Federal Court of Appeal | Cour d'appel fédérale

Date: 20260305

Dockets: A-113-25 (Lead File)
A-119-25

Citation: 2026 FCA 49

CORAM: **WEBB J.A.**
HECKMAN J.A.
BIRINGER J.A.

BETWEEN:

ROGERS COMMUNICATIONS INC. and
ROGERS COMMUNICATIONS CANADA INC.

Appellants

and

CORUS ENTERTAINMENT INC.

Respondent

Heard at Toronto, Ontario, on September 23, 2025.

Judgment delivered at Ottawa, Ontario, on March 5, 2026.

REASONS FOR JUDGMENT BY: WEBB J.A.

CONCURRED IN BY: HECKMAN J.A.
BIRINGER J.A.

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REASONS FOR JUDGMENT

WEBB J.A.

[1] Rogers Communications Inc. and Rogers Communications Canada Inc. (collectively Rogers) and Corus Entertainment Inc. (Corus) have been in a dispute since 2023 concerning Rogers' carriage of certain channels offered by Corus. The Canadian Radio-television and Telecommunications Commission (CRTC) issued two decisions related to this dispute.

[2] In the first decision, dated November 18, 2024 (the First Decision), the CRTC found that Rogers could not repackage the channel Slice by removing it from various packages offered by Rogers and offering it as a standalone service. The CRTC found that repackaging Slice, as proposed by Rogers, would contravene section 15.01 of the *Broadcasting Distribution Regulations*, SOR/97-555 (the standstill rule).

[3] In response to this decision, Rogers asked the CRTC to confirm that the standstill rule did not apply to Slice, Food Network Canada (to be rebranded Flavour Network) and HGTV Canada (to be rebranded Home Network) as of December 31, 2024, as Rogers Media Inc. (RMI) had acquired the majority of the Bravo content that Slice was using and also "the vast majority of HGTV and Food Network brands and content". Rogers argued that the content of Slice, Home Network and Flavour Network had therefore materially changed.

[4] In the second CRTC decision, dated November 29, 2024 (the Second Decision), the CRTC confirmed that Rogers was required to continue to distribute "Slice, Home Network and Flavour Network at the same rates and on the same terms and conditions as before the dispute, including packaging and channel placement".

[5] Rogers filed two appeals — one for each decision. The appeals were consolidated by the Order of this Court dated April 7, 2025, with A-113-25 being designated as the lead appeal. The original of these reasons will be placed in that file and a copy will be placed in A-119-25.

[6] For the reasons that follow, I would dismiss these appeals.

I. Background and Decisions of the CRTC

[7] Corus owns and operates a number of specialty television channels. In these appeals, the focus is on three of these channels: Slice, Flavour Network (formerly Food Network Canada), and Home Network (formerly HGTV Canada). Rogers distributes these channels pursuant to two affiliation agreements — one for central and eastern Canada and the other for western Canada (which Rogers assumed as part of its acquisition of Shaw Communications Inc.). Nothing in these appeals turns on any distinction between the two agreements. Both agreements were last amended in August 2023. In its memorandum, at paragraph 28, Rogers stated that "[o]n June 28, 2024, Rogers exercised its right to terminate the Rogers East and West Agreements on six months' notice, such that both agreements terminated at the end of 2024".

[8] By notice to the CRTC dated March 9, 2023, Corus advised the CRTC that Rogers and Corus were in a dispute with respect to Rogers' carriage and terms of carriage of Corus' discretionary channels. In an email dated September 8, 2023, Corus updated the CRTC to confirm that, although an agreement had recently been executed between the parties, Rogers had notified the CRTC that the agreement would expire in 120 days. As a result, Corus submitted that the parties were still in a dispute and Corus requested mediation. The CRTC, in a letter dated August 5, 2024, confirmed that the dispute between Rogers and Corus concerning the distribution of the channels offered by Corus arose in 2023 and that the standstill rule applied as of September 8, 2023.

[9] The standstill rule applicable to a broadcasting distribution undertaking (Rogers in these appeals) is set out in section 15.01 of the *Broadcasting Distribution Regulations*:

(1) During any dispute between a licensee and a person licensed to carry on a programming undertaking or the operator of an exempt programming undertaking concerning the carriage or terms of carriage of programming services or concerning any right or obligation under the Act, the licensee shall continue to distribute those programming services at the same rates and on the same terms and conditions as it did before the dispute.	(1) En cas de différend entre le titulaire et une personne autorisée à exploiter une entreprise de programmation ou l'exploitant d'une entreprise de programmation exemptée au sujet de la fourniture ou des modalités de fourniture des services de programmation ou au sujet de tout droit ou de toute obligation prévus par la Loi, le titulaire est tenu de continuer la distribution de ces services de programmation aux mêmes tarifs et selon les modalités qui s'appliquaient aux parties avant le différend.
(2) For the purposes of subsection (1), a dispute exists from the moment that written notice of the dispute is provided to the Commission and served on the other undertaking that is party to the dispute and ends when an agreement settling the dispute is reached by the concerned undertakings or, if no such agreement is reached, when the Commission renders a decision concerning any unresolved matter.	(2) Pour l'application du paragraphe (1), il existe un différend lorsqu'un avis écrit en faisant état est déposé auprès du Conseil et signifié à l'autre entreprise en cause. Le différend prend fin dès que les entreprises en cause parviennent à un accord ou, à défaut, dès que le Conseil rend une décision concernant toute question non résolue.

