

PREPAID WIRELESS SERVICES: protection from bill shock?

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The masculine is used generically in this report.

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Union des consommateurs, *Strength through Networking*

Union des consommateurs (UC) is a non-profit organization comprised of several ACEFs (*Associations coopératives d'économie familiale*), the *Association des consommateurs pour la qualité dans la construction* (ACQC), and individual members.

UC's mission is to represent and defend the rights of consumers, with special emphasis on the interests of low-income households. Its activities are based on values cherished by its members: solidarity, equity and social justice, and improving consumers' economic, social, political and environmental living conditions.

UC's structure enables it to maintain a broad vision of consumer issues while developing in-depth expertise in certain programming sectors, particularly via its research efforts on the emerging issues confronting consumers. Its activities, which are nation-wide in scope, are enriched and legitimated by its field work and the deep roots of its member associations in the community.

UC acts mainly at the national level, by representing the interests of consumers before political, regulatory or legal authorities or in public forums. Its priority issues, in terms of research, action and advocacy, include the following: household finances and money management, energy, issues related to telephone services, radio broadcasting, cable television and the Internet, public health, food and biotechnologies, financial products and services, business practices, and social and fiscal policy.

Lastly, in the context of market globalization, UC works in cooperation with several consumer groups in English Canada and abroad. It is a member of *Consumers International* (CI), an organization recognized by the United Nations.

1 Introduction

Cell phone companies are constantly diversifying their wireless service (WS) offers. To improve the consumer protection measures benefiting WS customers, the Canadian Radio-television and Telecommunications Commission (CRTC) adopted the Wireless Code in 2013. But the Code treats postpaid services and prepaid services differently: the obligations of wireless service providers (WSPs) are less substantial for prepaid services. Canadian consumers also benefit at times from provincial protections, mainly through consumer protection laws, but this is not always the case.

The purpose of this report is to study the issue of prepaid WS with regard to existing regulations, both in Canada and abroad, in order to determine whether Canadian consumers are well protected when entering into this type of contract.

Are consumer protections provided for wireless services adequate in the case of prepaid services, or are users of those services, who are often less wealthy, neglected? Are consumers adequately informed about the options of those services or about circumstances that could lead to bill shock? How well do prepaid WS providers meet their obligations?

Existing wireless regulations have focused on consumer information. We will thus examine the issue of information disclosure, which is likely to be regulated differently for prepaid services. We documented prepaid WS offers to determine how well they comply with current legal and regulatory frameworks, and to verify whether all practices are covered adequately by laws and regulations. The information thus gathered will enable us to issue recommendations for establishing, where necessary, a balance between consumer protection frameworks for prepaid as well as postpaid WS; and to ensure that all prepaid WS users, whether they purchase pay-per-use services or a monthly package, paid by recharge cards or direct debits, are sufficiently informed about all of their services' terms of use, so that they are aware of the risks and drawbacks of this way of using WS.

Our review of the literature draws a portrait of the wireless market and the share of prepaid services within it. We report the main complaints made by consumers of prepaid services. Then we study the protection measures currently established in provincial consumer protection laws and in the Canadian Wireless Code – particularly with regard to information requirements for prepaid WS contracts; we compare those requirements with those applicable to postpaid services. Afterward we verify how those protection measures are applied, in the field, by service providers.

On the basis of the WS providers' written documentation, we have drawn a portrait of all prepaid services offered in Canada. A field survey has enabled us to verify how contracts and terms are disclosed to consumers, and to what extent those contracts and terms comply with the current legal and regulatory framework.

2. Portrait of the Situation in Canada

What is the situation in Canada regarding wireless services (WS)? Who are the users of prepaid services? What are the pros and cons of this type of service? Are there specific complaints about it?

2.1 Definitions

The Canadian Radio-television and Telecommunications Commission's (CRTC) *Wireless Code*, which came into effect in December 2013, defines prepaid services as follows: "purchased in advance of use, such as the use of prepaid cards and pay-as-you-go services¹"; pay-per-use services are "Services that a customer can choose to add to their wireless plan, such as international roaming, which are typically measured and charged on a usage basis²." The Code defines postpaid services as "Wireless services that are paid for after use, usually upon receipt of a monthly bill³."

