of the Rules in its case by case assessment of costs awards, staff considers that an award of costs based on those rates cannot be seen as intervener funding.

Are the current rates appropriate? If not, how should an increase in the rates be calculated?

Staff notes that, other than the sample of rates provided by PIAC in its application, no party submitted evidence on current market rates. Staff also notes that, at the time the Legal Directorate adopted the original Taxation Guidelines on June 9, 1995, the market-rate approach had already been widely acknowledged and applied in Commission decisions. Staff therefore considers that the current rates are reflective of the market rates of such services at the time these rates were adopted. Staff notes if a party has a concern regarding the merits of a cost applicant's contribution to the proceeding or the amount claimed in an application for costs, such concerns should be raised in submissions and addressed on a case-by-case basis; such concerns do not indicate that the rates themselves are not in-line with market rates.

Staff notes the definition of inflation provided by the Bank of Canada: "A persistent rise over time in the average price of goods and services". Staff is of the view that the rate of inflation, which is calculated using the CPI, is a good indicator of the general increase in the cost of conducting business. Staff therefore considers that PIAC's use of the CPI provides a reasonable marker of the general increase in the market rates of services since 1998 and, with the exception of the modifications discussed below, accepts the new rates proposed by PIAC.

In regards to the expert witness and consultant fees, staff notes that the proposed increases exceed the rate of inflation, which is approximately 20%

since 1998. Current hourly rates in the Appendix for consultants range from \$90 to \$175 for a senior consultant. For expert witnesses, the hourly rate is set at \$175, the same as senior consultants. Based on inflation, the hourly rates for consultants would increase to \$107.95 to \$209.90, and to \$209.90 for experts. PIAC's small survey of experts provided an average fee of \$254.89, or a 45.7% increase above the current top rates of consultants and experts. Taking this information into consideration, PIAC has proposed an increase in expert fees of approximately 37%, and for consultants of about 28%. PIAC's justification for the higher rate for experts was based on the high degree of responsibility and care expected of experts.

Staff notes that prior to 1998, the rates for experts and consultants did differ. In 1998, the Legal Directorate adjusted the rates for these two categories, making them the same. The rationale for this decision was that, when not testifying, senior consultants and experts are providing essentially the same service. Staff does not feel sufficient evidence has been presented to alter this decision and therefore finds that expert rates and consultant rates should both be increased by the same percentage.

Staff notes that PIAC's proposed rate increase for consultants is already 8% above that of inflation and considers this to be a more reasonable increase than that proposed for experts (17% above inflation). Staff also notes that no evidence was provided by the Companies or TELUS to enable staff to conclude that the proposed rates for consultants are out of line with current market rates. Staff therefore has increased expert and consultant rates by 28% to better reflect current market rates.

In regards to the additional categories proposed by PIAC (creating an additional level of in-house counsel who have completed more than 8 years of practice and the addition of the category of outside legal counsel who have completed 20 years or more of practice, with 10 years of relevant experience), staff is of the view that these are both reasonable proposals. Staff does not doubt that in-house counsel with more years experience are paid at a higher rate than a more junior lawyer in his or her first years of practice. However, staff considers that the \$1,000/day rate suggested by PIAC is high relative to both the rates for counsel who have completed 8 years or less of practice and in-house consultants. Therefore, staff has adjusted this rate down to \$800/day.

With regard to the addition of the category of outside legal counsel who have completed 20 or more years of practice, staff does not doubt that such lawyers will bill at a higher rate than those with fewer years experience. This is supported by the chart in the Ontario *Rules of Civil Procedure*, which includes a separate category for lawyers who have completed 20 or more years of practice. Staff, therefore, accepts the addition of this new category at a rate of \$290 per hour.

Conclusion

Given all of the above, staff is of the view that it is reasonable that market rates are adjusted periodically to reflect the increased cost of doing business. Market rates for such services do increase over time, and using inflation and/or market surveys if they exist would seem to be reasonable methods of reflecting that increase.

As such, staff has adopted the rates as proposed by PIAC, with the exception of experts, whose rates will be adjusted at the same level as senior consultants, and in-house counsel who have completed over 8 years of practice, whose rate will be set at \$800/day.

These changes are reflected in the new Appendix A, reproduced below. The revised rates shall apply to all costs awards fixed or taxed by the Commission

on or after April 24, 2007.

Revised Appendix A to Guidelines for the Taxation of Costs

[Mod. 24 April 2007]

LEGAL FEES (Outside Counsel) – Hourly rates		
Service Provider	Completed Years of Practice	Hourly Rate
Legal Assistant	-	\$35
Articling Student	-	\$70
Legal Counsel	0-2	\$135
Legal Counsel	3-5	\$165
Legal Counsel	6-10	\$206
Legal Counsel	11-19	\$250
Legal Counsel	20 or more (with at least 10 years of relevant experience)	\$290

EXPERT WITNESSES	
Service provided	Rate
Attendance at an oral hearing in order to testify	\$1650/day
Other Services	\$225/hour

CONSULTANT AND ANALYST FEES – Hourly rates		
Service Provider	Completed Years of Practice	Hourly Rate
Analyst/Consultant	0-4	\$110
Intermediate Analyst/Consultant	5-8	\$165
Senior Analyst/Consultant	9 or more	\$225

IN-HOUSE FEES – Daily rates		
Service Provider	Completed Years of Practice	Daily Rate
Legal Counsel	0-8 years	\$600
Legal Counsel	over 8 years	\$800
Articling Student	-	\$235
Legal Assistant	-	\$175
Analyst/Consultant	-	\$470



DISBURSEMENTS

Travel by automobile: \$0.35 per km

Meals:

- Per diem rate applies where meals are taken in connection with a hearing or meetings which take place at a distance of more than 50 kilometres from regular place of work:

- \$48.00 per day

- Meal allowance where meals taken in connection with a hearing or meetings which take place at a distance of 50 kilometres or less:

- Breakfast: \$10
- Lunch: \$12
- Dinner: \$26

In-house photocopies: \$0.15 per copy

Footnotes:

¹ [1986] 1 S.C.R. 190

² See e.g. Taxation Orders 1986-4, 1986-6 and 1987-1.

Date Modified: 2007-05-04

[top](#)

[Comments about our site](#)

[Français](#) | [Contact Us](#) | [Help](#) | [Search](#) | [Canada Site](#)

[Today's Releases](#) | [File, Register and Epass](#) | [Decisions, Notices & Orders](#) |
[Home](#) | [CISC](#) | [Industries at a Glance](#) | [Reference Centre](#) | [Canadian Content](#) |
[Public Proceedings](#) | [Statutes & Regulations](#)
1-877-249-CRTC (2782) [Important Notices](#)

Appendix 5 The development of caselaw regarding public-interest participation

1800s to 1970s – litigation and compensation

When Great Britain established the Dominion of Canada¹⁵⁴ in 1867,¹⁵⁵ courts in England were divided between those making decisions based on the common law and those making decisions based on ‘equity’. Common-law courts could award sums of money to parties engaged in litigation as compensation for damages. Courts of equity, on the other hand, could order parties to do or to stop doing specific things and to the extent they ‘gave costs’, did so “from conscience and *arbitrio boni viri*”¹⁵⁶ [to act reasonably and to exercise a reasonable discretion] rather than from the idea of reimbursing parties for their costs.

Great Britain’s Parliament merged the courts of equity with its common-law courts from 1873¹⁵⁷ to the early 1900s,¹⁵⁸ and Canadian courts continued to follow their lead in granting legal or compensatory costs to the successful party in litigated matters.

