



Better
LET'S MAKE A DEAL™

Manitoba's Plan For Stronger Consumer Protection

Improving Consumer Protection in Cell Phone / Wireless Device Contracts

Public Consultation Paper

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Consumer Protection Office

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Part 1. Introduction

The growing popularity of cell phones in Manitoba has led to a rising number of customer concerns and complaints. Manitoba Family Services and Consumer Affairs' (FSCA) Consumer Protection Office has received complaints about cell phone contracts (ex: confusing to read, favour suppliers over customers).

Stronger Consumer Protection in Manitoba

Manitoba has recently committed to a five-year plan for stronger consumer protection, entitled *Let's Make A Better Deal*. To ensure consumers are dealt with fairly, the Manitoba government is considering changes to *The Consumer Protection Act* that will provide better regulation of cell phone contracts. Stronger consumer protection will allow customers to make more informed decisions about cell phone services.

Goals to improve cell phone contracts include:

- the use of plain language (easy for customers to read and understand)
- fairness for both consumers and suppliers
- clearer communication on when contract terms can be changed
- fair practices and clear information on contract cancellations

Your feedback

This consultation is to gather information and feedback from consumers, consumer groups, suppliers and other industry stakeholders. The results will be used to create better protection for consumers and set a level playing field for consumers and suppliers.

We welcome all comments, including proposed changes, questions and potential solutions.

Your feedback is an essential part of this process.

Protecting your personal information

Any personal information you provide as part of the consultation is protected under the *The Freedom of Information and Protection of Privacy Act*. It will be used for the consultation only. Your personal identity will not be given out or made public without your consent. However, the name of an organization may be made public.

Your submissions will be shared with government staff who are involved in the review. Submissions may also be shared with other interested parties during and after the review. You may be contacted by a government representative to clarify your comments. Your name will not be placed on any mailing lists that are not a part of the review.

If you have questions about protection of your privacy, contact the Consumer Protection Office. See the contact information at the end of this discussion paper.

Part 2. Cell Phone Industry in Manitoba

Cell phone providers

The cell phone industry in Canada is concentrated among a small number of large providers. The largest cell phone suppliers in Manitoba are MTS, Rogers and Telus. These companies provide many services, including phone, long distance, Internet and wireless.

The Canadian Wireless Telecommunications Association (CWTA) represents most cell phone suppliers in Canada. Manitoba members include MTS, Rogers and Telus, as well as Bell, Fido, Koodo Mobile and Virgin Mobile.

Code of conduct

The CWTA has a voluntary code of conduct for its members. The goal is to ensure customers:

- get the complete details about their contracts
- understand advertisements
- get complaints resolved efficiently

There are no consequences for members who don't follow the code. While the intent of the voluntary code is positive, the significant number of consumer complaints about cell phone contracts suggests that enforceable consumer protection measures are needed.

Cell phone consumers

Although the federal government is responsible for the technological area of telecommunications, the Manitoba government can regulate cell phone contracts. *The Consumer Protection Act* and *The Business Practices Act* apply to all service providers, but don't have rules specific to some of the problems that consumers have with cell phone contracts.

Consumers can complain to the Consumer Protection Office. However, without laws specific to fairness in cell phone contracts, the provincial government is limited in how it can protect consumers from unfair practices in this industry.

Throughout Canada, complaints about cell phone equipment and service have been rising. They are the biggest topic of complaints at Canada's Better Business Bureaus. In 2009/10, out of the 3,750 complaints received by Canada's Commissioner for Complaints for Telecommunications Services (CCTS), more than half were about cell phone service.

Wireless telecommunications are also the subject of a large number of consumer complaints in the United States. The main complaints received by the U.S. Federal Communications Commission include billing and rates, quality of phone service, early termination of contracts, and marketing and advertising practices.

Customer service and complaints

The Consumer Protection Office receives questions and complaints about cell phone contracts. Common issues include:

- Contracts are long and use language that's hard to understand.
- Comparison shopping is difficult, because prices and contract terms are written and presented in different ways by different suppliers.

- Some contracts allow suppliers to increase costs without notice, charge high cancellation fees and offer confusing renewal options.

