

Federal Court  
of Appeal



CANADA

Cour d'appel  
fédérale

**Date: 20090702**

**Docket: A-521-08**

**Citation: 2009 FCA 224**

**CORAM: RICHARD C.J.  
NOËL J.A.  
LAYDEN-STEVENSON J.A.**

**IN THE MATTER OF THE *USER FEES ACT*, S.C. 2004, C. 6,  
*TELECOMMUNICATIONS ACT*, S.C. 1993, C. 38 AND  
*TELECOMMUNICATIONS FEES REGULATIONS 1995*, SOR/95-157;**

**AND IN THE MATTER OF THE CANADIAN RADIO-TELEVISION  
AND TELECOMMUNICATIONS COMMISSION'S TELECOM  
DECISION CRTC 2006-71 AND TELECOM PUBLIC NOTICE CRTC  
2008-13;**

**AND IN THE MATTER OF AN APPLICATION DATED MAY 26,  
2006, BY ALIANT TELECOM INC. (NOW ALIANT REGIONAL  
COMMUNICATIONS, LP) AND BELL CANADA TO REQUEST  
THAT THE CANADIAN RADIO-TELEVISION AND  
TELECOMMUNICATIONS COMMISSION REVISE THE CURRENT  
REGULATIONS REGARDING TELECOMMUNICATIONS FEES;**

**AND IN THE MATTER OF AN APPLICATION BY WAY OF A  
REFERENCE TO THE FEDERAL COURT OF APPEAL PURSUANT  
TO SECTIONS 18.3(1) AND 28(2) OF THE *FEDERAL COURTS ACT*,  
R.S.C. 1985, C. F-7, AND SECTION 14 OF THE *CRTC  
TELECOMMUNICATIONS RULES OF PROCEDURE*, SOR/79-554.**

Heard at Ottawa, Ontario, on June 9, 2009.

Judgment delivered at Ottawa, Ontario, on July 2, 2009.

REASONS FOR JUDGMENT BY:

RICHARD C.J.

CONCURRED IN BY:

NOËL J.A.

LAYDEN-STEVENSON J.A.

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**REASONS FOR JUDGMENT**

**RICHARD C.J.**

[1] This is a reference brought by the Canadian Radio-television and Telecommunications Commission (CRTC) pursuant to subsections 18.3(1) and 28(2) of the *Federal Courts Act*, R.S.C. 1985, c. F-7 and section 14 of the *CRTC Telecommunications Rules of Procedure*, S.O.R./79-554 for this Court's opinion on a question of law with respect to the application of the *User Fees Act*, S.C. 2004, c. 6 to proposed changes to the *Telecommunications Fees Regulations, 1995*, S.O.R./95-157 (Fees Regulations). Aliant Telecom Inc. (now Bell Aliant Regional Communications, LP) and Bell Canada (collectively, Bell) and Rogers Communications Inc. (Rogers) have also made submissions in this proceeding.

[2] In Telecom Public Notice CRTC 2008-13, the CRTC described the issue to be resolved in this reference as follows:

**Issues to be resolved**

20. The issue to be resolved is whether amending or replacing the Fees Regulations [...] would amount to fixing, increasing, expanding the application or increasing the duration, pursuant to subsection 4(1) of the *User Fees Act*, of a "user fee," as defined in section 2 of the same Act.

21. As such, it must be determined whether all essential constituent elements of a "user fee" - including that it be for the "direct benefit or advantage" of those paying the fee - would be present.

22. The answer to this question would affect the process that would have to be followed in order to amend or replace the Fees Regulations [...]. As explained in more detail in the Appendix to this Public Notice, there are two possible alternative approaches:

(a) if the telecommunications fees are not "user fees," the Commission would have to comply with the requirements set out in sections 68 and 69 of the Act (which set out an obligation to pre-publish proposed fees regulations for public comment and a requirement to secure Treasury Board approval before making regulations following pre-publication); or

(b) if the telecommunications fees are "user fees," in addition to complying with the requirements set out in (a) above, the Commission would have to comply with the requirements for implementing "user fees" set out in sections 4 and following of the *User Fees Act*.