In fact, Canadian courts generally discouraged litigation undertaken ‘in the public interest’ for most of the 20th century. They initially appeared to believe that provincial attorneys-general were better placed than individuals to protect “public rights or interests” in cases that did not address private injuries.¹⁵⁹ By the 1920s private individuals were challenging laws as unconstitutional and courts, raising the spectre of such litigants flooding the courtrooms, continued to decline to grant standing to public-interest participants.¹⁶⁰ In

¹⁵⁴ Consisting at that time of the provinces of New Brunswick, Nova Scotia and Canada (later forming Ontario and Québec).

¹⁵⁵ [British North America Act](#), 1867, SS 1867, c 3 (30 Vict.).

¹⁵⁶ *Andrews v Barnes* (1888) 39 Ch D 133, 138, citing *Corporation of Burford v. Lenthall* (1743), 2 Atk 551-552).

¹⁵⁷ [Supreme Court of Judicature Act](#), 1873, c. 66 (36 & 37 Vict.).

¹⁵⁸ See e.g. [County Courts Act](#), 1903, c. 42 (3 Edw. 7).

¹⁵⁹ *MacIlReith v. Hart*, 1908 CanLII 64 (SCC), 39 SCR 657, <<https://canlii.ca/t/fsmfx>>:

The necessity of the Attorney-General being a party to any action against corporations which involve only public rights or interests, or for the protection, in any way, of public interests, as such, and as distinct from cases where there is a distinct private injury arising from the act complained of, is admitted.

¹⁶⁰ *Smith v. The Attorney General of Ontario*, 1924 CanLII 3 (SCC), [1924] SCR 331 at 337,

<<https://canlii.ca/t/1ttjf>>:

Much may be said, no doubt, for the view that an individual in the position of the appellant ought, without subjecting himself to a prosecution for a criminal offence, to have some means of raising the question of the legality of official acts imposing constraint upon him in his daily conduct which, on grounds not unreasonable, he thinks are unauthorized and illegal. We think, however, that to accede to appellant’s contention upon this point would involve the consequence that virtually every resident

the 1930s the courts left decisions about awarding costs to individuals challenging public-utility board decisions entirely to the discretion of those boards,¹⁶¹ declining to return or overturn decisions that denied all costs to parties appearing on behalf of the public interest.

By the 1940s, however, Ministers' decisions were receiving greater scrutiny. In 1946, for example, the Judicial Committee of the Privy Council¹⁶² held that while a government Minister may "disallow any expense which he in his discretion may determine to be in excess of what is reasonable or normal for the business carried on",¹⁶³ this disallowance must be determined in a "legal and regular" manner:

... the power given to the Minister is not an arbitrary one to be exercised according to his fancy. To quote the language of Lord Halsbury L.C. in *Sharp v. Wakefield*, [1891] A.C. 173 at p. 179 he must act "according to the rules of reason and justice, not according to private opinion; according to law and not humour. It is to be, not arbitrary, vague, and fanciful, but legal and regular".

The Privy Council's Judicial Committee also noted that there was "no material upon which he, as a reasonable man" could base a determination that an expense was or was not reasonable.¹⁶⁴ As well, while the governing statute did not "compel the Minister to state his reasons this does not necessarily mean that the Minister by keeping silence can defeat" appeals of his decisions: if so, "the Minister could in every case or at least the

of Ontario could maintain a similar action; and we can discover no firm ground on which the appellant's claim can be supported which would not be equally available to sustain the right of any citizen of a province to initiate proceedings impeaching the constitutional validity of any legislation directly affecting him, along with other citizens, in a similar way in his business or in his personal life. We think the recognition of such a principle would lead to grave inconvenience and analogy is against it. ...

¹⁶¹ *Northern Engineering and Development Company (Re)*, 1930 CanLII 274 (MB CA), <<https://canlii.ca/t/g9xht>>, pp. 544-545 (dismissing appeal of Board's decision refusing to award costs to owners of neighbouring properties):

Proceedings before the Board belong to a different category and are necessarily dealt with from a point of view that has no place in litigation between parties. The status and risks of suitors in an action are fixed by practice and authority. **No rule has been laid down by the Board that persons appearing by counsel before the Board shall, subject to the Board's discretion, have costs in event of their success or pay costs in event of their failure. Whether such a rule should be adopted** [p. 545] **or not is a matter wholly for the Board.** In the meantime the matter is left by sec. 55 in the Board's absolute discretion, untrammelled by the principles which necessarily control the discretion of the Court or a Judge.

[bold font added]

¹⁶² The United Kingdom's Judicial Committee of the Privy Council could hear appeals of Canada's Supreme Court and of provincial courts until 1933 with respect to criminal proceedings and until 1949 for civil proceedings: Supreme Court of Canada, *History*, "The creation of the Court [accessed 26 August 2025].

¹⁶³ *Wrights' Canadian Ropes Limited v. Canada (National Revenue)*, [1947] 1 D.L.R. 721, 1946 CanLII 345 (UK JCPC), <<https://canlii.ca/t/gb2n7>>, retrieved on 2025-08-26, at page 725.

¹⁶⁴ *Ibid.*, at page 731.

great majority of cases render the right of appeal given by the statute completely nugatory.”¹⁶⁵

In other words, decisions were to be made according to law rather than mood, and were to provide reasons.

Thorson v. Canada: 1974 – public entitled to challenge legislative power

By the 1970s, Canadian law regarding public-interest participation began to change.

In 1974 a majority of the Supreme Court of Canada (SCC) described “the contention that the Attorneys-General in Canada were always satisfactory guardians of the public interest who could be relied upon to challenge the constitutionality of statutes whenever the need arose or who would at least lend their support to private citizens' challenges” as “outmoded”,¹⁶⁶ in part because a provincial Attorney-General could only represent “the public interest of his Province only”.¹⁶⁷

The SCC’s 1974 decision also pointed out that “[t]he Courts are quite able to control” floods of individual litigants seeking to challenge laws’ constitutionality through discretion, stays and the imposition of costs.¹⁶⁸ Importantly, the majority stated that “it would be strange and, indeed, alarming, if there was no way in which a question of alleged excess of legislative power, a matter traditionally within the scope of the judicial process, could be made the subject of adjudication.”¹⁶⁹

The Supreme Court’s decision in *Thorson* was almost immediately followed by a decision regarding challenges of regulations.

Nova Scotia Board of Censors: 1975 – public entitled to challenge regulations

¹⁶⁵ *Ibid.*

¹⁶⁶ *Thorson v. Canada (Attorney General)* (1974), [1975] 1 S.C.R. 138 <<https://canlii.ca/t/1twxf>> at 153, 43 D.L.R. (3d) 1, granting appeal of *Thorson v. Attorney-General of Canada (No. 2)*, 1972 CanLII 28 (ON CA), <<https://canlii.ca/t/1vll2>> (which aff’d [1971 CanLII 662 \(ON SC\)](#), [1972] 1 O.R. 86, 22 D.L.R. (3d) 274 per Houlden J., dismissing an action on ground that Plaintiff lacked standing to maintain the action).

¹⁶⁷ *Ibid.*, at 145.

¹⁶⁸ *Ibid.*, at 152.

¹⁶⁹ *Ibid.*, at 145.

In *Nova Scotia Board of Censors v. McNeil*.¹⁷⁰ the Supreme Court considered whether individuals could be granted standing to challenge the constitutionality of regulations made by Nova Scotia's Amusements Regulation Board.¹⁷¹

Laskin C.J. explained, for a unanimous Court that unlike legislation whose constitutionality is being challenged, regulatory legislation does not “make those regulated the only persons with a real stake in the validity of the legislation.”¹⁷²

He noted that the “challenged legislation does not appear ... to be legislation directed only to the regulation of operators and film distributors. It strikes at the members of the public in one of its central aspects”, and agreed that an individual could challenge the Board's regulations.¹⁷³

Alberta Public Utilities Board – telecommunications costs

At this time, regulatory authority over telecommunications companies was divided between Canada's federal and provincial governments. Alberta, for example, had established a regulatory board to assess the rate applications and other aspects of, among other regulated companies, Alberta Government Telephones (AGT).

