

Québec Superior Court reaffirms the federal government's exclusive jurisdiction over telecommunications

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In this Update

In *Vidéotron c. Ville de Gatineau, 2017 QCCS 3571*, the Superior Court of Québec invalidated a set of bylaws adopted by the cities of Gatineau and Terrebonne. The bylaws governed both the construction of transmission lines by telecommunications carriers in those municipalities and the charging of fees for doing so. The Court found those bylaws unconstitutional because only Parliament has jurisdiction over the field of telecommunications.

Background

The *Telecommunications Act* enacted by Parliament allows telecommunications carriers to access public roadways in municipalities' territories in order to construct, operate and maintain their networks. This access can cause inconveniences, such as pavement deterioration, as the municipalities have to deal with the expanding telecommunications networks.

That is why the *Telecommunications Act* provides that telecommunications carriers have to cooperate with municipalities and obtain their consent before constructing transmission lines on their territories. If they disagree, the Canadian Radio-television and Telecommunications Commission (CRTC), a federal agency, decides on how the construction will be done and how the costs will be shared.

Gatineau and Terrebonne, like other cities that have been dissatisfied with cost-sharing arrangements for the construction of transmission lines by telecommunications carriers, passed bylaws in 2012 and 2013 to manage and charge for the construction. Since then, several telecommunications carriers, namely Vidéotron, Cogeco, Rogers, Telus and Bell, have taken legal proceedings to have such bylaws declared unconstitutional, invalid, unenforceable and inapplicable.

Reasons and conclusions

The Court declared the disputed bylaws to be invalid. Although the defendant municipalities can create legislation to protect property, public safety and the administration of their territories under paragraphs 92 (8), (13), (15) and (16) of the *Constitution Act, 1867*, they cannot create laws to govern the planning, construction, siting, maintenance or preservation of telecommunications networks, since those matters fall under federal jurisdiction pursuant to subparagraph 92 (10) (a) of the *Constitution Act, 1867*.

The Court noted that the bylaws in question created an application process specific to telecommunications carriers. That process required applications to be submitted in which, among other things, the carriers were obligated to pay the costs of the proposed construction as determined by the municipalities. Such costs could include the expenses for pavement damage, bypass routes, supports and hindrances. By doing so, those bylaws circumvented the rules Parliament created when it enacted the *Telecommunications Act*. The act prevents carriers from negotiating with municipalities, especially regarding cost sharing, and sets out what the CRTC is responsible for determining if there is disagreement.

Apart from the costs, the bylaws authorized the municipalities to impose their own conditions on all construction projects, including time frames and the siting of the work. However, it is well known that siting is at the core of federal jurisdiction over telecommunications. The bylaws go far beyond information gathering and coordination between carriers and municipalities. The evidence did not reveal any problems with regard to managing the carriers' construction of transmission lines. Rather, it revealed the municipalities' dissatisfaction with the procedure set out in the *Telecommunications Act* and the sharing of costs.

The Court concluded that the pith and substance of the bylaws in question was to control the planning, construction, siting, maintenance and conservation of the telecommunications networks. However, those matters fall under Parliament's jurisdiction. The defendants exceeded their powers when they passed those bylaws.

Comment

In this judgment, the Superior Court of Québec reiterates the need to protect federal jurisdiction over telecommunications. The judgment confirms that municipalities cannot legislate to control the activities of telecommunications carriers and circumvent the CRTC's jurisdiction, even indirectly. The decision is in line with recent jurisprudence from the Supreme Court of Canada, including the recent decision in *Rogers Communications Inc. v. Châteauguay (City)*, 2016 SCC 23. In that case, the Supreme Court declared unconstitutional a municipality's attempt to control the siting of telecommunications infrastructure by way of a notice of reserve.