



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

11: *Transparency means being clear (about being transparent)*

11 March 2023

This is the eleventh of a series of comments by FRPC about the openness, transparency and accountability of the Canadian Radio-television and Telecommunications Commission (CRTC). Parliament established the CRTC on 1 April 1968 and delegated responsibility to it for implementing Parliament's broadcasting and telecommunications policies for Canada.

The Ministers of Canadian Heritage and Innovation, Science and Economic Development wrote Chairperson Eatrudes in early February 2023 to offer congratulations on her appointment to the Commission¹ and also to "inform her of the Government's vision and priorities with respect to Canada's broadcasting and telecommunications system".² The Ministers referred to "a perception among many that access to CRTC processes is unequal" for the public and civil-society organizations. Among other things the Ministers expressed confidence in the new Chairperson's ability to see to the CRTC's "to being more open ..."

In 2019 the CRTC's [submission to the Broadcasting and Telecommunications Legislative Review Panel](#) commented that the "the interactions between Canada's citizens and its institutions are best maintained when these institutions are verifiably held to account in an open and transparent way." The CRTC's Chairperson subsequently went on to describe the transparency of the CRTC's processes in speeches (in [November 2022](#), for example) and [statements](#).

While often used – the CRTC website has an entire page on "[Transparency](#)" which is accessible through its Search Engine (though not listed on its [A-Z index](#) that itself is not listed on its front page or through its Search Engine) – the CRTC does not clearly explain what it means by "transparency".

The [free online law dictionary](#) defines both transparency and transparent:

TRANSPARENCY Definition & Legal Meaning

1. Clear see through piece of thin acetate used to project an image onto a screen.
2. A lack of any hidden agendas with all information being available.
3. Degree of disclosure is minimum for all verified agreements, practices and dealings.
4. Required condition for an open and free exchange.

....

TRANSPARENT Definition & Legal Meaning

1. Action, procedure or method with no hidden agendas, transparency in word and intention.
 2. An invisible operation or feature to the user or observer.
- See virtual.

Based on these definitions, one might expect transparency from the CRTC to consist of clear and published agendas, complete information, disclosure of dealings and visible operations or processes. The CRTC's two main governing statutes – the 1991 *Broadcasting Act* and the 1993 *Telecommunications Act* – either address these issues incompletely or inconsistently.

¹ CRTC, "[Meet Vicky](#)" (accessed 1 March 2023).

² Department of Canadian Heritage, "[New CRTC Chair's Leadership Will Help Shape the Future of Canada's Communication System](#)", News release (Gatineau, 6 February 2023).

1991 Broadcasting Act	1993 Telecommunications Act
Published agendas	
[Silent on this issue]	[Silent on this issue]
Disclosure of dealings	
Publish notifications of applications received to issue, amend or renew licences (section 19)	[Silent on this issue]
Visible operations or processes	
Hold public hearing to issue, suspend, revoke or set performance objectives for a broadcasting licence (section 18(1))	[Silent on this issue]
Publish notifications of any public hearing it holds (section 19)	[Silent on this issue]
Publish proposed regulations (sections 10(3) and 11(5))	Publish regulations proposed for a national do-not-call list (section 41.21(3)) or for other matters such as its procedural rules or costs-application criteria (sections 67 to 69) – but CRTC need not publish the regulations if modified after publication (sections 41.21(4) and 69(2))
Public register of all petitions to Cabinet which it receives about its broadcasting decisions (section 29(3))	[Silent on this issue]
Complete information	
[Silent on this issue]	Publish non-confidential information it receives in its proceedings (sections 38 and 39),
Publish notifications of decisions made about applications [wording in the original] issue, amend or renew licences (section 19)	Publish reasons for not approving tariffs filed with it (section 26(c))
Publish summary of decisions to suspend or revoke a licence, along with reasons (section 24(3))	[Silent on this issue]

While Parliament requires the CRTC to notify the public about its broadcasting hearings (whether these are hearings to which it invites applicants and interveners, or its 10-minute-long, Kabuki-style, attended-only-by-CRTC-personnel hearings) it does not require the Commission to notify the public when it holds public hearings about telecommunications. Conversely, while Parliament requires the CRTC to publish non-confidential information about telecommunications proceedings, no such requirement is stated for broadcasting matters.

An interesting aspect of the gaps in the *Broadcasting Act* and *Telecommunications Act* with respect to transparency on the part of the CRTC is that Parliament's 23-year long failure to fill such gaps has given the CRTC near-complete discretion over the transparency of its agendas, how much information it discloses, the dealings it makes public or conceals, and the degree to which its operations and processes are public or private. So, although the CRTC in 2010 took the initiative to update and enact its [Rules of Practice and Procedure](#) these cannot and do not bind the Commission: as section 7 of the *Rules* states, the Commission "may dispense with or vary these *Rules*" if it thinks that the public interest or fairness allows it to do so. Nor, incidentally, can the CRTC cannot be bound by its policies in either broadcasting or telecommunications.³

³ 1991 *Broadcasting Act*, section 6: "6 The Commission may from time to time issue guidelines and statements with respect to any matter within its jurisdiction under this Act, but no such guidelines or statements issued by the Commission are binding on the Commission"; 1993 *Telecommunications Act*, section 58: "The Commission may from time to time issue guidelines and statements with respect to any matter within its jurisdiction under this Act or any special Act, but the guidelines and statements are not binding on the Commission."



The true scope and impact of the CRTC's stated interest in being transparent is therefore entirely unknown.

Recommendations:

The CRTC should develop and implement a coherent, 21st century framework to ensure that its agenda(s), information, dealings and processes do not just appear to be, but actually are, transparent.

Maintaining the *status quo* – cultivating the appearance of transparency while withholding details about its true agenda(s), its dealings with interested parties, its operations and processes, and the information it has which is relevant to its determinations – would surely contradict the concern about openness raised by the Ministers to whom the CRTC reports.

~ Forum for Research and Policy in Communications (FRPC)

Other comments in this series

- 1 March 2023: [Openness means not hiding applications from public view](#)
- 2 March 2023: [Openness means not just describing but explaining the CRTC's process and proceedings](#)
- 3 March 2023: [Openness means 'real' public hearings, published decisions and published meeting schedules](#)
- 4 March 2023: [Openness means publishing information about CRTC meetings with those it regulates](#)
- 5 March 2023: [Openness today means easier access to CRTC programming, ownership and financial data](#)
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