More specific complaints included:

Service:

- lack of trained customer service representatives
- long waiting times for service and technical support
- transfers between in-store and call-centre representatives without adequate or consistent service
- damaged equipment that's not repaired properly or takes a long time to repair

Contract:

- sudden changes to a contract's terms and conditions (ex: charging for services like texting, which were free in the original contract)
- automatic renewal of a contract without the consumer's approval
- ongoing charges for cancelled services or cancellation without notice
- unclear cancellation clauses (ex: unclear financial penalties)
- charges for services customers have not agreed to
- personal information shared with outside people or organizations

Billing:

Incorrect billing inconveniences both consumers and suppliers, especially if service is suspended while both parties deal with disputed charges. Common disputes are over:

- lack of detailed information on bills
- incorrect or inconsistent information on charges
- outstanding bills going to collection agencies without first letting customers know
- customers being denied their billing information (because their contracts do not include detailed billing)
- customers held responsible for accounts where someone else signed the contract
- additional charges for paper invoices and account statements

Other stakeholders

Industry Canada is responsible for regulation and management of radio airwaves and most cell phone providers buy licenses to use the airwaves. Industry Canada also establishes technical requirements for various wireless systems. Cell phone customers can file complaints relating to telecommunications through Industry Canada's Office of Consumer Affairs or the Competition Bureau.

Canada's Office of Consumer Affairs

Mailing Address:

235 Queen Street, 6th Floor West

Ottawa, ON K1A 0H5

Phone: 613-946-2576 in Ottawa

Toll free: 1-800-328-6189 (Canada)

Toll free TTY: 1-866-694-8389 (for hearing-impaired only)

Fax: 613-952-6927

Email: consumer.information@ic.gc.ca

Competition Bureau

Mailing Address:

50 Victoria Street

Gatineau, Quebec K1A 0C9

Phone: 819-997-4282 in Gatineau

Toll free: 1-800-348-5358 (Canada)

Toll free TTY: 1-800-642-3844 (for hearing-impaired only)

Fax: 819-997-0324

Canadian Radio and Television Commission (CRTC) is an independent federal organization responsible for regulating and supervising Canadian broadcasting and telecommunications systems. The CRTC does not regulate the rates, contracts or business practices of cell phone suppliers – just telecommunications.

Commissioner for Complaints for Telecommunications Services (CCTS) is an office that helps resolve consumer and small business complaints about telecommunications services, including cell phones. Cell phone customers can file a complaint with the CCTS for an independent review to determine if the supplier has followed the contract agreed to, not to determine if the contract itself is fair.

Part 3. Consumer and Industry Issues

What consumers need to know before signing a contract

Prices

Cell phone customers need to know the total cost of their cell phone services. In 2009, the Organization for Economic Co-operation and Development (OECD) found that, of all member countries, the price of cell phone calls was highest in Spain, United States and Canada.

Consumers may find it hard to compare prices between suppliers if not all costs are included in the price (especially if the contract begins as a verbal agreement). Promotions, like months of free service, make it more difficult to compare prices.

Contracts may include additional fees for services, such as incoming text messages or incoming phone calls. Consumers may be charged for unsolicited sales calls, emails or text messages from the cell phone supplier. Prepaid plans may include account maintenance fees, which may not be obvious or clear. The final price may include additional charges (ex: system access fee) consumers don't know anything about.

With more products and features, it becomes more and more difficult for consumers to compare prices to make an informed choice. Consumers may not realize that they are using expensive services until they receive a bill from the supplier.

Services

Cell phone customers need to know what services are included, or excluded, in a contract. The lack of standard contracts means many consumers may not understand what services they get or pay extra for. Some contracts may limit use to certain services or applications. Services, like text messaging, may be marketed as unlimited, but actually have maximum use amounts in the contract. Time and data limits may also be unclear.

Consumers may have trouble comparing cell phone plans of different suppliers due to the variety of services, complicated rate structures and different restrictions. As well, quality of service may be difficult to compare among suppliers before a contract is signed.

There may also be issues for both consumers and suppliers about services provided through third parties, such as subscription text messages.

Bundling

Bundling services (ex: cell phone, Internet, cable, home phone) can result in lower prices, more convenient billing and lower transaction costs. However, bundling can also increase confusion for consumers in comparing the prices and services of different suppliers. It may be hard to see what bundles best meets their needs or how to break down the prices charged in one bill. If consumers with bundled services don't know how much they are paying for each service, they may be paying for services they don't use.

