The Law, EMF and 5G in Canada

A Summary Document

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Introduction

This document is a layperson's compilation of legal strategies and precedents intended to help guide Canadian activists and legal teams in taking legal action directed at suspending 5G and the installation of small cell antennas in our communities. It is by no means exhaustive, but it does provide a framework for understanding what is, and exploring possibilities of what could be.

Approaching the Issue from an Environmental Focus

1. **Eco-justice**

Eco-Justice successfully fought and won this case Upholding municipalities' right to restrict use of pesticides | Ecojustice which could set a precedent for us as "the decision reinforced the ability of municipal governments to protect both the health of their citizens and their local environment." Staff lawyer Justin Duncan worked on the case.

Eco-Justice also filed a claim against Climate Change deniers to the Competition Bureau:

https://thenarwhal.ca/ecojustice-files-competition-bureau-complaint-over-denier-group-s-misrepresentation-climate-science/

2. **The Public Trust Doctrine**

One of the legal angles worth exploring re: 5G is the concept of the Commons. (Especially with the federal government funding Telesat to put 5G-enabled satellites in our skies.)

The Public Trust (PT) Doctrine is rooted in federal Common Law and is based on the understanding that the air, water, soil, flora and fauna are commonly owned by all Canadians, and that the public has the right to a safe environment.

This document focuses on the PT doctrine and water:

https://poliswaterproject.org/files/2017/06/Common-Law-Implementing-the-Public-Trust-Doctrine-in-BC.pdf

Telecommunications Regulation - a Jurisdictional-based Approach

Overview

Approaching the encroachment of 4G and 5G small cell antennas on our streets from a jurisdictional standpoint is problematic in Canada as most of our legal precedents give the federal government ultimate control over antenna siting.
To learn more about Canadian telecommunications policy and law, read this document from Innovation, Science and Economic Development Canada: *An Analysis of Constitutional Jurisdiction in Relation to Radiocommunication* found here: https://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf09387.html.

Challenges with Creating Ordinances or Bylaw to Regulate Antenna Siting in Canada

As mentioned, telecommunications fall under federal jurisdiction in Canada, as most municipal leaders are quick to point out. In Canada, unlike in the US, municipal governments are generally prohibited from creating bylaws or ordinances that regulate the siting of antennas. Several Canadian legal precedents support this concept of ultimate federal control over telecommunications and help pave the way for 5G.

In Bell Canada Inc. v. The City of Calgary, 2018, the Court of Queen's Bench of Alberta ruled that a bylaw of the City of Calgary regulating the process for access and use of municipal rights-of-way does not apply to telecommunications providers.

In Telus Communications Co. v. City of Toronto, 2007, the Ontario Superior Court ruled that the City of Toronto could not enforce a site plan bylaw that was not specific to, but would apply to, new antenna sitings, as this could allow the City to impede TELUS' ability to maintain a functioning network.

A Pathway to Regaining Local Control over Antennas Siting in our Communities

In a presentation given to the Women's College Hospital of Toronto in May 2019, Barrister and Solicitor David McRobert suggested that the best way to give provinces and municipalities control over Antenna siting and radiofrequency exposure levels in Canada would be to create Mirror Legislation.

"Mirroring" is the process of preserving the substance and intent of existing federal acts and regulations, changing only what is necessary to make them functional in specific regions. In the long term, the regional government has the responsibility for this new legislation and is able to make changes to it if a need is identified.

Three Canadian Cases that support Local Control over Antennas

Based on the Canadian Court's interpretation of Section 43(5) of the Telecommunications Act, these uncontested legal precedents below support communities in denying access in some instances to the infrastructure needed for 5G:

1. **Barrie Public Utilities v. Canadian Cable Television Assn.**

This Supreme Court of Canada ruling says the CRTC is not authorized to mandate that the fiber or equipment needed for 5G and cell towers be placed on provincially regulated electric utility poles.
https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2060/index.do

2. **Canadian Institute of Public and Private Real Estate Co. v. Bell Canada, 2004 FCA 243 (CanLII)**

This ruling negates the CRTC's overriding right to force owners of multidwelling units to allow Telecoms to place telecommunications equipment on their premises

https://www.canlii.org/en/ca/fca/doc/2004/2004fca243/2004fca243.html

3. **R. v. City of New Westminster (1966), 55 D.L.R. (2d) 613 (B.C.C.A.)**

This uncontested BC Supreme Court ruling is the one case that exists to support the proposition that municipalities may regulated the commercial aspects of a broadcasting undertaking. This ruling allowed a local trade license to win out over a cablevision company's claim that they could ignore the bylaw because they were under federal jurisdiction. This decision may leave it open for municipalities to charge cell companies for a business license for each cell site.
https://www.canlii.org/en/bc/bcca/doc/1965/1965canlii520/1965canlii520.html?resultIndex=2

Canadian Rulings that Deny Municipalities Regulatory Control Over Telecommunications

1. Bell Canada Inc v The City of Calgary, 2018 ABQB 865

In Bell Canada Inc v The City of Calgary, 2018, the Court of Queen's Bench of Alberta ruled that a bylaw of the City of Calgary regulating the process for access and use of municipal rights-of-way does not apply to telecommunications providers as " municipalities cannot be encouraged to systematically intrude on federal jurisdiction by alleging local interests."

The City of Calgary appealed this decision, and in June 2020, the Alberta Court of Appeal sided with the four telecommunications giants by ruling portions of the Calgary bylaw unconstitutional because it conflicted with federal powers.

What is of interest is how this ruling relates to municipally-owned fiber. Calgary wanted to build a municipal fiber network and then lease their fiber to telecoms to use. They wanted to own the fiber and be able to control what telecom put fiber where. This did not go over well with the telecoms or the judge who felt the city was trying to control telecommunications, which fall under federal jurisdiction.

If a telecom does not like what a city requires of them – if it is in a bylaw or not - they can go to the CRTC and let them settle the dispute. The CRTC has ruled high speed broadband is an essential service and they do not want to stand in the way of it being provided.... Whatever the CRTC says goes in terms of transmission lines and telecommunications.

