



## Telecom Decision CRTC 2016-479

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Ottawa, 9 December 2016

*File number: 8663-P8-201607186*

### **Public Interest Advocacy Centre – Application for relief regarding section 12 of the Quebec Budget Act**

*In this decision, the Commission suspends consideration of PIAC's application concerning section 12 of the Quebec Budget Act, which would require that telecommunications service providers in Quebec block access to specific on-line gambling sites. The Commission also confirms its preliminary view regarding the interpretation of section 36 of the Telecommunications Act.*

#### **Background**

1. The Commission received a Part 1 application from the Public Interest Advocacy Centre (PIAC), dated 8 July 2016, requesting that the Commission provide certain declaratory and other relief regarding section 12 of *An Act respecting mainly the implementation of certain provisions of the Budget Speech of 26 March 2015*<sup>1</sup> (the Quebec Budget Act).
2. Section 12 of the Quebec Budget Act, which is not yet in force, would amend Quebec's *Consumer Protection Act*<sup>2</sup> in order to require that telecommunications service providers (TSPs) in Quebec block access to specific on-line gambling websites, as determined by the Société des loteries du Québec (i.e. Loto-Québec). TSPs that do not ensure that access to the prohibited sites is blocked within Quebec would be guilty of an offence.
3. In its application PIAC relied on arguments that, among other things, challenged section 12 on constitutional grounds. On 27 July 2016, the Canadian Wireless Telecommunications Association (CWTA) filed an application with the Superior Court of Quebec challenging section 12 of the Quebec Budget Act, also on constitutional grounds.

#### **Commission letter of 1 September 2016**

4. In a [letter](#) dated 1 September 2016, the Commission called for comments from interested persons on two preliminary views flowing from PIAC's application and the subsequent events set out above.

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<sup>1</sup> L.Q. 2016, c. 7

<sup>2</sup> C.Q.L.R. c. P-40.1

5. First, the Commission expressed the preliminary view that, in the circumstances, it would be appropriate to suspend consideration of PIAC's application while the constitutional issues related to the Quebec Budget Act are before the courts.
6. The second preliminary view was related to the Commission's interpretation of section 36 of the *Telecommunications Act* (the Act). Section 36 states: "Except where the Commission approves otherwise, a Canadian carrier shall not control the content or influence the meaning or purpose of telecommunications carried by it for the public."
7. The Commission expressed the preliminary view that the Act prohibits the blocking by Canadian carriers of access by end-users to specific websites on the Internet without prior Commission approval, whether or not such blocking was the result of an Internet traffic management practice. Such blocking would only be approved where it would further the telecommunications policy objectives set out in section 7 of the Act. Accordingly, compliance with other legal or juridical requirements—whether municipal, provincial, or foreign—would not, in and of itself, justify the blocking of specific websites by Canadian carriers, in the absence of Commission approval under the Act.
8. The Commission received comments from the Attorney General of Quebec (AG of Quebec), the Canadian Network Operators Consortium (CNOOC), Cogeco Communications Inc., the CWTA, OpenMedia, PIAC, Shaw Cablesystems G.P., TekSavvy Solutions Inc. (TekSavvy), TELUS Communications Company, and Vaxination Informatique.
9. The public record of this proceeding is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) or by using the file number provided above.

## **Issues**

10. The Commission has determined that the following issues are to be addressed in this decision, with regard to its preliminary views set out in the 1 September 2016 letter:
  - Should consideration of PIAC's application be suspended?
  - Should the Commission confirm its preliminary view regarding the interpretation of section 36 of the Act?

### **Should consideration of PIAC's application be suspended?**

11. In general, parties supported the Commission's first preliminary view, and none opposed it. PIAC and OpenMedia submitted that the file initiated by PIAC's application should not be closed and that the Commission should be prepared to resume its consideration of the application at a future time, if necessary. While PIAC did not directly oppose suspension of its application, it submitted that the Commission should be open to receiving factual updates related to the ongoing court process in order to determine if and when further consideration of the application would be appropriate.

### **Commission's analysis and determinations**

12. The record of this proceeding confirms the appropriateness of, and the underlying reasons for, the Commission's preliminary view that the proceeding initiated by PIAC's application should be suspended, as set out in its letter of 1 September 2016.
13. Accordingly, the Commission suspends consideration of PIAC's application concerning section 12 of the Quebec Budget Act while constitutional issues related to that provision are before the courts.
14. Any party, including PIAC, may file a procedural request that the Commission resume consideration of the application at some point in the future. The request should demonstrate a material change in circumstances that would justify further consideration of the application and identify the relief that remains outstanding and relevant for disposition.

### **Should the Commission confirm its preliminary view regarding the interpretation of section 36 of the Act?**

15. The vast majority of parties supported the Commission's preliminary view regarding the interpretation of section 36 of the Act.
16. PIAC, OpenMedia, and TekSavvy submitted that the preliminary interpretation of section 36 is sound from both a legal and a policy perspective. TekSavvy further submitted that the interpretation is consistent with the legislative history of the provision, and CNOC submitted that it is consistent with accepted Canadian principles of statutory interpretation.
17. The AG of Quebec submitted that it would be premature for the Commission to offer any interpretation of section 36 while the court process is ongoing, as such an interpretation is ancillary to the constitutional questions under consideration by the court. According to the AG of Quebec, the administration of justice would be best served if the Commission withheld its interpretation until the resolution of the court process.

### **Commission's analysis and determinations**

18. The Commission's preliminary view properly reflects the legislative history of section 36, Canadian principles of statutory interpretation, and relevant jurisprudence.
19. The fact that section 36 of the Act has also been raised before the Superior Court of Quebec in the CWTA's application does not legally prevent the Commission from pronouncing on the interpretation of the Act, particularly given that the Act is one of the Commission's home statutes.
20. As stated in the letter of 1 September 2016, an interpretation of section 36 by the Commission would provide timely guidance to TSPs, including Canadian carriers,

and to other interested persons, with respect to the scope and meaning of section 36 in circumstances involving the blocking of end-users' access to specific websites.

21. In light of the above, the Commission confirms its preliminary view regarding the interpretation of section 36 of the Act.

**Other matters**

22. PIAC submitted that the Commission, in confirming its preliminary view regarding the interpretation of section 36 of the Act, should provide additional clarification with respect to the blocking of particular categories of websites. Several parties submitted that it would be undesirable for carriers to have the discretion to determine what types of websites may be blocked.
23. PIAC's request was not supported by any specific facts, and there is no evidence on the record of this proceeding as to whether any Canadian carriers are currently blocking access to specific websites or categories of websites on the Internet. It would not be appropriate for the Commission to indicate how section 36 should be applied and enforced in hypothetical situations that may or may not arise.

Secretary General