In September 1975 Alberta's Public Utilities Board [APUB] began to consider an application from AGT to set a new rate base and revise the rates it charged the public,¹⁷⁴ and was also considering “other rate hearings in progress at the time”.¹⁷⁵ At the beginning of the APUB's public hearing in the matter “the interveners were led to believe that they would be allowed costs in accordance with the previous practice of the Board in rate hearings” which “was to allow full costs to the extent that they could be proven and substantiated as costs actually incurred” and to not disallow costs “except in extreme and unusual cases.”¹⁷⁶

¹⁷⁰ *Nova Scotia Board of Censors v. McNeil*, [1975 CanLII 14 \(SCC\)](#), [1976] 2 SCR 265.

¹⁷¹ *Ibid.*, at page 268.

¹⁷² *Ibid.*, at page 269.

¹⁷³ *Ibid.*, at page 271.

¹⁷⁴ *Green, Michaels & Associates, Ltd. v. Alberta (Public Utilities Board)*, [1977 ALTASCAD 115 \(CanLII\)](#) (12 May 1977), seeking leave to appeal, “ORDER GRANTING LEAVE”.

¹⁷⁵ *Green, Michaels & Associates Ltd. v. Alberta (Public Utilities Board)*, 1979 ALTASCAD 8 (CanLII), <<https://canlii.ca/t/fp5fl>>, (19 January 1979)

¹⁷⁶ *Green, Michaels & Associates, Ltd. v. Alberta (Public Utilities Board)*, [1977 ALTASCAD 115 \(CanLII\)](#) (12 May 1977), seeking leave to appeal, at paragraph 5; in *Green, Michaels & Associates Ltd. v. Alberta (Public Utilities Board)*, 1979 ALTASCAD 8 (CanLII), <<https://canlii.ca/t/fp5fl>>, (19 January 1979), appealing APUB Order

The APUB then issued guidelines in December 1975 which stated that costs would not be awarded to interveners' officials and employees or to their consultants when these did not give evidence,¹⁷⁷ and costs would be allowed "in proportion to the Board's evaluation of such participation".¹⁷⁸

In March 1976 the Board held a hearing to determine the method of regulating AGT: "Extensive written submissions were filed and oral representations were made."¹⁷⁹ In July 1976 the APUB issued a decision stating that it would reduce costs payments if these appeared "unreasonably excessive" due to "the inexperience or inefficiency of counsel or experts". The Board added that in its view, the time charged by lawyers and experts in this case was "in most instances ... inversely proportional to the contribution made".¹⁸⁰ (In February 1977, however, the APUB said that its proceedings benefitted from competent interveners.¹⁸¹)

The APUB issued Order E77034 on 11 February 1977 and reduced by just over half (55.5%), or by \$79,000,¹⁸² the amounts sought by public-interest interveners for their costs in its proceeding. On 8 March 1977 the Board said "that it would be inappropriate to provide any further detail in respect to specific disbursements or fees of any lawyer or consultant."¹⁸³

In May 1977 the Alberta Court of Appeal granted leave to appeal the APUB's Order. While recognizing that the Board had "wide discretions ... in the matter of costs" the Court of

E77034 of 11 February 1977, the Court of Appeal noted at paragraph 12 that in an APUB hearing on 31 August 1976, AGT's counsel had stated that "it is the basis of the current Board practices that interveners are granted in the main, full costs of consultants fees and disbursements in presenting an intervention to the Board. ..."

¹⁷⁷ *Ibid.*, at paragraph 6.

¹⁷⁸ *Ibid.*

¹⁷⁹ *Ibid.*, at paragraphs 8 and 9.

¹⁸⁰ *Ibid.*, at paragraph 7.

¹⁸¹ *Ibid.*, at paragraph 8:

[t]he Board's policy and attitude with respect to interventions should be stated simply and unequivocally. The Board not only welcomes interventions, but considers that it requires interventions to discharge properly its duties as a quasi-judicial tribunal. The Board is neither structured nor funded so that a total scrutiny of the applicant's case can be done by the Board, its staff or consultants retained by the Board. Even if the Board were so structured and funded and assumed the role of a consumer advocate, it would not be apparent to the public that the company's case had been properly tested. An aggressive, intelligent and informed intervention is preferable to ensure that public utilities are regulated in accordance with accepted regulatory principles and the appropriate statutes. Additionally, competent interveners provide an excellent voice to inform the consuming public they represent of the facts which the Board has taken into account in approving new rates.

¹⁸² The costs sought and granted are set out in a table at paragraph 1 in *Green, Michaels & Associates Ltd. v. Alberta (Public Utilities Board)*, [1979 ALTASCAD 8 \(CanLII\)](#), (19 January 1979); paragraph 17 (date of order).

¹⁸³ *Ibid.*

Appeal¹⁸⁴ found that it had created a dilemma in that “an intervener must judge whether ... it can by participation and evidence meet the case of the applicant and affect the outcome in the eyes of the Board.”¹⁸⁵

Green – 1979 decision vacated due to inadequate reasons

In January 1979 the Court of Appeal vacated the APUB’s cost order and referred it back “for further consideration and redetermination”,¹⁸⁶ noting that the order did not inform “the interveners why, and on what heads of claim and what bases their respective bills were reduced so dramatically”.¹⁸⁷ Noting that the APUB had “deliberately set its face against” complying with its statutory requirements,¹⁸⁸ the Court held that “it appears to be necessary to state ... again” that

Parliament provided that reasons shall be given, and in my view that must be read as meaning that proper, adequate reasons must be given. The reasons that are set out must be reasons which will not only be intelligible, but which deal with the substantial points that have been raised. In my view, it is right to consider that statutory provision as being a provision as to the form which the arbitration award shall take. If those reasons do not fairly comply with that which Parliament intended, then that is an error on the face of the award. It is a material error of form.¹⁸⁹

¹⁸⁴ At the time, the Appellate Division of the Supreme Court of Alberta.

¹⁸⁵ *Green, Michaels & Associates, Ltd. v. Alberta (Public Utilities Board)*, [1977 ALTASCAD 115 \(CanLII\)](#) (12 May 1977), at paragraph 9.

¹⁸⁶ *Green, Michaels & Associates Ltd. v. Alberta (Public Utilities Board)*, [1979 ALTASCAD 8 \(CanLII\)](#), 19 January 1979), at paragraph 35.

¹⁸⁷ *Ibid.*, at paragraph 19.

¹⁸⁸ *Ibid.*, at paragraph 32.

¹⁸⁹ *Ibid.*, at paragraph 31, citing the English case of *In re Poyser and Mills' Arbitration* [1964] 2 Q.B. 467 at page 478, which

... formed the basis for the judgment of ... of this Court delivered by Sinclair, J.A. on this point in *Dome Petroleum Ltd. v. Public Utilities Board* (1977) [1976 CanLII 2022 \(AB CA\)](#), 2 A.R. 453 where he said at page 472:

"As was pointed out by Megaw, J. in *Poyser and Mills' Arbitration*, [1964] 2 Q.B. 467, a case dealing with corresponding provisions of the *Tribunals and Inquiries Act, 1958*, it must be kept in mind that **the section is intended to enable persons whose rights are adversely affected by an administrative decision to know what the reasons for that decision were. The reasons must be proper, adequate and intelligible. They must also enable the person concerned to assess whether he has grounds of appeal.**"

The judgment of Sinclair, J.A. was affirmed by the Supreme Court of Canada (1977) [1977 CanLII 235 \(SCC\)](#), 2 A.R. 451.

