

November 22, 2023

Ms. Goldie Ghamari  
Chair  
Standing Committee on Justice Policy  
Whitney Block  
Room 1405  
99 Wellesley Street W  
Toronto, ON

**Via online submission form**

**Re: Committee study of Bill 142, *Better for Consumers, Better for Businesses Act, 2023***

Dear Chair,

On behalf of the Canadian Telecommunications Association, please find enclosed our recommendations regarding Bill 142, *Better for Consumers, Better for Businesses Act, 2023*.

Sincerely,

*[Original Signed by Eric Smith]*

Eric Smith  
Senior Vice President  
Canadian Telecommunications Association

**RECOMMENDATIONS FROM THE CANADIAN TELECOMMUNICATIONS ASSOCIATION  
ON BILL 142,**

***AN ACT TO ENACT THE CONSUMER PROTECTION ACT, 2023, TO AMEND THE  
CONSUMER REPORTING ACT AND TO AMEND OR REPEAL VARIOUS OTHER ACTS  
(BETTER FOR CONSUMERS, BETTER FOR BUSINESSES ACT, 2023)***

**A. INTRODUCTION**

1. The Canadian Telecommunications Association appreciates the opportunity to provide its recommendations on Bill 142, *An Act to enact the Consumer Protection Act, 2023, to amend the Consumer Reporting Act and to amend or repeal various other Acts* (Bill 142 or the Act).
2. We represent companies that provide services and products across the wired and wireless communications sector in Canada. Our primary role is to advocate on behalf of the sector and to inform Canadians about the contributions that the telecommunications sector makes to Canada, including innovation, economic growth, social well-being, and sustainability. We also facilitate industry initiatives, such as enhancing accessibility, charitable giving, and consumer protection.
3. While we appreciate the government's desire to implement a new Consumer Protection Act, we have a few concerns with the draft Bill 142, including items that are already addressed by the Canadian Radio-television Commission's (CRTC) Codes covering wireless, internet, and television services. To the extent that there is any inconsistency between our submission and that of one of our members, regarding the position of such member, the member's submission shall prevail.

**B. RECOMMENDATIONS**

**Recommendation #1: Service agreements that are covered by the CRTC Codes should be exempt from Bill 142. Failing this, Bill 142 and/or its regulations should expressly state that in the event of a conflict between the Act or its regulations and an applicable CRTC Code, the applicable Code shall prevail.**

4. While we represent members of the telecom industry in Canada, some of our members also provide television services. Where our discussion of Bill 142 below focuses on wireless service contracts, we note that most of the items identified as being covered by the Wireless Code<sup>1</sup> are also covered by the Internet Code<sup>2</sup> and the Television Service Provider Code<sup>3</sup> in the context of internet and television services, respectively (collectively, the Codes). As

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<sup>1</sup> <http://crtc.gc.ca/eng/phone/mobile/codesimpl.htm>

<sup>2</sup> <https://crtc.gc.ca/eng/internet/code.htm>

<sup>3</sup> <https://crtc.gc.ca/eng/television/services/codesimpl.htm>

such, we also ask the government to also consider these comments in the context of contracts for each of these services.

5. As the government acknowledged in its 2021 consultation paper on improving the Consumer Protect Act, existing federal CRTC regulations are in place that govern agreements between consumers and providers of telecommunications services. In 2013, the CRTC enacted the Wireless Code, with the purpose of making it easier for consumers to understand their wireless service contracts, establish consumer-friendly business practices for the wireless services industry, and contribute to a more dynamic wireless market. The Television Service Provide Code and the Internet Code were subsequently enacted and provide for similar consumer protections.
6. The Wireless Code applies to contracts between a service provider and an individual for the provision of wireless services, and includes, without limitation, regulations concerning the clarity of contracts, changes to contract terms and conditions, bill management, contract cancellation and extension. The Television Service Provider Code and the Internet Code address similar issues, as applicable.
7. The Wireless Code was the result of a lengthy comprehensive consultation process involving over 5,000 participants, including consumer advocacy groups, service providers, academia, hundreds of individual Canadians, the Ontario government and other provincial and territorial governments, and federal government agencies.<sup>4</sup> Since its inception, it has been subject to review and the CRTC has issued amendments and clarifications to ensure that the Code addresses new issues and any ambiguities are resolved.<sup>5</sup>

### ***The Need for Consistency Across Canada***

8. During the consultation process for the Wireless Code, the issue of potential conflicts between the Wireless Code and provincial consumer protection laws was a key topic of discussion. Most participants expressed the need for a national standard consistently applied across Canada. For example, in its submission to the CRTC, the Government of Alberta advocated for one national standard:

