

Court File No. CV-18-589518-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

AMENDED THIS Jan 17, 2022 PURSUANT TO MARJORIE NELSON
MODIFIÉ CONFORMÉMENT À

RULE/LA RÈGLE 26.02 (A _____)

Plaintiff

-and-

THE ORDER OF _____
L'ORDONNANCE DU
DATED/FAIT LE _____

TELUS COMMUNICATIONS INC.

Defendant

M. Godin
Digitally signed by Michelle Godin
DN: cn=Michelle Godin, o=Toronto
General, ou=Ontario, email=Michelle.Godin@toronto.ca
.....
REGISTRAR GREFFIER
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

Proceeding under the *Class Proceedings Act, 1992*

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this Court office, **WITHIN TWENTY DAYS** after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT WILL BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date of Issue: January 5, 2018

Issued by: "A. Fajardo"
Local Registrar

Address of court office:
393 University Avenue
Toronto, Ontario
M5G 1E6

TO: Telus Communications Inc.
25 York Street
29th Floor
Toronto, ON
M5J 2V5

CLAIM

1. The Plaintiff claims:

- (a) an order certifying this action as a class proceeding;
- (b) general damages of \$10,000,000 or such other amount as may be proved at trial;
- (c) statutory damages pursuant to ~~s.72(1) of the *Telecommunications Act, SC 1993,*~~
~~e.38, and~~ related provincial legislation;
- (d) treble damages pursuant to s.17(2) of the *Wireless Services Agreements Act, SO*
2013, c.8;
- (e) punitive damages pursuant to s.17(3) of the *Wireless Services Agreements Act, SO*
2013, c.8;
- (e.1) statutory and punitive damages pursuant to s. 272 of the *Consumer Protection Act,*
CQLR c P-40 with respect to Quebec class members;
- (e.2) punitive damages with respect to Manitoba and Newfoundland and Labrador class
members;
- (e.3) an accounting and restitution for unjust enrichment, or in the alternative,
disgorgement, with respect to Manitoba and Newfoundland and Labrador class
members;
- (f) pre-judgment and post-judgment interest;
- (g) the costs of this proceeding; and
- (h) such further and other relief this Honourable Court deems just.

OVERVIEW

1. Cellphone contracts in Canada are governed by conditions of service established by the Canadian Radio-television and Telecommunications Commission (“CRTC”) under section 24 of the Federal *Telecommunications Act*, including the *Wireless Code*, and also by provincial consumer protections statutes, including the Ontario *Wireless Services Agreements Act* (“WSAA”),² the Quebec Consumer Protection Act, CQLR c P-40 (“Quebec CPA”), the Manitoba Consumer Protection Act, CCSM c C200 (“Manitoba CPA”) and the Newfoundland and Labrador Consumer Protection and Business Practices Act, SNL 2009, c C-31.1 (“Newfoundland CPA”) .

2. Among other things, this regulatory framework governs cancellation fees that may be charged to consumers. In particular, the above statutes and the *Wireless Code* specify how and when a cellphone provider may charge a cancellation fee, and also, when a cellphone provider must refund or rebate monies already paid in advance by a consumer who wishes to cancel a cellphone contract.

3. Specifically, if a consumer has already paid in advance for a month of service, and that consumer then decides to cancel their contract at some point during that month, the cellphone provider must refund the consumer, on a prorated basis, fees allocated for the balance of that month. For example, if a consumer pays \$50/month for a cellphone contract, and they then cancel their service mid-month, they are entitled to a \$25 refund.

4. The purpose of this rule is to make it easy for consumers to switch cellphone providers, thereby encouraging competition, lowering prices, and enhancing consumer choice. Per capita fees for cellphone service in Canada are amongst the highest in the developed world, and the

federal and provincial regulation of cancellation fees is an effort to correct this situation. Moreover, such regulation also serves to avoid double billing. That is, consumers should not still be paying for a service after they have already cancelled it, and moved on to another provider.

5. Despite the clear language of the above legislation and *Code*, and despite clear guidance and repeated direction from the CRTC, the Defendant has continually and persistently charged its customers illegal cancellation fees. The Defendant has collected millions of dollars in cancellation fees to which it is not entitled, and it has made no effort to refund these monies to its customers, or even to notify its customers of their right to a refund upon cancellation of a contract.

