



Telecom Order CRTC 2017-403

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Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding that led to Telecom Decision 2017-115 and Telecom Order 2017-116

The Commission orders VOIS Inc. (VOIS) to pay an award of costs in the amount of \$1,008.75 to the Public Interest Advocacy Centre (PIAC) for PIAC's participation in the proceeding that led, among other things, to the finding of a violation of the Telecommunications Act against VOIS. This award is to be paid forthwith, and in no case later than 60 calendar days from the date of this order.

Application

1. By letter dated 23 January 2017, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding that led to Telecom Decision 2017-115 and Telecom Order 2017-116 (the proceeding). In the proceeding, the Commission determined, among other things, that telecommunications service provider VOIS Inc. (VOIS) had committed a violation of the *Telecommunications Act* (the Act) by virtue of having had its participation in the Commissioner for Complaints of Telecommunications Services Inc. (CCTS)¹ terminated.
2. The Commission did not receive any interventions in response to the application.
3. PIAC submitted that it had met the criteria for an award of costs set out in section 68 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) because it represented a group or class of subscribers that had an interest in the outcome of the proceeding, it had assisted the Commission in developing a better understanding of the matters that were considered, and it had participated in a responsible way.
4. In particular, PIAC submitted that it represented a distinct point of view in the proceeding, and that it filed concise, structured, and well-researched comments that reflected its expertise in the area of telecommunications policy and regulation.

¹ Effective 1 September 2017, the CCTS's name was changed to the Commission for Complaints for Telecom-television Services Inc.

5. PIAC submitted that it represents the interests of Canadian telecommunications subscribers in general, and the interests of VOIS' subscribers in particular. PIAC explained that this group or class have been denied effective recourse to the CCTS as a result of the termination of VOIS' participation in the CCTS.
6. PIAC requested that the Commission fix its costs at \$970.71, consisting of internal and external legal fees. In particular, PIAC claimed the following:
 - 0.5 hours at the rate of \$290 per hour for Mr. John Lawford as external legal counsel;
 - 1.25 working days at the rate of \$600 per day for Ms. Alysia Lau as internal legal counsel; and
 - 1 hour at the rate of \$70 per hour for Mr. Ben Segel-Brown as an external articling student.
7. PIAC's claim included the Ontario Harmonized Sales Tax (HST) on legal fees for external counsel less the rebate to which it is entitled in connection with the HST. PIAC filed a bill of costs with its application.
8. PIAC submitted that VOIS is the appropriate party to be required to pay any costs awarded by the Commission (the costs respondent).
9. As in the proceeding that led to Telecom Order 2017-364, there was additional process in this costs proceeding whereby Commission staff requested information from PIAC regarding the status of its legal counsel, Mr. Lawford, and its articling student. In particular, Commission staff sought comments on whether it was appropriate for PIAC to claim legal fees for these individuals as internal or external resources. PIAC responded to the request, and Bell Canada and TELUS Communications Company² provided comments.

Commission's analysis and determinations

Eligibility

10. The criteria for an award of costs are set out in section 68 of the Rules of Procedure, which reads as follows:
 68. The Commission must determine whether to award final costs and the maximum percentage of costs that is to be awarded on the basis of the following criteria:

² Effective 1 October 2017, TELUS Communications Company assets were legally transferred to TELUS Communications Inc. and TELUS Communications Company ceased to exist.

- (a) whether the applicant had, or was the representative of a group or a class of subscribers that had, an interest in the outcome of the proceeding;
- (b) the extent to which the applicant assisted the Commission in developing a better understanding of the matters that were considered; and
- (c) whether the applicant participated in the proceeding in a responsible way.

11. The Commission finds that PIAC has satisfied the criteria for an award of costs set out in section 68 of the Rules of Procedure. Specifically, the Commission finds that PIAC represented a group or class of subscribers that had an interest in the outcome of the proceeding, it assisted the Commission in developing a better understanding of the matters that were considered, and it participated in a responsible way.
12. PIAC was the only consumer group that intervened in the proceeding and its intervention was focused, structured, and concise. Further, its submissions involved concrete proposals as to how the interests of affected subscribers might be taken into account in the Commission's determination of the issues.

