

☒ RULE/LA RÈGLE 26.02 (C)

☒ THE ORDER OF JUSTICE JASMINE AKBARALI
L'ORDONNANCE DU
DATED/FAIT LE 11APR 2023

Court File No.: CV-21-00670953-00CP

Gerri Findlay Digitally signed by Gerri Findlay
Date: 2023.04.14 11:37:41
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REGISTRAR GREFFIER
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N :

DAVID TRUEMAN

Plaintiff

- and -

ROGERS COMMUNICATIONS CANADA INC. and ROGERS BANK

Defendants

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

FIFTH AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH

TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

October 26, 2021

Issued by "E-filed _____
Local registrar

*Address of
court office:*

Superior Court of Justice
393 University Ave,
10th Floor
Toronto, ON M5G 1E6

TO **ROGERS COMMUNICATIONS CANADA INC.**
333 Bloor Street East, 10th
Floor Toronto, Ontario
M4W 1G9

ROGERS BANK
333 Bloor Street East, 5th Floor
Toronto, ON M4W 0A1

CLAIM

1. The Plaintiff claims, on his own behalf and on behalf of the proposed Class Members as defined below:

- a. An order pursuant to s. 5 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (the “CPA”), certifying this action as a class proceeding and appointing David Trueman as representative plaintiff;
- b. A declaration that the Defendants (together, “Rogers”) intentionally or recklessly, and without lawful justification, intruded upon the seclusion of the Plaintiff and the Class Members;
- c. A declaration that Rogers breached the confidence of the Plaintiff and the Class Members by misusing their confidential credit information that was communicated in confidence, to the detriment of the Plaintiff and the Class;
- d. A declaration that Rogers Communications Canada Inc. (“Rogers Communications”) breached its contracts with the Plaintiff and the Class Members;
- e. An injunction prohibiting Rogers from further collecting, using, storing or disclosing credit information of the Plaintiff and the Class Members without their express, informed, and prior consent;
- f. Damages calculated on an aggregate basis in an amount sufficient to compensate the Plaintiff and the Class Members for the harm done to them as a result of

Rogers' unlawful conduct, or alternatively, general and special damages in the amount of \$50 million or as otherwise assessed by the Court; and

- g. Punitive and exemplary damages of \$2 million or in an amount to be determined by the Court, sufficient to deter Rogers, and similar entities, from similar wrongdoing in the future, to vindicate the Class Members for the wrongful conduct, and to denounce the wrongful conduct;
- h. Pre-judgment and post-judgement interest pursuant to the *Courts of Justice Act*, RSO 1980, c 43;
- i. Costs of providing all notices about this action to Class Members and all costs of administering the distribution of any judgment in favour of the Class Members; and
- j. Costs of this action.

A. THE PARTIES

- 2. The Plaintiff, David Trueman, is an individual resident in the City of Toronto, in the Province of Ontario. He entered into a contract with Rogers Communications for the provision of personal telecommunications and cable services in May 2011, and ~~has~~ remained a Rogers Communications customer ~~continuously since that time~~ until December 7, 2021, when he cancelled his services with Rogers Communications. Mr. Trueman is not, and never has been, a customer of Rogers Bank.

3. The Plaintiff seeks to represent a class consisting of all persons currently or previously residing in Canada Ontario, Quebec and Alberta who had consumer service contracts for post-paid services with Rogers between May 1, 2011, and the date that this action is certified as a class proceeding (the “Class Members”) and a Sub-Class of all Class Members to whom Rogers Bank issued a Rogers Bank-branded credit card without first receiving express written consent from the Sub-Class Member or without providing confirmation in writing that Rogers Bank had received the Class Member’s prior express oral consent to be issues such a credit card.
4. Rogers Communications is Canada’s largest telecommunications company, incorporated and registered pursuant to the laws of Canada. Its corporate headquarters are located in Toronto, Ontario, and it provides internet, cable, wireless, home monitoring, and home phone services to customers across Canada. Rogers Bank is a Canadian chartered bank and is a wholly owned subsidiary of Rogers Communications Inc. Rogers Communications Inc. is also the parent of Rogers Communications.
5. During the proposed class period, Rogers Communications delivered wireless, internet, home security, and cable services to consumers ~~through its wholly owned subsidiary, Rogers Communications Canada Inc., and including~~ under the brands of Rogers, Fido Solutions, and Chatr Mobile. Rogers Bank’s business is limited to offering Rogers-branded consumer rewards credit card products, of which it currently has four: Rogers World Elite MasterCard, Rogers Platinum MasterCard, Fido MasterCard and chatr MasterCard.