6. Section 72(1) of the *Telecommunications Act* and sections 17(2) of the *WSAA*, and s.272 of the Quebec CPA provide consumers with a civil cause of action with respect to illegal cancellation fees. The Manitoba CPA and the Newfoundland CPA establish clear statutory rules regarding the illegality of certain cancellation fees that support claims for breach of contract and unjust enrichment by persons in those provinces with respect to such illegal fees. The Plaintiff brings this action in her own right, and on behalf of a class of similarly situated persons, to enforce the rights of consumers under this regulatory framework.

7. **THE PARTIES**

The Plaintiff and the Class

8. The Plaintiff is an individual residing in Mississauga, Ontario.

9. The Plaintiff brings this claim on behalf of herself and on behalf of a proposed class of persons defined as follows (the “Class”):¹

“All persons in Canada who had monthly agreements for wireless service with the Defendant and who cancelled that agreement during the Class Period”.

The Class Period is defined as commencing two years prior to the date of this issuance of this Statement of Claim and continuing until a date fixed by the Court.

10. The Class includes a subclass defined as follows (the “Ontario Subclass”):

“All individuals who, for personal, family or household purposes, had monthly agreements for wireless service with the Defendant in Ontario and who cancelled that agreement during the Class Period.”

Telus

11. The Defendant is incorporated under the laws of British Columbia. It is registered in Ontario with an address for service at 25 York Street, 29th Floor, Toronto, ON, M5J 2V5.

12. The Defendant is a Wireless Service Provider (“WSP”) within the meaning of the *Wireless Code*.

THE REGULATORY FRAMEWORK

13. Under section 24 of the *Telecommunication Act*, all telecommunications services offered by Canadian carriers are subject to any conditions imposed by the CRTC. On June 3, 2013, the

¹ The certified class is as set out in *Nelson v. Telus Communications Inc. (Part 3)*, 2021 ONSC 24. As permitted by that decision, the Plaintiff proposes to make certain amendments to the certified class definition in regards to persons in Quebec, Manitoba and Newfoundland and Labrador, and these definitional amendments are set out in an accompanying Notice of Motion. The claims for alternative relief for class members in Quebec, Manitoba and Newfoundland and Labrador are set out in this Amended Statement of Claim.

CRTC issued the *Wireless Code* through *Telecom Regulatory Policy* 2013-271. Paragraph 266 of that Regulatory Policy states that “the Commission determines that consumers may cancel their wireless services at any time by notifying their WSP, and that cancellation must take effect on the date on which the WSP receives this notice.”

14. Prior to the issuance of the *Wireless Code*, it was common practice for WSP to bill customers for the remainder of their 30-day billing period. The Commission intended to address this practice through Section G.5. of the *Wireless Code* which reads:

“(i) Customers may cancel their contact at any time by notifying their service provider.

(ii) Cancellation takes effect on the day that the service provider receives notice of the cancellation.”

15. The Commission further established an interpretative principle that if it is unclear how the terms of the Code are to be applied, then the Code must be interpreted in a manner that is favourable to the consumer. (See para 378 of the *Wireless Code*).

16. The *Wireless Code* specifies limited circumstances in which an early cancellation fee may be charged to a customer at Section G.1-4. In particular, early cancellation fees may be charged where the customer received a subsidized device as a part of their contract, or where the customer has entered into a fixed term contract which may not exceed 24 months. The formula for the calculation of early cancellation fees is listed by the *Code*. In no circumstances may a WSP charge cancellation fees beyond those permitted by the *Wireless Code*. Moreover, no cancellation fees can be charged to a customer if they are on an indeterminate contract, or if they are beyond the term of their original contract.

17. Traditionally, wireless service providers billed customers for their services at the end of the customer's billing cycle. More recently, persons who have monthly agreements for wireless service are billed in advance for that service for the upcoming month.

18. Where a customer with a monthly plan with the WSP cancels that plan mid-month, they are owed a rebate by the WSP for the balance of that month under the *Wireless Code*.

19. While in some cases, such as where there was a device subsidy, or a fixed term contract, certain early cancellation fees are permissible, in all cases a prorated rebate for the balance of the month still applies. In other words, even where certain cancellation fees are permitted, these may still be off-set or reduced by the rebate.

20. The *Wireless Code* was effective for all new and amended wireless contracts as of December 2, 2013, and for all contracts as of June 3, 2015.