The APUB subsequently reviewed and reconsidered its E77034 cost order and issued decision E80104 in July 1980.¹⁹⁰

Green redux – 1980 decision vacated due to lack of reasons

The APUB reviewed and reconsidered its 1979 cost decision (E77034) and in July 1980 issued decision #80104.¹⁹¹ The Consumers Association of Canada (Alberta) applied for fees covering 323.8 hours of time and the APUB reduced the Association's time by 64% (to 116.25 hours).¹⁹²

In 1985 the Alberta Court of Appeal again set aside the Board's decision and referred it back for redetermination.¹⁹³ The Court set out several concerns in its second overturning of the APUB's 1977 cost order, all related to the Board's failure "to make any findings of fact" on which to base its conclusions.¹⁹⁴

First, the Board used the time charged by the City of Calgary's lawyer as a benchmark because "if this particular counsel could mount the most effective intervention on that basis the Board can see no reason why other counsel could not do likewise". It therefore "assessed all counsel for the intervenors on the basis of 116.245 hours."¹⁹⁵ APUB explained that this made it "unnecessary to consider the difficult questions arising from the claims for unrecorded time, travel time, excessive preparation time, etc."¹⁹⁶ The Court found that by ignoring these 'difficult questions' the APUB "sought to avoid dealing with relevant factors they were required to deal with following the express directions of the Court" in the 1979 *Green* case.¹⁹⁷

Second, holding all intervenors to the hours of the counsel for one of them ignored "the distinctive nature of the representations made by counsel circumscribed by the interests of their respective clients". Consequently the Board ignored "the nature of the constituency represented by each intervenor".¹⁹⁸ As well as the possibility that the

¹⁹⁰ *Consumers' Association of Canada (Alberta) v. Alberta (Public Utilities Board)*, 1985 ABCA 5 (CanLII), <<https://canlii.ca/t/2dgsh>>, at paragraph 8: "The Board then reviewed and reconsidered its decision #77034 and issued its decision #E80104 dated July 30, 1980."

¹⁹¹ *Consumers' Association of Canada (Alberta) v. Alberta (Public Utilities Board)*, 1985 ABCA 5 (CanLII), <<https://canlii.ca/t/2dgsh>>, at paragraph 8, on 30 July 1980.

¹⁹² *Ibid.*, at paragraph 3.

¹⁹³ *Ibid.*, at paragraph 44.

¹⁹⁴ *Ibid.*, at paragraph 27.

¹⁹⁵ *Ibid.*, at paragraph 16.

¹⁹⁶ *Ibid.*, at paragraph 16.

¹⁹⁷ *Ibid.*, at paragraph 23.

¹⁹⁸ *Ibid.*, at paragraph 24.

interests of each intervenor may require them “to put forward proposals that may or may nor [sic] be attractive to other intervenors or the Board.”¹⁹⁹

Third, by failing to consider each lawyer’s presentations, the Board also failed to ascertain whether they advanced frivolous proposals, were incompetent or advanced positions “that did not merit consideration by the Board in the light of the issue to be determined.”²⁰⁰

Fourth, the Court held that the Board’s conclusion that “delivery, steno services, long distance telephone, copying, agency fees and miscellaneous”²⁰¹ expenses should not be included in fees charged by lawyers or experts²⁰² was in fact “contrary to common professional practice”.²⁰³ While the APUB had said it would “allow ‘unusual or abnormal’ expenses to be claimed”,²⁰⁴ it did not appear to consider that long-distance telephone calls were then “generally a substitute for a meeting and such expense may result in a substantial savings in fees charged as a result of avoiding travelling time and expenses.”²⁰⁵

Overall, the Court found that the Board “failed to give proper reasons for its decision” and its policy statement “by itself, was insufficient to justify” its conclusions.²⁰⁶ Finally, the Court noted *in obiter dicta* that it did “not think a presentation should be judged ineffective merely because the proposal put forward is not accepted by the Board. The question that must be considered is whether it merited consideration by the Board before it made its decision.”²⁰⁷

The CRTC released a *Statement* on 20 July 1976²⁰⁸ to set out “the approach which the Commission intends to take in exercising its jurisdiction under the new Act”,²⁰⁹ as well as questions for discussion at a public hearing that would begin in late September 1976. The Commission then published its draft procedural regulations for telecommunications more

¹⁹⁹ *Ibid.*, at paragraph 24.

²⁰⁰ *Ibid.*, at paragraph 25.

²⁰¹ *Ibid.*, at paragraph 31.

²⁰² *Ibid.*, at paragraph 35.

²⁰³ *Ibid.*, at paragraph 39.

²⁰⁴ *Ibid.*, at paragraph 37.

²⁰⁵ *Ibid.*, at paragraph 40.

²⁰⁶ *Ibid.*, at paragraph 41.

²⁰⁷ *Ibid.*, at paragraph 26.

²⁰⁸ *TELECOMMUNICATIONS REGULATION – PROCEDURES AND PRACTICES*, STATEMENT OF THE CRTC IN PREPARATION FOR A PUBLIC HEARING AT THE CHATEAU LAURIER HOTEL IN OTTAWA COMMENCING SEPTEMBER 27, 1976 (Ottawa, 20 July 1976).

²⁰⁹ *Statement*, at page 1.

than a year and a half later, in July 1978.²¹⁰ It adopted the *CRTC Telecommunications Rules of Procedure and Tariff Regulations* in July 1979.

CRTC's 1976 consultation on procedural rules for telecom

The July 1976 *Statement* set out suggestions “directed towards five distinctive objectives”.²¹¹ Two of these involved public participation: “[t]o facilitate the involvement of the public in the regulatory process through greater informality and public access” and “[t]o increase the capacity of interveners to participate at public hearings in an informed way”.²¹² The Commission added, though, that it did “not have funds to provide for representation at hearings.”²¹³

A CRTC public hearing on its proposed procedural rules originally scheduled for September 1976 was held in late October 1976.²¹⁴ and of the 32 interveners, 18 appeared before the Commission with companies outnumbering public-interest organizations two to one:²¹⁵

Companies

ACTION BELL CANADA
A.E. AMES & CO. LIMITED AND WOOD
GUNDY LIMITED
BELL CANADA

²¹⁰ *CRTC Procedures and Practices in Telecommunications Regulation*, Telecom Decision CRTC 78-4 (Ottawa, 23 May 1978); the CRTC invited comments on its proposed procedures and practices at page 53; interventions were due 15 September 1978.

²¹¹ *Statement*, at page 7.

²¹² *Statement* (Ottawa, 20 July 1976), pages 6 to 7:

1. To ensure that Commission proceedings are of sufficient focus and depth to permit the highest possible quality of decision-making;
2. To assist regulated carriers to deal effectively with Commission concerns in respect of specific proceedings and on an ongoing basis;
3. To facilitate the involvement of the public in the regulator process through greater informality and public access;
4. To increase the capacity of interveners to participate at public hearings in an informed way; and
5. To eliminate unnecessary delay in the regulatory process.

²¹³ *Telecommunications Regulation – Procedures and Practices*, CRTC Statement (Ottawa, 20 July 1976), page 12.

²¹⁴ *CRTC Procedures and Practices in Telecommunications Regulation*, Telecom Decision CRTC 78-4 (Ottawa, 23 May 1978), at page 1.

²¹⁵ *Ibid.*, Appendix A.

