



Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Electronically issued : 05-Feb-2020
Délivré par voie électronique : 05-Feb-2020
Toronto

(Court Seal)

JOHN DOE

Plaintiff

and

BELL CANADA

Defendant

Proceeding under the *Class Proceedings Act, 1992*

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 MAY 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.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$750 for costs, within the time for serving and filing your Statement of Defence you may move to have this proceeding dismissed

-2-

by the Court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's claim and \$400 for costs and have the costs assessed by the Court.

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 _____ Issued by _____
Local Registrar

Address of court office: Superior Court of Justice
330 University Ave, Toronto
ON M5G 1R8

TO: **Bell Canada**
1050 côte du Beaver Hall
Montréal, Québec
H2Z 1S4

A. DEFINED TERMS

1. In this Statement of Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

- (a) “**Bell**” means the defendant Bell Canada;
- (b) “**CJA**” means the *Courts of Justice Act*, RSO 1990, c C.43, as amended;
- (c) “**Class**” or “**Class Members**” means, collectively:
 - (i) all persons who were in custody or otherwise in an Ontario correctional **Facility** at any time during the **Class Period** and who made a phone call through the **OTMS**; and
 - (ii) all persons in Canada who accepted and paid for a collect call originating from a person in custody or otherwise in an Ontario correctional **Facility** at any time during the **Class Period**;
- (d) “**Class Period**” means the period of time between June 1, 2013 and the certification of this lawsuit as a class action;
- (e) “**Consumer Protection Act**” means the *Consumer Protection Act, 2002*, SO 2002, c 30, Sched A and its regulations;
- (f) “**Contract**” means a contract between Her Majesty the Queen in right of Ontario as represented by the **MCSCS** and **Bell** signed on January 18, 2013 numbered COS-0009 for the purposes of the **OTMS**;
- (g) “**CPA**” means the *Class Proceedings Act, 1992*, SO 1992, c 6;

- (h) “**Excluded Persons**” means:
- (i) **Bell** and its officers and directors;
 - (ii) the heirs, successors and assigns of the persons described in subparagraph (i) above;
- (i) “**Facility**” or “**Facilities**” means the institutions in Ontario referenced and identified in section 1.01 of the **Contract**;
- (j) “**MCSCS**” means the Ministry of Community Safety and Correctional Services of Ontario and/or its successor the Ministry of the Solicitor General;
- (k) “**OTMS**” means the Offender Telephone Management System—the system through which **Bell** provides telephony services to **Prisoners** in Ontario’s correctional **Facilities**;
- (l) “**Plaintiff**” means the plaintiff John Doe;
- (m) “**Prisoner**” means a person serving a custodial sentence in a Facility, a person detained on remand, awaiting trial or awaiting sentencing in a **Facility**, a person awaiting transfer to a Federal correctional facility and any other person who made a phone call at a **Facility** on the **OTMS** during the **Class Period**;
- (n) “**Proposal**” means a proposal dated November 20, 2012 that **Bell** submitted to the **MCSCS** for an **OTMS**, responding to a Request for Proposals numbered COS-0009 issued by the **MCSCS** to procure a contract for the purposes of the **OTMS**;
- (o) “**Representations**” means the representations described at paragraphs 16, 18-19;

B. RELIEF SOUGHT

2. The Plaintiff, on his own behalf and on behalf of all Class Members, seeks:

- (a) an order certifying this action as a class proceeding and appointing the Plaintiff as the representative plaintiff;
- (b) a declaration that Bell engaged in unfair practices contrary to Part III of the *Consumer Protection Act*;
- (c) a declaration that it is not in the interests of justice to require that notice be given pursuant to section 18(15) of the *Consumer Protection Act*, and waiving any such notice requirements;
- (d) an order rescinding the consumer transactions between the Class Members and Bell;
- (e) statutory and general damages in an amount not exceeding \$152,000,000 for loss and damage suffered as a result of conduct contrary to Part III of the *Consumer Protection Act*, and for monies had and received under invalid and unconscionable agreements;
- (f) restitution for unjust enrichment in an amount equivalent to the fees paid by the Class to make phone calls through the OTMS;
- (g) punitive, exemplary, and aggravated damages in the amount of \$10,000,000;
- (h) an equitable rate of interest on all sums found due and owing to the Plaintiff and other Class Members or, in the alternative, pre- and post-judgment interest pursuant to the *CJA*;
- (i) costs of this action pursuant to the *CPA*, or alternatively, on a full or substantial indemnity basis plus the cost of administration and notice pursuant to section 26(9) of the *CPA* plus applicable taxes; and

(j) such further and other relief as this Honourable Court may deem just.