23. The answer to this question would also affect whether the other requirements with respect to user fees in the *User Fees Act*, such as the requirement to reduce the fees that fund the Commission when performance standards are not met, would apply.

### Reference Question

[3] The question referred to this Court is the following:

Would amending or replacing the *Telecommunications Fees Regulations, 1995*, SOR/95-157 (the “Fees Regulations”), in the manner contemplated in the application dated 26 May 2006 by Aliant Telecom Inc. (now Bell Aliant Regional Communications, Limited Partnership) and Bell Canada (which requested that the Canadian Radio-television and Telecommunications Commission revise the Fees Regulations) and Telecom Decision CRTC 2006-71, and as more fully described in the Appendix to Telecom Public Notice CRTC 2008-13, dated 15 October 2008, amount to fixing, increasing, expanding the application or increasing the duration, pursuant to subsection 4(1) of the *User Fees Act*, of a “user fee,” as defined in section 2 of the same Act?

[4] For the reasons that follow, I would answer this question in the negative.

### Background

[5] The parties are all agreed on the following background information.

[6] The CRTC is responsible for regulating the provision of telecommunications services in accordance with the Canadian telecommunications policy objectives listed in section 7 of the *Telecommunications Act*, S.C. 1993.

[7] Pursuant to subsection 68(1) of the *Telecommunications Act* and subject to the approval of the Treasury Board, the CRTC may make regulations prescribing fees (Telecom Fees) for the purpose of recovering all or a portion of its costs that the CRTC determines to be attributable to its

responsibilities under the *Telecommunications Act*. The current regulations have been in force since April 1, 1995.

[8] Under the current regulations, only tariff-filing Canadian carriers are required to pay Telecom Fees (Fees Regulations, section 3). “Canadian carrier” is defined in subsection 2(1) of the *Telecommunications Act* as a telecommunications common carrier that is subject to the legislative authority of Parliament. The amount paid by each of these carriers is based on its operating revenue relative to the aggregate of operating revenues for all of these carriers (Fees Regulations, section 4).

[9] Canada’s telecommunications industry also includes many telecommunications service providers (TSPs) that do not pay fees, either because they are not Canadian carriers or because they are not required to file tariffs.

[10] On May 26, 2006, Bell filed an application requesting that the CRTC revise the Fees Regulations in order to require the Telecom Fees to be payable by all TSPs based on each TSP’s total Canadian telecommunications service revenue (CTSR). Bell also submitted that changes to the Fees Regulations should be considered in the context of the *User Fees Act*.

[11] On November 6, 2006, in response to Bell’s application, the CRTC issued Telecom Decision CRTC 2006-71. In its decision, the CRTC concluded that it would be appropriate for every TSP with annual CTSRs equal to or greater than \$10 million to pay annual Telecom Fees, based on its operating revenue as a percentage of the revenue of all such TSPs. It is important to note that the proposed changes would not, in themselves, increase the CRTC’s revenues, but simply

would broaden the base of fee-payers and change the basis upon which telecommunications revenues are to be assessed.

[12] In this decision, the CRTC stated that it intended to commence the necessary process to draft the required changes to the Fees Regulations (Telecom Decision CRTC 2006-71, at paragraphs 48-49). The CRTC did not consider the applicability of the *User Fees Act* to the amendment process.

[13] During inter-departmental deliberations that followed the issuance of Telecom Decision CRTC 2006-71, the CRTC received conflicting legal opinions with respect to the application of the *User Fees Act* to the proposed amendments. As a result, the CRTC stated in Telecom Public Notice CRTC 2008-13 that it had reopened Decision 2006-71. In addition, the public notice stated that the CRTC would refer the question of law cited above to this Court. Pending the outcome of this proceeding, the CRTC stayed its review of the proposed amendments (Telecom Public Notice CRTC 2008-13, at paragraph 25).

### Issue

[14] As described above in the reference question, the only issue in determining whether the *User Fees Act* applies to the proposed amendments to the Fees Regulations is whether the Telecom Fees are user fees as defined in section 2 of the *User Fees Act*.

