Federal Court Cour fédérale

Date: 20260107

Docket: T-3245-25

Citation: 2026 FC 10

2026 FC 10 (CanLII)

Ottawa, Ontario, January 7, 2026

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

COGECO COMMUNICATIONS INC. AND BRAGG COMMUNICATIONS INC., C.O.A. EASTLINK

Applicants

and

THE ATTORNEY GENERAL OF CANADA

Respondent

ORDER AND REASONS

[1] In the present application for judicial review, two telecommunications companies are challenging a decision of the Governor in council that declined to vary a policy decision of the Canadian Radio-Television and Telecommunications Commission [CRTC].

[2] These reasons deal with three motions. The first two motions are brought by other telecommunications companies seeking to be added as respondents. I am allowing TELUS

Communications Inc.'s [TELUS] motion but denying Saskatchewan Telecommunications' [SaskTel], because the former is directly affected by the remedies sought by the applicants, while the latter is not.

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[3] In the third motion, the Attorney General is asking the Court to strike the application. I am granting the motion because, in the very specific circumstances of this case, judicial review would not be adequate, mainly because the applicants are seeking other remedies in other forums that will address the substantive concerns raised in this application.

I. Background

[4] On August 20, 2024, the CRTC issued its Telecom Regulatory Policy CRTC 2024-180, *Competition in Canada's Internet Service Markets*. In very broad terms, one effect of this policy is to grant the three major Canadian telecommunications companies, namely, Bell, Rogers and TELUS, wholesale access to other companies' infrastructure for the purpose of offering internet services to the public. I will call it the "initial decision."

[5] The applicants are smaller telecommunications companies who would be required to provide such access to Bell, Rogers and TELUS. They fear that doing so will give an unfair advantage to their competitors, that they will be driven out of the market and that competition for Internet services will be reduced to the detriment of the public.

[6] The applicants and other industry players challenged the initial decision in two ways. Pursuant to section 62 of the *Telecommunications Act*, SC 1993, c 38 [the Act], they asked the

CRTC to reconsider its decision. Based on new evidence, they argued that the CRTC made several errors of law and misapprehended the impact of its new policy on competition. Along with SaskTel, they also petitioned the Governor in council to vary the CRTC's initial decision, pursuant to section 12 of the Act, based on largely the same grounds.

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[7] On June 20, 2025, the CRTC refused to change the initial decision: CRTC 2025-154. In substance, it found that there was no evidence that the new policy would have the long-term effect of lessening competition or harming the applicants. Overall, it found that there was no substantial doubt as to the validity of the initial decision. The parties have called this the "review and vary" or "R & V decision" and I will do the same.

[8] On August 6, 2025, the Minister of Industry issued a press release stating that the Governor in council would not exercise its power to vary the CRTC's initial decision pursuant to section 12 of the Act.

[9] The applicants appealed the R & V decision to the Federal Court of Appeal pursuant to section 64 of the Act. They argue that the CRTC erred in its interpretation of the *Order Issuing a Direction to the CRTC on a Renewed Approach to Telecommunications*, SOR/2023-23, made pursuant to section 8 of the Act [the 2023 policy direction]. They also argue that the CRTC breached procedural fairness or made an arbitrary decision when it failed to address the applicants' key submissions. Leave was granted on September 10, 2025, and the appeal is still pending.

[10] On September 18, 2025, the applicants, together with SaskTel, also brought a new petition to the Governor in council, this time asking it to rescind or vary the CRTC's R & V decision. The petition argues that the policy adopted by the CRTC is fundamentally flawed, anti-competitive and inconsistent with other aspects of Canadian telecommunications policy. Moreover, the applicants brought new evidence, namely, an expert report regarding the impact of the new policy on competition in the Internet service industry. No decision has yet been made on this second petition.

[11] Lastly, the applicants brought the present application for judicial review of the Governor in council's refusal to vary the initial decision. They argue that the Governor in council failed to appreciate the nature of the applicants' petition, which asked for the variation of the initial decision in one particular respect only; failed to engage with the applicants' detailed submissions regarding the anti-competitive effects of the CRTC's policy; and acted inconsistently with its prior decisions, including the 2023 policy direction, without giving any reasons for this reversal.