*6. The Code should be applied consistently across Canada: While recognizing that provinces and territories have a capacity and a responsibility to implement consumer protection measures, interveners in Telecom Notice of consultation CRTC2012-206 called for a single set of standards for certain aspects of retail wireless service contracts across Canada, in order to avoid consumer confusion, as well as increased compliance costs and inefficiencies for the industry<sup>6</sup>.*

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<sup>4</sup> The Internet Code was the result of a similar public consultation launched in 2018 – <https://crtc.gc.ca/eng/archive/2018/2018-422.htm>

<sup>5</sup> <https://crtc.gc.ca/eng/phone/mobile/decisions.htm>

<sup>6</sup> <https://services.crtc.gc.ca/pub/DocWebBroker/OpenDocument.aspx?DMID=1812575>

9. During its appearance at the public hearings before the CRTC, the Government of Alberta further stated:

*“I think it’s obvious that having 10 provinces with varying legislation could be a regulatory nightmare for consumers and wireless service providers. A national solution is really the only way to go on this. It will really ensure consistency across all provinces and territories and best serve consumers and service providers (...) As someone who is advocating for Alberta consumers, current and future, a national Code is the most appropriate solution to address the challenges many are experiencing”<sup>7</sup>.*

10. The CRTC agreed and in its original Wireless Code determined that the Wireless Code would apply to all Canadian consumers of wireless services equally, regardless of any consumer protection legislation in force in the provinces or territories. Further it stated that the Wireless Code should take precedence over valid provincial laws in the cases of direct conflict.

11. In deference to the Wireless Code, Nova Scotia, which had provisions in its consumer protection legislation dealing with wireless service contracts prior to the Wireless Code, repealed such provisions after the Wireless Code became applicable to all wireless service contracts with individuals and small businesses. In addition, the Manitoba government passed legislation in 2021 that repealed its *Cell Phone Contracts Regulation*<sup>8</sup> while in 2022 the government of Newfoundland and Labrador also repealed provisions in its *Consumer Protection and Business Practices Act* that dealt with telecommunications contracts.<sup>9</sup>

12. Of special relevance to this consultation, in October 2019, the Ontario government repealed the *Wireless Services Agreement Act, 2013*<sup>10</sup>, a law that was specifically designed, in the context of wireless services contracts, to address matters touched upon in Bill 142, such as clarity of contract and changing contract terms. When asked to comment on the reason for repealing this legislation, a spokesperson for the then Minister of Government and Consumer Services stated:

*“By repealing it, we are harmonizing with federal regulations, which have made the original provincial Act redundant,” Woolley said. “Repealing the provincial Wireless Services Agreements Act frees businesses from burdensome duplicate regulations and provides consumers with clarity on their wireless service rights.”<sup>11</sup>*

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<sup>7</sup> <https://services.crtc.gc.ca/pub/DocWebBroker/OpenDocument.aspx?DMID=1844949>

<sup>8</sup> <https://web2.gov.mb.ca/bills/42-3/b030e.php>

<sup>9</sup> Bill 13 - <https://www.assembly.nl.ca/HouseBusiness/Bills/ga50session2/bill2213.htm> - Royal Assent November 9, 2022.

<sup>10</sup> <https://www.ontario.ca/page/consumer-protection-rules-wireless-service-providers>

<sup>11</sup> <https://bit.ly/3qK5jEH>

13. The arguments made before the CRTC and the above 2019 statement from the Ontario government hold true today. Consistency across Canada is in the best interests of consumers and service providers. Inconsistency creates confusion for consumers, inefficiencies and increased compliance costs.
14. Furthermore, the imposition of one set of rules across the country has unquestionably yielded results. In its 2017 review of the Wireless Code, the CRTC concluded that the Wireless Code is on its way to achieving its objectives. Specifically, since the Code was introduced<sup>12</sup>:
- Wireless complaints have decreased;
  - Bill shock has decreased;
  - Unilateral changes to contract terms have decreased; and
  - Ease of switching providers has increased.
15. While we do not dispute the Ontario government's authority to enact legislation in the area of consumer protection, the government should not impose obligations on federally regulated telecommunications service providers that are inconsistent with those found in the CRTC Codes. As the Ontario government has previously acknowledged, having a provincial set of regulations that are duplicative and, in some cases, inconsistent with federal regulations that apply across the country does not serve the best interests of Ontarians.
- Recommendation #2: Without limiting recommendation #1, service agreements that are covered by the CRTC Codes should be exempt from disclosure and contract delivery rules under Bill 142. Absent such exemption, Bill 142 and/or its regulations should expressly state that in the event of a conflict between the Act and any of the Codes, the latter shall prevail.**
16. Sections 17 and 18 of Bill 142 provide for disclosure and other requirements regarding entering into consumer contracts. While it appears that the details of such requirements will be set out in yet to be established regulations, it is important that the government recognize that the telecom industry is already bound by detailed and specific disclosure and other contractual requirements set out in the CRTC Codes.
17. The Codes sets forth detailed obligations regarding contract clarity and disclosure that are specifically tailored to address the key elements of service agreements for the specific type of service being provided. These include an obligation to use plain language, clearly set out key provisions, and provide a critical information summary that describes the most important elements of the contract. The Wireless Code further requires service providers to alert subscribers when they have entered jurisdictions where additional fees, such as roaming fees, apply.
18. While we agree that there should be clarity regarding the rights and obligations of consumers and businesses under service agreements, it is important to have one set of harmonized set of regulations across the country regarding agreements for telecom

