

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Seidel v. Telus Communications Inc.*,
2025 BCSC 1258

Date: 20250227
Docket: L050143
Registry: Vancouver

Between:

Michelle Seidel

Plaintiff

And

Telus Communications Inc.

Defendant

Before: The Honourable Mr. Justice D.M. Masuhara

Oral Reasons for Judgment

(In Chambers)

Counsel for the Plaintiff:

B.M. Lemer
A. Grant

Counsel for the Defendant:

A. Borrell

Place and Date of Hearing:

Vancouver, B.C.
October 21, 2024
January 17, 2025

Place and Date of Judgment:

Vancouver, B.C.
February 27, 2025

[1] **THE COURT:** This ruling deals with an application for approval of the settlement of this class proceeding, as well as approval of plaintiff's counsel's fees and disbursements.

[2] This action was started in 2005 and I have been the case management judge from that same year. This case has had several contested hearings in this Court and has been dealt with on appeals and has included a decision from the

Supreme Court of Canada. It is fair to say this case has been seriously litigated over those many years. There is also a companion or parallel case in Alberta which is being managed by Associate Chief Justice Nielsen in the Court of King's Bench of Alberta.

[3] The subject settlement includes both of those proceedings and hinges upon approval from both courts.

[4] In brief, the plaintiff's allegation contained in the pleadings against Telus Communications Inc. ("Telus") arise out of an assertion of billing its customers in relation to incoming calls on their cellular phone service more than it said it would.

[5] More specifically, the plaintiff says that rather than charging customers for the time they physically spent talking on the phone, that is from the time the consumer answers the call, Telus actually charged customers without notice also for the time needed by the communications network to connect the call and ringing time. This is called a system set-up time and involved a considerable time that would be billed.

[6] This settlement does not lead to any admission of liability on the part of Telus. The settlement to this proceeding was made in January 2020, which was facilitated by a mediator, former Justice Oppal. It is not clear why the application for approval was not brought forward earlier. The explanation is that the COVID-19 pandemic had a negative effect on the matter being brought forward.

[7] In terms of the settlement it is described in the written submissions as follows:

- a) Telus will fund up to \$3,700,000 for the redemption of vouchers, cy-près payments, class counsel fees, disbursements, and applicable taxes. Upon application, counsel issue to each class member a \$10 voucher which can be redeemed at Telus corporate stores for in-store purchases of accessories and post-paid devices up to \$3,000,700 net of cy-près payments of \$125,000, class action counsel disbursements up to a maximum of \$100,000, and applicable taxes on such fees and disbursements.
- b) A cy-près payment of \$125,000 payable in proportion to the estimated size of each of the BC and Alberta class actions to the BC Technology Core Learning Society and Alberta Computers for Schools. In the event that the value of the total issued vouchers is less than \$700,000, an additional cy-près distribution equal to the difference between \$700,000 and the value of the vouchers issued will be made payable in

proportion to the estimated size of each of the BC and Alberta class actions to the said charities.

- c) Class counsel's disbursements of \$100,000 tax on plaintiff counsel's fees, mediation expenses, and administration expenses will be paid by Telus in addition to the amounts set out above.
- d) Class counsel's fees will be kept at 30 per cent of \$3,000,700. However, as I have already mentioned, the class counsel fees being sought for approval is \$500,000, and other ancillary provisions which I do not believe I need to go through.

[8] The materials describe the reasonableness of the settlement in terms of fairness and best interest to the class, and I am satisfied that the terms are fair and reasonable and in the best interests of the class and are consistent with the authorities such as *Jeffery v. Nortel Networks*, 2007 BCSC 69, *Reid v. Ford Motor Company*, 2006 BCSC 1454, and *Ford v. F. Hoffman-La Roche Ltd.*, 74 OR (3d) 758.

[9] Turning then to fees and disbursements. I am again satisfied with the fees of \$500,000, which is about 13 percent of the settlement amount, as well as counsel waiving the interest on the disbursements, which are far less than the 30 percent contracted for under the retainer agreement. I find that reflects, as counsel indicated, various factors that have led to the reduction from the 30 percent.

[10] I also note that counsel have advised they will fund on social media the availability of the funds to class members. Accordingly, the fees will also be approved as well as disbursements.

[11] I note that counsel will have to return once the results from the voucher program are known, and I will expect counsel to provide full details regarding how that program performed relative to the anticipation as expressed to the court.

[12] That concludes my ruling.

"Masuhara J."