"user fee" means a fee, charge or levy for a product, regulatory process, authorization, permit or licence, facility, or for a service that is provided only by a regulating authority, that is fixed pursuant to the authority of an Act of Parliament and which results in a direct benefit or advantage to the person paying the fee.

« frais d'utilisation » Frais ou droits exigés pour un produit, la fourniture de procédés réglementaires, la mise à disposition d'une installation, la prestation d'un service fourni exclusivement par l'organisme de réglementation ou la délivrance d'une autorisation, d'un permis ou d'une licence, établis sous le régime d'une loi fédérale et qui entraînent un avantage direct pour la

personne qui les paye.

[15] Section 2 also defines the following terms found in the definition of user fee:

"direct benefit or advantage" means a benefit to the client paying the user fee with that benefit being either unique to that client or distinct from and greater than benefits that could also accrue to any other person or business as a result of that user fee being paid.

"regulating authority" means a department, agency, board, commission, or any other body mentioned in Schedule I, I.1 or II to the *Financial Administration Act* that has the power to fix a user fee under the authority of an Act of Parliament. Where the Act gives that power to the Governor in Council or a Minister, it means the body proposing the user fee.

« avantage direct » Avantage pour le client payant les frais d'utilisation qui est soit propre à ce client, soit distinct des avantages — tout en leur étant supérieur — que pourrait aussi recevoir toute autre personne ou entreprise du fait du paiement de ces frais.

« organisme de réglementation » Ministère, agence, conseil, office, commission ou tout autre organisme qui est mentionné à l'annexe I, I.1 ou II de la *Loi sur la gestion des finances publiques*, qui a le pouvoir, en vertu d'une loi fédérale, d'établir des frais d'utilisation. Lorsque la loi donne le pouvoir d'établir les frais au gouverneur en conseil ou à un ministre, l'expression s'entend de l'organisme qui les propose.

### Position of the CRTC

[16] The CRTC submits that the Telecom Fees do not meet the required elements of the definition of user fees under the *User Fees Act*. Specifically, the Fees are not for a “product, regulatory process, authorization, permit or licence, facility, or for a service that is provided only by a regulating authority”. The CRTC asserts that unlike user fees, which are imposed by the government for the use of specific government services or facilities, the Telecom Fees are regulatory charges that are calculated to recover the entire cost of regulating the Canadian telecommunications industry.



[17] Further, the CRTC submits that the statutory definition of user fee clearly requires there to be a direct nexus between the quantum charged to each fee-payer and the benefits received by that fee-payer. With respect to the Telecom Fees, the CRTC asserts that there is no such relationship between the amount paid by a particular fee-payer and the benefits received by that fee-payer. In fact, the CRTC submits that it is possible that a particular fee-payer could receive fewer benefits than a non-fee-payer depending upon the outcome of a particular CRTC decision or activity. This is because there are many different parties, and not just TSPs, that participate in CRTC proceedings, including both small and large telephone companies, public interest interveners, business associations, government authorities, and internet service providers.

#### Position of Bell

[18] Bell submits that the Telecom Fees are user fees within the meaning of the *User Fees Act* since the CRTC provides services, including dispute adjudication, regulatory processes, authorizations, and licenses. Furthermore, Bell asserts that fee-payers do receive a direct benefit or advantage – namely, access to a variety of regulatory services and processes. This benefit is “unique” to each TSP, since each TSP is different.

[19] Bell disagrees with the CRTC’s submission that the *User Fees Act* requires there to be a nexus between the quantum of fees paid by a TSP and the benefit received by that TSP. In any case, Bell submits that there is a nexus under the amended fee structure, since the TSP’s fee, based on its operating revenue, is used as a proxy for the ability of that TSP to acquire economic gain from its participation in the telecommunications industry. In Bell’s view, the fact that those TSPs whose operating revenues are less than \$10 million will not pay fees is simply a *de minimis* exemption, introduced by the CRTC for reasons of administrative expediency.

