

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

In the matter of a Claim under the  
*Class Proceedings Act, 1992*, S.O. 1992, c. 6

B E T W E E N:

RICHARD SAJECKI

Plaintiff

and

BCE INC. and BELL CANADA INC.

Defendant

**STATEMENT OF CLAIM**

TO THE DEFENDANT(S)

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.

Date: April 4, 2002

Issued by \_\_\_\_\_  
Local registrar

Address of court office:  
45 Main Street East  
Hamilton, Ontario  
L8N 2B7

TO: BCE INC.  
1000 rue de La Gauchetiere Ouest  
Bureau 3700  
Montreal, Quebec  
H3B 4Y7

AND BELL CANADA INC.  
TO: 1000 rue de La Gauchetiere Ouest  
Bureau 3700  
Montreal, Quebec  
H3B 4Y7

## CLAIM

1. The Plaintiff claims on his own behalf and on behalf of all Class Members:
  - a. Damages for breach of contract as set-out below;
  - b. Reimbursement of all amounts paid to the Defendant at rates in excess of those that applied under the Defendant's long distance "First Rate Savings" plan ("First Rate") as advertised and subscribed for, particulars of which are as set-out below;
  - c. Punitive, aggravated and exemplary damages;
  - d. Pre and post-Judgment interest pursuant to the provisions of the *Courts of Justice Act*, R.S.O. 1990 c. C43 as amended;
  - e. Costs on a substantial indemnity/solicitor and client basis; and
  - f. Such further and other relief as this Honourable Court may deem just and appropriate in the circumstances.



## **THE PARTIES**

2. Richard Sajecki ("Sajecki") resides in London and was a subscriber to First Rate.
3. BCE Inc. and Bell Canada Inc. ("Bell Canada") are corporations incorporated pursuant to the laws of Canada and carry on business as telecommunications companies operating nationally and providing telephone service to customers/subscribers including Bell Canada First Rate. BCE Inc. is a publicly-traded company trading on the Toronto Stock Exchange under the symbol "BCE".

## **BELL CANADA FIRST RATE SAVINGS PLAN**

4. Sajecki and Class Members subscribed to Bell Canada First Rate.
5. Sajecki subscribed to First Rate in or about February, 1998, and had previously been a subscriber to the Defendant's earlier long distance plans known as Real Plus and Real Plus Extra.

6. Class Members subscribed to First Rate on various dates and in various circumstances, however, the terms of First Rate as offered by the Defendant were the same.
  
7. First Rate was a plan developed, promoted, advertised and sold by Bell Canada under which subscribers could, for a maximum charge of \$20.00 per month, make an unlimited number of long distance calls to locations in Canada between 6:00 p.m. and 8:00 a.m. Monday to Friday, and anytime on weekends.
  
8. Bell Canada promoted First Rate as ideal for customers who make telephone calls to locations in Canada in the evenings or on weekends.
  
9. Bell Canada also developed, promoted, advertised and sold other variations of First Rate depending on the calling patterns/habits of customers in respect of calls to the United States of America or overseas and the typical timing of such calls.

## **UNILATERAL CHANGES TO FIRST RATE BY BELL CANADA**

10. In or about September or October, 2000, Bell Canada made a decision to unilaterally alter the terms of First Rate without proper, reasonable or sufficient notice to subscribers.
  
11. The unilateral changes were as follows:
  - a. For subscribers who used over 800 minutes of long distance calling time per month, a charge of \$0.10 per minute was to thereafter apply with respect to each minute over 800;
  - b. The call window of 6:00 p.m. to 8:00 a.m. was changed to 6:00 p.m. to 6:00 a.m., a reduction in the call window of two hours of peak time, within the off-peak period, namely 6:00 a.m. to 8:00 a.m.

## **NOTICE TO SUBSCRIBERS**

12. Bell Canada provided insufficient, inconsistent, deficient and misleading notices to subscribers in respect of the unilateral changes to First Rate.

13. In or about September or October, 2000, for the billing period of the month of October, 2000, subscribers received their normal, regular and ordinary-course bill/statement for the month of October, 2000, upon which bill/statement appeared a brief and cursory indication of the unilateral changes to First Rate. The Plaintiff received only this notice.
14. The said indication of unilateral changes on the normal, regular and ordinary-course bill/statement advised that the unilateral changes were effective immediately, that long distance calling time per month in excess of 800 minutes would be charged at a rate of \$0.10 per minute, that the call window of 6:00 p.m. to 8:00 a.m. was changed to 6:00 p.m. to 6:00 a.m. and furthermore advised that the said changes would not affect “most customers”.
15. The Plaintiff and Class Members state that the said notice was insufficient, inconsistent, deficient and misleading and in particular led subscribers to believe that the unilateral changes did not apply to them and were of no concern or consequence.



16. The Plaintiff and Class Members state that in or about mid-October, 2000, Bell Canada recognized that the notice to subscribers on the normal, regular and ordinary-course bill/statement for the month of October, 2000 was insufficient, inconsistent, deficient and misleading and attempted to remedy the situation through further notice to selected subscribers.
  
17. Specifically, the Plaintiff and Class Members state that in or about mid to late October, 2000, Bell Canada sent a standard form letter by ordinary mail to subscribers who had, in the prior four months as subscribers to First Rate, used more than 800 minutes of long distance calling time. The said standard form letter advised subscribers that effective immediately they would be required to pay \$0.10 per minute for any long distance calling time in excess of 800 minutes per month.
  
18. The Plaintiff and Class Members states that at about the same time a different but similar standard form letter was sent to subscribers who had, in the prior four months as subscribers to First Rate, used between 600 and 800 minutes of long distance calling time.

