

Supreme Court rebuffs Bell Mobility Inc challenge over charging for non-existent 911 service fees

*Julius Melnitzer, The Financial Post
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More than 20,000 Bell Mobility Inc. wireless phone customers in the Northwest Territories are in line to recoup monthly fees they were charged for 911 emergency service they didn't receive.

Bell's last opportunity to overturn the May 2013 [class action trial judgment](#) of a NWT judge was thwarted Thursday morning when the Supreme Court of Canada refused to grant leave to [appeal from the decision of the Northwest Territories Appeal Court](#) that upheld the ruling at trial. Following its usual practice, the SCC gave no reasons for dismissing the leave application.

Lawyers for the plaintiff estimate the decision affects 35,000 current and former Bell Mobility subscribers.

Damages have not yet been set, but Sam Marr, counsel for the plaintiffs, estimates the claim is worth between \$3 million and \$5 million.

"The Andersons and our firm are very pleased with today's ruling, in the first successful contested class action in Canada's North," Marr said.

As [reported earlier](#) by the Financial Post's Drew Hasselback, Bell's contract did state that Bell might charge a monthly fee for 911 service. But the NWT appeal court unanimously found that Bell was not entitled to the 75 cents service fee unless it followed through and provided the service.

Justice J.E. Côté, who wrote the appeal court decision, was clearly reluctant to interpret a contract in a way that required consumers to pay for what amounted to nothing.

"In my respectful view, connecting someone to nothing is still nothing," he wrote. "A right to charge a door-to-door delivery fee for milk cannot be triggered by delivering empty bottles. An airline which produces on time an airplane with no vacant seats cannot charge a traveller for a ticket on that flight, absent very clear wording in the contract."

The total value of the judgment will be determined in further proceedings. The award benefits all Bell Mobility customers resident in Canada who, prior to April 13, 2010, were charged for 911

emergency fee services even though there was no live 911 operator in the area in which they resided.

With files from Drew Hasselback