2. Telus v Toronto

https://www.toronto.ca/legdocs/mmis/2007/cc/bgrd/cc7.5.pdf

In this case, a bylaw regulating the siting of telecommunication towers enabled Toronto to control their placement or to refuse or significantly delay permission to establish wireless towers.

The Court found that TELUS did not need to show that this Bylaw had actually impaired its business or operations but instead simply that the site plan by-laws presented the potential for impairment. The Court accepted TELUS' evidence that the height, number and location of radio antennas all affect TELUS' ability to maintain a functioning coverage network.

As a result, the Court granted the declarations that the Toronto Bylaw could not apply to TELUS' antenna sites.

3. **City of Montréal v Bell Canada**

In this case, the Quebec Court of Appeal concluded that where Parliament had already provided a right of occupation to Bell (through the Telecommunications Act), the city of Montréal had no authority to allow or to deny access as that access is given by the federal government. A city can simply regulate some aspects of that access.

4. **Vidéotron c. Ville de Gatineau, 2017 QCCS 3571**

In this ruling, the Superior Court of Québec invalidated a set of bylaws adopted by the cities of Gatineau and Terrebonne. The bylaws governed both the construction of transmission lines by telecommunications carriers in those municipalities and the charging of fees for doing so. The Court found those bylaws unconstitutional because only Parliament has jurisdiction over the field of telecommunications.

https://www.osler.com/en/resources/regulations/2017/quebec-superior-court-reaffirms-the-federal-govern

"Although the defendant municipalities can create legislation to protect property, public safety and the administration of their territories under paragraphs 92 (8), (13), (15) and (16) of the *Constitution Act, 1867*, they cannot create laws to govern the planning, construction, siting, maintenance or preservation of telecommunications networks, since those matters fall under federal jurisdiction pursuant to subparagraph 91 (10) (a) of the *Constitution Act, 1867*."

In this judgment, the Superior Court of Québec reiterates the need to protect federal jurisdiction over telecommunications. The judgment confirms that municipalities cannot legislate to control the activities of telecommunications carriers and circumvent the CRTC's jurisdiction, even indirectly.

5. **Rogers Communications Inc. v. Châteauguay (City), 2016 SCC 23**

In this case, the Supreme Court declared unconstitutional a municipality's attempt to control the siting of telecommunications infrastructure by way of a notice of reserve.

If a telecommunications provider wants to build a tower on your property, it must first get your permission by way of a lease agreement. The same is true of municipal property. Once the lease is signed it is then in federal jurisdiction. In this case, Rogers leased a section of municipal property in 2007, placing it under federal jurisdiction. The city of Chateauguay, however, had a change of heart about a cell tower being built on this site when its citizens voiced their complaints.

Chateauguay argued that the pith and substance of wanting to move the tower site was to protect the health of the site's neighbours. The Supreme Court of Canada didn't believe it. Taking into consideration the order of actions by Chateauguay, the Court decided that the city's intent was to control a federal enterprise. As reported at the time, there is a hint of compromise in this ruling. Were the Supreme Court of Canada to believe that health really was a factor then perhaps they would have ruled in the city's favour.

Other Regulatory Aspects

1. Broadcasting Act

Section 3(1) (*t*)(ii) of the *Broadcasting Act* provides another relevant policy objective: "distribution undertakings . . . should provide efficient delivery of programming at affordable rates, **using the most effective technologies available at reasonable cost".**

It could be argued that fiber to the premises is the most effective technology available.

Civil Liberties

1. Trespass

A trespass approach would address how small cells and all EMR-broadcasting equipment including smart meters infringe upon our right to enjoy the sanctity of our personal property - our homes. This could be supported by a "No Consent" campaign.

This is from Australia:

"Trespass

Pollution incidents may also give rise to common law claims in trespass. This occurs when a person intentionally or recklessly wrongly allows something to enter onto another person's land. For example, by dumping waste or spraying toxic chemicals onto another person's land. The remedies for trespass are injunctions and damages. An injunction is an order made by a court to stop a person doing something, or in some cases, to require them to do something. Damages is an award of money to be paid by a person as compensation for loss or injury. "

2. Public Nuisance

The definitions relating to a public nuisance includes something that would create a health hazard.

The Public Health Act of BC clearly gives the provincial health authorities jurisdiction to prevent health hazards. The issue would be to convince the health authorities that there really is a hazard.

This has not been successful in the past. The case Tsawwassen Residents Against Higher Voltage Overhead Lines Society v. B.C. Utilities Commission, 2007 BCCA 95
was thrown out despite being present by Joseph Arvay a very leading counsel.

https://www.canlii.org/en/bc/bcca/doc/2007/2007bcca95/2007bcca95.html?autocompleteStr=Tsawwassen%20Residents%20higher%20voltage%20v%20BC%20Utilities%20Commission%20&autocompletePos=2

A public nuisance charge might be possible using the Accessible Canada Act and environmental hypersensitivity as a disability. (See Point 5 below.)

This next case is from the U.S. so it does not have relevance on a jurisprudence level here, and it was ruled a private nuisance which means this one individual was affected, not an entire community. (A private nuisance is something that interferes with "a person's interest in the private use and enjoyment" of his or her land.) In addition, the property was registered as a wildlife sanctuary.
http://www.muskogeephoenix.com/news/court-rules-against-cell-tower-company/article_b103cdb9-92d1-59c3-8b13-ffb657cc7c9a.html

A public nuisance "can give rise to both prosecution and civil action." With hard data in hand, one could declare small cell antennas "a public nuisance as they are a proven Health hazard" without actually taking the issue to court. However, one would have to get evidence that the installations are in fact a health hazard, leaving us at the mercy of the federal bureaucrats and Safety Code 6.

Proving these installations are in fact a health hazard will be a costly exercise. If that fact can be established it should be possible to proceed by petition to seek the help of politicians in Ottawa to support our case.

3. Canadian Civil Liberties Association sues over Google smart City plan in Toronto

In April 2019, the Canadian Civil Liberties Association launched action to sue Waterfront Toronto, municipal, provincial and federal governments.

