

Leave to Intervene in Federal Court of Appeal Canadian Radio-Television and Telecommunications Case - CRTC 2021-130

Date: November 1, 2021

To: City Council

From: City Solicitor

Wards: All

SUMMARY

The City Solicitor is seeking authority to approve a motion for leave to intervene in a Federal Court of Appeal case where the court will consider provisions of the Telecommunications Act relevant to telecommunications carriers' access to highways and other public places to construct, maintain and operate wireless telecommunications infrastructure.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council authorize the City Solicitor, with retroactive authority if required, to bring a motion seeking leave to intervene in the appeal of the Canadian Radio and Telecommunication's Review of Mobile Wireless Services, Telecom Regulatory Policy decision, CRTC 2021-130, dated April 15, 2021, at the Federal Court of Appeal, and to intervene in the appeal if granted leave by the Court.

FINANCIAL IMPACT

The City will incur some minor expenses for filing materials at the Federal Court of Appeal. These are estimated to be less than \$1000.00 and will be paid for by the Corporate Real Estate Management Division.

DECISION HISTORY

None

COMMENTS

The CRTC's Decision on its Jurisdiction

In April, 2021, the Canadian Radio-Television and Telecommunications Commission (the "CRTC") issued its Review of Mobile Wireless Services, Telecom Regulatory Policy decision, CRTC 2021-130, dated April 15, 2021 (the "CRTC Decision").

The CRTC Decision addresses important questions about the interpretation of the Telecommunications Act, including the CRTC's jurisdiction over telecommunication carriers' access to public places owned by municipalities for the purpose of constructing, maintaining or operating mobile wireless transmission facilities.

The CRTC concluded that it does not have jurisdiction to hear disputes between telecommunications carriers and municipalities regarding the construction, maintenance, or operation of wireless transmission equipment.

The CRTC's Decision is consistent with how the installation of infrastructure to support wireless communications has been approved and carried out for many years. Among other things, the CRTC noted that, under the Radiocommunications Act, the Minister of Industry has authority to approve sites on which radio apparatus, including antennas systems, may be located. Procedures published by the Minister provide guidance to municipalities and industry on how this jurisdiction will be exercised, including requirements for municipal consent and dispute resolution mechanisms when parties cannot agree upon the location or terms for placement of certain telecommunications infrastructure.

Telus Received Leave to Appeal the CRTC's Decision to the Federal Court of Appeal

In late August, 2021, the Federal Court of Appeal granted Telus Communications Inc. leave to appeal the CRTC Decision.

In its appeal, Telus Communications Inc. seeks to overturn the CRTC's finding that it does not have jurisdiction to hear disputes between telecommunications carriers and municipalities regarding the construction, maintenance, or operation of mobile wireless transmission facilities in or on highways or other public infrastructure.

Other telecommunications carriers, including Rogers, Bell, and Shaw, were parties at the hearing before the CRTC, as was the Canadian Federation of Municipalities and the Canadian Electricity Association, among others. These parties are entitled to participate in the appeal, and they have indicated their intention to do so.

Deployment of 5G Infrastructure in the City is a Significant Issue

The City Solicitor has consulted with the Deputy City Manager, Corporate Services, Deputy City Manager, Infrastructure and Development Services, and the Chief

Technology Officer, together with staff in Transportation Services, Corporate Real Estate Management, and Technology Services. Staff support the City's participation in this case.

The City of Toronto is the largest municipality in Canada and, with increasing demand for deployment of mobile wireless transmission facilities on its property, it has a large interest in the outcome of the appeal. The City has a genuine interest in this case. In my view it is important for the City to seek leave to intervene to actively participate.

In order to protect the City's interest in being able to effectively seek leave to intervene, it may be necessary to file leave materials with the Federal Court of Appeal in advance of Council's meeting. As a result I am seeking retroactive authority if required.

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SIGNATURE

Wendy Walberg
City Solicitor