



## Broadcasting Public Notice CRTC 2007-114 Telecom Public Notice CRTC 2007-19

Ottawa, 12 October 2007

### **Call for comments on a proposed Practice Direction on the Provision of Confidential Access to Confidential Information**

*In this notice the Commission sets out a proposed Practice Direction on the Provision of Confidential Access to Confidential Information and related issues, and requests comments on its proposal. The deadline for comments is **24 October 2007**.*

#### **Introduction**

1. The Commission conducts its public processes in an open and transparent manner. In some instances, parties submit information in the course of proceedings for which they request confidentiality. In such cases other parties to the proceeding may request public disclosure of the information. If such a request is granted, the information is put on the public record. If it is determined that the harm outweighs the public interest in disclosure, the request is denied and the information remains confidential. In the absence of such a request, the Commission may require that information for which confidentiality is claimed be put on the public record.
2. The Commission is of the view that there may be instances where, in order for a party to be able to participate meaningfully in a proceeding, it must receive some access to confidential information. In order to allow for meaningful participation while respecting the confidential nature of certain information, the Commission proposes to grant confidential access under certain conditions in broadcasting and telecom proceedings, as well as make provision for *in camera* proceedings. In order to implement this approach, the Commission has developed a proposed Practice Direction on the Provision of Confidential Access to Confidential Information (the Practice Direction), which is set out in the Appendix to this document.
3. The Practice Direction sets out the process that a party requesting confidential access to confidential information (the Requesting Party) must follow, the test the Commission will apply and the applicable conditions where access is granted.
4. In order to protect the confidentiality of the information, only certain individuals will be granted confidential access to confidential information. These individuals are external counsel, external experts under the control of external counsel, and their staff members.

## Call for comments

5. The Commission invites comments on:
  - a) the proposed Practice Direction set out in the appendix to this notice; and
  - b) whether confidential access to confidential information should be provided only in the context of public hearing proceedings or also in paper proceedings under both the *Broadcasting Act* and the *Telecommunications Act*.
6. The Commission will accept comments that it receives on or before **24 October 2007**. The Commission will not formally acknowledge comments. It will, however, fully consider all comments and they will form part of the public record of the proceeding, provided that the procedures for filing set out below have been followed.

## Procedures for filing comments

7. Interested parties can file their comments to the Secretary General of the Commission:
  - **by using the**  
[Broadcasting or Telecom Intervention/Comments Form](#)  
Telecom reference: 8665-C12-200714346
  - OR
  - **by mail to**  
CRTC, Ottawa, Ontario K1A 0N2
  - OR
  - **by fax at**  
819-994-0218
8. Submissions longer than five pages should include a summary.
9. Please number each paragraph of your submission. In addition, please enter the line \*\*\*End of document\*\*\* following the last paragraph. This will help the Commission verify that the document has not been damaged during transmission.

## Important notice

10. Note that all information that you provide as part of this public process, except information granted confidentiality, whether sent by postal mail, facsimile, e-mail or through the Commission's Web site at [www.crtc.gc.ca](http://www.crtc.gc.ca), becomes part of a publicly accessible file and will be posted on the Commission's Web site. This information

includes your personal information, such as your full name, e-mail address, postal/street address, telephone and facsimile number(s), and any other personal information you provide.

11. The personal information you provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.
12. Documents received electronically or otherwise will be put on the Commission's Web site in their entirety exactly as you send them, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
13. Please note that the information you provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the webpage of this particular public process. As a result, a general search of our Web site with the help of either our own search engine or a third-party search engine will not provide access to the information which was provided as part of this public process.
14. The Commission encourages interested parties to monitor the public examination file and the Commission's Web site for additional information that they may find useful when preparing their comments.