B. THE PLAINTIFF’S EXPERIENCE

Rogers' collection of the Plaintiff's credit information

6. In the summer of 2019, the Plaintiff discovered that within the previous year, on April 29, 2019, December 18, 2018, and August 17, 2018, Rogers Communications had initiated three separate account review inquiries with a credit reporting agency, TransUnion (the "Credit Checks").
7. Account review inquiries are commonly known as "soft credit checks" or "soft credit pulls". A soft credit check does not affect the subject's credit score, but includes "credit information" as defined in the *Consumer Reporting Act*, RSO 1990, c C.33 ("*Consumer Reporting Act*"), such as the subject's name, age, occupation, place of residence, previous places of residence, marital status, particulars of education or professional qualifications, places of employment, previous places of employment, estimated income, paying habits, credit score, and more.
8. The TransUnion credit report did not include any particulars about the Credit Checks, such as Rogers Communications' ~~the Defendant's~~ reason for initiating the Credit Checks, or the use(s) which Rogers Communications ~~the Defendant~~ made of the Plaintiff's credit information obtained through the Credit Checks.
9. Rogers Communications did not provide the Plaintiff with any notice that these Credit Checks would be made, were being made, or had been made. The Plaintiff was therefore not aware of any of these Credit Checks until he reviewed the TransUnion credit report.
10. The Plaintiff did not expressly or impliedly consent to any of the Credit Checks.

11. The only time the Plaintiff consented to the collection of credit information by the Defendants was at the time of the activation of his post-paid services account in 2011. At that time, he understood that Rogers Communications would perform a one-time credit check which was required at the inception of his postpaid Rogers services to assess his ability to pay his monthly bills.
12. The Plaintiff ~~has~~ maintained his Rogers Communications account in good standing since from its inception in 2011 until terminating his Rogers Communications services in December 2021.
13. At the time of the activation of his Rogers Communications account in 2011, the Plaintiff was obliged to agree to a standard form End User Agreement which states that purported to authorize Rogers Communications to ~~may~~ obtain/collect credit history information to “assess...eligibility for other Rogers products and services”. Implicitly, no such credit history could be accessed unless the customer “end user” requested additional products or services to be provided under the same agreement. The Plaintiff never applied for, nor made any inquiry regarding a Rogers Bank credit card. The Plaintiff never gave express, informed consent to Rogers to access his credit information so that Rogers could market any other services to him.
14. The End User Agreement does not stipulate any other circumstances in which Rogers may collect customer credit information, and is silent with regard to the use, storage, disclosure, and/or deletion of credit information. Nothing in the End User Agreement permits Rogers to conduct credit checks for the purpose of Rogers marketing its other services or for promoting or soliciting the Plaintiff to obtain different services, and

particularly the End User Agreement does not permit Rogers Communications to conduct credit checks of its customers and then share that information with Rogers Bank for the purpose of Rogers Bank soliciting customers to apply for Rogers Bank credit cards.

15. At the time of the activation of his Rogers Communications account in 2011, the Plaintiff received, or was provided access to, a copy of a standard-form Terms of Service document which is incorporated by reference into the End User Agreement. The Terms of Service are silent with regard to the collection, use, storage, disclosure, and/or deletion of credit information.
16. The Plaintiff had not applied for any new Rogers products or services at any time on or around the dates of the Credit Checks that would have justified Rogers undertaking a credit check, and the Plaintiff did not consent to any such Credit Check.