[10] Section 15 of the *Discretionary Services Regulations*, SOR/2017-159, is a substantially similar standstill rule that is applicable to programming undertakings (Corus in these appeals):

15 (1) During a dispute between a licensee and a person that is licensed to carry on a distribution undertaking or the operator of an exempt distribution undertaking concerning	15 (1) En cas de différend entre le titulaire et une personne autorisée à exploiter une entreprise de distribution ou l'exploitant d'une entreprise de distribution exemptée concernant la

the carriage or terms of carriage of programming that originates from the licensee or concerning any right or obligation under the Act, the licensee must continue to provide its programming services to the distribution undertaking at the same rates and on the same terms and conditions as it did before the dispute.	fourniture ou des modalités de fourniture de la programmation transmise par le titulaire ou concernant tout droit ou toute obligation prévus par la Loi, le titulaire continue à fournir ses services de programmation à l'entreprise de distribution aux mêmes tarifs et selon les modalités qui s'appliquaient aux parties avant le différend.
(2) For the purposes of subsection (1), a dispute begins when written notice of the dispute is provided to the Commission and is served on the other undertaking that is a party to the dispute and ends when an agreement settling the dispute is reached by the concerned undertakings or, if no such agreement is reached, when the Commission renders a decision concerning any unresolved matter.	(2) Pour l'application du paragraphe (1), le différend débute lorsqu'un avis écrit en faisant état est déposé auprès du Conseil et signifié à l'autre entreprise en cause. Le différend prend fin dès que les entreprises en cause parviennent à un accord ou, à défaut, dès que le Conseil rend une décision concernant toute question non résolue.

[11] Rogers does not challenge the finding by the CRTC that the dispute between Rogers and Corus arose sometime prior to September 8, 2023 and that the applicable date for the application of the standstill rule is September 8, 2023. Neither party submitted that the time period for the application of the standstill rule has ended. There is no agreement between the parties settling the dispute and neither party indicated that the CRTC has rendered a decision concerning the unresolved matters between the parties.

[12] The First Decision concerned Rogers' proposal to repackage Slice by removing it from the preassembled packages offered by Rogers and offering it as a standalone service. The CRTC found that the standstill rule applied, and therefore, "Rogers cannot repackage Slice at this time

without contravening the standstill rule and its regulatory obligations". The following paragraph sets out the CRTC's reasoning:

> The Commission is of the view that Rogers' interpretation of the rule is overly restrictive. The phrase "terms and conditions" as used in the rule should be interpreted broadly, and should include conditions such as those relating to the carriage, packaging and sale of programming services. The mere fact that the standstill rule does not explicitly mention the term "packaging" or its synonyms such as "combination" or "package" cannot be construed as an exclusion. The intention behind the standstill rule is to temporarily freeze a situation in which a service finds itself until such time as the parties can resolve the underlying dispute or the Commission renders a decision. This is so that parties cannot leverage such changes to unfairly influence the negotiations.

[13] Rogers then submitted a letter (dated November 22, 2024) to the CRTC in response to the First Decision requesting that the CRTC render a decision confirming that Slice, Home Network, and Flavour Network are not subject to the standstill rule as of December 31, 2024. In this letter, Rogers submitted that "Slice lost the majority of the Bravo content that has defined the channel's programming lineup and value proposition". That content was acquired by RMI.

[14] Rogers submitted that "[a]s a result, the Slice channel today is a very different service from what it was when the standstill was imposed on September 8, 2023. On the Commission's interpretation of the standstill, Corus is in breach of its regulatory obligations - far from 'freezing' the Slice service, it has materially changed that service since the standstill arose".

[15] Rogers also made similar arguments with respect to Home Network and Flavour Network as a result of these channels losing their content to RMI.

[16] Corus submitted a reply (dated November 26, 2024) setting out its position on why Slice, Home Network and Flavour Network are not and will not be new or materially different services. Rogers responded on November 29, 2024 (the same date as the Second Decision) reiterating that there has been a material change to Slice and there will be material changes to HGTV (Home Network) and Food Network (Flavour Network).

[17] In the Second Decision, the CRTC noted that:

> Rogers also argued that Slice is now a different service from what it was when the standstill was invoked, and that Flavour Network and Home Network are new services. Corus responded that these services continue to operate in the same genre and much of their programming remains unchanged.

[18] The CRTC found that:

> The Commission notes that the services will continue to operate under the same discretionary service licences and will still offer programming under the same theme/genre. While several programs offered by these services will change, the overall focus of the services will remain the same. Further, there is no limitation in the licences or in the policy framework that prevents a service from changing its programming offering.
>
> Furthermore, in Broadcasting Decision 2022-76, in which the Commission approved Rogers' acquisition of Shaw Communications Inc., the Commission included an expectation that Rogers is to treat independent undertakings fairly and to avoid dropping channels, imposing punitive or retaliatory measures, imposing unreasonable rates, significantly changing packaging or otherwise materially reducing wholesale payments. In the same decision, the Commission, while recognizing that BDUs routinely make packaging changes to adapt and improve their offerings to customers, also encouraged BDUs to minimize packaging changes until the Commission can complete a review of its policy framework supporting independent programming services and stations.

[19] The CRTC also noted that "the standstill is not permanent, and that it can be lifted once the outstanding matters are resolved".

[20] The CRTC concluded that:

> In light of the above, the Commission confirms that Rogers must continue to distribute the services Slice, Home Network and Flavour Network at the same rates and on the same terms and conditions as before the dispute, including packaging and channel placement.

II. Issues and Standard of Review

[21] The appeals are brought under the *Broadcasting Act*, S.C. 1991, c. 11. Subsection 31(2) of that Act provides for an appeal from a decision of the CRTC on a question of law or jurisdiction, if leave to appeal is granted. Leave to appeal the two decisions of the CRTC was granted by the Order of this Court dated March 4, 2025. There is no appeal on a question of fact (or mixed fact and law, absent an extricable question of law) under the *Broadcasting Act*.

[22] In these appeals, Rogers submits that the question of law is the interpretation of the standstill rule applicable to Rogers and indirectly the standstill rule applicable to Corus. For the First Decision, the issue is whether the standstill rule would override Rogers' contractual right to repackage Slice. For the Second Decision, the issue is whether the CRTC erred in applying the standstill rule to find that "Rogers must continue to distribute the services Slice, Home Network and Flavour Network at the same rates and on the same terms and conditions as before the dispute, including packaging and channel placement". The analysis in relation to the Second

Decision will also focus on the extent to which the appeal in relation to this decision raises a question of fact (or mixed fact and law) or a question of law.

[23] As these are appeals from a decision of the CRTC, the standard of review for a question of law is correctness (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at paragraph 37).