"Canada is not Google's lab rat," said the association's executive director and general counsel MJ Bryant. "We can do better. Our freedom from unlawful public surveillance is worth fighting for."

"Of all the misguided innovation strategies Canada has launched over the past three decades, this purported smart city is not only the dumbest but also the most dangerous".

Canada group sues over Google smart city

Note: The Toronto project was shut down in April 2020 after two years of ceaseless controversy relating to the enormous amounts of personal data that Google's Alphabet would collect, a lack of privacy protections, and questionable benefits for the city as a whole. Could the litigation they faced have influenced this decision?

4. The Canadian Charter of Rights and Freedoms

Are small cell antennas a violation of Section 7 of the Canadian Charter of Rights and Freedoms, which guarantees life, liberty and security of the person? The Section 7 argument was thrown out in the BC smart meter case, *Davis v. British Columbia Hydro and Power Authority, 2016 BCSC 1287*

Smart meter class action lawsuit against BC Hydro denied

More about our constitutional right to a healthy environment follows.

From :" The Constitutional Right to a Healthy Environment", February 2013, by David R. Boyd an environmental lawyer and adjunct professor at Simon Fraser University in Vancouver, British Columbia. He is an international expert on human rights and the environment.

http://www.lawnow.org/right-to-healthy-environment/

"Our Constitution does not mention the environment, and Canada is one of a dwindling number of countries that refuse to recognize the right to a healthy environment.

As of 2012, 177 of the world's 193 UN member nations recognize this right; either through their constitutions, environmental legislation, court decisions, or ratification of an international agreement (see Map 1). The only remaining holdouts are the U.S., Canada, Japan, Australia, New Zealand, China, Oman, Afghanistan, Kuwait, Brunei Darussalam, Lebanon, Laos, Myanmar, North Korea, Malaysia, and Cambodia.
In 2011, with the unanimous support of the opposition parties, Parliament came very close to passing Bill C-469, the Canadian Environmental Bill of Rights."

How this situation will be changed:

- litigation resulting in a court decision that there is an implicit right to a healthy environment in s. 7 of the Charter (the right to life, liberty, and security of the person); and
- a judicial reference resulting in a court decision that there is an implicit right to a healthy environment in s. 7 of the Charter."

5. **Accessible Canada Act**

https://laws-lois.justice.gc.ca/eng/acts/A-0.6/

Electromagnetic hypersensitivity, though not specifically named, would be covered by the definition of Disability in this Act, which focuses on the removal and prevention of barriers to accessibility wherever Canadians interact with areas under federal jurisdiction.

"Accessibility in Canada is about creating communities, workplaces and services that enable everyone to participate fully in society without barriers....

This legislation will benefit everyone in Canada, especially persons with disabilities, by helping to create a barrier-free Canada through the proactive identification, removal and prevention of barriers to accessibility wherever Canadians interact with areas under federal jurisdiction. The *Accessible Canada Act* provides for the development of accessibility standards and gives the Government of Canada the authority to work with stakeholders and persons with disabilities to create new accessibility regulations that will apply to sectors within the federal jurisdiction, such as banking, telecommunications, transportation industries and the Government of Canada itself."

In the United States:

Under the **Americans with Disabilities Act (ADA)** you would have, at least in theory, a right to seek an accommodation from the wireless provider, and do so directly. And if the wireless provider does not give you an accommodation to which you are due, regardless of what that accommodation may be, perhaps not pointing the wireless radiation through your bedroom window, you would have a right to file your own action in an appropriate court, whether it be a state court or federal court, invoking the ADA itself.

Administrative Procedures on a Municipal Level

Insurance & Liability

Municipalities recognize 5G and small cells may inflict injury and property damage from EMF, but also from falling objects, fire, and from injury to installers. All of these things can subject the municipality to liability, and they attempt to protect themselves from this liability by requiring insurance.

This insurance requirement is a part of the Master Licensing Agreements they execute with telecom companies. Under the Master Licensing Agreement, the telecom company will often list a shell company as a licensee. The reason they do this is to avoid exposure, by promising indemnity instead of insurance.

Pollution exclusion-free insurance policies

When people get in front of municipal boards, Planning Commissions and city councils, they should hammer home to the elected officials that they need to require as part of the licensing agreement, **General Liability Insurance without a pollution exclusion**, because a pollution exclusion under the policy lists EMF as a pollutant. If you require that kind of insurance, you can slow the process down to a halt, because they can't get EMF insurance.

Fall Zones

There are many dangers associated with cell towers other than RF radiation. There are structural failures, icefall, debris fall; and for these reasons, local governments enact fall zone requirements. It is often very easy to show, especially if they want to put it near a school, that the application doesn't afford a sufficient fall zone, so that no students or any member of the public would be within the danger zone of the tower, either for structural failure, icefall, debris fall.

Schools & Churches

Many churches and schools acquire their property by donation. If they want to put a cell tower on a church or in a school district you must look up the deeds. Many schools and churches get their properties from donations. When somebody donates property to a school or a church, they frequently put a restrictive covenant in the deed that says the property can't be used for commercial purposes.

Building Plans

One of the things that is important in the 5G rollout is that very often when a site developer submits plans once these plans are approved the developer builds something which is different from what's shown in the plans. If they do that, the municipality can immediately revoke the permit and make them start the whole process over again.

Criminal Negligence

1. Criminal Negligence in Canada

In December 2018, CBC Ideas held a mock trial to see if Sir John A. MacDonald was guilty of crimes against humanity as a result of his treatment of First Nations.

https://www.cbc.ca/radio/ideas/the-trial-of-sir-john-a-macdonald-would-he-be-guilty-of-war-crimes-today-1.4614303

In his judgement, **Ian Binnie**, one of Canada's most respected arbitrators and advocates, stated that MacDonald's conduct could attract civil liability but not criminal liability. He said that a**n individual may not be found guilty of an offence under the Canadian criminal code as a result of his or her failure to do something**. Guilt stems from actions we have taken, not inaction.

