



Interview Summary: Canadian Radio-television and Telecommunications Commission (Scott Shortliffe and Daniel Pye)

Scott Shortliffe, Executive Director of Broadcasting and Daniel Pye, Acting Director General of Broadcasting Policy of the Canadian Radio-television and Telecommunications Commission (“**CRTC**”), were interviewed by Commission counsel on August 28, 2024.

Notes to Readers:

- Commission Counsel have provided explanatory notes in square brackets to assist the reader.

1. Background

- [1] Scott Shortliffe joined the CRTC in 2017 as chief consumer officer and has been executive director of broadcasting since 2019. Mr. Shortliffe has been with the civil service for 30 years, 23 of which he spent at the Department of Canadian Heritage, where he also worked on broadcasting starting in 2010. He currently focuses on the implementation of the new *Broadcasting Act*, which regulates broadcasting activities on the internet, and the *Online News Act*, which regulates the distribution of monies relating to news broadcasts.
- [2] Daniel Pye has been with the CRTC for 17 years. At the time of the interview, he had recently been named acting director general of broadcasting policy. His substantive position is director of news remuneration, which he has held for approximately two years and under which he leads the team responsible for implementing the *Online News Act*. He was previously director of television policy, where he dealt with licensing issues, and worked on the Russia Today (“**RT**”) file. Before that, Mr. Pye worked in ownership and acquisitions, which includes enforcement of foreign ownership rules, as well as investigation of television station ownership. His educational background is in

commerce, which has led him to occupy various roles relating to economics and finance within the CRTC.

2. CRTC Mandate

- [3] Section 3 of the *Broadcasting Act* sets out the broadcasting policy for Canada. The CRTC is charged with applying the policy in terms of broadcaster licensing and access to Canadian airwaves.
- [4] Though broadcasting matters are within the purview the Minister of Canadian Heritage, the CRTC is entrusted with its mandate directly by Parliament and operates at arm's length from the Government of Canada. The CRTC's dealings with Canadian Heritage generally relate to technical matters, not matters of substantive policy.
- [5] The *Online Streaming Act*, enacted in 2023, amended the *Broadcasting Act* to expand the CRTC's jurisdiction to regulate certain broadcasting and streaming activities on the internet. The *Online News Act*, also enacted in 2023, tasks the CRTC with overseeing the bargaining framework that ensures the fair compensation of news businesses whose content is broadcast on internet platforms.

2.1 Licensing of Television and Radio Broadcasting

- [6] Generally speaking, licensing applies to Canadian television and radio stations and to Canadian distributors (e.g. Bell Media, Rogers) who distribute media content over cable and satellite networks.
- [7] All broadcasters and distributors operating in Canada are subject to the CRTC's jurisdiction. Those not operating online undertakings must be licensed. Some smaller broadcasters may qualify for an exemption order, meaning they do not have to apply for a license, but they are nonetheless subject to the CRTC's rules and regulations, in addition to the conditions of their exemption order.
- [8] The number of licenses available for broadcasting over the airwaves is limited by availability on the frequency spectrum. When a frequency becomes available, the CRTC oversees a competition to which prospective broadcasters can apply. The CRTC grants

licenses to broadcasters who, in its estimation, best support the objectives of section 3 of the *Broadcasting Act* in the context of the relevant marketplace. The CRTC, in considering the objectives in section 3, looks at the relative absence or presence of Indigenous content, or content directed at minority communities, including racialized and minority official language communities. Licenses are typically valid for seven years and have conditions attached to them. Licensees are also required to comply with CRTC regulations and conditions of service (e.g, prohibition against transmitting propaganda or hate speech). Broadcasters who are not in compliance with their conditions or the regulations can have their licenses revoked or not renewed by the CRTC following a public process.