**Examination of public comments and related documents at the following Commission offices during normal business hours**

Toll-free telephone: 1-877-249-2782  
Toll-free TDD: 1-877-909-2782

Central Building  
Les Terrasses de la Chaudière  
1 Promenade du Portage, Room 206  
Gatineau, Quebec K1A 0N2  
Tel.: 819-997-2429  
Fax: 819-994-0218

Metropolitan Place  
99 Wyse Road  
Suite 1410  
Dartmouth, Nova Scotia B3A 4S5  
Tel.: 902-426-7997  
Fax: 902-426-2721

205 Viger Avenue West  
Suite 504  
Montréal, Quebec H2Z 1G2  
Tel.: 514-283-6607

55 St. Clair Avenue East  
Suite 624  
Toronto, Ontario M4T 1M2  
Tel.: 416-952-9096

Kensington Building  
275 Portage Avenue  
Suite 1810  
Winnipeg, Manitoba R3B 2B3  
Tel.: 204-983-6306  
TDD: 204-983-8274  
Fax: 204-983-6317

Cornwall Professional Building  
2125 - 11<sup>th</sup> Avenue  
Room 103  
Regina, Saskatchewan S4P 3X3  
Tel.: 306-780-3422

10405 Jasper Avenue  
Suite 520  
Edmonton, Alberta T5J 3N4  
Tel.: 780-495-3224

530-580 Hornby Street  
Vancouver, British Columbia V6C 3B6  
Tel.: 604-666-2111  
TDD: 604-666-0778  
Fax: 604-666-8322

Secretary General

*This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>*

**Appendix to Broadcasting Public Notice CRTC 2007-114/  
Telecom Public Notice CRTC 2007-19**

**Proposed Practice Direction on the Provision of Confidential Access to  
Confidential Information**

**Application**

1. This Practice Direction applies to all broadcasting and telecom proceedings with regard to information filed in confidence that the Commission has not required to be put on the public record.

**Matters not provided for in this Practice Direction**

2. Where any matter arises that is not provided for in this Practice Direction, the Commission will rely, *mutatis mutandis*, on the *Federal Courts Rules*, SOR/98-106.

**Definitions**

3. For the purposes of this Practice Direction:

“Counsel” means a member in good standing of the bar of one of the provinces or territories of Canada or of the order of notaries in the Province of Quebec who is acting in the proceeding on behalf of a party or intervener and who is not a director or employee of a party or of an intervener.

“Expert” means a person who possesses specialized knowledge through skill, education, training, or experience beyond that of the ordinary person in an area relevant to the proceeding who is acting under the control or direction of Counsel and who is not a director or employee of a party or intervener.

“Staff Member” means an employee of Counsel or of an Expert.

“Requesting Party” means the party or intervener requesting confidential access to confidential information.

“Supplying Party” means the party who filed information in confidence which the Commission has not required to be put on the public record and which is the subject of the request for confidential access.

**Requests for confidential access to confidential information - Confidentiality Declaration and Undertaking**

4. Where information that has been filed in confidence has not been required by the Commission to be put on the public record pursuant to the *CRTC Rules of Procedure* or the *CRTC Telecommunications Rules of Procedure* as the case may be, parties may request confidential access to that confidential information. Such requests for confidential access to confidential information shall be made no later than seven business days following the placement of the claim for confidentiality on the public record.
5. In requesting confidential access to confidential information, Counsel for the Requesting Party shall:
  - a) File with the Commission a request for confidential access to confidential information identifying:
    - i) the portion of the confidential information to which confidential access is required,
    - ii) why, without confidential access to confidential information, the Requesting Party could not meaningfully participate in the proceeding, and
    - iii) the name, role (Counsel, Expert or Staff Member) and reason for which each person requires confidential access to the confidential information;
  - b) File with the Commission:
    - i) a Declaration and Undertaking in the form set out in Appendix A, signed under oath, for each Counsel and Expert,
    - ii) a Declaration and Undertaking in the form set out in Appendix B, signed under oath, for each Staff Member;
  - c) Serve a copy of the request for confidential access to confidential information and all relevant Declaration and Undertaking(s) on the Supplying Party.
6. Where a Requesting Party adds and/or removes Counsel or an Expert, or Counsel or an Expert adds and/or removes a Staff Member to whom the Commission has granted confidential access to confidential information, Counsel for the Requesting Party shall, for each individual who has been added or removed, within seven business days of the addition or removal, file with the Commission:
  - a) In the case of a removal, a notice of the removal in the form set out in Appendix C;
  - b) In the case of an addition, a request for confidential access to confidential information and a Declaration and Undertaking pursuant to paragraph 5.
7. Within two business days after being served with the request for confidential access to confidential information, the Supplying Party may object to the request for confidential access to confidential information, serving a copy of the objection on Counsel for the Requesting Party.

