

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN :

JAMES DOUGLAS ANDERSON and SAMUEL ANDERSON
on behalf of himself themselves, and all other members of a
class having a claim against Bell Mobility Inc.

Plaintiffs

- and -

BELL MOBILITY INC.

Defendant

AMENDED
NOTICE TO THE DEFENDANT

1. You are hereby notified that the Plaintiffs may enter judgment against you in accordance with the attached Amended Statement of Claim, or such judgment as may be granted under the *Rules of the Supreme Court of the Northwest Territories*, without further notice to you unless within

- (a) twenty-five (25) days, if you were served within the Northwest Territories; and
- (b) thirty (30) days, if you were served outside of the Northwest Territories

after service of the Amended Statement of Claim upon you, you cause to be filed in the office of the Clerk of the Supreme Court of the Northwest Territories either:

- (a) a Statement of Defence, or
- (b) an Appearance

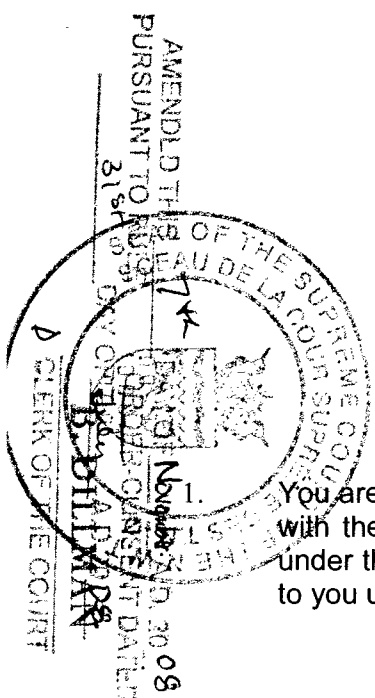
and unless within the same time you serve a copy of the Statement of Defence or Appearance on the Plaintiff or the Plaintiff's lawyer.

- 2. The attached Statement of Claim is to be served within 12 months from the day on which is it issued.
- 3. Every Defendant should consult his or her lawyer, or refer to the *Rules of the Supreme Court of the Northwest Territories*, to determine his or her rights.

The attached Amended Statement of Claim is hereby issued out of the office of the Clerk of the Supreme Court of the Northwest Territories at Yellowknife, Northwest Territories, on the "29th" day of November, 2007.

"C. Patrick"

"D/" Clerk of the Supreme Court



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AMENDED
STATEMENT OF CLAIM

THE PARTIES

1. The Plaintiffs reside in Yellowknife, Northwest Territories, Canada. James Douglas Anderson ("James") is the father of Samuel Anderson ("Samuel").

2. The Defendant is a Federal corporation carrying on business throughout Canada, *inter alia*, as a supplier of wireless cellular phone services.

B. 911 FEES

3. The Defendant provides cellular phone services to the Plaintiffs. The services were provided to the Plaintiffs for two cellular phones with an 867 area code ("the Plaintiff's cell phones").

4. The Plaintiff James has a cellular phone with a phone number of 867-445-6009 ("the 6009 phone").

5. The Plaintiff Samuel has a cellular phone with a phone number of 867-445-4405 ("the 4405 phone").

AMENDED STATEMENT OF CLAIM
PURSUANT TO ORDER OF COURT DATED
31.08.08
OF THE SUPREME COURT OF THE NORTHWEST TERRITORIES
IN THE MATTER OF JAMES DOUGLAS ANDERSON AND SAMUEL ANDERSON
D. CLERK OF THE COURT
B. DILLMAN

6. Each month, the Plaintiff Samuel is charged \$.75 cents for 911 Emergency access for the 4405 phone.

7. Each month, the Plaintiff James is charged \$.75 cents for 911 Emergency access for the 6009 phone.

8. There is no 911 Emergency access service in Yellowknife or anywhere in the Northwest Territories. Some other parts of Canada have no 911 Emergency access service.

C. THE CLASS

9. The Plaintiffs are the representatives of all Canadians, past, present or who before trial:

- i) receive cellular phone services from the Defendant; **and who**
- ii) are charged for 911 Emergency Access service; **and who**
- iii) have no 911 Emergency Access service where they reside, or who have cellular phones with an area code which has no 911 Emergency Access service.

10. The Plaintiffs seeks an order that they be authorized by the Court to seek damages on behalf or for the benefit of all Canadians described in paragraph 8 above, pursuant to the provisions of the *Northwest Territories Rules of Court*.

D. THE CAUSES OF ACTION AGAINST THE DEFENDANT

(i) Breach of Contract

11. The Defendant is charging the Plaintiffs and the Class Members a fee for 911 Emergency access. Expressly or impliedly the contracts which the Plaintiffs and the

Class members have with the Defendant, require the Defendant to provide the services for which fees and monies are charged. The Plaintiffs and Class Members have paid the Defendant monies in consideration for 911 Emergency access service. No 911 emergency area service is provided by the Defendant to the Class Members. The Defendant has breached its contracts with the Plaintiffs and Class Members by not providing their customers for 911 Emergency access services, for which services the Plaintiffs and Class Members have paid.

