



## Telecom Order CRTC 2017-424

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### **Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding that led to Telecom Decision 2016-479**

#### **Application**

1. By letter dated 9 January 2017, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding that led to Telecom Decision 2016-479 (the proceeding). The proceeding was initiated by PIAC's filing of an application regarding section 12 of the Quebec Budget Act<sup>1</sup> (the Budget Act application), which would require telecommunications service providers (TSPs) in Quebec to block access to certain gambling websites.
2. The Canadian Wireless Telecommunications Association (CWTA) filed an intervention dated 19 January 2017, and TELUS Communications Inc. (TCI)<sup>2</sup> filed an intervention dated 20 January 2017 in response to PIAC's application for costs.
3. As in the proceeding that led to Telecom Order 2017-364, there was additional process in this costs proceeding whereby Commission staff requested information from PIAC regarding the status of its legal counsel, Mr. John Lawford. In particular, Commission staff sought comments on whether it was appropriate for PIAC to claim legal fees for this individual as an internal or external resource. PIAC responded to the request, and Bell Canada and TCI provided comments.
4. PIAC submitted that it had met the criteria for an award of costs set out in section 68 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) because it had, and represented a group or class of subscribers that had, an interest in the outcome of the proceeding; it had assisted the Commission in developing a better understanding of the matters that were considered; and it had participated in a responsible way.

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<sup>1</sup> An Act respecting mainly the implementation of certain provisions of the Budget Speech of 26 March 2015, L.Q. 2016, c. 7. Section 12 of this act is not yet in force.

<sup>2</sup> In this proceeding, submissions were received from TELUS Communications Company (TCC). However, effective 1 October 2017, TCC's assets were legally transferred to TCI and TCC ceased to exist. For ease of reference, "TCI" is used in this order.

5. In particular, PIAC submitted that it is a national non-profit organization mandated to represent the public interest in regulatory proceedings. It argued that it offered a distinct perspective focused on the interests of telecommunications service consumers both in Quebec and across Canada, which was supported by its legal and regulatory expertise. PIAC also submitted that it contributed to a better understanding of the relevant issues throughout the proceeding. PIAC indicated that it was uniquely positioned to bring the Budget Act application because it did not face the potential conflict of interest faced by TSPs, towards whom section 12 of the Quebec Budget Act is directed. PIAC added that it participated responsibly in the proceeding by filing prompt and concise submissions and through its efficient use of less senior legal counsel.
6. With respect to the group or class of subscribers PIAC submitted that it represents, PIAC explained that it represents the interests of vulnerable consumers. Specifically, PIAC argued that this group or class consists of, among others, member organizations from five provinces and one territory, with both regional and national representation. PIAC submitted that it was difficult to state the exact number of individuals represented, but that individual members of these organizations numbered in the thousands.<sup>3</sup> With respect to the specific methods by which PIAC submitted that it represents this group or class, PIAC explained that it informed its Board of Directors and annual general meeting attendees of the proceeding's progress. It also indicated that the Board of Directors agreed with the position that PIAC advanced.
7. PIAC requested that the Commission fix its costs at \$22,101.78, consisting of \$17,203.72 for external and internal legal fees and \$4,898.06 for disbursements. PIAC's claim included the Ontario Harmonized Sales Tax (HST) on external legal fees less the rebate to which PIAC is entitled in connection with the HST.
8. PIAC claimed 43 hours for senior external legal counsel (Mr. Lawford) at a rate of \$290 per hour (\$12,961.32 with the HST and the associated rebate); 18.5 hours for intermediate external legal counsel (Mr. Geoffrey White) at a rate of \$206 per hour (\$3,961.15 with the HST and the associated rebate); 0.25 days for internal legal counsel (Ms. Alysia Lau) at a rate of \$600 per day (\$150); and 0.75 days for an internal legal assistant (Ms. Stefanija Savic) at a rate of \$175 per day (\$131.25).
9. PIAC submitted that the amount claimed in relation to disbursements was a result of the statutory requirement to serve notice of the constitutional question raised on each

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<sup>3</sup> PIAC referred to the following member organizations and membership numbers: the Ontario Society of Senior Citizens' Organizations (160 seniors' groups representing 500,000 individual seniors in Ontario); the Alberta Council on Aging (4,500 individual members and 450 organizational members); Canadian Pensioners Concerned (5,000 individual members); Dying with Dignity Canada (2,000 individual members); the PEI Council of the Disabled (1,500 individual members); Rural Dignity of Canada (2,000 individual members); and the Federation of Metro Tenants' Associations, which, according to PIAC, represents 92 tenants' associations.

provincial/territorial attorney general and the Attorney General of Canada. PIAC filed a bill of costs with its application.