21. On November 6, 2014, pursuant to *Broadcasting and Telecom Regulatory Policy* CRTC 2014-576, the provision of the *Wireless Code* regarding cancellation policies were extended more broadly to also include various internet services and broadcasting services.

22. On November 6, 2015, *Broadcasting Regulatory Policy* CRTC 2015-495 was issued. It stated that "the Policy is clear that no charges are to be imposed for a cancelled service." The Commission defined a charge for a cancelled service to include retaining fees paid in advance.

23. On May 5, 2016, *Telecom Decision* CRTC 2016-171 was issued. In that the decision, the CRTC “clarifies that, in line with its prohibitions of 30-day cancellation policies, service providers must not charge for a service that is not, and cannot be, provided following cancellation. Moreover, all service providers must provide refunds for retail wireless, local voice (including VoIP), Internet, and broadcasting distribution services following cancellation of such services when some or all of the monthly service fees are billed in advance. The refunds must be pro-rated, based on the number of days left in the last monthly billing cycle after cancellation” (See para 17 of the *Telecom Decision*).

24. On July 4, 2016, the Defendant brought an application before the CRTC seeking “clarifications” of CRTC 2016-171 to the effect that it did not apply to services with limited usage. TELUS did not seek, and was not granted, any interim relief. In its application materials, the Defendant appears to concede that it has failed to provide rebates to its customers, and that it may be exposed to civil claims for damages as a result. The Defendant wrote:

“[I]f the Commission does not vary the Decision and continues to frame it as a clarification of existing regulatory policies, then customers who were denied a pro-rated refund from the date of the BTRP 2014-576 or the *Wireless Code* would be entitled to make a claim for damages.”

25. Under the CRTC’s regulatory framework, consumers have the option of bringing complaints regarding their wireless services to the Commissioner for Complaints for Telecommunications Services (CCTS). The CCTS publishes an Annotated Guide to the Wireless Code which, since it was initially released on 2 March 2016, has consistently stated that WSPs must provide pro-rated refunds for amounts billed in advance when a customer cancels mid-month.

26. On June 15 2017, *Telecom Regulatory Policy* CRTC 2017-200 again confirmed the obligation of WSPs to provide rebates to customers. It reads in part:

“The Commission therefore reiterates that WSPs must not charge for a service that is not, and cannot be, provided following cancellation. The Commission also reiterates that all WSPs must provide refunds for retail wireless services following cancellation of such services when some or all of the monthly service fees are billed in advance. The refunds must be pro-rated, based on the number of days left in the last monthly billing cycle after cancellation.”

27. The Defendant has breached the above regulatory policies which have been in place since 2013, and which have been repeatedly confirmed by the CRTC.

ILLEGAL CANCELLATION FEES CHARGED TO THE PLAINTIFF

28. The Plaintiff had a monthly services contract with the Defendant with account number 26567806. This account was for her personal, household or family use. She had had this account with some years, as such, was not subject to any early cancellation fees if she decided to terminate her account.

29. Her account with the Defendant provided for a monthly service fee of \$60, and a monthly data fee of \$30. These charges were billed to her in advance, on the 5th day of each month, for the coming month.

30. The Plaintiff paid these charges from the Defendant regularly.

31. In mid-November 2017, the Plaintiff cancelled her contract with the Defendant and switched to another provider.

32. The Defendant issued its final bill to the Plaintiff on December 5, 2017. This bill did not issue any rebate or refund to the Plaintiff for the balance of November 2017, nor did it even mention her right to such a refund. The Plaintiff paid this final bill.

33. The Plaintiff had previously paid the Defendant's monthly charges for November 2017, in advance, totaling \$90. On a pro-rated basis, the Defendant ought to have refunded at least half of this charge for November 2017 in its final bill to the Plaintiff. Otherwise, the Plaintiff had paid for services that were not, and could not be provided.

THE DEFENDANT'S SERVICES AGREEMENT

34. The Defendant has a standard form agreement for wireless services with its customers. The current version of its services agreement, at paragraph 18, specifies that customers with a monthly rate plan are billed one month in advance, and, at paragraph 22, that payments are owed when the bill is issued. Further, at paragraph 26, such bills may be paid by pre-authorized payment.

