



25 August 2015

John Traversy
Secretary General
CRTC
Ottawa, ON K1A 0N2

Dear Secretary General,

Re: *Review of the structure and mandate of the Commissioner for Complaints for Telecommunications Services Inc.*, Broadcasting and Telecom Notice of Consultation CRTC 2015-239 (Ottawa, 4 June 2015)

- 1 The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established to undertake research and policy analysis about communications, including telecommunications. We request the opportunity to appear before the Commission at its 3 November 2015 public hearing in this proceeding, to address the submissions of other parties and to respond to questions from the CRTC.
- 2 The Forum supports a strong Canadian communications system that serves the public interest. We welcome the opportunity to respond to the questions raised by the CRTC in its review of the structure and mandate of Commissioner for Complaints for telecommunications Services Inc., and look forward to reviewing other parties' submissions. Our comments are attached.

If you have any questions, please do not hesitate to contact the undersigned.

Sincerely yours,

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Review of the structure and mandate of the
Commissioner for Complaints for Telecommunications Services Inc.
Broadcasting and Telecom Notice of Consultation CRTC 2015-239 (Ottawa, 4 June 2015)

Comments by

Forum for Research and Policy in Communications (FRPC)

25 August 2015

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Executive Summary

Introduction

- ES 1** The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established to undertake research and policy analysis about communications, including telecommunications. The Forum supports a strong Canadian communications system that serves the public interest, and wishes to appear before the CRTC at its November 2015 public hearing on the structure and mandate of Commissioner for Complaints for Telecommunications Services Inc. (CCTS).
- ES 2** In 2007 Cabinet ordered the CRTC to ensure the establishment by Canada's telecommunications industry of a telecommunications "Consumer Agency" or "agence de protection des usagers" (the *Order* is reproduced in Appendix 1). CCTS was incorporated in 2008 by some of Canada's largest telecommunications service providers (TSPs).
- ES 3** CCTS is now in its 8th year of operation. It serves an important role: the CRTC has forborne from regulating many telecommunications services, and even in the case of regulated services, the *Telecommunications Act* is silent on the Commission's role in resolving disputes between TSPs and those who use their services and products. CCTS therefore provides complainants with a way of having their concerns heard, and perhaps of being compensated when the complaints are justified under the *Codes* administered by CCTS.
- ES 4** Participation in CCTS was originally limited to large (\$10 million or more in revenues) TSPs, but since 2011 has been mandatory for all TSPs.
- ES 5** CCTS is currently responsible for administering the *Deposit and Disconnection Code* and the *Wireless Code*. Later this year it will also begin administering the *Television Service Providers Code*, at which point TVSPs should also become participants, and have representation on its Board of Directors. CCTS administers its *Codes* under the provisions of its own *Procedural Code*.
- ES 6** CCTS' Board of Directors now has 7 members: 3 Industry Directors, 2 Consumer Director and 2 Independent Directors. The Directors do not deal with individual complaints received by CCTS, but with general issues of direction with respect to CCTS and the Commissioner, CCTS' annual budget, and special circumstances involving its budget (such as hiring more staff to cope with unexpected increases in complaint numbers).
- ES 7** CCTS' current by-laws do not limit the appointment of Industry Directors, but restrict those who may be appointed as Independent Directors and set limits on their terms so as to 'refresh' the Board. As CCTS was originally intended to be a "consumer agency" it is not clear why its by-laws establish distinctions between Consumer and Independent Directors. First, no distinctions are made between Industry Directors, which leads to the

question of why distinctions exist for non-Industry Directors. Second, if Independent Directors are on the Board to vote differently from Consumer Directors, the effect is to give Industry majority control in voting; if Independent Directors are on the Board to provide Consumers with majority control in voting, the Board should simply have a majority of Consumer Directors. Finally, if ‘refreshment’ matters, responsibility for ‘refreshments’ should be shared equally among all the Directors, and not be placed solely on the shoulders of the Independent or Consumer Directors.

- ES 8** If CCTS’ Board of Directors is increased to accommodate a new Directorship for TVSPs, the opportunity should be taken to revise the by-laws to convert the Independent Directors’ positions into Consumer Directors, and to ensure that Consumer Directors continue to hold a majority of votes on the Board.

CCTS’ Role

- ES 9** While many – including Cabinet, the Minister of Industry, the CRTC and TSPs – describe CCTS as a ‘telecommunications consumer agency’, when TSPs incorporated CCTS they included a provision requiring CCTS to be impartial and to not advocate for TSPs, complainants or anyone else. By requiring its strict impartiality, TSPs have ensured that CCTS cannot function as a ‘Consumer Agency’.
- ES 10** CCTS therefore operates as an alternative dispute resolution (ADR) system, with limited authority to require TSPs to make consumers whole for overbilling and other charges (compensatory damages), and to compensate complainants for inconvenience (aggravated damages). The authority with respect to redress is limited by CCTS’ *Procedural Code*, which requires CCTS to secure the “least expensive resolution of every complaint”.
- ES 11** While ADR offers flexibility and in this case, free service to complainants, ADR’s propensity to settle complaints behind closed doors weakens its utility in setting precedents for the TSP sector. Of the 50,838 complaints that CCTS has agreed to handle since 2009, fewer than 1% (46) CCTS Decisions have been published.

CCTS’ Mandate

- ES 12** CCTS accepts complaints about unregulated telecommunications services, such as wireless telephones, Internet access services and long-distance telephone services. The issues it addresses include billing disputes and errors, service delivery and credit management. CCTS deals with all complaints within its mandate as established by its *Procedural Code*.
- ES 13** The CRTC has added TVSPs to CCTS’ mandate this year, but no formal system exists to enable other parties to propose that CCTS be given responsibilities in other areas (such as monitoring compliance with requirements for accessibility, for example).

ES 14 As ADR outcomes are not published, accountability through CCTS reporting is therefore critical for ensuring that the *Wireless Code, Deposit and Disconnection Code* and *TVSP Code* function properly.

Accountability

ES 15 Cabinet's *Order* requires CCTS to report annually about telecommunications complaints. CCTS' *Annual Reports* have grown more sophisticated in style, but have many deficiencies. The most recent *Annual Report*, for 2013-2014, suffers from:

- confusing presentations of data that leave questions unanswered
- unclear definitions of key concepts (6 concepts are defined in terms of 23 measurable elements, but data are only available for 18 or 78% of the elements)
- a failure to address 3 of 7 reporting requirements set by the CRTC in 2011
- lack of clear benchmarks (the data offered by CCTS address just 13 of 34, or 38%, of benchmarks developed in Australia for dispute resolution bodies, and set out in Appendix 5)
- absence of information about timeliness and complainant satisfaction with outcomes
- lack of clarity as to whether CCTS procedures treat TSPs and complainants equally
- absence of a formal framework for considering compensatory and aggravated damages
- absence of financial statements
- absence of information about timeliness with respect to complaints resolution
- absence of anonymized, public database about complaints and their outcomes
- a limited historical perspective that ignores the first five years of its history (when it is only eight years old) and provides no meaningful information about complaint outcomes, and, perhaps most importantly, the
- failure to measure complainant satisfaction with outcomes

ES 16 FRPC has developed 22 recommendations for addressing the concerns it has identified, and these are set out below.

ES 17 Answers to questions raised by Broadcasting Notice of Consultation CRTC / Telecommunications Notice of Consultation 2015-239 are provided within the framework of our introductory analysis.

FRPC Recommendations

FRPC recommendation 1 Consumer groups should ensure that the majority of their Members on CCTS' Board have legal training.

FRPC recommendation 2	CCTS should amend By-law No. 1 to permit TVSP participants without any telecommunications interests to appoint a Member to the CCTS Board.	17
FRPC recommendation 3	CCTS should amend its by-laws to permit Canadian consumer groups to appoint a majority of the Members of the CCTS Board.	19
FRPC recommendation 4	CCTS should amend its by-laws to permit Consumer Directors to be appointed if their last direct or indirect employment by Parliament, government, TSPs or TVSPs groups was ten or more years previous.	19
FRPC recommendation 5	CCTS should amend its by-laws either to eliminate term limits for non-Industry Directors, or to impose term limits for Industry Directors.	19
FRPC recommendation 6	CCTS should list the Committees and members of the Committees of its Board of Directors on its website and in its <i>Annual Reports</i> , so as to be transparent.	20
FRPC recommendation 7	CCTS' Board should post the minutes (not transcripts) of its meetings on its website, so as to be transparent.	20
FRPC recommendation 8	CCTS' By-law No. 1 should be amended to include the description of CCTS by Order in Council 2007-533 as a Consumer Agency.	28
FRPC recommendation 9	The CRTC should require CCTS to amend its <i>Procedural Code</i> to remove the terms "impartial", "remain impartial", "not act as an advocate for telecommunications service providers, customers or any other person" and "endeavour to secure the .. most expeditious and least expensive resolution of every complaint on its merits" in section 2.2.	29
FRPC recommendation 10	The CRTC should require CCTS to amend its <i>Procedural Code</i> to require CCTS to approach the resolution of complaints in an objective manner.	29
FRPC recommendation 11	CCTS' <i>Procedural Code</i> must be changed to include the resolution of complaints about TVSPs within its scope.	30
FRPC recommendation 12	The CRTC should formalize the process through which interested parties may have CCTS' mandate changed to include new issues or services.	30
FRPC recommendation 13	CCTS should report on the number of complaints received by each TSP, per 100,000 subscribers.	32
FRPC recommendation 14	TSPs' breaches of the <i>Procedural Code</i> should be addressed either by reducing TSP fees when evidence is filed on time, or by adding fees when evidence is filed late.	38
FRPC recommendation 15	CCTS should provide more years of information in its <i>Annual Report</i> , or it should provide the information in the <i>Annual Report</i> for all years of its operations on its website.	39

FRPC recommendation 16	CCTS should revise its presentation of statistics about its work to include information about key benchmarks.	43
FRPC recommendation 17	CCTS should ensure that its reports about complaints are complete and consistent.	43
FRPC recommendation 18	Each year's <i>Annual Report</i> should include a complete historical record (while documenting when presentation formats have changed)	43
FRPC recommendation 19	CCTS should publish a statement of its income and expenditures each year, and include a summary of the financial support remitted by TSP category (ILEC, TVSP, etc.)	44
FRPC recommendation 20	CCTS should publish an anonymized database to permit research on consumer complaints agencies.	46
FRPC recommendation 21	CCTS should include the date on which it accepted a complaint in each Recommendation and Decision.	46
FRPC recommendation 22	CCTS should engage one or more accredited members of the Marketing Research and Intelligence Association to develop statistically valid and reliable research tools to measure complainants' satisfaction with CCTS' services and CCTS outcomes.	47
FRPC recommendation 23	CCTS should report respondents' answers to questions measuring their satisfaction with the outcome achieved by CCTS for their complaint.	47
FRPC recommendation 24	CCTS should publish the factors it considers when deciding whether to compensate complainants for the inconvenience caused by TSPs' misconduct.	49

I Introduction

1 The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established to undertake research and policy analysis about communications, including telecommunications. The Forum supports a strong Canadian communications system that serves the public interest.

2 In June 2015 the CRTC announced that it was reviewing the structure and mandate of Commissioner for Complaints for Telecommunications Services Inc. (CCTS),¹ now in its eight year of operation.

A *Commissioner of Complaints for Telecommunications Services Inc. (CCTS)*

3 CCTS is a federally-incorporated body established by Canadian telecommunications service providers (TSPs) in 2007. Funded entirely by TSPs, it currently administers two telecommunications instruments - the *Wireless Code* and the *Deposit and Disconnection Code*² at no charge to those who make complaints under the *Codes*. Earlier this year the CRTC decided to add complaints about cable and satellite companies to CCTS' mandate, by having it administer the *Television Service Providers Code*.³

4 The CRTC last reviewed CCTS in January 2011,⁴ and has now invited comments on

- the service that CCTS provides to consumers
- the consumer experience with CCTS
- public awareness of CCTS
- company participation in CCTS, and
- the mandate, activities, structure, and funding of CCTS.

¹ *Review of the structure and mandate of the Commissioner for Complaints for Telecommunications Services Inc.*, Broadcasting and Telecom Notice of Consultation 2015-239 (Ottawa, 4 June 2015).

² *Ibid*, at para. 4.

³ *Navigating the Road Ahead - Making informed choices about television providers and improving accessibility to television programming*, Broadcasting Regulatory Policy CRTC 2015-104 (Ottawa, 26 March 2015), <http://crtc.gc.ca/eng/archive/2015/2015-104.htm>, at para. 23:

The Commission notes that the majority of BDUs that offer other communications services, such as Internet, local voice services and wireless services, will offer incentives for their customers to purchase a bundle of these services. In a marketplace where a growing number of consumers take advantage of these offers, it becomes ever more important to have a consistent approach to informing consumers and dealing with consumer complaints. As such, given its expertise in administering the *Wireless Code* and handling telecommunications complaints, the Commission considers that the CCTS would be the appropriate ombudsman to administer the TVSP Code of Conduct.

⁴ *Review of the Commissioner for Complaints for Telecommunications Services*, Telecom Regulatory Policy CRTC 2011-46, (Ottawa, 26 January 2011), <http://www.crtc.gc.ca/eng/archive/2011/2011-46.htm>.

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- 5 FRPC welcomes the opportunity to respond to the CRTC's questions about CCTS' structure and mandate.
- 6 While Cabinet ordered its creation to stem a growing tidal wave of complaints about telephone service, CCTS was originally designed to woo industry's participation.
- 7 In our view, TSPs have benefited from CCTS' existence. People and small businesses with legitimate concerns about their telecommunications services have a free and easy-to-use alternative to complaining to the CRTC or taking TSPs to court. Telecommunications companies may use the existence of CCTS to justify continued deregulation. The CRTC can devote itself to regulation and policy, rather than complaints made under the *Codes*.
- 8 After seven years, and in view of the CRTC's decision to add complaints about cable and satellite companies to CCTS' mandate, FRPC considers that CCTS' efficiency and effectiveness can be improved with minor changes to its mandate, activities, funding and structure. These changes would ensure that CCTS is able to perform in a way that is consistent with Cabinet's 2007 *Order*, and with current trends in Canadian law.
- B OIC 2007-533: a "Consumer Agency" / "agence de protection des usagers"**
- 9 The English-language text of *Order in Council 2007-0533* is set out in Appendix 1, and directed the CRTC to ensure that a new body for dealing with complaints about TSPs was established. Specifically, it required the CRTC to report on the progress being made by industry to establish this body by industry, and by the CRTC to approve the body once it was established.
- 10 As noted in the heading of this subsection, the *Order* referred to the agency in two ways: as a 'consumer agency', and also as an 'agency to protect users'.
- 11 FRPC notes that under Canadian law English-language and French-language texts of legislative instruments are equally authentic.⁵ If differences between the texts exist, both texts must be read carefully and considered to resolve interpretative issues.⁶ The preferred approach to resolving differences in wording is to identify and adopt the meaning that is shared by both.⁷
- 12 The English-language text of the *Order* states Cabinet's view that
- an independent agency with a mandate to resolve complaints from individual and small business retail customers ("Consumer Agency") should be an integral component of a deregulated telecommunications market.

⁵ The rule was first set out in the 1891 case of *C.P.R. v. Robinson* (1891), 19 S.C.R. 292; reversed on other grounds [1892] A.C. 481.

⁶ See e.g. *Re Estabrooks Pontiac Buick* (1982), 44 N.B.R. (2) 201 at 2010 (CA).

⁷ See e.g. *R. v. O'Connell*, [1979] 1 W.W.R. 385 (BC CA).

13 The French-language version of the *Order* refers, however, to “une agence *de protection* des usagers des services de télécommunications...” [underlining and italics added].

14 In our view, Cabinet wanted TSPs to establish a consumer agency to protect the interests of telecommunications users across Canada.

C Consumer rights law in Canada: large and liberal application

15 Under the provisions of Canada’s constitution responsibility for consumer protection lies primarily with the provinces, although the federal government has a role to play in areas such as the environment, food safety, banking and privacy.

16 That said, cases brought to court establish basic principles about consumer protection and contracts, across Canada. For example, Canadian courts have said that consumer protection legislation should be given a “large and liberal conception”.⁸ And while individuals are usually free to enter into, and are therefore bound by, contracts, courts have established minimum standards for reasonable contracts. In 1978, for instance the Ontario Court of Appeal dealt with ‘standard form’ contracts that are typical of many commercial transactions but that tend not to be read or understood. It held that parties must take reasonable steps to bring onerous terms to each other’s attention:

In modern commercial practice, many standard form printed documents are signed without being read or understood. In many cases the parties seeking to rely on the terms of the contract know or ought to know that the signature of a party to the contract does not represent the true intention of the signer, and that the party signing is unaware of the stringent and onerous provisions which the standard form contains. Under such circumstances, I am of the opinion that **the party seeking to rely on such terms should not be able to do so in the absence of first having taken reasonable measures to draw such terms to the attention of the other party, and, in the absence of such reasonable measures, it is not necessary for the party denying knowledge of such terms to prove either fraud, misrepresentation or *non est factum*..** This is particularly true in the case of ‘standard form contracts’, or ‘contracts of adhesion’.⁹

[bold font added]

17 In other words, one contracting party should not take undue advantage of the other(s).¹⁰ This is now a basic principle for contracts.

18 More recently – last November – the Supreme Court of Canada established a new duty for all contracts – “that parties must generally perform their contractual duties honestly and reasonably and not capriciously or arbitrarily.”¹¹ The Court traced this new duty to

⁸ Richard v. Time Inc., [2012] 1 SCR 265, 2012 SCC 8 (CanLII).

⁹ *Tilden Rent-A-Car Co. v. Clendenning*, 1978 CanLII 1446 (ON CA).

¹⁰ See e.g. para. 43 in *Bhasin v. Hrynew*, [2014] 3 SCR 495, 2014 SCC 71 (CanLII).

¹¹ *Bhasin v. Hrynew*, [2014] 3 SCR 495, 2014 SCC 71 (CanLII), at para. 63.

the late 1700s when it was held that “a person having a power, must execute it *bona fide* for the end designed, otherwise it is corrupt and void.”¹²

- 19 The law that emerges from courts’ decisions therefore plays an important role in understanding Canadians’ rights as consumers.
- 20 Common law also has a role to play in explaining the different types of remedies to which consumers may be entitled if their complaint about a good or service has merit. Canada has traditionally followed the major streams of British legal thinking. Accidents of history led to the establishment in Great Britain centuries ago of courts of law and courts of equity. Historically, courts of equity (equity courts, or chancery courts) dealt with petitions and lawsuits related to trusts, land law, estates and guardianships; they had the ability to grant remedies that included writs, and were known for offering faster and more flexible outcomes than traditional courts of law. Courts of law, however, could order damages.

- 21 Over the centuries the courts of equity and of common law merged, with the result that the different remedies available in the different courts are now usually available to consumers, to ensure that justice is done.¹³ At the same time, historical approaches to these remedies also continue to be invoked.

- 22 These approaches to considering whether to grant remedies are often summarized by maxims: the phrase that ‘equity loves clean hands’, for instance, is a short-form expression of the principle that a plaintiff seeking relief with respect to a

Maxims related to equitable relief:

Equity sees that as done what ought to be done
Equity will not suffer a wrong to be without a remedy
Equity delights in equality
One who seeks equity must do equity
Equity aids the vigilant, not those who slumber on their rights
Equity imputes an intent to fulfill an obligation
Equity acts *in personam* or persons
Equity abhors a forfeiture
Equity does not require an idle gesture
He who comes into equity must come with clean hands
Equity delights to do justice and not by halves
Equity will take jurisdiction to avoid a multiplicity of suits
Equity follows the law
Equity will not aid a volunteer
Where equities are equal, the law will prevail
Between equal equities the first in order of time shall prevail
Equity will not complete an imperfect gift
Equity will not allow a statute to be used as a cloak for fraud
Equity will not allow a trust to fail for want of a trustee

¹² *Ibid.* at para. 35, citing *Aleyn v. Belchier* (1758), 1 Efen 132, 28 E.R. 634 at 637.

¹³ *Canson Enterprises Ltd. v. Boughton & Co.*, [1991] 3 SCR 534, 1991 CanLII 52

La Forest for La Forest, Sopinka, Gonthier and Cory JJ

as I have indicated, willy-nilly the courts have tended to merge the principles of law and equity to meet the ends of justice as it is perceived in our time. That, in effect, is what was done in *Jacks v. Davis*, *supra*, and by the courts below in the instant case. As I see it, this is both reasonable and proper.