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<sup>12</sup> <https://crtc.gc.ca/eng/archive/2017/2017-200.htm>

services. This not only lessens the compliance costs for businesses, but it also provides consumers with clarity regarding their rights. Having both provincial and federal contract disclosure and delivery rules for telecom service agreements does not provide clarity, benefit consumers, or reduce the operational burden for businesses.

**Recommendation #3: Without limiting recommendation #1, provisions dealing amendment and continuation of contracts in Bill 142 should not apply to service agreements that are covered by the CRTC Codes. Failing this, such provisions should apply only to service agreements entered into after the in-force date of the new regulations.**

19. Section 19(2) of Bill 142 states that consumer contracts may not be amended or continued except as otherwise provided for in the regulations. The Codes address the issue of contract amendment and continuation in detail and in a manner that is specifically tailored to the type of service being provided. As the Ontario government stated when it repealed the *Wireless Services Agreement Act*, having duplicate layers of legislation governing the same subject matter creates unnecessary burdens on businesses and confusion for consumers. The government should avoid such duplication and confusion by ensuring that the amendment and continuation of contracts provisions do not apply to contracts that are covered by the Codes.
20. As the proposed new regulations have not been made available, we cannot provide comments to the specifics of what may be contained in the regulations. However, we note that in the government's 2023 consultation on proposed amendments to the Consumer Protection Act we provided comments regarding government proposals, which we repeat herein.
21. Due to the potential for conflict between the proposed contract amendment rules and the Codes, federally-regulated telecommunications service providers and broadcasting undertakings that are subject to Codes should be exempted from the application of any provisions of the Act dealing with changes to or extensions of contracts. Absent such exemption, it is important that the limitations on changes and extensions of contracts be consistent with Section D of the Wireless Code (and similar provisions in other Codes), including the duration of notice periods and the express recognition that, in the case of wireless service agreements, the express requirements for changes that "increase the consumer's obligations or reduce the business' obligations" are limited to the "key terms" as defined in the Wireless Code (or similar provisions in other Codes) during the fixed-term service commitment period. Failing that, the Act should expressly state that in the event of a conflict between the Act and any of the Codes, the applicable Code takes precedence.
22. Section D of the Wireless Code provides that, in the case of a postpaid wireless contract, the service provider cannot, during the fixed- term of the contract, unilaterally change any of the enumerated "key terms", such as services to be provided, data allowance, minimum monthly charges, and cancellation fees, without informed and express consent. The consumer is entitled to refuse such a change. An exception to the consent requirement is if the change benefits the consumer by either reducing the rate for a single service or increasing the customer's usage allowance for a single service. Any other term of the contract can be

changed provided the account holder is given at least 30 calendar days' notice before making such changes.

23. Section D of Wireless Code is specifically designed to strike the appropriate balance between providing consumers with certainty regarding material elements of a services agreement and giving service providers the flexibility to make necessary non-material amendments to service agreements upon advance notice. While the government's proposal in the 2023 consultation on amendments to the CPA had similarities to Section D of the Wireless Code, they are not the same. In particular, the Wireless Code expressly defines what are considered "key terms" that cannot be amended without consent. Furthermore, while the Wireless Code stipulates that consumers should receive advance notice of changes to non-key terms, it recognizes that service providers should be able to amend non-key terms without giving the customer the right to terminate the contract. This balance was carefully considered and tailored to both protect consumers and allow service providers to make some changes to contracts without impacting the commitment period of a fixed-term contract.
24. While the government's 2023 consultation on amendments to the CPA proposal also allows for a change to terms upon advance notice, and without consent, if the changes do not result in an "increase to the consumer's obligations or reduction in the business' obligations", it leaves room for uncertainty as to whether a specific change to a contract will result in an increase to the consumer's obligations or reduce the business' obligations.
25. While the Wireless Code requires service agreements to set out the minimum monthly charge for the services in the contract as well as the price for any optional services selected by the customer at the time of entering the contract, it does not require the contract to contain the prices for other optional services or pay-per-use services. Instead, it need only indicate where the customer can find prices for these services.
26. This distinction is important as the prices for some optional and pay-per-use services, such as roaming or long-distance call fees, can change during a fixed-term contract, and these changes are not ones for which the CRTC requires advance notice or customer consent. Instead, after careful consideration and consultation, the CRTC determined that advance notice is not required and that advising customers where they can find information for the then-current prices of optional and pay-per-use services strikes the appropriate balance between consumer protection and the practicalities of providing wireless services.
27. Requiring wireless service providers, as the government's 2023 consultation on amendments to the CPA proposal suggests, to contact customers whenever there is an increase in the rate for a long-distance call to one of over a hundred countries, or some other optional or pay-per-use service is unreasonable, and giving customers the right to terminate their fixed-term agreement because of an increase to an optional or pay-per-service that they may, or may not, use is inequitable. Unlike the government proposal, the Wireless Code provides clarity for both consumers and businesses on the issue of changes to wireless services agreements.