- [9] Online broadcasting undertakings (commonly known as “online streamers”) can operate in Canada without obtaining a license from the CRTC. However, online streamers are subject to regulatory obligations that the CRTC is currently putting in place through its new order-making power. These are known as “conditions of service”. Conditions of service can be modified by the CRTC with discretion as to the timing. The CRTC is shifting from a license-based framework to a framework based on conditions of service. Under the old *Broadcasting Act*, the CRTC had fewer tools of enforcement, such as shorter license terms or license revocation. Under the new *Broadcasting Act*, the CRTC has more enforcement tools at its disposal, including a new administrative monetary penalties (“**AMPs**”) regime which empowers the CRTC to impose AMPs of up to \$15,000,000 per violation following a public proceeding.

2.2 Broadcasting Distribution Undertakings (BDUs)

- [10] All CRTC licensees must be Canadian owned (see section 2.2 below for more details on ownership rules) and all are subject to rules and regulations relating to, for example, Canadian content.
- [11] Broadcasting distribution undertakings (“**BDUs**”), commonly known as cable, IPTV and satellite operators, include companies like Bell and Rogers. BDUs can distribute non-Canadian television programming as part of the television packages they offer to their subscribers. BDUs can only distribute non-Canadian television programming services

that are on the CRTC's list of non-Canadian programming services and stations authorized for distribution (the "**List**"). In order to be on the list, the non-Canadian programming service must first be "sponsored" by a Canadian, such as a Canadian BDU or law firm. The sponsor then files a request with the CRTC in order to have that non-Canadian programming services added to the list. There is no similar system for radio stations because they are all on the frequency spectrum and therefore licensed. SiriusXM, the only satellite radio service operating in Canada does not use frequency but is similarly licensed.

- [12] The non-Canadian programming services and stations on the List are not themselves licensed by the CRTC and are not subject to rules relating to Canadian content. However, BDUs, who carry these services, must comply with their own obligations. As explained in more detail in section 4, a non-Canadian channel has been removed from the List for offending rules and regulations relating to abusive comment, though the CRTC does not currently have a framework in place for determining under what circumstances a non-Canadian channel will be removed from the List.

2.3 The CRTC's mandate relating to online content

- [13] The CRTC's mandate to regulate online content is limited.
- [14] The CRTC does not have the authority to regulate the users of social media and has a very limited authority over user-generated content. User-generated content is not well defined, but basically consists of user or consumer-created content, e.g. 'YouTubers' or 'TikTokers,' such as audio and video content, which they upload and broadcast on social media platforms. Social media users and the content they upload on social media services is not subject to any CRTC oversight.
- [15] Section 4.2 of the *Broadcasting Act* does provide the CRTC with a limited mandate to regulate social media platforms when they act as a broadcaster. Social media platforms act as broadcaster when, for example, they create and broadcast their own music playlists, or if they broadcast a sporting event.

3. Broadcasting Policy

3.1 The CRTC's ability to regulate content

[16] Section 5(1) of the CRTC's *Television Broadcasting Regulations, 1987* provides that:

5 (1) A licensee shall not broadcast:

- a) anything in contravention of the law;
- b) any abusive comment or abusive pictorial representation that, when taken in context, tends to or is likely to expose an individual or a group or class of individuals to hatred or contempt on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, age or mental or physical disability;
- c) any obscene or profane language or pictorial representation; or
- d) any false or misleading news.

[17] This obligation is replicated in the *Discretionary Services Regulations*, as it applies to discretionary television services, in the *Radio Regulations, 1986*, as it applies to radio services and in the *Broadcasting Distribution Regulations*, as it applies to cable and satellite operators.

[18] Section 5(1)(d) could possibly encompass the broadcasting of propaganda and mis- or disinformation. Such content can also be restricted if it happens to be captured by other categories listed under section 5(1) or if it violates various codes, which are referenced in the standard conditions of service.

[19] The CRTC considers restricting such content to be challenging, especially when it comes to false or misleading news. As Mr. Shortliffe put it, "Someone's propaganda is always someone else's truth." In other words, whether content is in fact false, or misleading is not always clear. The CRTC has not yet grappled with a definition of propaganda but is currently planning to hold hearings in the near future that may address this issue. The scope of these hearings has yet to be defined.

