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A tale of two forums: consumer class actions and the CRTC in telecommunications cases

Given Quebec's unique civil law regime, we seldom blog about legal developments in Quebec. However, sometimes decisions of Quebec courts have broader relevance outside of Quebec; this is often the case where Quebec courts rule on federalism issues. The Quebec Court of Appeal's recent decision in *Bell Canada v Aka-Trudell* falls into that category. In that case, the Quebec Court of Appeal refused to dismiss a class action against Bell Canada, rejected the argument that the Quebec Superior Court had no jurisdiction and that the matter ought to have instead been considered by the Canadian Radio-television and Telecommunications Commission (the "CRTC").

By way of background, the underlying proceeding was started as a proposed class action in 2010. The claim alleged that Bell had unilaterally increased its interest rate applicable to late accounts from two to three percent per month. The representative plaintiff claimed that this was abusive and contrary to both the Quebec *Civil Code* and the *Consumer Protection Act*.

The case was authorized as a class action by the Quebec Superior Court in 2011. In 2014, Bell brought a motion to dismiss the proceeding on the ground that the Quebec Superior Court did not have jurisdiction over the case, and that the matter instead fell within the exclusive jurisdiction of the CRTC. Bell claimed that the CRTC had exclusive jurisdiction over all matters relating to rates for telecommunication services. Bell also raised federalism challenges to the provincial legislation that the claim alleged rendered the increase in interest rates unlawful.

At first instance, the Quebec Superior Court held that it had jurisdiction over the claims. The Court refused to consider Bell's constitutional argument, holding that a full factual record was necessary to make such a determination.

The Quebec Court of Appeal subsequently granted Bell leave to appeal only on the jurisdictional issues, leaving the constitutional question to be decided following a full hearing on the merits.

The Court of Appeal ultimately held that the Superior Court had

jurisdiction over the dispute. The Court noted there was nothing in the *Telecommunications Act* that ousted the jurisdiction of Superior Court for such claims. The Court of Appeal held that the causes of action pleaded were based on private law claims under provincial statutes rather than the *Telecommunications Act*. The Court held that there was no decision or rule of the CRTC that would be called into question by the proposed class. Consequently, the Court of Appeal confirmed that the Courts had jurisdiction to hear the case. Consistent with the decision below, the Court left open the constitutional issues that Bell had raised.

This decision is important for all firms that operate in federally-regulated industries such as telecommunications, banking, and transportation. The decision confirms that even the existence of federal legislation and a federal regulator does not oust the civil jurisdiction of Superior Courts to hear private law claims against such entities.

The Quebec Court of Appeal's decision dodges for now the constitutional question as to whether any provincial legislation touching on telecommunication services is either inoperative by virtue of the doctrine of paramountcy or constitutionally inapplicable by virtue of the doctrine of inter-jurisdictional immunity. This remains a significant issue to be determined and will have significant impact in common law provinces as well. For example, Ontario has enacted legislation impacting the wireless sector, the constitutionality of which has not yet been tested.