

# Applying Existing Legislation to New Technology: Supreme Court of Canada Weighs In

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On April 25, 2025, the Supreme Court of Canada (the **Supreme Court**) released its 7-2 decision in [Telus Communications Inc. v. Federation of Canadian Municipalities, 2025 SCC 15](#) (**Telus Communications**). The case provides guidance to companies that are using or developing new technology and how that technology may interact with existing legislation.

In brief, businesses should not assume that existing statutes will automatically and beneficially extend to emerging circumstances or technologies. There may be cases—like this one—where a statute will be interpreted as "static" to only apply to existing technology. In contrast, some statutes may be interpreted as "dynamic" or "technologically neutral" such that they can apply to new and emerging technologies. Determining whether a statute is "static" or "dynamic"—and ultimately whether it applies to a given technology—can be challenging, as demonstrated by the dissenting opinion in this case.

## Facts of the case

The case dealt with 5G technology, the next generation of wireless mobile networks, and whether the term "transmission line" under sections 43 and 44 of the *Telecommunications Act* (the **Act**) applies to the installation of 5G small cell antennas. Unlike previous-generation mobile wireless networks, 5G networks employ low-powered small cell antennas that are not free-standing. Instead, the antennas are mounted on existing structures, many of which are located on municipally owned public property. If the 5G antennas were "transmission lines", then carriers could install 5G wireless antennas without municipal consent.

Prior to the hearing at the Supreme Court, both the Canadian Radio-television and Telecommunications Commission (the **CRTC**) and the Federal Court of Appeal determined that "transmission line" in sections 43 and 44 of the Act only applied to "wireline infrastructure" and not 5G antennas. Telus Communications Inc., Quebecor Media Inc., Videotron Ltd. and Rogers Communications Canada Inc. (collectively, the **Appellants**) appealed.

## Majority finds that the statute was "static" and did not apply to new technology

The majority's analysis centred on the modern approach to statutory interpretation, which required sections 43 and 44 to be understood with reference to the Act's text, context and purpose. The Supreme Court also raised the distinction between the roles of the courts and the government, reminding readers that courts are to not exceed their institutional role by engaging in political questions raised by changing circumstances: that is for the legislatures to address. The Supreme Court noted, however, that this principle does not prevent courts from applying statutes to new circumstances if the legislature has incorporated broad or open-textured language to "cover circumstances that are neither in existence nor in their contemplation."

The Appellants argued that the Federal Court of Appeal and CRTC erred in their decisions by adopting a "static" approach to interpretation, and that a "dynamic" approach was correct, which would allow the Act to be interpreted in a way that could apply to new technology as it arises. The Supreme Court disagreed, holding that whether a statute is "static" or "dynamic" is determined by reading the disputed provisions with an ordinary understanding of the text, and with reference to the context and purpose of the statute.

Applying this approach to the facts of the case, the Supreme Court determined that Parliament intended "transmission line" to apply to wireline infrastructure only. The 5G antennas at issue were not physical lines and the ordinary meaning of "transmission line" supported a narrow interpretation of the term. Additionally, the Supreme Court concluded that, unlike transmission lines, 5G antennas could not be buried under or run along private property as noted in sections 43 and 44 of the Act. Nor do signals transmitted via antenna run on, over, or along public property. In this way, 5G antennas "do not fit naturally within the ordinary meaning because antennas do not transmit intelligence along physical pathways" like a transmission line.

## **Dissenting opinion focuses on "technological neutrality"**

Two judges, Justice Côté and Justice Martin, dissented. The dissent determined that the concept of "technological neutrality" should allow law to continue to operate without requiring constant amendments to adapt to technology change. The dissent also held that Parliament had not explicitly defined "transmission line" within the Act and that this allowed the term to be interpreted broadly to allow for future developments. Further, the dissent reasoned that 5G networks should be subject to the same legal standards because they perform the same telecommunications functions and serve the same purposes as traditional wired or cable-based networks. The disagreement between the majority and the dissent demonstrates that navigating the legislative framework for new technology products can be challenging.

## **Takeaways**

The principles in *Telus Communications* are relevant to many businesses today, especially those who are using and developing new technologies where an explicit legislative framework has not been developed, such as Artificial Intelligence. BD&P's technology and intellectual property litigators are here to help you navigate these challenges.