III. Analysis

[24] The analysis will first focus on the First Decision of the CRTC concerning the repackaging of the Slice channel. This reflects the main focus of Rogers' oral arguments at the hearing of these appeals. The analysis will then address the Second Decision.

A. *First Decision*

[25] As noted above, the First Decision related to Rogers' proposed repackaging of the Slice channel. The issue concerning whether Rogers could, in accordance with the terms of its applicable agreement with Corus, drop one of Corus' channels from its packages was the subject of an application by Corus before the Ontario Superior Court of Justice for a declaration that Rogers could not remove this channel from its television packages. Although the name of the channel was not identified in the reasons, there is no dispute that it was Slice.

[26] The Ontario Superior Court of Justice (*per* Penny J. (2024 ONSC 6126)) reviewed the agreement between Rogers and Corus for eastern Canada and concluded, at paragraph 42, that:

> …Rogers's right, at its sole option, to freely create retail product packages confers a broad right to package Corus's channels as Rogers sees fit. The removal of the Channel from Rogers' television packages falls within the rights conferred on Rogers in section 3(a) of the eastern Canada agreement, subject to the second proviso in section 3(a). It is common ground, however, that to the extent the Channel was included in any Rogers television package in 2018, it will continue to be so until the expiry of the agreement.

[27] As a result, Corus' application for a declaration that Rogers did not have the right to remove Slice from existing Rogers' television packages was dismissed. Penny J. noted in paragraph 11 that:

> Rogers has declared that both agreements will come to an end at the end of this year. What happens during the transitional period while Corus and Rogers renegotiate these agreements is governed by CRTC rules and regulations. The question of what terms and conditions obtain when the agreements expire is specifically before the CRTC in applications brought by Corus and Rogers to address this very question. The Corus application to determine the scope of a regulatory "standstill" has been argued but the CRTC has not yet rendered a decision.

[28] Penny J. also acknowledged in paragraph 51 that:

> [t]he issue of the applicability and scope of the regulatory standstill is squarely before the CRTC.

[29] The Ontario Superior Court of Justice found that Rogers had the contractual right to repackage based on the wording of the particular contract for eastern Canada. The scope or application of the standstill rule, that is the subject of these appeals, was not addressed by the

Ontario Superior Court of Justice and therefore the decision rendered by that Court is not relevant in relation to the interpretation of the standstill rule in the *Broadcasting Distribution Regulations*. Whether the agreements granted Rogers the right to repackage Slice is not before us. Rather, the issue that is before us in these appeals is, even though Rogers (as found by the Ontario Superior Court of Justice) has the contractual right under the agreement for eastern Canada to repackage Slice, does the standstill rule apply to prevent Rogers from repackaging Slice?

[30] Neither party, in these appeals, disputes the commencement date for the application of the standstill rule or that their dispute has not been resolved. The issue is the interpretation of the standstill rule. Rogers' argument is that the standstill rule should be interpreted as providing that the contract between Rogers and Corus would continue with whatever rights and obligations existed under the contract immediately before the dispute arose. In Rogers' view, if it had a right under the contract to change a term or condition related to the distribution of the programming services of Corus (including the packaging of Slice), the standstill rule would not prevent Rogers from implementing such change in the term or condition.

[31] As support for the proposition that the standstill rule means that the contract continues with all of its terms and conditions, Rogers cites the decision of this Court in *TVA Group Inc. v. Bell Canada*, 2021 FCA 153 (*TVA Group*).

[32] In *TVA Group*, TVA Group Inc. and Quebecor Media Inc. (TVA) withdrew the signal of the TVA Sports channel from subscribers of Bell Canada, Bell ExpressVu Limited Partnership

and Bell Canada Enterprises (Bell), at the start of the television broadcast of the first game of the National Hockey League playoffs in 2019. The CRTC rendered two decisions. The CRTC found that Bell and TVA were in a dispute and that "TVA had contravened section 15 of the *Discretionary Services Regulations* by withholding its signal of the TVA Sports channel from distribution by Bell". The CRTC ordered TVA to continue to provide its programming service to Bell until the dispute was resolved.

[33] Rogers, in paragraph 69 of its memorandum, refers to two excerpts from this decision. Although Rogers states that the two excerpts are from paragraph 63 of *TVA Group*, only one is from that paragraph and the other is from paragraph 59. While Rogers extracts the two excerpts in isolation, the context in which the two excerpts were written is relevant. It is important to include the entire paragraphs in which the excerpts appear and to also consider these comments in the context of that case. In paragraphs 59 and 63 of *TVA Group*, this Court stated:

> [59] It was on the basis of this finding [that TVA and Bell were engaged in a dispute] that the CRTC applied the standstill rule, requiring TVA and Bell to provide their respective services to one another in accordance with the terms set out in the affiliation agreement that was in place before the dispute arose.
>
> …
>
> [63] The very purpose of the standstill rule is to prevent a programming undertaking bound by an affiliation agreement from withholding its signal in the context of negotiations in which a dispute arises--or to prevent a programming undertaking from simply abandoning the service. This rule allows the CRTC, as part of the mission given to it by Parliament, (i) to maintain the affiliation agreement in question as it existed before the dispute arose, (ii) to maintain a level playing field throughout a negotiation process, and (iii) to ensure that Canadian consumers are not deprived of services during such disputes. In fact, it is only by preserving the status quo with respect to programming and by neutralizing the possibility of an arbitrary withdrawal of service that the CRTC can act to protect the public interest. In other words, to the extent that the standstill rule requires the

> provision of service, its very purpose is to maintain the existing balance and thereby protect that interest. Finally, the standstill rule is not permanent in nature, as TVA submits, because a party may directly ask the CRTC to lift the standstill rule if the dispute at issue is resolved or, in the absence of an agreement, the CRTC may render a decision concerning any unresolved matter (*Discretionary Services Regulations*, subsection 15(2)).