It should be noted that the only distinction the Code draws regarding those types of services is based on the *moment of payment*, depending on whether payment is charged before or after using WS, as suggested by the services' names.

The CRTC adopts a more cautious definition in its Monitoring Report 2014, by introducing the concept of a "significant portion" of the payment:

Canadians have a choice of either prepaid or postpaid wireless services. With prepaid services, a significant portion of services and usage is paid prior to consuming the services. With postpaid services, a significant portion of services and usage is paid subsequent to consuming the services⁴.

Despite the CRTC's reservation and the designation of those services, most wireless service providers (WSPs), as we will see below (section 3.4.5), require consumers to pay WS before using them, whether the latter are called prepaid or postpaid. There seems to be a certain inconsistency here between the Canadian Code and what actually occurs.

Because the CRTC assumes that prepaid services cannot entail bill shock (surprise charges), it waives many of the information requirements for postpaid services⁵.

¹ CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION (CRTC). *The Wireless Code, simplified*, CRTC, Ottawa, Ontario, Canada, 2013. [Online] http://www.crtc.gc.ca/eng/info_sht/t14.htm (page consulted on August 14, 2014).

² *Ibid.*

³ *Ibid.*

⁴ CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION (CRTC). *Communications Monitoring Report 2014*, CRTC, Ottawa, Ontario, Canada, October 2014, 320 pages. See p. 213. [Online] <http://www.crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2014/cmr.pdf> (document consulted on June 7, 2015).

⁵ CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION (CRTC). *Telecom Regulatory Policy CRTC 2013-271*, CRTC, Ottawa, Canada, June 3, 2013, 78 pages. See par. 22 and 46. [Online] <http://www.crtc.gc.ca/eng/archive/2013/2013-271.pdf> (document consulted on August 5, 2014).

2.2 Portrait of Wireless Service Usage

The CRTC's Communications Monitoring Report of 2013 reported that in 2012, "81% of Canadians subscribed to a wireless service, of which 52% used smartphones, tablets and/or other advanced handheld devices to communicate⁶."

The Monitoring Report of 2014 observes that wireless service usage is increasing and that migration to wireless services (to the detriment of wired services) is greater among households with an annual income of less than \$28,000:

In 2012, the percentage of Canadian households subscribing to wireline and/or wireless telephone declined from 99.3% to 99.2%. However, households have been gradually increasing their reliance on wireless services, as evidenced by the fact that households subscribing to local wireline services declined by 3.0%, from 86.5% in 2011 to 83.5% in 2012, while those subscribing to wireless service increased over those years by 2.0%, from 79.4% to 81.4%. This increased reliance on wireless services was more pronounced for households with annual incomes below \$28,000. The percentage of these households subscribing to wireline services decreased by 1.4%, from 76.0% in 2011 to 74.6% in 2012, while the percentage subscribing to wireless service increased over those years by 4.4%, from 57.3% to 61.7%⁷.

The same report points out that, according to Statistics Canada's Survey of Household Spending, "81.4% of Canadian households subscribed to wireless services and 17.8% abandoned wireline services in favour of wireless services⁸."

The revenue growth of wireless services was relatively constant between 2009 and 2012, in the 6 to 7% range, even though subscriber growth rates declined. In 2013, the wireless revenue growth rate declined to 3.5% and subscriber growth rates reached 2.3%, the lowest in 10 years⁹.

⁶ CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION (CRTC). *Communications Monitoring Report 2013*, CRTC, Ottawa, Ontario, Canada, September 2013, 262 pages. See p. ii. [Online] <http://www.crtc.gc.ca/eng/publications/reports/policymonitoring/2013/cm2013.pdf> (document consulted on August 4, 2014).

⁷ *Op. cit.*, Note 4, CRTC. *Communications Monitoring Report 2014*, p. ii.

⁸ *Id.*, p. 210.