(ii) Unjust Enrichment

12. As a result of the Defendant charging the Plaintiffs and the Class Members monies for 911 Emergency access not provided, the following has occurred:

- a) the Defendant has been enriched; and
- b) the Plaintiffs and Class Members have suffered a corresponding deprivation.

There is no juristic reason for this enrichment being received by the Defendant.

13. The Plaintiffs and the Class Members seek restitution of the 911 Emergency access service fees unjustly charged and received by the Defendant.

14. The Plaintiffs plead and rely upon the legal doctrines of waiver of tort, unjust enrichment, *quantum meriut*, restitution and constructive trust.

E. DAMAGES AND RESTITUTION

15. The Plaintiffs and the Class Members seek damages, restitution and the return all fees and monies paid to the Defendant for 911 Emergency access service not received by the Plaintiffs and the Class Members. The Plaintiffs seeks repayment to the

Plaintiffs and the Class Members of the benefits unjustly obtained, and by which the Defendant has been unjustly enriched.

F. PUNITIVE AND EXEMPLARY DAMAGES

16. The conduct of the Defendant is such as to justify an award of punitive, exemplary and aggravated damages. The Plaintiffs pleads that the Defendant's conduct has been a breach of the duty of good faith and a separate actionable wrong. The Defendant breached its obligations to the Plaintiffs and Class Members because of its desire to maximize profits. The Defendant has behaved with arrogance and high-handedness, has shown a callous disregard and complete lack of care for the Plaintiffs and Class Members and the rights of the Plaintiffs and Class Members, and ought to be punished and deterred from future misconduct. The Defendant's conduct was sufficiently harsh, vindictive, reprehensible and malicious, so as to justify an award of punitive and exemplary and aggravated damages from the Defendant. The Defendant was, or ought to have been aware of the probable consequences of its conduct and the damage such conduct would cause to the Plaintiffs and Class Members.

17. The Defendant continues to be a major participant in the cellular phone marketplace. The Defendant has considerable assets. An award of \$1,000,000.00 for punitive and exemplary damages is justified and required to punish the Defendant and deter its inappropriate conduct in the future.

G. THE CLAIM FOR RELIEF

18. The Plaintiffs ~~James Douglas Anderson~~ claims on their own behalf and on behalf of each of the Class Members;

- (a) general and special damages and restitution in the amount of \$5,000,000.00;
- (b) punitive and exemplary damages in the sum of \$1,000,000.00;
- (c) compounded prejudgment and post-judgment interest pursuant to the provisions of the *Judicature Act*, R.S.N.W.T. 1974, c.J-1 as amended;
- (d) any goods and services tax which may be payable on any amounts pursuant to Bill C-62, *The Excise Tax Act*, R.S.C. 1985, as amended or any other legislation enacted by the Government of Canada;
- (e) the costs of this proceeding on a complete indemnity basis; and
- (f) Such further and other relief as counsel may advise and this Honourable Court permit.

DATED at the City of Yellowknife, in the Northwest Territories, this “29th” day of November, 2007, and **DELIVERED** by Messrs. Peterson, Stang & Malakoe, solicitors for the Plaintiff, whose address for service is in care of the said solicitors at 4910 – 49th Street, P.O. Box 939, Yellowknife, Northwest Territories X1A 2N9.

PETERSON, STANG & MALAKOE

Per: “Garth Malakoe”
Garth Malakoe, solicitors for
the Plaintiff

TAKE NOTICE that service of this Statement of Claim may be effected outside of the Northwest Territories pursuant to the following subrules of Rule 47(1) of the *Rules of the Supreme Court of the Northwest Territories*:

- (f) the proceeding is to enforce, rescind, resolve, annul or otherwise affect a contract or to recover damages or obtain any other relief in respect of a contract, where
 - (i) the contract was made in the jurisdiction;
 - (ii) the contract was made by or through an agent trading or residing in the jurisdiction on behalf of a principal trading or residing out of the jurisdiction;
 - (iii) the contract, by its terms or by implication, is governed by the law of the Territories, or
 - (iv) the parties to the contract agree that the courts of the Territories shall have jurisdiction to entertain any action in respect of the contract.
- (g) The action is in respect of a breach committed in the jurisdiction of a contract made in or out of the jurisdiction, whether or not the breach was preceded or accompanied by a breach committed out of the jurisdiction that rendered impossible the performance of so much of the contract as ought to have been performed in the jurisdiction;
- (h) The action is founded on a tort committed in the jurisdiction;

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BETWEEN

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and SAMUEL ANDERSON on
behalf of himself themselves, and
all other members of a class
having a claim against Bell
Mobility Inc.**

Plaintiffs

- and -

BELL MOBILITY INC.

Defendant

**AMENDED
STATEMENT OF CLAIM**

This Statement of Claim is issued by:
PETERSON, STANG & MALAKOE, solicitors for
the Plaintiff whose address for service is in care of:

PETERSON, STANG & MALAKOE
4902 – 49th Street
P.O. Box 939
Yellowknife, NT X1A 2N7
p: 867.669.8450
f: 867.873.6543

AND IS ADDRESSED TO THE DEFENDANT,
whose address, so far as is known to the Plaintiff,
is:

2920 Matheson Blvd. East.
Mississauga, Ontario
L4W 4M7

File No. 07-1028-GM

