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About our presenter...

Margaret Capes, B.A. (Hons.), LL.B., M.Ad.Ed, is Legal Education Coordinator of Community Law School (Sarnia-Lambton) Inc. She also acts as Review Counsel for Community Legal Services, as an adjunct professor in the clinical law program, and as faculty advisor for Pro Bono Students Canada and the Dispute Resolution Centre, all at the Faculty of Law, University of Western Ontario. She is the former Executive Director of Community Legal Assistance Sarnia.





**Hot Topics in
Consumer Protection:
Cell Phone Contracts**

Webinar Overview

1. **Typical Cell Phone Contract Characteristics**
2. **Cell Phone Contracts: Governing Laws**
3. **Cell Phone Contracts: Regulatory Bodies**
4. **Consumers' Rights Regarding Cell Phone Contracts:**
 - Written Agreements
 - Freedom from Unfair Business Practices
5. **Consumer Remedies:**
 - Cancellation
 - Rescission
 - Complaint to the Ministry of Consumer Services
 - Complaints to the CCTS
 - Small Claims Court
6. **Appendix**
7. **Closing**





Typical Cell Phone Contracts

- Many competing service providers, e.g., Bell, Rogers, etc.
- Incentives (e.g., a free cell phone) offered to consumers in exchange for a fixed-term contract.
- Lengthy standard-form contracts
- Little opportunity to review, let alone negotiate, the contract terms
- Consumer locked in for one to three years
- Substantial cancellation fees or other charges for changing or cancelling their service before the end of the contract
- Take-it-or-leave-it nature of contracts makes it especially advisable for consumers to shop around



Cell Phone Contracts: Governing Law



- No Ontario laws specifically regulate cell phone contracts per se.
- A cell phone contract is treated as a “future performance agreement” under the *Consumer Protection Act, 2002* if:
 - It is worth \$50 or more; and
 - At least one of the parties is located in Ontario
- As a result of this classification, the CPA affords consumers certain protections with regard to cell phone contracts.





Cell Phone Contracts: Regulatory Bodies

Several agencies and organizations have various roles regulating cell phone services, including:

- **Canadian Radio-Television and Telecommunications Commission (CRTC)**, which functions to ensure the confidentiality of customer information and fair treatment of customers. The CRTC does not regulate rates, quality of services, or business practices;
- **Commissioner for Complaints for Telecommunications Services (CCTS)**, an industry-sponsored and funded nonprofit corporation that tries to facilitate the resolution of complaints about cell phone service problems; and
- **Ontario Ministry of Consumer Services** administers the *Consumer Protection Act, 2002*.



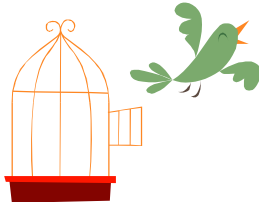
Cell Phone Contracts and Consumer Rights Under the CPA, 2002: Written Agreements



A future performance agreement such as a cell phone contract must be in writing, and must also include:

- the name of the consumer;
- the name, address, and telephone number of the service provider, and any other contact information such as facsimile number or email address;
- an accurate description of the goods and services being provided, and an itemized list of them, including taxes and shipping charges;
- a description of any additional fees that may be charged;
- the total amount the consumer must pay, the payment frequency, and how payments are to be made;
- a description of any trade-in, including the amount of trade-in allowance;
- the currency the payments are to be made in, if not Canadian;
- all other restrictions and conditions imposed by the service provider; and
- the date of the contract.





Consumer Rights: Freedom From Unfair Business Practices

- The *Consumer Protection Act, 2002* specifically prohibits two types of unfair business practices, which we will discuss in more detail shortly:
 - Making a false, misleading or deceptive representation, and
 - Making an unconscionable representation.
- The CPA also prohibits a person from using custody or control of goods to force a consumer into renegotiating the terms of the agreement.



False, Misleading or Deceptive Representations



- False, misleading and deceptive representations fall generally into four categories:
 - Representations as to the quality, characteristics, condition, or “special” nature of the goods or services;
 - The current or future availability of the goods or services;
 - The need for the goods or service; and
 - The cost, price advantage, or benefit of the good or service to the consumer.
- Please refer to the Appendix for more a detailed list of false, misleading, and deceptive representations as defined by the CPA.



Unconscionable Representations

Some business practices are so egregious that they are deemed unconscionable under the CPA. They include:

- Taking advantage of the disability, ignorance, language barriers, or illiteracy of the consumer;
- Grossly overcharging for the good or service;
- Using excessively one-sided or otherwise
- inequitable contracts to the detriment of the consumer;
- Obligations that the consumer has no reasonable probability of paying in full;
- Misleading statements of opinion that the consumer relies on or is likely to rely on, to their detriment; and
- Using pressure tactics to persuade the consumer to enter into the transaction.