8. Within two business days after being served with the objection, Counsel for the Requesting Party may file reply comments, serving a copy of the reply on the Supplying Party.
9. Where a document is to be filed or served by a specific date, the document must be actually received, not merely sent, by that date. Service may be effected in accordance with the *CRTC Rules of Procedure* or the *CRTC Telecommunications Rules of Procedure* as the case may be.
10. No confidential access to confidential information shall be given until the Commission has ruled on the request for access and any objections.
11. The Commission may give further directions to the parties from time to time to protect the confidential information from disclosure to persons who are not entitled to such disclosure.

**Disclosure of the confidential information**

12. Where the Commission grants a request for confidential access to confidential information, the Supplying Party shall provide the confidential information to Counsel for the Requesting Party within the time period specified by the Commission.

**Hearings in the absence of the public (*in camera* hearings)**

13. The Supplying Party or Counsel for the Requesting Party may request that portions of an oral hearing not be open to the public on the basis that they relate to information for which confidentiality has been granted.
14. Any party requesting that a portion of an oral hearing be held *in camera* shall file a request with the Commission at least ten business days prior to the start of the hearing identifying the reasons for the request and the portion of the confidential information that they wish to discuss *in camera*.
15. The Commission may make any order that it deems appropriate in response to a request that a portion of the hearing be held *in camera*.
16. All persons shall be excluded from the hearing room for the duration of the *in camera* portion of the oral hearing except:
  - a) representatives of the Commission, including Commissioners, Commission staff, and Commission Experts;
  - b) representatives of the Supplying Party;
  - c) Counsel, Experts and Staff Members granted confidential access by the Commission to the confidential information at issue;

- d) translators, court reporters and interpreters under the authority of the Commission, provided they have signed under oath a Declaration and Undertaking in the form set out in Appendix D.

#### **Transcripts**

- 17. Transcripts of the *in camera* portion of the hearing shall be treated as confidential.
- 18. Copies of the transcript of the *in camera* portion of the hearing will only be provided to the Supplying Party and to Counsel, Experts and Staff granted confidential access by the Commission to the confidential information at issue.
- 19. Summaries of *in camera* proceedings prepared by Commission Staff will be placed on the public record.
- 20. Where testimony is given *in camera* relating to information which is not confidential, the Commission may direct that it be placed on the public record.

#### **Further written arguments**

- 21. Where an opportunity is provided for further written arguments following a hearing, parties and interveners shall, as far as possible, prepare their further written arguments without reference to confidential information. Where a party makes specific reference to confidential information in its further written arguments, the party filing the arguments shall:
  - (a) file a confidential appendix containing the confidential information; or
  - (b) file both a confidential version of the further written arguments and an abridged version of the further written arguments to be placed on the public record.
- 22. Where a confidential appendix or an abridged version of the further written arguments contains information that has not been granted confidentiality by the Commission, the Commission may order the party filing the further written arguments to file a revised appendix or abridged version disclosing this information.

#### **Destruction or return of the confidential information**

- 23. Within ten business days after the close of record of the proceeding, all confidential information obtained pursuant to a request for confidential access to confidential information and all documents or portions thereof containing such information shall either be destroyed or returned to the Supplying Party.
- 24. Counsel for the Requesting Party shall file, for each person who was granted confidential access to confidential information who chooses to destroy that confidential information, a Certificate of Destruction in the form set out in Appendix E with the Secretary General of the Commission and the Supplying Party.



