CRTC chair Ian Scott set to leave behind a deeply divided telecom industry

Consumer advocates say a lack of action by the CRTC during Ian Scott's term allowed incumbents to set the agenda

*Irene Galea*

Ian Scott says he never really considers the legacy he will leave after departing as leader of Canada's telecom regulator. Soon, the industry will do it for him.

Mr. Scott is almost certainly entering the final weeks of his five-year term as the chairman of the Canadian Radio-television and Telecommunications Commission - the chief watchdog for the broadcasting and telecom industries.

According to the commission, Mr. Scott's term will end Jan. 4, 2023, but a new chair has yet to be announced. His initial term was already extended four months.

As with each chair before him, Mr. Scott was faced with numerous competing demands: calls for greater competition; investment in physical networks; and support for smaller and regional telecos fighting the industry incumbents for market share. All this against the backdrop of the global pandemic and pleas by consumers for lower bills.

Mr. Scott is leaving an industry deeply divided over the decisions made by the CRTC while he was in charge.

His term has centred on the state of competition in the telecommunications industry, at a time when new technologies are rapidly evolving and big players are seeking to amalgamate. Still, Canada lacks a collective position on the best way to regulate the way incumbents and independent telecommunications companies should co-exist, many industry people say.

Mr. Scott faced early criticism when he took up the role in 2017, as some observers said his prior experience working as a lobbyist for Telus Communications Inc. would colour his decision-making.

It's a perception he has fought ever since. Consumer advocates say a lack of action by the CRTC during his term allowed incumbents to set the agenda. "I think it's been disastrous for public confidence at the CRTC at the very time that the government wants to hand over even greater power to the regulator," said Michael Geist, the Canada research chair in internet and e-commerce law at the University of Ottawa.

Mr. Scott himself calls this criticism a mischaracterization, saying his commission's approach has been to consider all the evidence before the CRTC with an unbiased and thorough eye.

"Whatever decisions you make, there are always winners and losers," he said. "Death and taxes are unavoidable. Maybe so is criticizing the regulator."

Born in Montreal, Mr. Scott graduated with a degree in political science from McGill University in 1980. He took his first job with the government, joining the Competition Bureau and then moving to the CRTC, where he helped develop a framework for long-distance telephone service competition in Canada.

He then shifted to the private sector, spending time at Call-Net Enterprises, a company competing for long-distance-call customers, at Telesat as the executive director of government and regula-
tory affairs and as vice-president of government relations at Telus.

By his own admission, Ian Scott is not one for the spotlight. "I'm actually relatively reserved, and don't like a lot of public attention, despite the fact that I'm in a very public role," he said. He frequently notes that he is just one of nine commissioners, making decisions based on the advice of hundreds of expert staff.

Mr. Scott's personality has often been compared with his predecessor, Jean-Pierre Blais. The former chair was seen as divisive and theatrical, known for his public clashes with top executives and as a defender of the consumers. In his second week on the job, Mr. Scott set the tone: He didn't want to be "pro-consumer," like Blais, nor "industry shill." Instead, he wanted to be known as "pro-public interest."

Mr. Scott's commission has moved on a number of telecom issues. He oversaw the rollout of the Broadband Fund, which to date has invested $225-million to improve internet infrastructure in rural and remote Indigenous communities. (Mr. Scott recently announced a coming third call for Broadband Fund applicants.)

The agency also created the Internet Code, a mandatory code of conduct for providers of retail fixed internet-access services; launched the 9-8-8 crisis line, a mental health and suicide-prevention service; investigated misleading or aggressive sales practices; and required that carriers implement anti-spam call technology.

Yet Mr. Scott's tenure has been haunted by an encounter with Mirko Bibic, then-chief operating officer of Bell Canada, (and now chief executive of parent BCE Inc.) at an Ottawa pub in 2019. Critics blasted Mr. Scott for the optics of the industry's top regulator having drinks with an executive of one of the country's biggest telecom companies. The federal Ethics Commissioner has since found that Mr. Scott did not breach the Conflict of Interest Act.

The term also featured two contentious decisions concerning business dealings between independents and incumbents.

In its 2021 wholesale broadband ruling, the CRTC reversed a 2019 decision that reduced fees the big telecoms would be able to charge smaller internet service providers for access to their broadband networks. It said that the previous rates included a series of errors and that it would be "irresponsible" to implement them. Independents said the reversal was unduly biased in favour of the incumbents, and has resulted in a series of acquisitions by large incumbents.

Mr. Scott recently acknowledged that the marketplace has evolved since the framework was developed in a way that "wasn't fully anticipated," and that the CRTC was continuing to work on and "fix it."

In its decision on mobile virtual network operators (MVNOs), the CRTC required the incumbents to share their networks with regional players who owned their own spectrum and network infrastructure, and would then have seven years to build their own facilities. Responses varied: While MVNOs unsuccessfully appealed the decision, incumbents expressed concerns that the seven-year sunset clause could be extended indefinitely.

These arguments stem from a long-running debate in Canada over whether operators should be required to build their own infrastructure. The topic is currently being disputed before the Competition Tribunal as part of the hearings assessing Rogers Communication Inc.'s $26-billion takeover of Shaw Communications Inc.

Mark Goldberg, a telecommunications consultant, said that Mr. Scott's approach should not have come as a surprise.

"He's been consistent with his favouring of facilities-based competition for the 30 or more years that I've known him," Mr. Goldberg said. "I don't think the government's role is to defend competitors. It's to defend competition and ensure a competitive marketplace, not protect any particular business model."

When asked if he would in hindsight have done anything differently during his term, Mr. Scott doesn't hesitate.

"No. We believe they're the best decisions, based on those records," Mr. Scott said. "I've taken the high road with respect to public commentary. I don't bite, I don't debate and I don't engage in petty arguments."

His only regret, he said, is that he didn't roll out some programs faster.

On this point, insiders from incumbents, regional and independent companies agreed: The speed of the commission's decision-making has been frustrating and damaging to business.

"The fact is that the CRTC, in the last five years, has drifted along completely rudderless," said John Lawford, executive director of Canada's Public Interest Advocacy Centre.
Ottawa also agrees: in a draft policy directive issued in May, Innovation, Science and Economic Development Canada instructed the CRTC to make decisions and activities more clear, timely and effective, as well as increase competition.

Speeding up the commission's process will fall to the next chair. In addition to the CRTC's existing open files on telecom and broadcasting, it will face a rapidly expanding mandate on subsidizing newsmakers, regulating streaming platforms and overseeing social-media content.

That will only add to the difficulty of running the CRTC.

"It's one of the hardest jobs in Ottawa," said Mr. Lawford. "I wouldn't wish that job on anyone."

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