The Plaintiff's inquiries regarding the collection, use and storage of his credit information

17. Concerned about the intrusion into his private affairs, on or around December 18, 2019, the Plaintiff contacted Rogers Communications' customer service department by telephone to inquire about the nature and purpose of Rogers Communications' unauthorized collection and/or use of his credit information.
18. A customer service representative was unable to advise the Plaintiff as to why his credit information had been collected repeatedly, or how his credit information had been used, so his inquiry was escalated to the Credit Operations Department ("COD"). The COD opened a file and advised that they would follow up with him in approximately five days.

19. The Plaintiff did not receive a response within five days of his inquiry and file opening.
20. Consequently, the Plaintiff, on or about December 26, 2019, telephoned a Rogers Communications' representative and expressly directed Rogers to stop accessing his personal credit information immediately.
21. On or around December 30, 2019, the Plaintiff contacted Rogers Communications' customer service department again by telephone to inquire as to the status of his file with the COD. At this time, a different customer service representative advised the Plaintiff that it is Rogers Communications' practice to periodically conduct soft credit checks on customers, relying on the general consent provided at the time of initial service activation. The customer service representative did not provide any information regarding Rogers' use(s) of the Plaintiff's collected credit information.
22. The Plaintiff requested that his privacy concerns be escalated to the Office of the President at Rogers Communications and he reiterated his direction that Rogers stop collecting his credit information without his consent.
23. On or around January 9, 2020, the Plaintiff received a letter from an advisor to Rogers Communications' President. The advisor explained that Rogers performed the Credit Checks for "marketing and promotional purposes" and that Rogers took the position that the End User Agreement signed by the Plaintiff authorized the Credit Checks.
24. The Plaintiff escalated his complaint to Rogers' Privacy Office on or around February 9, 2020.

25. On February 12, 2020, the Rogers Privacy Office responded in writing, stating that Rogers “provides notice and obtains consent from customers for the collection, use, and disclosure of information when entering into agreements to obtain products and services”. The Rogers Privacy Office also stated that there exists a “two-way sharing of information with credit bureaus such as TransUnion, which cannot be opted-out of while the service is still active”.
26. The Rogers Privacy Officer admitted that Rogers collects personal information “for many different reasons”, including:
- ...to manage credit and business risks, collect an outstanding debt, detect, prevent, manage, and investigate fraud or other unauthorized or illegal activity. This may require [it] to obtain information from credit agencies or members or affiliates of the Rogers Communications Inc. organization, such as Rogers Bank. Customer information may also be collected to evaluate eligibility for other Rogers’ products and services.
27. Rogers’ Privacy Office did not identify any contractual provision or document by which Rogers had provided the Plaintiff with notice that his credit information would be collected, used disclosed, or stored for “marketing and promotional purposes” or “to evaluate eligibility for other Rogers’ products and services”, nor of any particular contractual provision or document by which Rogers had obtained the Plaintiff’s consent to collect, use, disclose, or store his credit information for “marketing and promotional purposes” or “to evaluate eligibility for other Rogers’ products and services”.

Rogers’ ongoing breach of the plaintiff’s privacy

28. Despite Rogers' representatives, including the Privacy Office and the Office of the President, being explicitly advised that the Plaintiff did not consent to Rogers continuing to access his credit information, Rogers continued to do so.
29. Throughout 2020 and 2021 Rogers continued to access the Plaintiff's credit information multiple times per year without the Plaintiff's consent, including on December 22, 2020, April 12, 2021, and September 2, 2021. The Plaintiff terminated his post-paid services account on December 7, 2021.