**Breach of Confidentiality Undertakings and Commission rulings**

25. The Commission may file a complaint with the appropriate law society or other professional association or initiate contempt of court proceedings in the Federal Court of Canada or a superior court of a province in the event of a breach of the terms of a Declaration and Undertaking signed under oath or of any Commission rulings in respect of confidential information pursuant to this Practice Direction.

## Appendix A

### DECLARATION AND UNDERTAKING OF EXTERNAL COUNSEL AND EXPERTS

In the file: \_\_\_\_\_  
(name of the proceeding)

I, \_\_\_\_\_, act  
(print name)

as counsel of record ☐  
-or-

as an expert ☐

for \_\_\_\_\_  
(print name of the party)

### DECLARATION

I hereby declare that

- (a) I have read and I understand the Practice Direction on the Provision of Confidential Access to Confidential Information issued by the Canadian Radio-television and Telecommunications Commission (hereinafter “CRTC”) and all notices and rulings of the CRTC that relate to this proceeding;
- (b) I am not a director or employee of a party to the proceeding for which I act or of any other person known by me to be a party in the proceeding;
- (c) I understand that this Declaration and Undertaking applies to all information that I receive in this proceeding and that has been filed in confidence and that has not been required to be put on the public record by the CRTC and to all documents that contain or refer to that confidential information;
- (d) I understand that execution of and compliance with this Declaration and Undertaking is a condition of a ruling of the CRTC, and that the CRTC may apply to the Federal Court of Canada or to a superior court of a province to enforce it.

## UNDERTAKING

I hereby undertake

- (a) to use the information disclosed under the conditions of this Undertaking exclusively for duties performed in respect of the subject proceeding;
- (b) not to divulge information disclosed under the conditions of this Undertaking except to a person granted access by the CRTC to such information or to the CRTC;
- (c) not to reproduce, in any manner, information disclosed under the conditions of this Undertaking without prior written approval by the CRTC;
- (d) to keep confidential and to protect the information disclosed under the conditions of this Undertaking in the following manner, namely,
  - (i) I will keep in my office or under my control, at all times, the complete set of documents made available to me under the conditions of this Undertaking, and
  - (ii) I will store all documents and materials containing information disclosed under the conditions of this Undertaking in a locked vault, safe or other secure storage device when the documents and materials are not being used;
- (e) to return to the Supplying Party all documents and materials containing information disclosed under the conditions of this Undertaking, including notes, charts, memoranda, submissions and transcripts based on such information, or to destroy such documents and materials and to file with the CRTC Secretary General and the Supplying Party a Certificate of Destruction pertaining to the destroyed documents and materials within ten business days after the close of record of the proceeding;
- (f) if the party that I represent removes me as counsel in the proceeding, within seven business days,
  - (i) to return to the Supplying Party all documents and materials containing information disclosed under the conditions of this Undertaking, including notes, charts, memoranda, submissions and transcripts based on such information, or
  - (ii) to destroy such documents and materials and to file with the CRTC Secretary General and the Supplying Party a Certificate of Destruction pertaining to such destroyed documents and materials;
- (g) if the party no longer retains me as an expert in the proceeding, within seven business days,
  - (i) to return to the Supplying Party all documents and materials containing information disclosed under the conditions of this Undertaking, including notes, charts, memoranda, submissions and transcripts based on such information, or
  - (ii) to destroy such documents and materials and to file with the CRTC Secretary General and Supplying Party a Certificate of Destruction pertaining to such destroyed documents and materials;
- (h) to report promptly to the CRTC any violation of a Declaration and Undertaking; and
- (i) to inform the CRTC immediately of any changes in the facts referred to in this Undertaking.

SWORN (OR AFFIRMED) BEFORE ME

at the City of )

in the Province of )

this day of , 20 )

(Signature)

Name (Print)

A Commissioner for Taking Affidavits )

in the Province of )

(Address)

[print name of commissioner]

(Telephone)

(Fax)

(E-mail)

### EMPLOYEES TO BE GIVEN ACCESS TO INFORMATION

Following are the names and titles of all employees to whom I intend to give confidential access to the information disclosed under the terms and conditions of this Declaration and Undertaking. Each employee will sign a Declaration and Undertaking and will be bound individually by the terms and conditions of that Declaration and Undertaking, if confidential access is granted.