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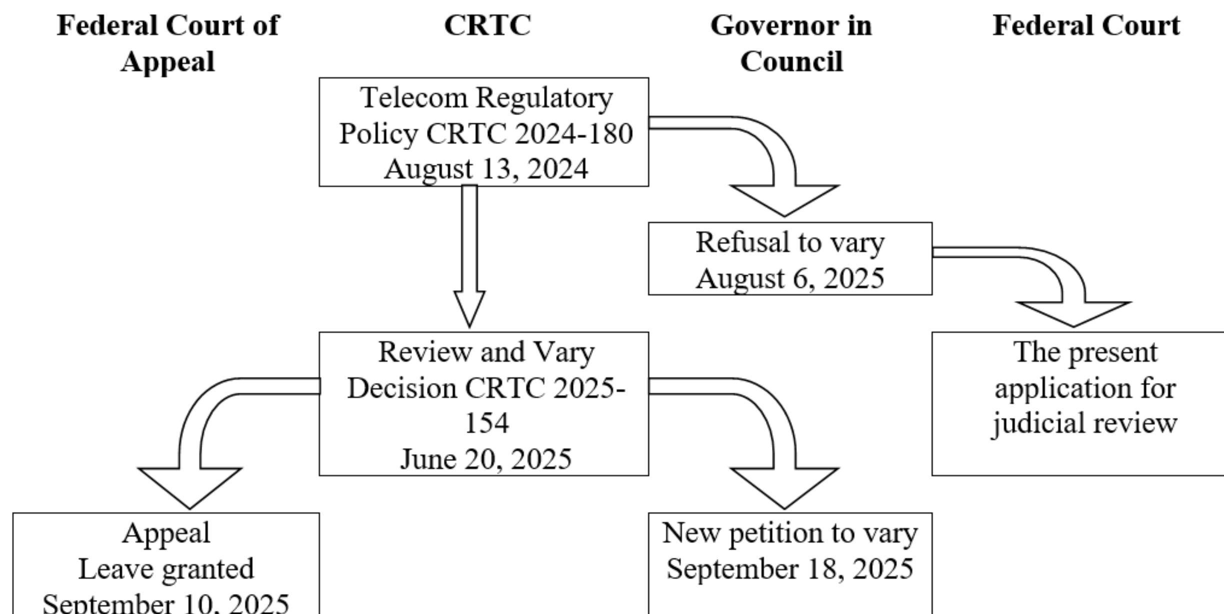
[12] This string of decisions and recourses can be illustrated by the following diagram:



[13] The Attorney General now brings a motion to strike the application for judicial review, on the ground that the applicants have adequate alternative remedies in their appeal to the Federal Court of Appeal and their new petition to the Governor in council.

[14] TELUS and SaskTel have brought motions to be added as respondents. They sought to have their motions determined before the hearing of the motion to strike, so as to be able to make submissions on the latter motion. Due to scheduling constraints, I directed that the three motions be heard one after the other. As I did not know whether I would be in a position to rule on their motions at the hearing, I allowed TELUS and SaskTel to make submissions regarding the motion to strike.

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II. Motions to be Added as Parties or Intervenors

[15] I will first deal with the motions to be added as parties. For the reasons that follow, TELUS's motion to be added as a respondent will be granted, but SaskTel's motion will be dismissed.

A. *Basic Principles*

[16] In the Federal Court, as in most other courts, the rules of standing and the rules regarding who should be named as respondent aim to ensure that the judicial process is truly adversarial. In other words, a proceeding before the Court must involve parties who will be impacted by the outcome of the proceeding and who are therefore motivated to provide the Court with fulsome evidence and submissions. Conversely, the presence of parties who lack such interest is discouraged.

[17] Section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7, identifies who can bring an application for judicial review:

18.1 (1) An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought.	**18.1 (1)** Une demande de contrôle judiciaire peut être présentée par le procureur général du Canada ou par quiconque est directement touché par l'objet de la demande.