[20] The CRTC can act in clear cut cases of misinformation. For example, if a message were broadcast claiming election polls were closed, when in fact they were not, the CRTC

could intervene because it relates to a bare matter of fact. The CRTC could require that a licensee issue a retraction to be broadcast several times, or take other actions if they were found to have breached their conditions of service. For this requirement to be enforceable, the CRTC would have to develop a public record in order to take action. If this scenario took place on election day, it is very unlikely that the CRTC could issue such an order quickly enough for the false information to be corrected the same day.

[21] The CRTC's ability to deal with issues relating to content is limited insofar as it does not have the regulatory tools to take down offending content swiftly. The CRTC's mode of intervention consists of building a record relating to a particular issue and making a decision based on the record, any applicable legislation and existing policy. This is because, as an administrative tribunal, the CRTC is bound by principles of procedural fairness. Accordingly, the CRTC's decision-making process takes time.

[22] The CRTC has no authority to intervene if propaganda or mis-/disinformation is propagated online.

3.2 Rules relating to ownership

[23] Licensees are subject to rules relating to Canadian ownership. These rules are laid out in the Direction to the CRTC (Ineligibility of non-Canadians). As per the Direction, in order to be considered a qualified corporation, eighty percent (80%) of a licensee's voting shares and votes must be Canadian owned and controlled, and 80% of a licensee's directors must be Canadian. In the case of a parent corporation, Canadians must own and control not less than 66 and two thirds of all issued and outstanding voting shares and not less than 66 and two-thirds percent of the votes.

[24] Licensees must not only be Canadian-owned and operated, they must also be Canadian-controlled. A licensee must exercise control in fact of the programming undertaking, which includes control over editorial content and programming decision.

[25] Ownership rules also extend to funding. A licensee may be Canadian-owned, but may still be non-compliant if it benefits from, for example, foreign loans that indirectly drive its decision-making, thereby bringing into question whether the licensee has control in fact of the license.

- [26] Ownership rule compliance is generally not an issue for large Canadian companies. In fact, compliance must be proven as a precondition to obtain a license, such that even smaller licensees are also generally compliant. The CRTC does receive and investigates complaints relating to foreign ownership after a license is issued, though such complaints are relatively rare.
- [27] The CRTC has broad information gathering powers to investigate matters of ownership, but, in practice *de facto* ownership tests are difficult to prove on the record. The CRTC is not a recipient of FINTRAC information.

4. Removal of non-Canadian TV services from the 'List'

- [28] As explained above, non-Canadian services can be authorized for distribution in Canada; however, they do not require a license as they are not considered to be broadcasting in Canada and would not be licensable in any event due to the ownership requirements. The US news channel CNN, for example, does not hold a license in Canada, but is authorized by the CRTC for distribution by the BDUs.
- [29] In exchange for broadcasting their feed, Canadian BDUs can negotiate a fee, which could be on a 'per subscriber' basis, for the right to distribute the non-Canadian services. Canadian commercial advertising cannot be spliced into that feed, so carriers do not get advertising revenue from including foreign channels in their packages, only subscription revenues. It should be noted that the CRTC does allow for the insertion of "local availabilities" of Canadian programs and services on foreign channels, which has some value.
- [30] Some channels may appear to be foreign but are in fact Canadian. BBC Earth, for instance, holds a Canadian license but has an agreement with the BBC to broadcast their content. BBC News, on the other hand, does not hold a CRTC license, but is a non-Canadian service authorized for distribution in Canada.
- [31] Non-Canadian stations do not have to abide by CRTC rules relating to Canadian content. The CRTC authorizes non-Canadian services for distribution as part of its

mandate to encourage pluralism and access by Canadians to many sources of content from local, regional, national and international sources.

[32] The CRTC has a process for adding non-Canadian stations to the List. While the CRTC recognizes that it can de-authorize services and has done so in one instance, the rules are not currently designed to take channels off the List.