The Criminal Code of **Canada says:**

"Every one is criminally negligent who

(a) in doing anything, or

(b) in omitting to do anything that it is his duty to do,shows wanton or reckless disregard for the lives or safety of other persons.

Definition of duty. (2) For the purposes of this section, duty means a duty imposed by **law**. R.S., c. C-34, s.

What is the legally defined duty of our federally, provincially and municipally elected officials?

2. Personal Liability for Elected Leaders

It is likely that the way the wireless industry and the courts would review this type of claim is that, so long as the wireless facility is emitting radiation levels which are within Safety Code 6 limits, there's no breach of fiduciary duty.

Health & Safety

1. Durand v. Attorney General of Québec and others

In *Durand* v. *Attorney General of Québec*, Justice Gary D.D. Morrison refused to authorize (certify) a class action on behalf of persons, fauna, pets and animals relating to electromagnetic field pollution.

THE ELECTROMAGNETIC FIELD POLLUTION CLASS ACTION IN QUÉBEC WILL NOT GO FORWARD

SEPTEMBER 7, 2018

"In the Courts' view, the proposed class action represents a poorly-disguised attempt to hijack the class action process in order to conduct a form of commission of inquiry, both scientific and political in nature, with a view to imposing the scientific views of the Applicants and their experts, not only on the Quebec Government, but also on the Royal Society of Canada and the Canadian Government, thereby affecting all Canadians, and not just class members"

https://www.fasken.com/en/knowledge/2018/09/the-electromagnetic-field-pollution-class-action-in-quebec-will-not-go-forward

2. MARCH 2019 _ The Quebec Court of Appeal upheld a landmark judgment ordering three companies to pay billions of dollars in damages to Quebec smokers.

https://nationalpost.com/news/canada/newsalert-appeals-court-upholds-landmark-tobacco-ruling

Cited from the link above:

…Imperial Tobacco, JTI-Macdonald and Rothmans-Benson & Hedges had appealed a ruling that found the companies chose profits over the health of their customers.

...Quebec's highest court, which began hearing the appeal in 2016, struck down almost all of the tobacco companies' grounds for appeal. The five-judge panel confirmed that the companies failed in their duty to inform their customers of the risks of smoking and failed to demonstrate that consumers were aware of the risk.

The judges concluded that the companies understood that their marketing strategies would expose consumers to the risk of addiction or fatal disease. "In so doing, they certainly infringed in an illicit and intentional fashion the rights to life, to personal security and to inviolability" of the plaintiffs, the court ruled.

…"We've shown that adult consumers have known the risks associated with tobacco for decades," he said. "We also know that it's the federal government that gives us the license to allow us to operate in this market, and we followed the laws and regulations," he told reporters.

…Some 76 witnesses testified at the Superior Court trial and nearly 43,000 documents were entered into evidence, including internal tobacco company documents that showed smokers didn't know or understand the risks associated with cigarettes.

3. **Quebec vs BoisBriand (City) 2000**

This case examined if a perceived disability is enough to launch a human rights claim. In this case the courts rules "Yes", the government is accepting a broader definition of disability.

Thus, perceived disabilities are accepted, which is why most tribunals do not automatically dismiss electrosensitivity claims.

https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1789/index.do

4. **Prohibitions stipulated in the Canada Consumer Product Safety Act** which apply to Manufacturers, Importers and those advertising products

http://laws-lois.justice.gc.ca /eng/acts/C-1.68/page-1.html

http://collectiveactionquebec.com/index.html

The Consumer Product Safety Act dates from 2010, which harken back to the Hazardous Products Act of 1985. Case law based on the Consumer Product Safety Act would mean someone having taken a specific product "to court" because it causes "adverse effects on human health if those effects could be serious or irreversible."

Of course, causation between the product and ill health must be proven.

It is possible this clause may exempt a product based on EMF, given that Health Canada has federal guidelines (Safety Code 6) for exposure level safety:

"There are exceptions. Consumer products do not include products that are governed by other federal legislation, such as food, drugs, natural health products, medical devices, cosmetics, pest control products, animal feed, seeds, fertilizers, explosives, firearms,

ammunition, motor vehicles (including integral parts), airplanes, ships and animals (CCPSA, Schedule 1).

Mandatory Incident Reporting

One tactic could be to bring medical files to places that sell wireless equipment linking use to "incident" which could force vendors to file mandatory incident reports.

"Mandatory incident reporting (s. 14) applies only to incidents concerning “serious adverse effects” on health. Health Canada interprets a serious adverse health effect as being an illness or injury requiring medical treatment such as a burn, a laceration, internal bleeding, a fracture, poisoning, loss of function, loss of consciousness, inability to breathe, etc.

Manufacturers, importers and sellers must report any incidents involving consumer products (whether they occurred in Canada or elsewhere) to Health Canada. “Incident” is defined in the Act to include any occurrence that resulted (or may reasonably have been expected to result) in death or a serious adverse effect on an individual’s health, including a serious injury (s. 14(1)(a)). “Incident” is also defined to include a defect or characteristic, or an incorrect, insufficient or missing label or instructions, any of which may reasonably have been expected to result in death or a serious adverse effect on someone’s health (again, including a serious injury) (s. 14(1)(b) and (c)).

... once a manufacturer, importer or seller becomes aware of the event or the relevant information, it can take a reasonable amount of time to evaluate it to decide whether such event constitutes a reportable incident under the Act. Insights into Health Canada’s interpretation of the CCPSA can be found in its **Frequently Asked Questions** for the *Canada Consumer Product Safety Act*.

The challenge of course will be to get the seller to agree that the "incident" is linked to the product....

Radiation-Emitting Devices

You can report a side effect (adverse reaction) to--or an incident with--a radiation-emitting device to the Consumer and Clinical Radiation Protection Bureau. Examples: ultrasound equipment, X-ray devices, microwave ovens, tanning equipment, and lasers. For radiation-emitting devices used to diagnose or treat a medical condition, you can voluntarily report adverse reactions and injuries to the Medical Devices Program.

https://www.canada.ca/en/services/health/report-health-safety-concern.html

5. The Nuremberg protocol

For the Nuremberg protocol to apply, it must be a country or a government that is doing the exposing. The problem with applying Nuremberg here is the fact that the exposing is being done under contract with a governmental entity by a private company, Bell, Rogers, TELUS, and so forth.