[34] The references to:

(a) the CRTC applying the standstill rule to require TVA and Bell "to provide their respective services to one another in accordance with the terms set out in the affiliation agreement that was in place before the dispute arose" (paragraph 59); and

(b) allowing the CRTC "to maintain the affiliation agreement in question as it existed before the dispute arose" (paragraph 63)

related to a situation where the programming undertaking (TVA) ceased to provide certain programming services to the broadcasting distribution undertaking (Bell) despite having a contractual obligation to provide such services.

[35] The comments of this Court do not support the proposition that the standstill rule should be interpreted as meaning that, following the date of the dispute, a broadcasting distribution undertaking can invoke a provision of the agreement that would allow that undertaking to alter the terms and conditions applicable to the distribution of programming services so long as such changes are contemplated by the agreement.

[36] If, following a dispute, Rogers could invoke any provision of the existing contract, Rogers could invoke a provision that would result in the termination of the contract. Terminating the contract would not maintain the status quo. As this Court noted in *TVA Group*, at paragraph 63, “it is only by preserving the status quo with respect to programming and by neutralizing the possibility of an arbitrary withdrawal of service that the CRTC can act to protect the public interest”.

[37] As well, if the term of the existing contract expires after the dispute arose, the standstill rule would mean that, notwithstanding the expiration of the term of the contract, the broadcasting distribution undertaking is still obligated to distribute the programming services offered by the programming undertaking under that agreement.

[38] In this appeal, Rogers submitted in paragraph 24 of its memorandum that the agreements between Rogers and Corus, “according to their terms”, terminated at the end of 2024. Rogers, however, is continuing to distribute the programming services of Corus “by virtue of the CRTC’s interventions”. While Rogers does not specifically refer to the application of the standstill rule, Rogers does not, in its memorandum, refer to any decision of the CRTC other than the First Decision and the Second Decision that would require Rogers to continue distributing Corus’ programming services. By continuing to distribute the programming services of Corus, Roger is implicitly acknowledging that the standstill rule overrides the termination of the agreements.

[39] Rogers, in support of its argument that the standstill rule should be interpreted as maintaining the existing contract and any rights therein to change any term or condition, referred to three policy statements of the CRTC related to implementing the standstill rule:

1. Broadcasting Regulatory Policy CRTC 2011-415 (dated July 8, 2011) "Review of the regulatory framework relating to vertical integration";

2. Broadcasting Regulatory Policy CRTC 2011-601 (dated September 21, 2011) "Regulatory framework relating to vertical integration"; and

3. Broadcasting Regulatory Policy CRTC 2012-407 (dated July 26, 2012) "Amendments to various regulations – Implementation of the regulatory framework relating to vertical integration".

[40] In the first two policies, the CRTC noted that:

> A broadcasting distribution undertaking that is in negotiations with a programming undertaking with respect to the terms of carriage of programming originated by that programming undertaking should continue to distribute the programming services of that programming undertaking on the same terms and conditions as contained in the last agreement reached between the concerned undertakings.
>
> [at paragraph 1 in the first policy and at paragraph 99 in the second policy]

[41] In the second policy, the CRTC stated in paragraph 104 that:

> In light of the above, the Commission considers that during any dispute between an operator of a programming undertaking (whether licensed or exempt) and the operator of a distribution undertaking (whether licensed or exempt) concerning

> the terms of carriage of programming or any right or obligation under the Act, each licensee or operator shall continue to provide its services or distribute the programming services on the same terms and conditions as it did before the dispute. The rates determined by the Commission or agreed to by the parties prior to the Commission reaching a decision will be applied when the last agreement reached for the distribution of the service expires. The standstill rule will thus prevent a distributor from simply dropping services or a programmer from ceasing to provide its services to a distributor until the Commission has ruled on the dispute.

[42] Paragraph 1 of the first policy and paragraph 99 of the second policy refer to a broadcasting distribution undertaking continuing to distribute programming services "on the same terms and conditions as contained in the last agreement reached between the concerned undertakings". This could suggest, as Rogers argues, that all of the terms and conditions continue unabated. Any change contemplated by the agreement could be implemented after the dispute arose. In paragraph 104 of the second policy, the CRTC states "each licensee or operator shall continue to provide its services or distribute the programming services on the same terms and conditions as it did before the dispute". This could suggest that the terms and conditions are frozen as of the date of the dispute. The broadcasting distribution undertaking would have to continue to distribute the programming services under whatever terms and conditions were in place before the dispute arose. Any changes contemplated or permitted under the agreement could not be made while the dispute is outstanding, unless presumably the changes were minor.

[43] As a result, these policy statements do not provide a clear statement concerning whether the standstill rule will mean that the terms and conditions are frozen or whether the agreement, as it existed prior to the dispute, would continue with any right to implement any change contemplated by the agreement.

[44] However, if the standstill rule simply means that the parties are bound by the contract that they had signed and the provisions of that contract continue unabated, the standstill rule would be rendered meaningless. The parties would be bound by their contract with or without the standstill rule. If the standstill rule only means that a contract that would otherwise expire while a dispute is outstanding is extended until the dispute is resolved, the standstill rule could have simply extended the term of an existing contract until the dispute is resolved.

[45] The third policy statement referenced by Rogers does not assist Rogers. In this policy statement, the CRTC reviewed submissions concerning certain requested revisions to the standstill rule. Rogers highlighted paragraphs 46 and 47 of this policy:

> 46. The IBG [Independent Broadcasting Group] submitted that the wording of the proposed section 15.01 of the *Broadcasting Distribution Regulations* should be expanded to prevent BDUs from making changes to the distribution of any programming services that result in leaving the programming service that initiated the dispute in a more disadvantageous position. In this regard, it submitted that the standstill rule should not be limited, in its application, to the services of the programming undertaking that initiated the dispute with a BDU.
>
> 47. The Commission considers that accepting this proposal would significantly expand the scope of its determination in this regard set out in Broadcasting Regulatory Policy 2011-601. It considers that the modifications proposed by the IBG are not required to address the objectives underpinning the provision under discussion, which are those of ensuring a more level playing field during negotiations between programming undertakings and BDUs, and ensuring that consumers are protected from the loss of service during disputes between such undertakings. Accordingly, the Commission denies the IBG's proposal.

