



FINANCIAL POST

April 17, 2015

Bell faces \$750 million lawsuit over targeted ad program

By Christina Pellegrini

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The battle over BCE Inc.'s contentious targeted advertising program is moving into the courtroom after a \$750-million class action lawsuit was filed against its Bell Mobility and Bell Canada units.

Court documents filed with the Ontario Superior Court of Justice allege that the Mississauga, Ont.-based subsidiaries of BCE breached contractual obligations, privacy laws and the *Telecommunications Act* resulting from their "unauthorized use and disclosure of [clients'] personal information" to a third party without explicit consent. By doing so for a fee, Bell was "unjustly enriched" and ought to be financially liable for "the anguish, suffering and distress" caused by its "unlawful intrusion," the filings state.

Bell spokesperson Jacqueline Michelis declined to comment on the lawsuit, filed Thursday.

Ted Charney of Toronto's Charney Lawyers, one-half of the counsel representing plaintiff Settimo Tocco, a Bell Mobility client with data service who resides in Windsor, Ont., estimates as many as five million of Bell's 7.9 million wireless customers were tracked under the so-called Relevant Advertising Program (RAP) through their use of Internet data, making this "the largest privacy breach ever" in Canada.

"We think there's going to be some damages awarded to each class member, and the real question is 'what's the amount going to be?'" Charney said in an interview Friday. "Could be anywhere from a couple hundred dollars to a couple thousand dollars, depending on the nature of the privacy breach and the circumstances of how the breach happened."

A similar lawsuit has also been launched in Quebec.

Introduced to wireless customers on Nov. 16, 2013, RAP tracked and amassed people's mobile-phone usage habits to create a profile that was shared with third-party marketers for a fee, states the filings. Data collected include names of websites accessed on phones and demographic details such as a person's postal code, sex, age range, credit score and payment patterns. Bell cancelled the program Monday, promising to delete all existing profiles and that any future RAP or an equivalent would require opt-in consent.

But RAP's initial notice did not identify what information would be collected or how it would be used. Plus, rather than having the choice to opt into the initiative, customers were told they could opt out.

After receiving 170 complaints from the public and concluding an 18-month investigation into Bell's RAP, the federal privacy commissioner deemed last week the company neither didn't have its clients' consent to disclose

personal information to third parties nor did it adequately disclose the type of data it shared, noting that how Bell handled credit scores was "inappropriate and violated" the country's privacy laws.

"Until the Privacy Commissioner released his report [on April 7], I don't think anybody in this country had a clue about what was going on," Charney said. As of 2:30 p.m. ET Friday, more than 1,000 people had registered to become members in the class, he said.

The five-million projection of eligible class members includes the people who opted out of the initiative, since Bell continued to monitor their usage and update their customers profiles, according to the court filings. "In fact, in some ways, what happened to them is even more egregious," said Charney. "They took the time to go through all the hoops to opt out and boom, they got profiled anyway."

Counsel for the Tocco and any other Bell Mobility or Virgin Mobile customers who will be approved by the court to join the class action lawsuit are requesting that the matter be tried in a Windsor court, where the other law firm representing the plaintiffs, Sutts, Strosberg LLP, is based.

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