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- transaction must establish that his/her/its own record in that transaction was 'clean'.¹⁴
- 23 Then, apart from whatever legal maxim may be applied to a specific set of facts, care must be given to the correct redress for unlawful behaviour in the contract setting. Redress could include compensation for the party that has been harmed (compensatory damages), compensation for the party which also takes into account intangible injuries caused by insulting or oppressive conduct that increases mental distress through anxiety, fear and distress (aggravated damages¹⁵), and awards granted to punish the actionable wrong that resulted in an upheld complaint (punitive damages) so as to deter and denounce misbehaviour.¹⁶
- 24 Courts have traditionally been the venue for raising complaints and obtaining redress, but alternative dispute resolution (ADR) has grown since the 1990s, to the point that many contracts stipulate that contractual disputes must be handled through ADR. The courts have upheld that such stipulations, even in standard form contracts, unless provincial statutes expressly offer complainants the opportunity to go to court, perhaps to ensure that cases that go to court "will generate a measure of notoriety and, where successful, public denunciation, neither of which would be achieved to nearly the same extent by 'private, confidential and binding arbitration.'"¹⁷
- 25 ADR is nevertheless viewed as a flexible way to sidestep lengthy and inflexible courtroom battles. On the other hand, companies can also benefit when private resolution is mandated by contract:
- "[t]here are real advantages to be gleaned from an arbitration agreement which guarantees confidentiality of the proceeding, avoids the dispute getting into the public

¹⁴ *Volkswagen Canada Inc. v. Access International Automotive Ltd.*, [2001] 3 FCR 311, 2001 FCA 79: [21] I take it to be undisputed that the remedies sought by Volkswagen Canada in this case include equitable relief, and that it is open to Access International to allege that Volkswagen Canada should be denied such relief because it does not come to the Court with "clean hands". An unclean hands defence can be made out if, but only if, there is a sufficient connection between the subject-matter of the claim and the equitable relief sought. This was explained as follows by Schroeder J.A. in *Toronto (City) v. Polai*, 1969 CanLII 339 (ON CA), [1970] 1 O.R. 483 (C.A.) (affirmed without discussion of this point, 1972 CanLII 22 (SCC), [1973] S.C.R. 38) [at pages 493-494]:

The maxim "he who comes into equity must come with clean hands" which has been invoked mostly in cases between private litigants, requires a plaintiff seeking equitable relief to show that his past record in the transaction is clean: *Overton v. Banister*, (1844), 3 Hare 503, 67 E.R. 479; *Nail v. Punter* (1832), 5 Sim. 555, 58 E.R. 447; *Re Lush's Trust* (1869), L.R. 4 Ch. App. 591. ...The maxim must not be interpreted and applied too broadly as, e.g., against a plaintiff who had not led a blameless life. ...

¹⁵ See *Campbell v. Tremblay*, 2010 NLCA 62 (CanLII).

¹⁶ See *Hill v. Church of Scientology*, [1995] 2 S.C.R. 1130, 1995 CanLII 59 (SCC); see also *Pivotal Capital Advisory Group Ltd. v. NorAmara BioEnergy Corporation*, 2008 ABQB 206 (CanLII).

¹⁷ *Seidel v. TELUS Communications Inc.*, [2011] 1 SCR 531, 2011 SCC 15, at para. 6, per Binnie J. for the majority.

domain, and ensures that sensitive information or harmful precedents remain confidential¹⁸

26 ADR has different forms, including mediation, settlement conferences, negotiation and arbitration. ADR is banned entirely in Quebec and Ontario for consumer claims,¹⁹ and limited in British Columbia. While arbitrators may order remedies for one of the parties involved in an ADR matter, they cannot order performance by any other party, and cannot grant either declarations or injunctions (as superior courts are empowered to do).²⁰ Other concerns about the use of ADR to address consumer issues involve questions about due process: “independence and impartiality, publicity and transparency, ... right to be heard, right to respond and fair hearing.”²¹

27 As the following section shows, CCTS offers TSPs and telecommunications users an ADR service. Part II describes CCTS’ history, membership, governance and role, and is followed by Part III, setting out FRPC’s answers to the questions raised in Broadcasting Notice of Consultation CRTC / Telecommunications Notice of Consultation 2015-239.

II Commissioner of Complaints for Telecommunications Services Inc.

3 CCTS was established seven years ago to give telecommunications users a place to complain when their complaints to telecommunications service providers (TSPs) went unheeded.

4 This section reviews CCTS’ history; membership and governance; role and authority; procedures; and resources. Finally, we set out our responses to the CRTC’s questions.

A History

5 Parliament expressly permits the CRTC to adjudicate complaints about broadcasting matters,²² but not about telecommunications companies or services. The 1993 *Telecommunications Act* does not even refer to ‘complaints’.

¹⁸ *Ibid.* at para. 38, quoting W.J. Earle, *Drafting ADR and Arbitration Clauses for Commercial Contracts*.

¹⁹ *Ibid.*, at para. 40.

²⁰ *Ibid.*, at para. 39.

²¹ Uniform Law Conference of Canada, *Consumer Protection and E-Commerce: ADR*, App. 1 to the Report of the Working Group, “Alternate Dispute Resolution in the Consumer Context”, http://www.ulcc.ca/images/stories/2004_English.pdf/2004ulcc0017_Jurisdiction_CP_E-Commerce_ADR_En.pdf, at para. 9.

²² 1991 *Broadcasting Act*, :

18(3) The Commission may hold a public hearing, make a report, issue any decision and give any approval in connection with any complaint or representation made to the Commission or in connection with any other matter within its jurisdiction under this Act if it is satisfied that it would be in the public interest to do so.

...

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- 6 Complaint adjudication has never been a comfortable fit for the CRTC, whether it has or has not been included in its responsibilities. On the broadcasting side, where Parliament explicitly enabled the CRTC to address complaints, the CRTC tacitly or expressly approved the establishment of industry organizations to handle complaints about advertising,²³ radio and television,²⁴ and cable²⁵ more than twenty years ago. A few years ago it said that self-regulation is a “key mechanism” for achieving Parliament’s broadcasting policy objectives.²⁶
- 7 As for telecommunications, the CRTC did not involve itself directly in complaints adjudication but encouraged telephone companies to resolve users’ complaints, and used numbers of complaints as one of several measures to evaluate telecommunications service quality and competition.²⁷ In 1982 the CRTC began to require telephone companies to report on the number of complaints they received per 100,000 accounts, as one of eight service areas requiring measurement.²⁸ At the time – just six years after having been given jurisdiction over telecommunications by Parliament – the CRTC agreed that an appropriate objective for the companies was to ensure that at least 90% of subscribers were satisfied with their service.²⁹

21. The Commission may make rules (a) respecting the procedure ... for making ... complaints to the Commission

²³ Advertising Standards Canada (ASC) was established in 1957 and began “... reviewing broadcast advertising to children at the request of CAB and CRTC” in 1972: ASC, *About: History*, <http://www.adstandards.com/en/AboutASC/ourHistory.aspx>.

²⁴ The Canadian Broadcast Standards Council was established in 1991, ‘fully supported’ by the CRTC, to provide “a means of recourse for members of the public regarding the application of” *Codes* on broadcasting ethics, television violence and gender portrayal. *Canadian Broadcast Standards Council*, Public Notice CRTC 1991-90 (Ottawa, 30 August 1991), <http://www.crtc.gc.ca/eng/archive/1991/PB91-90.HTM>.

²⁵ *Cable Television Standards Council*, Public Notice CRTC 1992-22 (Ottawa, 16 March 1992), <http://www.crtc.gc.ca/eng/archive/1992/PB92-22.HTM>.

²⁶ CRTC, *Communications Monitoring Report, 2008*, at 2(iv)(b) (“The CRTC, policies and regulation”).

²⁷ When the CRTC deregulated payphones, for example, it said it would review “the impact compn has had on the local pay telephone market. This review will include, among other things, problem areas that have been identified through complaints, including complaints with respect to consumer safeguards and barriers to entry.” *Local Pay Telephone Competition*, Telecom Decision CRTC 98-8, (Ottawa, 30 June 1998), <http://www.crtc.gc.ca/eng/archive/1998/dt98-8.htm>.

²⁸ *Quality of Service Indicators for Use in Telephone Company Regulation*, Telecom Decision CRTC 82-13 (Ottawa, 9 November 1992), <http://www.crtc.gc.ca/eng/archive/1982/dt82-13.htm>: “The Commission accepts the recommendation ... that eight service-interfaces be measured: provision of service, repair service, local service, long distance service, operator service, directory service, billing and complaints.”

²⁹ *Ibid.*: “The Commission notes that there has been general agreement throughout this proceeding that the standards established for the various indicators should be set at a level which ensures

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- 8 As new telecommunications technologies have been introduced problems arose for which Canadians wanted and expected solutions. They assumed the CRTC was the agency to which to turn. Complaints about unsolicited calls made using automatic diallers, for example, grew from 3% of all complaints made to the CRTC in 1983 to 40% (almost 5,000) of complaints in the first half of 1993 alone.³⁰
- 9 One challenge for the CRTC was that it has lacked clear jurisdiction to offer complainants quick and effective relief. It could impose regulatory punishments (reporting requirements, for instance) or monetary penalties to punish misbehaviour after the fact. It could not readily order communications providers to compensate individual communications users by making them whole (refunding monies that users should not have paid) or by compensating them for the inconvenience caused by the communications provider.
- 10 The CRTC's role as licensing body, the absence of an explicit mandate to adjudicate complaints and offer equitable relief, and the relatively unchanging nature of the CRTC's resources all encouraged consideration of alternatives to deal with telecommunications complaints.
- 11 In February 2005 the federal government recognized "the critical importance of the telecommunications sector to Canada's future well-being and the need for a modern policy framework" and announced that it would "appoint a panel of eminent Canadians" to review Canadian telecommunications policy and regulation.³¹ The panel was to "make recommendations ... on how to move Canada to a modern telecommunications framework in a manner that benefits Canadian industry and consumers."³²
- 12 In November 2005 Industry Canada helped to fund a study by the Public Interest Advocacy Centre of different models for a telecommunications industry ombudsman. The study noted several characteristics of industry ombudsmen:
- Dealing with individual customers and their relationship with a service provider³³

that 90% of subscribers are satisfied with the service provided. The Commission accepts this objective at this time. ..."

³⁰ *Use of Automatic Dialing-Announcing Devices*, CRTC Telecommunications Public Notice 93-58 (Ottawa, 21 September 1993).

³¹ Department of Finance Canada, *The Budget Plan, 2005*, (Ottawa, 2005) <http://fin.gc.ca/budget05/pdf/bp2005e.pdf>, at 167.

³² *Ibid.*, at 168.

³³ John Lawford, PIAC, *Telecommunications Ombudsman for Canada* (Ottawa, November 2005), http://www.piac.ca/wp-content/uploads/2014/11/telecom_ombudsman_for_canada.pdf, at 11.

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- Independent and objective investigator³⁴
 - Can resolve disputes quickly and informally³⁵
 - Can decide whether complaints are justified³⁶
 - If complaints are justified, can make recommendations to the organization to resolve problems³⁷
- 13 The PIAC study made several recommendations about its structure and authority:
- a not-for-profit organization, funded by participating service providers
 - subject to general government guidelines, but otherwise independent of both industry and government
 - with jurisdiction over wire-line and wireless telecommunications, as well as Internet access and voice services (VoIP), where internal conflict resolution has been tried and failed, and where other administrative bodies do not have jurisdiction
 - with the purpose of
 - attempting to mediate voluntary resolutions to disputes, and
 - making recommendations for resolution when necessary
 - with the discretion to refer complainants to a regulator or the courts if in its judgment that is a more appropriate or convenient avenue to pursue
 - recommended resolutions should include an explanation or apology, an action by the service provider, and
 - compensation for actual damages up to a maximum of \$1,000.³⁸
- 28 The Telecommunications Policy Review Panel ('Panel')³⁹ then made proposals about Canada's telecommunications system in March 2006, including the creation of a "new form of 'ombuds' office to be called the Telecommunications Consumer Agency".⁴⁰
- 29 The Panel noted that while, in a competitive telecommunications environment, customers who had problems with a wireless or wireline telecommunications service provider (TSP) could change TSPs or go to court, expensive cancellation fees and the

³⁴ *Ibid.* at 12.

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ John Lawford, PIAC, *Telecommunications Ombudsman for Canada* (Ottawa, November 2005), http://www.piac.ca/wp-content/uploads/2014/11/telecom_ombudsman_for_canada.pdf, at 3.

³⁹ Consisting of panel Chair Dr. Gerri Sinclair, communications lawyer Hank Intven and former CEO of Microcell, André Tremblay.

⁴⁰ Telecommunications Policy Review Panel, *Final Report*, Executive Summary, at 9.

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- complexity of the judicial process might discourage use of these remedies.⁴¹ It also opined that the then-current complaints process in which customers would complain to the CRTC was “time-consuming”, “expensive”, “intimidating”, inefficient and could not in any event “redress ... past grievances.”⁴²
- 30 The Panel therefore recommended that a new “Telecommunications Consumer Agency ... be established to protect the interests of Canadian consumers” in an environment in which telecommunications services are more pervasive and more complex.⁴³ Relying in part on the PIAC study, the Panel said this agency should have the “authority to resolve complaints from individual and small business retail customers of any telecommunications service provider”.⁴⁴ It also said this should happen “without duplicating the role and responsibilities of existing organizations – and without increasing the regulatory burden on the telecommunications industry.”⁴⁵
- 31 The Panel described the “useful features that should be included” in the agency’s design:
- Industry-established
 - Independent
 - Structure and functions determined by the CRTC
 - Compulsory membership for all TSPs
 - Funded by the industry because then “members will be vigilant in addressing systemic problems or repeated claims against specific TSPs” and the agency will have an “arm’s-length relationship” with the CRTC
 - Authority to respond to complaints involving any TSP’s regulated or unregulated telecommunications services, except those involving equipment, regulation or policy, content or another agency’s jurisdiction
 - Ability to refer “significant or recurring problems that cannot be satisfactorily resolved” to the CRTC
 - Ability to track and analyze patterns of complaints
 - Authority “to conduct research and analysis into significant or recurring consumer problems”, and the

⁴¹ *Ibid.*, at 6-7.

⁴² *Ibid.*, at 6-8.

⁴³ *Ibid.*

⁴⁴ *Ibid.*, Recommendation 6-2.

⁴⁵ *Ibid.* at 6-7.

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- Authority to reject complaints that do not show a cause of action, are being adjudicated elsewhere or are being brought by an entity that should go elsewhere
- 32 One month after the Panel reported its findings, the CRTC invited local exchange carriers “to establish an industry self-regulatory system ... that set out clear rules and standards and that provided a reliable mechanism for expeditiously resolving customer complaints.”⁴⁶
- 33 A year after that, in April 2007, the federal government announced that it considered “that an independent agency with a mandate to resolve complaints from individual and small business retail customers (“Consumer Agency”) should be an integral component of a deregulated telecommunications market”.⁴⁷
- 34 In July 2007, eight telecommunications service providers (TSPs) established the Commissioner of Complaints for Telecommunications Services Inc. (CCTS)⁴⁸ and submitted a proposal about the CCTS to the CRTC for its review and approval. Incorporating many of the elements proposed in PIAC’s November 2005 study,⁴⁹ these TSPs said that CCTS service was to be accessible, timely, efficient and informal – and also “impartial”.⁵⁰ They proposed that TSP members fully fund CCTS,⁵¹ but that ‘independent’ directors on CCTS’ Board would “at all times number at least one more than the Industry Directors”,⁵² being one director each from incumbent TSPs, the cable sector and other TSPs.
- 35 As for remedies, the founding members proposed that CCTS’ staff be permitted to recommend that TSPs explain or apologize to complainants, do or stop doing specific activities, and/or pay complainants up to \$1,000 to compensate them beyond any

⁴⁶ *Forbearance from the regulation of retail local exchange services*, Telecom Decision CRTC 2006-15 at paras. 372-373, as am. (not with respect to industry self-regulation) by Order in Council PC 2007-0532 (4 April 2007), <http://www.pco-bcp.gc.ca/oic-ddc.asp?lang=eng&Page=secretariats&txtOICID=2007-532&txtFromDate=&txtToDate=&txtPrecis=&txtDepartment=&txtAct=&txtChapterNo=&txtChapterYear=&txtBillNo=&rdoComingIntoForce=&DoSearch=Search+%2F+List&viewattach=16133&blnDisplayFlg=1>.

⁴⁷ Order in Council PC Number 2007-0533 (Ottawa, 4 April 2007).

⁴⁸ Bell, Cogeco, MTS, Rogers, Sasktel, Telus, Quebecor and Vonage. *Commissioner of Complaints for Telecommunications Services Inc.: A proposal*, (23 July 2007) at para. 2.

⁴⁹ *Ibid.*, at para. 16.

⁵⁰ *Ibid.*, at para. 11. The TSPs added their hope that CCTS would be seen as part of the TSP industry: “The Founding Members recognize that the CCTS will come to be seen by the public as an extension of each of their complaints handling functions, and, as such, are committed to making customers’ interactions with the agency as satisfying as possible.”

⁵¹ *Ibid.*, at para. 44.

⁵² *Ibid.*, at para. 23.

amounts refunded or credited to the complainant for billing errors.⁵³ The founding members also proposed that TSPs be bound by CCTS recommendations when these were accepted by complainants.⁵⁴

- 36 The CRTC announced a public proceeding to consider CCTS' organization and mandate the next month,⁵⁵ and with a few changes approved CCTS' formation in December 2007.⁵⁶ It welcomed the creation of this new "consumer-friendly" organization (see Appendix 2).

Issue	July 2007 proposal	2007-130	2011-46
Participation of TSPs	Voluntary	Mandatory if telecommunications revenues > \$10 million	Mandatory for all TSPs for 5 years
Funding		Must be sufficiently funded to execute mandate effectively	
Governance	7-member board: 3 TSP 2 consumer groups 2 independent	7-member board: 3 TSP 2 consumer groups 2 independent	
Appointing chair	Special and extraordinary resolutions	Simple majority vote	
Appointing CEO		Simple majority vote	
Removing CEO or chair		Special resolution	
Develop or approve industry Codes	If requested by TSP member, Director or CEO	If requested by TSP member, Director, CEO or CRTC; must be filed with CRTC	
Identify trends	If requested by TSP member	If requested by TSP member, Director, CEO or CRTC	
Annual report	Nature, #, resolution by stage of eligible complaints for each TSP member	Nature, #, resolution by stage of eligible complaints for each TSP member	
Remedies	Apology Do or cease activity	Apology Do or cease activity	

⁵³ *Ibid.*, at para. 38.3.

⁵⁴ *Ibid.* at para. 38.

⁵⁵ *Proceeding to consider the organization and mandate of the Commissioner for Complaints for Telecommunications Services*, Telecom Public Notice CRTC 2007-17 (Ottawa, 22 August 2007), <http://www.crtc.gc.ca/eng/archive/2007/pt2007-16.htm>.

⁵⁶ *Establishment of an independent telecommunications consumer agency*, Telecom Decision CRTC 2007-130 (Ottawa, 20 December 2007), <http://www.crtc.gc.ca/eng/archive/2007/dt2007-130.htm>.

Issue	July 2007 proposal	2007-130	2011-46
	Monetary compensation up to \$1000	Monetary compensation up to \$5000	
Transparency & accountability			
Position towards consumers and TSPs	Impartial	Impartial	

37 CCTS' first elected Board of Directors was established in June 2008; until then CCTS "existed essentially on paper with a handful of staff borrowed from stakeholders."⁵⁷

14 In 2009 the Minister of Industry welcomed CCTS' establishment, describing it as an "independent telecommunications consumer agency" and "an effective, accessible and consumer-friendly recourse for individuals and small businesses who have been unable to resolve disagreements with their service providers".⁵⁸

38 In 2011 the CRTC reviewed CCTS' structure and mandate, again referring to it as an "independent telecommunications consumer agency".⁵⁹ Broadcasting and Telecom Notice of Consultation CRTC 2015-239, which sets out the CRTC's questions in this proceeding, also describes CCTS as a "telecommunications consumer agency."

B Membership

15 CCTS Members now include telecommunications service providers, cable companies and other TSPs that have agreed to participate in CCTS. Consumer groups are not Members of CCTS.

⁵⁷ CCTS, *Annual Report 2013-14*, at 2.

⁵⁸ CRTC, *Report on Plans and Priorities, 2008-2009*, <http://www.tbs-sct.gc.ca/rpp/2008-2009/inst/rtc/rtc01-eng.asp>:

a) Industry self-regulation

In Establishment of an independent telecommunications consumer agency (Telecom Decision CRTC 2007-130), the CRTC granted conditional approval to the structure and mandate of a new telecommunications consumer agency: the Commissioner for Complaints for Telecommunications Services Inc. (CCTS). The CRTC directed all service providers with annual domestic telecommunications service revenues of more than \$10 million to become CCTS members.

The CCTS is an effective, accessible and consumer-friendly recourse for individuals and small businesses who have been unable to resolve disagreements with their service providers. As a self-regulating body, the CCTS has the authority to develop and approve industry-related codes of conduct and standards. The organization will also identify and report to the CRTC on industry trends and issues, and publish an annual report on the nature, number and resolution of complaints received for each member. The CCTS has been operational since 23 July 2007 and does not charge for its services.

In the coming year, the Commission will work with the CCTS on the agency's operating procedures and public-awareness campaign.

⁵⁹ *Review of the Commissioner for Complaints for Telecommunications Services*, Telecom Decision CRTC 2011-46 (Ottawa, 26 January 2011), <http://www.crtc.gc.ca/eng/archive/2011/2011-46.htm>.