See also: STATISTICS CANADA. *Survey of Household Spending*, Statistics Canada website, Ottawa, Canada, 2012, latest update January 29, 2014. [Online] <http://www.statcan.gc.ca/daily-quotidien/140129/dq140129a-eng.htm> (page consulted on June 7, 2015).

⁹ *Op. cit.*, Note 7, CRTC. *Monitoring Report 2014*, pp. 212 and 214 (see tables 5.5.1 and 5.5.4).

The number of Canadian WS subscribers increased by 1.8% to \$27.9 million from 2012 to 2013; WS are now accessible to 99% of Canadians¹⁰. However, the CRTC notes a greater decrease in prepaid WS subscribers since 2012:

Table 1A
% of postpaid subscribers as a percentage of WS subscribers

	2009	2010	2011	2012	2013
Postpaid	79	79	78	81	83

Source: CRTC data collection

Table 1B
Revenues by types of services¹¹

	2010	2011	2012	2013	CAGR 2010- 2013
Prepaid	1,042.9	978.2	877.3	790.4	-8.8%
<i>Annual growth</i>	<i>na</i>	-6.2%	-10.3%	-9.9%	
Postpaid	14,296.2	14,957.3	15,762.3	16,303.6	4.5%
<i>Annual growth</i>	<i>na</i>	4.6%	5.4%	3.4%	
Total	15,339.1	15,935.5	16,639.6	17,094.0	3.7%
<i>Annual growth</i>	<i>na</i>	3.9%	4.4%	2.7%	

Source: CRTC data collection

A total of 99.3% of Canadian households subscribe to a telephone service, whether wired or wireless. However, since 2009, the portion of households subscribing to a wireless service has been increasing. Alberta and British Columbia have the highest penetration rate of wireless services¹². The CRTC report points out another interesting fact: in 2010, 15.1% of Canadian households in the first quintile (i.e., households earning less than \$27,900 annually) subscribed only to a wireless telephone service. A year later, in 2011, that proportion grew to 21.3%, i.e., an impressive increase of 41.1%, the largest increase among all income quintiles studied. In total, there was an increase of 25.5% for all households taken together¹³.

¹⁰ *Id.*, p. 210.

¹¹ *Id.*, Tables 5.5.5, p. 214 and 5.5.3, p. 213.

¹² *Op. cit.*, Note 6, CRTC. *Monitoring Report 2013*, p. 24, table 2.2.3.

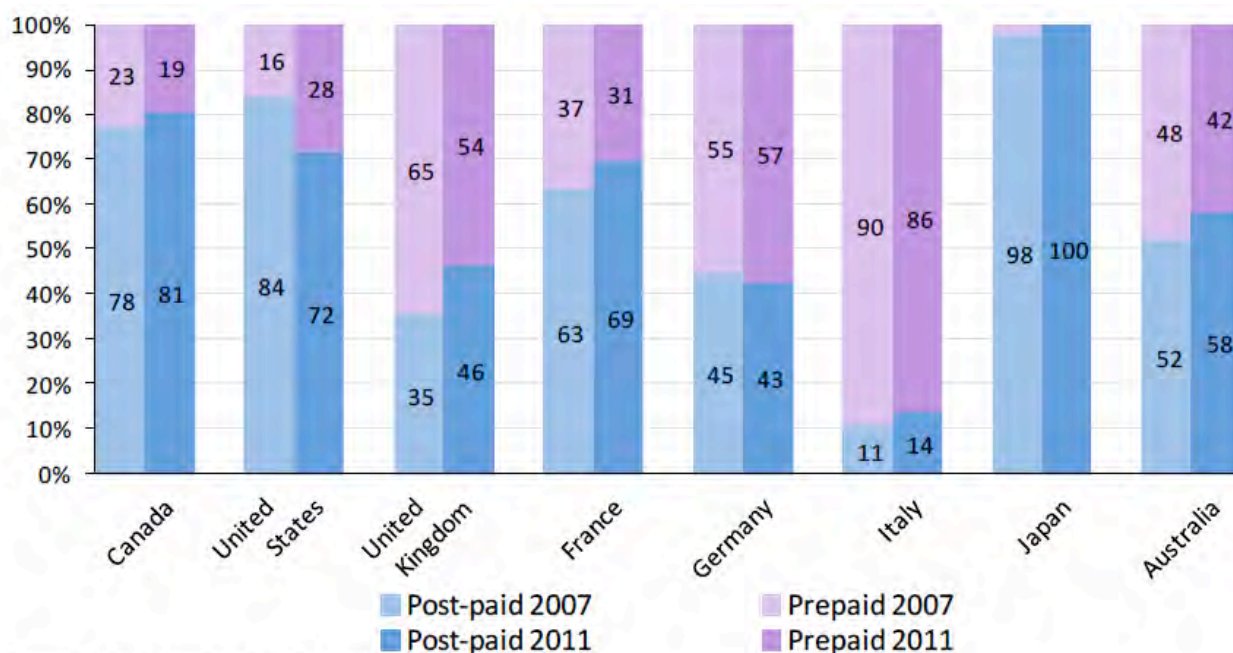
¹³ *Id.*, p. 26, table 2.2.4.

