

Legal update

Quebec consumer law: Superior Court confirms no punitive damages can be claimed for actions based on unconscionability

January 2017 Class actions

On January 17, Justice Clément Samson of the Superior Court of Quebec dismissed a class action instituted against Telus Mobility and Telus Communications Company (TELUS).¹ The class action, authorized in July 2012, primarily alleged that TELUS charged its customers abusive and unconscionable cancellation fees to terminate their wireless or wireline service agreements.

The judgment on the merits in *Masson c Telus Mobilité (Société Telus Communications)* is highly relevant for a number of reasons. We will look at two.

Test to determine whether a rate is abusive or unconscionable

A court's analysis to determine whether a rate is abusive or unconscionable cannot take place in a vacuum. In finding that TELUS' termination charges were not abusive, Justice Samson weighed the consideration received by the class members who felt aggrieved (e.g. the cost of the telephone supplied to the consumer under the wireless services agreement) and the costs borne by the defendants to implement the relevant clause. TELUS had submitted substantial expert evidence demonstrating that the cancellation fees it charged were not abusive or unconscionable considering the costs that had to be borne by TELUS.

Claims for punitive damages under the *Consumer Protection Act (CPA)*

According to Justice Samson, a consumer bringing an action based on Section 8 CPA (unconscionability) is not entitled to punitive damages because Section 8 sets out a specific regime separate from the recourse for punishing a failure to fulfill an obligation imposed by the CPA, which includes the possibility of claiming punitive damages (s. 272 CPA). This interpretation is, moreover, consistent with the Court of Appeal's finding in [Household Finance](#) to the effect that the recourse under Section 272 CPA cannot be combined with other recourses specifically provided by other provisions of the CPA.

Charles-Antoine M. Péladeau
Frédéric Wilson

Footnote

1. *Masson c Telus Mobilité*, 200-06-000126-105 (SC).

For further information, please contact one of the following lawyers:

> Marianne Ignacz	Montréal	+1 514.847.4511	marianne.ignacz@nortonrosefulbright.com
> Charles-Antoine M. Péladeau	Montréal	+1 514.847.4418	charles-antoine.peladeau@nortonrosefulbright.com
> Frédéric Wilson	Montréal	+1 514.847.6020	frederic.wilson@nortonrosefulbright.com
> Kateri-Anne Grenier	Québec	+1 418.640.5932	kateri-anne.grenier@nortonrosefulbright.com
> Randy C. Sutton	Toronto	+1 416.216.4046	randy.sutton@nortonrosefulbright.com

Norton Rose Fulbright Canada LLP, Norton Rose Fulbright LLP, Norton Rose Fulbright Australia, Norton Rose Fulbright South Africa Inc and Norton Rose Fulbright US LLP are separate legal entities and all of them are members of Norton Rose Fulbright Verein, a Swiss Verein. Norton Rose Fulbright Verein helps coordinate the activities of the members but does not itself provide legal services to clients.

References to "Norton Rose Fulbright", "the law firm", and "legal practice" are to one or more of the Norton Rose Fulbright members or to one of their respective affiliates (together "Norton Rose Fulbright entity/entities"). No individual who is a member, partner, shareholder, director, employee or consultant of, in or to any Norton Rose Fulbright entity (whether or not such individual is described as a "partner") accepts or assumes responsibility, or has any liability, to any person in respect of this communication. Any reference to a partner or director is to a member, employee or consultant with equivalent standing and qualifications of the relevant Norton Rose Fulbright entity.

The purpose of this communication is to provide general information of a legal nature. It does not contain a full analysis of the law nor does it constitute an opinion of any Norton Rose Fulbright entity on the points of law discussed. You must take specific legal advice on any particular matter which concerns you. If you require any advice or further information, please speak to your usual contact at Norton Rose Fulbright.