### Position of Rogers

[20] Rogers agrees with Bell that the Telecom Fees are user fees within the meaning of the *User Fees Act* and concurs substantially with Bell's submissions. Additionally, Rogers submits that the fact that the CRTC "bundles" its fees to recover the costs of several regulatory processes or services should not take it outside the ambit of the *User Fees Act*. Rogers cautions that to interpret the Act as applying only to individualized fees would encourage regulatory authorities to avoid the application of the Act by bundling fees for multiple regulatory processes. It asserts that this is contrary to the purpose of the Act, which is to provide transparency.

### Analysis

[21] To answer the question referred to this Court, it is important to keep in mind Driedger's modern principle of statutory interpretation, namely:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

*Sullivan on the Construction of Statutes*, 5<sup>th</sup> ed. (Markham, Ont.: LexisNexis Canada, 2008) at p. 1.

[22] All parties are in agreement that, to be a "user fee", the fee, charge or levy must be:

- (a) for a product, regulatory process, authorization, permit or licence, facility, or for a service that is provided only by a regulatory authority;
- (b) that is fixed pursuant to the authority of an Act of Parliament; and
- (c) which results in a direct benefit or advantage to the person paying the fee.

[23] All parties also agree that the CRTC is a regulatory authority within the meaning of the *User Fees Act* and that the Telecom Fees are fixed pursuant to the authority of an Act of Parliament, the *Telecommunications Act*.

#### *Relevant Jurisprudence*

[24] In its submissions, the CRTC asserted that the Supreme Court of Canada decisions of *Westbank First Nation v. British Columbia Hydro and Power Authority*, [1999] 3 S.C.R. 134 (*Westbank*) and *620 Connaught Ltd. v. Canada (A.G.)*, 2008 SCC 7, [2008] 1 S.C.R. 131 (*Connaught*) were relevant to the interpretation of the term “user fee”. In both these cases, the Court had to characterize the fees at issue as taxes or regulatory charges in order to determine whether they were *ultra vires* the authority of the imposing body.

[25] While neither of these cases considered the *User Fees Act*, I note that in *Westbank* Gonthier J. characterized government levies as belonging to one of three categories: taxes, regulatory charges, or user fees, which are a subset of regulatory charges. He stated (at paragraph 30):

Although in today’s regulatory environment, many charges will have elements of taxation and elements of regulation, the central task for the court is to determine whether the levy’s primary purpose is, in pith and substance: (1) to tax, i.e. , to raise revenue for general purposes; (2) to finance or constitute a regulatory scheme, i.e., to be a regulatory charge or to be ancillary or adhesive to a regulatory scheme; or (3) to charge for services directly rendered, i.e., to be a user fee.

[26] In *Telus Communications Inc. v. Canada (Attorney General)*, 2005 FCA 409, 344 N.R. 219 (*Telus*), this Court reviewed the CRTC’s assessment of Telus’ Telecom Fees. While Rothstein J.A. (as he then was) referred to the Telecom Fees as “user fees” throughout the decision, he expressly

declined to apply the *User Fees Act* to the Telecom Fees since it was unnecessary to dispose of the appeal.

[27] While these decisions provide a useful background, the issue to be resolved in this reference is whether the Telecom Fees are user fees within the meaning of section 2 of the *User Fees Act*. I note that no party before this Court has asserted that there are no longer the three types of government levies described in *Westbank*, such that the *User Fees Act* would apply to all government levies that are not taxes.

#### *Statutory Framework*

[28] In determining whether the Telecom Fees are “user fees”, one must have regard to the telecommunications objectives and the CRTC’s powers provided in the *Telecommunications Act*.

[29] The CRTC is entrusted, pursuant to section 7 of the *Telecommunications Act*, with the following objectives:

(a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions;

(b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;