10. PIAC submitted that the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents) should be the parties named in the Budget Act application, being the major TSPs operating in Quebec and the CWTA.
11. PIAC suggested that the responsibility for payment of costs for major TSPs should be based on their telecommunications operating revenues (TORs),<sup>4</sup> consistent with the Commission's general practice. In addition, PIAC submitted that the CWTA should be required to pay 25% of the costs awarded because that organization took an active role in the proceeding, and because its subsequent application to the Quebec Superior Court raised procedural complications for PIAC and other parties with respect to the Budget Act application before the Commission.

### **Answer**

12. The CWTA submitted that the Commission should maintain its general practice not to require industry associations to be responsible for costs. The CWTA noted that although the *Telecommunications Act* allows the Commission to require any party to a proceeding to be responsible for costs, to the best of its knowledge, there has been no instance where the Commission has ordered an industry association to pay for costs. It also noted past instances in which the Commission had explicitly considered whether the CWTA should have been a costs respondent in the circumstances, and concluded that it should not.<sup>5</sup>
13. TCI opposed the amount related to disbursements sought by PIAC. TCI argued that the disbursements, which related to costs incurred for personal service of the Budget Act application on the Attorney General of Canada and the provincial and territorial attorneys general, were neither reasonable nor necessarily incurred. TCI argued that personal service was not required by statute, and that PIAC could have effected service in a simpler and less costly manner.
14. TCI noted that the amount claimed in disbursements for service was equivalent to over 20 days of work for an in-house articling student, as calculated in accordance with the Commission's *Guidelines for the Assessment of Costs*, as set out in Telecom Regulatory Policy 2010-963 (the Guidelines). TCI argued that this was an excessive amount of time to complete this task and that the claim for disbursements should be reduced to \$235, the equivalent of one day of work for an articling student. TCI added that since the Commission's Rules of Procedure allow electronic filing, disbursements for photocopying and printing should not be allowed.

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<sup>4</sup> TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

<sup>5</sup> See, for instance, Telecom Order 2013-526.

## **Commission's analysis and determinations**

### **Eligibility**

15. The criteria for an award of costs are set out in section 68 of the Rules of Procedure, which reads as follows:

68. The Commission must determine whether to award final costs and the maximum percentage of costs that is to be awarded on the basis of the following criteria:

(a) whether the applicant had, or was the representative of a group or a class of subscribers that had, an interest in the outcome of the proceeding;

(b) the extent to which the applicant assisted the Commission in developing a better understanding of the matters that were considered; and

(c) whether the applicant participated in the proceeding in a responsible way.

16. In Telecom Information Bulletin 2016-188, the Commission provided guidance regarding how an applicant may demonstrate that it satisfies the first criterion with respect to its representation of interested subscribers. In the present case, PIAC has demonstrated that it meets this requirement. In its costs application, PIAC identified and described the group or class of subscribers it represents, provided information on the regions of Canada in which some of its members are located, and provided information regarding the number of individuals making up the group or class of subscribers being represented.

17. PIAC has also satisfied the remaining criteria through its participation in the proceeding. In particular, PIAC's submissions, especially those concerning the interpretation of section 36 of the *Telecommunications Act*, offered a distinct point of view and assisted the Commission in developing a better understanding of the matters that were considered.

### **Rates and amounts**

18. As noted in Telecom Order 2017-364, the appropriate test for assessing whether a lawyer is an internal or external resource is how the lawyer reports to the law society of which he or she is a member, in accordance with the Guidelines. However, the Commission may depart from the Guidelines and award costs at a different rate than what the lawyer is otherwise entitled to in cases where the applicant demonstrates that exceptional circumstances exist to warrant the departure.

19. In Telecom Order 2017-364, the Commission found that no exceptional circumstances existed. Consistent with Mr. Lawford's status as reported to the

Law Society of Upper Canada, the Commission allowed the Coalition<sup>6</sup> to calculate Mr. Lawford's legal fees using the external hourly rate for costs claimed for the period after 1 January 2017 but required it to use the internal daily rate for costs claimed for the period prior to that date.

20. The Commission finds that the same determination is appropriate in the present case, since the record of this costs proceeding regarding the status of Mr. Lawford as an external or internal resource is the same as that of the proceeding that led to Telecom Order 2017-364. The Commission also finds that there are no exceptional circumstances in this case that would justify a deviation from the normal rate scale for costs applicable under the Guidelines.
21. In the present case, the 43 hours for Mr. Lawford were claimed for the period prior to 1 January 2017. Therefore, the Commission finds that PIAC is eligible to calculate legal fees for Mr. Lawford's services at the internal daily rate of \$800 based on his years of practice. Accordingly, the Commission reduces the costs claimed from \$12,961.32 to \$5,000. The 43 hours claimed at the external rate were converted into 6.25 days based on a 7-hour work day, in accordance with the Guidelines.
22. The Commission finds that the total amount claimed by PIAC for legal fees, as adjusted above, was necessarily and reasonably incurred and should be allowed.
23. Accordingly, the total legal fees claimed are reduced from \$17,203.72 to \$9,242.40.
24. On the issue of disbursements, the Commission considers that PIAC's costs should not be adjusted.
25. The Commission notes that this application raised extraordinary issues, including constitutional issues, which led to procedures not commonly employed in the course of Commission proceedings. In particular, by procedural letter dated 18 July 2016, Commission staff notified PIAC of the requirement, under the *Federal Courts Act*, to serve notice of its constitutional question upon the Attorney General of Canada and upon each provincial and territorial attorney general. While this letter was silent as to the appropriate method of service, PIAC appears to have acted diligently, honestly, and in good faith while incurring its service-related expenses. Further, it is clear from the record that PIAC's constitutional question was successfully brought to the attention of the attorneys general as required.
26. In the circumstances, it would be inconsistent with a key objective of the Commission's costs regime, namely, encouraging the participation of individuals and groups representing subscriber interests in proceedings that raise issues of importance to the telecommunications system, to deny or significantly reduce PIAC's disbursements. Accordingly, the Commission considers that the amount of