[33] Approximately 12 or 13 years ago, Al-Jazeera English applied to be authorized for distribution. Unusually for that time, the CRTC did not add the channel to the list immediately because of a concern that it supported and promoted jihadist points of view. Al-Jazeera's position was that, although it sometimes interviewed jihadists on the air, they did not espouse their opinions. The CRTC eventually authorized the channel but with the condition that BDUs set up a one-minute time delay on the feed so the offending content could be removed. BDUs refused to carry Al-Jazeera English owing to the important cost of setting up such a delay. After about a year, BDUs made the case that a whole year's worth of Al-Jazeera English content showed there was no problem with the channel. The CRTC acceded to their demand and removed the delay requirement.

[34] The CRTC faced another challenge relating to RT in 2022. When Russia invaded Ukraine, RT broadcast content seeking to justify the attacks on the Ukrainian people by promoting a narrative that spread hate against them. The government reacted to the issue. Under section 15 of *the Broadcasting Act*, the Governor in Council can issue an Order in Council requesting that the CRTC hold a hearing on a given issue and make a report.¹ The Governor in Council requested the CRTC to hold a hearing to assess whether RT's content was in support of, or contrary to, the Broadcasting Act.² The CRTC was given two weeks to hold a hearing and make a report.

[35] After the hearing was concluded, the CRTC reported that the continued authorization for BDUs to distribute RT was not in the public interest. Were RT licensed in Canada and

¹ Section 15 of the *Broadcasting Act* reads, "The Commission shall, on request of the Governor in Council, hold hearings or make reports on any matter within the jurisdiction of the Commission under this Act." **CRT0000026**.

² Order in Council 2022-0183. **COM0000602**.

therefore subject to regulation, its content would be contrary to section 5(1)(d) of the CRTC's *Television Broadcasting Regulations, 1987* in that it constitutes abusive comment since it tends to or is likely to expose the Ukrainian people to hatred or contempt on the basis of their race, national or ethnic origin.³

- [36] The CRTC considers the RT decision to be an important precedent as it relates to non-Canadian stations. It was the first time that a non-Canadian station was removed from the List.
- [37] Mr. Shortliffe also noted that, though RT was not subject to license conditions, BDUs that carry it are. The CRTC does not yet have an established policy for BDUs carrying non-Canadian services whose content contravenes the regulations, so there was no consequence for BDUs flowing from its decision to remove RT from the List. While RT is no longer available on Canadian television, the CRTC has no authority to block RT's online content or restrict ISPs; RT's content remains accessible online.
- [38] The CRTC has received complaints about two authorized Chinese state media TV channels. One such complaint came from Safeguard Defenders, a human rights organization focused on China. Safeguard Defenders has alleged that these two channels have broadcast confessions obtained under torture, and requested that the two channels in question be removed from the List. The complaint is still before the CRTC.
- [39] Mr. Shortliffe noted that the CRTC does not have standards of evidence against which to determine what he considered to be a complex factual issue like the one raised in the complaint. In contrast, he considered the RT case to be clear-cut. Russia had clearly invaded Ukraine and was seeking to justify the attacks on the Ukrainian people by promoting a narrative that spread hate against them. The issue of whether a confession was obtained under torture is much more complex, and the CRTC does not have the capacity to carry out an investigation in the People's Republic of China. According to Mr. Shortliffe, the standard of evidence may be different if these channels were applying

³. Broadcasting Decision CRTC 2022-58. *Review of the authorization to distribute Russia Today (RT) and RT France pursuant to the List of non-Canadian programming services and stations authorized for distribution.* **CRT0000051**.

for inclusion on the List, but, in this case, the CRTC has been asked to withdraw an approval which, in his view, requires a higher standard of proof.