Applicable U.S. Legal Initiatives

1. **Fibergate: IRREGULATORS v FCC**

> ... Almost the entire wireless business, including 5G, has been built by charging low income families, rural customers, seniors, small businesses — anyone using wireline services — a fee, which has then been transferred to support wireless networks.
>
> 5G requires a fiber optic wire. Wireline utility networks and their customers have paid for and cross-subsidized the wireless build out in America.
>
> The **IRREGULATORS v FCC** DC Court opinion given in March 2020 freed states in the US from the FCC, and they are now independent and can go after these funds.
>
> https://medium.com/@kushnickbruce/disaster-capitalism-separate-the-wireline-and-wireless-subsidies-and-fix-the-digital-divide-db697fad8df0

Suggestion: Look at the various Canadian federal funding initiatives re: universal broadband and follow the contracts to see if something similar has happened here in Canada. The one gray area that may be worth looking at is when telecoms use these funds to install fiber optic cables and then also install small and macro cell antennas.

> This is a good generic place to start:
>
> Building a Better Canada: Universal High-Speed Internet

2. **Using *the Administrative Process* to get Draconian Laws Revoked**

Two laws were passed in the U.S. on March 23rd, 2020:

1. **Secure 5G and Beyond Act of 2020**

> This Act paves the way for the creation of a plan to secure 5G networks and protect related innovations.
>
> https://www.congress.gov/bill/116th-congress/senate-bill/893/text/enr

2. The "Broadband DATA Act"

> This Act is aimed at improving the Federal Communications Commission's data collection process for broadband mapping. The bill requires that ISPs report "download and upload speeds" and "latency" of their broadband service. However, it

does not require ISPs to submit information on the *quality* of the services they provide including Actual speeds, pricing, data caps, network security and resiliency and more.

https://www.congress.gov/bill/116th-congress/senate-bill/1822/text/enr

Actions Taken to Contest these Laws:

Citizens are being asked to register their non-consent in the form of a Notice that uses Administrative Process principles.

Suggestion: Administrative Process and Canada

In terms of the Administrative Procedure in Canada, one would need to prove that the government has performed an illegal action. A few angles could be used here:

- the violation of the Commons,
- the Nuremberg Protocol,
- the Canadian Charter of Rights and Freedoms,
- and some specific regulation like ISED's Antenna siting procedure or even Safety Code 6 could be the focus piece of legislation,

But once again - a lawyer qualified in this field would need to analyze this situation. And as usual we come up against the exposure limits set by Safety Code 6 in the former and ICNIRP in the latter.

Administrative law is based on the principle that government actions must (strictly speaking) be legal, and that citizens who are affected by unlawful government acts must have effective remedies.

Here is a link to more on the area of Administrative Law in Canada:

https://www.thecanadianencyclopedia.ca/en/article/administrative-law

3. U.S. Federal Court Overturns FCC Order which Bypassed Environmental Review For 5G & Small Cell Wireless

On August 9, 2019 the U.S. Court of Appeals for the District of Columbia Circuit issued a decision substantially setting back the efforts of the Federal Communications Commission (FCC) to expedite the deployment of 5G.

The FCC had reasoned that even though the industry planned to deploy as many as 800,000 of these 50-foot (possibly taller) towers in neighborhoods and historic districts around the U.S. by 2026, it was not in the public interest to review their potential impacts.

The Court of Appeal, however observed that the FCC had failed to address the cumulative harms that may result from "densification," i.e. crowding of multiple cell towers in a limited area; the potential harms from co-location of multiple cell facilities on a single pole; and the concern that the FCC was speeding deployment of cell towers when it had not completed its ongoing investigation into the potential health effects of low-intensity radiofrequency radiation.

Federal Court Overturns FCC Order Which Bypassed Environmental Review For 5G & Small Cell Wireless - Environmental Health Trust

Suggestion: **ISED**

ISED's CPC-2-0-03 has a section on the Environment in it:

"Proponents are responsible to ensure that antenna systems are installed and operated in a manner that respects the local environment and that complies with other statutory requirements."

By excluding microcells from the need for public consultation, it appears ISED also excuses telecoms from confirming their small cell installations do not violate the *Canadian Environmental Assessment Act, 2012*. (CEAA)

It seems that ISED requires that projects *check in* with them (rather than simply report to them) about meeting CEAA if projects are on federal lands or North of 60. Other than that in the case of projects that are subject to the public consultation requirement, the telecom simply needs to provide information on the environmental status of the project, including any requirements under the Act.

If there is no public consultation process required, telecoms are off the hook, although individual communities could have a clause in their antenna siting protocol saying the project must be: "installed and operated in a manner that respects the local environment."

But once again, this likely would be federally disregarded if enforced for microcells, and the ISED wording above is very (likely intentionally) vague.

This all leaves so much up to interpretation. Yes, there is science showing radiofrequency radiation harms endangered pollinators, insects, and migratory birds. But we run up against Safety Code 6 - although that is just for human exposure - so there may be an opening here re: effects on wildlife - but it would likely take a legal challenge.

Environmental Assessment and 5G in Canada

From CPC-2-0-03 — Radiocommunication and Broadcasting Antenna Systems

http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf08777.html#sec7

7. General Requirements

In addition to roles and responsibilities for site sharing, land-use consultation and public consultation, proponents must also fulfill other important obligations including: compliance with Health Canada's Safety Code 6 guideline for the protection of the general public; compliance with radio frequency immunity criteria; notification of nearby broadcasting stations; **environmental considerations**; and Transport Canada/NAV CANADA aeronautical safety responsibilities.

To determine legibility read this: http://laws-lois.justice.gc.ca/eng/acts/C-15.21/ and these: Canadian Environmental Protection Act, 1999, the Migratory Birds Convention Act, 1994, and the Species at Risk Act.