[18] The requirement that the applicant be "directly affected" means that judicial review is available only if the impugned decision affects the applicant's rights or legal situation. In

contrast, “Where administrative action does not affect an applicant’s rights or carry legal consequences, it is not amenable to judicial review”: *Democracy Watch v Conflicts of Interest and Ethics Commissioner*, 2009 FCA 15 at paragraph 10. In other words, to use a consecrated phrase, the decision being challenged must affect the applicant’s rights, impose obligations on them or cause them prejudice: *Forest Ethics Advocacy Association v Canada (National Energy Board)*, 2013 FCA 236 at paragraph 20 [*Forest Ethics*]; see also *Democracy Watch v Canada (Attorney General)*, 2021 FCA 133 at paragraph 29; *O’Driscoll v Canada (Royal Canadian Mounted Police)*, 2025 FCA 206 at paragraph 12.

[19] To ensure the adversarial nature of the proceeding, we must also turn our minds to who must be named as respondent. In this regard, rule 303 of the *Federal Courts Rules*, SOR/98-106, provides:

303 (1) Subject to subsection (2), an applicant shall name as a respondent every person	**303 (1)** Sous réserve du paragraphe (2), le demandeur désigne à titre de défendeur :
(a) directly affected by the order sought in the application, other than a tribunal in respect of which the application is brought; […]	**a)** toute personne directement touchée par l’ordonnance recherchée, autre que l’office fédéral visé par la demande; […]

[20] As the Federal Court of Appeal noted in *Forest Ethics* at paragraph 18, the wording of rule 303 mirrors that of section 18.1 as both use the phrase “directly affected.” There is, however, an important distinction. Under section 18.1, the applicant must be directly affected by the “matter,” that is, by the decision being challenged. By contrast, a respondent must be directly affected “by the order sought in the application” or, in other words, the remedy that the applicant is seeking. Accordingly, when applying rule 303,

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> . . . the question is whether the relief sought in the application for judicial review will affect a party's legal rights, impose legal obligations upon it, or prejudicially affect it in some direct way. If so, the party should be added as a respondent.
>
> (*Forest Ethics* at paragraph 21)

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[21] Applicants do not always name as respondents every person who is directly affected. When they fail to do so, an interested party may bring a motion pursuant to rule 104:

104 (1) At any time, the Court may	**104 (1)** La Cour peut, à tout moment, ordonner :
[…]	[…]
(b) order that a person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the proceeding may be effectually and completely determined be added as a party, but no person shall be added as a plaintiff or applicant without his or her consent, signified in writing or in such other manner as the Court may order.	b) que soit constituée comme partie à l'instance toute personne qui aurait dû l'être ou dont la présence devant la Cour est nécessaire pour assurer une instruction complète et le règlement des questions en litige dans l'instance; toutefois, nul ne peut être constitué codemandeur sans son consentement, lequel est notifié par écrit ou de telle autre manière que la Cour ordonne.

B. *TELUS's Motion*

[22] TELUS is one of Canada's three major telecommunications companies. It is not seriously in dispute that it stands to benefit from the CRTC's policy that lies at the root of the present application. It has intervened before the CRTC in favour of the policy, both at the initial hearing

and in opposition to the R & V application. It is named as a respondent in the applicants' appeal to the Federal Court of Appeal against the R & V decision.

[23] It is obvious that TELUS is directly affected by the order sought in the present application. Currently, TELUS is entitled to avail itself of the policy. If the application is granted, the Governor in council will be directed to review the policy again. This may result in the policy being varied and TELUS losing the rights it now holds.

[24] The applicants, however, argue that this is a merely hypothetical interest. They submit that if the remedy sought in the application is granted, it is impossible to know what the Governor in Council will decide upon reviewing the matter again. I am unable to agree. One is directly affected when required to defend a challenge to one's rights. TELUS's situation is similar to that of Enbridge in *Forest Ethics*. The National Energy Board denied an individual leave to intervene in Enbridge's application for the approval of a pipeline. That individual, together with an environmental advocacy group, sought judicial review in the Federal Court of Appeal. While the remedy sought by the applicants would not directly lead to the rejection of Enbridge's application, the Federal Court of Appeal noted, at paragraph 24, that:

> . . . if the relief sought is granted, potentially many persons and organizations from different perspectives will have rights of participation where, before, they did not. The Board might accept some of the new participants' arguments, leading to the rejection of Enbridge's application for approval of its project. The risk of that happening directly affects Enbridge, the proponent of the project.