C. NATURE OF THE ACTION

3. This action arises from the imposition by Bell of unconscionable telephone service rates on the Plaintiff and the Class Members.

4. Bell entered into the Contract with MCSCS in 2013. Under the Contract, Bell obtained the exclusive right to provide telephone services to Prisoners in jails, detention centres, and other similar correctional Facilities operated by the Province of Ontario. In return, Bell pays the Ontario government a commission based on a percentage of all gross monthly revenue generated from the Contract.

5. Taking advantage of its exclusive control over the OTMS, Bell gave Ontario Prisoners one option, and one option only: place collect calls to landlines at exorbitant and improvident prices extracted from anyone who had to accept the calls.

6. Bell nevertheless represented that the Prisoner calls cost the same as for the general public and specifically the same as for Bell's residential customers.

7. In so doing, Bell engaged in unfair practices contrary to section 15 of the *Consumer Protection Act*. Bell imposed unconscionable and invalid agreements on the Class Members and benefited itself to their disadvantage. Bell unjustly enriched itself at the expense of the Plaintiff and the Class Members.

D. PRISONERS' RELIANCE ON AND ACCESS TO TELEPHONE

8. Communication between Prisoners, family members, and members of the community is

fundamental to Prisoners' rehabilitation and successful reintegration into society. The telephone is the primary method by which Prisoners maintain contact with others.

9. Mental illness rates are up to seven times higher in jails than in the general population in Canada. For Prisoners with mental health concerns, communication with their family and support network sometimes means the difference between life and death. The Verdict of Coroner's Jury in the recent death of Cleve Gordon Geddes, a Prisoner with mental illness, at the Ottawa Carleton Detention Centre emphasized the vital importance of telephone communications for Prisoners.

10. Under the OTMS, Prisoners are only allowed to call a person with a standard North American 10-digit landline capable of being billed for collect calls, provided that the recipient of the call is willing to accept the exorbitant charges, and the call does not violate a court order, does not constitute an offence under federal or provincial statute, or does not jeopardize the safety of any person or the security of the institution. Prisoners are not permitted to call cell phones.

E. THE PLAINTIFF AND CLASS

11. The Plaintiff John Doe is a resident of the Greater Toronto Area. He spent several years in various Facilities during the Class Period. He was most recently incarcerated at the Toronto South Detention Centre before his release. Throughout his incarceration in Ontario correctional Facilities, the Plaintiff faced significant financial challenges in making phone calls to his family and support network because of the fees charged by Bell. His family and loved ones could not afford to receive frequent collect calls from him. The exorbitant fees extorted by Bell also prevented the Plaintiff from effectively coordinating his legal defence on multiple occasions and

-8-

made his reintegration upon release more difficult.

12. The Plaintiff was released in December, 2017. Since that time, the Plaintiff has been working on rebuilding his life. For safety and privacy reasons, his identity cannot be made public, but can be disclosed to Bell under assurances of confidentiality.

13. The Plaintiff seeks to represent the Class.

F. THE DEFENDANT

14. Bell is a communications and multimedia company headquartered in Montreal, Quebec. It is the dominant “incumbent local exchange carrier” for telephone services in most of Canada, including Ontario. Bell is a public issuing company and subsidiary of the holding company BCE Inc.

15. Bell is a party to the Contract with MCSCS under which Bell exercises a monopoly over the provision of telephony services to Prisoners at Facilities across Ontario.

G. THE PROPOSAL AND THE CONTRACT

16. In the Proposal to obtain the Contract, Bell acknowledged the objective to “[p]rovide offenders with reasonable access to telephone services for the purpose of maintaining family, friend and community ties, and supporting rehabilitation”. Bell represented in the Proposal specifically: “Bell is providing identical call rate and connection fees including all time of day and mileage discounts as are experienced by Bell residential customer” [*sic*].

17. Based on those and other Representations, the Proposal was successful in the procurement process and resulted in the Contract with the MCSCS. Under the Contract, Bell

became the exclusive “Supplier” of telephony services to prisoners in Facilities throughout Ontario. Section 1.01 of the Contract expressly included the Proposal as part of the Contract’s terms.