BRITISH COLUMBIA TELEPHONE
COMPANY
CANADIAN CABLE TELEVISION
ASSOCIATION
Canadian NATIONAL/Canadian PACIFIC
TELECOMMUNICATIONS
Canadian TELECOMMUNICATIONS
CARRIERS ASSOCIATION
TELESAT CANADA
Provincial governments
British Columbia
Ontario
Quebec
Public-interest participants
CIVIL LIBERTIES ASSOCIATION
(NATIONAL CAPITAL REGION)
CONSUMERS' ASSOCIATION OF Canada
National Anti-Poverty Organization
Public Interest Advocacy Centre (PIAC)
Individuals
C. GILMOUR
MRS. MARY VAN NESTE
Academics
MISS LIORA SALTER

The CRTC then issued its findings and conclusions about its telecom-procedures consultation in Telecom Decision CRTC 78-4 (Ottawa, 23 May 1978) and invited comments on the draft rules it was proposing.²¹⁶ In section 14 of the decision – “Assistance to the Public” – the CRTC noted that the “complexity and importance of the issues which come before the Commission often demand that expert resources be available for their adequate treatment”²¹⁷ and that “[s]uch resources are employed by the regulated companies”.²¹⁸

²¹⁶ CRTC *Procedures and Practices in Telecommunications Regulation*, Telecom Decision CRTC 78-4 (Ottawa, 23 May 1978)

²¹⁷ *Ibid.*, at page 37.

²¹⁸ *Ibid.*, at pages 37-38.

The Commission said that regulated companies' payments of these costs were "an allowable expense" just as their own preparatory work for rate applications was treated as an allowable expense.²¹⁹ Interveners' costs "would only represent a small fraction of such regulatory expenses" but would "contribute to a more effective representation of subscriber interests and to an improved record on which to base decisions."²²⁰

The Commission concluded that "it is critical to, and part of the necessary cost of, the regulatory process" that "such resources also be available to responsible representative interveners".²²¹ It stated that

... if the objective of informed participation is to be met, some form of financial assistance must be made available to responsible interveners, both active and potential, who do not have sufficient funds to properly prosecute their cases, particularly where such interveners represent the interests of a substantial number or class of subscribers.²²²

The CRTC said it had considered three alternatives to assist interveners: "first, funding from the Commission, either directly or through a "consumer advocacy" office; second, direct funding from government to qualified interest groups; and third, the awarding of costs to qualified interest groups."²²³ The CRTC preferred the first and second alternatives as these "would ensure the availability of resources to interveners in advance of hearings" and "permit adequate pre-hearing preparation for meaningful intervention";²²⁴ it did not set out reasons why advance costs awards or orders could not be considered.

The Commission proposed a third, "partial resolution"²²⁵ option of awarding "costs to qualified interest groups"²²⁶ – though only after "rate hearings" when it would award costs "against an applicant".²²⁷ It said it would exercise its discretion to award costs in all

²¹⁹ *Ibid.*, at page 39.

²²⁰ *Ibid.*, at page 39.

²²¹ *Ibid.*, at page 38.

²²² *Ibid.*, at page 37.

²²³ *Ibid.*, at page 38.

²²⁴ *Ibid.*

²²⁵ *Ibid.*, at page 39.

²²⁶ *Ibid.*, at page 38.

²²⁷ *Ibid.*, at page 39.

other proceedings²²⁸ and “declined to adopt a general rule of awarding costs” in “issue hearings ... and other hearings called on the Commission’s own motion”.²²⁹

The Commission adopted the Rules of Procedure of the Canadian Radio-television and Telecommunications Commission in regard to Telecommunications Proceedings²³⁰ – or CRTC Telecommunications Rules of Procedure²³¹ -- on 20 July 1979; they were registered as regulations on 27 July 1979.²³² The adopted Rules included a provision for interim costs that the Commission decided it might award “in certain cases” if this meant the difference between participation “in an informed way and no participation at all”.²³³

Otherwise, the CRTC’s *Rules* limited the Commission to awarding costs when public-interest participants intervened in matters set out in Part III of the *Rules*, “applications for general rate increases”. In announcing the new *Rules*, the Commission repeated its objectives, including the facilitation of public involvement “through greater informality”.

²²⁸ *Ibid.*, at page 40 (proceedings “ranging from matters of a purely administrative character to cases of disputes”).

²²⁹ *Ibid.*, at pages 40 to 41.

²³⁰ *CRTC TELECOMMUNICATIONS RULES OF PROCEDURE AND TARIFF REGULATIONS*, Public Announcement (Ottawa, 20 July 1979).

²³¹ *Ibid.*, s. 1 (Short Title).

²³² SOR/79-554 (27 July 1979).

²³³ CRTC, Public Announcement (Ottawa, 20 July 1979), at page 6.

Appendix 6 The development of the CRTC telecom costs process

When Parliament created the CRTC in 1968, it did so to replace the Board of Broadcast Governors.²³⁴ At this time Canada had just concluded its first centennial, and was flush with the success of Expo '67: anything seemed possible, including the use of radio and television programming to reflect Canada to Canadians. Canada had, moreover, just become the third country in the world to launch a satellite (the Alouette, designed by Canadians in cooperation with NASA²³⁵) and exciting developments in mobile and cellular telephone service were underway.²³⁶

During the 1970s, though, Parliament faced different challenges, in that jurisdiction over telecommunications companies was divided between the federal and provincial governments. Seven of the ten provinces regulated their principal telephone companies²³⁷ while Canada's largest telecommunications companies²³⁸ were regulated by the Canadian Transport Commission²³⁹ under the 1967 *National Transportation Act*.²⁴⁰ In March 1973 the federal government's Minister of Communications issued a Green

²³⁴ Itself created to replace the CBC's Board of Governors, which then regulated private broadcasters.

²³⁵ "... in cooperation with NASA": < <http://history.nasa.gov/SP-4402/ch2.htm> >

²³⁶ The US Bell system introduced Improved Mobile Telephone Service so that when mobile cellphones were used "[c]onversations went back and forth just like a regular telephone": Tom Farley, "Mobile Telephone History" in "Future Mobile Phones", *Telektronikk* Vol.101 (3/4), 2005, http://www.telenor.com/wp-content/uploads/2012/05/T05_3-4.pdf#page=24, 22-34 at 24. Bell first used cellular radio for telephone service in January 1969: *Ibid.* at 23-24.

²³⁷ Minister of Communications, *Proposals for a Communications Policy for Canada: A position paper of the Government of Canada*, (Ottawa, March 1973) at page 7; the telephone companies in British Columbia, Ontario and Québec were federally regulated.

²³⁸ Bell Canada, British Columbia Telephones, Canadian National Telecommunications, Canadian Pacific Telecommunications, Telesat Canada and the Canadian Overseas Telecommunications Corporation. Minister of Communications, *Proposals for a Communications Policy for Canada: A position paper of the Government of Canada*, (Ottawa, March 1973) at page 7.

²³⁹ Which derived "its authority from the *National Transportation Act*, the *Railway Act* and the *Special Acts* of incorporation of the undertakings subject to its authority." Minister of Communications, *Proposals for a Communications Policy for Canada: A position paper of the Government of Canada*, (Ottawa, March 1973) at page 13.

²⁴⁰ *Bell Canada v. Consumers' Assoc. of Canada*, 1986 CanLII 49 (SCC), [1986] 1 SCR 190, <<https://canlii.ca/t/1ftvd>>, [28 February 1986], at paragraph 20, aff'g *Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission)*, 1983 CanLII 4959 (FCA), [1984] 1 FC 79, <<https://canlii.ca/t/g9gkx>>, (31 March 1983).

Paper²⁴¹ proposing changes to implement national policies regarding telecommunications²⁴² based on “a single federal agency”.²⁴³

In 1975 Parliament transferred jurisdiction over telecommunications to the Commission through legislative legerdemain – it included a provision in a new *Canadian Radio-television and Telecommunications Commission Act* to give the CRTC responsibility for telecommunication,²⁴⁴ effective 1 April 1976 when the *CRTC Act* entered into force.²⁴⁵

Section 73 of the *National Transportation Act* gave the CRTC the discretion to fix or tax the “costs of and incidental to any proceeding before the Commission” regarding telecommunications.²⁴⁶ At this time, the concept of “costs” had an expansive meaning, relaying on the definition used in the 1970 *Railway Act*: “‘costs’ includes fees, counsel fees and expenses”.²⁴⁷

²⁴¹ Minister of Communications, [Proposals for a Communications Policy for Canada: A position paper of the Government of Canada](#), (Ottawa, March 1973).