Consumer Remedies: Cancellation

- Consumers may cancel at any time during the first year if the contract does not include all of the required information, or if the consumer does not receive a copy of the contract.
- Consumers may cancel within thirty days after signing the contract if the service provider has not provided the goods (e.g., a specific cell phone model) or the services (e.g., it fails to activate the account).
- Consumers may cancel without penalty, if the goods or services are substantially different from what was agreed upon, if the service provider either refuses to fix the problem or its attempts to fix the problem have been inadequate.



Consumer Remedies: Rescission



- A consumer may rescind any agreement entered into while the other party engaged in an unfair business practice under the *Act*.
- If rescinded, the agreement and all related agreements, guarantees, and payment security are cancelled as if they never existed.
- Notice of rescission must be given within one year after entering into the agreement (written notice is recommended).
- If rescission is not feasible, the consumer may recover the amount by which payment exceeded the actual value of the goods or services, or damages, or both.
- Sample rescission letters are available on the Ministry of Consumer Services website.
- If the consumer does not get a satisfactory response from the service provider, he or she may complain to the Ministry, or commence a civil action under the CPA.



Consumer Remedies: Complaint to the Ministry



- If the service provider refuses to remedy the matter, the consumer should report the problem to the Ministry of Consumer Services, which has broad investigative and remedial powers.
- Online complaint forms are available on the Ministry's website.
- The Ministry may order the service provider to comply with the provisions of the *Consumer Protection Act, 2002*.
- The Ministry may also bring charges in Provincial Offences Court.
- The Provincial Offences Court may, upon conviction, impose upon an individual a fine of up to \$50,000, or imprisonment for a term of not more than two years less a day, or both.
- A corporation that is convicted may be fined up to \$250,000.





Consumer Remedies: Complaint to the CCTS

- The **Commissioner for Complaints for Telecommunications Services (CCTS)**, hears and tries to facilitate the resolution of complaints about cell phone service problems.
- The CCTS is industry-sponsored and receives its funding directly from Telecommunications Service Providers (TSPs), but operates completely independent of them.
- The CCTS takes complaints from individual consumers or small businesses against its TSP members, who are not charged a fee for CCTS services.
- Membership in the CCTS is voluntary for cell phone companies, but most large cell phone companies are members.
- The CCTS deals with a broad range of complaints, including its TSP members' compliance with the terms of service contracts, billing issues, and service delivery issues.
- The CCTS does not deal with the actual terms of a contract, prices, privacy/confidentiality, false advertising, or general operating practices of the TSP that are beyond the specific contract terms.



Consumer Remedies: Small Claims Court

- If other dispute resolution alternatives have failed, a consumer may sue the service provider in court. Ontario's Small Claims Court (SCC) is designed to be accessible to consumers. Some advantages of using the SCC include:
 - Self representation. Claimants in the SCC are not required to hire a lawyer to represent them. In fact, it is very common for people to represent themselves at the SCC.
 - Low cost. With no lawyer required, the SCC provides an inexpensive way to file suit, and Court filing fees are also relatively low.
 - Available resources. Because the SCC is designed for self-represented litigants, many resource guides have been developed to assist with the process. These are available on the website of the Ministry of the Attorney General.
- Even if pursuing an action in the SCC, a consumer should not withhold payments that come due.
- Instead, payments should be made to the service provider, with a request to the SCC for reimbursement at the end of the action.
- Alternatively, the consumer can arrange to pay the amount to the SCC in the context of the SCC suit.
- At the end of the lawsuit, the court will pay the provider what is owed and return any leftover funds to the consumer.



Appendix: False, Misleading, and Deceptive Representations

While not intended to preclude actions based upon other representations that would qualify as unfair under the *Consumer Protection Act, 2002*, the following are specifically mentioned as examples of false, misleading, or deceptive representations:

- That the goods or services have sponsorship, approval, performance characteristics, accessories, uses, ingredients, benefits, or qualities that they do not have;
- That the person supplying the goods or services has sponsorship, approval, status, affiliation or connection that the person does not have;
- That the goods or services are of a particular standards, quality, grade, style, or model, if they are not;
- That the goods are new, or unused, if they are not or are reconditioned or reclaimed;
- That the goods have been used to an extent that is materially different from the fact;



Appendix: False, Misleading, and Deceptive Representations, cont.

- That the goods or services are available for a reason that does not exist;
- That the goods or services have been supplied in accordance with a previous representation, if they have not;
- That the goods or services, or any part thereof, are available when the person making the representation knows or should know that they are not;
- That the goods or services, or any part thereof, will be available by a specified time when the person making the representation knows or should know that they will not be available by that time;
- That a service, part, replacement or repair is needed or advisable, if it is not;



Appendix: False, Misleading, and Deceptive Representations, cont.

- That a specific price advantage exists, when it does not;
- That misrepresents the authority of a salesperson, representative, employee, or agent to negotiate the final terms of the agreement;
- That the transaction involves or does not involve rights, remedies, or obligations if the representation is false, misleading, or deceptive;
- That misrepresents the purpose or intent of any solicitation of, or communication with, a consumer;
- That misrepresent the purpose of any charge or proposed charge; or
- That misrepresents or exaggerates the benefits that are likely to flow to a consumer if they help a person obtain new or potential customers.



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