18. The Contract required Bell to charge fees for all calls that “would apply to comparable calls connected and billed by the Supplier in the community of the applicable Facility”. Section 4.08 provided:

Calling Rates

Subject to this Section 4.08 and to Section 3.05(a), the Supplier shall establish the calling rates for local and long distance calls from all telephones. The Supplier shall ensure that the local and long distance rates and connection fees for all telephones are **no higher than the published residential rates** established by the Incumbent Local Exchange Carrier (ILEC) **applicable to a comparable call connected and billed by the Supplier placed outside the Facility within the local community of the applicable Facility**. In accordance with Section 3.02(a)(5) and upon the Ministry’s request during the Term of the Contract, the Supplier shall provide written documentation satisfactory to the Ministry, in its sole discretion, to demonstrate compliance with this Section 4.08. [emphasis added]

19. In public statements, Bell has stated repeatedly that rates for Prisoners are the same as for the general public.

H. BELL BREACHED THE *CONSUMER PROTECTION ACT*

20. Bell is located in Ontario for the purposes of the *Consumer Protection Act*.

21. Bell is a “supplier” under s. 1 of the *Consumer Protection Act*.

22. Class Members who were Prisoners at Facilities and made calls for personal, family or household purposes on terms imposed by Bell, and Class Members who accepted and paid for collect calls from Ontario Prisoners for personal, family or household purposes are “consumers”

under s. 1 of the *Consumer Protection Act*.

23. Every instance of an Ontario Prisoner making a phone call from a Facility to another Class Member constitutes a “consumer agreement” or “consumer transaction” where Bell agreed to supply its telephony services to those Class Members for payment.

24. As detailed above, Bell represented that the rates for Prisoners at Ontario Facilities are the same as for the general public. In the Proposal, which is part of the Contract under which Bell exercises its monopoly, Bell represented that its telephony services for Ontario Prisoners would be at an “identical call rate and connection fees including all time of day and mileage discounts as are experienced by Bell residential customer”.

25. This Representation was false. In reality, Bell charges the Class astronomical prices that no one else pays in Ontario outside the Class—including Bell’s residential customers. The OTMS call system is unique to Prisoners in the Ontario correctional Facilities. Reasonably comparable telephone services in Ontario since 2013 for residential and other public customers have been cellphones and, to a lesser extent, residential landlines, both of which cost a fraction of the extraordinary amounts that Bell charges the Class Members.

26. When a Prisoner makes a local call, Bell imposes more than a \$1 fee for each local call. When a Prisoner is transported to a Facility in a neighbouring area, Class Members are forced to pay in excess of \$30 for a 20-minute long-distance collect phone call. Calls are capped at 20 minutes.

27. No other comparable telephony service in Ontario costs anywhere near these amounts. Depending on how many calls a Prisoner makes in a month, the fees that Bell extracts from the

-11-

Class Members can be tens of times higher than those paid by consumers outside the OTMS, including Bell's own residential customers.

28. Bell's Representations constituted unfair, unconscionable and/or otherwise prohibited practices under the *Consumer Protection Act*, given that, among other things, Bell knew, or ought to have known, that:

- (a) the Representations were false, misleading, and deceptive;
- (b) the fees imposed by Bell were not comparable to its residential and other customers outside the OTMS;
- (c) Bell has exclusive control over the provision of telephony services to the Class, and the Class is not reasonably able to protect its interests because of the Ontario Prisoners' particular circumstances as Prisoners of the state, their lack of freedom and choice, and other challenges facing Prisoners, including a significant number of Class Members with mental health concerns;
- (d) the prices at which Bell has made telephony services available to the Class grossly exceed the prices at which similar services are readily available to like consumers;
- (e) the consumer agreements and transactions between Bell and the Class are excessively one-sided in favour of Bell;
- (f) the terms of the consumer agreements and transactions made between Bell and the Class Members are so adverse to the Class Members as to be inequitable; and/or,
- (g) because of such further conduct concealed by Bell and unknown to the Plaintiff.

-12-

29. The Representations were made on or before the Plaintiff and other Class Members entered into the consumer agreements and transactions to make phone calls on Bell's OTMS telephones.

30. The Plaintiff and other Class Members are entitled to rescission of the consumer agreements and transactions as well as damages pursuant to section 18 of the *Consumer Protection Act*.