[46] The proposed change that was rejected by the CRTC was to expand the standstill rule so that it would apply to "the distribution of any programming services that result in leaving the programming service that initiated the dispute in a more disadvantageous position." This is not

the issue in these appeals. The application of the standstill rule in these appeals is limited to the distribution of the programming services of Corus that are the subject of the dispute.

[47] The CRTC based its decision concerning Rogers' proposed repackaging of Slice on the standstill rule as set out in subsection 15.01(1) of the *Broadcasting Distribution Regulations*.

[48] As noted by the Supreme Court of Canada in *Amaratunga v. Northwest Atlantic Fisheries Organization*, 2013 SCC 66 (*Amaratunga*), regulations are to be interpreted in accordance with the rules of statutory interpretation and the words of the statute granting the power to make the regulation are relevant:

> [36] Regulations and orders in council must be interpreted in accordance with the modern principle of statutory interpretation: *Contino v. Leonelli-Contino*, 2005 SCC 63, [2005] 3 S.C.R. 217, at para. 19; *Glykis v. Hydro-Québec*, 2004 SCC 60, [2004] 3 S.C.R. 285, at para. 5; R. Sullivan, *Sullivan on the Construction of Statutes* (5th ed. 2008), at p. 368. As Binnie J. explained in *Bristol-Myers Squibb Co. v. Canada (Attorney General)*, 2005 SCC 26, [2005] 1 S.C.R. 533, at para. 38, however, it is necessary, in interpreting a regulation, to consider the words granting the authority to make the regulation in question in addition to the other interpretive factors. In this regard, Binnie J. quoted the following comment by E. A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 247:
>
> > It is not enough to ascertain the meaning of a regulation when read in light of its own object and the facts surrounding its making; it is also necessary to read the words conferring the power in the whole context of the authorizing statute. The intent of the statute transcends and governs the intent of the regulation.

[49] As noted by the Supreme Court in *Telus Communications Inc. v. Federation of Canadian Municipalities*, 2025 SCC 15:

> [30] There is no controversy that, in accordance with the modern approach, the meaning of a statutory provision is determined by reference to its text, context and purpose (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21; *R. v. Basque*, 2023 SCC 18, at para. 63; *Auer v. Auer*, 2024 SCC 36, at para. 64; *Piekut v. Canada (National Revenue)*, 2025 SCC 13, at para. 42).

[50] Therefore, the interpretation of the standstill rule will be determined by analyzing its text, context and purpose and also by examining the governing legislation.

(1) Text

[51] The critical part of the standstill rule as set out in subsection 15.01(1) of the *Broadcasting Distribution Regulations* is the final part of this rule:

> …the licensee [Rogers] shall continue to distribute those programming services at the same rates and on the same terms and conditions as it did before the dispute.

[52] With respect to the text of the standstill rule, the rule provides, in part, that "the licensee shall continue to distribute those programming services at the same rates … as it did before the dispute". Although neither CRTC decision in issue in these appeals relates to the rates, the application of the standstill rule to rates is relevant in considering its application to the other terms and conditions.

[53] Because the broadcasting distribution undertaking is to distribute the programming services at the same rates as it did before the dispute, the rates that would be paid for the distribution of the programming services by a broadcasting distribution undertaking (Rogers) to a

programming undertaking (Corus) would be the same rates as they were before the dispute, notwithstanding any adjustment that could be contemplated by the agreement. This would mean that the rates are frozen during the dispute.

[54] If the rates are to be frozen during the dispute, then likewise the other terms and conditions should also be frozen during the dispute. In the First Decision, the CRTC found that "the phrase 'terms and conditions' as used in the rule should be interpreted broadly and should include conditions such as those relating to the carriage, packaging and sale of programming services". Rogers does not challenge the finding by the CRTC that the packaging and sale of programming services are terms and conditions related to the distribution of Corus' channels. Rather, Rogers challenges whether the requirement in the standstill rule that it is to "continue to distribute those programming services at the same rates and on the same terms and conditions as it did before the dispute" means that it cannot implement its right under the agreements to repackage Slice during the dispute. However, since the rates are to be frozen during the dispute, then the right to repackage channels should also be frozen during the dispute.

(2) Context

[55] The standstill rule is part of the dispute resolution process as set out in the *Broadcasting Distribution Regulations*. The regulations include a provision whereby the CRTC may require the parties to engage in mediation before the CRTC accepts a referral of the matter for dispute resolution (subsection 12(3)) and the parties will be required to participate in mediation following the acceptance of a referral (subsection 12(4)):

(3) The Commission may require the parties to engage in mediation before the Commission accepts a referral of the matter for dispute resolution.	(3) Le Conseil peut exiger que les parties participent à la médiation avant d'accepter que l'affaire lui soit renvoyée pour le règlement de différend.
(4) If the Commission accepts a referral of a matter for dispute resolution, the parties to the dispute are required to participate in a mediation with a person appointed by the Commission.	(4) Si le Conseil accepte que l'affaire lui soit renvoyée en vue du règlement du différend, les parties ont recours à la médiation d'une personne nommée par le Conseil.

[56] If the mediation process does not result in an agreement between the parties, the CRTC may render a decision concerning any unresolved matters:

14 If no agreement is reached by the parties, the person appointed under subsection 12(4) must submit a report to the Commission concerning all unresolved matters within the period established by the Commission.	14 À défaut d'entente entre les parties, la personne nommée en vertu du paragraphe 12(4) doit, dans le délai fixé par le Conseil, lui présenter un rapport sur les points de désaccord qui restent à résoudre.
15 The Commission may, after accepting a referral of a matter for resolution under section 12, render a decision concerning any unresolved matters, including the wholesale rate.	15 Le Conseil peut, après avoir accepté qu'une affaire lui soit renvoyée pour le règlement de différends en vertu de l'article 12, rendre une décision concernant toute question non résolue, y compris le tarif de gros.