[25] Thus, having to face a new challenge to one's rights, or a challenge by different persons, is enough for someone to be directly affected within the meaning of rule 303. More generally,

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the requirements of rule 303 must be interpreted in the context where a successful application for judicial review usually leads to the matter being remitted to the decision-maker for reconsideration. The uncertainty pertaining to the ultimate result cannot negate a respondent's interest pursuant to rule 303.

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[26] Hence, in my view, TELUS is directly affected by the relief sought and must be added as a respondent.

C. *SaskTel's Motion*

[27] SaskTel is a government-owned telecommunications company offering its services in Saskatchewan. It opposes the CRTC's policy. It was one of the signatories to the petition asking the Governor in council to vary the CRTC's policy, together with the present applicants. For reasons that were not explained to the Court, it chose not to join the applicants in bringing the present judicial review application.

[28] It is obvious that SaskTel is directly affected *by the Governor in council's decision*. It does not deny that it could have brought its own application for judicial review. However, the time to apply for judicial review has elapsed, and SaskTel did not seek an extension of time.

[29] This does not mean that SaskTel is directly affected "*by the order sought in the application*," so that it is entitled to be added as a respondent pursuant to rule 303(1)(a). If the application were successful, SaskTel would not lose rights, no obligations would be imposed

upon it and it would not be prejudicially affected. Rather, granting the application would further SaskTel's interests.

[30] SaskTel argues, however, that it does not need to be prejudicially affected, only affected in a positive or negative way. I cannot agree. When one reads *Forest Ethics*, it is obvious that the test laid out by the Federal Court of Appeal requires a respondent to be prejudicially affected by the order sought. If it were otherwise, the distinction between an applicant and a respondent would become meaningless.

[31] Relying on *Douglas v Canada (Attorney General)*, 2013 FC 451 [*Douglas*], SaskTel also suggests that a respondent's interests need not be opposed to those of the applicant. I acknowledge that this may sometimes happen, especially where applicants err on the side of inclusion when naming respondents who do not satisfy the test in rule 303 and no one objects. It does not follow, however, that SaskTel should be added as respondent simply because its interests are aligned with those of the applicants.

[32] I also understand that SaskTel is relying on its status as petitioner before the Governor in council to argue that it should be named as a respondent in any challenge to the Governor in council's decision. Indeed, a decision of the Federal Court of Appeal rendered before the adoption of rule 303 suggests that all parties to a proceeding before a federal board, commission or other tribunal should be parties to a judicial review arising out of those proceedings: *Tetzlaff v Canada (Minister of the Environment)*, [1992] 2 FC 215 at 227 [*Tetzlaff*]. I do not need to decide whether *Tetzlaff* remains good law since the adoption of rule 303. It is enough to say, as did the

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Court in *Douglas* at paragraph 19, that a person involved in inquisitorial or non-adversarial proceedings should not be named as a respondent in an application for judicial review unless they are directly affected by the relief sought.

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[33] Pursuant to rule 104(1)(b), a person may also be added as a respondent where it shows that its presence is necessary for the complete determination of the matter. In its written submissions, SaskTel argues that its presence is necessary because it was a party to the proceedings before the CRTC and the Governor in council. As I explained above, the fact that a person was a party to the underlying proceeding is not sufficient to show that the person is affected by the remedy sought in the application. SaskTel did not put forward other grounds to show that its presence would be necessary.

[34] In the alternative, SaskTel's motion also sought intervener status, although it did not insist on this aspect at the hearing. I cannot grant SaskTel intervener status, because it has not explained how its "participation will assist the determination of a factual or legal issue related to the proceeding," as required by rule 109(2)(b). Moreover, a motion for leave to intervene cannot be used as a substitute for bringing an application for judicial review when the time for doing so has elapsed: *Tsleil-Waututh Nation v Canada (Attorney General)*, 2017 FCA 102 at paragraphs 36–46.

III. Motion to Strike

[35] In spite of counsel for the applicants' able advocacy, I am allowing the Attorney General's motion to strike the application. Judicial review is a discretionary remedy. In the

complex procedural context of this case, this application for judicial review is not an appropriate remedy, and I must exercise my discretion to put an end to it. This is mainly because the applicants have exercised other recourses that provide them with adequate alternative remedies. Moreover, the fact that the CRTC issued a further decision dealing with the same issues adds elements of mootness and lack of practical utility.