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- 16 The number of TSPs whose complaints are addressed by CCTS has grown. From 2008 to 2010 CCTS' membership consisted of Canada's largest telecommunications companies – those with annual telecommunications service revenues of \$10 million or more. In 2011 the CRTC required all TSPs offering services covered by CCTS' mandate to join CCTS for five years. It said that mandatory membership would comply with the federal government's original 2007 Order demanding that all TSPs participate and help to fund CCTS, that CCTS had been effective in resolving complaints, that the level of telecommunications services no longer directly regulated by the CRTC was likely to increase, and that compulsory membership would give all consumers access to CCTS' services, regardless of their TSP's revenues.
- 17 To reflect the addition of more TSPs, CCTS amended its *Participation Agreement* to refer to industry 'Participants', rather than 'Members'. Participants that agree to be bound by the complaints regime set out in the *Procedural Code* are assigned to the ILEC, cable and other TSP categories of CCTS. They are entitled to appoint three of the seven Members of CCTS' Board of Directors.
- 18 In 2015 the CRTC decided that CCTS should also administer a new *Code* for cable and satellite distribution services, or Television Service Providers (TVSPs), previously known as broadcasting distribution undertakings (BDUs).
- 19 The CRTC's decision to add complaints about TVSPs to CCTS' duties is likely to require companies to become Participants in CCTS, and raises the question of whether new Members should be added to CCTS' Board. TVSPs will presumably be required to make payments to support CCTS' activities, as it adjudicates complaints filed under the new *TVSP Code*. Creating a new TVSP Member would provide TVSPs that do not have any telecommunications interests, and that are not owned or otherwise affiliated with TSPs, to make their views known when CCTS' annual budget is being considered.
- 20 Adding one TVSP Director to CCTS' Board will eliminate Consumer and Independent predominance, however, raising the very serious risk that Canada's telecommunications consumer agency will become an industry agency. FRPC believes this risk can be eliminated; we set out our suggestions below.
- C Governance**
- 21 CCTS is governed by a Board of Directors. The Directors are also CCTS' Members: 2 appointed collectively by consumer groups, 3 appointed by CCTS Participants in the telecommunications industry (one each appointed by ILECs, cable companies and other TSP participants); and 2 from candidates proposed by an Independent Committee acting as a Nominating Committee.
- 22 In the remainder of this submission FRPC distinguishes between the Industry, Consumer and Independent Directors on CCTS' Board.

- 23 CCTS' Board has a number of functions. While it is not to deal directly with individual complaints, it is required to direct the Commissioner, review CCTS' annual reports and approve CCTS' annual budget or changes to that budget. These requirements are set out in section 51 of By-law No. 1:

provide the Commissioner with general guidance in carrying out the duties of the Commissioner and, in respect thereof, may recommend approval, amendment or repeal of any of the provisions of the *Procedural Code* for approval by the Members pursuant to paragraph 20(c)(ii)

... confirm the Annual Report of the Corporation as recommended pursuant to paragraph 67(a) for review by the Members,

...

confirm an Annual Budget and Business Plan for the Corporation as recommended pursuant to paragraph 67(b) for approval by Extraordinary Resolution pursuant to paragraph 11(b); and

recommend any amendments to any Annual Budget and Business Plan, including, without limitation, changes to the budgets contained therein and the amounts payable by the Participating Service Providers in connection therewith between annual meetings for approval by Extraordinary Resolution pursuant to paragraph 20(b)(iii).

- 24 CCTS' Board now has four directors with experience in telecommunications and/or broadcasting, and four lawyers. All three of the industry directors also work for telecommunications companies, and two are lawyers. Two of the four 'independent directors' are lawyers; and two have a background in telecommunications:

Table 1 Members of CCTS' Board of Directors in August 2015

CCTS designation and Director's name	Background (CCTS website: https://www.ctcs-cprst.ca/about/who-we-are)
Independent director	
1 Mary M. Gusella (Chair)	Lawyer and former Chief Commissioner of the Canadian Human Rights Commission
2 Jacques C.P. Bellemare	Engineer who "has worked in telephony with Bell Canada, in Cable TV with Cablevision Nationale ..., in consulting with Raymond, Chabot, Martin, Paré, and in regulation with Teleglobe Canada after its privatization"
3 Marie Bernard-Meunier	Diplomat who served as Canada's Ambassador to UNESCO, the Netherlands and German
4 Marina Pavlovic	Lawyer and Assistant Professor of Law at the University of Ottawa, in the area of law and technology
Industry Directors	
5 Dennis Béland	VP, Regulatory Affairs, Quebecor
6 Marten Burns	Senior Regulatory Legal Counsel, Telus

CCTS designation and Director's name	Background (CCTS website: https://www.ccts-cprst.ca/about/who-we-are)
7 Jill Schatz	General Counsel and VP Law, Primus Canada

- 25 Proportionately more industry directors have a legal background and telecommunications expertise than independent directors (see Table 2).

Table 2 Legal and telecommunications experience on CCTS' Board in 2015

Types of CCTS directors	Lawyers	Telecommunications background	Total
Independent	50%	50%	57%
Industry	66%	100%	43%
Total	57%	71%	100%

- 26 FRPC notes that in Canada lawyers bear a duty to represent the interests of their clients: in other words, TSPs' legal representatives on CCTS' Board are bound to act in TSPs' interests not simply because of their duty to their employer, but also due to their responsibilities as lawyers. Their work on the Board cannot be, and should not be, expected to reflect their personal views, and they certainly should not be expected to offer legal advice to non-TSP Board members if this would not serve their clients' interests.

- 27 CCTS' does not appear to engage the full-time services of legal counsel. Even if consumer groups have decided that they do not require the same degree of legal representation to represent their interests on CCTS' Board as TSPs, FRPC's concern is that consumer representatives who are unfamiliar with the law concerning contract formation and adjudication may be at a disadvantage compared to the TSP Directors who are also lawyers. It may happen, for instance, that Consumer or Independent Members without legal training are the only Consumer or Independent Members on one of the committees of CCTS Board of Directors (of which there are at least 4, being the Nominating, Independent, Audit and Coordinating Committees).

- 28 Therefore, and although the focus of this proceeding is on the CCTS' governance, mandate and work, FRPC respectfully suggests that consumer groups that appoint Members to CCTS' Board of Directors ensure that the majority of these Members have legal training, preferably with an emphasis on consumer rights law.

FRPC recommendation 1 Consumer groups should ensure that the majority of their Members on CCTS' Board have legal training.

- 29 As noted above, the CRTC has given CCTS the responsibility to administer the new *TVSP Code*. If TVSPs are required to share responsibility for funding CCTS' operations, as

Cabinet's original Order in Council required, their interests should be represented by a Member of CCTS' Board. That said, ILECs and cable companies are already represented by Members of the Board.

30 We are aware that in 2007 Bell's Chief Regulatory Affairs officer suggested that specific ratios must be maintained on the Board with respect to special and extraordinary resolutions of the Board, and that these ratios (not set out at the public hearing itself) determine the Board's size. Bell's concern was that increasing the number of Industry and Consumer Members would inadvertently require a larger board.

31 CCTS is nevertheless now faced with the prospect of dealing with complaints about cable and satellite distribution services. So as to ensure the representation of TVSP interests that are not already reflected on CCTS board, new TVSP participants that do not have any telecommunications (including telephone and/or Internet) interests should be permitted to appoint a new Member.

FRPC recommendation 2 CCTS should amend By-law No. 1 to permit TVSP participants without any telecommunications interests to appoint a Member to the CCTS Board.

32 CCTS' by-laws do not restrict the appointment of Industry Directors, but do restrict Independent Directors' appointments. CCTS by-laws establish formal differences between the Consumer and Independent Directors. For example, TSPs may appoint any one to the Board, but Independent Directors must represent a diversity of experience and interests, including individuals "known and respected on a regional and national basis, either in their own right or by virtue of an appointment or office held" and "representative of the Canadian population, including gender, linguistic, minority, and geographic representation".⁶⁰

33 In particular, the two Independent Director cannot be part of the Board if they are or within the previous three years were, employed by CCTS, the telecom sector, consumer groups or advocacy groups. CCTS By-law No. 1 prohibits the two Independent Directors from being from being involved with CCTS, TSPs, Parliament, lobbyists or government:

Table 3 Restrictions on the Independent Directors' appointment

Independent Directors cannot be drawn from:

- | | |
|-----------------------------|-------------------------------------------------------------------------------------------------|
| CCTS | • an officer or employee of CCTS |
| A telco or a telco supplier | • a director, officer or employee of any TSP member, or having been one in the previous 3 years |
| | • an individual or employee of an entity that derives significant revenue from providing goods |

⁶⁰ By-law No. 1, s. 30(b).

	<ul style="list-style-type: none"> • or services to a TSP member, or having had such an interest in TSPs in the previous 3 years • someone with a significant ownership interest in a TSP member, or having had one in the previous 3 years
Parliament	<ul style="list-style-type: none"> • a Member of the Senate, Parliament, or a provincial or territorial legislative assembly or having been one in the previous 3 years
Telco or consumer lobbyist	<ul style="list-style-type: none"> • a director, officer or employee of a telecom industry or consumer advocacy or lobbying group
Any level of government, including the CRTC	<ul style="list-style-type: none"> • an employee of a federal, provincial or territorial government or agency of the Crown
Source: By-law No. 1, s. 30	

- 34 The GIC order regarding an “effective Consumer Agency” does not state that there should be separate consumer and other independent directors, but only that it should be governed by “a majority of members who are not affiliated with any telecommunications service provider.”⁶¹ We note that the idea that the Board of Directors of any corporation should predominantly comprise outside directors, with a presumed independence from management, is hardly new. For example, Chandler (1975, pp. 74–5) argued more than 30 years ago that:

. . . it is almost ridiculous to have to justify the importance of a strong majority of outside directors. If it is true that the board must steadfastly represent the stockholders in making a continuous evaluation of the CEO’s performance, then a board of predominately (even overwhelmingly) outsiders logically follows.⁶²

- 35 In 2007, moreover, the CRTC thought CCTS’ independent directors could have been employed by consumer advocacy groups:

The Commission considers that the restriction prohibiting persons employed by a consumer advocacy group within the previous three years from being eligible as other independent directors is unwarranted. In this regard, consistent with the Order, the Commission considers that the Agency is to be independent from only the telecommunications industry, not consumer advocacy groups. The Commission also considers that other independent directors should be selected

⁶¹ Australia, Commonwealth Consumer Affairs Advisory Council, *Review of the Benchmarks for Industry-based Customer Dispute Resolution Schemes: Final Report*, (Australia, July 2014), <http://ccaac.gov.au/2013/04/24/review-of-the-benchmarks-for-industry-based-customer-dispute-resolution-schemes/>.
www.researchgate.net/profile/Mandy_Cheng/publication/4745970_Corporate_Governance_and_Board_Composition_diversity_and_independence_of_Australian_boards/links/0c96051e8f6a3cf759000000.pdf, 194-207 at 196.

from among the best candidates available to the Agency, provided that there is no recent industry affiliation.⁶³

36 It is not clear why employment limitations are placed on Independent Directors. If it is assumed that current or past employment affects their voting preferences, consumer interests do not predominate at the Board, as Consumer Directors make up only 2 of the 7 seats. This may make CCTS an agency that is independent of TSPs, but does not make it a consumer agency.

37 To ensure that CCTS is, as the federal Panel, Cabinet's Order, the CRTC and industry representatives have all said, a telecommunications **consumer** agency, Consumer Directors should predominate on CCTS' Board of Directors. To reflect consumers' predominance, the restrictions and separate appointment process for Independent Directors should be eliminated, whether a new TVSP member is added or is not added.

FRPC recommendation 3 **CCTS should amend its by-laws to permit Canadian consumer groups to appoint a majority of the Members of the CCTS Board.**

38 To ensure that consumer interests predominate, certain remaining restrictions on Consumer Directors should be maintained and expanded to address employment by TVSPs. Specifically, TVSP Directors should not be part of CCTS' Board if they work or have recently worked for telcos, TVSPs, Parliament or government. As well, the current 3-year restriction on previous employment should be increased, to reflect the impact of long-term employment: previous TSP and TVSP employees should be capable of appointment to CCTS as Consumer directors if they last worked directly or indirectly (as a consultant, for example) at least ten or more years previously.

FRPC recommendation 4 **CCTS should amend its by-laws to permit Consumer Directors to be appointed if their last direct or indirect employment by Parliament, government, TSPs or TVSPs groups was ten or more years previous.**

39 No limits are set on the three Industry Directors' term of office, while two of the other four Directors cannot be re-elected to the Board after six years.⁶⁴ By-law No. 1 explains that this limit exists to 'refresh' the Board. If Board refreshment is important, the refreshment duty should lie equally on all Directors.

FRPC recommendation 5 **CCTS should amend its by-laws either to eliminate term limits for non-Industry Directors, or to impose term limits for Industry Directors.**

40 The membership of the CCTS Nominating Committee that currently proposes independent Directors is not set out in CCTS' *2013-2014 Annual Report*, and its

⁶³ 2007-130, para. 52.

⁶⁴ By-law No. 1, s. 32.

description in CCTS By-Law 1 is unclear. (The Independent Committee proposes the two Independent Directors and it consists of the Directors appointed by the Board and the consumer groups:

65. The Board shall appoint an Independent Committee, composed of all the Directors who are nominees of the Members appointed by the Board and Canadian consumer groups.

...

67. The duties of the Independent Committee shall include, among other duties assigned by the Board from time to time:

...

(d) the performance of the duties of a Nominating Committee)

- 41 CCTS does not publish the minutes of its meetings, and neither CCTS' *2013-2014 Annual Report* nor its website lists the membership of any of the Committees of the Board. Publication of this information would make CCTS' more transparent

FRPC recommendation 6 CCTS should list the Committees and members of the Committees of its Board of Directors on its website and in its *Annual Reports*, so as to be transparent.

FRPC recommendation 7 CCTS' Board should post the minutes (not transcripts) of its meetings on its website, so as to be transparent.

D *Role, mandate and accountability*

- 39 CCTS is currently responsible for administering the *Wireless Code* and the *Deposit and Disconnection Code* and will soon also assume responsibility for administering the *Television Service Providers Code (TVSP Code)*

1 **Role: consumer agency or mediator?**

- 40 As previously noted, the Telecommunications Policy Review Panel recommended formation of a "Telecommunications Consumer Agency". The federal government's *Order* refers to a "Consumer Agency". Rogers described CCTS as a "consumer ombudsperson" in the CRTC's 2011 review.⁶⁵ The CRTC describes CCTS as a telecommunications consumer agency.

⁶⁵ CRTC, Transcript, <http://www.crtc.gc.ca/eng/transcripts/2010/tt1201.html>, at para. 2500, in discussing whether CCTS should participate in CISC discussions:

MR. ENGELHART: A CISC process, it's a regulatory process managed by the CRTC. I don't see the value of combining that with the activities of the CCTS, which is a consumer ombudsperson working in some cases with industry codes of conduct, but outside of the direct regulatory system. So it doesn't seem appropriate to us.

41 The Order directing the CRTC to establish CCTS was very clear on this point:

Whereas the Governor in Council considers that the governance structure of an effective **Consumer Agency** should be designed to ensure its independence from the telecommunications industry by incorporating elements such as: a governing body composed of a majority of members who are not affiliated with any telecommunications service provider; a chief executive officer appointed by the governing body and also not affiliated with any telecommunications service provider; and a budget set by its governing body and provided by the industry at a level sufficient to effectively execute its mandate;

And whereas the Governor in Council also considers that all telecommunications service providers should participate in and contribute to the financing of an effective **Consumer Agency** and that its structure and mandate would be approved by the Commission;

....

[Appendix 1; bold font added]

42 CCTS shares a few of the features and successes of a consumer agency. The Commissioner and CCTS' staff must perform their work in a 'non-legalistic' way, under section 2.2(f) of the *Procedural Code*. This implies that CCTS has some flexibility in the way it approaches problems. CCTS acted when TSPs have cancelled service of subscribers who/that filed complaints with CCTS, or have charged them fees⁶⁶ by objecting to these practices, and they were terminated.⁶⁷

43 CCTS, however, does not describe itself as a consumer agency, but as "an independent organization dedicated to working with consumer and small business customers and participating Canadian telecommunications service providers to resolve complaints relating to most deregulated retail telecommunications services."⁶⁸ It says that it strives "to assist customers and service providers in an independent, fair, effective and efficient manner, after direct communications between a customer and a service provider has proven ineffective."⁶⁹ In 2009-10 it said that it

... retained a well-respected firm with expertise in alternative dispute resolution to customize and deliver a training program to all CCTS staff. The objective was to provide our staff with the tools and resources to deal with their complaint-handling and dispute resolution roles most effectively, efficiently and professionally.⁷⁰

⁶⁶ *Annual Report 2011-12* at 21.

⁶⁷ *Ibid.*

⁶⁸ CCTS, *Annual Report 2013-14*, at 4.

⁶⁹ CCTS, *Annual Report 2013-14*, at 4.

⁷⁰ CCTS, *Annual Report, 2009-2010*, at 9.

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- 44 In other words, CCTS deals with users' complaints about TSPs through the ADR prism, not from the perspective of consumer protection. We are concerned that at the level of the individual complaint, mediation has displaced the consumer protection function. We note that while CCTS' by-laws do not require CCTS to be impartial or to act as a mediator, they require that the CCTS' Commissioner's "dispute resolution powers and duties ... be those set out in the Procedural Code approved from time to time. ...".
- 45 The *Procedural Code* then stipulates that the Commissioner must be impartial, and must not advocate for consumers.⁷¹ It also requires CCTS to determine whether the TSP being complained of performed "reasonably",⁷² by considering "general principles of law, good industry practice, any relevant codes of conduct or practice, and what is fair and reasonable in the circumstances of the Complaint", as well as a TSP's "policies or operating practices".⁷³
- 46 The *Code* does not, however, make any stipulations about the degree to which the CCTS should consider complainants' circumstances or practices. It does not provide guidance about the degree to which the Commissioner or CCTS should consider Canadian consumer protection law when it considers the 'reasonableness' of settlement offers.
- 47 By requiring impartiality by CCTS, however, the *Procedural Code* ensures that CCTS is not advocating for anyone. If is not advocating for anyone it cannot then also be acting as the "Consumer Agency", or an "agence de protection des usagers" demanded by the *Order*.
- 48 FRPC acknowledges that CCTS reports trends in complaints that could enable the CRTC, if it chooses, to require amendments to industry *Codes*.
- 49 But the identification of trends does not establish how CCTS actually approaches individual complaints – as a consumer protection agency, or as a dispute resolution mechanism? If CCTS acts impartially towards consumers and TSPs, is it entitled to

⁷¹ *Procedural Code*, s. 2.2(a):

In carrying out his or her functions, powers and duties, the Commissioner shall act in a manner that is independent and impartial, accessible and efficient. Without limiting the generality of the foregoing, the Commissioner shall:

- (a) remain impartial to the interests of the Participating Service Providers, as between the Participating Service Providers, and from and as between their respective customers;
- (b) not act as an advocate for telecommunications service providers, customers, or any other person;

....

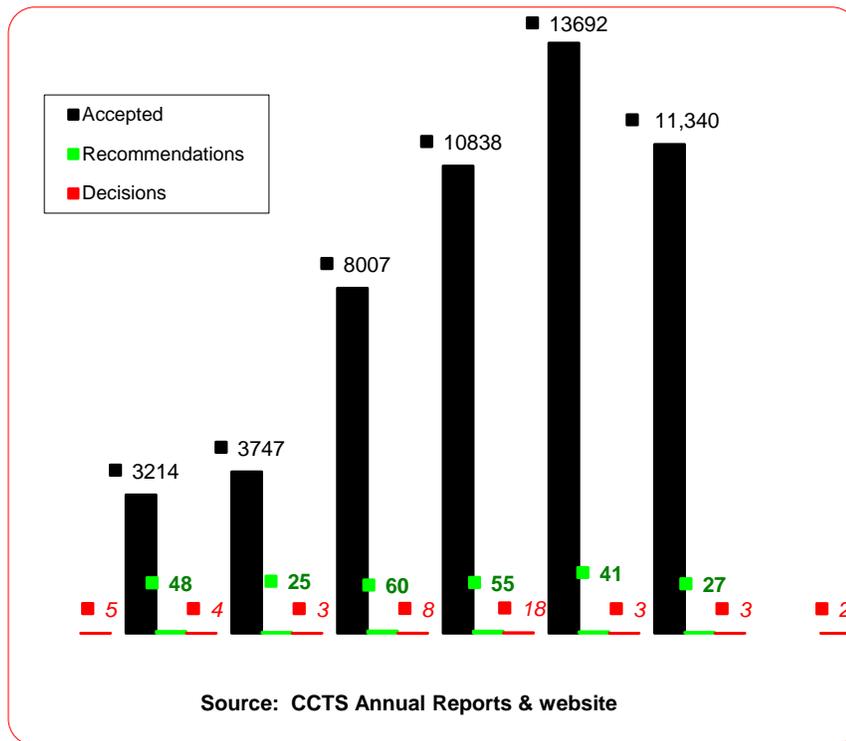
⁷² S. 4.1.