- [40] The CRTC also received a complaint from Égale Canada (“**Égale**”), a LGBTQ+ rights advocacy group, calling for the removal of Fox News [an American conservative news and political commentary television channel] from the List, on the claim that that its content was promoting hatred against members of the LGBTQ+ community. Égale’s complaint received 7,000 responses from the public, such that the issue was the subject of vigorous debate, with one side condemning anti-LGBTQ+ messaging and the other in support of freedom of expression. The content in question was attributed to Tucker Carlson, a Fox News host and commentator who was terminated from Fox News some time after the complaint was filed, such that the specific factual issue underlying the complaint is now moot. The CRTC stated that it is committed to a public process to determine what standards should be applied to cases where the CRTC is asked to withdraw a channel’s authorization. The CRTC is aware that the standards will have to strike a balance between its mandate to protect Canadians and its commitment to support freedom of expression.
- [41] The CRTC has yet to hold hearings on the issue but will hold a series of policy hearings over the next several months touching on a broad range of issues related to the implementation of the new Broadcasting Act. These hearings will also consider policies applicable to online radio distributors (e.g. Spotify), which are not yet fully integrated into the CRTC regulatory framework.

5. The CRTC’s Complaints Process

- [42] Not all types of complaints are received by the CRTC directly. For example, complaints about television or radio broadcasting content on Canadian services are generally directed to the Canadian Broadcast Standards Council (“**CBSC**”), a private complaints resolution body run by an association of private broadcasters. [Complaints about CBC content are referred to the CBC Ombudsman]. Private broadcasters must be, or become, members of the CBSC as part of their licensing conditions. The CBSC process is akin to an arbitration. If a complainant is unhappy with the decision they receive from

the CBSC, they can resubmit their application to the CRTC, which will hear the matter *de novo*.

- [43] The CRTC does not accept anonymous complaints. Complaints can be submitted in writing to the CRTC, either by a letter or, more formally, by a “Part 1 application”, that is, an application made under Part 1 of the CRTC’s *Rules of Practice and Procedure*. Complaints submitted by way of a letter can be treated as Part 1 applications with the complainant’s consent (as was the case for the Égale complaint about Fox News, referred to above). Part 1 applications are generally made public within 48 hours.
- [44] The CRTC has client services and single point of contact unit to which all complaints are generally submitted. The CRTC adopts a “no wrong doors” approach to receiving complaints. The client services and point of contact units refer complaints to the appropriate entity. If the appropriate entity is the CRTC, complaints are funneled to the appropriate subject-matter expert within the CRTC, e.g. telecommunications, broadcasting, compliance (i.e. spam), consumer code concerns, etc. The CRTC does not have a stand-alone complaints department; CRTC analysts in each sector handle complaints according to their expertise as part of their daily responsibilities.
- [45] Subject-matter experts can determine whether a complaint is frivolous, in which case the CRTC responds to the complaint with a letter explaining why the complaint will not be treated further. For non-frivolous complaints, analysts can make a recommendation to their manager, who may take it to a director, if necessary. Directors will then review the complaint and meet with the executive director of broadcasting, who maps out a course of action to determine whether the complaint should be submitted to the commissioners for a decision and, if so, how. If the CRTC decides to pursue a complaint, the complainant is contacted and told that the complaint will be made public. A complaint becomes public when a proceeding is launched.
- [46] The CRTC receives thousands of inquiries every year and most can be dealt with fairly quickly. Mr. Shortliffe is aware of all broadcasting related complaints that raise an apparent breach of a rules or regulations. Mr. Shortliffe does not recall ever handling a complaint about foreign interference. According to him, Safeguard Defenders’ complaint

about the Chinese channels was focused on the issue of torture, and not foreign interference.