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A. *Basic Principles*

(1) Discretionary Bars to Judicial Review

[36] Judicial review is a discretionary remedy: *Canadian Pacific Ltd v Matsqui Indian Band*, [1995] 1 SCR 3 at paragraphs 30–31 (Lamer CJ, writing for the majority on this point) [*Matsqui*]; *Strickland v Canada (Attorney General)*, 2015 SCC 37 at paragraphs 37–38, [2015] 2 SCR 713 [*Strickland*]; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraph 139, [2019] 4 SCR 653 [*Vavilov*]; *Yatar v TD Insurance Meloche Monnex*, 2024 SCC 8 at paragraphs 51–56 [*Yatar*]. In other words, the Court does not automatically issue a remedy as soon as the applicant shows that the challenged decision is unlawful. The Court needs to look beyond the applicant's individual interests and to have regard to policy considerations, or values, to decide whether judicial review is adequate in the circumstances. Those policy considerations include the efficient allocation of scarce judicial and administrative resources and respect for the procedures laid out by Parliament: Donald JM Brown and John M Evans with David Fairlie, *Judicial Review of Administrative Action in Canada*, 2nd ed (Toronto: Thomson Reuters, looseleaf) at §3.1 and §3.9 [Brown and Evans]; Paul Daly, *Understanding Administrative Law in the Common Law World* (Oxford: Oxford University Press, 2021) at

163-170, 174, 180. The overriding issue is whether judicial review is a suitable and appropriate remedy in the circumstances: *Strickland* at paragraph 43.

[37] Of course, discretion is not synonymous with arbitrariness. Rather, it must be exercised in a judicial and principled manner. Thus, over time, courts have identified certain circumstances in which judicial review would usually not be appropriate. Categories have emerged to describe these circumstances and tests have sometimes been crafted to guide the exercise of the court's discretion. Nevertheless, the emergence of well-known doctrines with respect to specific categories of cases does not displace the fundamentally discretionary nature of the assessment. As Chief Justice Lamer wrote in *Matsqui* at paragraph 37, "it is for courts in particular circumstances to isolate and balance the factors which are relevant"; see also *Strickland* at paragraph 45.

[38] The interplay between established categories and the discretionary nature of the exercise is illustrated by the category on which the Attorney General primarily relies, namely, the existence of an adequate alternative remedy. The underlying principle is that the Court should not entertain an application for judicial review where the applicant has another recourse.

[39] This principle has most frequently been applied where the decision under challenge is subject to an administrative appeal. In *Harelkin v University of Regina*, [1979] 2 SCR 561 [*Harelkin*], the Supreme Court of Canada stated that applicants must usually exercise their statutory rights of appeal before seeking judicial review. See also *Matsqui* at paragraphs 32–37. This specific instance of the doctrine of adequate alternative remedy is often referred to as the

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requirement to exhaust the administrative process: *CB Powell Limited v Canada (Border Services Agency)*, 2010 FCA 61 at paragraph 31. Another subcategory is the quasi-total prohibition on judicial review of interlocutory administrative decisions, also described as the doctrine of prematurity: *Dugré v Canada (Attorney General)*, 2021 FCA 8 at paragraph 35 [*Dugré*].

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[40] The doctrine of adequate alternative remedy, however, is not restricted to these two subcategories, nor does it exclude the Court's discretion to decide whether judicial review is appropriate in the circumstances of each case. The Supreme Court's description of the doctrine is not restricted to specific categories: *Strickland* at paragraphs 40–45. Rather, the Supreme Court entrusted judges with a wide discretion to decide whether an alternative remedy is adequate in the circumstances. It noted, at paragraph 42, that in order for an alternative remedy to be adequate, "neither the process nor the remedy need be identical to those available on judicial review." It also gave examples of factors that are relevant when deciding whether an alternative remedy is adequate:

> . . . the convenience of the alternative remedy; the nature of the error alleged; the nature of the other forum which could deal with the issue, including its remedial capacity; the existence of adequate and effective recourse in the forum in which litigation is already taking place; expeditiousness; the relative expertise of the alternative decision-maker; economical use of judicial resources; and cost.