⁷³ S. 4.2 and 4.3.

address the implications of imbalances between consumers and TSPs in terms of knowledge, experience and access to legal resources?

- 50 Finding evidence about CCTS’ approach to TSPs and consumers in terms of individual complaints is very difficult because materials related to individual complaints are not published, and the statistics CCTS publishes about its work offer little or not information about complaint outcomes.
- 51 According to its *Annual Reports* CCTS has agreed, since being established, to deal with 50,838 complaints as being within its mandate (see Figure 1). The materials about these complaints are not published on its website. However, since 2009 CCTS staff have issued 256 Recommendations, and the CCTS Commissioner has issued 46 Decisions.

Figure 1 Number of complaints accepted by CCTS from 2008/09 to July 2015



- 52 CCTS published the ‘Recommendations’ issued by CCTS staff as attachments in the ‘Decisions’ issued by the CCTS Commissioner, from 2008 to 2011. As a result 26 Recommendations can be reviewed.

Table 4 CCTS Commissioner Decisions and CCTS Recommendations 2008-2015

Do CCTS Decisions include CCTS' staff's Recommendations?			
Year	No	Yes	Total
2008		5	5
2009		4	4
2010		3	3
2011		8	8
2012	18		18
2013	3		3
2014	3		3
2015	2		2
Total	26	20	46

53 One of the Recommendations involves a complaint that CCTS accepted in May 2008 (#05807). The complainant said that she had been overbilled by Rogers for wireless service since December 2007 when she accepted Rogers’ offer for a four-telephone plan. The complainant said that the offer made by Rogers’ representative included a provision that one telephone number could be changed to the area code of another province. One month later, after one of the telephone numbers was changed to a different province, Rogers told the complainant that while the number could be changed, her plan would be changed. A year of billing disputes followed, and although the complainant continued to pay what she believed was the amount required under her contract, Rogers disconnected her phones in November 2008.

54 The complainant and Rogers made different proposals to resolve their dispute:

Complainant	Rogers offer after CCTS involvement
Customer willing to pay \$400 to cancel all telephones if outstanding balance is waived, or return all telephones and pay \$200 as an early termination fee	Early termination fee: \$800 (\$200/device)

55 A CCTS Investigator wrote the Recommendation and listed six factors described as “relevant” to the Recommendation’s finding:

- Length of dispute
- Complainant’s continued monthly payments
- “goodwill credits” remitted by Rogers “although XXX had to call upon receipt of each bill to have these credits applied”

-
- Complainant's continued claim that Rogers' original offer included the ability to switch telephone numbers, and Rogers' disagreement
 - Rogers' willingness to switch complainant from \$75/month to \$82/month plan
 - Rogers' willingness to reduce early termination fee from \$1600 to \$800.

56 We note that of the five factors that CCTS cited as relevant, three related to Rogers: the credits it offered the complainant and its two proposals to address the complainant's concerns.

57 The factors cited by CCTS do not, however, summarize the overbilling that the Investigator concluded had taken place since May 2008, did not describe the complainant's offers to settle the dispute and did not review the time spent by the customer to have her concerns addressed.

58 The Investigator's Recommendation also addressed the issue of the contract's clarity:

The parties remain in dispute about what was originally represented to XXX with regard to her service plan. Rogers states that it never promised her the same rate if one telephone number changed to an out-of-province number, but Rogers does not state that if ever told XXX that this change would cause her service plan to change in some way.

[underlining added]

59 The Investigator then concluded that Rogers' offer of a \$82/month plan was reasonable, as was its proposal to charge \$800 as an early termination fee and – importantly – that the details of the original plan offered by Rogers to the complainant were uncertain:

Recommendation

Given the uncertainty about the details of the original plan, we believe that Rogers' offer of a substantially similar plan at a cost of \$82 per month is a reasonable offer for settlement of this dispute. However, we believe that Rogers should credit XXX for the overage charges on her bills from May 2008 [when the complaint was accepted by CCTS] to the date of this Recommendation, including late payment charges incurred in the period since she brought the matter to dispute at CCTS, for a total of \$92.00. Further to this, we find no basis on which to award any monetary remedy for inconveniences incurred.

If XXX decides that she does not want to retain her service, we believe that it is reasonable for Rogers to charge half of the applicable termination fee on each telephone, currently a total of \$800.

[bold font added]

60 When the complainant did not accept the Recommendation, the CCTS Commissioner reviewed and upheld it.

61 The CCTS' approach in this matter raises concerns about its application of the *Procedural Code's* requirement for impartiality: CCTS accepted Rogers' offers as reasonable,

-
- without explaining why the complainant's offers were unreasonable. The absence of such reasons means that there is no basis for understanding how CCTS understands or applies the concept of 'impartiality'. The factors listed as being relevant summarized facts about Rogers, but omitted facts about the complainant.
- 62 More seriously, CCTS 'impartial' approach to this matter ignored the legal issue of contract clarity, even though CCTS' Investigator agreed that the original contract was unclear. As the Commission knows, it is trite law (ie, well-known) that ambiguities in contracts are to be construed against the party drafting the contract.⁷⁴ This is especially true in the case of standard form contracts such as wireless contracts.
- 63 We do not say that CCTS should approach complaints involving such issues in a legalistic manner – but it is perplexing, to say the least, that they at times ignored altogether. We think that Canadians would be very startled to know that the recommendations of a 'telecommunications consumer agency' do not take well-known consumer law into account.
- 64 We think Canadians would also be surprised to learn that to CCTS, unconscionable contracts – contracts written to favour one side against another – are simply standard practice. In its 2008/2009 *Annual Report*, CCTS wrote that self-dealing contracts was understandable and would be corrected by competition, not through the work of a telecommunications consumer agency:
- It is not surprising that a business that drafts the contract will do so in a manner that is favourable to itself. At CCTS, our mandate is to apply the contract that is in place, and to provide redress for consumers when the provider has not followed the contract. It is not our role to determine whether it is fair for a provider to be able to draft a contract that favours itself. This is a policy issue. Government telecommunications policy is that in the deregulated telecommunications marketplace, vigorous competition should redress these inequities, i.e. providers will draft their Terms to be more customer-friendly in order to win customers.⁷⁵
- 65 In fact, it was precisely to reduce the numbers of complaints about overly complicated contracts written precisely to benefit of TSPs that the *Wireless Code* was introduced. (Although the *Wireless Code* has still not addressed many wireless subscribers' main concern – pricing – the new *Code* is a significant improvement over the old *Wireless Code*.) While it is good to know that CCTS has accepted the idea that ambiguities should be interpreted in consumers' favour as it acknowledged in its 2013/2014 *Annual Report*,

⁷⁴ See, for example, *Manulife Bank of Canada v. Conlin*, [1996] 3 SCR 415, which discusses the *contra proferentum* rule (the words of documents should be construed against the party which drew it).

⁷⁵ CCTS, *Annual Report 2009-2010*, at 27.

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- it is a matter of serious concern that CCTS' change in view only took place because the CRTC changed the *Wireless Code*.⁷⁶
- 66 We note that several complaints published on CCTS' website engaged other legal issues: the definition of a contract (complaint #6075), whether the concept of inconvenience involves stress (#5178), moral rights (#131318), whether a "relation contractuelle entre les parties" means that a contract exists, even if a signed contract is not available (#3034), and the mechanisms for resiling from a contract's terms (#1228). It is unclear whether CCTS' expertise includes its own in-house counsel or independent external legal counsel.
- 67 Obviously if all complainants were well versed in Canadian contract and consumer-rights law, they would not need CCTS. But for better or for worse relatively few people attend law school, and as a result the majority of TSP subscribers and users do not know their legal rights in great detail. They rely on CCTS to defend those rights, because Canada's major TSPs are not only very experienced in consumer rights issues⁷⁷ but typically have in-house and outside legal advisors. This imbalance in experience, knowledge and resources is why a telecommunications consumer agency was needed. CCTS should correct this imbalance.
- 68 Our concern is that when CCTS is required to 'resolve' complaints efficiently, effectively, expeditiously and inexpensively, as well as impartially, its staff may encourage complainants to settle, suggesting that the TSP's offer is the best they will receive – when in fact the TSP's behaviour may itself have been unlawful, and should be sanctioned not just by requiring consumers to be made whole, but by compensating them for their inconvenience.
- 69 This is why we do not share the CCTS' positive conclusion, in its 2012-2013 *Annual Report*, that the very small number of parties who 'appeal' CCTS staff resolutions means that "both consumers and service providers view our process as fair and rigorous, and our approach as unbiased."⁷⁸
- 70 We think that many complainants simply do not know what an unbiased, fair and rigorous approach ought to be in the context of often-complicated telecommunications disputes – and why should they? They assume CCTS will protect their interests.
- 71 Complainants may not know that, when it comes to the issue of compensation, the *Procedural Code* requires CCTS to "endeavour to secure the ... least expensive resolution

⁷⁶ *Annual Report 2013-2014*, at 22.

⁷⁷ Experienced in the sense of having received many complaints, not in the sense of resolving complainants' concerns to the latter's satisfaction.

⁷⁸ *Annual Report, 2012-13* at 3.

of every complaint on its merits”.⁷⁹ They not understand that CCTS must similarly try to obtain the “most expeditious” resolution of every complaint.

- 72 In our view, the challenge that confronts CCTS and its staff every day is that with the best will in the world to act on behalf of consumers, they are prohibited from doing so by their own *Procedural Code*.
- 73 It simply does not make sense to us that an internal *Procedural Code* should be permitted override the express intentions of the *Order* to establish a ‘telecommunications consumer agency’. That would be as appropriate as allowing a CRTC regulation to override the express intentions of the *Telecommunications Act* – but as the Commission knows, subordinate legislation cannot override Parliament’s statutes.
- 74 FRPC therefore recommends that CCTS’ By-law No. 1 be amended to reflect CCTS’ role as a telecommunications consumer agency, as Order in Council 2007-533 originally required.

FRPC recommendation 8 CCTS’ By-law No. 1 should be amended to include the description of CCTS by Order in Council 2007-533 as a Consumer Agency.

- 75 Having amended By-law No. 1, and even if it does not amend By-law No. 1 as we have suggested, CCTS should still modify its *Procedural Code* to remove the requirement that the CCTS Commissioner be ‘impartial’.
- 76 After all, CCTS views itself as a body capable of advocating – though this advocacy is restricted to the amorphous, cloud-like concept of ‘positive change’. In its 2013-14 annual report – titled, *Driving positive change* – CCTS wrote that its “... efforts to drive positive change in the industry are bearing fruit.”⁸⁰
- 77 We think the *Procedural Code* should instead simply require the CCTS Commissioner to ensure that he and his staff seek settlements that are reasonable, and that they approach the resolution of complaints objectively. The *Procedural Code* should be amended to replace requirements that the Commissioner be “impartial” (s. 2.2), “remain impartial” (s. 2.2(a)), not act as an advocate for TSPs, customers or any other person (s. 2.2(a)), with a requirement be ‘objective. The *Procedural Code* should also be amended to remove the requirement that CCTS “endeavour to secure the ... most expeditious and least expensive resolution of every complaint on its merits” (s. 2.2(d)).
- 78 The Commissioner would still be required “to secure the appropriate ... resolution of every complaint on its merits” (s. 2.2(d)), to “follow cost-effective business practices ...

⁷⁹ S. 2.2(d).

⁸⁰ CCTS, *Annual Report 2013-14*, at 3.

to provide the services of his or her office in an economically efficient manner” (s. 2.2(g)) and to approach complaints in an objective (*i.e.*, fact-based) manner.

FRPC recommendation 9 **The CRTC should require CCTS to amend its *Procedural Code* to remove the terms “impartial”, “remain impartial”, “not act as an advocate for telecommunications service providers, customers or any other person” and “endeavour to secure the .. most expeditious and least expensive resolution of every complaint on its merits” in section 2.2.**

FRPC recommendation 10 **The CRTC should require CCTS to amend its *Procedural Code* to require CCTS to approach the resolution of complaints in an objective manner.**

2 **Mandate: the process for adding to CCTS’ responsibilities?**

79 CCTS currently accepts complaints about unregulated telecommunications services. In 2011 PIAC submitted that the scope of complaints eligible for CCTS’ consideration include regulated services and customer service issues. The CRTC did not agree: it said CCTS’ annual report on trends would determine whether its scope should broaden, and that CCTS should not duplicate the CRTC’s work by accepting complaints about regulated services.⁸¹

80 CCTS’ current mandate is set out on its website. It deals with complaints that involve

- Contractual compliance
- Billing disputes (whether customer and TSPs agreed to a specific plan or price)
- Billing errors (overcharging)
- Service delivery (installation, quality of service, repair, disconnection, transfers of service), and
- Credit management (security deposits, payment arrangements and accounts collection).

81 The services that CCTS addresses include:

- Home Telephone;
- Long Distance telephone services (including prepaid calling cards);
- Wireless phone services (including voice, data, and text);
- Wired and wireless Internet access services;
- White page directories, Directory assistance, and Operator services; and,
- Other forborne (unregulated) retail telecommunications services.

As noted previously, the CRTC has asked CCTS to administer the *TVSP Code*, and as a result its mandate has changed. CCTS’ mandate is set out in section 3 of its *Procedural Code* by showing the services that do not fall within its mandate. These services include

⁸¹ Telecom Decision CRTC 2011-46.

broadcasting services, which would include TVSPs. As a result, the *Procedural Code* should be changed.

FRPC recommendation 11 **CCTS' *Procedural Code* must be changed to include the resolution of complaints about TVSPs within its scope.**

82 We assume that CCTS will be training its staff to address complaints filed with respect to the *TVSP Code*. In our view, it would be important to ensure that CCTS understands the issues raised by this *Code* from the perspective of the CRTC, the industry and consumer groups.

83 Where other issues addressed by CCTS involve forborne telecommunications services, TVSPs are not forborne – the CRTC regulates cable and satellite distribution companies under the *Broadcasting Act*. In our view, the decision to add TVSPs to CCTS' mandate raises the question of whether the CRTC should formalize the approach to be followed when interested parties propose that CCTS address specific issues or services.

84 This will require amendments to CCTS By-law No. 1 to include the resolution of complaints about TVSPs.

FRPC recommendation 12 **The CRTC should formalize the process through which interested parties may have CCTS' mandate changed to include new issues or services.**

3 **Accountability: the missing link?**

85 The questions raised by the CRTC involve issues of accountability. Where court decisions involving telecommunications users and TSPs will publicize problems and remedies, the confidential resolution approach used by CCTS means that the majority of individual decisions are not published. Although it publishes summaries of individual complaints to demonstrate its approach to resolution and interesting trends, only 46 (.08%) Decisions of roughly 59,000 complaints 'handled' by CCTS since 2008 include detailed descriptions of complaints.

86 Well-designed and thorough reports by CCTS would permit the public to evaluate its performance and decide not just whether they have confidence in CCTS as a 'telecommunications consumer agency', but also in effectiveness of the various *Codes* it administers in protecting the public interest and the interests of telecommunications users.

87 Reporting by CCTS can also identify areas of concern for improvement.

88 CCTS now publishes several sets of reports on its website: *Annual Reports*, annual performance summaries and copies of CCTS Decisions that redact the names of complainants.

a Annual reports

- 89 The *Order* requires the ‘Telecommunications Consumer Agency’ to report annually on the complaints it receives and resolves, and CCTS’ by-laws permit its Directors, its Commissioner and the CRTC to suggest matters that should be reported.⁸²
- 90 In 2011-46 the CRTC expressed concerns about CCTS’ annual reporting in terms of its quality and transparency.⁸³ It said CCTS’ *Annual Report* should provide comprehensive information about its complaint resolution activities, trends in complaints, operational improvements, and the effectiveness of public awareness initiatives.⁸⁴ The CRTC therefore required CCTS to include at least the following data in its annual reports:
- (a) total contacts divided into total complaints and total non-complaint contacts;
 - (b) total complaints divided into closed and open complaints;
 - (c) total complaints divided into in-scope and out-of-scope complaints;
 - (d) total in-scope complaints divided into a list of in-scope services or matters;
 - (e) total out-of-scope complaints divided into each item in the CCTS’s list of 16 out-of-scope services or matters, as set out in its Procedural Code;
 - (f) remedies awarded and accepted (at the recommendation and decision stages) during that year; and
 - (g) measurements of public awareness and customer satisfaction.

The CRTC added that it expected CCTS to “ensure that the breakdowns of data provided tally, or to provide a clear explanation as to why a given data set does not tally.”⁸⁵

- 91 After the CRTC issued these directions CCTS’ implemented a new case management tool in 2011-2012 to permit it “to record far more information about complaints than ever before”.⁸⁶ It also completed an upgrade of its website and online complaint form in February 2012.⁸⁷

1) Confusing presentation

- 92 In recent years CCTS’ *Annual Reports* have become increasingly sophisticated in design, and its most recent 2013-2014 *Annual Report* is colourful and attractive. That said, it is also confusing, as complaints are not clearly and consistently distinguished from issues (we assume that any given complaint could raise more than one issue). Textual

⁸² By-law 1, s. 90: Commissioner, director or CRTC “may identify issues or trends that may warrant reporting by the Corporation, provided that any such reports shall maintain the confidentiality of Customers.”

⁸³ Telecom Decision CRTC 2011-46 at para. 31.

⁸⁴ *Ibid.*, at para. 32.

⁸⁵ Telecom Decision CRTC 2011-46, at para. 33.

⁸⁶ *Annual Report*, 2011-12 at 8.

⁸⁷ CCTS *Annual Report* 2009-2010, at 24.

descriptions do not match the data presented: the 2013-2014 *Annual Report*, for says that the “number of complaints” it has moved to its investigation stage decreased from 41% to 19%⁸⁸ - percentages of complaints are not the same as numbers of complaints.

- 93 The 2013-2014 *Annual Report* makes a number of similarly confusing statements:
- Complaints decreased by 17% (from what to what?)
 - 99% of complaints concluded (how many out of how many, and were of those received, or of those accepted?)
 - 87% of concluded complaints were successfully resolved (how many were and were not successfully resolved?)
 - CCTS accepted 11,340 complaints, concluded 11,196 complaints, but reported 16,717 “Leading Complaint Issues”;⁸⁹ does this mean that some complaints raise more than one issue?
- 94 FRPC also notes that in some cases CCTS’ presentation of data overwhelms, rather than informs. For instance, CCTS reports on the percentage of total complaints submitted about different TSPs.
- 95 In reality, the percentage of complaints that are received by Bell, Rogers, Telus or any other company provides very little information, because these companies are large and have large subscriber bases.
- 96 A more meaningful measure is the number of complaints that TSPs receive, for a specified number of subscribers, because this statistic permits companies to be compared across the same base. Publishing rates of complaints per 100,000 subscribers – the measure used by the CRTC in the 1980s – would allow TSPs to be compared regardless of the size of their subscriber base and would also permit the complaints-rates for individual TSPs to be analyzed over time.

FRPC recommendation 13 CCTS should report on the number of complaints received by each TSP, per 100,000 subscribers.

2) Complaint definitions unclear

- 97 The concept of ‘complaint’ is also unclear: under s. 6.3 of the *Procedural Code* complaints may or may not be within scope, but in the 2013-2014 *Annual Report* CCTS defines complaints only as those within scope (at 8). Meanwhile, a ‘resolved’ complaint is not investigated, but is informally addressed to the satisfaction of the TSP and the

⁸⁸ *Ibid.*, at 7.

⁸⁹ *Annual Report* 2013-2014 at 10.

customer. A ‘closed complaint’ is “fully investigated and subsequently closed”, but then can also closed if the complainant fails to provide the information needed for investigation – in other words, it cannot be fully investigated.⁹⁰

- 98 While CCTS’ 2013-2014 *Annual Report* defines 6 concepts and presents data, it is very difficult to link the concepts defined by CCTS to the data it presents. CCTS defines six key concepts in terms of 23 measurable elements, but the data in the report are not reported in terms of these elements. For example, a “complaint” is defined as a complaint that CCTS received, reviewed and found to be within its mandate – but CCTS’ one-page “Operational Statistics” page does not state how many complaints it received, it reviewed and found within its mandate: it states instead the number of “Complaints Accepted”. Similarly, CCTS defines “out of mandate” as being products, services or issues that CCTS “cannot”⁹¹ investigate – and while it reports numbers of out-of-scope complaints and issues, it does not report numbers of out-of-scope products or services.
- 99 We found that CCTS described the six concepts in terms of 23 different measurable elements, and that its 2013-2014 *Annual Report* presented data for 18 (78%) of these (see Table 5). It is unclear how many complaints it reviewed in total, how many complaints were in mandate (as opposed to being in mandate and accepted for resolution) and how many complaints were “fully investigated”. It is also not clear how many of all the complaints it reviewed were resolved informally, or how long those informal resolutions took in comparison to ‘formal resolutions’.

