

Federal Court of Appeal



Cour d'appel fédérale

Date: 20260529

Docket: A-254-25

Citation: 2026 FCA 107

**CORAM: LOCKE J.A.
ROUSSEL J.A.
WALKER J.A.**

BETWEEN:

**BELL CANADA, ROGERS COMMUNICATIONS INC., COGECO
COMMUNICATIONS INC., VIDEOTRON LTD., TELUS COMMUNICATIONS INC.,
SHAW COMMUNICATIONS INC., and THE CANADIAN COMMUNICATION
SYSTEMS ALLIANCE**

Applicants

and

**COPYRIGHT COLLECTIVE OF CANADA, CANADIAN BROADCASTERS RIGHTS
AGENCY, CANADIAN RETRANSMISSION COLLECTIVE, FWS JOINT SPORTS
CLAIMANTS, INC., CANADIAN RETRANSMISSION RIGHT ASSOCIATION,
SOCIETY OF COMPOSERS, AUTHORS AND MUSIC PUBLISHERS OF CANADA,
BORDER BROADCASTERS INC., MAJOR LEAGUE BASEBALL COLLECTIVE OF
CANADA INC. and DIRECT RESPONSE TELEVISION COLLECTIVE INC.**

Respondents

Dealt with in writing without appearance of the parties.

Judgment delivered at Ottawa, Ontario, on May 29, 2026.

REASONS FOR JUDGMENT BY:

LOCKE J.A.

CONCURRED IN BY:

ROUSSEL J.A.
WALKER J.A.

Federal Court of Appeal



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CANADA INC. and DIRECT RESPONSE TELEVISION COLLECTIVE INC.**

Respondents

REASONS FOR JUDGMENT

LOCKE J.A.

[1] The applicants seek judicial review of a decision of the Copyright Board (the Board) dated June 20, 2025 that was a second redetermination (the Second Redetermination Decision) of

a tariff of royalties payable by retransmitters, including the applicants, to the respondents for the retransmission of distant television signals in Canada for the years 2014-2018 (the Tariff). The Second Redetermination Decision was the Board's third final (non-interim) decision in respect of the Tariff. The reasons for the original decision, issued August 2, 2019, prompted a first application for judicial review that was granted by this Court on July 22, 2021 (2021 FCA 148). This resulted in a first redetermination decision by the Board dated January 12, 2024. This redetermination decision prompted a second application for judicial review that was likewise granted by this Court on May 8, 2025 (2025 FCA 92, the Second Judicial Review Decision), resulting in the Second Redetermination Decision in issue here.

[2] The only issues in the present application concern the Settlement Date and other transitional provisions discussed in paragraphs 34 and following of the Tariff approved (or established) in the Second Redetermination Decision. The Settlement Date represents the date that amounts owing under the Tariff are due and after which interest thereon will accrue at a higher rate than before. In the Second Redetermination Decision, the Settlement Date was set at September 30, 2019, a date years in the past. The parties agree that it was inappropriate to select a date in the past because doing so was inconsistent with the Board's past practice, including in respect of the Tariff, and the Board provided no explanation for selecting such a date.

[3] The applicants brought this issue, and another concerning rates for mid-sized transmission systems, to the attention of the Board by commencing the present application for judicial review. In response, the Board corrected the problem with mid-sized transmission

systems because it resulted from a clerical error. However, the Board took the position that it could not amend the Settlement Date. It stated:

The Board's jurisdiction after rendering a decision is constrained: *Canadian Association of Film Distributors and Exporters v. Society for Reproduction Rights of Authors, Composers and Publishers in Canada (SODRAC) Inc.*, 2014 FCA 235 and *Copyright Collective of Canada v. Bell Canada*, 2025 FCA 92 [the Second Judicial Review Decision]. The Board is of the view that it has neither the power nor jurisdiction to make the change sought by the BDUs, nor the changes suggested by the Collectives.

[4] As indicated, the parties agree that the Board erred in refusing to amend the Settlement Date and that this Court should remit the matter to the Board to correct it. Where the parties have disagreed (until recently) is whether this Court's ruling should also include the other transitional provisions. The applicants took the position that this would be inappropriate because its notice of application focuses on the Settlement Date rather than the other transitional provisions, and the respondents did not raise the issue in a separate notice of application. The respondents argued that it was unnecessary for them to raise the issue in a separate notice of application because the correction of the other transitional provisions is included within the scope of remedies sought in the applicants' notice of application. The parties now agree that this Court's Judgment in this application should also address the transitional provisions.

[5] With regard to the issue of the Settlement Date, I agree with the parties that the Board's decision to set it in the past is inconsistent with the Board's general practice and lacking adequate explanation, and it is therefore unreasonable.

[6] Based on the Board's explanation quoted above, it is not clear whether the Board felt that it lacked the power to amend the Settlement Date because of its Second Redetermination

Decision or because of its Original Decision back in 2019. In other words, did the Board believe that it became *functus officio* on this issue in 2025 because it had released the Second Redetermination Decision, or in 2019 with the release of the Original Decision? Either way, it is appropriate for this Court to intervene.

[7] If the Board felt that it became *functus officio* in 2025, then this decision sets aside that concern.

