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The Comma That Costs 1 Million Dollars (Canadian)

By [IAN AUSTEN](#)

OTTAWA, Oct. 24 — If there is a moral to the story about a contract dispute between Canadian companies, this is it: Pay attention in grammar class.

The dispute between [Rogers Communications](#) of Toronto, Canada's largest cable television provider, and a telephone company in Atlantic Canada, Bell Aliant, is over the phone company's attempt to cancel a contract governing Rogers' use of telephone poles. But the argument turns on a single comma in the 14-page contract. The answer is worth 1 million Canadian dollars (\$888,000).

Citing the "rules of punctuation," Canada's telecommunications regulator recently ruled that the comma allowed Bell Aliant to end its five-year agreement with Rogers at any time with notice.

Rogers argues that pole contracts run for five years and automatically renew for another five years, unless a telephone company cancels the agreement before the start of the final 12 months.

The contract is a standard one for the use of utility poles, negotiated between a cable television trade association and an alliance of telephone companies. French and English versions were approved by a government regulator about six years ago.

The dispute is over this sentence: "This agreement shall be effective from the date it is made and shall continue in force for a period of five (5) years from the date it is made, and thereafter for successive five (5) year terms, unless and until terminated by one year prior notice in writing by either party."

The regulator concluded that the second comma meant that the part of the sentence describing the one-year notice for cancellation applied to both the five-year term as well as its renewal. Therefore, the regulator found, the phone company could escape the contract after as little as one year.

“The meaning of the clause was clear and unambiguous,” the regulator wrote in a ruling in July.

But Kenneth G. Engelhart, vice president for regulatory affairs at Rogers, disagreed. “Why they feel that a comma should somehow overrule the plain meaning of the words is beyond me,” he said. “I don’t think it makes any sense.”

He acknowledged, however, that lawyers for his company might have underestimated the regulator’s interest in grammar.

“We were obviously too confident the first time around,” he said.

But this time, Rogers has turned to Canada’s other official language, French, as well as its own outside grammar expert to appeal the ruling.

Aliant, which is controlled by the Montreal-based [BCE](#), declined to comment. But in a filing with the Canadian Radio-television and Telecommunications Commission, it called the issue “a classic case of where the placement of a comma has great importance.”

Mr. Engelhart said the grammar fight began when Aliant told Rogers in February 2005 that it was canceling a pole agreement for the province of New Brunswick one year early. The cancellation was necessary because a local electric utility was taking direct control of poles that Aliant previously managed on its behalf.

The power company, Mr. Engelhart said, planned to “really crank up rates,” a change that would cost Rogers about 1 million Canadian dollars over that final year.

To bolster its appeal, Rogers commissioned a 69-page affidavit, mostly about commas, from Kenneth A. Adams, a lawyer from Garden City, N.Y., who is the author of two books on contract language. It disputes the regulator’s analysis of what Mr. Adams calls “the rule of the last antecedent.”

Rogers is also pointing to the official French version of the pole agreement, which has equal status under Canadian law. While differences between the languages will not settle the comma question, Mr. Engelhart said the phrasing removed any ambiguity about the contract’s life span.

“It becomes very clear once you read the French version,” he said.