31. The Plaintiff and other Class Members are entitled, to the extent necessary, to a waiver of any notice requirements under the *Consumer Protection Act*, particularly given the opaque nature of Bell's practices impugned herein and the Plaintiff's and other Class Members' circumstances as Prisoners with little possibility of meaningful communication with individuals outside of Ontario correctional Facilities.

I. BELL IMPOSED UNCONSCIONABLE AGREEMENTS ON THE CLASS

32. When a Prisoner in an Ontario Facility makes a phone call through the OTMS to a person outside of the Facility and that person accepts the collect call, both parties are required to agree to terms imposed by Bell. In making the call, these parties enter into agreements whereby Bell provides the telephone service and the other parties pay for that service ("**Agreements**").

33. Given the terms imposed by Bell and the circumstances in which these Agreements are formed, such Agreements are unconscionable and therefore invalid.

34. The terms that Bell imposed on the Plaintiff and Class Members are grossly unfair and improvident.

-13-

35. Class Members were afforded no independent legal advice or any other suitable advice before entering into the Agreements.

36. There was an overwhelming imbalance in bargaining power caused by Ontario Prisoners' vulnerability and lack of any choice except the onerous terms offered by Bell, and the information asymmetry between the parties.

37. Bell knew and knows the Class Members' vulnerability as Prisoners of the state, and the vulnerability of their families, loved ones and support network. Bell knowingly took and still takes advantage of those vulnerabilities.

J. BELL UNJUSTLY ENRICHED ITSELF

38. Bell caused the Plaintiff and Class Members to pay money for a service, which contrary to the *Consumer Protection Act*, they should not have paid for or, in the alternative, for which they should have paid less than they did.

39. Bell likewise caused the Plaintiff and Class Members to pay money for a service under Agreements that were unconscionable and invalid.

40. As a result of this conduct, Bell has been enriched by the payment or overpayment made by the Plaintiff and the Class.

41. The Plaintiff and Class Members suffered a financial deprivation corresponding to Bell's enrichment.

42. There is no juristic reason for Bell's enrichment and the Plaintiff and Class Members' corresponding deprivation. Indeed, it would be contrary to the interests of justice to allow Bell to

-14-

retain the fruits of its unconscionable conduct. The Plaintiff and Class Members are entitled to restitution and/or a disgorgement of profits as a result of Bell's unjust enrichment.

K. PUNITIVE, EXEMPLARY, AND AGGRAVATED DAMAGES

43. Telephone communication with individuals outside of Ontario correctional Facilities is crucial the rehabilitation of Prisoners. It is the only way for incarcerated persons to maintain contact with their families and loved ones, coordinate and arrange re-entry plans, and access important services in the community such as legal counsel, healthcare, and mental health support.

44. Bell saw an opportunity to exploit Prisoners, their families, and loved ones under its exclusive telephony control. Bell chose excessive profits even if that meant isolating Prisoners in Ontario Facilities by preventing or imposing insurmountable financial burdens to contact with loved ones and by exposing them to the hardships and injustices resulting from a lack of access to necessary communication with vital post-release services.

45. Due to the egregious nature of Bell's conduct particularized herein, the Plaintiff and Class Members are entitled to recover punitive, exemplary, and aggravated damages. Bell's conduct offends the moral standards of the community and warrants the condemnation of this Court.

L. SERVICE

46. This originating process may be served without court order outside Ontario in that the claim is:

-15-

- (a) in respect of real or personal property in Ontario (Rule 17.02(a) of the *Rules of Civil Procedure*);
- (b) brought against a person ordinarily resident or carrying on business in Ontario (Rule 17.02 (p) of the *Rules of Civil Procedure*).

February 5, 2020

SOTOS LLP

180 Dundas Street West
Suite 1200
Toronto ON M5G 1Z8

Mohsen Seddigh (LSO#: 70744I)
Tassia K. Poynter (LSO#: 70722F)

Tel: 416-977-0007
Fax: 416-977-0717

Lawyers for the Plaintiffs

JOHN DOE
Plaintiff

-and-

BELL CANADA
Defendant

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

SOTOS LLP

180 Dundas Street West
Suite 1200
Toronto ON M5G 1Z8

Mohsen Seddigh (LSO#: 70744I)
Tassia K. Poynter (LSO#: 70722F)

Tel: 416-977-0007
Fax: 416-977-0717

Lawyers for the Plaintiffs