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<sup>6</sup> The Coalition consists of the Consumers' Association of Canada, the Council of Senior Citizens' Organizations of British Columbia, the National Pensioners Federation, and PIAC.

disbursements claimed by PIAC for photocopying and personal service is appropriate in the present case.

27. Nonetheless, in future cases, if procedural requirements for Commission proceedings are unclear to parties, it may be prudent for those parties to seek additional guidance before incurring uncommon expenses related to such procedural requirements. This would especially be the case if the party in question intends to seek a costs award to reimburse those expenses.
28. In light of the above, the Commission determines that the total amount claimed by PIAC for disbursements was necessarily and reasonably incurred and should be allowed.
29. This is an appropriate case in which to fix the costs and dispense with taxation, in accordance with the streamlined procedure set out in Telecom Public Notice 2002-5.

### **Costs respondents and allocation**

30. The Commission has generally determined that the appropriate costs respondents to an award of costs are the parties that have a significant interest in the outcome of the proceeding in question and have participated actively in that proceeding.
31. The Commission has noted in previous costs orders<sup>7</sup> that naming the CWTA as a costs respondent, in addition to naming the TSPs that are parties to the proceeding, could introduce inequities in the assignment of costs, essentially double-charging some TSPs while indirectly assessing costs against other entities that do not have a significant interest in the outcome of the proceeding. The Commission considers that the same rationale applies in the present circumstances.
32. The Commission therefore considers that the following parties had a significant interest in the outcome of the proceeding, participated actively in the proceeding, and should be named as costs respondents: the Canadian Network Operators Consortium Inc., Cogeco Communications Inc., Shaw Cablesystems G.P. (Shaw), TCI, and TekSavvy Solutions Inc.
33. The Commission considers that, consistent with its general practice, it is appropriate to allocate the responsibility for payment of costs among costs respondents based on their TORs<sup>8</sup> as an indicator of the relative size and interest of the parties involved in the proceeding. However, as set out in Telecom Order 2015-160, the Commission considers \$1,000 to be the minimum amount that a costs respondent should be required to pay due to the administrative burden that small costs awards impose on both the applicant and costs respondents.

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<sup>7</sup> See, for example, Telecom Order 2013-526.

<sup>8</sup> In this order, the Commission has used the TORs of the costs respondents based on their most recent audited financial statements.

34. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

<b>Company</b>	<b>Percentage</b>	<b>Amount</b>
TCI	89.2%	\$12,613.29
Shaw	10.8%	\$1,527.17

### **Directions regarding costs**

35. The Commission **approves, with changes**, the application by PIAC for costs with respect to its participation in the proceeding.
36. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$14,140.46.
37. The Commission **directs** that the award of costs to PIAC be paid forthwith by TCI and Shaw according to the proportions set out in paragraph 34.

Secretary General

### **Related documents**

- *Determination of costs award with respect to the participation of the Coalition in the proceeding that led to Telecom Regulatory Policy 2017-200*, Telecom Order CRTC 2017-364, 16 October 2017
- *Public Interest Advocacy Centre – Application for relief regarding section 12 of the Quebec Budget Act*, Telecom Decision CRTC 2016-479, 9 December 2016
- *Guidance for costs award applicants regarding representation of a group or a class of subscribers*, Telecom Information Bulletin CRTC 2016-188, 17 May 2016
- *Determination of costs award with respect to the participation of the Ontario Video Relay Service Committee in the proceeding initiated by Telecom Notice of Consultation 2014-188*, Telecom Order CRTC 2015-160, 23 April 2015
- *Determination of costs award with respect to the participation of the Public Interest Advocacy Centre (PIAC) in the proceeding leading to Telecom Regulatory Policy 2013-271*, Telecom Order CRTC 2013-526, 27 September 2013

- *Revision of CRTC costs award practices and procedures*, Telecom Regulatory Policy CRTC 2010-963, 23 December 2010
- *New procedure for Telecom costs awards*, Telecom Public Notice CRTC 2002-5, 7 November 2002