35. At paragraph 37 of its standard form agreement the Defendant purports to be entitled to keep any monthly charges already collected from the customer prior to cancellation. This paragraph reads as follows:

“37. If you cancel your service or if TELUS cancels it for reasons justified under the Service Terms, you remain responsible for any applicable cancellation charges and for all amounts chargeable to your account up to the time the service is cancelled. Any recurring charges that were billed at the beginning of your billing cycle or any credit balance under five dollars will not be refunded when your service is cancelled.”

36. This provision of the Defendant's standard form agreement is in breach of the *Wireless Code* and the *WSAA*, the Quebec CPA, the Manitoba CPA and the Newfoundland CPA and is non-operative. The *Wireless Code* is mandatory for all WSPs, and they may not contract out of it.

Similarly, section 6 of the *WSAA* provides that a wireless agreement is not binding unless made in accordance with the Act.

CAUSES OF ACTION

Breach of the *Telecommunications Act*

~~37. — The Defendant’s failure to provide a prorated rebate of monthly fees following cancellation of a service agreement constitutes a breach of the *Wireless Code*, and of subsequent decisions made by the CRTC.~~

~~38. — The Plaintiff and class members are entitled to bring an action under s.72(1) of the *Telecommunications Act* against the Defendant on account of the Defendant’s breaches of the *Wireless Code* and subsequent decisions made by the CRTC under the *Wireless Code* which are conditions of service imposed under section 24 of that Act.~~

~~39. — The Plaintiff and class members have sustained loss or damage as result of the Defendant’s breaches of the *Wireless Code* and subsequent decision made by the CRTC under the *Wireless Code*. Such loss or damage includes paying illegal cancellation fees, and not receiving prorated refunds or rebates of monies already paid to the Defendant at the time of cancellation.~~

Breach of the *Wireless Services Agreements Act*

40. The Plaintiff and Ontario Subclass members are “consumers” within the meaning of section 2 of the *WSAA*.

41. The Defendant is a “supplier” within the meaning of section 2 of the *WSAA*.

42. The Defendant's service agreements with the Plaintiff and Ontario Subclass members constituted "wireless agreements" within the meaning of section 2 of the *WSAA*.

43. Pursuant to s.16(1) of the *WSAA*, a consumer may cancel a wireless agreement at any time and without any reason.

44. Pursuant to ss.16(2) to (8) of the *WSAA*, there are only very limited circumstances in which a supplier can charge a cancellation fee to a consumer. Monies advanced by the consumer to the supplier outside of the scope of these provisions must be refunded or rebated by the supplier at the time of cancellation.

45. In failing to refund or rebate monthly charges to the Plaintiff and class members which had been paid in advance at the time of cancellation, the Defendant has breached s.16 of the *WSAA*. The *WSAA* is intended to protect consumers. From the perspective of consumers, the benefit of being able to cancel effective immediately is that they do not have to pay for the remainder of their billing cycle. By refusing to provide rebates for amounts billed in advance, TELUS is making consumers cancellations effective as of the end of their billing cycle, rather than immediately.

46. The Plaintiff and Ontario Subclass members are entitled to a refund of payments made to the Defendant to which the Defendant is not entitled pursuant to s.17(1) of the *WSAA*. This action constitutes a demand for payment by the Plaintiff and Ontario Subclass members within the meaning of s.17(1) of the *WSAA*.

47. The Plaintiff and Ontario Subclass members are entitled to triple damages pursuant to s.17(2) of the *WSAA*.

48. The Defendant's breach of the *WSAA* was willful, intentional, wanton, and deserving of punishment, deterrence and condemnation such that the Plaintiff and Ontario Subclass members are entitled to punitive and exemplary damages under s. 17(3) of the *WSAA*.

Alternative relief for Class Members in Quebec, Manitoba and Newfoundland and Labrador

Part A. Quebec class members

49. This Part applies to class members in Quebec. Such class members are “consumers” within the meaning of ss. 1 (e) of the Quebec *CPA*.

50. The Defendant is a “merchant” within the meaning of ss.1 *in fine* of the Quebec *CPA*.

51. The Defendant's service agreements with Quebec class members constituted contracts involving sequential performance for a service provided at a distance under Division VII of the Quebec *CPA*.

52. Pursuant to s. 214.6 of the Quebec *CPA*, a consumer may, at any time and at the consumer's discretion, cancel the contract for cell phone services.