[8] If, on the other hand, the Board understood that this Court's Second Judicial Review Decision prohibited it from making any changes to the Original Decision other than those explicitly mentioned therein, even changes that naturally follow therefrom or are consequent thereto, I am of the view that such a reading was unreasonable. The parties did not raise the issue of the Settlement Date in the application that led to the Second Judicial Review Decision, and that decision said nothing on the issue. There was no reason for the Board to feel constrained in determining the Settlement Date. It was entitled to select a Settlement Date that was consistent with its usual practice. For greater certainty, nothing in these reasons is intended to alter what was said in the Second Judicial Review Decision.

[9] I would set aside the Board's ruling on the Settlement Date and remit the issue to the Board for reconsideration.

[10] I would do the same with regard to the other transitional provisions. As with the issue of the Settlement Date, the Board refused to reconsider the other transitional provisions because it

felt it lacked the power to do so. Regardless of the basis for the Board's concern in this regard, it should not have felt so constrained. Moreover, I agree that the remedies sought in the notice of application are sufficiently broad to encompass the other transitional provisions.

[11] I would make no award of costs in this application.

"George R. Locke"

J.A.

"I agree.

Sylvie E. Roussel J.A."

"I agree.

Elizabeth Walker J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-254-25

STYLE OF CAUSE:

BELL CANADA, ROGERS
COMMUNICATIONS INC.,
COGECO COMMUNICATIONS
INC., VIDEOTRON LTD., TELUS
COMMUNICATIONS INC.,
SHAW COMMUNICATIONS
INC., and THE CANADIAN
COMMUNICATION SYSTEMS
ALLIANCE v. COPYRIGHT
COLLECTIVE OF CANADA,
CANADIAN BROADCASTERS
RIGHTS AGENCY, CANADIAN
RETRANSMISSION
COLLECTIVE, FWS JOINT
SPORTS CLAIMANTS, INC.,
CANADIAN RETRANSMISSION
RIGHT ASSOCIATION, SOCIETY
OF COMPOSERS, AUTHORS
AND MUSIC PUBLISHERS OF
CANADA, BORDER
BROADCASTERS INC., MAJOR
LEAGUE BASEBALL
COLLECTIVE OF CANADA INC.
and DIRECT RESPONSE
TELEVISION COLLECTIVE INC

DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR JUDGMENT BY:

LOCKE J.A.

CONCURRED IN BY:

ROUSSEL J.A.
WALKER J.A.

DATED:

MAY 29, 2026

WRITTEN REPRESENTATIONS BY:

Gerald Kerr-Wilson
Kiera Boyd

FOR THE APPLICANTS

Andrew Bernstein
Alexandra Peterson

FOR THE APPLICANTS

Laurent Massam
James Green
Nikolas Purcell

FOR THE RESPONDENT
COPYRIGHT COLLECTIVE OF
CANADA

Jonathan O'Hara
Adelaide Egan

FOR THE RESPONDENT
CANADIAN BROADCASTERS
RIGHTS AGENCY

Daniel G.C. Glover
Connor Bildfell

FOR THE RESPONDENT
CANADIAN RETRANSMISSION
COLLECTIVE

Mark Hayes

FOR THE RESPONDENT
CANADIAN RETRANSMISSION
RIGHT ASSOCIATION

Gregory A. Piasetzki
William Regan

FOR THE RESPONDENT
FWS JOINT SPORTS
CLAIMANTS INC.

Matthew Estabrooks
William Foster

FOR THE RESPONDENT
SOCIETY OF COMPOSERS,
AUTHORS, AND MUSIC
PUBLISHERS OF CANADA

Ryan Sheahan

FOR THE RESPONDENT
BORDER BROADCASTERS INC.

Mark Lewis

FOR THE RESPONDENT
DIRECT RESPONSE
TELEVISION COLLECTIVE
INC.

Michael Koch

FOR THE RESPONDENT
MAJOR LEAGUE BASEBALL
COLLECTIVE OF CANADA

SOLICITORS OF RECORD:

Fasken Martineau DuMoulin LLP
Ottawa, Ontario

FOR THE APPLICANTS

Torys LLP
Ottawa, Ontario

FOR THE APPLICANTS

Gowling WLG (Canada) LLP
Toronto, Ontario

FOR THE RESPONDENT
COPYRIGHT COLLECTIVE OF
CANADA

McMillan LLP
Ottawa, Ontario

FOR THE RESPONDENT
CANADIAN BROADCASTERS
RIGHTS AGENCY

McCarthy Tétrault LLP
Toronto, Ontario

FOR THE RESPONDENT
CANADIAN RETRANSMISSION
COLLECTIVE

Hayes eLaw Professional Corporation
Toronto, Ontario

FOR THE RESPONDENT
CANADIAN RETRANSMISSION
RIGHT ASSOCIATION

Piastzki & Nenniger Kvas LLP
Toronto, Ontario

FOR THE RESPONDENT
FWS JOINT SPORTS
CLAIMANTS INC.

Gowling WLG (Canada) LLP
Ottawa, Ontario

FOR THE RESPONDENT
SOCIETY OF COMPOSERS,
AUTHORS, AND MUSIC
PUBLISHERS OF CANADA

Stikeman Elliott LLP
Toronto, Ontario

FOR THE RESPONDENT
BORDER BROADCASTERS INC.

Mark Lewis
Toronto, Ontario

FOR THE RESPONDENT
DIRECT RESPONSE
TELEVISION COLLECTIVE INC.

Goodmans LLP
Toronto, Ontario

FOR THE RESPONDENT
MAJOR LEAGUE BASEBALL
COLLECTIVE OF CANADA