[57] These provisions indicate that there is a process set out therein that could result in the dispute being resolved either through the mediation process or, failing that process, by the CRTC. The CRTC, in Broadcasting and Telecom Information Bulletin CRTC 2019-184 (dated May 29, 2019), at paragraphs 55 - 57, notes that if a party contests the appropriateness of a dispute resolution mechanism and the CRTC "declines to intervene in the matter, it will end the

dispute, thus lifting the standstill". Therefore the status quo would not be maintained for an indefinite period of time but only until the dispute is resolved or ended. In this case, it is not clear why the dispute has not yet been resolved through the mediation process or as a result of a final determination by the CRTC.

[58] Changing the packaging of channels not only impacts Rogers and Corus but also the customers of Rogers. Maintaining the status quo is potentially less disruptive for consumers. If a broadcasting distribution undertaking, during a dispute, is allowed to change a term or condition related to the distribution of a programming service (including the packaging of that service), and in resolving the dispute it is ultimately determined that the change should not have been made, this will be disruptive for the customers of the broadcasting distribution undertaking. The possibility of this disruption is avoided by maintaining the status quo and not allowing any changes pending the resolution of this dispute.

[59] Rogers, in paragraph 99 of its memorandum, submits that it has no intention of continuing to carry Slice, Home Network and Flavour Network:

> …The parties are <u>not</u> in "a negotiation process" for the continuation of Slice, Home, and Flavour. No negotiations are taking place at all. Rogers has no interest in carrying these services any longer, given their loss of key branding and output content, and has told Corus as much….
>
> [Emphasis added by Rogers]

[60] While Rogers' position indicates that, in this particular case, there is no possibility that the resolution of the dispute could result in Slice being maintained in existing packages offered

by Rogers, the question before us is the interpretation of the standstill rule. As a question of statutory interpretation, in my view, the potential disruptive impact of allowing a change that, in the course of resolving a dispute, may be found to be one that should not have been made and the parties then revert to the original term or condition, is a relevant factor in determining whether the standstill rule means that the terms and conditions are frozen or that a party could still make changes permitted by the agreement.

(3) Purpose

[61] In *TVA Group*, at paragraph 63, this Court confirmed that the purpose of the standstill rule in the *Discretionary Services Regulations* is to prevent a programming undertaking from withdrawing or abandoning its services during a dispute. This Court also noted that the standstill rule allows the CRTC:

> (i) to maintain the affiliation agreement in question as it existed before the dispute arose,
>
> (ii) to maintain a level playing field throughout a negotiation process, and
>
> (iii) to ensure that Canadian consumers are not deprived of services during such disputes.

[62] The reference to maintaining the affiliation agreement and ensuring that Canadian consumers are not deprived of services during a dispute must be read in the context of that decision. The issue was not whether the terms and conditions of the affiliation agreement were frozen but rather whether one party (TVA) could unilaterally withdraw services (the television

broadcast of the National Hockey League playoffs) contrary to the terms and conditions of the affiliation agreement.

[63] As this Court also noted in *TVA Group*, at paragraph 63:

> In fact, it is only by preserving the status quo with respect to programming and by neutralizing the possibility of an arbitrary withdrawal of service that the CRTC can act to protect the public interest. In other words, to the extent that the standstill rule requires the provision of service, its very purpose is to maintain the existing balance and thereby protect that interest.

[64] Freezing the terms and conditions related to the distribution of programming services maintains the status quo until the dispute is resolved and protects the public interest. As noted above, if the broadcasting distribution undertaking has the right to terminate an agreement, allowing the broadcasting distribution undertaking to exercise this right during a dispute would disrupt the status quo and deprive consumers of services during the dispute. As well, other changes that may be contemplated by an agreement may also be disruptive if they are made during a dispute and the resolution of the dispute results in the reversal of those changes. The suspension of any contractual right to make changes is consistent with the purpose of maintaining the status quo until the dispute is resolved.

(4) Statutory Framework

[65] As noted by the Supreme Court in *Amaratunga*, in interpreting a regulation the authorizing statute is also to be considered. The authorizing statute for the *Broadcasting Distribution Regulations* is the *Broadcasting Act*. Section 3 of that Act includes the following:

3 (1) It is hereby declared as the broadcasting policy for Canada that	3 (1) Il est déclaré que, dans le cadre de la politique canadienne de radiodiffusion :
…	[…]
(t) distribution undertakings	t) les entreprises de distribution :
…	[…]
(iii) should, where programming services are supplied to them by broadcasting undertakings pursuant to contractual arrangements, provide reasonable terms for the carriage, packaging and retailing of those programming services…	(iii) devraient offrir des conditions acceptables relativement à la fourniture, la combinaison et la vente des services de programmation qui leur sont fournis, aux termes d'un contrat, par les entreprises de radiodiffusion, …

[66] As part of the broadcasting policy, there is a specific reference to broadcasting distribution undertakings providing reasonable terms for the packaging of programming services.

[67] The authority to make the *Broadcasting Distribution Regulations* is found in section 10:

10 (1) The Commission may, in furtherance of its objects, make regulations	10 (1) Dans l'exécution de sa mission, le Conseil peut prendre des règlements :
…	[…]
(h) for resolving, by way of mediation or otherwise, any disputes arising between programming undertakings and distribution undertakings concerning the carriage of programming originated by the programming undertakings;	h) pourvoyant au règlement — notamment par la médiation — de différends concernant la fourniture de programmation et survenant entre les entreprises de programmation qui la transmettent et les entreprises de distribution;

[68] In *TVA Group*, this Court confirmed that paragraph 10(1)(*h*) of the *Broadcasting Act* gives the CRTC very broad powers to make regulations:

> [52] While legislative history is not in itself determinative, it does provide additional information on how to interpret paragraph 10(1)(h) of the Act. In this case, an overview of the history reveals that Parliament's intent was to give very broad powers to the CRTC in support of its broadcasting mission, especially with respect to the settlement of disputes in light of the growing challenge posed by the advent of the distribution undertaking as the gatekeeper of programming.
>
> [53] It should be noted that this challenge arose when the federal government authorized vertical integration without restriction. In so doing, it allowed a single entity to own or control both programming and distribution services. In approving vertical integration, the federal government immediately became aware of the increased potential for conflicts of interest. To address this challenge, it was decided that the CRTC would have the power to resolve disputes that might arise in the context of negotiations between a programming undertaking and a distribution undertaking….

