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CANADIAN TELECOMMUNICATIONS AND ONLINE SERVICES LAW

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This publication provides a comprehensive statement and analysis of the law relating to telecommunications law in Canada. This in-depth reference deals with a broad range of topics, including a general description of the constitutional and legislative framework governing telecommunications services, the incorporation, licensing and powers of carriers, the regulation of rates, resale of services, carrier liability and the duty to serve, the powers of the CRTC and the conduct of regulatory proceedings. The publication includes a discussion of all significant case law and regulatory rulings across Canada. Supplemented annually, this publication is an invaluable reference for anyone involved in this rapidly changing field.

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What's New in this Update

This release features updates to Chapter 9 and Appendix G.

Highlights

Part III. The Regulatory Process—Chapter 9. Conduct of CRTC Proceedings—II. Preliminary Matters—§ 9:6. Production of Documents—The decision of the Alberta Court of Appeal in *Alta Link Management Ltd v. Alberta Utilities Commission* turned on the adequacy of the notice provided by a regulator. The case arose out of a proceeding before the Alberta Utilities Commission that established the treatment, for rate setting purposes, of expenses related to the construction of electrical infrastructure necessary for the interconnection of electrical transmission and distribution systems in Alberta. Under the scheme existing at the time of the decision, the transmission facilities required to provide service to a customer were financed by both the customer requesting the service and the relevant transmission facility owner [TFO]. Distribution facilities operators [DFOs] (and others) who requested a new transmission system access service or changes to an existing system access service were required to pay a construction contribution to the TFOs on behalf of their customers. The DFOs' payment effectively reduced the TFOs' investment in those facilities by the amount of the customer contribution. DFOs were allowed to treat the financial contributions they made to transmission facilities owners for the construction and associated costs of transmission facilities as an investment for regulatory purposes and to earn a return on that investment.

Part III. The Regulatory Process—Chapter 9. Conduct of CRTC Proceedings—IV. Particular Matters—§ 9:16. Ex Parte Contacts—In *Vavilov*, the Supreme Court of Canada re-affirmed the principle of procedural fairness underlying *Baker* and said that reasons for decision, where they are required, must demonstrate that the decision can be “justified to citizens in terms of rationality and fairness” because reasoned decision-making is “the lynchpin of institutional legitimacy”. In order to be reasonable a decision must be based on “an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker”. “The decision must ‘meaningfully grapple’ with key issues or central arguments raised by the parties” and a failure to do so “may call into question whether the decision maker was actually alert and sensitive to the matter before it”.