Table 5 CCTS concepts, definitions and data (2013-2014 Annual Report)

Concepts and definitions (p. 8)	Data in 2013-2014 Annual Report		
Complaint	A customer complaint that we have	1. Complaints received (p. 8)	?
	1. received	Complaints reviewed	?
	2. reviewed	2. Complaints accepted (p. 9)	11,340
	3. found to be within our mandate	Complaints in mandate	?
Out of Mandate	Complaints that CCTS “cannot” investigate about	3. Complaints concluded (p. 9)	11,196
	4. products	4. Out of mandate complaints (“Closed Complaints”) (p. 34)	302
	5. services	Out of mandate products	?
	6. issue	Out of mandate services	?
Resolved		5. Out of mandate issues (p. 33)	11,896
		6. Complaints resolved (p. 9)	9,754

⁹⁰ *Annual Report*, 2013-14, at 8.

⁹¹ Note that when used formally, ‘cannot’ may mean either incapacity, or absence of permission. It is unclear from the wording in CCTS *Annual Report* whether it means that it is unable to deal with a complaint, or whether the complaint is out of its scope.

Concepts and definitions (p. 8)	Data in 2013-2014 Annual Report		
	7. The complaint was informally resolved with the assistance of a CCTS team member, to the satisfaction of both the customer and the participating service provider.	7. Complaints resolved at pre-investigation (p. 9) – informally?	7,440
		8. Complaints resolved at investigation (p. 9) – formally?	2,314
Closed	8. Fully investigated	Fully investigated complaints	?
	9. Then closed for reasons that include	9. Total complaints closed (p. 9)	1,434
		10. Closed at pre-investigation (p. 9)	610
		11. Total number of escalations due to overdue or incomplete report (p. 24)	2,672
		12. Closed at investigation (p. 9)	824
	10. TSP has made an offer to resolve the complaint that we think is fair and reasonable in light of the specific circumstances of the complaint	13. Service provider offer is reasonable (p. 34)	181
	11. complaint had no merit	Complaints without merit	?
	12. customer withdrew complaint	14. Customer withdrew complaint (p. 34)	78
	13. customer did not provide information we needed to conduct our investigation	15. <i>Customer not cooperative</i> (p. 34)	274
	14. it should have been taken to another agency, tribunal or court.	16. More appropriately handled by another agency (p. 34)	19
	15. "In many cases, complaints are closed after the service provider has corrected the problem and provided the customer with some form of compensation."	Closed after TSP corrected problem and compensated customer	?
Recommendation	16. The complaint was fully investigated	Fully investigated complaints	?
	17. Often, the service provider has not made an offer to informally resolve the complaint	TSP did not offer to resolve informally	?
	18. or the offer is not found to be reasonable in light of the specific circumstances of the complaint	TSP offer unreasonable	?
	19. "CCTS will make a Recommendation requesting that the provider take specific actions to resolve the matter."	17. Recommendations accepted (p. 9)	7
Decision	20. A Decision is issued if either the customer or the service 21. provider rejects the Recommendation. The party rejecting the Recommendation	18. Decisions issued (<i>Recommendations not accepted?</i>) (p. 9)	1

Concepts and definitions (p. 8)	Data in 2013-2014 <i>Annual Report</i>		
	must set out its reasons and the Commissioner will reconsider the Recommendation and issue a Decision.		
	22. The Commissioner may confirm the original Recommendation	Confirmed recommendations	?
	23. or, if the Commissioner concludes that there is substantial doubt as to the correctness of the Recommendation, the Commissioner may modify the Recommendation as appropriate.	Modified recommendations	?
Notes: bold font – missing; italics – resembles element in definition			

100 As for the seven reporting gaps identified by the CRTC in 2011, three continue to lack some or all of the information requested (see Table 6).

Table 6 CRTC reporting requirements and data reported by CCTS in 2013-2014

CRTC reporting requirements	Data reported by CCTS in 2013-2014
1. total contacts divided into total complaints and total non-complaint contacts;	1. Total contacts: p. 32 2. Total complaints: p. 9 3. Total non-complaint contacts: p. 32
2. total complaints divided into closed and open complaints;	Open complaints: ? 4. Closed complaints: p. 9, 34
3. total complaints divided into in-scope and out-of-scope complaints;	5. In-scope complaints: p. 9 6. Out-of-scope complaints: ? 7. # of issues that were out of scope: p. 33
4. total in-scope complaints divided into a list of in-scope services or matters;	In-scope complaints: ? In-scope services: ? In-scope matters: ?
5. total out-of-scope complaints divided into each item in the CCTS's list of 16 out-of-scope services or matters, as set out in its Procedural Code;	8. Total closed complaints, by <i>Procedural Code</i> out-of-scope description: p. 34
6. remedies awarded and accepted (at the recommendation and decision stages) during that year; and	9. "full value of compensation received by customers" as reported to CCTS: p. 35 Remedies awarded – recommendations Remedies accepted - recommendations Remedies awarded – decisions Remedies accepted - decisions
7. measurements of public awareness and customer satisfaction.	10. "quality of service": p. 38 Does not ask about satisfaction with outcome

3) Procedures unclear

- 101 CCTS' by-laws provide that CCTS must handle complaints as set out in the *Procedural Code*.⁹² CCTS' *Procedural Code* permits the Commissioner to delegate any of the Commissioner's functions, powers and jurisdiction to CCTS staff.⁹³ We note that CCTS' *Annual Report* describes and lists its staff, and the staff includes customer representatives, investigators, complaint analysts and complaints resolution officers.⁹⁴ It is unclear whether these officers have different roles and responsibilities.
- 102 As for the entire process around a complaint, CCTS notes that once a complaint is closed – having been “fully investigated”, it may result in a recommendation.
- 103 In terms of CCTS' investigation, section 3.2 of the *Procedural Code* requires CCTS participants to provide any information requested under section 6, and to co-operate in good faith with any investigation conducted by CCTS. CCTS' annual report does not provide statistics about TSPs' compliance with this requirement, but the CCTS Commissioner's Decisions and CCTS' staff Recommendations sometimes do.
- 104 For example, a Recommendation was issued about Complaint #22205 on April 2, 2010 – roughly six weeks later (May 13), MTS sent CCTS an eleven-page letter “accompanied by a number of attachments. The letter provides much of the information we had been requesting since October 2010, and also corrects some of the misinformation provided by MTS earlier in the process.”
- 105 In reviewing the 46 Decisions posted on CCTS website we noted that in more than a third (17, or 37%) of these matters TSPs submitted and CCTS accepted evidence after CCTS had issued its Recommendation – and presumably had completed its investigation:

Table 7 Number of Decisions in which TSPs submitted complaints post-Recommendation

Year	More TSP evidence after recommendation?				% of total
	No	Unknown	Yes	Total	
2008	3		2	5	40%
2009	3		1	4	25%
2010	2		1	3	33%
2011	6		2	8	25%
2012	9	1	8	18	44%

⁹² By-law No. 1, s. 74:

The dispute resolution powers and duties of the Commissioner shall be those set out in the *Procedural Code* approved from time to time. **For greater certainty, the Commissioner's dispute resolution activities shall be restricted to dealing with complaints relating to telecommunications services in accordance with such *Procedural Code*** which is consistent with the purposes of the Corporation.

⁹³ S. 5.

⁹⁴ 2013-2014 *Annual Report*, p. 41.

Year	More TSP evidence after recommendation?				% of total
	No	Unknown	Yes	Total	
2013	2		1	3	33%
2014	2		1	3	33%
2015	1		1	2	50%
Grand Total	28	1	17	46	37%
	61%	2%	37%	100%	

- 106 Based on the information in CCTS' Decisions, TSPs tended to file evidence after Recommendations had been issued, when the TSPs disagreed with the Recommendation: they filed new evidence for 17% of Recommendations challenged by complainants, and filed new evidence for 60% of Recommendations that they (the TSPs) were challenging:

Who appealed	More TSP evidence after recommendation?				% of Total	
	No	Unknown	Yes	Total		
Both		1		1	2	50%
Customer		19	1	4	24	17%
TSP		8		12	20	60%
Total		28	1	17	46	37%
		61%	2%	37%	100%	

- 42 Our first concern is that if TSPs are bringing forward new evidence when they appeal Recommendations to the Commissioner, the original investigation that founded the Recommendation could not have been 'full'.
- 43 Our second concern is that TSPs appear to be breaching the *Procedural Code* without consequence, by failing to provide evidence as the *Code* requires. One aspect of this concern is fairness: it seems unreasonable that in cases where the Commissioner upholds a TSP challenge to a Recommendation, the TSP is effectively rewarded for breaching the *Procedural Code* because the breach is not sanctioned and the TSP 'wins' the complaint. Another aspect has to do with workload: if TSPs are already failing to provide evidence as required by the *Procedural Code* and incur no penalties for this failure, this tendency is likely to grow and become far worse when TVSPs are added to CCTS' responsibilities - meaning that CCTS' workload will increase because the Commissioner will be required to issue more Decisions. A third aspect has to do with fairness: TSPs all pay the same fees, but TSPs that file evidence late cause CCTS more work that is subsidized by *Procedural Code*-abiding TSPs.
- 44 We suggest that CCTS Board of Directors encourage compliance with the *Procedural Code*, perhaps by adding a new payment category – either a discounted complaint rate for filing all information on time, or a new fee for filing evidence late.

FRPC recommendation 14 **TSPs' breaches of the *Procedural Code* should be addressed either by reducing TSP fees when evidence is filed on time, or by adding fees when evidence is filed late.**

- 45 The Decisions available on CCTS' website also raise concerns about procedural fairness. In the Decision about Complaint # 01473, for instance, the TSP involved clearly submitted evidence throughout the process: "During the course of the investigation, Bell stated that Later in the investigation, Bell stated that it was willing to provide an additional credit of \$197.72 as a further gesture of good will"
- 46 What is unclear is whether, in its efforts to be flexible so as to reduce time and expenses, CCTS has established clear internal procedures about contacts with TSPs and complainants. Is each side provided with the same level of information available to the other side? We note that although CCTS says that "Our process provides both the customer and the service provider with some time to consider the Recommendation and determine whether to accept or reject it",⁹⁵ it does not clearly state that each party has the same time for consideration: we would be concerned if complainants consistently received less time to consider proposals than TSPs.
- 47 Similarly, CCTS does not clearly explain its approach when evidence is missing. Complaint #84523 involved data issues for a Turbostick, in which the complainant said that the device itself was using data for which the complainant was charged. The Decision acknowledges that the TSP offered no evidence on this point, but decided in the TSP's favour: "Based on the information present, CCTS has no reason to believe that the Turbo Stick, itself, uses significant amounts of data or causes charges to be incurred for anything other than client usage." How often, we wonder, does CCTS reject complainants' concerns even when the TSPs offer no evidence to refute or challenge those concerns?
- 48 Defined procedural rules could protect CCTS' reputation if TSPs and complainants are treated in the same fair manner. The absence of clear and fair procedures would raise concerns about the degree to which TSPs that have frequent contact with CCTS due to their size receive favourable treatment due to the familiarity that will necessary increase as individual CCTS staff contact them. This was a concern mentioned by the Supreme Court of Canada in 2011:

This consumer legislation is designed, it is contended, to remedy the mischief described by Sharpe J.A. of the Ontario Court of Appeal:

The seller's stated preference for arbitration is often nothing more than a guise to avoid liability for widespread low-value wrongs that cannot be litigated individually but when aggregated form the subject of a

⁹⁵ CCTS, <http://www.ccts-cprst.ca/complaints/complaints-process>.

viable class proceeding **When consumer disputes are in fact arbitrated through bodies such as NAF that sell their services to corporate suppliers, consumers are often disadvantaged by arbitrator bias in favour of the dominant and repeat-player corporate client . . .**

⁹⁶

- 49 Statistics about the treatment of complaints as they move through CCTS' procedural stages are difficult to locate and understand. In 2011, for example, the CRTC asked CCTS to report more clearly about complaints that were within CCTS' mandate, but that CCTS considered too difficult to handle:

2557 COMMISSIONER MENZIES: But what I'm trying to get at, how do we explain that to the person phoning with a complaint, right. Like, "I'm sorry you are inconvenient", you know, "like you cost too much", "it's too hard to handle your file." It seems to me that that goes -- I mean I understand that it's practical, but it seems to me that, even if it's a small percentage, that goes against the entire purpose of having a consumer complaints commission of some kind, that if it's not -- like if they can't go there they should be able to go to the CRTC.

<http://www.crtc.gc.ca/eng/transcripts/2010/tt1201.html>

- 50 It is now not clear from CCTS *Annual Report* whether CCTS or not CCTS now investigates all complaints.

4) Historical overview too limited

- 107 Finally, historical reporting is very limited – in the 2013-2014 *Annual Report* aggregated information about complaints is reported for three years.

- 108 CCTS' failure to include more years in its presentation of historical data forces interested to review previous editions of CCTS' *Annual Report*. This grows increasingly complex due to changes in presentation style and definitions. CCTS should either include more years of information in its *Annual Report*, or provide complete historical data on its website.

FRPC recommendation 15 CCTS should provide more years of information in its *Annual Report*, or it should provide the information in the *Annual Report* for all years of its operations on its website.

5) No meaningful information about outcomes

⁹⁶ Seidel v. TELUS Communications Inc., [2011] 1 SCR 531, 2011 SCC 15 (Binnie for the majority), citing (Griffin v. Dell Canada Inc., 2010 ONCA 29 (CanLII), 98 O.R. (3d) 481, at para. 30), bold font added.

109 Regardless of CCTS’ workload (numbers of complaints) and process for handling the workload (what it investigates or does not investigate), there is virtually no information about the actual outcomes of the complaints:

- How many complaints had merit?
- How many complaints that had merit received redress?
 - How many complainants received an apology?
- How many complaints involved financial loss to the complainant?
 - How many complainants were compensated for their losses? (from overbilling, for example)
 - Of those compensated for their losses, how many were fully compensated, and how many were partially compensated?
- Did TSPs act appropriately in dealing with all complaints, and if not, how many complaints involved inappropriate behaviour by TSPs?
- Of the complaints where TSPs behaved inappropriately, how many obtained compensation for the inappropriate behaviour?

110 FRPC also notes that no information is presented to show the types of compensation being provided. How many complainants are fully reimbursed for overbilling, for example – and how many are compensated for the time and inconvenience that attempting to resolve the complaints has taken? We note that in the 46 decisions posted on CCTS’ website, 8 (17%) mentioned compensation for inconvenience: if this figure typifies CCTS’ approach to compensation, 83% of complainants receive no compensation for the inconvenience caused if TSPs have acted inappropriately.

CCTS decisions mentioning compensation for inconvenience	
2008	
2009	
2010	1
2011	
2012	2
2013	2
2014	1
2015	2
Total	8

111 As for the seventh issue – having to do with complainant satisfaction – we note that the data reported by CCTS describe complainants’ opinions about the quality of its service, but not with the actual outcome of the process. We think these are two separate points, and that of the two, outcomes matter more. Complainants may consider that CCTS offered professional service, for example – but if they do not believe they obtained the remedy (ies) to which they were entitled, CCTS may not be working properly: either it is failing to help complainants understand why they should not receive redress, or it is not providing complainants with the redress to which they are entitled.

112 The data in CCTS’ 2013-2014 *Annual Report* raised other questions. For example,

- a) What period does CCTS’ reporting year cover?

- b) At page 8, if resolved complaints are complaints that are informally resolved, why does CCTS report at page 9 that 2,314 complaints (24%) were resolved “at investigation”?
- c) At page 8, if closed complaints are complaints that are fully investigated, why does CCTS report at page 9 that 610 (43%) of complaints were closed at the “pre-investigation” stage?
- d) At page 10, entitled “Complaints”, CCTS reports on the “broad subject categories into which complaints received this year fell”, showing a total of 16,717. Does ‘complaints received’ actually refer to issues?
- e) At pages 17, 18, 22 and 23, do breaches refer to individual complaints?
- f) CCTS says at page 24 that 2,672 escalations to investigations happened, but at page 8 refers to 3,134 investigations (2,314 resolved complaints closed at investigation and 824 closed complaints closed at investigation). Do the figures on pages 24 and 8 refer to different ‘investigations’?
- g) At 34 CCTS says that 493 complaints did not further investigation. How does CCTS decide when a complaint does not warrant investigation?
- 113 Finally, FRPC considered whether other countries have developed empirical measures for complaint-handling bodies. In July 2014 by the Australian government re-issued an analysis it had undertaken several years earlier about benchmarks for industry-based customer dispute resolution systems.⁹⁷ It identified and measured six characteristics of customer resolution systems: accessibility, independence, fairness, accountability, efficiency and effectiveness, as shown in Appendix 5. It then devised 34 benchmarks to evaluate these characteristics, set out below in Table 7.
- 114 In our view, CCTS cannot be evaluated in terms of 21 (62%) of the 34 benchmarks because information is either unknown or unclear:

Table 8 Benchmarks for consumer resolution systems in Australia (July 2014)

Benchmark and its purpose	Principle	Benchmark and associated issues	Available for CCTS?
Accessibility	The agency makes itself ready available to customers promoting	1. Point at which complainant may approach agency	1. Not clear
		2. Promotion of the agency	

⁹⁷ Australia, Commonwealth Consumer Affairs Advisory Council, *Review of the Benchmarks for Industry-based Customer Dispute Resolution Schemes: Final Report*, (Australia, July 2014), <http://ccaac.gov.au/2013/04/24/review-of-the-benchmarks-for-industry-based-customer-dispute-resolution-schemes/>.

Benchmark and its purpose	Principle	Benchmark and associated issues	Available for CCTS?
To promote customer access to the scheme on an equitable basis	knowledge of its existence, being easy to use and having no cost barriers	3. Accessibility for those with physical disabilities	
		4. No cost to consumer	
		5. Dealing with frivolous complaints	2. Not clear
		6. Other barriers	3. Not clear
		7. Approach to triage	4. Not clear
		8. Not for profit	
		9. No conflicts of interest,	5. Not clear
Independence To ensure that the agency's processes and decisions are objective and unbiased and are seen to be objective and unbiased	The agency's decision-making process and administration are independent of its members	10. No bias	6. Not clear
		11. Transparency	7. Not clear
		12. Consistency	8. Not clear
		13. Review of decisions	
Fairness To ensure that the decisions of the scheme are fair and are seen to be fair.	The scheme produces decisions which are fair and seen to be fair by observing the principles of procedural fairness, by making decisions on the information before it and by having specific criteria upon which its decisions are based.	14. Enforceability (reporting of non-compliance)	9. Not clear
		15. Procedural fairness	10. Not clear
		Communication, including	
		16. description of legal principles applied	11. Not clear
		17. reporting obligations	
		18. practices in communicating/ receiving information from complainant and TSP	12. Limited (some description in Decisions)
		19. Findings offer direction of likely outcomes	13. Unknown
Accountability To ensure public confidence in the scheme and allow assessment and improvement of its performance and that of scheme members	The scheme publicly accounts for its operations by publishing its determinations and information about complaints and highlighting any systemic industry problems	20. case assessments offer direction of likely outcomes	14. Unknown
		21. Non-compliance re compensation (contingency fund)	15. Unknown
		22. Effective feedback & discussion	
		23. Reporting re systemic problems and problem TSPs	
		24. Reporting re systemic problems and problem TSPs	
		25. Only in-scope complaints	16. Unclear
Efficiency (value for money) To give customers and scheme members confidence in the scheme and to ensure	The scheme operates efficiently by keeping track of complaints, ensuring complaints are dealt with by the appropriate process or forum and regularly reviewing its performance.	26. Timeliness (for efficiency and combatting systemic issues)	
		Professionalism, including	
		27. knowledge of law	17. Unknown

Benchmark and its purpose	Principle	Benchmark and associated issues	Available for CCTS?
the scheme provides value for its funding		28. industry practices	18. Problematic
		29. consumer issues	19. Unknown
Effectiveness To promote customer confidence in the scheme and ensure that the scheme fulfils its role	The scheme is effective by having appropriate and comprehensive terms of reference and periodic independent reviews of its performance.	30. Requires clearly defined objectives	
		31. Compliance to ensure redress	20. Unclear
		32. Transparency – report determinations	21. Unclear
		33. Report systemic issues	
		34. Make suggestions to CRTC, members and consumer groups for change	

115 While CCTS *Annual Report* is a very attractive-looking document, it continues to lack basic and meaningful information about its work. We suggest that these information gaps be closed.

FRPC recommendation 16 CCTS should revise its presentation of statistics about its work to include information about key benchmarks.

FRPC recommendation 17 CCTS should ensure that its reports about complaints are complete and consistent.

FRPC recommendation 18 Each year's *Annual Report* should include a complete historical record (while documenting when presentation formats have changed)

51 The federal government wanted the Consumer Agency to be entirely funded entirely by telecommunications companies, and this has been the case.

52 Under the *Participation Agreement* CCTS' Board of Directors receives and approves CCTS' forecast Annual Budget and Business Plan.⁹⁸ The *Agreement* stipulates that 40% of CCTS' total annual expenses are to come from fees based on complaints, and the other 60% from fees based on TSPs' revenues. The *Agreement* also describes two other sources of income for CCTS – one-time fees for joining the organization, and 'annual fees' for telecommunications companies with less than \$10 million in retail forborne revenues.

⁹⁸ Article 4.2, *Participation Agreement*.