[69] Since the CRTC has been granted very broad powers to make regulations for resolving disputes, and since the broadcasting policy includes a specific reference to broadcasting distribution undertakings providing reasonable terms for packaging programming services, it would follow that, as found by the CRTC in the First Decision, the packaging of a programming service is a term or condition of distributing programming services. As a result, the standstill rule should be interpreted as freezing the packaging of programming services during a dispute.

B. *Second Decision*

[70] As noted above, the Second Decision arose as a result of Rogers, following the receipt of the First Decision, requesting that the CRTC confirm that the standstill rule did not apply to three channels offered by Corus (Slice, Home Network and Flavour Network) as of December 31,

2024. Rogers' submissions to the CRTC were based on the changes that Corus made to the programming content of Slice, Home Network and Flavour Network (changes that Corus had to make as a result of RMI acquiring certain content of these channels).

[71] Rogers submitted that the CRTC should apply the standstill rule applicable to Corus (which for Corus was the standstill rule in the *Discretionary Services Regulations*) "even-handedly" (paragraph 76 of Rogers' memorandum). Rogers, in its submissions to the CRTC and in its memorandum in these appeals, argues that Corus is in breach of the standstill rule because it has materially changed the content of these channels.

[72] In its submissions to the CRTC, Rogers wrote:

> a. ***Slice.*** As of September 1, 2024, Slice lost the majority of the Bravo content that has defined the channel's programming lineup and value proposition. After January 1, 2025, it will be losing the majority of the remaining Bravo content currently airing on the service. That content was acquired by Rogers Media Inc. (**RMI**) in a free and open market. As a result, the Slice channel today is a very different service from what it was when the standstill was imposed on September 8, 2023. On the Commission's interpretation of the standstill, Corus is in breach of its regulatory obligations – far from "freezing" the Slice service, it has materially changed that service since the standstill arose.
>
> b. ***Home*** and ***Flavour***. Neither of these are existing Corus services. They are new services that will be launched on January 1, 2025, to make up for the loss of Corus' rights to distribute the vast majority of HGTV and Food Network brands and content. These brands and their associated content were acquired by RMI in a free and open market, and Corus will no longer be able to provide the vast majority of that programming as of the end of this year. Corus' new Home and Flavour services will be launched to replace HGTV and Food Network in its portfolio. These are new services that Rogers does not currently carry and to which the standstill cannot apply. There is no legal basis under s.15.01(1) of the *Broadcasting Distribution Regulations* to force Rogers to carry services that did not exist at the time the standstill took effect.

> Alternatively, if the Commission concludes that Home and Flavour are continuations of Corus' existing HGTV and Food Network services – a conclusion Rogers says is patently wrong – then, as with Slice, Corus will be in breach of the standstill on those services as of January 1, 2025. Corus has confirmed it will be significantly changing those services, including their branding and their primary content. As with Slice, the services on January 1, 2025 will be materially different from what they are today, and what they were when the standstill arose.

[underlining added; the other emphasis is in the original]

[73] Rogers' position was that the services provided via Slice, Home Network and Flavour Network are "a very different service", "materially changed", and "materially different".

[74] Following the submissions of Corus, which included submissions on why the services offered via Slice, Home Network and Flavour Network are not materially different and why "these [services] will remain substantially the same services", Rogers made further submissions to the CRTC by letter dated November 29, 2024. In these submissions, Rogers referred to Corus' loss of content for the three channels and submitted that:

> 2. c. …Rogers' position is that the standstill cannot apply either because the channels are new (Home and Flavour), or because they are materially different from what they were when the standstill came into effect (Home, Flavour, and Slice). Losing the majority of their most popular content is a material change to these services, regardless of what that content is replaced with.
>
> 3. Accordingly, there can be no dispute that there have been or will be material changes to HGTV, Food Network, and Slice. The issue before the Commission is the consequence of those changes for the standstill.

[75] The focus of Rogers' submissions in this letter is also on Rogers' argument that there have been material changes to these three channels.

[76] In its memorandum filed in these appeals, Rogers continues to argue that the standstill rule would prevent Corus from making material changes to its programming services:

> 78. Thus, a programming undertaking must, for the duration of the standstill, "freeze" the service it is providing, including the core branding and content of the channel. It cannot be that a BDU has to continue performing all of its obligations, including payment terms, while a programming undertaking is free to **materially change** the channels it is providing and in respect of which the BDU is prevented from taking any action. Yet that is exactly what Corus has done.
>
> [emphasis added]

[77] Rogers is, in effect, acknowledging in its memorandum and in its submissions to the CRTC, that in order for a change in programming content to be in breach of the standstill rule, it must be a material change to the programming content. This would mean that any change that is not material would not be subject to the standstill rule, *i.e.* the threshold for the application of the standstill rule is a material change in a term or condition.

[78] In responding to Rogers' submissions that the services offered by Corus through Slice, Home Network and Flavour Network were materially different from the services previously offered through these channels, the CRTC found that:

- the services will continue to operate under the same discretionary service licences and will still offer programming under the same theme/genre;
- [w]hile several programs offered by these services will change, the overall focus of the services will remain the same; [and]
- … there is no limitation in the licences or in the policy framework that prevents a service from changing its programming offering.

[79] Rogers did not submit that the CRTC erred in finding that "there is no limitation in the licences or in the policy framework that prevents a service from changing its programming offering". The other findings made by the CRTC are findings of fact. An appeal to this Court from a decision of the CRTC is limited to a question of law or jurisdiction. No appeal lies from a finding of fact. These findings cannot be the basis for an appeal to this Court.

[80] Although Rogers argues that the CRTC did not apply the standstill rule consistently to Rogers and Corus, this is not an accurate statement of what the CRTC did. The CRTC, in the Second Decision, was responding to Rogers' arguments that Corus had materially changed the programming services Slice, Home Network and Flavour Network. In relation to the application of the standstill rule to Rogers, Rogers did not argue that its proposed changes to the packaging of Slice or the channel placement of Slice were not material changes. Therefore, there was no issue before the CRTC concerning whether the proposed repackaging of Slice or the proposed channel realignment of Slice was a material change to the terms and conditions of distributing the programming services.