- [47] Mr. Shortliffe also does not recall receiving a viable complaint about propaganda. Mr. Shortliffe reported that his staff have told him that they have received complaints of that nature, but that they are challenging to pursue operationally. Complaints must contain a degree of specificity for the CRTC to do any investigative work – crucially, the complainant must specify when the offending content was seen or heard so the CRTC can request recordings of the broadcast. If the complaint is specific, the CRTC has broad information request powers and does not need a court order to obtain the recordings. However, not all undertakings are required to retain recordings. It has happened that the CRTC has requested recordings and has been told that they were lost, destroyed or otherwise unavailable. Mr. Shortliffe indicated that these occurrences have not arisen with large broadcasters, but have come up occasionally with small community channels or stations. Mr. Shortliffe stated that no complaint about propaganda has risen to his level, possibly because of these types of operational challenges.
- [48] Mr. Shortliffe reported that the CRTC did receive a complaint from the Indian High Commission about an exempt Punjabi-language television service, which it alleged to have broadcast content in support of terrorism. This complaint was determined by Commission staff to be unfounded.
- [49] In other instances, the CRTC has also received complaints from the public and from other licensed radio stations regarding South Asian radio services in British Columbia that were broadcasting without a license. In some cases, the CRTC held hearings to look into the matter and some of these broadcasters were shut down as a result. However, none of the complaints which triggered the Commission's involvement involved concerns about propaganda. In some instances, the radio broadcasters managed to reestablish themselves under other names, some of them three or four times, and the Commission continues to monitor the situation.
- [50] To investigate complaints about foreign-language stations or channels, the CRTC first needs to ascertain whether it has the internal language capacity to handle the matter. If

it does not, it secures a contract with external translators. Because these processes take time, the CRTC does not have the ability to take down propaganda, or other offending content, on an urgent basis.

6. Relationships with Other Departments and Agencies

- [51] The CRTC has information sharing memoranda of understanding (“**MOU**”s) with various government agencies such as Elections Canada and the Office of the Commissioner of Canada Elections. Mr. Shortliffe indicated that some complaints have been referred to Elections Canada and that complaints may have been referred to the CRTC from Elections Canada.
- [52] The CRTC does not have any formal agreements with security and intelligence agencies or law enforcement agencies. Mr. Shortliffe stated that to his knowledge the CRTC does have interactions with these entities, but mostly concerning threats against the CRTC or its staff.
- [53] The CRTC also has information sharing MOUs with counterpart entities in the Five-Eyes countries as well as in the European Union and in Japan. Mr. Shortliffe stated that the MOUs tend to be matters of courtesy, pledges of cooperation and information sharing if necessary. To his knowledge, these MOUs have not been used to exchange viewpoints on content regulation.
- [54] The CRTC also has a relationship with its counterpart in the United States, the Federal Communications Commission (“**FCC**”). The CRTC has not shared viewpoints with the FCC on policy matters relating to content regulation because the FCC steers clear from regulating content.
- [55] Mr. Shortliffe reported that the CRTC has a positive relationship with its counterpart in the United Kingdom and that the two regulators share viewpoints and information about various issues, including the regulation of internet companies. The CRTC recently had a meeting with some of its European counterparts, who are very focused on developing policy relating to online harms, including foreign interference.

7. Detecting, Deterring and Countering Foreign Interference

- [56] According to Mr. Shortliffe, the CRTC is attuned to the issue of foreign interference, but that, at the moment, few resources could be allocated to it. Currently, much of the CRTC's focus is on implementing the new *Broadcasting Act* and *Online News Act*, and that this will likely be the case until the end of 2025. The CRTC does not have the resources to look deeply into several important issues, one of them being foreign interference.
- [57] In Mr. Shortliffe's view, the main policy issue in relation to foreign interference is how to regulate online content in an age of transnational platforms. Current CRTC rules and regulations are designed as a wall-guard to control what Canadians have access to over the airwaves and through cable and satellite networks. Foreign interference is on the CRTC's radar because it can no longer assume that its wall-guard is sturdy. New rules in Canada should take into account what is happening in the rest of the world, protecting Canadians from foreign interference, while also permitting access to quality content from around the world.
- [58] Mr. Shortliffe's view is that the CRTC's greatest vulnerability at the moment is its inability to react quickly because the CRTC is designed to act on the basis of a public record and in accordance with fairness rules. The CRTC does not have rapid take-down capabilities nor is it a law enforcement agency. Mr. Shortliffe opined that Canada's larger broadcasters are not a risk or vulnerable to foreign interference, but that smaller broadcasters might be, though their actual vulnerability is difficult to prove.

8. Recommendations

- [59] According to Mr. Shortliffe, the CRTC applies legislation, but does not make legislation. Accordingly, the CRTC did not speak to any recommendations it might have.