Contract language and terms

Consumers and suppliers need to understand all the terms and conditions in a contract. This is especially important in Canada, where about 80 per cent of cell phone users have longer-term service contracts, rather than prepaid plans.

When contracts are not straightforward and easy to understand, consumers may find themselves paying for products or services they didn't plan to buy. Using fine print, or providing too much information, can make contracts confusing.

Consumers need to understand all the terms of a contract to make an informed decision. Clear and concise contracts that include essential information, without confusing details, will help consumers understand what they're getting.

Some cell phone suppliers are moving away from paper contracts to providing all information and bills online. However, people without regular access to the Internet may need paper documents to make informed decisions.

Products

The availability of services for cell phone equipment will affect which cell phone provider a consumer chooses. Technical incompatibility can make it difficult for consumers to switch cell phone suppliers. Suppliers may also lock a phone so that consumers cannot switch service providers.

Equipment subsidies and other promotions

Cell phones have a short life expectancy. Consumers are constantly updating their phones to get the latest technology. One way suppliers compete is through providing customers with new equipment and better technology. Equipment is often promoted as free or subsidized to tempt consumers to sign longer-term contracts. As well, consumers have come to expect free phones when buying cell phone service.

However, consumers may end up paying for the cost of the phone to get out of a contract, as the equipment subsidy is usually part of an early cancellation fee. Consumers need to know that when they receive subsidized equipment, there may be additional hidden costs in the contract.

Deposits and repairs

Consumers may have to pay a deposit for cell phone equipment. The deposit may not be refunded in full at the end of the contract, even if the equipment is returned. Also, when equipment breaks down, customers may continue to be charged for service while repairs are taking place – even if the equipment is the supplier’s responsibility.

Warranties

Suppliers may offer consumers the opportunity to buy extended equipment warranties. However, they may not tell consumers about the **free** warranty protection they’re already getting from the manufacturer or other agencies.

Changing a contract

Changing the price or service

Suppliers can change the price or services of fixed-term contracts with very little notice to consumers. In some cases, consumers may not be able to get out of the contract until it expires – even with significant changes to the terms.

Termination, renewal and early cancellation fees

Prepaid cell phone plans often have short expiry periods. Consumers may not realize that service will end shortly if they don’t add more money to their plans. To add to customer confusion, store displays may mix prepaid plans with similar services that don’t have expiry dates.

Three-year cell phone contracts are most common in Canada. Most other countries have a two-year limit on contracts. Consumers who want to end fixed-term cell phone contracts often have to pay early cancellation fees. These fees are usually based on the number of months remaining in a contract. Early cancellation fees can stop consumers from switching cell phone suppliers, which reduces competition.

Phone numbers

According to the CRTC, consumers should be able to keep their phone numbers when they change suppliers, as long as they’re in the same local area. However, the process used to transfer phone numbers between cell phone providers can be confusing, and often causes errors or leads to multiple billings. Therefore, the challenges that go along with keeping a phone number may prevent some consumers from changing suppliers.

Part 4. Other Provinces

Québec's Bill 60

Québec is the only Canadian province with legislation on cell phones. Amendments to Québec's *Consumer Protection Act* came into effect in June 2010. The act has restrictions to contract changes, and makes cell phone suppliers provide more information to consumers.

Cell phone providers must issue written contracts with clear, specific information. This includes:

- detailed descriptions of the services provided
- monthly rate for each service or the equivalent monthly cost
- total amount paid each month
- restrictions on services, including geographical limits
- contract term and expiry date
- details on how to terminate the contract
- details on any special deals offered in the contract

Québec suppliers must use a minimum font size for fine print in the contract. The legislation also prevents automatic renewal of contracts without written approval from the consumer. Suppliers must inform consumers of the expiry date of a contract by written notice between 60 and 90 days before the contract expires. Consumers can cancel a contract at any time, at the fee stated in the contract. This early cancellation fee is based only on the cost of the free or subsidized phone provided at the start of the contract. Suppliers must provide notice of at least 30 days before making any change to a contract, and consumers have the right to reject the change by cancelling the contract at no cost. Suppliers do not have the right to decide to change essential parts (like the price or length) of a fixed-term contract.