53. Pursuant to sections 214.7 and 214.8 of the Quebec *CPA*, and sections 79.10 and 79.11 of the *Regulation respecting the application of the Consumer Protection Act*, CQLR c P-40.1, r 3,

there are only very limited circumstances in which a supplier can charge a cancellation fee to a consumer. Monies advanced by the consumer to the supplier outside of the scope of these provisions must be refunded or rebated by the supplier at the time of cancellation.

54. In failing to refund or rebate monthly charges to class members in Quebec which had been paid in advance at the time of cancellation, the Defendant has breached s. 214.6 of the Quebec CPA. The Quebec CPA is intended to protect consumers. From the perspective of consumers, the benefit of being able to cancel effective immediately is that they do not have to pay for the remainder of their billing cycle. By refusing to provide rebates for amounts billed in advance, TELUS is making consumers cancellations effective as of the end of their billing cycle, rather than immediately.

55. Consequently, Quebec class members are entitled to a refund of payments made to the Defendant to which the Defendant is not entitled, and these class members assert a claim for damages under s.272 of the Quebec CPA.

56. The Defendant's breach of the Quebec CPA was willful, intentional, wanton, and deserving of punishment, deterrence and condemnation such that Quebec class members are entitled to punitive damages under s. 272 of the Quebec CPA.

Part B. Manitoba class members

57. This Part applies to class members in Manitoba. Such class members are "customers" within the meaning of s.180 of the Manitoba CPA, excluding however, the Defendant's business customers.

58. The Defendant is a “supplier” and its standard form agreement with Manitoba class members is a “contract”, within the meaning of s. 180 of the Manitoba CPA.

59. It was an express or, in the alternative, implied term of the Defendant’s standard form agreement for wireless services with Manitoba class members that it would not charge any fees to them for services that it did not and could not provide to them and that they did not receive.

60. The source of such an implied term is both statutory, namely the requirements of the Manitoba CPA, and also the common law.

61. Section 37 of the Defendant’s service agreement, by way of which the Defendant purports to retain the fees paid by Manitoba class members at the time of cancellation, is in breach of sections 196 to 199 of the Manitoba CPA and is non-operative.

62. Section 37 of the Defendant’s service agreement is severable in accordance with section 6 of the Defendant’s service agreement.

63. Sections 180 to 185 of the Manitoba CPA set out required terms of cellphone contracts in that province. These are statutorily implied terms. They include a requirement, at section 185(1)(m) of the Manitoba CPA, that the contract contain language enabling the customer to cancel the contract consistent with the provisions of the Manitoba CPA that the customer not be charged illegal cancellation fees.

64. Thus, as set out above, at the time of cancellation of their wireless services agreement, in not receiving prorated refunds from the Defendant, Manitoba class members paid for a service they did not receive.

65. In turn, the Defendant's receipt and retention of payment for a service it did not and could not provide to Manitoba class members at the time of cancellation, constitutes a breach of the wireless services agreement with each of these class members.

66. Manitoba class members have sustained loss or damage as result of the Defendant's breach of contract. Such loss or damage includes paying illegal cancellation fees, and not receiving prorated refunds or rebates of monies already paid to the Defendant at the time of cancellation.

67. Manitoba class members claim general damages from the Defendant for breach of contract.

68. As set out above, the Defendant has also been enriched by the collection of the illegal cancellation fees from the Manitoba class members.

69. The Manitoba class members have been deprived through the payment of the illegal cancellation fees to the Defendant.

70. There is no juristic reason why the Defendant should have received or should retain this benefit. The violations of the Manitoba CPA and the doctrine of illegality negate any juristic reason why the Defendant should have received or should retain this benefit.

71. As a result of its actions, the Defendant has been unjustly enriched by the benefits it received from the Manitoba class members.

72. Manitoba class members are entitled to restitution of the benefits received by the Defendant from them in the form of the illegal cancellation fees.

73. In the alternative, justice and good conscience require that the Defendant disgorge to the Manitoba class members an amount attributable to the benefits it received from failing to provide prorated refunds to the Manitoba class members.

74. The Defendant's conduct with respect to the Manitoba class members, and its breach of the Manitoba CPA, was willful, intentional, wanton, and deserving of punishment, deterrence and condemnation such that the Manitoba class members are entitled to punitive damages.