4. **Contesting FCC's Refusal to Review Radiation Safety Limits**

i) *Environmental Health Trust, Consumers for SafeCell Phones, Elizabeth Barris, and Theodora Scarato v. The FCC and the United States of America*

A group of scientists, consumer health nonprofits, and citizens filed a historic legal action against the FCC for its refusal to update its 24-year-old cell phone and wireless radiofrequency (RF) radiation guidelines. The legal petition contends the FCC's action is "arbitrary, capricious, an abuse of discretion" and "not in accordance with the law" as the FCC has violated the Administrative Procedure Act and the National Environmental Policy Act by failing to adequately review the hundreds of relevant scientific submissions finding harmful effects from wireless technologies.

The appeal was filed in the U.S. Court of Appeals for the District of Columbia Circuit on January 31, 2020 by the Law Office of Edward B. Myers.

https://ehtrust.org/eht-takes-historic-legal-action-against-the-fcc-regarding-cell-phone-radiation/

ii) *Children's Health Defense v. FCC*

Children's Health Defense (CHD) is leading a historic legal action against the Federal Communication Commission (FCC) for its refusal to review their 25 year old guidelines, and to promulgate scientific, human evidence-based radio frequency emissions ("RF") rules that adequately protect public health from wireless technology radiation. The Petition contends the agency's actions are capricious and not evidence-based.

The Petition was filed on 2/2/2020 in the U.S. Court of Appeals for the Ninth Circuit. Robert F Kennedy Jr is the Director of Children's Health Defense and lead counsel on this lawsuit. See full press release here

Suggestion: Take Similar Action against Health Canada

5. OTARD – filed by Children's Health Defense to the FCC

In 2020, the FCC planned to expand its 'Over The Air Reception Devices' (OTARD) rule (WT 19-71), to allow wireless companies to install 5G and other cell towers and transmitting devices on homes, while allowing an expansion of 5G infrastructure and antenna deployment which would include 1,000,000 antennas to provide the ground infrastructure for 5G-enabled satellites.

In April 2020, the Children's Health Defense filed this document in response:

https://childrenshealthdefense.org/wp-content/uploads/OTARD-Ex-Parte-4-17-FINAL.pdf

Sections of Interest are:

- Page 8: I. Property rights
- Page 10 : II. Bodily autonomy and Informed consent
- Page 14 : III. Americans with Disabilities Act
- Page 15: IV. Fair Housing Act

As of June 2020, the Courts have not yet ruled on this case.

6. Satellite Lawsuit v. FCC Initiative

This landmark collaborative transnational legal initiative intends to mandate the FCC to follow established principles and procedures that are well recognized by:

- international treaty,
- the U.S. Constitution,
- federal statutes,
- state laws, and local ordinances

to carefully assess all risks, costs, and viable alternatives **before** permitting the implementation of a blanket license of 1 million earth stations and accelerating the launch of 50,000-100,000 satellites.

Julian Gresser leads an international team of veteran attorneys including Jim Turner, Scott McCollough, Joe Sandri, and Raymond Broomhall. Read more here: Healthy Heavens Trust Initiative.

7. **Ohio Small Cell Lawsuit**

Several lawsuits were filed in Ohio in 2017 aimed at a State Bill that granted industry the right to install small/microcells on public property without consultation or approval. Victories in a handful of lawsuits filed in the state's major counties by more than 70 communities held up implementation in 2017. The legal victories didn't directly strike down the wireless cell regulations. Rather, judges found that the legislation violated the Ohio Constitution's "single-subject rule" for legislation.

As a result, the Legislature had to come up with new legislation, and it asked the telecommunications industry and representatives of cities and villages to come up with something they all could live with.

https://www.crainscleveland.com/article/20180520/news/162291/cities-carriers-strike-compromise-over-5g-technology

8. In May 2020, **An Atlanta, Georgia attorney sued Verizon** in a class action suit for attempting to erect a 5G cell tower in his yard

Atlanta attorney Bill Kasper alleged unlawful trespass and resulting property devaluation, unlawful taking of property and of the joy and benefits of homeownership, fraud and intentional infliction of emotional distress, among other claims.

Kaspers, who's almost 72, says Verizon's subcontractor and crew put him and his neighbors at risk of contracting COVID-19 from the unmasked workers as well as diseases linked to 5G. He pointed to a number of studies that have found radiation from a 5G cell unit can cause cancer "and other serious and potentially permanently debilitating health conditions in people of all ages."

"Moreover, the decrease in value of residences near a 5G cell unit is even greater than 20% for residences which are closer/closest to the emanating 5G cell unit," he said, adding that the tower will be roughly 100 feet from the bedrooms in his home.

The case, *Kaspers v. Verizon Wireless Services LLC* , which was filed in May 2020, is case number 1:20-cv-02142 in the U.S. District Court for the Northern District of Georgia

9. **Letter from a lawyer warning about financial liability of California regarding health effects caused by microcells**

The letter states liability could be spread among various governments: local, regional, and federal.

https://ehtrust.org/wp-content/uploads/Assembly-Appropriations-risk-warn-letter-7-19-17.pdf

10. **To consider: A Coming Storm For Wireless? From Investment analyst Gloria Vogel**

"Imagine an enterprise sector that utilizes a known human hazard and knowingly turns a blind eye to the health and safety of third party workers. Yet, this is exactly the situation surrounding radio frequency (RF) radiation within the wireless industry. Wireless carriers have long hidden behind the veil of federal compliance to avoid implementing a meaningful RF safety solution.

To date, the wireless industry has managed to stay relatively unscathed financially from injuries related to RF radiation. This is largely due to the medical community's ignorance of the effects of RF injuries, either cognitive or physical. If experts in the medical community have no understanding of RF radiation, how can a worker realize they have been injured when RF radiation is invisible, odorless, and tasteless? Workers have no way of connecting their overexposure incident with the manifestation of symptoms, which may not arise immediately."

