

Rogers Communications Canada Inc. v. Timeless Inc., 2026 FCA 92 (CanLII)

Source: Federal Court of Appeal
Date: 2026-05-11
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**Dockets: A-154-26 (lead file)
A-40-26**

Citation: 2026 FCA 92

**CORAM: STRATAS J.A.
MONAGHAN J.A.
ROUSSEL J.A.**

BETWEEN:

ROGERS COMMUNICATIONS CANADA INC.

Appellant/Applicant

and

TIMELESS INC. and ATTORNEY GENERAL OF CANADA

Respondents

Heard at Toronto, Ontario, on May 11, 2026.

Judgment delivered from the Bench at Toronto, Ontario, on May 11, 2026.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on May 11, 2026).

STRATAS J.A.

[1] Rogers refused to carry Timeless' OneSoccer channel on its cable and satellite systems. The Canadian Radio-television and Telecommunications Commission found that there was an undue

preference in favour of existing channels, contrary to section 9 of the *Broadcasting Distribution Regulations*, S.O.R./97-555.

[2] But what remedy should be ordered for that? On that issue, the Commission ordered Rogers and Timeless to go into staff-assisted mediation and, if that should fail, final offer arbitration: letter decision dated December 19, 2025 in file 2022-0445-2.

[3] Rogers appeals from that decision with leave. Rogers also applies for judicial review of that decision. Given the urgency in this matter, this Court scheduled an expedited hearing.

[4] At the outset, it is not clear to us why Rogers had to bring a separate judicial review. Just because one can be brought does not mean that it should be brought: *Best Buy Canada Ltd. v. Canada (Border Services Agency)*, 2025 FCA 45. However, in accordance with *Best Buy*, Rogers quickly moved to consolidate the two, minimizing the procedural complexity.

[5] These reasons deal with both the appeal and the judicial review. In these, Rogers raises a forest of issues against the Commission's letter decision. But all are without merit. Thus, we will dismiss the appeal and the application with costs.

[6] First, Rogers says that the Commission's reasons are inadequate. We disagree. Reasons are to be read "in light of the record and with due sensitivity to the administrative regime in which they were given": *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 at para. 103. The Commission found that Rogers' proposal "may not necessarily lead to a resolution of the dispute in a timely manner", there is an "imbalance in the parties' bargaining positions", and further delays would undermine several important public policy goals in the *Broadcasting Act*, S.C. 1991, c. 11. In saying this, the Commission considered the record placed before it and the reasons given in its undue preference decision (Broadcasting Decision CRTC 2023-94).

[7] Here the Commission was dealing with a discretionary, factually suffused matter, one with some urgency. A long reserve with reams of court-style analysis was not called for.

[8] And what more did the Commission need to say? Here, Rogers can have no doubt as to why the Commission did what it did, especially given the filings made (such as OneSoccer's submissions at Appeal Book, Tab 28) and the circumstances of this case, including the Commission's reasons in its undue preference decision, also seen in light of the filings made there. Rogers is a major, sophisticated telecommunications actor locked in a continuous, long-term regulatory relationship with the Commission—it is a frequent flyer, not an occasional tourist, so to speak. As well, the Commission said enough to satisfy the need for public transparency and accountability and to allow a meaningful review of its decision. Insisting the Commission say more serves only technicality and formalism—with every risk of ossifying administrative procedures that should be flexible and efficient.

[9] There was also no error of law, palpable and overriding error or unreasonableness in the Commission's factually suffused, somewhat policy-based assessment that Rogers' proposed remedy was unlikely to be acceptable to Timeless and alternative dispute resolution was useful and needed in these circumstances.

[10] We also see no reversible error in the Commission ordering alternative dispute resolution in this case while not doing so in other cases. The Commission did not depart from earlier cases. Rather, it was exercising a factually suffused discretion in this particular case with these particular parties in these particular dynamics. Over two years had gone by since the undue preference decision (Broadcasting Decision CRTC 2023-94). Here there is a dispute between the parties and the Commission made a relatively unconstrained discretionary assessment in this case that dispute resolution was necessary and appropriate.

[11] Rogers says that the Commission unfairly considered new evidence from Timeless. This is wholly without merit: the Commission invited the parties to "provide updated information" as part

of their submissions leading up to this decision, Timeless accepted that invitation, and the Commission properly considered Timeless' updated information. Here, if Rogers had a real concern, it could have objected to the Commission about Timeless including new evidence. But Rogers did not do that. By virtue of the doctrine of waiver, it is now barred from raising the issue on judicial review: see, *e.g.*, *Halton (Regional Municipality) v. Canada (Transportation Agency)*, [2024 FCA 122](#) and the cases cited at para. 38 therein, and many others; see also the “new issue” jurisprudence, below, which applies in both judicial reviews and appeals.

[12] Rogers says the Commission had no power to order mandatory alternative dispute resolution. But Rogers did not raise that issue with the Commission, except for an idle, passing comment (Appeal Book, p. 322). Thus, this is a new issue in this Court, and we decline to consider it: *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, [2011 SCC 61](#), [2011] 3 S.C.R. 654 (judicial review) and *Quan v. Cusson*, [2009 SCC 62](#), [2009] 3 S.C.R. 712 (appeals). An idle passing comment before the Commission is not enough to get around this “new issue” jurisprudence: *TVA Group Inc. v. Bell Canada*, [2021 FCA 153](#), [2022] 1 F.C.R. 283 at paras. 64-66.

[13] In any event, Rogers has not persuaded us that mandatory alternative dispute resolution in these circumstances is unavailable under paragraph 9(1)(h) and 10(1)(h) of the Act and sections 12-15 of the Regulations. This issue awaits resolution in a proper case.

[14] Rogers says the Commission is offending the principle of *functus officio*. No it is not. In decision CRTC 2023-94, the Commission decided that Rogers engaged in an undue preference. Now the Commission must decide upon a remedy.

[15] We will dismiss the appeal and the application for judicial review with costs.

“David Stratas”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKETS: A-154-26 (LEAD FILE)
A-40-26

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ANADA INC. v. TIMELESS INC.
AND ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 11, 2026

REASONS FOR JUDGMENT OF THE COURT BY: STRATAS J.A.
MONAGHAN J.A.
ROUSSEL J.A.

DELIVERED FROM THE BENCH BY: STRATAS J.A.

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