Routine practice of obtaining credit information

30. Rogers regularly and without notice or consent collects its customers' credit information by conducting Credit Checks. It uses the credit information so obtained for its own marketing and promotional purposes or to evaluate customers' eligibility to have other Rogers products and services marketed to them, including credit card products offered by Rogers Bank.
31. From in or about October 2013 to February 2019 Rogers Bank used the credit check information not only to evaluate customers' eligibility to have other Rogers products and services marketed to them; but specifically to determine if the customer should be issued a Rogers Bank credit card. Rogers Bank then used this credit information to issue and deliver one or more Rogers Bank credit card to the Sub-Class Members without first obtaining the Sub-Class Members' express written or oral consent. This practice came to the attention of the Plaintiff in August 2022, but Rogers never disclosed the practice to its customers or to the regulatory authorities.

32. There is no agreement between the Plaintiff nor any other member of the Class that granted to Rogers the right to collect, use, disclose, or store credit check information for “marketing and promotional purposes” or to evaluate the Class Members’ eligibility to have other Rogers’ products and services marketed to them. Conducting credit checks to identify those customers that Rogers considers suitable to receive additional marketing and promotional solicitations or to whom it would issue unsolicited credit cards is a gross abuse of its ability to perform credit checks of existing customers, has nothing to do with the existing contractual relationship between Rogers Communications and the Plaintiff (and the Class), and was conducted solely to enrich Rogers at the expense of the Plaintiff’s and the Class Members’ privacy and right to seclusion, and causing consequential harm to the Sub-Class Member’s credit scores.
33. There is no agreement between the Plaintiff nor any Sub-Class Member by which he or the Sub-Class Members consented to Rogers Bank accessing their credit score information to evaluate the Plaintiff’s or the Sub-Class Members’ qualifications to be issued a Rogers Bank credit card, and for Rogers Bank to then issue a Rogers Bank credit card to the Sub-Class Members.

Harms suffered by the Plaintiff

34. The Plaintiff was shocked and angered to learn that Rogers was, without authorization, repeatedly collecting, using, and storing his personal credit information for “marketing and promotional purposes” or “to evaluate eligibility for other Rogers’ products and services” unrelated to the provision of the services for which he pays.

35. The Plaintiff continues to experience distress, upset, anger and embarrassment that Rogers repeatedly, unilaterally and surreptitiously invaded his privacy.
36. The Plaintiff's distress, upset, anger and embarrassment have been exacerbated by the uncertainty caused by Rogers' refusal to provide particulars of its use and potential disclosures it has made of his private credit information, as well as its continued unauthorized intrusions into his credit information despite his clear request that Rogers cease doing so. For example, he is forced to live with the possibility that any Rogers employee may be able to access his private credit information, or that his private credit information may have been disclosed to third-party marketing, logistics, or sales companies and their employees.
37. Class members also suffered distress, upset, anger and embarrassment caused by Rogers' breach of their privacy, and exploitation of their highly confidential credit score information to promote and advance Rogers' business interests.
38. Sub-Class members also suffered distress, upset, anger and embarrassment caused by Rogers' breach of their privacy, and exploitation of their highly confidential credit score information to promote and advance Rogers Bank's business interests to their financial detriment.

C. CAUSES OF ACTION

Intrusion upon seclusion

39. Credit information is private and highly sensitive financial information. Rogers was authorized to collect the Class Members' credit information only to assess credit

worthiness when opening a post-paid service account, and to store it for nor longer than reasonably necessary for its intended purpose.

40. By repeatedly collecting, using, disclosing, or storing the Plaintiff's and the Class Members' credit information for unauthorized purposes, and without their knowledge or consent, Rogers intentionally intruded upon their privacy in a manner that would be highly offensive to a reasonable person.
41. Rogers knew or ought to have known that the unauthorized and surreptitious collection of credit information was likely to cause distress, humiliation and anguish to the Class Members once the intrusion was discovered.
42. There was no lawful justification for Rogers' deliberate and significant invasions of the Plaintiff's and Class Members' personal privacy.