Retail forborne revenues	One-time initial fee	Revenue-based fee (RBF) (60% of CCTS total expenses)	Annual Fee	Complaint-based fee (40% of CCTS total expenses)
>\$10 million		% of share of RBF = % share of retail forborne revenues		Payable once one complaint about a TSP is received by CCTS
< \$10 million	\$500		Unknown	
< 0.1% of total retail forborne revenues	\$1,000			
>0.1% and <1.5% of total retail forborne revenues	\$10,000			
>1.5% of total retail forborne revenues	\$25,000			

Participation Agreement, Art. 5.1, 5.2

- 53 CCTS publishes information about its annual budget sporadically in its *Annual Report*. In 2009-10, for instance, its total budget was approximately \$2.1 million,⁹⁹ but information about the 2013-2014 budget was not set out in that year's *Annual Report*. No information about CCTS' expenses are available, although CCTS has occasionally reported that it has had to incur new expenses mid-year to accommodate unexpected increases in complaints. (We asked CCTS whether the budget was posted online, but had not heard back at the time of writing: see Appendix 3).
- 54 As CCTS does not publish its financial statements, the level of income generated by different fee categories and different TSP participants is not known.
- 55 The absence of basic annual financial information about CCTS makes it impossible to evaluate the efficiency of its performance. Suppose TSPs – responsible for funding CCTS – argue that CCTS is inefficient? The absence of such information from its *Annual Reports* makes it impossible for members of the public to answer or rebut this argument. Suppose that the addition of the TVSP to CCTS' responsibilities doubles CCTS' workload –but that TVSP financial support makes up a very small portion of CCTS' income. The absence of such information from CCTS' *Annual Report* makes it impossible to evaluate the degree to which CCTS' finances are sufficient for its responsibilities.

FRPC recommendation 19 CCTS should publish a statement of its income and expenditures each year, and include a summary of the financial support remitted by TSP category (ILEC, TVSP, etc.)

⁹⁹ CCTS *Annual Report* 2009-2010, at 10.

- 56 The *Participation Agreement* submitted by CCTS in this proceeding included the current schedule for payments made in relation to complaints, however. We applied the numbers of complaints described by CCTS in its 2013-2014 *Annual Report* to the complaint-based fee schedule in the *Participation Agreement*, as follows:

Table 9 Estimated CCTS income

2014-15 complaint based fees	Fee (\$)	2013-14 complaints			Total
		Resolved	Closed	Total	
Pre-investigation	88.75	7440	610	8050	\$ 714,438
Investigation	221.88	2314	824	3138	\$ 696,259
Recommendation	355.00	7		7	\$ 2,485
Decision demanded by customer	355.00			0	\$ -
Decision demanded by TSP	488.13	1		1	\$ 488
Total					\$ 1,413,670

- 116 The calculations of this table suggest that CCTS' complaint-based income could be in the order of \$1.4 million. Note that this calculation assumes that a single complaint generates only one fee: if one complaint actually triggers more than one fee, the \$1.4 million figure underestimates actual income.
- 117 That said, if the \$1.4 million in complaint-based fees represents 40% of CCTS' total revenue, revenue-based fees would represent \$3.5 million in income, for a total of \$4.9 million. As this calculation also omits any income from one-time initial and annual fees, it likely underestimates total income.

b Outcomes

1) Maintain confidentiality but permit access to anonymized data about individual complaints

- 118 As noted previously, a disadvantage of private dispute resolution is that our understanding of good and fair consumer practices cannot grow, because such resolutions are often entirely confidential.
- 119 Although CCTS sets out interesting anecdotes in its *Annual Report*, it would be more useful if CCTS were to publish a database of complaints, showing dates and outcomes for each stage of its procedures. This database should include dates and where the complaint involves financial matters, financial data (overbilling amounts, cancellation penalties, for instance).
- 120 Quite apart from enabling CCTS' performance to be evaluated, such data could stimulate new and important research in Canada about the impact and utility of consumer agencies.

FRPC recommendation 20 CCTS should publish an anonymized database to permit research on consumer complaints agencies.

2) Timeliness cannot be evaluated

121 FRPC reviewed the very limited information that CCTS has published about its Decisions and Recommendations. Its website makes copies available of 46 Decisions issued by the Commissioner from July 2008 to July 2015: 80% of these determinations gave no information about the date on which CCTS received a complaint:

Table 10 Number of Decisions in which complaint date set out, 2008-2015

Year	No date given	Date given	Total	Date given as % of total
2008		5	5	100%
2009	1	3	4	75%
2010	2	1	3	33%
2011	8		8	0%
2012	18		18	0%
2013	3		3	0%
2014	3		3	0%
2015	2		2	0%
Total	37	9	46	20%
%	80%	20%	100%	

122 The lack of information about the dates when complaints are received, and when they are finally ‘settled’ makes it impossible to know whether CCTS is operating efficiently from complainants’ perspective.

FRPC recommendation 21 CCTS should include the date on which it accepted a complaint in each Recommendation and Decision.

3) Satisfaction: how should complainants’ satisfaction with CCTS be measured?

123 CCTS *Annual Report* sets out results from a survey. In 2011-2012, it noted that 2,875 respondents described as CCTS’ “customers” had responded, constituting a 27.5% response rate.¹⁰⁰ The 2013-2014 *Annual Report* also sets out survey results, but does not provide the survey questionnaire, describe who received it or indicate who answered it. It is therefore impossible to know whom the results are supposed to represent, and whether the results occurred by chance or were statistically significant.

124 To be of any use whatsoever survey research must meet minimum standards for sample collection and survey questionnaire design. CCTS should adopt a professional approach

¹⁰⁰ CCTS *Annual Report* 2011-12, at 23.

to surveying those who rely on its services, to identify areas where it should improve performance.

FRPC recommendation 22 **CCTS should engage one or more accredited members of the Marketing Research and Intelligence Association to develop statistically valid and reliable research tools to measure complainants' satisfaction with CCTS' services and CCTS outcomes.**

125 While the report describes answers to several questions about the professionalism of CCTS, it does not state whether those surveyed were asked if they were satisfied with the actual result of their complaint. Answers to that question could help CCTS to understand whether it is clearly explaining outcomes to complainants, and identify areas in which the *Codes* may be inadequate to protect the public interest.

FRPC recommendation 23 **CCTS should report respondents' answers to questions measuring their satisfaction with the outcome achieved by CCTS for their complaint.**

4) Damages

126 As noted earlier, Canadian courts are able to consider three types of damages: compensatory damages that make parties whole (usually by returning monies spent), aggravated damages to compensate parties for stress and anxiety from other parties' misconduct, and punitive damages to denounce and thereby deter misconduct.

127 Sections 12.2 and 12.3 of the *Procedural Code* permit the Commissioner to recommend or decide that a participating member shall pay a customer "monetary compensation" beyond billing-error amounts that are to be refunded or credited. The amounts are to be "appropriate to compensate the Customer for any loss, damage or inconvenience incurred by the Customer arising directly from the circumstances of the complaint", but are not to be "punitive" or "in the nature of consequential damages". In other words, CCTS has the authority to recommend compensatory and aggravated damages.

128 CCTS 2013-2014 *Annual Report* reports that 7,795 complaints resulted in compensation of \$2.3 million, but does not explain whether the compensation consisted solely of compensatory damages.

129 CCTS' procedures for deciding whether or when to recommend aggravated damages are not clearly set out. Such procedures may exist, according to the Recommendation issued in January 2009 for Complaint #5178:

Pursuant to section 12.2 of CCTS' Procedural Code, we cannot award a monetary penalty 'that is in the nature of indirect or consequential damages'. Any monetary remedy must be commensurate with 'any loss, damage or inconvenience actually incurred by the Complainant and arising from the facts on which the complaint is based.' *In deciding whether to award compensation for 'inconvenience' and, if so, the amount of compensation, we consider several*

factors, including: the severity of the issue and related costs, the responsiveness of the service provider, the reasonableness of any offers made by the service provider, the reasonableness of the complainant in communicating with CCTS and the service provider and the total number of hours spent by the complainant in pursuing a resolution.” (Page 8, italics added.)

- 130 In November 2014, however, CCTS denied that it considered specific factors for aggravated damages. In Complaint #326878 involving a TSP’s incorrect disconnection of a service CCTS acknowledged the TSP’s misconduct but declined to grant aggravated damages because calculating such damages is difficult:

... Bell had failed to meet a number of its obligations towards Ms. XXX and had failed to take the necessary steps to correct the billing and service disconnection issues identified. ... I have also considered Ms. XXX’ concerns about the quantum of the award for inconvenience. *Unfortunately, there is no mathematical formula for determining the amount thereof, and in assessing the appropriate amount we are guided by past practice and all of the circumstances of the case.* In these circumstances I see no basis to alter the amount contained in the Recommendation.

- 131 Meanwhile, in Complaint #167645, a case involving frequent service interruptions for the complainant, CCTS did not set out any of the factors it considered, but simply recommended that the TSP “compensate XXX for his inconvenience in the amount of \$400.00 as he had spent much time and made numerous attempts to try and resolve this matter with Bell.”

- 132 In Complaint #11920 CCTS denied compensation for inconvenience because even though CCTS acknowledged the inconvenience suffered by the complainant, the complainant did not prove the duration of this inconvenience to CCTS’ satisfaction. It mentioned

... the inconvenience incurred as a result of having to troubleshoot technical problems with Bell when the reason his service was not working was because it had already been disconnected for excessive use. ... However, we note that there is doubt as to the extent of the troubleshooting required and of XXX inconvenience in this regard. As such, our Decision does not require that Bell provide him with compensation based on inconvenience.”

- 133 In Complaint #1228, the complainant sought damages for having to spending more than 200 hours on the telephone with Bell to resolve her problem. Without offering clear facts in support, or denying that 200 hours were used, the Commissioner decided that the compensatory damages were reasonable and adequate, and that other damages were unnecessary.

- 134 In Complaint #5178 CCTS “...acknowledged that XXX had suffered a degree of inconvenience as a result of the loss of her Internet service and her extensive dealings with TELUS.” CCTS nevertheless decided against aggravated damages “on the basis that

TELUS could not be faulted for its handling of the matter given the lack of clarity in the relevant industry guidelines and industry practice.” In this case, CCTS agreed that the TSP’s conduct caused inconvenience, but excused the misconduct because of vagueness in the industry *Codes* and practice.

135 It is therefore unclear whether CCTS applies a set of factors for aggravated damages consistently, to all complainants, and how much proof it requires with respect to these damages. It is unclear whether CCTS is concerned with remedying the damages caused by TSPs and their misconduct, or whether it seeks to avoid imposing costs on the TSPs whose conduct it investigates, and which fund its existence.

136 Our concern is that the absence of clear standards for CCTS’ decisions to deny or grant aggravated damages may, over time, lead consumers to apply to the courts for relief, through class-action suits. We suggest that CCTS’ board establish very clear standards for CCTS to grant aggravated damages, to maintain confidence in its impartiality.

FRPC recommendation 24 **CCTS should publish the factors it considers when deciding whether to compensate complainants for the inconvenience caused by TSPs’ misconduct.**

137 Having set out some of our analysis of CCTS activities, we now respond to the CRTC’s questions.

III CRTC issues and questions

A The service an independent communications ombudsman provides to consumers

- 1. Comment on how an independent communications ombudsman serves the needs of consumers.**
 - o Address the service that it provides by resolving complaints about phone, wireless, and Internet services, reporting on these complaints, and administering related codes of conduct.**
 - o Address the service it would provide by resolving complaints about television services, reporting on these complaints, and administering related codes of conduct.**

138 An independent communications ombudsman should serve the needs of consumers by advocating on their behalf, and by adjudicating complaints objectively using clearly established procedures that respect consumer rights, conform with due process, and, in the case of complaints that are founded, compensate complainants for their costs and their inconvenience.

139 In FRPC’s view telecommunications users and subscribers would benefit by establishing that CCTS is a communications ombudsman, rather than a dispute resolution

organization, by requiring CCTS' Board of Directors to amend its by-laws as well as its *Procedural Code* to reflect this matter.

B The consumer experience with the CCTS

2. The CCTS surveys customers who have used its services and publishes the results in order to obtain feedback on the quality of service it provided and to identify areas for improvement. Does the survey provide an effective and appropriate measurement of consumer satisfaction?

140 No.

141 The questions disclosed by CCTS in its *Annual Reports* do not measure satisfaction with CCTS, but with the quality of the service it provides: ease of contacting CCTS, time taken to complete CCTS work, whether CCTS' staff were "professional, knowledgeable and courteous", whether CCTS acted impartially or partially, and whether CCTS resolution and investigation process was fair.

142 CCTS has not

- Explained how these questions measure "consumer satisfaction"
- Stated when the questions are administered and completed
- Explained how the questions are administered (in writing by mail, e-mail or mobile app; verbally, in telephone interviews)
- Described the population to which the survey results apply (individual complainants, small business complainants)
- Explained whether everyone who contacts CCTS is surveyed, and if not, how survey respondents are selected
- Listed the total number of respondents to the questions, by category of respondent (individual complainant vs small business complainant)
- Shown whether different groups of respondents answer differently
 - Are individual telecommunications users, individual telecommunications subscribers and small businesses equally 'satisfied' with CCTS?
 - Do respondents believe they were treated fairly even when the CCTS found their complaint to be unfounded?
 - Are responses the same or different, by TSP involved?
 - Are responses the same for those who are compensated for inconvenience, and for those who are not compensated for inconvenience?
- Established whether the results are meaningful, by providing statistics measuring 'significance' (i.e., the probability that the results were unlikely to have occurred by chance)

- It is also unclear whether complainants have a basis for answering some of these questions. They could only answer questions about CCTS' partiality or impartiality, or its fairness or unfairness, if complainants were copied on all CCTS communications with TSPs with respect to their complaints. If this is not the case, complainants' answers may be of interest, but will otherwise have no meaning.
 - Specific questions would have to be included in CCTS' surveys of complainants, to determine whether they understand the outcome of their complaint, and whether they agree with the CCTS' approach resolving the complaint.
- 57 FRPC notes that many organizations regularly evaluate their success in meeting specific objectives, to promote accountability and transparency. The federal government, for example, has published a number of documents on the issue of service standards: *Guideline on Service Standards* (<http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25750>), *Policy and Evaluation* (<http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=15024>), *Standard on Evaluation for the Government of Canada* (<http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=15688>) and *Directive on the Evaluation Function* (<http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=15681>), to name a few.

3. For consumers who have made a complaint with the CCTS, comment on your experience in using the CCTS for resolving your dispute.

143 FRPC may address this question at a later date.

C Public awareness of the CCTS

4. What measures, including online approaches, should the CCTS take to promote itself and increase public awareness of the CCTS?

144 FRPC notes that CCTS' first public awareness plan was approved in 2009.¹⁰¹ Originally TSPs notified complainants about their right of recourse to CCTS after the TSP's internal complaint-handling process was completed. In 2011-12 CCTS advised that this had changed so that notice must give after the second level of escalation. "... CCTS will continue to accept complaints from customers who have not fully exhausted their service provider's internal complaint-handling process provided that they have offered their provider a reasonable opportunity to look into and resolve the complaint."¹⁰²

145 CCTS should survey those it contacts to ask whether or when their TSP informed them about CCTS' existence.

¹⁰¹ *Annual Report, 2011-12 at 7.*

¹⁰² *Annual Report, 2011-12 at 7.*

- 146 CCTS' Board of Directors should also consider introducing a temporary, one-year budget increase to enable CCTS to advertise its availability to address complainants that include TVSP and the *TVSP Code*.

5. Are there specific consumer segments where the CCTS should focus its promotional activities?

- 147 Yes.
- 148 CCTS should generally focus its promotional activities on individuals and small businesses that use or subscribe to telecommunications, cable and/or satellite services.
- 149 CCTS should also undertake promotional efforts for twelve months once it begins to administer the *TVSP Code*, by requiring TVSP participants to include information about CCTS in their subscribers' monthly bills. After this one-year introductory period, TVSPs should include information about CCTS in their paper bills on a quarterly basis, and in their digital bills on a monthly basis.

6. Are the current measures used by CCTS participants to promote the CCTS sufficient? If not, what additional measures could participants in the CCTS take to promote the Agency?

- 150 The current measures used by CCTS participants to promote the CCTS meet current regulatory requirements, but have not ensured widespread public awareness of the agency.
- 151 All TSPs should be required to include a single line in each invoice to advise their customers
- a) how to contact the TSPs in the case of disagreements about contracts, billing, directories, credit issues, or other matters within CCTS' mandate, and
 - b) how to contact the CCTS if the customers are dissatisfied with the TSP's response.
- 152 TSPs that believe this requirement represents an undue burden would always be free to apply for exemptions from this requirement to the CRTC. The CRTC would be free to grant these applications provided the supporting evidence is clear and unchallenged.
- 153 CCTS' *Procedural Code* should be amended to require TSPs to include a section in their own annual reports to set out statistics about user and subscriber complaints, as well as results from CCTS proceedings.

7. How could TVSPs promote the CCTS? Should TVSP participation be leveraged to promote the CCTS, such as by a requirement to broadcast public service announcements about the CCTS?

-
- 154 FRPC supports the idea that TVSPs broadcast public service announcements about CCTS, provided CCTS designs and provides the content for the PSAs.

8. How should the effectiveness of these public awareness initiatives be measured?

- 155 The most objective measure of public awareness initiatives' effectiveness is a well-designed survey administered before and after the initiatives enter into effect.

D Telecommunications service providers

9. Should participation in the CCTS continue to be mandatory for all TSPs that provide services within the CCTS's mandate? Why or why not? Provide supporting rationale.

- 156 Yes. In FRPC's view, mandatory participation minimizes confusion for TSP customers with complaints. In the absence of evidence to the contrary, we also assume that a one-stop-serves-all complaints agency reduces TSPs' operating costs to some degree.

10. Should participation in the CCTS become immediately mandatory on a going-forward basis for small TSPs that are not currently CCTS participants (i.e. instead of the requirement being triggered by a complaint)?

- 157 Yes. In FRPC's view, however, small TSPs should not be forced to assume new costs that, in the absence of evidence to the contrary, are *de minimus* for Canada's largest TSPs. In other words, some thought should be given to eliminating any initial fees, and limit their costs to the fees levied for complaints. Consideration should also be given to reducing fees for non-profit, community-directed TVSPs.
- 158 We also note that small Internet service providers (ISPs) do not have a designated representative on CCTS' Board of Directors. The President of Velocity Networks Inc. in Alberta, for instance, wrote that CCTS' "process is flawed in that as an ISP, we are not being represented, we are only being investigated."¹⁰³
- 159 Representation on CCTS' Board does not affect the outcome of individual complaints (as Directors are not supposed to receive or be involved with individual complaints), but could affect the content of CCTS' by-laws and its *Procedural Code*.
- 160 Moreover, small companies with representation on the Board may be able to disseminate information to their colleagues about the CCTS process, and provide feedback from their colleagues to CCTS.

¹⁰³ Jason Marsland, Intervention No. 4 (13 June 2015).

161 Adding such a representative to the Board could be a worthwhile improvement, provided as we have recommended above, Consumer Directors hold a majority of votes on the Board.

11. With the recent amendments to the *Telecommunications Act* that allow the Commission to directly impose conditions of service on resellers, should the requirement that TSPs participate in the CCTS be imposed directly on resellers on a going-forward basis?

162 Yes. Imposing the requirement now ensures that

- a) confusion is minimized for resellers and their customers (provided an public relations campaign is conducted)
- b) resellers could immediately notify their customers that they may direct complaints not resolved with themselves to the CCTS
- c) resellers' customers' concerns are addressed consistently, and
- d) CCTS' ability to administer the *Codes* for which it is responsible is not mired with requirements to contact unknown TSPs to solicit their membership.¹⁰⁴

E Television service providers

12. Should participation in the CCTS be mandatory for all licensed TVSPs and related exempt undertakings? Why or why not? Provide supporting rationale.

163 Yes: mandatory participation will establish a consistent approach to complaints made under the *TVSP Code*.

F CCTS's mandate

¹⁰⁴

This was the point raised by PIAC in the CRTC's 2011 review of CCTS:

2537 MR. LAWFORD: That's if you were to mandate mandatory membership but not require any of the small providers to actually become members or do anything, then they could fly under the radar until they got a complaint and you could do that so that the customer calls and says "Hi, I have a complaint against", I don't know, whatever new company there is, and the CSR says "Well, that's interesting, I have never heard of them", writes the name down and then runs off to Howard presumably and says, "You better call these guys because they are new."

2538 And you could do it that way in an iterative process and add them along, but the question is, are there so many administrative headaches that come with follow-up to that that it bogs down the CCTS. I hear them saying it will so much that they can't do their primary work for the other carriers, the other 99 percent of the people who are covered, or 95 percent, and that was my concern.

....

13. Does the CCTS's mandate remain appropriate with respect to the categories of complaints it can address about telecommunications services (i.e. compliance with contract terms, billing disputes and errors, service delivery, and credit management for telecommunications services and complaints related to codes of conduct that the CCTS administers)? Why or why not?