²⁴² *Ibid.*, at page 13. The Green Paper explained further at page 16 that “it is clearly a desirable objective to agree upon common practices and standards which would apply throughout Canada.”

²⁴³ Minister of Communications, [Proposals for a Communications Policy for Canada: A position paper of the Government of Canada](#), (Ottawa, March 1973), at page 23. The new agency

... would be more readily adaptable to the rapid and continuing evolution which has created a grave imbalance between the resources devoted to the development and technology of systems, and those devoted to the creation, production, and distribution of programming and information content. In short, one of the principal advantages of the proposed new agency would be the attainment of a proper balance between the social, cultural, economic, and technical aspects of communications, in accordance with clearly stated national objectives.

²⁴⁴ *Canadian Radio-television and Telecommunications Commission Act*, s. 14(2)

²⁴⁵ Through the proclamation of the *Canadian Radio-television and Telecommunications Commission Act*, (23 & 24 Eliz.2), c. 49 (see CRTC, *Annual Report 1976-1977*, at pages 22-23).

²⁴⁶ Section 14(3) of the *CRTC Act* referred “[f]or greater certainty but without limiting the generality of subsection [14](2)” to the application of “sections 17 to 19 and 43 to 82 of the *National Transportation Act*....”, and section 73 of that Act addressed cost orders:

(1) The costs of and incidental to any proceeding before the Commission, except as herein otherwise provided, are in the discretion of the Commission, and may be fixed in any case at a sum certain, or may be taxed.

(2) The Commission may order by whom and to whom any costs are to be paid, and by whom they are to be taxed and allowed.

(3) The Commission may prescribe a scale under which such costs shall be taxed.

²⁴⁷ *Railway Act*, R.S.C. 1970, c. R-2, at s. 2(1), cited in *Bell Canada v. Consumers' Assoc. of Canada*, 1986 CanLII 49 (SCC), [1986] 1 SCR 190, <<https://canlii.ca/t/1ftvd>>, [28 February 1986], at paragraph 21 (citing s. 43 of the *National Transportation Act*), aff'g *Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission)*, 1983 CanLII 4959 (FCA), [1984] 1 FC 79, <<https://canlii.ca/t/g9gkx>>, (31 March 1983).

In July 1976, the CRTC announced a public hearing and invited public comment on the approach the CRTC should taken in regulating telecommunications,²⁴⁸ explaining, though, that it did “not have funds to provide for representation at hearings.”²⁴⁹

The Commission then published and invited comment on draft procedural regulations for telecommunications in May 1978.²⁵⁰ The CRTC noted that the “complexity and importance of the issues which come before the Commission often demand that expert resources be available for their adequate treatment”²⁵¹ and that “[s]uch resources are employed by the regulated companies”.²⁵² It stated that regulated companies’ payments of these costs were “an allowable expense” just as their own preparatory work for rate applications was treated as an allowable expense.²⁵³ Interveners’ costs, on the other hand, “would only represent a small fraction of such regulatory expenses” but would “contribute to a more effective representation of subscriber interests and to an improved record on which to base decisions.”²⁵⁴

The Commission concluded that “it is critical to, and part of the necessary cost of, the regulatory process” that “such resources also be available to responsible representative interveners”.²⁵⁵ It stated that

... if the objective of informed participation is to be met, some form of financial assistance must be made available to responsible interveners, both active and potential, who do not have sufficient funds to properly prosecute their cases, particularly where such interveners represent the interests of a substantial number or class of subscribers.²⁵⁶

The CRTC said it had considered three alternatives to assist interveners: “first, funding from the Commission, either directly or through a “consumer advocacy” office; second, direct funding from government to qualified interest groups; and third, the awarding of

²⁴⁸ TELECOMMUNICATIONS REGULATION – PROCEDURES AND PRACTICES, STATEMENT OF THE CRTC IN PREPARATION FOR A PUBLIC HEARING AT THE CHATEAU LAURIER HOTEL IN OTTAWA COMMENCING SEPTEMBER 27, 1976 (Ottawa, 20 July 1976).

²⁴⁹ *Telecommunications Regulation – Procedures and Practices*, CRTC Statement (Ottawa, 20 July 1976), page 12.

²⁵⁰ *CRTC Procedures and Practices in Telecommunications Regulation*, Telecom Decision CRTC 78-4 (Ottawa, 23 May 1978); the CRTC invited comments on its proposed procedures and practices at page 53; interventions were due 15 September 1978.

²⁵¹ *Ibid.*, at page 37.

²⁵² *Ibid.*, at pages 37-38.

²⁵³ *Ibid.*, at page 39.

²⁵⁴ *Ibid.*, at page 39.

²⁵⁵ *Ibid.*, at page 38.

²⁵⁶ *Ibid.*, at page 37.

costs to qualified interest groups.”²⁵⁷ The CRTC preferred the first and second alternatives as these “would ensure the availability of resources to interveners in advance of hearings” and “permit adequate pre-hearing preparation for meaningful intervention”.²⁵⁸

The Commission proposed a third, “partial resolution”²⁵⁹ option of awarding “costs to qualified interest groups”²⁶⁰ – though only after “rate hearings” – when it would award costs “against an applicant”.²⁶¹ It said it would exercise its discretion to award costs in all other proceedings²⁶² and “declined to adopt a general rule of awarding costs” in “issue hearings ... and other hearings called on the Commission’s own motion”.²⁶³

The Commission ultimately adopted the *CRTC Telecommunications Rules of Procedure and Tariff Regulations* in July 1979. The adopted *Rules* included a provision for interim costs that the Commission decided it might award “in certain cases” if this meant the difference between participation “in an informed way and no participation at all”.²⁶⁴ Otherwise, the CRTC’s *Rules* limited the Commission to awarding costs when public-interest participants intervened in matters set out in Part III of the *Rules*, “applications for general rate increases”. In announcing the new *Rules*, the Commission repeated its objectives, including the facilitation of public involvement “through greater informality.”

Developments in caselaw from 1977 to 1985

The CRTC’s decision in mid-1979 to limit cost awards to public-interest participants in general rate cases may be explained to some extent by the fact that the Commission had developed its approach “following a consideration of the factors used by” the Alberta Public Utilities Board (APUB) and the Ontario Energy Board (OEB) “which have adopted a similar practice”.²⁶⁵ The CRTC did not set out any details concerning these factors or any conclusions it drew from their consideration.

²⁵⁷ *Ibid.*, at page 38.

²⁵⁸ *Ibid.*

²⁵⁹ *Ibid.*, at page 39.

²⁶⁰ *Ibid.*, at page 38.

²⁶¹ *Ibid.*, at page 39.

²⁶² *Ibid.*, at page 40 (proceedings “ranging from matters of a purely administrative character to cases of disputes”).

²⁶³ *Ibid.*, at pages 40 to 41.

²⁶⁴ CRTC, Public Announcement (Ottawa, 20 July 1979), at page 6.

²⁶⁵ *Telecommunications Regulation – Procedures and Practices*, CRTC Statement (Ottawa, 20 July 1976) At page 40.

As it happens, while questions about the OEB's approach to intervenor costs were apparently only first addressed in court in 1985,²⁶⁶ the APUB's decisions were attracting detailed scrutiny by Alberta's courts from 1977 to 1985 (a period when cases were printed and were unavailable online because there was no 'online'²⁶⁷). In fact, one of the APUB's decisions was returned to the Board for redetermination three times.