**Name**

**Title**


## Appendix B

### DECLARATION AND UNDERTAKING OF STAFF MEMBERS OF EXTERNAL COUNSEL OR EXPERTS

In the file: \_\_\_\_\_  
(name of the proceeding)

I, \_\_\_\_\_, as an employee of  
(print name)

counsel of record ☐  
\_\_\_\_\_  
(print name)

-or-

an expert ☐  
\_\_\_\_\_  
(print name)

for \_\_\_\_\_  
(print the name of the party to the proceeding)

#### DECLARATION

I hereby declare that

- (a) I have read and understand the Practice Direction on the Provision of Confidential Access to Confidential Information issued by the Canadian Radio-television and Telecommunications Commission (hereinafter "CRTC") and all notices and rulings of the CRTC that relate to this proceeding;
- (b) I am not a director or employee of a party to the proceeding for which I act or of any other person known by me to be a party in the proceeding;
- (c) I understand that this Declaration and Undertaking applies to all information that I receive in this proceeding and that has been filed in confidence and that has not required to be put on the public record by the CRTC and to all documents that contain or refer to that confidential information;
- (d) I understand that execution of and compliance with this Declaration and Undertaking is a condition of a ruling of the CRTC, and that the CRTC may apply to the Federal Court of Canada or to a superior court of a province to enforce it.

## UNDERTAKING

I hereby undertake

- (a) to use the information disclosed under the conditions of this Undertaking exclusively for duties performed in respect of the subject proceeding;
- (b) not to divulge information disclosed under the conditions of this Undertaking except to a person granted access by the CRTC to such information or to the CRTC;
- (c) not to reproduce, in any manner, information disclosed under the conditions of this Undertaking without prior written approval by the CRTC;
- (d) to keep confidential and to protect the information disclosed under the conditions of this Undertaking in the following manner, namely,
  - (i) I will keep in my office or under my control, at all times, the complete set of documents made available to me under the conditions of this Undertaking, and
  - (ii) I will store all documents and materials containing information disclosed under the conditions of this Undertaking in a locked vault, safe or other secure storage device when the documents and materials are not being used;
- (e) to return to the Supplying Party all documents and materials containing information disclosed under the conditions of this Undertaking, including notes, charts, memoranda, submissions and transcripts based on such information, or to destroy such documents and materials and to file with the CRTC Secretary General and the Supplying Party a Certificate of Destruction pertaining to the destroyed documents and materials within ten business days after the close of record of the proceeding;
- (f) if the party that Counsel represents, and for which I am an employee, removes Counsel in the proceeding, or I, as an employee am removed, within seven business days,
  - (i) to return to the Supplying Party all documents and materials containing information disclosed under the conditions of this Undertaking, including notes, charts, memoranda, submissions and transcripts based on such information, or
  - (ii) to destroy such documents and materials and to file with the CRTC Secretary General and the Supplying Party a Certificate of Destruction pertaining to such destroyed documents and materials;
- (g) if the party no longer retains the Expert for which I am an employee in the proceeding, or I, as an employee am removed, within seven business days,
  - (i) to return to the Supplying Party all documents and materials containing information disclosed under the conditions of this Undertaking, including notes, charts, memoranda, submissions and transcripts based on such information, or
  - (ii) to destroy such documents and materials and to file with the CRTC Secretary General and the Supplying Party a Certificate of Destruction pertaining to such destroyed documents and materials;
- (h) to report promptly to the CRTC any violation of a Declaration and Undertaking; and
- (i) to inform the CRTC immediately of any changes in the facts referred to in this Undertaking.

SWORN (OR AFFIRMED) BEFORE ME

at the City of )

in the Province of )

this day of , 20 )

(Signature)

Name (Print)

A Commissioner for Taking Affidavits )

in the Province of )

(Address)

[print name of commissioner]

(Telephone)

(Fax)

(E-mail)

## APPENDIX C

### NOTICE OF REMOVAL OF COUNSEL, EXPERT OR STAFF MEMBER

In the file: \_\_\_\_\_  
(name of the proceeding)

Notice is hereby given that \_\_\_\_\_  
(name of person)  
has been removed from the above referenced proceeding.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_  
20\_\_.