Overview of Global Case Law on Wireless Radiation & 5G

Australia

1. Australia: McDonald and Comcare [2013] AATA 105 (28 February 2013)

Mr McDonald was working at the Commonwealth Scientific and Industrial Research Organisation (CSIRO) since 1994. He claimed compensation under the Safety, Rehabilitation and Compensation Act 1988 (Cth) as he claimed to have been injured in the course of his employment. Conditions he had, had been contributed to, in a significant degree, by his employment.

The claims were made for:

1. Aggravation of an electromagnetic hypersensitivity syndrome
2. Chronic Adjustment disorder with depressed moods
3. Permanent impairment which came from the adjustment disorder, and
4. Migraines

Decision in McDonald and Comcare -The court decided in the favor of Mr McDonald.

2. From a Conference in Australia: Risks, regulations and liability around exposing other people to wireless technology EMF radiation ~ UNSW Sydney 'faculty of law' October 14, 2015

Common Law Liability and EMF radiation exposure

David Andersen, partner at HWL Ebsworth Lawyers, who has experience with asbestos cases spoke about Causation in Common Law. He commented that parallels exist between EMF and asbestos litigation. The latter has lead to difficult questions being asked about scientific proof, causation, foreseeability, and reasonable response to risk. These same questions could arise in radiation-related legal battles.

David Andersen began his presentation by offering insight into Causation in Common Law. He explained that a defendant is liable for the whole of a plaintiff's damages if the defendant's negligence made a "material contribution" to the injury. This is not a high obstacle because the courts have a principle that if a contribution is not determined to be "de minimis non curat lex" (wasting the court's time on trivial matters) then it MUST BE material.

Risks of Occupiers

When there is a relationship of "master – servant" (employer – employee, school – pupil, hospital – patient) then it is relatively straightforward to establish a duty of care. It is "easier" for the law when there is a more defined relationship between the defendant and the plaintiff, but what about people walking past a building site and being affected by something found there? Or being in public places, airports, shopping centre and libraries?

Is the power company or the government liable for allowing home construction near high power transmission lines and the resulting health consequences?

The case of Caltex Refineries (Qld) Pty Ltd vs Stavar [2009] NSWCA 258 dealt with such a situation, where the employee's wife - who washed his asbestos-covered work overalls - contracted lung cancer. It was determined that there was a duty of care. Following that line of thinking, a duty of care could very well be applicable to:

- EMF radiation exposure like Wi-Fi that people receive in public places;
- areas caught in the cross fire of mobile phone towers;
- areas where people are permitted to build or occupy homes that are near something dangerous, like power supply cables, big or small.

There are laws in place and requirements that those who own and manage facilities keep them safe for others to be in, or near.

Breach of the duty of care

The courts have the task to determine how an organization like a company or school is meant to respond to a perceived risk. This "responding" can also be viewed in the context of exposure duration. Exposing a child, who is still growing and who's cells are multiplying, to the radiation of a commercial grade Wi-Fi system all day long may warrant a different response than the perceived risk of exposing a cleaner who works in that environment for a couple of hours one day a week to the same Wi-Fi source. The duty of care is likely to be very different.

David Andersen stressed that a risk that is not farfetched and foreseeable is a real risk. It is important that such risks be established. The condition of being harmed by EMF radiation is still being questioned. Is there any danger in being exposed to non-thermal, low level radiation? There must be indisputable research showing that exposure to EMF radiation can be harmful.

3. **Ray Broomhall: Assault**

Ray Broomhall, a lawyer in Australia, is using the potential of harm, including the concept of assault to fight 5G.

Broomhall's system is to get medical practitioners to assess the science and decide whether or not it is harmful or there is a risk of harm to his clients if a small cell tower is installed by their homes.

When the attorneys go to court, they do not focus on the doctor's assessment, but on **the PATIENT and how they see this is an assault on their health**.

Broomhall states: "A doctor has given an opinion; my client has established a reasonable fear of EMFs based on that opinion that this is going to harm him."

If the telecoms do not back down, the Broomhall team will then apply for restraining orders or will threaten to apply for restraining orders. At this point, the telecom may realize that their employees and anyone in any position with them such as counselors will be liable.

The definition of assault in Australia says:

> "An assault is the act of inflicting physical harm or unwanted physical contact upon a person or, in some specific legal definitions, a threat or attempt to commit such an action. It is both a crime and a tort and, therefore, may result in either criminal and/or civil liability."

It appears that Broomhall has not successfully applied this argument yet in court.

The problem with this legal argument is that the facts for each case would be very particularized and individual to the plaintiff. And it is not well suited to something like a class action suit. It is likely the defense would be able to defeat any effort to bring a class action suit, simply because the facts and circumstances vary so considerably.

To test this, one must find a perfect plaintiff. The problem is the cost of prosecuting the case is more than any individual could probably handle. Therefore, there needs to be some means by which one or two of these "lodestar case" could be prosecuted through the courts with some assistance and funding, because once that domino falls, then the rest of them will follow.

If you bring a class action for battery or for assault, your defendant is going to be the telecom company, or the operating company, which is operating the facility; you are not going to be suing the city. So it's not a mandamus action. It is not an action to compel the city to withdraw a permit, or cease and desist on an inappropriately issued permit, or cause the removal of the cell towers based on the permit itself. Rather, this would be a damage claim on behalf of a group of people against the telecom, which means you are going to be fighting a much more funded entity than if you were suing a city.

What is the definition of Assault in BC/Canada?

As assault can be either a crime or a tort or both, definitions are quite complicated. Any legal definition is subject to how it is applied to the specific case at hand. The criminal definition is found in section 265 of the Criminal Code of Canada.

There are two aspects to the subject, being assault, and battery. Battery requires physical contact but assault does not necessarily require physical contact. In a criminal case, usually there must also be intent to inflict injury.

