Federal Court of Appeal Cour d'appel fédérale

Date: 20250528

Docket: A-271-24

Citation: 2025 FCA 104

2025 FCA 104 (CanLII)

CORAM: **BOIVIN J.A.**
LOCKE J.A.
PAMEL J.A.

BETWEEN:

ROGERS COMMUNICATIONS CANADA INC.

Appellant

and

QUÉBECOR MÉDIA INC.

Respondent

Heard at Ottawa, Ontario, on May 28, 2025.
Judgment delivered from the Bench at Ottawa, Ontario, on May 28, 2025.

REASONS FOR JUDGMENT OF THE COURT BY: LOCKE J.A.

Federal Court of Appeal

Cour d'appel fédérale

Date: 20250528

Docket: A-271-24

Citation: 2025 FCA 104

2025 FCA 104 (CanLII)

CORAM: **BOIVIN J.A.**
LOCKE J.A.
PAMEL J.A.

BETWEEN:

ROGERS COMMUNICATIONS CANADA INC.

Appellant

and

QUÉBECOR MÉDIA INC.

Respondent

REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on May 28, 2025).

LOCKE J.A.

[1] The appellant, Rogers Communications Canada Inc. (Rogers), appeals a decision of the Canadian Radio-television and Telecommunications Commission (CRTC) concerning a final offer arbitration (FOA). In the decision in issue (Telecom Decision CRTC 2023-217, the Decision), the CRTC selected the offer of the respondent, Québecor Média Inc. (Québecor). The

FOA concerned access rates for Québecor as a wholesale mobile virtual network operator and required the CRTC to choose between the parties' respective proposals.

[2] Pursuant to subsection 64(1) of the *Telecommunications Act*, S.C. 1993, c. 38 (the Act), this appeal is limited to questions of law or of jurisdiction. Rogers argues that the CRTC erred (i) by depriving Rogers of procedural fairness, and (ii) by failing to respect the requirement of subsection 27(1) of the Act that "[e]very rate charged by a Canadian carrier for a telecommunications service shall be just and reasonable" (emphasis added).

[3] Rogers argues its right to procedural fairness was breached in three respects.

[4] First, Rogers points to "adjustments" made by the CRTC in its analysis without providing details and giving Rogers an opportunity to make submissions thereon. We see no breach of procedural fairness here. Though the CRTC referred to "adjustments" to Rogers' cost inputs, they were cited simply as one factor among others to explain the CRTC's choice to side with Québecor's submission on the FOA. The CRTC did not adopt an unexpected methodology. Rogers was not denied the right to know the case it had to meet and to make submissions in that regard. Rogers was able to make its submissions, which the CRTC considered. The CRTC was simply unconvinced. Further, we are not persuaded that the CRTC's reasons for selecting Québecor's proposal over that of Rogers were insufficient.

[5] Second, Rogers cites the CRTC's refusal to permit disclosure of certain of Québecor's confidential information for Rogers' counsel and experts' eyes to permit additional submissions

2025 FCA 104 (CanLII)

thereon. The CRTC, which has been granted broad discretion in these matters, justified its refusal on the basis that (i) Rogers' expectation that the disclosure would not delay the conduct of the proceeding was unrealistic, (ii) Rogers' request for disclosure did not engage with the applicable confidentiality/disclosure regime, and (iii) the lack of disclosure did not impede Rogers' knowledge of the case it had to meet or its ability to meaningfully respond. We see no breach of procedural fairness here. The CRTC's concerns about delay arose from a factual conclusion that was open to it. Moreover, both sides agreed to the FOA process and thereby agreed that the confidentiality/disclosure regime applicable thereto was fair. That regime contemplated that the parties would submit documents to the CRTC that could have some information redacted from view by the opposite party. Rogers effectively argues before this Court that the CRTC was obliged to make an exception to the confidentiality/disclosure regime. We are not convinced that Rogers' position is justified in the present circumstances.

[6] Third, Rogers argues that it was unfair for the CRTC to refuse to order production by Québecor of an allegedly relevant document that it had previously filed on a confidential basis with the Competition Tribunal. Here, the CRTC noted that its practice does not generally provide parties a right to seek discovery and Rogers had not argued for an exception to this general practice. The CRTC was also concerned about delay that could result from production of the document. Again, we see no breach of procedural fairness here.

[7] Turning now to the issue of whether the Decision respected the requirement that the rates be just and reasonable, we note first that, in the present appeal, this Court will not review factual conclusions by the CRTC: *Teksavvy Solutions Inc. v. Bell Canada*, 2024 FCA 121, [2024] F.C.J.

2025 FCA 104 (CanLII)

No. 1382 at para. 12. To be successful, Rogers must establish an error of law. Its argument in that regard is that the CRTC erred in law in stating at paragraph 15 of the Decision that:

> …just and reasonable rates can (i) include rates that may not provide an immediate-term return on investment, or (ii) require an otherwise profitable enterprise to incur a modest or temporary loss in one line of business while other lines remain profitable.

[8] But the Supreme Court of Canada's decision in *Ontario (Energy Board) v. Ontario Power Generation Inc.*, 2015 SCC 44, [2015] 3 S.C.R. 147, cited by Rogers at paragraph 74 of its memorandum of fact and law, focuses on a fair return on capital over the long run (see paragraph 16 thereof). Rogers' arguments on this issue focus on its ability to earn a return on capital over the short term, and do not address the CRTC's apparent view that its Decision permitted Rogers a fair return over the long term. We see no legal error in the context of this case.

[9] Moreover, even if the CRTC's analysis of short-term consequences was lacking, it does not appear that this Court's intervention would be warranted. Indeed, paragraph 49 of the Decision indicates that the CRTC was not convinced by Rogers' evidence that it would be unable to recover its costs.

[10] For the foregoing reasons, we will dismiss this appeal with costs.

"George R. Locke"

J.A.

2025 FCA 104 (CanLII)

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-271-24
STYLE OF CAUSE:	ROGERS COMMUNICATIONS CANADA INC. v. QUÉBECOR MÉDIA INC.
PLACE OF HEARING:	Ottawa, Ontario
DATE OF HEARING:	MAY 28, 2025
REASONS FOR JUDGMENT OF THE COURT BY:	BOIVIN J.A. LOCKE J.A. PAMEL J.A.
DELIVERED FROM THE BENCH BY:	LOCKE J.A.

APPEARANCES:

Crawford G. Smith John Carlo Mastrangelo	FOR THE APPELLANT
Cara Cameron Marie-Pier Cloutier	FOR THE RESPONDENT
Joshua Bouzaglou	FOR THE RESPONDENT BY VIDEOCONFERENCE

SOLICITORS OF RECORD:

Lax O'Sullivan Lisus Gottlieb LLP Toronto	FOR THE APPELLANT
Woods S.E.N.C.R.L. Montréal	FOR THE RESPONDENT

2025 FCA 104 (CanLII)