(c) to enhance the efficiency and

a) favoriser le développement ordonné des télécommunications partout au Canada en un système qui contribue à sauvegarder, enrichir et renforcer la structure sociale et économique du Canada et de ses régions;

b) permettre l'accès aux Canadiens dans toutes les régions — rurales ou urbaines — du Canada à des services de télécommunication sûrs, abordables et de qualité;

c) accroître l'efficacité et la compétitivité,

competitiveness, at the national and international levels, of Canadian telecommunications;	sur les plans national et international, des télécommunications canadiennes;
(d) to promote the ownership and control of Canadian carriers by Canadians;	d) promouvoir l'accèsion à la propriété des entreprises canadiennes, et à leur contrôle, par des Canadiens;
(e) to promote the use of Canadian transmission facilities for telecommunications within Canada and between Canada and points outside Canada;	e) promouvoir l'utilisation d'installations de transmission canadiennes pour les télécommunications à l'intérieur du Canada et à destination ou en provenance de l'étranger;
(f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective;	f) favoriser le libre jeu du marché en ce qui concerne la fourniture de services de télécommunication et assurer l'efficacité de la réglementation, dans le cas où celle-ci est nécessaire;
(g) to stimulate research and development in Canada in the field of telecommunications and to encourage innovation in the provision of telecommunications services;	g) stimuler la recherche et le développement au Canada dans le domaine des télécommunications ainsi que l'innovation en ce qui touche la fourniture de services dans ce domaine;
(h) to respond to the economic and social requirements of users of telecommunications services; and	h) satisfaire les exigences économiques et sociales des usagers des services de télécommunication;
(i) to contribute to the protection of the privacy of persons.	i) contribuer à la protection de la vie privée des personnes.

[30] It is common ground that the Telecom Fees pay for the activities that the CRTC determines to be attributable to its telecommunications activities, including carrying out the above objectives.

In order to fulfill its mandate, the *Telecommunications Act* gives the CRTC broad powers to provide several different regulatory processes, services, and licences. For example, the CRTC may:

- by order, exempt any class of Canadian carriers from the application of the *Telecommunications Act* and to determine compliance with any condition of such an exemption order (section 9);
  - issue, suspend, or revoke international telecommunications service licences and establish or amend conditions for these licences (sections 16.3 & 16.4);
  - approve, amend, or disallow the filing of a tariff by a Canadian carrier (section 26);
  - impose conditions for the offering and provision of any telecommunications service by a Canadian carrier (section 24);
  - approve agreements or arrangements between Canadian carriers with respect to the interchange of telecommunications by means of their facilities, the management or operation of either or both of their facilities and the apportionment of rates or revenues between carriers (section 29);
  - require a Canadian carrier to submit periodic reports relating to any information that the CRTC considers to be necessary for the administration of the *Telecommunications Act* (paragraph 37(1)(b));
  - order a Canadian carrier to connect any of its telecommunications facilities to any other telecommunications facilities (section 40);
  - on application by an interested party, inquire into and make a determination in respect of anything prohibited, required or permitted to be done under Part II of the *Telecommunications Act* (except in relation to submarine cables), Part III, or Part IV (section 48);
  - refrain in whole or in part and conditionally or unconditionally from exercising the powers referred to under sections 24, 25, 27, 29, and 31 of the *Telecommunications Act* (section 34);
- and

- generally determine any matter and make any order relating to the rates, tariffs or telecommunications services of Canadian carriers (section 32(g)).

[31] The exercise of the CRTC's powers related to telecommunications services, licences, and regulatory processes may provide benefits or advantages to non-fee-payers. In the past, the CRTC has exercised its powers to:

- establish a 50% discount for Telecommunications Devices for the Deaf (TDD) users on long-distance calls for hearing or speech-impaired subscribers (Order CRTC 2000-17 (19 January 2000));
- require telephone companies to, on request, provide billing statements and bill inserts in alternative format to subscribers who are blind ("Extending the availability of alternative formats to consumers who are blind" (8 March 2002), Telecom Decision CRTC 2002-13);
- require access to pay telephones, including implementing an upgrade program for certain pay telephones to grant access to persons with disabilities ("Access to pay telephone service" (15 July 2004), Telecom Decision CRTC 2004-47);
- allow public authorities to use the numbers and addresses in 9-1-1 databases to improve the effectiveness of telephone-based emergency public alerting systems ("Use of E9-1-1 information for the purpose of providing an enhanced community notification service" (28 February 2007), Telecom Decision CRTC 2007-13); and
- establish a National "Do Not Call" List ("Unsolicited Telecommunications Rules framework and the National Do Not Call List" (3 July 2007), Telecom Decision CRTC 2007-48).