Denmark

Danish attorney Christian F. Jensen provides this legal opinion which concludes that 5G contravenes human and environmental laws - EM Facts Consultancy - November 04, 2019:

https://drive.google.com/file/d/1ArfycrCD_ZFb1gp0OhuTBdZSC9t9tJ9R/view

http://www.tacinterconnections.com/index.php/allnews/researchsurveys/3186-legal-opinion-on-whether-it-would-be-in-contravention-of-human-rights-and-environmental-law-to-establish-the-5g-system-in-denmark

France

1. **France - 2009** - parents take a telecom to court to order them to dismantle WIFI in the school their children attend - court orders equipment opt be removed:

http://www.next-up.org/pdf/Gerson_School_vs_Bouygues_Telecom_Court_Order_District_Court_Lyon_France_14_05_2009.pdf

2. **France - 2014** - Judgement recognizes electro hypersensitivity:

http://sante.lefigaro.fr/actualite/2014/04/17/22237-premiere-indemnisation-pour-electrosensibilite

3. **France - August 2015** - French Judgement recognizes electromagnetic hypersensitivity and forces compensation to be paid:

http://www.buergerwelle.de:8080/helma/twoday/bwnews/stories/6753/

India

1. **April 2017 - Cell tower shut down by Supreme Court of India** due to man living beside it getting cancer. This judgement mentions the precautionary principle:

> SC Directs Deactivation of BSNL's Mobile Tower, On A Complaint From A Cancer Patient [Read Petition & Order] | Live Law

2. **Supreme Court of India** orders that thousands of cell towers near homes, schools and hospitals get dismantled – 2013:

> https://ecfsapi.fcc.gov/file/7520958472.pdf

Netherlands

1. The Dutch stop 5G group, Stop5GNetherlands, filed an injunction against the Dutch State on February 25, 2020, invoking an emergency procedure to stop the rollout of 5G

> On February 25, the Dutch foundation Stop5GNL issued a summons to the Ministry of Economic Affairs and Climate, asking that 5G be prohibited "unless it is demonstrated with sufficient certainty, by consensus of the scientific community, that 5G does not pose a danger to public health in the long term."
>
> The lawsuit was heard in the District Court in The Hague. On May 25, 2020, the Dutch Court ruled that 5G deployment by the government is lawful. In his decision the Judge states:
>
> "It cannot be concluded that the State is acting unlawfully by auctioning the frequencies in the intended manner. The claims aimed at preventing those auctions will therefore be rejected....
>
> There is no question that total exposure to electromagnetic fields (the sum of the use of multiple applications) in any location where people are present must remain below the limits which are intended to safeguard public health. Stop5GNL has rightly argued that at present it is not clear exactly how 5G systems and the field strengths they cause will develop.
>
> For that reason, the Netherlands Radiocommunications Agency will continue to monitor the field strengths in various ways ... and will intervene if future measurements by the Radiocommunications Agency show that the ICNIRP Guidelines are or will be exceeded.
>
> In addition, the State has indicated that it will also intervene if new insights show that

the exposure limits need to be adjusted; when it therefore appears that there are still health risks in the event of exposure to electromagnetic waves below the limits that are currently considered safe ... In view of this, the roll-out of 5G is not irreversible.

Under these circumstances there is no reason for Intervention by the interim injunction judge."

https://www.stop5gnl.nl/wp-content/uploads/2020/02/Dagvaarding-in-kort-geding.pdf

2. In a landmark December 2020 ruling, a judge in Gelderland, Netherlands ruled that 4G and 5G cell towers may not be placed without taking health considerations into effect, even if the installation meets government radiation exposure guidelines.

Here is a summary of the judge's decision: (Use Google translate if needed)

https://www.msn.com/nl-nl/nieuws/Binnenland/stralingszieken-blij-uitspraak-van-rechter-over-5g-zendmast-doorbraak/ar-BB1cmvfD

Here is the judge's ruling:

https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBGEL:2020:6699

The United Kingdom

1. Legal Action Against 5G

In May 2020, it was announced that barrister Michael Mansfield QC is leading a legal team challenging the UK Government over its failure to take notice of the health risks and public concern related to 5G.
https://actionagainst5g.org/

2. UK High Court case against EMFs and 5G

In June 2020, lawyers in the UK led by solicitor Jessica Learmond-Criqui launched a campaign to take the UK government to court over health concerns relating to 5G and to EMFs generally.

https://ehtrust.org/a-second-lawsuit-in-the-united-kingdom-over-health-effects-of-5g-technology/

Overview of Potential Legal Avenues

The following was compiled by international attorney Julian Gresser in May 2020.

Please Note: Many of the Laws and Acts listed below are American, but similar Canadian legislation likely exists.

5G and International Law
• International Treaty Obligations (World Heritage, Biodiversity, Endangered Species, Outer Space, UNCLOS, Human Rights, Environmental and Health Rights, Children, Outer Space, Right to Know)
• National Liability (Outer Space Liability Convention)

Comparative and Transnational Law
Standards, Liability, Litigation, Insurance

• Personal injury actions (precautionary principle, duty of care, foreseeability, warning, monitoring, causation, assessment of damages to health, environment, property, interference with economic opportunity and advantage)

• Employer's Responsibility and Workers Compensation
• Landlord/Tenant Actions (covenants of quiet enjoyment and habitability)
• Vulnerable populations (children, elderly, disabled, minorities)
• American Disability Act/Fair Housing Act
• Toxic products, duty to warn and monitor (California Proposition 65)

• RFR as uninsured and uninsurable
• Criminal Liability (assault and battery, child, elderly endangerment, trespass and public nuisance)

Public Law Constraints on Administrative Action
• Critical Challenge — Standing
• Administrative Procedure Act
• Tort of Misfeasance in Office
• Limits on sovereign immunity
• Freedom Of Information Act
• National Environmental Policy Act (NEPA) and related statutes
• Regulatory Flexibility Act (RFA)

• False Claims Acts
• Consumer Data Privacy Protection Laws
• Securities Laws: Duty of Full and Complete Disclosure (10K etc.)
• Federal preemption
• Empowering Local Communities: Local Ordinance Best Practices
• Public Disputes Mediation
• Misdirection and Misappropriation of Taxpayer/Ratepayer funds (*Irregulators v. FCC*)

Safe G Alternatives for a Global Telecommunications Infrastructure
• National Security
• Secure 5G and Beyond Act of 2020
• Optical Fiber-Wired Infrastructure (FTTP)

• Strategic Alliances and International Licensing