164 FRPC may address this question at a later date.

14. Should the CCTS address the same types of issues for consumers of services provided by TVSPs that it addresses for consumers of telecommunications services? Why or why not? What additional issues, if any, should it address?

165 FRPC may address this question at a later date.

15. Certain services associated with the telecommunications industry are excluded from the scope of the CCTS, such as alarm monitoring, telemarketing, and accessibility services. Are there specific services provided by TVSPs that should be excluded from the CCTS's mandate?

166 FRPC may address this question at a later date.

G CCTS's structure

16. Is the current structure of the CCTS's Board of Directors and the voting structure appropriate?

167 No. The current structure of the CCTS Board of Directors is not appropriate if it is to play a meaningful role as a consumer agency, and if it is to provide TVSPs with representation.

168 In terms of structure, CCTS' current Board has seven members: three from industry, two from consumer groups and two others denoted as independent. CCTS' by-laws set restrictions on those who may be consumer or independent directors, but do not restrict industry members. The rationale for this is not clear.

17. Should the CCTS change the structure of its Board of Directors to reflect the addition of television services to its mandate? If so, how and why?

169 FRPC supports the inclusion of a Directorship for TVSPs due to CCTS' assumption of responsibility for administering the *TVSP Code*.

170 FRPC also supports the expansion of the Consumer Directors from 2, to a majority of the Board. (In other words, the replacement of Independent Directors, with Consumer Directors.)

18. Should the CCTS change its voting structure to reflect the addition of TVSP participants and complaints related to the provision of television services to its mandate? If so, how and why?

171 No. The voting structure of CCTS' Board of Directors should be modified to include a representative of the TVSP sector it should add at least two more members to represent the public.

19. Do the remedies provided by the CCTS to consumers as set out in its Procedural Code, including compensation up to \$5,000 per complaint, remain appropriate and sufficient to meet the needs of consumers of both telecommunications and television services?

172 Yes – but the remedies are being applied inconsistently and non-transparently, as our analysis in Part II of this submission demonstrated.

20. Comment on whether any changes are required to the categories of complaints the CCTS reports on its annual and mid-year reports as a result of the addition of services provided by TVSPs to its mandate.

173 FRPC may comment on this question at a later date.

21. Are there other modifications to the CCTS structure that could make its operations more effective or efficient? If yes, describe the modifications and provide the rationale for their adoption.

174 CCTS should

- formalize its procedures for processing complaints by publishing information about the factors it considers for accepting complaints
- enforce compliance with the *Procedural Code* requirements stipulating that CCTS participants must respond to CCTS requests for information within given timeframes
- survey complainants about their satisfaction with complaint outcomes
- develop an anonymized database of its complaints for public use to permit interested parties to monitor its processing of complaints with respect to a variety of factors, such as 'timeliness' and the amounts and types of damages awarded.

H CCTS's funding model

22. Is the CCTS's current funding model appropriate?

- 175 The funding model is appropriate insofar as it is entirely funded by those who participate in CCTS, and because the model includes incentives to promote participants' improved conduct by charging participants fees for individual complaints.
- 176 The absence of financial statements in CCTS' *Annual Reports* makes it difficult to know whether the funding model is providing CCTS with the funds it requires to meet its mandate satisfactorily, however.
- 177 In particular, FRPC is concerned about CCTS' ability to undertake research to enable it to meet its mandate, such as but not limited to, professional statistically valid survey research.

23. Should the CCTS change its funding model to reflect the addition of television services to its mandate? If so, how and why?

- 178 TVSPs should support CCTS financially; FRPC may comment on details on this point later in this proceeding

I Future review**24. What is the appropriate time frame for the next review of the CCTS?**

- 179 In an ideal world, the next review of CCTS would take place at the beginning of the term of the next Chairperson of the CRTC, and be repeated before the end of his or her term.
- 180 This timing would maximize the chances that required changes will actually happen.

25. Is the current CCTS performance report the appropriate framework for measuring the performance of the Agency? If not, what measures are appropriate and why?

- 181 No. The report offers a confusing jumble of statistics about the numbers of contacts, communications, complaints and issues, and does not report on the outcomes of complaints or complainants' satisfaction with the outcomes of their individual complaints.

Appendices

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Appendix 1 Order in Council 2007-0533

PC Number: 2007-0533

Date: 2007-04-04

Whereas the Governor in Council considers that an independent agency with a mandate to resolve complaints from individual and small business retail customers (“Consumer Agency”) should be an integral component of a deregulated telecommunications market;

Whereas section 14 of the Telecommunications Act provides that the Canadian Radio-television and Telecommunications Commission (“the Commission”) shall, on the request of the Governor in Council, make a report on any matter within the jurisdiction of the Commission;

Whereas, in its report of March 2006, the Telecommunications Policy Review Panel recommended the creation of a telecommunications consumer agency that would be mandated to resolve complaints from individual and small business retail customers of any telecommunications service provider, which agency would be self-funding, independent, industry established, and whose structure and functions would be determined by the Commission;

Whereas, in Telecom Decision 2006 15, Forbearance from the regulation of retail local exchange services, the Commission invited the industry to propose for its approval an industry self-regulatory system, and noted that an appropriate system would be one designed in consultation with groups representing customers, that set out clear rules and standards and that provided a reliable mechanism for expeditiously resolving customer complaints;

Whereas the Governor in Council, by Order in Council P.C. 2007 532 of April 4, 2007, has varied CRTC Telecom Decision 2006 15 to provide a more appropriate and timely framework for the deregulation of local exchange services provided by incumbent local exchange carriers;

Whereas the Commission currently receives complaints and inquiries regarding services provided by telecommunications service providers;

Whereas the Governor in Council considers that the mandate of an effective Consumer Agency should include (in addition to resolving complaints) the development or approval of related industry codes of conduct and standards; publishing an annual report on the nature, number and resolution of complaints received for each telecommunications service provider; and, as appropriate, identifying issues or trends that may warrant further attention by the Commission or the government;

Whereas the Governor in Council considers that the governance structure of an effective Consumer Agency should be designed to ensure its independence from the telecommunications industry by incorporating elements such as: a governing body composed of a majority of members who are not affiliated with any telecommunications service provider; a chief executive

officer appointed by the governing body and also not affiliated with any telecommunications service provider; and a budget set by its governing body and provided by the industry at a level sufficient to effectively execute its mandate;

And whereas the Governor in Council also considers that all telecommunications service providers should participate in and contribute to the financing of an effective Consumer Agency and that its structure and mandate would be approved by the Commission;

Therefore, Her Excellency the Governor General in Council, on the recommendation of the Minister of Industry, pursuant to section 14 of the Telecommunications Act, hereby requires the Commission to make a report to the Governor in Council at least once per year, the first of which shall be submitted no later than April 6, 2008, regarding services provided by telecommunications service providers as outlined below:

(a) each report shall outline complaints received from individuals and small business retail customers regarding services provided by telecommunications service providers and shall include:

(i) statistical information, for each telecommunications service provider and in total, on the nature and number of complaints received and the standing of these complaints when the report was compiled,

(ii) an identification of issues or trends that may warrant further attention by the Commission or by the government, such as the availability of consumer choice, the impact of marketing strategies and practices, consumer billing and contracts, and

(iii) a report on progress made toward the establishment of a Consumer Agency; and

(b) the Commission shall continue to make reports until such time as a Consumer Agency has been established by industry and approved by the Commission.

Attendu que la gouverneure en conseil est d'avis qu'une agence indépendante ayant pour mandat de régler les plaintes faites par les particuliers et les petites entreprises de détail (« agence de protection des usagers ») devrait faire partie intégrante d'un marché de télécommunication déréglementé;

Attendu que l'article 14 de la Loi sur les télécommunications prévoit que le Conseil de la radiodiffusion et des télécommunications canadiennes (« le Conseil »), sur demande du gouverneur en conseil, fait rapport sur toute question relevant de sa compétence;

Attendu que, dans son rapport publié en mars 2006, le Groupe d'étude sur le cadre réglementaire des télécommunications a recommandé la création d'une agence de protection des usagers des services de télécommunication qui aurait pour mandat de régler les plaintes

faites par les particuliers et les petites entreprises de détail contre tout fournisseur de services de télécommunication, laquelle agence serait autofinancée, indépendante, créée par l'industrie et dont la structure et les fonctions seraient établies par le Conseil;

Attendu que, dans la Décision télécom 2006 15, Abstention de la réglementation des services locaux de détail, le Conseil a invité l'industrie à soumettre à son approbation des propositions sur un système d'autoréglementation et a souligné qu'un système adéquat devrait être élaboré en collaboration avec des groupes qui représentent les consommateurs, qu'il devrait établir des règles et des normes en termes clairs, ainsi qu'un mécanisme fiable qui permette de régler rapidement les plaintes des clients;

Attendu que la gouverneure en conseil, par le décret C.P. 2007 du 2007, a modifié la Décision télécom 2006 15 afin de fournir un cadre plus approprié et opportun pour la déréglementation des services locaux de détail fournis par les entreprises de services locaux titulaires;

Attendu que le Conseil reçoit à l'heure actuelle des plaintes et des demandes touchant les services qui sont offerts par les fournisseurs de services de télécommunication;

Attendu que la gouverneure en conseil est d'avis que, afin qu'une telle agence soit efficace, son mandat devrait comprendre, en plus du règlement des plaintes, l'élaboration ou l'approbation, à l'intention de l'industrie, de codes de conduite et de normes connexes; la publication d'un rapport annuel concernant la nature, le nombre et le règlement des plaintes, pour chacun des fournisseurs de services de télécommunication; et la détermination, au besoin, des tendances ou des enjeux qui pourraient nécessiter une analyse plus poussée de la part du Conseil ou du gouvernement;

Attendu que la gouverneure en conseil est d'avis que l'agence de protection des usagers devrait être constituée de manière à demeurer indépendante par rapport aux fournisseurs de services de télécommunication; à cette fin, ses instances dirigeantes sont composées en majorité de membres non affiliés aux fournisseurs, dont le président-directeur général, également non affilié à ces fournisseurs, est nommé par ces instances et son budget, lequel est alloué par l'industrie, est établi par les instances à un niveau suffisant pour lui permettre de s'acquitter efficacement de son mandat;

Attendu que la gouverneure en conseil est d'avis qu'il serait souhaitable que tous les fournisseurs de services de télécommunication participent aux activités d'une agence de protection des usagers et contribuent à son financement,

À ces causes, sur recommandation du ministre de l'Industrie et en vertu de l'article 14 de la Loi sur les télécommunications, Son Excellence la Gouverneure générale en conseil demande au Conseil de lui faire rapport sur les services offerts par les fournisseurs de services de télécommunication au moins une fois par année et de lui présenter le premier rapport au plus tard le 6 avril 2008, selon les modalités suivantes :

a) chaque rapport doit donner un aperçu des plaintes faites par les particuliers et les petites entreprises de détail touchant les services offerts par les fournisseurs de services de télécommunication et doit comprendre :

(i) des statistiques concernant la nature et le nombre des plaintes reçues et l'état d'avancement de leur règlement au moment de l'établissement du rapport, pour chaque fournisseur de services de télécommunication et pour l'industrie dans son ensemble,

(ii) la détermination des tendances ou des enjeux qui pourraient nécessiter une analyse plus poussée de la part du Conseil ou du gouvernement, notamment les choix offerts aux usagers, l'incidence des stratégies et de pratiques de commercialisation, la facturation des usagers et les contrats,

(iii) un compte rendu des progrès réalisés quant à la création d'une agence de protection des usagers;

b) le Conseil continue de faire rapport jusqu'au moment où une agence de protection des usagers est créée par l'industrie et où sa création est approuvée par le Conseil.

Appendix 2: CRTC's 2007 news release on formation of "new telecommunications consumer agency"

December 20, 2007 5:00 PM (<http://archive.newswire.ca/en/story/42699/crtc-grants-conditional-approval-to-a-new-telecommunications-consumer-agency>)

CRTC grants conditional approval to a new telecommunications consumer agency

OTTAWA and GATINEAU, QC, Dec. 20 /CNW Telbec/ - The Canadian Radio-television and Telecommunications Commission (CRTC) today granted conditional approval to a newly established consumer agency, the Commissioner for Complaints for Telecommunications Services Inc.

"We are very pleased that the industry came together to establish this consumer agency so quickly," said Konrad von Finckenstein, Q.C., Chairman of the CRTC. "It will provide residential and small business customers with an effective, accessible and consumer-friendly recourse when they are unable to resolve a disagreement with their service provider."

The agency was launched on a provisional basis in July 2007. During the first four months of operation, the agency received over 1,000 complaints and inquiries, and successfully resolved the majority of the complaints it received. Its services are available to consumers free of charge.

In its decision, the Commission is asking the agency to make certain modifications to its proposed structure and mandate to ensure its effectiveness, as well as its independence from the telecommunications industry. The CRTC expects the agency to implement these measures within the next 45 days.

The Commission also determined that service providers and resellers whose annual Canadian telecommunications service revenues exceed \$10 million are required to become members of the agency by February 1, 2008.

Additional information about the agency can be obtained through its website, www.ccts-cprst.ca, <http://www.crtc.gc.ca/eng/redirect.asp?URL=http://www.ccts-cprst.ca> or by telephone, at 1-888-221-1687.

The CRTC

The CRTC is an independent, public authority that regulates and supervises broadcasting and telecommunications in Canada.

Telecom Decision CRTC 2007-130

<http://www.crtc.gc.ca/archive/ENG/Decisions/2007/dt2007-130.htm>

Reference document: Telecom Public Notice CRTC 2007-16

<http://www.crtc.gc.ca/archive/ENG/Notices/2007/pt2007-16.htm>

Backgrounder on the telecommunications consumer agency

The Commissioner for Complaints for Telecommunications Services Inc. provides residential and small business customers with an effective recourse when they are unable to resolve a disagreement with their service provider about an unregulated telecommunications service.

Consumers should contact the Canadian Radio-television and Telecommunications Commission (CRTC) if they are unable to resolve a disagreement with their service provider about a regulated telecommunications service.

It is important to remember that consumers should attempt to resolve any disagreements directly with their service provider before contacting the agency or the CRTC.

Where should consumers address their complaint?

The following chart sets out the scope of services for which complaints will be handled by the consumer agency and the CRTC:

Consumer agency	CRTC
- Deregulated local telephone services and Voice over Internet Protocol services (including calling features)	- Local telephone services in areas that have not been deregulated
- Long-distance services (including prepaid calling cards)	- Emergency services (9-1-1)
- Wireless telephone services	- Accessibility services such as TTY
- Internet services	- Payphones
	- 900/976 premium services

Bundled services

The agency is the first point of contact in the case of a disagreement about a service that is part of a bundle that includes unregulated and regulated services. If the complaint is deemed to be related to a regulated service, the agency will then refer the complainant to the CRTC.

Consumer agency complaint process

Consumers with a disagreement about an unregulated telecommunications service should always contact their service provider as a first step. If the matter is not resolved to their satisfaction, they may then file a complaint with the agency.

Complaints may be filed by using the online form, which is available at www.ccts-cprst.ca, or by mail or fax. In its decision, the CRTC indicated that the agency should also accept complaints by telephone, e-mail and TTY.

The agency will:

- Assess whether the complaint is within the scope of its mandate.
- If so, the agency will forward a copy of the complaint to the service provider, who will have 20 business days to respond, with a copy to the complainant.
- If the service provider does not respond or the complaint remains unresolved after 20 business days, agency staff will investigate and make a non-binding recommendation to the complainant and the service provider.
- If either the complainant or the service provider rejects the staff recommendation, the agency will render a decision that becomes binding if accepted by the complainant.

Remedies

To resolve a complaint, the agency can require a telecommunications service provider to:

- provide an explanation or an apology to the consumer;
- undertake to do or cease a specific activity or activities; and
- provide up to \$5,000 per complaint in compensation to the consumer.

Governance

Although the consumer agency was established by telecommunications service providers, it has been structured in a way that will ensure its independence from the industry. Notably, its Board of Directors will consist of seven directors, four of whom will be independent. In addition, two of the four independent directors will be appointed by consumer groups.

Membership

All service providers and resellers whose annual Canadian

telecommunications service revenues exceed \$10 million are required to become members of the agency by February 1, 2008. This requirement ensures that as many consumers as possible will have recourse to the agency's complaint resolution services.

For more information

Commissioner for Complaints for Telecommunications Services Inc.:
P.O. Box 81088, Ottawa, Ontario K1P 1B1
Tel: 1-888-782-2924 (toll free)
TTY: 711 or 1-800-855-0511
Fax: 1-877-782-2924

Website: www.ccts-cprst.ca

<http://www.crtc.gc.ca/eng/redirect.asp?URL=http://www.ccts-cprst.ca>

E-mail: info@ccts-cprst.ca

For further information: Media Relations: Media Relations
(<http://support.crtc.gc.ca/CRTCSubmissionMU/forms/Mediarelations.aspx?lang=e>),
(819) 997-9403, Fax: (819) 997-4245; General Inquiries: (819) 997-0313, TDD:
(819) 994-0423, Fax: (819) 994-0218, Toll-free No. 1-877-249-2782, TDD -
Toll-free No. 1-877-909-2782, On-line Services
(<http://support.crtc.gc.ca/CRTCSubmissionMU/forms/main.aspx?lang=e>); These
documents are available in alternative format upon request.

Appendix 3: CCTS' annual budget

From: ml.auer@sympatico.ca
To: response@ccts-cprst.ca
Subject: Question about CCTS
Date: Tue, 18 Aug 2015 13:43:55 -0400

Hi,

I don't have a complaint, but am wondering whether CCTS' annual operating budget (showing income and expenses) is available for review?

Thanks,

Monica.

Monica L. Auer, M.A., LL.M., Barrister & Solicitor
Ottawa, Ontario
(613) 526-5244 [tel]

Date: Wed, 19 Aug 2015 14:06:21 -0400
From: response@ccts-cprst.ca
To: ml.auer@sympatico.ca
Subject: Re: CCTS #00000000612801 REFERRAL Monica L. Auer

Dear Monica L. Auer,

Thank you for contacting the *Commissioner for Complaints for Telecommunications Services* (CCTS). The CCTS is an independent agency with a mandate to receive, facilitate the resolution of, and, if necessary, resolve eligible consumer and small business complaints relating to certain retail telecommunications services. The CCTS strives to do this in an accessible, impartial, timely, efficient and informal manner, after direct communication between a consumer or a small business and a participating service provider has proven ineffective.

In response to your inquiry, please visit our website at www.ccts-cprst.ca for more information regarding CCTS. You may find the requested information within our annual review. If you cannot find the information you are looking for, please contact our administration department at communications@ccts-cprst.ca.

Sincerely,

CCTS Assessment Team

From: ml.auer@sympatico.ca
To: communications@ccts-cprst.ca
Subject: CCTS annual budget
Date: Wed, 19 Aug 2015 15:05:02 -0400

Hello,

Are the income and expenses of the CCTS posted on its website, and if so, could you please provide the relevant link?

Thanks,

Monica L. Auer, M.A., LL.M., Barrister & Solicitor
Ottawa, Ontario
(613) 526-5244 [tel]

From: postmaster@mail.hotmail.com
To: ml.auer@sympatico.ca
Date: Wed, 19 Aug 2015 12:05:03 -0700
Subject: Delivery Status Notification (Failure)

This is an automatically generated Delivery Status Notification.

Delivery to the following recipients failed.

communications@ccts-cprst.ca

From: Monica Auer [mailto:ml.auer@sympatico.ca]
Sent: August-19-15 4:06 PM

To: CCTS-CPRST <response@ccts-cprst.ca>

Subject: RE: CCTS #00000000612801 REFERRAL Monica L. Auer

Please confirm that the e-mail address for your communications department is: communications@ccts-cprst.ca

Thanks,
Monica L. Auer, M.A., LL.M., Barrister & Solicitor
Ottawa, Ontario
(613) 526-5244 [tel]

From: response@ccts-cprst.ca

To: ml.auer@sympatico.ca

Subject: RE: CCTS #00000000612801 REFERRAL Monica L. Auer

Date: Wed, 19 Aug 2015 20:22:35 +0000

Good Afternoon,

We sincerely apologize for the error. The correct email address is communication@ccts-cprst.ca

Kind Regards,

CCTS Assessment Team

Appendix 4: CCTS’ annual performance report (2014-2015)

Source: <https://www.ccts-cprst.ca/about/ccts-performance-report>

CCTS PERFORMANCE REPORT

August 1, 2014 through July 31, 2015

CCTS is committed to publicly reporting its performance on the measures described in this report to provide greater transparency into CCTS’ daily activities.

Contact Centre/Pre-Investigation

Process	Target	Q1	Q2	Q3	Q4	YTD
		Result	Result	Result	Result	
Answer phone calls within 120 seconds	80%	91.1%	94.3%	92.6%	88.3%	92.7%
Process written communications within 3 calendar days	80%	89.4%	92.9%	91.2%	87.0%	89.6%

Complaint-Handling

Process	Target	Q1 Result	Q2 Result	Q3 Result	Q4 Result	YTD
Complaints concluded at Pre-Investigation stage within 40 days of acceptance	80%	96.4%	96.4%	95.9%	96.7%	96.4%
Complaints concluded at Investigation stage within 60 days of referral to Investigation	80%	77.9%	85.3%	91.8%	95.8%	86.7%

After all four quarters of the 2014-15 fiscal year, CCTS is exceeding all of its performance indicators.

