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# PRACTICE AND PROCEDURE BEFORE ADMINISTRATIVE TRIBUNALS

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## AUTHOR'S NOTE

In *Telus Communications Inc. v. Federation of Canadian Municipalities*, 2025 CarswellNat 1393, 2025 CarswellNat 1392, 2025 SCC 15, 36 Admin. L.R. (7th) 173, 502 D.L.R. (4th) 59 (S.C.C.), the Supreme Court set out the proper approach to statutory interpretation in administrative law. The appeal turned on the interpretation of the term "transmission line" in ss. 43 and 44 of the *Telecommunications Act*, S.C. 1993, c. 38 ("Act"). These provisions give telecommunications carriers a qualified right of access to construct, maintain and operate their transmission lines situated on public property. The Court was invited by the appellant telecom companies to find that the meaning of "transmission line" can include the "small cell" antennas used in new fifth-generation ("5G") mobile wireless networks. The Court declined this invitation to a more dynamic interpretation of the statute, preferring instead to rely on the ordinary meaning of "transmission line" and the text of ss. 43 and 44 which did not include "antennas."

Writing for the majority, Moreau J's conclusion that "transmission line"

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must refer to physical, wireline infrastructure notwithstanding the Court's acceptance of "dynamic interpretation," whereby statutes must be interpreted against the backdrop of "new or evolving circumstances". According to Moreau J., the term "transmission line," in its ordinary meaning, imports a requirement of physicality, as opposed to the notion of the 5G radio waves received by or transmitted by an antenna. Moreau J. explains the proper approach to statutory interpretation in these terms:

> [30] There is no controversy that, in accordance with the modern approach, the meaning of a statutory provision is determined by reference to its text, context and purpose (*Rizzo & Rizzo Shoes Ltd. (Re),* 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27, at para. 21; *R. v. Basque*, 2023 SCC 18, at para. 63; *Auer v. Auer*, 2024 SCC 36, at para. 64; *Piekut v. Canada (National Revenue),* 2025 SCC 13, at para. 42).
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> [31] The parties disagree on how legislation should be interpreted in response to changing circumstances. The carriers maintain that statutory terms are not "confined to their meaning" at the time of enactment and that the CRTC and the Court of Appeal erred in adopting a "static" rather than "dynamic" interpretation (A.F., Telus, at para. 65). The public authorities maintain that the carriers misconstrue the principle of dynamic interpretation by wrongly asserting that legislative terms can grow in meaning over time. Statutes, though enacted in the past, are interpreted and applied in the present. If circumstances have evolved between these two points in time, what bearing does this evolution have on the interpretive exercise?
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> [32] Statutory interpretation is centered on the intent of the legislature at the time of enactment and courts are bound to give effect to that intent (see *Perka v. The Queen,* 1984 CanLII 23 (SCC), [1984] 2 S.C.R. 232, at pp. 264-66; *R. v. Big M Drug Mart Ltd*., 1985 CanLII 69 (SCC), [1985] 1 S.C.R. 295, at p. 335; *United States of America v. Dynar*, 1997 CanLII 359 (SCC), [1997] 2 S.C.R. 462, at para. 45; P.-A. Côté and M. Devinat, *Interprétation des lois* (5th ed. 2021), at para. 24; R. Sullivan, *The Construction of Statutes* (7th ed. 2022), at § 6.01[1]). Courts must be careful not to "exceed their institutional role" by engaging in political questions raised by changes subsequent to enactment, which are better addressed by legislatures (Sullivan, at § 6.01[3]).
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> [33] This principle does not, however, prevent courts from applying statutes to new or evolving circumstances. It is uncontroversial that, in the exercise of their legislative authority, enacting legislatures can use broad or open-textured language to cover circumstances that are neither in existence nor in their contemplation (see *R. v. D.L.W*., 2016 SCC 22, [2016] 1 S.C.R. 402, at para. 61; *Perka*, at p. 265; Côté and Devinat, at para. 285). Indeed, they frequently do so to ensure the long-term objects of an enactment can be achieved without constantly reopening the statute (see Sullivan, § 6.01[2]).
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> [34] A legislature may in this way intend that a provision be interpreted dynamically, in that the provision should be capable of applying to new