Under Québec's legislation, suppliers cannot offer extended warranties without first providing information on existing warranties and statutory protection. Suppliers cannot demand payment for service if equipment is being repaired, unless replacement equipment is provided. Suppliers must return security deposits (plus interest) less any amount owing within 30 days of the contract's expiry date. Québec's legislation also includes penalties for suppliers that don't follow the new rules.

Contracts with national cell phone providers now clearly show clauses that don't apply in Québec or only apply in Québec. Cell phone suppliers in Québec continue to offer subsidized phones and service promotions. To date, no other jurisdiction has developed regulations for cell phone contracts.

Ontario's Proposed Legislation

In November 2010, a private member's bill calling for greater protection for consumers of cell phone services was introduced in Ontario. Under *The Wireless Phone, Smart Phone and Data Service Transparency Act*, cell phone service providers would be required to:

- clearly disclose the cost of all optional and mandatory services
- provide plain language contracts
- reduce cancellation fees charged to consumers
- improve transparency around automatic renewal of contracts
- notify consumers of additional charges for exceeding usage limits
- eliminate activation and expiry dates on pre-paid cards for cell phone service
- be more transparent in advertising the cost of cell phone service
- unlock any cell phone that has been paid for in full or is not bound by a contract.

Part 5. Next Steps

Consultations

Early discussions indicate there is strong industry and consumer interest in this topic. We have developed discussion questions to help guide individuals and groups in preparing their submissions for this consultation. Other information about cell phone contracts (not included in these questions) is also welcome in your submission.

Your input will help us understand the issues reviewed in this paper, and will guide the Manitoba government in improving consumer protection for cell phone contracts. After this consultation, the proposed next step is to develop changes to *The Consumer Protection Act* to regulate cell phone contracts.

Discussion questions

In your written response to this discussion paper, you may wish to answer the following questions:

- 1) How should the total monthly price be presented in cell phone contracts, monthly bills and advertisements? Would an "all-inclusive" price (including set fees and costs) be helpful to consumers? Would it be feasible?
- 2) Is it important to clearly show the various fees for cell phone services – both what's included and what's **not** included – in cell phone contracts? Services that may have additional fees include administration, incoming and outgoing calls, incoming and outgoing texts, long distance, roaming and data storage. Are there any challenges with this that Manitoba should be aware of?
- 3) Should cell phone suppliers contact consumers and gain their consent before they are charged additional fees (for roaming, text messages or other services), especially if fees are higher than normal monthly charges?
- 4) Should consumers be able to set a monthly maximum on their bill?

- 5) What other information needs to be in cell phone contracts to allow consumers and suppliers to make informed decisions?
- 6) How should contract information be presented (ex: font size, layout, language) so that contracts are easily understood by consumers, suppliers and their representatives? What are the key considerations for businesses in developing cell phone contracts?
- 7) Is it important that all consumers receive a paper contract and detailed paper bills, and should suppliers be able to charge extra for paper documents?
- 8) Should sales representatives tell consumers about equipment subsidies, other promotions and warranties? Should this information also be included in the cell phone contract?
- 9) Who is responsible for damaged or broken equipment?
- 10) Should equipment be unlocked after it is paid for by the consumer or at the end of a contract?
- 11) What should be included in the calculation of early cancellation fees?
- 12) What parts of a contract should either the supplier or the consumer be able to change before the end of the contract, and how much notice should be required for these changes?
- 13) How should contracts be renewed and for what time periods?
- 14) When cell phone contracts expire, what should happen to any unused balances (for prepaid services, or credit)?
- 15) What customer service information should be included in cell phone contracts?
- 16) How should contract disputes, including disagreements about services provided by third parties, be resolved?
- 17) How can the Manitoba government encourage suppliers to comply with the new rules for cell phone contracts?
- 18) What can Manitoba learn from Québec's recent law and the proposed law in Ontario regarding cell phone contracts?

Part 6. Your Comments

Please send your written submission/comments via email or by mail by **January 17, 2011**. You are welcome to send both an individual and a group submission. We thank you in advance for participating in this important consultation.

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