From May 1977 – after the CRTC had already held its consultation on its proposed *Rules* – to January 1985 the Alberta Court of Appeal issued four decisions about the same, single APUB intervenor-cost decision. The Court granted leave to appeal APUB order E77034 in [May 1977](#), vacated the order and ordered its redetermination in [January 1979](#), vacated another part of the order (now described as E81004) and ordered its redetermination on [9 January 1985](#), and set aside all of the E81004/E77034 order five days later, on [14 January 1985](#), again referring it back for reconsideration.

Over the course of its four reviews of the APUB's AGT cost order, the Court of Appeal traced the evolution in law regarding public-interest participation in the legal system. In 1977, it

Noted that comments from British caselaw in the early 1970s “reflect a growing recognition of the need in the general public interest for the supervisory jurisdiction of the court to keep pace with the increase of administrative functions created by legislatures”²⁶⁸

Found that costs processes that require an intervenor to “judge in advance whether, or to what extent, it can by participation and evidence meet the case... and affect the outcome in the eyes of the Board” pose “a dilemma for intervenors”²⁶⁹

In 1979 the Alberta Court of Appeal

²⁶⁶ The OEB was established in 1960: Auditor General of Ontario, *2011 Annual Report*, <https://www.auditor.on.ca/en/content/annualreports/arreports/en11/302en11.pdf>, Ch. 3, Section 3.02 (“Electricity Sector – Regulatory Oversight”), at page 67. In *Re Ontario Energy Board*, 1985 CanLII 2086 (ON SC), <<https://canlii.ca/t/g1bnl>> it considered the OEB's jurisdiction to award interim costs to interveners [the Court was then known as the High Court of Justice, Divisional Court].

²⁶⁷ The 1986 *Report* of the Task Force on Broadcasting Policy recommended at page 185 that the “government and the CRTC should work together to establish a readily accessible database on regulatory and self-regulatory processes and decisions”; by the late 1980s the CRTC began to scan the notices and decisions it issued after 1983 into a database, and by the late 1990s provided free diskettes of some of their decisions.

²⁶⁸ *Green, Michaels & Associates Ltd. v. Alberta (Public Utilities Board)*, 1979 ALTASCAD 8 (CanLII), <<https://canlii.ca/t/fp5fl>>, (19 January 1979), at paragraph 21.

²⁶⁹ *Green, Michaels & Associates, Ltd. v. Alberta (Public Utilities Board)*, 1977 ALTASCAD 115 (CanLII), <<https://canlii.ca/t/fp382>>, (12 May 1977), at paragraph 9.

- distinguished “public hearings on matters of public concerns” from cases involving *lis inter partes* [disputes between parties], explaining that the dissimilarity of procedures and purposes of these two types of proceedings means that **the principles underlying costs in litigation do not apply to public hearings regarding public concerns**²⁷⁰
- stated that “[i]t is patent that in most cases, substantial expense must be incurred for useful intervention, which need be no more than adequate testing of the propositions and figures put forward by an applicant, whether by cross-examination or further evidence”,²⁷¹ and
- noted that discretionary power cannot be exercised arbitrarily according to fancy or humour but according to law, following the rules of reason and of justice²⁷² and considering all the circumstances of a matter and the reasons for which discretion was granted²⁷³

In 1985, the Alberta Court of Appeal held that the APUB was incorrect when it

- used the hours of preparation and participation of one intervener that it found “particularly helpful” as a maximum against which to assess the value (to AGT

²⁷⁰ *Green, Michaels & Associates Ltd. v. Alberta (Public Utilities Board)*, 1979 ALTASCAD 8 (CanLII), <<https://canlii.ca/t/fp5fl>>, (19 January 1979), at paragraph 30:

In the factum of the appellants a number of cases were noted dealing with the discretion exercisable by courts in the matter of costs of litigation, as well as statements propounded in texts on the subject. I do not find them sufficiently appropriate to warrant discussion. Such costs are influenced by Rules of Court which in some cases provide block tariffs [*sic*], and in any event are directed to *lis inter partes*. We are here concerned with the costs of public hearings on a matter of public interest. There is no underlying similarity between the two procedures, or their purposes, to enable the principles underlying costs in litigation between parties to be necessarily applied to public hearings on public concerns. In the latter case the whole of the circumstances are to be taken into account, not merely the position of the litigant who has incurred expense in the vindication of a right.

²⁷¹ *Green, Michaels & Associates Ltd. v. Alberta (Public Utilities Board)*, 1979 ALTASCAD 8 (CanLII), <<https://canlii.ca/t/fp5fl>>, (19 January 1979), at paragraph 25.

²⁷² *Ibid.*, at paragraph 20, citing *Minister of National Revenue v. Wrights' Canadian Ropes*, 1946 CanLII 345 (UK JPC), [1947] A.C. 109, at page 122 – 123.

²⁷³ *Ibid.*, at paragraph 21, citing *In re Northern Engineering and Development Company and Philip, In re the Municipal and Public Utility Board*, (1930) 1930 CanLII 274 (MB CA), 1 W.W.R. 615.

customers) of other interveners' lawyers' participation without providing any facts on which to base this finding,²⁷⁴ and

- when it denied costs of the solicitor of the City of Edmonton on the basis that the City was represented by internal counsel, since Alberta's Municipal Government Act limited the Board's discretion to deny costs to salaried municipal solicitors.²⁷⁵

The Alberta Court of Appeal also added in 1985 that interventions should not "be judged ineffective merely because the proposal put forward is not accepted by the Board" if the proposal "merited consideration ... before it made its decision".²⁷⁶

Briefly, the Alberta Court of Appeal cases established at least four key points. First, they showed that the purposes and procedures established for addressing disputes between individual parties in courts should not be applied to regulatory proceedings involving the public interest: proceedings involving the public interest are not contests after which losing parties pay some of the winning parties' costs, but are mechanisms to test proposals and provide evidence-based alternatives.

Second, the appellate cases agreed that public-interest interventions require expenditures to be useful and that depending on their subject, these expenditures may be substantial.

Third, the cases explained that costs cannot be applied using one intervener's work as a baseline or standard because different interveners may represent different groups with different concerns; each cost application must be considered on its own merits.

Finally, the cases established that public-interest interveners are entitled to expect that their applications for costs will be reviewed not based on whether their proposals were accepted, but on whether they were serious (rather than frivolous), competent (rather than incompetent) and worthy of consideration (rather than irrelevant).

CRTC's approach to telecom costs and the Supreme Court's findings

²⁷⁴ *Edmonton (City) v. Alberta (Public Utilities Board)*, 1985 ABCA 6 (CanLII), <<https://canlii.ca/t/2dggqf>>, at paragraphs 16 and 23:

... In the absence of findings of fact by the Board in matters [with respect to the nature of the constituency represented by each intervener] the application of a benchmark had the effect of predetermining the exercise of the discretion vested in it. It started from the conclusion that the time expended by counsel for the City of Calgary was the maximum time it would allow in fixing fees of other counsel. ...

Ibid., at paragraph 27.

²⁷⁵ *Ibid.*, at paragraphs 2, 6 to 7 and 14 to 19.

²⁷⁶ *Ibid.*, at paragraph 25.

Although the CRTC's procedural rules came into effect on 20 July 1979, the CRTC had already awarded intervenor costs in a telecommunications proceeding that began in March 1978 and apparently ended in August 1978.²⁷⁷

Decision CRTC 78-7²⁷⁸ directed interveners in the 1978 basic rate proceeding to submit their costs to a 'Taxing Officer'.²⁷⁹ It declined to award the Consumers' Association of Canada (CAC) the administrative and legal costs of its participation in the Commission's proceeding on the grounds that CAC's membership dues "can be deemed to be directed towards this participation".²⁸⁰

In September 1978, however, one of the interveners asked the Commission to review the costs awarded in 78-7.²⁸¹ By the time the CRTC published its decision concerning its review in January 1980, the Alberta Court of Appeal had issued its 1977 and 1979 decisions that overturned the APUB's similar denials of intervenors' costs in its AGT telecom proceeding.