August 2015

Ottawa, ON

Appendix 5 Benchmarks Review

Australia, Commonwealth Consumer Affairs Advisory Council, Review of the Benchmarks for Industry-based Customer Dispute Resolution Schemes: Final Report, (Australia, July 2014), [://ccaac.gov.au/2013/04/24/review-of-the-benchmarks-for-industry-based-customer-dispute-resolution-schemes/](http://ccaac.gov.au/2013/04/24/review-of-the-benchmarks-for-industry-based-customer-dispute-resolution-schemes/) http://ccaac.gov.au/2013/04/24/review-of-the-benchmarks-for-industry-based-customer-dispute-resolution-schemes/. http://ccaac.gov.au/2013/04/24/review-of-the-benchmarks-for-industry-based-customer-dispute-resolution-schemes/.

Benchmark 1: Accessibility

Awareness/Promotion

The office¹⁰⁵ seeks to ensure that those in the community who may require its services are aware of its existence.

The office promotes its services in the media or by other means.

The office produces readily available material in simple terms explaining:

How to access the office;

How the office works;

The major areas with which the office deals; and

Any limits on the office's powers.

The office requires participating organisations¹⁰⁶ to inform customers¹⁰⁷ about the office.¹⁰⁸ This may include providing information at the point of service (for example, in displays or brochure stands), in contracts, codes of practice and customer service charters, on websites and in newsletters and correspondence forwarded to customers.

¹⁰⁵ The 'office' refers to a person or organisation providing external dispute resolution services. The type of office established will differ according to the size and nature of the industry in which it operates.

¹⁰⁶ 'Participating members' refers to any organisations which participate in a customer dispute resolution service or are within the jurisdiction of the office.

¹⁰⁷ The term 'customer' is used to refer to any consumers who purchase or have purchased goods or services from participating organisations, and may also refer to someone affected by the participating organisation.

¹⁰⁸ This key practice relates to general promotion of the services of the office by participating organisations. The circumstances in which individual customers are required to be informed about dispute resolution services is dealt with in key practice 1.5.

The office ensures that information about its services, procedures and scope is made available to customers by participating organisations when the participating organisation responds to a complaint.¹⁰⁹

The office also ensures that this information is made available by participating organisations:

- (a) when customers are not satisfied in whole or in part with the outcome of the internal complaints mechanism¹¹⁰ of a participating organisation;
- (b) when the participating organisation refuses to deal with a complaint; or when a reasonable time¹¹¹ has passed for the participating organisation to resolve a complaint, and the complaint remains unresolved, whichever first occurs.

¹⁰⁹ A 'complaint' is an expression of dissatisfaction about an organisation, related to its products and services, or the complaints-handling process itself, where a response or resolution is explicitly or implicitly expected; see the Standards Australia Standard on Customer Satisfaction: Guidelines for complaints handling in organisations, AS ISO 10002 – 2006.

¹¹⁰ An 'internal complaints mechanism' refers to the system set up within a participating organisations to handle complaints by customers or complainants

¹¹¹ 'Reasonable time' will depend on a number of factors, including the requirements of any internal dispute resolution procedure, the nature of the complaint and the inquiries required.

The office promotes its services in such a way as to be sensitive to and inclusive of customers with particular requirements, including those experiencing disadvantage. This includes making information available in appropriate languages, and in alternative formats such as large text and audio.

The office focuses its promotion efforts on areas where a customer is likely to seek information in the event of a dispute; for example, the websites of consumer agencies and advocacy services.

Access

The office seeks to ensure access to any person who may require its services.¹¹²

The office provides appropriate facilities and assistance to enable participation by complainants across the community, including those with particular requirements and those experiencing disadvantage. This includes allowing contact in a range of modes (in person, by telephone, telephone typewriter, fax, email or online), providing interpreter services, providing text in simplified English and/or available in large print format.

Complaints can make initial contact with the office orally or in writing.¹¹³

There are arrangements for participating organisations to refer a complaint to the office in appropriate circumstances.¹¹⁴

The jurisdiction of the office are expressed clearly.¹¹⁵

The office seeks to minimise any 'virtual barriers' to complainants, for example, by providing 24-hour contact options such as an online complaint form.

Cost

There is no application or other fee or charge required from a complainant before a complaint is dealt with by the office, or at any stage in the process.¹¹⁶

¹¹² Maximising access to the office could include measures such as providing toll free telephone access for consumers/complainants.

¹¹³ In most cases the staff of a scheme will help a complainant reduce a complaint to writing where the complainant requires assistance to do so.

¹¹⁴ Any arrangements for referrals by a participating organisation must consider relevant privacy laws and any other legal requirements.

¹¹⁵ The jurisdiction of an office, setting out the functions of the office including the complaints the office can and cannot deal with, may be included in documents such as legislation creating the office, the terms of reference for the office, or the charter or constitution of the office.

¹¹⁶ In special cases, where an office agrees to provide services that are outside its jurisdiction at the request of a complainant, there may be a limited exception to this rule.

Staff Assistance

The office's staff have the ability to handle complaints and are provided with adequate training in complaints handling.

The office's staff explain to complainants in simple terms:

- (a) how the office works;
 - (b) the major areas it deals with;
 - (c) any limits on its powers; and
- the timelines applicable to each of the processes in the office.

The office's staff assist complainants to make a complaint, where complainants need assistance to do so.

Use

The office's processes are simple to understand and easy to use.

The office provides for a complainant's case to be presented verbally or in writing, at the discretion of the decision-maker.

The office provides for complainants to be supported by another person at any stage in the office's processes where necessary.

Acceptance by Office

The office assesses complaints received for timely and appropriate action: for referral to an alternative avenue for justice, or a regulator; for liaison where there may be an overlap in jurisdiction with another dispute resolution office; or for acceptance as a case by the office.

The office follows a defined and transparent process for excluding potentially vexatious or frivolous complaints to ensure appropriate use of the office's resources and minimise the risk of unreasonable cost increases.

Non-adversarial Approach

The office uses appropriate techniques including conciliation, mediation and negotiation in attempting to settle complaints.¹¹⁷

¹¹⁷ While the focus of the scheme is mainly on alternative dispute resolution, it also has the function of making final determinations about disputes – including arbitrating disputes – which cannot be resolved by alternative dispute resolution techniques listed here are used before final determinations are

The office provides for informal proceedings which discourage a logistic, adversarial approach at all stages in the office's processes.

Legal or other Representation

Parties should not be prohibited from having a support person in attendance.

Legal representation will generally only be allowed with the permission of the office. Unless legal representation is required, having regard to the nature of the dispute and issues involved, it will generally be discouraged by the office.¹¹⁸

Where an office agrees to one party being legally represented:

- (a) the office will provide the opportunity for the other party to be legally represented; and
- (b) the office will require the participating organisation to pay the legal costs of complainants where the participating organisation is the first party to be legally represented.

Legal Proceedings

A participating organisation will not commence legal proceedings before a court, tribunal or other forum in respect of a complaint before an office, except in special circumstances. Special circumstances may include:

- (a) where the legal limitations period for bringing legal proceedings is about to expire; and
- where the complaint is to be used as a test case in legal proceedings.

Benchmark 2: Independence

The Decision-maker

The scheme has a decision-maker¹¹⁹ who is responsible for the final determination of complaints.

considered. Initially, complainants are encouraged to discuss their complaint with the participating organisation and use any internal complaints mechanism that is available. Offices are then encouraged to attempt to settle complaints before they are referred for a final determination. The office does not have to use all of the listed alternative dispute resolution techniques nor in this particular order – but the ones cited in this key practice are recognised techniques.

¹¹⁸ At times, it may be appropriate for paid representatives to act for consumers in the dispute resolution process, for example, when a consumer experiences communication difficulties.

¹¹⁹ The 'decision-maker' refers to the individual, panel of individuals or other entity which is responsible for the final determination of complaints. For most offices, the decision-maker will be the

The decision-maker is appointed to the office for a fixed term.

The decision-maker is not selected directly by participating organisations, and is not answerable to participating organisations for final determinations.¹²⁰

The decision-maker has no relationship with the participating organisations that funds or administer the office which could give rise to a perceived or actual conflict of interest.

Staff

The office selects its own staff. The office's staff are not answerable to participating organisations for the operation of the office.

Overseeing Entity

There is a separate entity set up formally to oversee the independence of the office's operation.¹²¹

Where the office is established as a company, the overseeing entity must have a balance of consumer, industry and, where relevant, other key stakeholder interests involved in governance.

Chief Executive Officer of the office. The decision-maker most commonly has the title of Ombudsman or Commissioner. For some offices, a decision-maker may include a panel of persons charged with making a decision.

¹²⁰ Where the decision-maker consists, for example, of a panel of individuals, only the chair or the individual, who controls the decision-making process, is required to be independent of an industry or consumer interests and be appointed by the entity which oversees the independence of an office's operation. Where the decision-maker consists of more than one individual, the chair ensures the independence of the decision-making. This allows for the relevant industry to be represented on the decision-making entity, as long as a balance between consumers and industry is maintained.

¹²¹ There are a variety of arrangements which may be put in place to meet this requirement. For example, an overseeing entity may include a council or other body usually consisting of an independent chair, consumer member or members, member or members from participating organisations and, where relevant, other stakeholder member or members. Offices established under statute may have specified the arrangements to make sure the office is independent, and these offices may be subject to arrangements including accountability to Parliament, Parliamentary Committee or Minister, in addition to or instead of an overseeing entity. Smaller industry sectors or those with few complaints may not have the ability or need to devote large resources to setting up such an entity. Other types of overseeing entities are not precluded as long as they allow for suitable independence or a balance of competing interests.

Representatives of consumer interests on the overseeing entity¹²² must be:

- (a) capable of reflecting the viewpoints and concerns of consumers; and persons in whom consumers and consumer organisations have confidence.

As a minimum the functions of the overseeing entity should include:

- (a) appointing or dismissing the decision-maker;
- (b) making recommendations for or approving the office's budget;
- (c) receiving complaints about the operation of the office;¹²³
- (d) recommending and being consulted about any changes to the office's jurisdiction;
- (e) receiving regular reports about the operation of the office; and receiving information about systemic problems.

Transparency

The office manages any actual or perceived conflicts of interest and bias in a transparent manner.

Funding

The office has sufficient funding to enable its caseload and other relevant functions to be handled in accordance with the Benchmarks for Industry-based Customer Dispute Resolution.

Terms of Reference

Changes jurisdiction of the office are made in consultation with relevant stakeholders, including participating organisations, industry and consumer organisations and government.

Participating organisations do not have a power or right to veto a proposed change to the jurisdiction of the office or to significant rules and procedures.

¹²² Suitable consumer representatives can be ascertained by a number of methods, including the relevant consumer organisation providing a nominee, advertising for representatives, or the relevant consumer affairs agency or Minister responsible for consumer affairs nominating a representative. Suitable industry and other stakeholder representatives can be sought from the relevant industry association or stakeholders respectively.

¹²³ The receipt of complaints about the scheme's operation (by the entity which oversees the independence of a scheme's operation) does not extend to receiving appeals against the determinations of the decision-maker.

Benchmark 3: Fairness

Final Determinations

The decision-maker bases final determinations¹²⁴ on what is fair and reasonable, having regard to good industry practice, relevant industry codes of practice and the law.

Procedural Fairness

The office's staff advise complaints of their right to access other redress mechanisms at any stage if they are dissatisfied with any of the office's decisions¹²⁵ or with the decision-maker's final determination.

The office provides information to both parties at the same time, including timely ongoing communication on the progress of the investigation and decision.

Both parties can put their case to the decision-maker.

Both parties are told the arguments, and sufficient information to know the case, of the other party.

Both parties have the opportunity to rebut the arguments of, and information provided by, the other party.

Both parties are told of the reasons for any decision in writing.

Both parties are told of the reasons why a complaint is outside jurisdiction or is otherwise excluded.

Provision of Information to the Decision-Maker

The decision-maker encourages but cannot compel¹²⁶ complainants to provide information relevant to a complaint.

The decision-maker can demand that participating organisations provide all information which, in the decision-maker's view, is relevant to a complaint, unless that information identifies a third party to whom a duty of confidentiality or privacy is

¹²⁴ The term 'final determinations' is used to refer to the final decision made by the decision-maker when determining a complaint. For some offices, a final determination may be in the form of a recommendation to a participating organisation.

¹²⁵ The term 'decisions' is used to refer to any decision made by the office's staff other than final determinations.

¹²⁶ An exception to this requirement may occur where an office has been established under statute, and the statute provides for the office to compel the production of information.

owed,¹²⁷ or unless it contains information which the participating organisation is prohibited by law from disclosing.

Confidentiality

Where a participating organisation provides information which identifies a third party, the information may be provided to the other party with deletions, where appropriate, at the discretion of the decision-maker.

The office ensures that information provided to it for the purposes of resolving complaints is kept confidential, unless disclosure is required by law or for any other purpose specified in the Benchmarks for Industry-Based Customer Dispute Resolution.

Review of Decisions and Determinations

The office establishes a process to review decisions and determinations for consistency and compliance, such as selective sampling and auditing of cases.

Benchmark 4: Accountability

Procedures

The office makes available to participating organisations, complainants and other interested bodies its guidelines and policies for dealing with complaints.

Final Determinations

The office makes available written reports of final determinations and the reasons for the decision¹²⁸ to participating organisations and any interested bodies for purposes including:

- (a) educating participating organisations and the community; and demonstrating consistency and fairness in decision-making.

Public reports of final determinations do not name parties involved.

¹²⁷ Where a duty of confidentiality or privacy is owed to a third party in relation to information sought by the decision-maker, the participating organisation can seek the permission to the third party to release that information to the decision-maker in full or with deletions as appropriate.

¹²⁸ Written reports of final determinations can consist of a concise summary of a decision-maker's determination and reasons for so determining. It is not necessary for public written reports of all determinations made by the decision-maker. The final determinations which are reported should be left to the office's discretion. It is not envisaged that written reports would necessarily be provided of other decisions (apart from final determinations) made by the office.

Responding to Complainants and Participating Organisations

The office uses comments received from complainants and participating organisations to inform the continuous improvement of their internal processes and procedures, and to inform their public reporting.

Annual Report

The office publishes a detailed and informative annual report containing specific statistical and other data about the performance of the office, including:

General information

- (a) a description of the jurisdiction of the office (for example, a list of participating organisations and outline of complaints that can be received);
- information about how the office works;
- information about how the office ensures equitable access;
- information about new developments or key areas in which policy or education initiatives have been undertaken or are required;
- a list of participating organisations supporting the office, together with any changes to the list during the year;
- where the office's jurisdiction permits, the names of those participating organisations which do not meet their obligations as members of the office.¹²⁹

Information about complaints

- (a) the number and types of complaints it receives and their outcome, including information outlining the complaints received and outcomes for each of the participating organisations;
- the time taken to resolve complaints;
- any systemic problems arising from complaints;
- examples of representative case studies and reports on investigations;
- in appropriate cases, information about any participating organisations which do not meet their obligations.¹³⁰

¹²⁹ The office's jurisdiction should state whether it will disclose the names of participating organisations which do not meet their obligations to the office. Examples of where a participating organisation does not meet its obligations to the office will include where it does not provide information as and when requested, or where it does not comply with a final determination.

¹³⁰ Examples of where a participating organisation does not meet its obligations will include where it does not provide information as and when requested, or when it does not comply with a final determination.

The annual report is to be made public, including through distribution to participating organisations, relevant stakeholders and otherwise made available upon request.

Benchmark 5: Efficiency

Appropriate Process or Forum

The office will only deal with complaints which are within its jurisdiction. The office will generally not deal with complaints that have been dealt with, or are being dealt with, by another dispute resolution forum.¹³¹ The office will generally only deal with complaints:

- (a) which have been considered, and not resolved to a person's satisfaction, by a participating organisation's internal dispute resolution mechanism; or where a participating organisation has refused, or failed within a reasonable time,¹³² to deal with a complaint under its internal dispute resolution mechanism.

Any provision in the internal dispute resolution mechanism of a participating organisation requiring a complaint to reach a deadlock before it can be dealt with by the office must be reasonable, and must allow the office to deal with a complaint where it is clear that it has not been resolved to the satisfaction of the person making the complaint in reasonable time.

The office has mechanisms and procedures for referring complaints that are not within its jurisdiction to other, more appropriate, forums.

The office liaises with other forums where there is a complaint entailing a potential overlap in jurisdiction.

The office has mechanisms and procedures for dealing with systemic problems that become apparent from complaints, including by investigating these issues or referring them to relevant participating organisations, or to regulators or policy makers.

The office excludes vexatious and frivolous complaints, at the discretion of the decision-maker.

Timeliness

¹³¹ Complaints which have been made to one scheme but are found to be more appropriately dealt with by another scheme can be dealt with by the latter scheme. It is where a complaint has been subsequently considered by one scheme that a complainant is discouraged from forum-shopping.

¹³² 'Reasonable time' will depend on a number of factors, including the requirements of any internal dispute resolution procedure, the nature of the complaint and the inquiries required.

The office considers timeliness in all of its processes and procedures, including the timeliness of acknowledging and responding to an initial complaint, time taken to investigate a complaint, and the time taken to make a decision.

Tracking of Complaints

The office has reasonable time limits set for each of its processes which facilitate speedy resolution without compromising quality decision-making.

The office has mechanisms to ensure compliance with time limits, as far as possible.

The office has a system for tracking the progress of complaints.

The office's staff keeps the parties informed about the progress of their complaint.

Monitoring

The office sets objective targets against which it can assess its performance.

The office keeps systemic records of all complaints and enquiries, their progress and their outcome.

The office conducts regular reviews of its performance.

The office's staff seeks periodic feedback from complainants and participating organisations about their perceptions of the performance of the office.

The office reports to the overseeing entity on the results of its monitoring and review.

Professionalism

The office recruits staff with the requisite skills, qualifications and experience to perform the work efficiently.

Benchmark 6: Effectiveness**Coverage**

The scope of the office and the powers of the decision-maker are clear.

The scope of the office (including the decision-maker's powers) is sufficient to deal with:

- (a) the vast majority of complaints in the relevant industry or service area and the whole of each such complaint; and

complaints involving monetary amounts up to a specified maximum that is consistent with the nature, extent and value of customer transactions in the relevant industry.¹³³

The decision-maker has the power to make monetary awards of sufficient size and other awards (but not punitive damages) as appropriate.¹³⁴

Systemic Problems

The office has mechanisms for referring systemic industry problems, based on cases brought to dispute resolution, to an appropriate regulator for action if required.

The office has mechanisms to determine when to bring systemic problems to the attention of policy agencies or other relevant bodies, such as industry associations.

Office Performance

The office has appropriately qualified staff to undertake its functions, and provides ongoing professional development and appropriate resources and processes to allow staff to effectively undertake their functions.

The office has procedures in place for:

- (a) receiving complaints about the office; and
- where appropriate, referring complaints about the office to the overseeing entity for action.

The office responds to complaints and any recommendations of the overseeing entity in a timely and appropriate manner.

Internal Dispute Resolution Mechanisms

The office requires participating organisations to set up internal dispute resolution mechanisms, and to inform those affected by the organisation's services about the mechanisms.¹³⁵

¹³³ This requirement applies only where a monetary limit is specified. Because the loss arising from the determination of a complaint may vary according to the industry or service area concerned, the Benchmarks Key Practices do not specify a monetary limit above which complaints are excluded from the office.

¹³⁴ A monetary award includes a final determination.

¹³⁵ The Standards Australia *Standard on Complaints Handling AS 4269-1995* can assist participating organisations to set up appropriate internal dispute resolution mechanisms.

The office has the capacity to advise participating organisations about their internal dispute resolution mechanisms.

Compliance

The office has mechanisms to encourage participating organisations to cooperate with the office, and to abide by the rules of the office.¹³⁶

Final determinations of the decision-maker that are not recommendations are binding on the participating organisation if complainants accept the determination.

The office has methods to mandate or improve compliance with decisions, and ensure redress for customers when a participating member is non-compliant with an office's final determination, decision or recommendation.

Periodic Independent Review

The operation of the office is reviewed regularly by an independent party at set periods.

The review, undertaken in consultation with relevant stakeholders, includes:

- (a) the office's progress towards meeting the Benchmarks for Industry-based Customer Dispute Resolution;
 - (b) whether the scope of the office is appropriate;
 - (c) participating organisation and complainant satisfaction with the office;
 - (d) assessing whether the dispute resolution process used by the office are just and reasonable;
 - (e) the degree of equitable access to the office; and
- the effectiveness of the statute, charter, terms of reference or other document establishing the office, its jurisdiction, functions, rules and procedures.

The results of the review are made available to relevant stakeholders.

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¹³⁶ Mechanisms for encouraging participating organisations to abide by the rules of the office could include statutory requirements, contractual obligations of the participating organisation, or naming in annual reports or otherwise those participating organisations which do not abide by the rules of the office.