[41] More specifically, *Strickland* dealt with an application for judicial review of the Governor in council's enactment of guidelines for child support. The Supreme Court found that a judicial remedy, namely, a divorce action in the provincial superior court, was an adequate alternative to judicial review in the Federal Court. It follows that adequate alternative remedies

are not restricted to administrative appeals of the challenged decision, nor even to administrative remedies generally; see also Brown and Evans at §3.9.

[42] There are other recognized grounds for the exercise of the Court's discretion not to hear an application for judicial review. The Court will not hear a matter that has become moot due to events taking place after the decision under review was issued: *Phillips v Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, [1995] 2 SCR 97 at paragraphs 4, 12; *Canada (Information Commissioner) v Chairman of Canadian Cultural Property Export Review Board*, 2002 FCA 150. The Court may also decline to issue a remedy that lacks practical utility: *Iris Technologies Inc v Canada*, 2024 SCC 24 at paragraph 58 [*Iris Technologies*]; see also Brown and Evans at §3.35.

(2) Motions to Strike Applications for Judicial Review

[43] Rule 221(1)(a) provides that a statement of claim that "discloses no reasonable cause of action" may be struck. While this rule applies to actions, a similar principle has been extended to applications for judicial review. Thus, in *David Bull Laboratories (Canada) Inc v Pharmacia Inc*, [1995] 1 FC 588 (CA) at 600, the Federal Court of Appeal held that it could strike a notice of application for judicial review that is "so clearly improper as to be bereft of any possibility of success"; see also *Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc*, 2013 FCA 250 at paragraphs 47–48, [2014] 2 FCR 557 [*JP Morgan*]; *Iris Technologies* at paragraph 26.

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[44] This test is met where there is a discretionary bar to judicial review: *Wenham v Canada (Attorney General)*, 2018 FCA 199 at paragraph 36. As the Supreme Court recently wrote in *Yatar* at paragraph 54:

> If, in considering the application, the judge determines that one of the discretionary bases for refusing a remedy is present, they may decline to consider the merits of the judicial review application . . .

[45] In particular, an application for judicial review may be struck at the preliminary stage where there is an adequate alternative remedy: *Çolakoğlu Metalurji AS v Altasteel Inc*, 2024 FC 831 at paragraph 48, aff'd 2025 FCA 29. This is also true where an application is premature (*Dugré*) or where the Court lacks jurisdiction (*JP Morgan*). In appropriate cases, striking such applications "promotes litigation efficiency" and greater proportionality: *R v Imperial Tobacco Canada Ltd*, 2011 SCC 42 at paragraph 20, [2011] 3 SCR 45.

B. *Application to This Case*

[46] The present application must be struck because it is not an adequate remedy in the circumstances. To explain why I am exercising my discretion not to allow this application to go forward, I must describe the complex way in which several factors interact in this case. If a single category had to be chosen to ground the exercise of my discretion, the concept of adequate alternative remedy would be the closest approximation, and that may explain why the Attorney General mainly focused on it. Nevertheless, some relevant factors may also be linked to the concepts of mootness and lack of practical utility.

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[47] It is useful to begin the analysis with the procedural diagram at paragraph [12] above. One branch of this tree runs from the initial CRTC decision through the first Governor in council decision to the present application for judicial review. Judicial review would most likely be appropriate if one looks at this branch in isolation. The mere fact that the CRTC has the power to reconsider (or "review and vary") its own decision would normally not bar judicial review: see, by way of analogy, *Ellis-Don Ltd v Ontario (Labour Relations Board)*, 2001 SCC 4 at paragraph 57, [2001] 1 SCR 221; *Re:Sound v Fitness Industry Council of Canada*, 2014 FCA 48 at paragraphs 85–88, [2015] 2 FCR 170.

[48] But one cannot stop there and ignore the fact that the tree has another branch, as the applicants have in fact sought reconsideration of the initial CRTC decision. The R & V decision that resulted opened up new recourses, which the applicants have in fact exercised. Given the way in which the CRTC dealt with the issues raised by the applicants in the R & V decision, the recourses against the latter afford the applicants an adequate alternative remedy to the present application for judicial review. In other words, the way in which the applicants played their procedural cards allows the Federal Court of Appeal and the Governor in council to address the substantive issues they raised on a more extensive record and based on a more recent assessment by the CRTC.