As the CRTC mentions in its 2014 report, no Statistics Canada data more recent than those used in the 2013 report were available as the 2014 report was being written.

The increase in connections per household for wireless services was 6% annually between 2008 and 2012, i.e., double the increase in other basic services¹⁴.

As for prepaid services worldwide, we can observe in the table below that in Canada, as almost everywhere else, that market was already decreasing in 2011, but increasing substantially in the United States.

Table 2
Proportion of postpaid and prepaid subscriptions, 2007 and 2011¹⁵



Source: Bank of America Merrill Lynch

¹⁴ *Id.*, p. 23, table 2.2.1.

¹⁵ **CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION (CRTC)**. *Communications Monitoring Report 2012*, CRTC, Ottawa, Ontario, Canada, September 5, 2012, 188 pages. See graphic 6.1.10, p. 209. [Online] <http://www.crtc.gc.ca/eng/publications/reports/policymonitoring/2012/cmr2012.pdf> (document consulted on June 7, 2015).

Indeed, the economic crisis and the rigidity of cell phone contracts reportedly motivated many low- and middle-income American consumers to adopt prepaid services¹⁶:

Total U.S. prepaid subscriptions shot past 100 million as of June, growing by 12 percent over the previous year, while traditional wireless telephone services with monthly bills remained flat. About 1 in 3 U.S. cellphone owners now opt to pay as they go.

[...]

The move toward prepaid cellphone service in the United States is starting to mimic the pattern that has long been the rule in the developing world. Prepaid accounts for 95 percent of cellphone handsets in India, 80 percent in Latin America, 70 percent in China and 65 percent in Europe, according to Chetan Sharma, a Washington state wireless consultant.

[...]

The U.S. switch to prepaid accelerated during the recession as nervous consumers decided not to get bogged down with lengthy contracts and phone charges they couldn't predict¹⁷.

It appears that Canadian WSPs are not very interested in selling prepaid WS, as we will see below when discussing the field survey we conducted for our study.

¹⁶ **PR NEWSWIRE**, *Experts: "Middle-Class Mainstreaming" Of Prepaid Wireless Could Push One Out Of Three U.S. Consumers To No-Contract Cell Phones In Next 12 Months*, PR Newswire, Washington, United States, July 19, 2012. [Online] <http://www.prnewswire.com/news-releases/experts--middle-class-mainstreaming-of-prepaid-wireless-could-push-one-out-of-three-us-consumers-to-no-contract-cell-phones-in-next-12-months-163059036.html> (page consulted on June 7, 2015).

¹⁷ **LIFSHER, Marc**. *More cellphone users switch to prepaid plans*, Phys.org, Douglas, United Kingdom, February 22, 2013. [Online] <http://phys.org/news/2013-02-cellphone-users-prepaid.html> (page consulted on June 7, 2015).

2.3 Pros and Cons of Prepaid Wireless Services

What are the pros and cons of prepaid WS compared to other types of services?

2.3.1 Advantages of Prepaid WS

The main advantage ascribed to prepaid services is their lower cost to consumers not expecting to have a high call time usage (or who primarily use text messages), since the cost per minute is often higher than for postpaid WS¹⁸.