Breach of confidence

43. The Plaintiff and the Class Members' credit information is highly sensitive information that was to be provided to Rogers Communications for a limited purpose - to assess credit worthiness when opening a post-paid service account.
44. The Plaintiff and the Class Members, to the extent that they expressly consented to allowing Rogers Communications to access their credit information at all, did so for the specific purpose of establishing eligibility to purchase a product or service that they sought to obtain. They did not consent to credit checks for Rogers' subsequent marketing or promotional purposes or to evaluate eligibility for other Rogers' products and services, including Rogers Bank credit cards.

45. By using the Plaintiff's and the Class Members' credit information for marketing or promotional purposes and to identify Class Members to whom Rogers Bank would then issue an unsolicited Rogers Bank credit card, including sharing the credit information with third parties, Rogers misused their personal credit information resulting in a breach of the Plaintiff's and the Class Members' right to privacy.

Breach of contract

46. The contractual relationship between Rogers Communications and its customers is set out in various Rogers Communications service agreements, including its End User Agreement, which incorporates by reference Rogers Communications' Terms of Service, which in turn incorporates by reference the Rogers Privacy Policy (collectively, the "Contract").
47. In particular, the Rogers Privacy Policy applies to all personal information that Rogers collects, uses, or discloses about its customers, including information gathered from third parties such as credit bureaus.
48. The Contract is a standard-form contract of adhesion and its terms are unilaterally imposed by Rogers Communications on its customers. The Class Members had no ability to negotiate or alter the terms of the Contract and the Contract must be interpreted *contra proferentem* in favour of the Plaintiff and the Class Members.
49. The Plaintiff and the Class Members entered into the Contract with Rogers Communications for the purchase and provision of Rogers Communications' services. As a term of the Contract, the Class Members agreed to permit Rogers Communications

to collect their personal credit information only for purposes of determining their eligibility to purchase specified products or services requested by the Plaintiff or Class Members. In exchange, it was an express or implied term of the Contract that Rogers Communications would handle the Class Members' personal information, including their credit information, in accordance with applicable privacy standards, including legislative standards and the Rogers Privacy Policy.

50. The Contract contains the following express or implied terms:

- a. Rogers Communications would seek express consent for the performance of a credit check;
- b. Rogers Communications would seek express consent before performing a credit check for marketing purposes;
- c. Rogers Communications would obtain consent prior to collecting personal information from a third party like a credit agency or bureau;
- d. the purposes of personal information collection would always be identified prior to, or at the time of, collection;
- e. personal information disclosed to a credit reporting agency would only be for the purposes of account management, the collection of past due bills on an account, or to evaluate creditworthiness;
- f. Rogers Communications would retain personal information only for as long as necessary to fulfill the purpose for which it was collected;

- g. personal information that was no longer required for the purposes for which it was collected would be destroyed or de-identified; and
- h. Rogers Communications would comply with all relevant statutory obligations regarding the collection, use, storage, disclosure and deletion of each Class Member's personal information; and
- i. Rogers Communications would not conduct credit checks on its customers for the purpose of sharing that information with Rogers Bank without first obtaining the informed consent of the Plaintiff or the Class Members; and,
- j. Rogers Communications would not conduct credit checks on its customers for the purposes of providing that information to Rogers Bank so that Rogers Bank could assess whether to offer a pre-approved Rogers Bank credit card to the Class Member, or so that Rogers Bank could use that information to issue an unsolicited Rogers Bank credit card to the Sub-Class Members.