[49] To understand this, it is useful to take a closer look at the R & V decision. The applicants and other stakeholders made extensive submissions challenging the correctness of the initial CRTC decision. They brought new evidence projecting the impacts of the initial decision on competition in the telecommunications market. The CRTC itself also sought extensive evidence

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from a wide range of stakeholders. In reaching the conclusion that the initial decision should not be varied, it found that the largest incumbents only captured a small share of the market outside their traditional territories and that the most realistic projections showed that smaller companies, such as the applicants, would not be forced out of the market. It also found that the initial decision was not inconsistent with the 2023 policy direction.

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[50] These issues are essentially the same as the ones the applicants say the Governor in council failed to address in the decision that is the subject of the present application for judicial review. In fact, with respect to these issues, the analysis offered in the R & V decision supersedes that of the initial decision. In other words, the reasons for that decision constitute the CRTC's most current thinking regarding the justification of the impugned policy.

[51] Thus, it follows that challenges to the R & V decision before the Federal Court of Appeal and the Governor in council afford the applicants an adequate alternative remedy. The factors identified by the Supreme Court in *Strickland* buttress that conclusion. Together, the appeal and the petition fully address the concerns that the applicants may have. In particular, the applicants will be able to argue that the CRTC's analysis of the policy's impacts on competition was flawed and ignored the 2023 policy direction. Moreover, this Court lacks the expertise of the Federal Court of Appeal and Governor in council with respect to telecommunications matters. Proceedings in these two forums are already underway; this Court is unlikely to be quicker. Lastly, judicial resources will be better spent if the applicants focus on these two remedies.

[52] Elements of mootness and lack of practical utility are also present in this case. While the initial decision remains in force because it has not been varied, the reasons given for the R & V decision constitute the CRTC's most recent thinking with respect to the substantive issues raised by the applicants. As I explained above, they supersede the reasons for the initial decision, which were the focus of the decision of the Governor in council under review in the present application. It is difficult to understand what would be achieved by challenging reasoning that is no longer current. This is a form of mootness, similar in some respects to what happened in *Vidéotron Télécom Ltée v Communications, Energy and Paperworkers Union of Canada*, 2005 FCA 90 at paragraphs 12–15. This also casts doubt on the practical utility of the present application.

[53] The applicants nevertheless assert that only the present application for judicial review is able to address their main concern with the Governor in council's decision, which would be its lack of reasons and its failure to grapple with the gist of their submissions. The Court, however, must focus on "the real essence of the application" or its "essential character": *JP Morgan* at paragraphs 49–50. The applicants have understandably framed their application using the language of judicial review, such as the lack of intelligible justification or the misapprehension of their key submissions. However, this does not alter the substance of the issues they raise in this application, which are the same as in the R & V decision and, by extension, in the appeal to the Federal Court of Appeal and the second petition to the Governor in council. In *Strickland*, the Supreme Court held that an alternative remedy need not be identical to judicial review to be adequate. I understand that the applicants would have preferred receiving more fulsome reasons for the Governor in council's refusal to exercise its powers under section 12 of the Act than a five-paragraph press release. However, this is not the central aspect or "real essence" of the

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present application. The fact that the Federal Court of Appeal and Governor in council will not be able to address the issue of the sufficiency of reasons does not render these alternative recourses inadequate.

[54] The applicants rely on *McDowell v Automatic Princess Holdings, LLC*, 2017 FCA 126, [2018] 3 FCR 445 [*McDowell*], for the proposition that "[t]he fact that a different proceeding, pursuant to a different statutory provision, might produce the same result does not engage the doctrine of adequate alternate remedy" (at paragraph 25). More generally, they contend that the doctrine of adequate alternative remedies only operates to bar judicial review where the alleged alternative is a component of the administrative process under review, as in *Harelkin*. They argue that the administrative process "terminated" with the decision of the Governor in council that is the subject of the present application, because the Act does not provide any right of appeal. I disagree.