\* \* \*

[32] Clearly, the Telecom Fees pay for many regulatory processes and services that do not offer a benefit or advantage to the fee-payer, let alone a “direct benefit or advantage”. Some may even adversely affect a fee-payer. However, as noted by the CRTC in its submissions, the fee-payer is still required to pay its share of the costs of the CRTC’s annual telecommunications activities. I note as well that these regulatory processes and services are not simply incidental or collateral to those services or processes that offer a benefit or advantages to fee-payers.

[33] This is not to suggest that a fee-payer must be guaranteed a benefit in order for a government levy to be a user fee within the meaning of the *User Fees Act*. However, in my view, the *Telecommunications Act* sets out a complex regulatory scheme, rather than the regulatory processes or services contemplated by the *User Fees Act*.

[34] Rogers’ suggests that if this Court adopts the definition of “user fee” advanced by the CRTC, this could encourage regulating authorities to “bundle” fees set to recover the costs of more than one regulatory process in an effort to avoid the application of the *User Fees Act*. However, no party suggested that the CRTC was attempting to avoid the application of the *User Fees Act* to the proposed Telecom Fees. Further, Parliament granted to the CRTC not only the authority to administer discrete regulatory processes, but also the broad authority to manage the telecommunications industry in Canada and to implement the telecommunications objectives listed in section 7 of the *Telecommunications Act*.

[35] This Court’s attention was also drawn to the legislative summary accompanying the *User Fees Act*. It states:



This enactment provides for parliamentary scrutiny and approval of user fees set by regulating authorities. It also provides for greater transparency in the cost recovery and fee setting activities of those authorities, by requiring them to engage in a participatory consultation with clients and other service users before introducing or amending those fees.

[36] While the Telecom Fees are not subject to the scrutiny of Parliament, the Treasury Board must approve the Fees Regulations, pursuant to subsection 68(1) of the *Telecommunications Act*. Given the nature of the Treasury Board as a statutory cabinet committee, the additional oversight envisaged by the *User Fees Act* was not intended to apply to the Fees Regulations. With respect to the legislative purpose of transparency, subsection 69(1) of the *Telecommunications Act* requires that the proposed regulations be published in the *Canada Gazette* and that “a reasonable opportunity shall be given to interested persons to make representations to the Commission with respect to the proposed regulations”.

### Conclusion

[37] Accordingly, I would answer the reference question as follows:

Would amending or replacing the *Telecommunications Fees Regulations, 1995*, SOR/95-157 (the “Fees Regulations”), in the manner contemplated in the application dated 26 May 2006 by Aliant Telecom Inc. (now Bell Aliant Regional Communications, Limited Partnership) and Bell Canada (which requested that the Canadian Radio-television and Telecommunications Commission revise the Fees Regulations) and Telecom Decision CRTC 2006-71, and as more fully described in the Appendix to Telecom Public Notice CRTC 2008-13, dated 15 October 2008, amount to fixing, increasing, expanding the application or increasing the duration, pursuant to subsection 4(1) of the *User Fees Act*, of a “user fee,” as defined in section 2 of the same Act?

Answer: No.

“John D. Richard”

---

Chief Justice

“I agree

Marc Noël J.A.”

“I agree

Carolyn Layden-Stevenson J.A.”

## Appendix

### ***Telecommunications Act, S.C. 1993, c. 38.***

**68.** (1) The Commission may, with the approval of the Treasury Board, make regulations prescribing fees, and respecting their calculation and payment, for the purpose of recovering all or a portion of the costs that the Commission determines to be attributable to its responsibilities under this Act or any special Act.

(2) Fees required to be paid under this section constitute a debt due to Her Majesty in right of Canada and may be recovered in a court of competent jurisdiction.

**69.** (1) Any regulations proposed to be made under section 67 or 68 shall be published in the *Canada Gazette* at least sixty days before their proposed effective date, and a reasonable opportunity shall be given to interested persons to make representations to the Commission with respect to the proposed regulations.

(2) Proposed regulations that are modified after publication need not be published again under subsection (1).