19. The Plaintiff and Class Members state that the attempted notification by Bell Canada to First Rate subscribers, by way of the standard form letters referred to above, indicated that the unilateral changes imposed by Bell Canada "...will not affect the majority of our customers" which again led subscribers to believe that the unilateral changes did not apply to them and were of no concern or consequence.
  
20. The Plaintiff and Class Members state that subscribers who had, in the prior four months, used less than 600 minutes of long distance calling time, did not receive a letter to inform them of the unilateral changes to First Rate. Rather, those subscribers received only their normal, regular and ordinary-course bill/statement for the month of October, 2000 as indicated above.

## **BREACH OF CONTRACT**

21. The Plaintiff and Class Members state that it was an implied term of First Rate that Bell Canada would not unilaterally alter the terms of the plan without sufficient and reasonable notice being provided to subscribers in advance.

22. The Plaintiff and Class Members state that Bell Canada imposed unilateral changes to First Rate without sufficient and/or reasonable notice having been provided to subscribers in advance and that same constitutes a breach of contract.
  
23. The Plaintiff and Class Members state that they have suffered damage as a result of Bell Canada's breach of contract as described above, ie., unilateral changes to First Rate without sufficient and/or reasonable notice having been provided in advance.
  
24. The Plaintiff and Class Members state that subscribers who used more than 800 minutes of long distance calling time per month did not notice, understand or appreciate the nature of the unilateral changes imposed by Bell Canada and/or were led to believe by Bell Canada that they could ignore the changes/notification as described above, and accordingly made calls in excess of the new 800 minute maximum and were charged \$0.10 per minute for the excess/overage long distance calling time by Bell Canada.

25. The Plaintiff and Class Members state that subscribers who made calls, in particular between 6:00 a.m. and 8:00 a.m. did not notice, understand or appreciate the nature of the unilateral changes imposed by Bell Canada, or were led to believe by Bell Canada that they could ignore the changes/notification as described above, and were charged at Bell Canada's regular rates with respect to those calls.
26. Sajecki made long distance calls in March, 2001 between 6:00 a.m. and 8:00 a.m. He was charged Bell Canada's full applicable long distance rate of \$0.43/minute pursuant to the unilateral changes to First Rate imposed by the Defendant. Sajecki did not notice, understand or appreciate the Defendant's notice on his normal, regular and ordinary-course bill/statement for the month of October, 2000.
27. The Plaintiff and Class Members state that Bell Canada's full long distance rates vary according to distance but that in all cases the rates charged are in excess of even \$0.10/minute.
28. The Plaintiff and Class Members state that they are entitled to reimbursement of all amounts paid to Bell Canada at rates in excess of those that applied under First Rate as advertised and subscribed for.

29. The Plaintiff and Class Members state that Bell Canada has demonstrated and taken a cavalier, arbitrary and inconsistent approach in dealing with complaints of subscribers in respect of the unilateral changes to First Rate and the excess charges levied.
30. The Plaintiff and Class Members state that despite complaints and a recognition by Bell Canada of its improper conduct as outlined above, it has failed to develop and implement a fair, reasonable, structured, consistent and just complaint process and compensation plan for subscribers and has failed in any event to properly and reasonably communicate with subscribers in that regard.
31. The Plaintiff and Class Members claim entitlement to punitive, aggravated and exemplary damages in the circumstances.

## **THE CLASS**

32. The Plaintiff proposes that the Class herein be defined as follows:

Any person in Canada, outside the Province of Quebec, who subscribed to/for the Bell Canada First Rate program described above prior to October 31, 2000.

## LEGISLATION

33. The Plaintiff and Class Members plead and rely upon the provisions of the *Class Proceedings Act 1992*, S.O. 1992, c. C6, the *Business Practices Act*, R.S.O. 1990, c. B18, the *Consumer Protection Act*, R.S.O. 1990, c. C31, the *Unconscionable Transactions Relief Act*, R.S.O. 1990, c. U2 and equivalent/similar legislation in provinces and territories outside Ontario, and the provisions of the *Competition Act*, R.S.C. 1985, c. C34.

## SERVICE OUTSIDE ONTARIO

34. The Plaintiff anticipates that it might be necessary to serve this Statement of Claim on the Defendant outside the Province of Ontario and in that regard pleads and relies upon the provisions of Rule 17.02 of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194 as amended, and in particular:
- a. Rule 17.02 (f) - a contract made in Ontario and/or breached in Ontario;
  - b. Rule 17.02 (h) - damages sustained in Ontario.

35. The Plaintiff proposes that this action be tried at the City of Toronto, Province of Ontario.

April 4, 2002

**SCARFONE HAWKINS** <sup>LLP</sup>  
Barristers & Solicitors  
120 King Street West  
Suite 1050  
HAMILTON, Ontario  
L8N 3P9

DAVID THOMPSON (28271N)  
MATT MOLOCI (40579P)  
Tel : (905) 523-1333  
Fax: (905) 523-5878

Solicitors for the Plaintiff

SAJECKI, RICHARD v. BCE INC. and BELL CANADA INC.

Court File No. 02-6556-CP



---

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT HAMILTON

---

**STATEMENT OF CLAIM**

---

**SCARFONE HAWKINS<sup>LLP</sup>**

Barristers & Solicitors  
120 King Street West  
Suite 1050  
HAMILTON, Ontario  
L8N 3P9

DAVID THOMPSON (28271N)  
MATT MOLOCI (40579P)  
Tel : (905) 523-1333  
Fax: (905) 523-5878