75. While Part XXII of the Manitoba CPA dealing with Contracts for Cell Phone Services was repealed by the Consumer Protection Amendment Act, S.M. 2021, c.31 (the "Amendment Act"), such repeal was not retroactive (see s.9(3) of the Amendment Act) and it did not alter the existing rights held by Manitoba class members during the Class Period.

Part C: Newfoundland class members

76. This Part applies to class members in Newfoundland and Labrador ("Newfoundland class members"). Such class members are "consumers" within the meaning of s. 2 (a) of the Newfoundland CPA. They are natural persons acting for personal, family or household purposes.

77. The Defendant is a "supplier" within the meaning of s. 2 (j) of the Newfoundland CPA. It offers or advertises the sale of goods or services to consumers, and it engages in consumer transactions with consumers.

78. The Defendant's standard form agreement is a "distance service contract" within the meaning s.35.1(1)(b) of the Newfoundland CPA, namely, it is a contract for cellphone service.

79. It was an express, or in the alternative, implied term of the Defendant's standard form agreement for wireless services with Newfoundland class members that it would not charge any fees to them for services that it did not and could not provide to them and that they did not receive.

80. The source of such an implied term is both statutory, namely the requirements of the Newfoundland CPA, and also the common law.

81. Section 37 of the Defendant's service agreement, by way of which the Defendant purports to retain the fees paid by Newfoundland class members at the time of cancellation, is in breach of sections 35.8 to 35.10 of the Newfoundland CPA and is non-operative.

82. Section 37 of the Defendant's service agreement is severable in accordance with section 6 of the Defendant's service agreement.

83. Section 35.2(1) of the Newfoundland CPA sets out the required terms of cellphone contracts in that province. These are statutorily implied terms. They include requirements, at section 35.2(1)(n) and (o), regarding the cancellation of such contracts.

84. Thus, as set out above, at the time of cancellation of their wireless services agreement, in not receiving prorated refunds from the Defendant, the Newfoundland class members paid for a service they did not receive.

85. In turn, the Defendant's receipt and retention of payment for a service it did not and could not provide to the Newfoundland class members at the time of cancellation, constitutes a breach of the wireless services agreement with each class member.

86. Newfoundland class members have sustained loss or damage as result of the Defendant's breach. Such loss or damage includes paying illegal cancellation fees, and not receiving prorated refunds or rebates of monies already paid to the Defendant at the time of cancellation.

87. Newfoundland class members claim general damages from the Defendant for breach of contract.

88. As set out above, the Defendant has been enriched by the collection of the illegal cancellation fees from the Newfoundland class members.

89. The Newfoundland class members have been deprived through the payment of the illegal cancellation fees to the Defendant.

90. There is no juristic reason why the Defendant should have received or should retain this benefit. The violations of the Newfoundland CPA and the doctrine of illegality negate any juristic reason why the Defendant should have received or should retain this benefit.

91. As a result of its actions, the Defendant has been unjustly enriched by the benefits it received from the Newfoundland class members.

92. The Newfoundland class members are entitled to restitution of the benefits received by the Defendant from them in the form of the illegal cancellation fees.

93. In the alternative, justice and good conscience require that the Defendant disgorge to the Newfoundland class members an amount attributable to the benefits it received from failing to provide prorated refunds to the Newfoundland class members.

94. The Defendant's conduct with respect to the Newfoundland class members, and its breach of the Newfoundland CPA, was willful, intentional, wanton, and deserving of punishment, deterrence and condemnation such that the Newfoundland class members are entitled to punitive damages.

CAUSATION AND DAMAGES

95. As a consequence of the Defendant's breaches of the ~~Telecommunications Act~~ and the WSAA, the Quebec CPA, and its standard form agreement for wireless services with the Plaintiff and class members in Manitoba and Newfoundland and Labrador, the Plaintiff and class members suffered loss and damage. The Plaintiff and class members paid illegal cancellation fees to the Defendant for which they are entitled to a refund.

PLACE OF TRIAL

96. The Plaintiff proposes that this action be tried in the City of Toronto.

January 5, 2018

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Toronto, ON M5X 1C9

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Marjorie Nelson

- and -

Telus Communications Inc.

Plaintiff

Defendant

Court File No. CV-18-589518-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

Proceeding under the Class Proceedings Act, 1992

AMENDED STATEMENT OF CLAIM

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