[81] In its letter to the CRTC dated November 29, 2024, Rogers also referred to the contractual obligation of Corus to provide certain content:

> 2. The purpose of this brief Reply is to address Corus' assertion that there has not been a material change to Slice and there will not be material changes to HGTV and Food Network. This is incorrect for three reasons:
>
> > a. In respect of HGTV and Food Network, the branding of these services is a critical part of their value; these brands are household names that drive consumer interest and subscriptions. This is reflected in the parties' contract, which lists the "key output content" for HGTV and Food Network as the Warner Bros.

> Discovery content that comes with those brands. Corus' loss of that critical content and branding gives Rogers the contractual right to cease carrying the services, demonstrating the central importance the parties placed on them.

[82] In referring to the contract, Rogers does not identify which provision lists the "key output content" nor does it include the specific wording of the relevant clause. Rogers raised the argument concerning the interpretation of the agreements between Rogers and Corus as part of its argument that Corus had materially changed Slice and would be materially changing HGTV and Food Network.

[83] This argument concerning the interpretation of the agreement was not raised by Rogers in its letter dated November 22, 2024. In that letter the only reference to a contractual obligation of Corus is the following:

> Corus will be permitted to ignore its contractual and regulatory obligations by materially changing its services.

[84] There is no reference to any particular provision of the agreements. Since the issue of whether Corus would be in breach of the agreements by failing to provide "key output content" was only raised in Rogers' letter dated November 29, 2024, the CRTC did not have Corus' position on the interpretation of the agreement when it rendered its decision on November 29, 2024.

[85] The CRTC did not explicitly address this argument concerning the interpretation of the contract in the Second Decision. At the hearing of these appeals, Rogers also argued that Corus

was bound by the agreements to provide specific content in these channels. By raising it in these appeals, Rogers was essentially asking this Court to interpret the contract. The interpretation of the agreements would, however, involve issues of mixed fact and law (*Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, at paragraph 50), and therefore, it would not be appropriate for this Court to interpret the contract as appeals under the *Broadcasting Act* are restricted to questions of law or jurisdiction. Likewise, if the CRTC's decision was based on its interpretation of the agreements between Rogers and Corus, the CRTC's interpretation cannot be appealed to this Court (absent an extricable question of law).

[86] With respect to the channel placement, the only reference to Rogers' proposed channel realignment in the submissions of the parties to the CRTC is in Corus' response (dated November 26, 2024) to Rogers' submissions (dated November 22, 2024):

> 22. Finally, RCCI's [Rogers Communications Canada Inc.] request for Commission confirmation that the Standstill does not apply to Slice, Home or Flavour by December 1, 2024 is completely arbitrary. Contrary to its suggestions, RCCI has provided no evidence that its customers are clamouring for any changes to the carriage or terms of carriage of these three services, which, by all acouunts [*sic*], continue to perform very well. Nor are RCCI's near term intentions for the three channels even clear at this point. Three days after filing its November 22, 2024 submission, on November 25, 2024, RCCI notified Corus that it intended to **move Slice to a new channel position as of January 25, 2025**, a revelation that contrasts with RCCI's November 22 assertion that it has "no intention or desire to carry these channels [including Slice] beyond the termination of the contract [December 31, 2024]."
>
> [emphasis in original]

[87] In its reply to the CRTC dated November 29, 2024, Rogers did not address the proposed change in the channel position for Slice. In these appeals, Rogers noted that the channel

placement is part of a separate undue preference application brought by Corus, which is still pending.

[88] In its memorandum in these appeals, Rogers referred to section 15.3 of the *Broadcasting Distribution Regulations*:

15.3 A licensee shall not realign the channel number on which a Canadian programming service is distributed unless, at least 60 days before the proposed effective date of the realignment, the licensee sends a written notice indicating the intended date of the realignment and the channel number on which the programming service will be distributed to each of the operators of the programming services whose channel placements will be affected by the channel realignment.	15.3 Le titulaire ne peut réaligner le canal sur lequel un service de programmation canadien est distribué que si, au moins soixante jours avant la date prévue pour le réalignement, il envoie, à chacun des exploitants des services de programmation qui seront touchés par le réalignement, un avis écrit précisant la date en question et le canal sur lequel le service de programmation sera distribué.

[89] As noted above, Rogers did not make any submissions to the CRTC following Corus' reference, in its letter to the CRTC dated November 26, 2024, to the proposed channel realignment for Slice. Rogers should have submitted its arguments concerning section 15.3 of the *Broadcasting Distribution Regulations* in relation to the application to the standstill rule to the CRTC. In any event, it should be noted that section 15.3 of the *Broadcasting Distribution Regulations* is not a right to realign channels but rather a prohibition on realigning channels without providing the notice specified therein. Therefore, applying the standstill rule to prohibit a channel realignment during a dispute would not conflict with section 15.3 of the *Broadcasting*

Distribution Regulations. Rather, it would impose a further restriction on realigning a channel number.

[90] In my view, for the same reasons as stated above concerning the proposed changes to packaging Slice, the CRTC did not err in finding that channel placement would also be part of the terms and conditions related to the distribution of programming services that would be subject to the standstill rule.

IV. Conclusion

[91] As a result, in my view, the CRTC did not err in its interpretation of the standstill rule in either the First Decision or the Second Decision. I would dismiss the appeal from the First Decision with costs, and I would dismiss the appeal from the Second Decision, with costs.

"Wyman W. Webb"
J.A.

"I agree.
Gerald Heckman J.A."

"I agree.
Monica Biringer J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKETS:	A-113-25 (Lead File) and A-119-25
STYLE OF CAUSE:	ROGERS COMMUNICATIONS INC. *et al.* v. CORUS ENTERTAINMENT INC.
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	SEPTEMBER 23, 2025
REASONS FOR JUDGMENT BY:	WEBB J.A.
CONCURRED IN BY:	HECKMAN J.A. BIRINGER J.A.
DATED:	MARCH 5, 2026

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