Access to prepaid services requires (in almost all cases) prior acquisition of a device, because the offer to finance a device linked to a long-term service contract is not applicable to prepaid services, which are provided on a monthly or indeterminate basis. This is an advantage, to the extent that the user doesn't risk being charged a cancellation fee when he terminates the service.

Prepaid services also eliminate, at least in principle, the risk of bill shock, since the depletion of credits paid to the account in advance leads to the service being suspended; if no service can be used, nothing can be billed in addition to what has already been paid.

Some consumers can face many difficulties when trying to subscribe to postpaid services: consumers can be refused a subscription if their credit history is poor, or they may be charged a deposit that can be quite substantial. Prepaid services don't require the WSP to check credit histories. Consumers fearing that their credit history is problematic to a provider, or who prefer not to give a wireless service provider access to their credit information, view this as an advantage¹⁹.

2.3.2 Disadvantages of Prepaid WS

When a consumer who wants to use prepaid services doesn't already have a compatible (or unlocked) telephone, he must of course pay more initially by purchasing a device, or he must unlock his device if he already has one²⁰.

The price per minute is higher for prepaid services than for postpaid packages²¹. So payment per minute can be a disadvantage to consumers who expect to engage in long telephone conversations.

¹⁸ **CONSUMER MEASURES COMMITTEE.** *Cellphones*, in the Canadian Consumer Handbook, Office of Consumer Affairs, Industry Canada, Ottawa, Canada, no date. [Online] <http://www.consumerhandbook.ca/en/topics/products-and-services/cellphones> (page consulted on June 7, 2015).

¹⁹ **GRAMMOND, Stéphanie**, "Le cellulaire le moins cher en ville," La Presse, Montreal, Quebec, Canada, June 13, 2013. [Online] <http://affaires.lapresse.ca/opinions/chroniques/stephanie-grammond/201306/12/01-4660436-le-cellulaire-le-moins-cher-en-ville.php>, (page consulted on May 25, 2015).

²⁰ The cost of unlocking was most often around \$50 as these lines were being written. Activating an unlocked phone with a new provider will also require purchasing a new SIM card.

²¹ For example, with Koodo, the least expensive postpaid service (\$28 per month, including 200 calling minutes), costs 14 cents per minute, whereas the option of adding 25 minutes for \$5 corresponds to a usage of 20 cents per

Prepaid minutes must be used before the end of the established period, otherwise they will be lost, unless the consumer pays to add minutes²². The choice can be difficult: either add minutes (which may also be lost for lack of use or additional purchase) to unused ones, or lose the accumulated time (and invested funds).

Given that the telephone usually must be paid in full so the consumer can benefit from prepaid services, the devices purchased to that end are often less technologically advanced (e.g., for taking photos, less free applications, etc.), since they are less expensive.

The telephone number cannot be retained indefinitely after the services expire without renewal and the purchase of additional minutes; after a certain period of account inactivity, a new number will be attributed for a reactivation. This can obviously be problematic to some users.

minute. With TELUS, the least expensive postpaid package costs 23 cents per minute, whereas the rate for prepaid pay-per-use services is 50 cents per minute.

²² Expiry dates mainly vary between 1 month and 1 year, depending on the total for prepaid services purchased by the consumer.

2.4 Review of the Main Sources of Complaints

Among all the complaints received by the CCTS for 2013-2014, 60.8% belonged to the wireless sector (vs. 60.4% for 2012-2013). Of those complaints, billing errors and contractual disputes constituted the most frequent sources of consumer dissatisfaction (74.3% of total complaints – vs. 75.9% for 2012-2013)²³.