Rates, amounts, and costs respondent

13. As noted in Telecom Order 2017-364, the appropriate test for assessing whether a lawyer is an internal or external resource is how the lawyer reports to the law society of which he or she is a member, in accordance with the *Guidelines for the Assessment of Costs* (the Guidelines), as set out in Telecom Regulatory Policy 2010-963. However, the Commission may depart from the Guidelines and award costs at a different rate than what the lawyer is otherwise entitled to in cases where the applicant demonstrates that exceptional circumstances exist to warrant the departure.
14. In Telecom Order 2017-364, the Commission found that no exceptional circumstances existed. Consistent with Mr. Lawford's status as reported to the Law Society of Upper Canada, the Commission allowed the Coalition³ to calculate Mr. Lawford's legal fees using the external hourly rate for costs claimed for the period after 1 January 2017 but required it to use the internal daily rate for costs claimed for the period prior to that date. The Commission also found the articling student to be a resource internal to PIAC and allowed the Coalition to claim costs for that student based on the internal daily rate.
15. The Commission finds that the same determinations are appropriate in the present case, since the record of this costs proceeding regarding the status of Mr. Lawford and the articling student as internal or external resources is the same as that of the proceeding that led to Telecom Order 2017-364. The Commission also finds that

³ The Coalition consists of the Consumers' Association of Canada, the Council of Senior Citizens' Organizations of British Columbia, the National Pensioners Federation, and PIAC.

there are no exceptional circumstances that would justify a deviation from the normal rate scale for costs applicable under the Guidelines.

16. In the present case, the 0.5 hours for Mr. Lawford were claimed for the period prior to 1 January 2017. Therefore, the Commission finds that PIAC is eligible to calculate legal fees for Mr. Lawford's services at the internal daily rate of \$800 based on his years of practice. Accordingly, the Commission alters the costs claimed from \$150.71 to \$200.00. The 0.5 hours claimed at the external rate were converted into 0.25 days based on a 7-hour work day, in accordance with the Guidelines.
17. With respect to the articling student, PIAC is eligible to claim costs for his services at the internal daily rate. The Commission therefore alters the costs for the articling student from \$70.00 to \$58.75, calculated using the daily rate of \$235. The one hour claimed at the external rate was converted into 0.25 days based on a 7-hour work day, in accordance with the Guidelines.
18. The rate of \$750, claimed in respect of legal fees for the remaining legal counsel, is in accordance with the rates established in the Guidelines.
19. Accordingly, the Commission determines that the total amount of legal fees that were reasonably and necessarily incurred and that should be allowed amount to \$1,008.75.
20. The Commission considers that this is an appropriate case in which to fix the costs and dispense with taxation, in accordance with the streamlined procedure set out in Telecom Public Notice 2002-5.
21. The Commission finds that the appropriate costs respondent to PIAC's costs application is VOIS, whose expulsion from the CCTS led to the proceeding.

Should this Order be registered with the Federal Court?

22. In its application, PIAC made the extraordinary request that, in the event that costs were awarded and VOIS ordered to pay, the order be registered with the Federal Court pursuant to section 63 of the Act.
23. The Commission has the ability to enforce its orders irrespective of whether they have been registered with a court. However, in the circumstances, it would be appropriate to register the present order with the Federal Court, as requested.
24. Given VOIS' past behaviour with respect to Commission proceedings, wherein it has neglected to respond to specific Commission directions,⁴ it would be consistent with the objectives of the Commission's costs award regime if the applicant had a broader

⁴ See Telecom Notice of Consultation 2017-117.

range of potential recourses in order to ensure that it is able to recover the costs it has been awarded.

Directions regarding costs

25. The Commission **approves, with changes**, the application by PIAC for costs with respect to its participation in the proceeding.
26. Pursuant to subsection 56(1) of the Act, the Commission fixes the costs to be paid to PIAC at \$1,008.75.
27. The Commission **orders** that the award of costs to PIAC be paid forthwith by VOIS, and **in no case later than 60 calendar days from the date of this order**.
28. The Commission intends to register the present order with the Federal Court, pursuant to section 63 of the Act.

Secretary General

Related documents

- *Determination of costs award with respect to the participation of the Coalition in the proceeding that led to Telecom Regulatory Policy 2017-200, Telecom Order CRTC 2017-364, 16 October 2017*
- *Failure of VOIS Inc. and Mr. Harpreet Randhawa to provide information to the Commission as required, Telecom Notice of Consultation CRTC 2017-117, 27 April 2017*
- *VOIS Inc. – Non-compliance with the requirement to participate in the Commissioner for Complaints for Telecommunications Services Inc. and violation under section 72.001 of the Telecommunications Act, Telecom Decision CRTC 2017-115 and Telecom Order CRTC 2017-116, 27 April 2017*
- *Revision of CRTC costs award practices and procedures, Telecom Regulatory Policy CRTC 2010-963, 23 December 2010*
- *New procedure for Telecom costs awards, Telecom Public Notice CRTC 2002-5, 7 November 2002*