The CRTC issued Telecom Decision CRTC 80-1 in early 1980²⁸² and granted CAC's legal and administrative costs due to its submission of evidence showing that its membership fees were not earmarked for participating in CRTC proceedings and that its legal counsel was not a full-time CAC employee.²⁸³ 80-1 ordered a Taxation Officer to tax the CAC's costs.

Taxation Order 1980-1 was issued in mid-February 1980.²⁸⁴ The CRTC Taxation Officer stated²⁸⁵ that they had

²⁷⁷ The CRTC's decisions from before 1984 are not available online.

²⁷⁸ (Ottawa, 10 August 1978).

²⁷⁹ *Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission)*, [1983 CanLII 4959 \(FCA\)](#), [1984] 1 FC 79, at page 90.

²⁸⁰ *Bell Canada v. Consumers' Assoc. of Canada*, 1986 CanLII 49 (SCC), [1986] 1 SCR 190, <<https://canlii.ca/t/1ftvd>>, [28 February 1986], at paragraph 12, aff'g *Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission)*, 1983 CanLII 4959 (FCA), [1984] 1 FC 79, <<https://canlii.ca/t/g9gkx>>, (31 March 1983).

²⁸¹ *Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission)*, [1983 CanLII 4959 \(FCA\)](#), [1984] 1 FC 79, at page. , at page 93.

²⁸² *Ibid.*

²⁸³ *Bell Canada v. Consumers' Assoc. of Canada*, 1986 CanLII 49 (SCC), [1986] 1 SCR 190, <<https://canlii.ca/t/1ftvd>>, [28 February 1986], at paragraph 13, aff'g *Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission)*, 1983 CanLII 4959 (FCA), [1984] 1 FC 79.

²⁸⁴ *Ibid.*, at page 90. Taxation Order 1980-1 (Ottawa, 19 February 1980).

²⁸⁵ *Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission)*, [1983 CanLII 4959 \(FCA\)](#), [1984] 1 FC 79, at pages 94 to 95, citing Taxation Order 1980-1 at page 11.

... reviewed the cases referred to me by counsel for all parties, but I have not found conclusive authority therein for purposes of the present case. Most of them deal with costs in a traditional legal context, and assume a traditional relationship between counsel, client and tribunal. **Regulatory agencies and public interest interveners pose different problems and, while legal cases can be a useful guide in the area of costs, particularly with respect to quantum, the approach to the problems in this case cannot, in my opinion, be circumscribed by a strict application of traditional legal principles.** Therefore, I have interpreted the Commission's decision in light of the knowledge that public participation is a fragile concept, more talked about than realized, that public interest advocacy groups offer a different, but no less valuable, approach to participation than does the traditional solicitor-client form, and that a restrictive interpretation of a costs award by the officer responsible for implementing it would serve no useful public purpose.

[bold font added]

Bell Canada appealed the Order to the Commission; the CRTC dismissed the appeal in March 1981.²⁸⁶ The Commission explained that public-interest participants' continued participation and knowledge in its regulatory proceedings is desirable:

... the active participation of established organizations such as CAC and NAPO et al in regulatory proceedings is desirable in view of their continuing interest and knowledge base in the field. **In the Commission's view, the adoption of Bell's argument concerning double recovery would in effect mean that only *ad hoc* organizations could expect to obtain awards of costs from the Commission. Such organizations would not likely have the base for informed participation upon which established organizations such as CAC and NAPO et al can build their specific interventions.** Such organizations are called upon to intervene in a number of regulatory proceedings and the Commission has concluded that the taxing officer did not err in principle when he interpreted the Commission's direction to take into account government funding as a direction to deduct from awards of costs only funds specifically designated for the 1978 Bell rate case.

The Commission added that the purpose of its cost awards in telecom is to encourage informed public-interest participation:

... In the Commission's opinion, the proper purpose of such awards is the encouragement of informed public participation in Commission proceedings. ...

286

Ibid., at pages 90, 95 and 96. Telecom Decision CRTC 81-5 (Ottawa, 9 March 1981).

[N]o useful purpose would be served by requiring public interest groups artificially to arrange their affairs, by means, for instance, of forgivable debts or bonus accounts, in order to avoid a restrictive interpretation of the term "costs".²⁸⁷

[bold font and underlining added]

Bell appealed this decision to the Federal Court of Appeal (FCA), saying that the Commission had misinterpreted the meaning of "costs" in its decision by ignoring the fact that – due to agreements with their counsel – the intervenors did not 'actually incur expenses'.²⁸⁸ Bell argued that intervenors' costs claims should be dismissed entirely²⁸⁹ to prevent over-compensation.²⁹⁰

In March 1983 the FCA upheld Decision CRTC 81-5 as being within the CRTC's jurisdiction,²⁹¹ noted that no evidence showed that the CAC, as an intervener, "was more than reimbursed for its expenses" and held that "to the extent counsel was engaged in the Bell rate hearing, he was not available to perform other services."²⁹² In February 1986 the Supreme Court of Canada unanimously dismissed Bell's appeal of the 1983 FCA decision.²⁹³

Parliament was by this time in the late 1980s considering new telecommunications legislation. The *National Transportation Act* was replaced by the 1993 *Telecommunications Act*.²⁹⁴ Parliament also changed the language regarding costs in three substantive ways. It used more contemporary language, it permitted the Commission to award interim as well as final costs in to telecom proceedings and it allowed costs to be awarded in "all proceedings before it":

²⁸⁷ *Bell Canada v. Consumers' Assoc. of Canada*, 1986 CanLII 49 (SCC), [1986] 1 SCR 190, <<https://canlii.ca/t/1ftvd>>, [28 February 1986], at paragraph 19, aff'g *Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission)*, 1983 CanLII 4959 (FCA), [1984] 1 FC 79, <<https://canlii.ca/t/g9gkx>>, (31 March 1983).

²⁸⁸ *Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission)*, [1983 CanLII 4959 \(FCA\)](#), [1984] 1 FC 79, at page 92.

²⁸⁹ *Ibid.*, at page 94.

²⁹⁰ *Ibid.*, at pages 100 to 101.

²⁹¹ *Ibid.*, at page 106.

²⁹² *Ibid.*, at page 101.

²⁹³ *Bell Canada v. Consumers' Assoc. of Canada*, 1986 CanLII 49 (SCC), [1986] 1 SCR 190, <<https://canlii.ca/t/1ftvd>>, [28 February 1986], dismissing appeal of *Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission)*, 1983 CanLII 4959 (FCA), [1984] 1 FC 79, <<https://canlii.ca/t/g9gkx>>, (31 March 1983).

²⁹⁴ *Telecommunications Act*, s. 134 ("Coming into Force"), marginal note.



Enabling statutes regarding telecom costs	
1965 <i>National Transportation Act</i>	1993 <i>Telecommunications Act</i>
<p>73. (1) The costs of and incidental to any proceeding before the Commission, <i>except as herein otherwise provided</i>, are in the discretion of the Commission, and may be fixed in any case <i>at a sum certain</i>, or may be taxed.</p> <p>(2) The Commission may order by whom and to whom any costs are to be paid, and by whom they are to be taxed <i>and allowed</i>.</p> <p>(3) The Commission may <i>prescribe</i> a scale under which such costs shall be taxed.</p>	<p>Award of costs</p> <p>56 (1) The Commission may award interim or final costs of and incidental to proceedings before it and may fix the amount of the costs or direct that the amount be taxed.</p> <p>Payment of costs</p> <p>(2) The Commission may order by whom and to whom any costs are to be paid and by whom they are to be taxed and may establish a scale for the taxation of costs.</p>



Appendix 7 ***Sepulveda Consulting Inc., Recommendations for CRTC Intervener Cost Award Rate Structures and Levels, Report (Toronto, 9 September 2025)***