51. As an entity entities that collects, uses, or discloses personal information in the course of commercial activities carried on in Canada, Rogers must comply with the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, including Schedule 1 thereof, which requires, amongst other obligations, the following of Rogers:

- a. Section 4.1 - that Rogers be responsible and accountable for personal information and that it implement policies and practices to give effect to the principles concerning the protection of personal information;

- b. Section 4.2 - that Rogers identify the purposes for which personal information was collected at or before the time the information was collected;
- c. Section 4.3 - that Rogers ensure the knowledge and consent of the Plaintiff and Class Members for the collection, use, or disclosure of their personal information and that Rogers make a reasonable effort to ensure that the Plaintiff and Class Members were advised of the purposes for which information was collected;
- d. Section 4.3.2 - that the Plaintiff and the Class Members' consent to the use of their personal information must be "meaningful", which requires that "the purposes must be stated in such a manner that the individual can reasonably understand how the information will be used or disclosed";
- e. Section 4.3.3 - that Rogers not require the Class Members to "consent to the collection, use, or disclosure of information beyond that required to fulfill the explicitly specified, and legitimate purpose" as a condition of the supply of a product or service;
- f. Section 4.3.4 - that Rogers must take into account the sensitivity of the information in determining the form of consent to use, whereby "some information (for example, medical records and income records) is almost always considered to be sensitive" and "any information can be sensitive, depending on context";

- g. Section 4.3.6 - that Rogers seek the Plaintiff and the Class Members' express consent when the personal information collected is likely to be considered sensitive;
 - h. Section 4.4 - that Rogers limits both the amount and type of information collected to that which is necessary to fulfill the purposes identified and that Rogers collect information by fair and lawful means;
 - i. Section 4.5 – that Rogers is prohibited from using or disclosing the Plaintiff and the Class Members' personal information for any purposes other than those for which it was collected, except with the Plaintiff or the Class Members' explicit and informed consent; and
 - j. Section 4.8 – that Rogers make readily available information about its policies and practices relating to the management of the Plaintiff's and the Class Members' personal information.
52. Rogers' contractual obligations are also informed by, and limited by, the provisions of the *Consumer Reporting Act*, which requires, amongst other things:
- a. Section 8(2) – that Rogers refrain from “knowingly obtain[ing] any information from the files of a consumer reporting agency respecting a consumer” except in specifically enumerated situations (which are not applicable here); and
 - b. Section 10(2) – that Rogers refrain from requesting or obtaining a consumer report containing personal information about a Class Member unless it first gives written notice to the Class Member.

53. At all material times, Rogers Bank was (and is) obliged to comply with the *Negative Option Billing Regulations*, SOR/2012-23 under, *inter alia* the *Bank Act*, S.C., 1991, c. 46, and in particular section three thereof, under which Rogers Bank was obliged to obtain the Sub-Class Members' express consent before providing them with a new primary financial or optional product or service, including Rogers Bank credit cards.
54. Rogers Communications breached the terms of the Contract by:
- a. Collecting the credit information of the Plaintiff and Class Members without their consent;
 - b. In the event that consent was provided to collect the Plaintiff and Class Members' credit information, such information was obtained for purposes not disclosed to the Plaintiff and Class Members and therefore was collected without their informed consent;
 - c. Using the Plaintiff and the Class Members' credit information for marketing and promotional purposes or to evaluate eligibility for other Rogers' products and services without their consent;
 - d. Providing the Plaintiff's and the Class Members' credit information to Rogers Bank so that Rogers Bank could use the credit information for marketing and promotional purposes, and/or to evaluate eligibility for and/or to issue Rogers Bank credit cards without their consent;

- e. Providing the Plaintiff's and the Class Members' credit information to third parties, including third party analytics, marketing, promotional, and sales entities, without the Plaintiff's and the Class Members' consent; and
- f. Otherwise using the credit information to promote and market Rogers' business enterprises for its own enrichment without regard to the Plaintiff's and the Class Members' privacy interests and rights.

Québec

55. On behalf of the Class Members resident in the province of Québec, if any, the Plaintiff pleads that Rogers breached arts. 35-37 of the *Civil Code of Quebec* ("CCQ") by failing to obtain the consent of those Class Members to collect and disclose their personal information and violating their right to privacy without lawful authorization.

56. As a result of the breaches of the CCQ, the Class Members resident in Québec are entitled to moral and material damages pursuant to arts. 1457 and 1463-1464 of the CCQ.