Signature:

Name (*Print*):

Address:

Telephone:

Fax:

E-mail:



## Appendix D

### DECLARATION AND UNDERTAKING OF A COURT REPORTER, TRANSLATOR OR INTERPRETOR

In the file: \_\_\_\_\_  
(name of the proceeding)

I, \_\_\_\_\_, in my capacity as a  
Name (please print)

Court reporter,  
translator or  
interpreter


#### DECLARATION

I hereby declare that

- (a) I have read and understand the Practice Direction on the Provision of Confidential Access to Confidential Information issued by the Canadian Radio-television and Telecommunications Commission (hereinafter "CRTC") and all notices and rulings of the CRTC that relate to this proceeding;
- (b) I am not a director or employee of any party to the proceeding or of any other person known by me to be a party in the proceeding;
- (c) I understand that this Declaration and Undertaking applies to all information that I receive in the *in camera* portion of a hearing and that has been filed in confidence and that has not been required to be put on the public record by the CRTC and to all documents that contain or refer to that confidential information;
- (d) I understand that execution of and compliance with this Declaration and Undertaking is a condition of a ruling of the CRTC, and that the CRTC may apply to the Federal Court of Canada or to a superior court of a province to enforce it.

#### UNDERTAKING

I hereby undertake

- (a) to use the information disclosed under the conditions of this Undertaking exclusively for duties performed in respect of the subject proceeding;
- (b) not to divulge information disclosed under the conditions of this Undertaking except to a person granted access by the CRTC to such information or to the CRTC;
- (c) not to reproduce, in any manner, information disclosed under the conditions of this Undertaking without prior written approval by the CRTC;
- (d) to keep confidential and to protect the information disclosed under the conditions of this Undertaking in the following manner, namely,
  - (i) I will keep in my office or under my control, at all times, the complete set of documents made available to me under the conditions of this Undertaking, and

- (ii) I will store all documents and materials containing information disclosed under the conditions of this Undertaking in a locked vault, safe or other secure storage device when the documents and materials are not being used;
- (e) to return to the CRTC Secretary General all documents and materials containing information disclosed under the conditions of this Undertaking, including notes, charts, memoranda, submissions and transcripts based on such information, or to destroy such documents and materials and to file with the CRTC Secretary General a Certificate of Destruction pertaining to the destroyed documents and materials within ten business days of ceasing to hold my position of court reporter, translator or interpreter, if I cease to hold such position before completion of the subject proceeding, whichever is earlier;
- (f) to report promptly to the CRTC any violation of a Declaration and Undertaking; and
- (g) to inform the CRTC immediately of any changes in the facts referred to in this Undertaking.

SWORN (OR AFFIRMED) BEFORE ME

at the City of \_\_\_\_\_ )  
in the Province of \_\_\_\_\_ )  
this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_ )

\_\_\_\_\_)  
A Commissioner for Taking Affidavits )  
in the Province of \_\_\_\_\_ )  
\_\_\_\_\_)  
[print name of commissioner]

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Telephone)

\_\_\_\_\_  
(Fax)

\_\_\_\_\_  
(E-mail)

# Appendix E

## CERTIFICATE OF DESTRUCTION

I hereby declare that I have destroyed all protected documents and materials in respect of the following proceeding:

---

SWORN (OR AFFIRMED) BEFORE ME

at the City of )

in the Province of )

this day of , 20 )

(Signature)

Name (Print)

A Commissioner for Taking Affidavits )

in the Province of )

(Address)

[print name of commissioner]

(Telephone)

(Fax)

(E-mail)

Once completed, send to:

Secretary General

CRTC

Ottawa, Ontario

K1A 0N2

Fax: 819- 994-0218

Or electronically through the CRTC Web Site [www.crtc.gc.ca](http://www.crtc.gc.ca)