**68.** (1) Le Conseil peut, par règlement pris avec l'agrément du Conseil du Trésor, imposer des droits — et en déterminer le mode de calcul ainsi que les modalités de paiement — afin de recouvrer tout ou partie des frais entraînés, selon lui, par l'exercice de ses pouvoirs et fonctions dans le cadre de la présente loi ou d'une loi spéciale.

(2) Les droits payables dans le cadre du présent article constituent une créance de Sa Majesté du chef du Canada, dont le recouvrement peut être poursuivi à ce titre devant tout tribunal compétent.

**69.** (1) Les projets de règlement visés aux articles 67 et 68 sont publiés dans la *Gazette du Canada* au moins soixante jours avant la date prévue pour leur entrée en vigueur, les intéressés se voyant accorder la possibilité de présenter au Conseil leurs observations à cet égard.

(2) Une seule publication suffit, que le projet ait ou non été modifié.

### ***User Fees Act, S.C. 2004, c. 6.***

**4.** (1) Before a regulating authority fixes, increases, expands the application of or increases the duration of a user fee, it must

(a) take reasonable measures to notify clients, and other regulating authorities with a similar clientele of the user fee proposed to be fixed, increased, expanded in application or increased in

**4.** (1) Avant d'établir ou d'augmenter les frais d'utilisation, d'en élargir l'application ou d'en prolonger la durée d'application, l'organisme de réglementation doit :

a) prendre des mesures raisonnables pour aviser de la décision projetée les clients et les autres organismes de réglementation qui ont des clients semblables;

- duration;
- (b) give all clients or service users a reasonable opportunity to provide ideas or proposals for ways to improve the services to which the user fee relates;
  - (c) conduct an impact assessment to identify relevant factors, and take into account its findings in a decision to fix or change the user fee;
  - (d) explain to clients clearly how the user fee is determined and identify the cost and revenue elements of the user fee;
  - (e) establish an independent advisory panel to address a complaint submitted by a client regarding the user fee or change; and
  - (f) establish standards which are comparable to those established by other countries with which a comparison is relevant and against which the performance of the regulating authority can be measured.
- (2) In addition to subsection (1), the Minister must cause to be tabled in each House of Parliament a proposal
- (a) explaining in respect of what service, product, regulatory process, facility, authorization, permit or licence the user fee is being proposed;
  - (b) stating the reason for any proposed change in user fee rate;
  - (c) including the performance standards established in accordance with
    - b) donner aux clients ou aux bénéficiaires des services la possibilité de présenter des suggestions ou des propositions sur les façons d'améliorer les services auxquels les frais d'utilisation s'appliquent;
    - c) mener une étude d'impact afin de déterminer les facteurs pertinents et prendre en considération les conclusions de cette étude dans sa décision d'établir ou de modifier les frais d'utilisation;
    - d) expliquer clairement aux clients la façon dont les frais d'utilisation sont établis et en indiquer les composantes de coût et de recette;
    - e) établir un comité consultatif indépendant pour le traitement des plaintes déposées par les clients au sujet des frais d'utilisation ou de leur modification;
    - f) établir pour l'évaluation du rendement de l'organisme de réglementation des normes comparables à celles établies par d'autres pays avec lesquels une comparaison est pertinente.
- (2) En plus des mesures exigées au paragraphe (1), le ministre doit faire déposer devant chaque chambre du Parlement une proposition qui contient les renseignements suivants :
- a) une description du produit, du procédé réglementaire, de l'installation, du service, de l'autorisation, du permis ou de la licence auxquels les frais d'utilisation projetés s'appliquent;
  - b) les raisons de la modification proposée des frais d'utilisation;
  - c) les normes de rendement établies