57. In addition, Class Members resident in Québec are entitled to injunctive relief and punitive damages pursuant to art. 49 of the Québec *Charter of Human Rights and Freedoms*.

D. REMEDIES

58. The Plaintiff and the Class Members have all suffered damages as a direct result of Rogers' wrongful conduct including, but not limited to:

—

- a. loss of their right to privacy in respect of their personal information;
 - b. loss of privacy and injury to dignity;
 - c. humiliation, distress, upset, anxiety, embarrassment and anguish arising from the unauthorized collection, usage, storage and/or disclosure of their personal credit information without their knowledge or consent;
 - d. uncertainty surrounding the nature and scope of the unauthorized credit checks;
 - e. uncertainty surrounding the nature and scope of the disclosure of their personal credit information; ~~and~~
 - f. lost or wasted time, frustration, and inconvenience in responding to the unauthorized credit checks,
 - g. impairment of the Sub-Class Members' credit ratings arising from the issuance of the Rogers Bank credit cards, as well as lost or wasted time, frustration, and inconvenience in rejecting or cancelling the unsolicited credit card and correcting credit score information.
59. Some or all of the damages set out above, including moral damages for intrusion upon seclusion, and nominal damages for breach of contract are common to the Class or the Sub-Class and may be assessed in the aggregate at a common issues trial.
60. Punitive damages are justified in these circumstances as such an award is rationally connected to the goals of denunciation, deterrence, and retribution:

- a. Rogers knew or ought to have known that its actions and omissions would have a significant adverse effect on all Class Members;
- b. Rogers' conduct was high-handed, reckless, without care, deliberate, and in disregard of the privacy rights of the Plaintiff and Class Members;
- c. Rogers Bank intentionally breached s. 3 Negative Option Billing Regulation for the purpose of enriching itself; and
- d. Rogers prioritized its own corporate interests and profit-making over the privacy, security and dignity of the Plaintiff and the Class Members.

E. RELEVANT STATUTES

61. The Plaintiff pleads and relies upon the following statutes, including any associated regulations:
 - a. *Courts of Justice Act*, RSO 1990, c C.43;
 - b. *Consumer Reporting Act*, RSO 1990, c C.33;
 - c. *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5;
 - d. *Personal Information Protection Act*, SA 2003, c P-6.5;
 - e. ~~*Personal Information Protection Act*, SBC 2003, c 63;~~
 - f. *Act Respecting the Protection of Personal Information in the Private Sector*, CQLR, c P-39.1;

- g. *Privacy Act*, RSBC 1996, c 373;
- h. ~~*Privacy Act*, CCSM, c P125;~~
- i. ~~*Privacy Act*, RSS 1978, c P 24;~~
- j. *Civil Code of Quebec*, L.R.Q., c. C-1991, art. 35-40, ~~and *Act Respecting the Protection of Personal Information in the Private Sector*, R.S.Q., c. P-39.1;~~ and
- k. ~~*Privacy Act*, RSNL 1990, c P 22;~~
- l. *Negative Option Billing Regulations*, SOR/2012-23.

62. The Plaintiff pleads and relies on section 10 of the *Québec Consumer Protection Act*, c. P-40.1, which provides that “[a]ny stipulation whereby a merchant is liberated from the consequences of his own act or the act of his representative is prohibited”. This section renders unenforceable any provision in the Contract purporting to limit or exclude Rogers’ liability as against class members whose Contracts are governed by the *Consumer Protection Act*, P-40.1.

F. PLACE OF TRIAL

63. The Plaintiff proposes that this action be tried at the City of Toronto.

October 26, 2021

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DAVID TRUEMAN -and- ROGERS COMMUNICATIONS CANADA INC. et al.
Plaintiff Defendants

Court File No.: CV-21-00670953-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT TORONTO

FIFTH AMENDED STATEMENT OF CLAIM

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