

SCC holds that CRTC cannot resolve disputes for telecommunication carriers' access to 5G antennas on public land

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The Supreme Court of Canada held in *Telus Communications Inc. v. Federation of Canadian Municipalities*, [2025 SCC 15](#) that the term “transmission line” in the *Telecommunications Act*, [S.C. 1993, c. 38](#), is restricted to physical wireline infrastructure, rejecting a position advanced by wireless telecommunication carriers that the statutory language extends to small cell antennas used in 5G wireless technology. In rejecting the carriers’ argument that “transmission line” captures small cell antennas, the Supreme Court examined and applied the statutory interpretation principle of dynamic interpretation and the concept of technological neutrality, but found that neither supported the carriers’ argument that Parliament intended the term “transmission line” to extend to new wireless technologies. At issue was whether the carriers could employ a CRTC regime for entering and breaking up public property to construct, maintain or operate a telecommunications “transmission line”. Finding that Parliament intended only for the access regime to apply to wireline technology, carriers seeking to place antennas on public property must operate outside the CRTC access regime and negotiate access with the government owner of the property.

Background

The rollout of 5G cellular technology across Canada has multiplied the number of antennas that carriers must install on physical infrastructure because 5G technology employs a larger number of “small cell” antennas with smaller coverage, whereas previous technological generations employed fewer, larger, and longer range antennas.

In 2019, the CRTC reviewed the regulatory framework governing cellular technology and 5G networks, and invited comment on whether the term “transmission line” in the *Telecommunications Act* included cellular antennas, a question that had never been decided. The carriers advanced an interpretation of “transmission line” that included small cell antennas, in part because these antennas are connected to wired infrastructure. This interpretation would have enabled the carriers to employ the CRTC access regime for situating wireless infrastructure on public property. If required to operate outside the access regime, situating an antenna on public property would have required the carrier to negotiate with the government owner of the property, and the

carriers argued this would delay and increase the cost of deploying 5G networks across the country.

In 2021, the CRTC issued a decision rejecting the carriers' interpretation of "transmission line" and the Federal Court of Appeal dismissed the carriers' appeal from the CRTC, finding that "transmission line" captured traditional wireline infrastructure but not antennas attached to wires.

The Supreme Court found that antennas are not transmission lines

The Supreme Court found that the Federal Court of Appeal correctly interpreted the meaning of the term "transmission line" by deciding that transmission lines do not include small cell antennas.

The Court found that the ordinary meaning of the term "transmission line" includes only physical wireline infrastructure. The Court rejected the carriers' argument that because antennas are connected to physical wires, they are apart of the transmission line. The Court found this interpretation overbroad as it would capture anything attached to those wires. The carriers also argued that the general objectives of the *Telecommunications Act*—to facilitate the orderly development of telecommunications—supported their argument that small cell antennas should be subject to the access regime. The Supreme Court disagreed. It found that this general objective did not override Parliament's clear intention to grant telecommunication carriers a qualified right of access to their wireline infrastructure only.

The carriers had also argued that "transmission lines" should be interpreted dynamically to include antennas. Dynamic interpretation provides that the meaning of statutory language can grow over time to meet new circumstances. In dismissing this argument, the Court focused on the relationship between dynamic interpretation and the concept that statutory interpretation must always center on the intent of the legislature at the time of enactment. The Court reconciled these two principles by holding that the legislature can intend for broad and open-ended statutory provisions to be interpreted dynamically if that interpretation can be supported by the legislative text, context, and purpose. In such instances, dynamic interpretation furthers the legislative intent at the time of enactment. Here, however, the Court found that Parliament intended a narrow interpretation of the term "transmission line". As such, dynamic interpretation did not extend the scope of the term to include antennas.

The Court also rejected the carrier's argument that the principle of technological neutrality required the term "transmission line" to include wireless infrastructure. The Court acknowledged that the statutory language could apply to new technology, but the technology is limited only to new wireline infrastructure. The Court observed that wireless technology employing antennas already existed when Parliament enacted the statutory language, and through its choice of the term "transmission line", Parliament had excluded wireless technology.

Key takeaways

- The Supreme Court’s decision confirms that the CRTC access regime does not apply to wireless carriers seeking access to public property to install and maintain wireless antennas. As a result, wireless carriers seeking to install wireless infrastructure on public property must negotiate the terms of access to that property with its government owners.
- The Court confirmed that even where statutory language is broad, forward-looking, and intended to apply to new circumstances not in existence or contemplation when the statute was enacted, dynamic interpretation of a statute is still constrained by the legislature’s intention at the time of enactment. While statutes can be interpreted to apply to new an evolving circumstances, dynamic interpretation of open-ended statutory language does not empower courts to stray beyond the original legislative intent. Because there is no bright line delineating statutes that are “dynamic” versus static, determining whether statutory language applies to new circumstances is an interpretive question to be answered based on the statutory text read in context and consistent with the legislative purpose. Where the interpretation involves the concept of technological neutrality, the technology may be limited to the scope of the statutory language. In this case, the principle of technological neutrality would apply to capture new wireline infrastructure, but not to extend the CRTC access regime to wireless infrastructure.

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