As for details of complaints across Canada, the CCTS presents this table:

Table 3
Complaint issues by province²⁴

Province	Billing	Contract Dispute	Service Delivery	Credit Management	Total
Alberta	45.34%	29.14%	20.09%	5.43%	100.00%
British Columbia	47.55%	30.96%	17.39%	4.10%	100.00%
Manitoba	45.53%	27.62%	22.76%	4.09%	100.00%
New Brunswick	50.44%	26.11%	19.91%	3.54%	100.00%
Newfoundland and Labrador	41.36%	34.03%	21.47%	3.14%	100.00%
Northwest Territories	75.00%	12.50%	12.50%	0.00%	100.00%
Nova Scotia	45.49%	32.58%	14.19%	7.74%	100.00%
Nunavut	0.00%	25.00%	75.00%	0.00%	100.00%
Ontario	41.74%	30.44%	24.07%	3.75%	100.00%
Prince Edward Island	56.51%	18.87%	20.75%	3.77%	100.00%
Quebec	51.86%	25.61%	19.44%	3.10%	100.00%
Saskatchewan	53.41%	22.49%	17.67%	6.43%	100.00%
Yukon Territory	29.03%	35.48%	32.26%	3.23%	100.00%

²³ **COMMISSIONER FOR COMPLAINTS FOR TELECOMMUNICATIONS SERVICES (CCTS)**. *Annual Report 2013-14*, CCTS, Ottawa, Ontario, Canada, 2014, 42 pages, See p. 10. [Online] <http://www.cts-CCTS.ca/wp-content/uploads/pdfs/en/2013-2014/CCTS-Annual-Report-2013-2014.pdf> (document consulted on June 7, 2015).

²⁴ *Ibid.*, p. 37.

With regard to precontractual disclosure about WS generally, the CCTS emphasized in its 2012-2013 report that it was receiving complaints from customers saying that they had been “misled” by their providers about service terms (principal terms were undisclosed before conclusion of the contract; the service’s price or the rebate applied by the provider to their account did not correspond to the agreement; the provider attempted to apply terms they did not believe they had agreed to; provisions were vague, ambiguous or not disclosed appropriately).

We also received many complaints from customers who claim to have inquired about specific Terms and Conditions surrounding such things as termination charges, the ability to cancel or temporarily suspend service, or when transferring responsibility for the service to another party. In many of these cases we found that the customer was not given proper information in response to their inquiry, causing a complaint that could have been avoided had the service provider fully informed the customer about the relevant Terms and Conditions. In our 2008-09, 2009-10, 2010-11 and 2011-12 Annual Reports, we stated that if service providers seek to bind a customer to their Terms and Conditions, they must ensure that the terms are clear, unambiguous and that the customer has clearly consented to them²⁵.

The CCTS concluded: “In 2012-13, the issue we call ‘non-disclosure of terms/misleading information about terms’ was raised almost 1,000 times and compared to last year, the number of times that this issue was raised increased by 73%²⁶.”

In its 2013-2014 report, the CCTS returned to that issue and was surprised that those complaints, rather than diminishing, had increased substantially:

Last year, we discussed the many issues that we categorize as “non-disclosure/misleading terms”. These are generally situations in which customers complain that they did not receive full, complete, or accurate information about key terms and conditions related to their services. Many felt that they had not received all of the necessary information about the price of their services, or that they were not properly informed about which services were included in their plan, and which services would incur additional fees. In 2012-13, we reported that these issues had increased by 73% compared to the previous year. We informed service providers that they needed to ensure that they properly inform their customers about all of the necessary information relating to their services and that customers needed to be vigilant about reviewing critical terms and conditions prior to agreeing to obtain service. So we were quite surprised that in 2013-14 we recorded a 74% increase in the number of times that this issue has been raised by customers²⁷.

The CCTS added that despite the entry into effect of the *Wireless Code*, “wireless services are still the subject of 72.4% of all of non-disclosure issues raised²⁸.”

In its 2012-2013 report, the CCTS mentioned that 21.5% of WS billing problems reported came from the prepaid sector²⁹. But the 2013-2014 report does not make this distinction, and only points out that billing errors remain the problem most frequently raised by consumers³⁰.

²⁵ **COMMISSIONER FOR COMPLAINTS FOR TELECOMMUNICATIONS SERVICES (CCTS)**. *Annual Report 2012-13*, CCTS, Ottawa, Ontario, Canada, 2013, 52 pages. See p. 13 [Online] <http://www.ccts-cprst.ca/wp-content/uploads/pdfs/en/2012-2013/CCTS-Annual-Report-2012-2013.pdf> (document consulted on August 4, 2014).