sociological or technological circumstances as they arise (Sullivan, at § 6.03). If this original intention is to be preserved, courts must interpret broad or open-textured concepts in a manner sensitive to the evolving context (see *R. v. 974649 Ontario Inc*., 2001 SCC 81, [2001] 3 S.C.R. 575, at para. 38). Such an approach does not detract from the enacting legislature's will — it furthers it. This principle has been codified in s. 10 of the *Interpretation Act*, R.S.C. 1985, c. I-21, which provides that the law is "always speaking" and "shall be applied to the circumstances as they arise, so that effect may be given to the enactment according to its true spirit, intent and meaning".

[35] Properly understood, there is no contradiction between the principles that the interpretive exercise is grounded in the intent of the enacting legislature and that statutes can be applied to circumstances that were not contemplated by the legislature. Lord Bingham's dictum in *R. (Quintavalle) v. Secretary of State for Health*, [2003] UKHL 13, [2003] 2 A.C. 687, at para. 9, illustrates this point:

There is, I think, no inconsistency between the rule that statutory language retains the meaning it had when Parliament used it and the rule that a statute is always speaking. If Parliament, however long ago, passed an Act applicable to dogs, it could not properly be interpreted to apply to cats; but it could properly be held to apply to animals which were not regarded as dogs when the Act was passed but are so regarded now.

[36] In this way, dynamic interpretation is situated firmly within the modern approach. There is no bright line between statutes that are "static" and statutes that are "dynamic". The degree to which a provision is capable of applying to new circumstances, including new technology, is an interpretive question like any other that must be answered by reading the text in context and consistent with the legislature's purpose.

[37] The real disagreement between the parties in this case concerns what Parliament intended "transmission line" to mean, and whether 5G small cell antennas are captured by that meaning.

This decision of the Court represents a synthesis of a number of different, recent decisions exploring the proper approach to statutory interpretation, and in particular addresses squarely the limits of "dynamic" interpretation. Or, to use another familiar metaphor, unlike constitutional interpretation, the "living tree" approach does not extend to the interpretation of ordinary statutes.

This release also features developments in several other areas of administrative law.

In *Afolabi v. Law Society of Ontario*, 2025 CarswellOnt 4952, 2025 ONCA 257 (Ont. C.A.), the Ontario Court of Appeal reversed the Divisional Court's conclusion that the LSO's process breached the fairness rights of the affected applicants. In considering the *Baker* factors, the Court disagreed with the

Divisional Court's characterization of the licensing decision-making as quasi-judicial. Writing for the Court, Gillese J.A. concluded that the licensing provisions provide no procedural protections akin to the trial model, and accordingly, the Director was not engaged in a quasi-judicial process nor was he required to hold an oral hearing before he made the registration decision.

In *Dr Ignacio Tan III v. Alberta Veterinary Medical Association*, 2025 CarswellAlta 791, 2025 ABCA 119 (Alta. C.A.), the Alberta Court of Appeal considered a challenge to a decision of the Committee of the Council of the Alberta Veterinary Medical Association under section 45.1 of the *Veterinary Profession Act*, RSA 2000, c V-2 (VPA) dealing with a professional conduct and sanctions findings of the hearing tribunal. The Court dismissed the appeal and upheld as reasonable the decision of the Council, which in turn had affirmed the decision of the hearing panel. In its reasons, the Court also considered in some detail the role of expertise in the *Vavilov* judicial review framework.

In *Canadian Coalition for Firearm Rights v. Canada (Attorney General),* 2025 CarswellNat 1301, 2025 FCA 82, 502 D.L.R. (4th) 723 (F.C.A.) involved an appeal from a series of dismissed applications for judicial review of the *Regulations Amending the Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited, Restricted or Non-Restricted*, SOR/2020-96, which prohibited over 1500 firearms that previously were licensed for legal ownership. The subject of the judicial reviews was whether the Regulations were *ultra vires* the federal government's authority under the *Criminal Code* for prescribing a firearm as prohibited. The Court applied the Supreme Court's framework for the review of regulations under *Auer v. Auer* and found them to be reasonable.