- paragraph (1)(f), as well as the actual performance levels that have been reached;
- (d) giving an estimate of the total amount that the regulating authority will collect in the first three fiscal years after the introduction of the user fee, and identifying the costs that the user fee will cover; and
- (e) describing the establishment of an independent advisory panel in accordance with paragraph (1)(e) and describing how any complaints received under section 4.1 were dealt with.
- (3) If the amount of user fee being proposed by the Minister pursuant to subsection (2) is higher than that existing in a country with which a comparison referred to in paragraph (1)(f) is relevant, the Minister must as part of the proposal being made give reasons for the difference.
- (4) Every proposal tabled under subsection (2) is deemed referred to the Committee.
- 5.** The Committee may review a proposal for a user fee referred to it pursuant to subsection 4(4) and submit to the Senate or the House of Commons, as the case may be, a report containing its recommendation as to the appropriate user fee, subject to the provisions of section 5.1.
- 5.1** Where a regulating authority's performance in a particular fiscal year in respect of a user fee does not meet the standards established by it for that fiscal year by a percentage greater than ten per cent, the user fee shall be reduced by a percentage equivalent to the unachieved performance, to a maximum of fifty per cent of the user fee. The reduced user fee
- aux termes de l'alinéa (1)f) ainsi que le niveau de rendement déjà atteint;
- d) une estimation du montant total des frais d'utilisation que l'organisme de réglementation compte percevoir au cours des trois exercices suivant la prise d'effet des frais d'utilisation et une indication des coûts que ces frais permettront de recouvrer;
- e) une description du comité consultatif indépendant établi aux termes de l'alinéa (1)e) et du traitement accordé aux plaintes visées à l'article 4.1.
- (3) Si le montant des frais d'utilisation proposés par le ministre aux termes du paragraphe (2) est supérieur aux frais d'utilisation en vigueur dans un pays avec lequel la comparaison visée à l'alinéa (1)f) est pertinente, le ministre doit donner dans sa proposition une justification de l'écart.
- (4) Le comité est saisi d'office de toute proposition déposée en application du paragraphe (2).
- 5.** Le comité peut examiner une proposition reçue aux termes du paragraphe 4(4) relative à des frais d'utilisation et présenter au Sénat ou à la Chambre des communes, selon le cas, un rapport faisant état de ses recommandations quant aux frais d'utilisation appropriés, sous réserve des dispositions de l'article 5.1.
- 5.1** Si, pour un exercice donné, le rendement d'un organisme de réglementation à l'égard de frais d'utilisation est inférieur aux normes de rendement qu'il a établies pour cet exercice dans une proportion dépassant dix pour cent, ces frais d'utilisation sont réduits d'un pourcentage — d'au plus cinquante pour

applies from the day on which the annual report for the fiscal year is tabled under subsection 7(1) until the day on which the next annual report is tabled.

**6.** (1) The Senate or the House of Commons may pass a resolution approving, rejecting or amending the recommendation made by the Committee pursuant to section 5.

(2) If, within twenty sitting days after the tabling of a proposal under subsection 4(2), the Committee fails to submit a report containing its recommendation to the Senate or the House of Commons, as the case may be, the Committee is deemed to have submitted a report recommending that the proposed user fee be approved.

cent — équivalent à l'insuffisance du rendement. La réduction s'applique à partir du jour où le rapport visé au paragraphe 7(1) qui est relatif à l'exercice est déposé jusqu'au dépôt du rapport suivant.

**6.** (1) Le Sénat ou la Chambre des communes peut, par résolution, approuver, rejeter ou modifier les recommandations du comité visées à l'article 5.

(2) Si le comité n'a pas fait rapport de ses recommandations au Sénat ou à la Chambre des communes, selon le cas, dans les vingt premiers jours de séance suivant le dépôt de la proposition visée au paragraphe 4(2), il est réputé avoir présenté un rapport recommandant l'approbation des frais d'utilisation proposés.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-521-08

**(IN THE MATTER OF AN APPLICATION BY WAY OF REFERENCE TO THE FEDERAL COURT OF APPEAL PURSUANT TO SUBSECTIONS 18.3(1) & 28(2) OF THE FCA & SECTION 14 OF THE CRTC TELECOMMUNICATION RULES OF PROCEDURE.**

**PLACE OF HEARING:** Ottawa, Ontario

**DATE OF HEARING:** June 9, 2009

**REASONS FOR JUDGMENT BY:** RICHARD C.J.

**CONCURRED IN BY:** Noël J.A.  
Layden-Stevenson J.A.

**DATED:** July 2, 2009

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