



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

### 4: *Openness means publishing information about CRTC meetings with those it regulates*

4 March 2023

*This is the fourth 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 Commission<sup>1</sup> and also to "inform her of the Government's vision and priorities with respect to Canada's broadcasting and telecommunications system".<sup>2</sup> 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 ...".*

The CRTC's Chairperson and Commissioners often mention the importance of the public's views to its decision-making.<sup>3</sup> It was therefore somewhat surprising that a chance photograph of then-Chairperson Ian Scott meeting one-on-one in December 2019 with Bell's Chief Operating Officer led to public concerns that private meetings between a regulatory agency and a company it regulates under the *Broadcasting Act* and *Telecommunications Act*<sup>4</sup> were inappropriate.

A basic problem in evaluating this issue is that the public has no way of assessing the impact of such meetings because there is no straightforward way to learn about them, while the CRTC often says it always considers Canadians' opinions when making its decisions.

Reviewing the available evidence about the meetings between broadcasting and telecommunications companies and the CRTC lends at least some support for Canadians' sense that access to the CRTC is tilted in favour of the companies.

In the case of CRTC proceedings, it is true that the CRTC advertises opportunities for the public to participate in its proceedings through [notices of consultation](#) and its [website](#). Yet during former Chairperson Scott's five-

---

<sup>1</sup> CRTC, "[Meet Vicky](#)" (accessed 1 March 2023).

<sup>2</sup> 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)

<sup>3</sup> In his [opening remarks for the CRTC's January 2021 public hearing](#) regarding CBC's applications to renew its licences (and to maintain the exempted status of its numerous online programming services) then-Chairperson Ian Scott said,

The Commission received over 20,000 interventions from Canadians, as well as from a variety of interested parties. I would be remiss if I didn't take this opportunity to thank all those who took the time to participate in this public consultation. Your views are important to us. They're on the public record and will be taken into consideration by the Commission in our decision-making.

<sup>4</sup> Such concerns led to requests that the Chairperson [recuse himself](#) from certain decisions, [resign](#) or [be fired](#) as well as an [investigation by the federal Conflict of Interest and Ethics Commissioner](#).



year term (5 September 2017 to 4 January 2023) only 13 (32%) of the 40 ‘public hearings’ held by the CRTC in that period even allowed the public to appear.<sup>5</sup> The remaining 27 (67%) of the CRTC’s ‘public hearings’ were non-appearing and excluded applicants and members of the public.

As for the 13 so-called ‘appearing hearings’ that the CRTC invited applicants and interveners to attend from 2017 to 22, just 51 (18%) of the 284 interveners whom the CRTC invited were individuals – people identified in the CRTC’s hearing agendas without any connection to regulated companies, industry associations, guilds, unions or civil-society organizations such as FRPC. If, based on the CRTC’s general practices of the last decade, the CRTC gave members of the public five minutes to express themselves and ten minutes to all other interveners, the general public probably received just over four hours to address Commissioners directly, while the remaining interveners received some 38 hours or nine times more time than the public.

The central issue regarding openness is that the CRTC has chosen not to publish any information about its private meetings with non-CRTC parties. This gap in openness means that even if the [Value and Ethics Code for the Public Sector](#) applies to the CRTC – including its expectation that “[p]ublic servants shall uphold the Canadian parliamentary democracy and its institutions by ... carrying out their duties ... in a non-partisan and impartial manner” – Canadians cannot know if private meetings between the CRTC and those it regulates take place, or whether this enables broadcasting and telecommunications companies to raise the issues that are central to their interests, and perhaps help to set the CRTC’s agenda. As Professor Michael Geist noted in May 2018, at least one major CRTC proceeding – a proposal for the CRTC to facilitate the blocking of Canadians’ access to certain websites – “[only came after months of private discussions between Bell and CRTC officials](#)” about the plan. While information about such discussions was disclosed by the CRTC, it did so only due to a request under Canada’s *Access to Information Act*.<sup>6</sup>

Little is known about the CRTC’s meetings with other parties because apart from the CRTC itself, the only avenue for such information is the Office of the Commissioner of Lobbying of Canada and it does not provide simple summaries of these meetings. A recent search for meetings with the CRTC in its one-year summaries of monthly communications reports found that the results do not actually report the number of meetings between lobbyists and the CRTC;<sup>7</sup> While the Office allows users to [download its monthly communications reports](#), the three datasets provided are so unwieldy<sup>8</sup> as to be unusable by most people.

The result is a tilted playing field not just because the public has far less access to the CRTC than the companies it regulates, but also because the public has no way of knowing about that access due to the

---

<sup>5</sup> Although one ([2019-106](#)) did not include an intervention process.

<sup>6</sup> Disclosure: while preparing its intervention in the CRTC’s ‘Fairplay’ proceeding, FRPC made the access-to-information request, and provided Professor Geist with a copy of the materials it received from the CRTC.

<sup>7</sup> The one-year summary instead appears to provide all meetings in which the CRTC may have been mentioned rather than the specific meetings between lobbyists and the CRTC. Searching only for the “Canadian Radio-television and Telecommunications Commission” as the “Who is being lobbied” brought up 371 results, the first of which being the lobbying activity of the Canadian Association of Broadcasters (CAB). While the CAB listing appeared to show 36 monthly communications – yet reviewing the associated Monthly Communications Reports instead showed that only 3 of the 36 monthly communications involved a CRTC official (on 14 Dec/22, on 20 Sep/22 and 21 Mar/22).

<sup>8</sup> Consisting of the 251,972 lines of the ‘PrimaryExport’ file, the 514,602 lines of the ‘SubjectMatter’ file and the 377,857 lines of the ‘DpohExport’ file, the three files must be merged to answer the basic question of which parties met with the CRTC on which dates.



CRTC's lack of openness: it publishes verbatim transcripts of its 'public' hearings<sup>9</sup> but does not even summarize who it is meeting outside of such hearings or why.

### **Recommendation**

The CRTC should publish a monthly list of the meetings its Commissioners and senior staff have with non-CRTC parties, including the dates of the meetings, the names of those attending and whom they represent.

Maintaining the *status quo* – offering members of the public a few minutes of time during hearings held once or twice a year, while shielding its private meetings with other parties from all public scrutiny – would surely contradict the concern 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](#)

---

<sup>9</sup> Even including the two-page transcripts of non-appearing public hearings such as the one it held on [23 February 2023](#).