[55] *McDowell* was a case in which the Federal Court of Appeal allowed an application for judicial review of an interlocutory decision of the Trademarks Opposition Board. This brought into play the doctrine of prematurity or, in other words, the prohibition on judicial review of interlocutory decisions, save in exceptional circumstances. The Federal Court had considered that such exceptional circumstances might exist where the applicant had no adequate alternative remedy. It is in that very specific context that the Federal Court of Appeal made the statement quoted above. Given this focus on prematurity, *McDowell* cannot be read as laying out any rigid rule regarding what alternative remedies may be adequate in other contexts. In truth, such a rigid rule would be hard to reconcile with the discretionary nature of judicial review underscored by

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the Supreme Court in *Matsqui* and *Strickland*. Moreover, the Federal Court of Appeal itself found that an adequate alternative remedy may stem from statutory provisions other than those that govern the administrative process at issue: *JP Morgan* at paragraph 90.

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[56] For the same reasons, the applicants' more general proposition that only remedies within the administrative process subject to review may be considered adequate must be rejected. One must not confuse the general category of adequate alternative remedy with the more specific case of exhaustion of administrative remedies. *Strickland* shows that the doctrine of adequate alternative remedy is not confined to applicants who attempt to skip an administrative appeal, although this may be the most frequent case; see also Brown and Evans at §3.9.

[57] To conclude, a discretionary bar to judicial review clearly exists in the present case. It is based mainly on the existence of adequate alternative remedies, coupled with elements of mootness and lack of practical utility. Accordingly, the application is "bereft of any possibility of success" and must be struck.

IV. Disposition

[58] For these reasons, TELUS's motion to be added as a respondent will be granted, SaskTel's motion to be added as a respondent or intervenor will be dismissed, and the Attorney General's motion to strike will be granted.

[59] The Attorney General is seeking its costs on the motion to strike and on SaskTel's motion to be added as party or intervenor. There is no reason to depart from the general rule that the

losing party bears the costs of the successful party. Hence, the applicants will pay the Attorney General's costs on the motion to strike, and SaskTel will pay the Attorney General's costs on its motion to be added as party or intervenor.

[60] The applicants adopted an ambivalent attitude towards TELUS's motion to be added as respondent. Nevertheless, they asserted that TELUS was not affected by the outcome of this application, a submission that I rejected above. For this reason, I consider that the applicants in reality opposed TELUS's motion and must bear its costs.

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ORDER in T-3245-25

THIS COURT ORDERS that:

1. TELUS Communications Inc.'s motion to be added as a respondent is granted.
2. Saskatchewan Telecommunications' motion to be added as a respondent or intervenor is dismissed.
3. The Attorney General's motion to strike the notice of application is granted.
4. The applicants are condemned to pay TELUS Communications Inc.'s costs on the latter's motion to be added as respondent.
5. Saskatchewan Telecommunications is condemned to pay the Attorney General's costs on its motion to be added as respondent or intervenor.
6. The applicants are condemned to pay the Attorney General's costs on the latter's motion to strike.

"Sébastien Grammond"
Judge

2026 FC 10 (CanLII)

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-3245-25
STYLE OF CAUSE:	COGECO COMMUNICATIONS INC. AND BRAGG COMMUNICATIONS INC., C.O.A. EASTLINK v THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	DECEMBER 11, 2025
ORDER AND REASONS:	GRAMMOND J.
DATED:	JANUARY 7, 2026

APPEARANCES:

Olga Redko Anthony Breton Paul Daly	FOR THE APPLICANTS
Sara Gauthier Thomas Swerdfager	FOR THE RESPONDENT
Ewa Krajewska Brandon Chung	FOR THE PROPOSED RESPONDENT TELUS COMMUNICATIONS INC.
Simon Bieber Jocelyn Howell	FOR THE PROPOSED RESPONDENT SASKATCHEWAN TELECOMMUNICATIONS

SOLICITORS OF RECORD:

IMK LLP Montréal, Quebec	FOR THE APPLICANTS
Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT
Henein Hutchison Robitaille LLP Toronto, Ontario	FOR THE PROPOSED RESPONDENT TELUS COMMUNICATIONS INC.
Adair Goldblatt Bieber LLP	FOR THE PROPOSED RESPONDENT

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Toronto, Ontario SASKATCHEWAN TELECOMMUNICATIONS

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