**Recommendation #4: Remove paragraph 14(1)(d) from Bill 142**

28. Paragraph 14(1)(d) of Bill 142 prohibits contract terms that place monetary limits on the amount of any claim made by a consumer for breach of a condition or warranty under the *Sale of Goods Act* or any deemed condition or warranty under the Act.
29. In its 2021 consultation paper the government stated that its proposal to forbid contract terms that limit the dollar value of claims for breach of implied warranties and condition “is not about exposing businesses to increased or unlimited liability.” Yet paragraph 14(1)(d) does exactly that.
30. Paragraph 14(1)(d) increases the potential liability of all businesses and will result in an increase in the cost of doing business. Without the ability to limit their liability, businesses may have no option but to increase the prices they charge consumers to account for these increased expenses.
31. Paragraph 14(1)(d) is particularly concerning for the telecom sector. Section 9(1) of the current CPA (and Section 13 of Bill 142) imposes an implied warranty that services “are of a reasonably acceptable quality.” While this may be a simple measure for the provision of some services, the quality of telecom services is conditional upon many factors that are outside the control of the service provider, including, without limitation, physical obstructions, geography, environmental conditions, distances between antennas and devices, interference from other wireless services, signal sharing, spectrum capacity limits, network loads, and end user device specifications and compatibility. In addition, as mobile wireless services are designed to be used while on the move, the impact of these outside factors will constantly change and, at any given time, the quality of service received by wireless subscribers will vary.
32. If service providers are unable to account for these variables by limiting their liability for an alleged breach of implied warranty or conditions, they may have no other option than to increase service fees for consumers to account for these increased expenses. It is also possible that some service providers, in an effort to limit potential liability, will elect to stop providing services in areas that are particularly hard to serve and where the quality of services varies greatly as a result of outside factors such as those listed above.

**Recommendation #5: Paragraph 69(2)(b) of Bill 142 should be deleted.**

33. Paragraph 69(2)(b) of Bill 142 provides that if a consumer successfully brings a claim for a refund, the court shall order that the consumer receives three times the amount of the refund.
34. Increasing the amount that a consumer may claim for a refund claim will have the unintended effect of diverting consumer complaints from the independent agency established by the federal government to deal with customer complaints to the already overcrowded provincial court system.
35. In 2007, the federal government ordered the CRTC to create an independent, industry-funded agency to resolve complaints from consumers and small business retail telecom consumer. The resulting agency, the Commission for Complaints for Telecom-television Services (CCTS), investigates and attempts to resolve consumer complaints at no charge to the



consumer. For unresolved complaints, the CCTS can impose a wide array of remedies, including requiring a service provider to provide a customer with monetary compensation that is not subject to any limitations of liability contained in the service agreement.

36. The CCTS also publishes an annual and mid-year report of complaints, which includes identifying the number of complaints made against named service providers. The knowledge that the number of complaints against it will be published, together with the potential of having to pay compensation if found at fault, act as deterrents to wrongful behaviour and motivate service providers to resolve issues with customers even if the service provider is not clearly at fault.
37. The CCTS was established to provide consumers with an efficient and less-costly alternative to pursuing their complaint in court. It also helps lessen the burden on the province's court system. Increasing the amount that a consumer may claim for a refund claim does not give the consumer any greater potential compensation than pursuing their complaint through the CCTS. However, it may unintentionally drive more complaints to the court system. This would not benefit the consumer, taxpayers or service providers.
38. In addition to the CCTS resolution process, the CPA already includes administrative monetary penalties that may be levied against a business if it fails to comply with its obligations under the Act, including refund obligations.

**Recommendation #6: Bill 142 and/or its regulations should include a transition period of no less than twelve months from the in-force date of the yet to be proposed regulations.**

39. Many of the provision of Bill 142, if enacted, would require operational and computer system changes for businesses, including telecom service providers. This operational burden and expense would be greatly increased if changes are required to the millions of existing consumer contracts. As such, a transition period of no less than twelve months from the in-force date of the yet to be proposed regulations would be required to enable businesses to make the necessary changes to their contracts, operational processes, and computer systems.

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