²⁶ *Ibid.*, p. 14.

²⁷ *Op. Cit.*, Note 23, **CCTS**, *Annual Report 2013-14*, p. 12.

²⁸ *Ibid.*

²⁹ *Op. Cit.*, Note 25, **CCTS**, *Annual Report 2012-13*, p. 34.

³⁰ *Op. Cit.*, Note 23, **CCTS**, *Annual Report 2013-14*, p. 12.

2.5 Overview of Provincial Protections

This subsection will highlight the provincial consumer protections of five Canadian provinces, regarding precontractual disclosure for purchases of wireless cell phone services: Quebec, Ontario, Manitoba, Nova Scotia, and Newfoundland and Labrador. We will focus on specific provisions that can apply to this type of contracts, and will present general aspects of the laws where applicable.

But before this study of provincial laws, it should be noted that the provinces studied have also distinctly regulated distance contracts, by imposing specific obligations on merchants for this type of contracts; those obligations also apply of course when consumers enter into a distance contract for wireless services. To avoid useless repetitions during our overview of each province's laws, and given that the laws specific to distance contracts have been harmonized, we will discuss those laws in a distinct section (section 2.4.6).

2.5.1 Quebec

In Quebec, although the *Consumer Protection Act*³¹ (CPA) does not specifically cover WS, it does specifically regulate two areas directly involving prepaid WS, i.e., prepaid card sales contracts as well as contracts involving sequential performance for a service provided at a distance.

CPA sections 187.1 to 187.5 regulate prepaid card sales, particularly the obligation to inform a consumer, before conclusion of a contract, about the terms for using such cards, and about the way he can verify his balance. That information may be entered on the card or be provided to the consumer otherwise, in writing. Under the implementing regulation³², prepaid WS are expressly excluded from the application of certain provisions applicable to prepaid cards: the prohibition against expiry dates and the requirement to refund the balance. As opposed to other prepaid cards, those of mobile phones can thus expire even though the full value of the card has not been used.

The CPA also specifically governs contracts involving sequential performance for a service provided at a distance (sec. 214.1 and fol.), which includes all WS contracts, whether postpaid or prepaid. For this type of contracts, the Act requires the contract between merchant and consumer to be in writing. The law also specifies the content of such writing, including: the names and addresses of the parties, the merchant's other contact information, a detailed description of services, the monthly rate/cost and the total amounts that must be paid each month, usage restrictions (such as the service's geographic boundaries), the contract's term and expiry date, the circumstances allowing the consumer to cancel or amend the contract, etc. (sec. 214.2 CPA). The CPA's implementation regulation states that this information must be

³¹ *Consumer Protection Act*, CQLR c P-40.1 (CPA), The Canadian Legal Information Institute, Ottawa, Ontario, Canada, no date. [Online] <http://www.canlii.org/en/qc/laws/stat/cqlr-c-p-40.1/100554/cqlr-c-p-40.1.html> (page consulted on May 4, 2015).

³² **PUBLICATIONS DU QUEBEC**, *Regulation respecting the application of the Consumer Protection Act*, ch. P-40.1, r. 3, sec. 79.1, Québec City, Quebec, Canada, update June 1, 2015. [Online] http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=3&file=/P_40_1/P40_1R3_A.HTM (page consulted on June 4, 2015).

found “at the very beginning” of a contract and “to the exclusion of all other information” and that they must be drawn up clearly and legibly³³.

In addition to being subject to specific provisions, WS contracts, whether prepaid or postpaid, are also subject to general CPA provisions, such as: those prohibiting a merchant from amending a contract unilaterally unless he has previously indicated in the contract the elements likely to be amended, and unless he sends the consumer 30 days’ notice of his intention to make the amendment (sec. 11.2 CPA); or those requiring that a merchant who wants to terminate an indeterminate-term service contract involving sequential performance send the consumer a written notice to that effect, 60 days before the date of cancellation (if the consumer has not defaulted on his obligation) (sec. 11.3 CPA).

2.5.2 Ontario

Since April 1, 2014, Ontarians have been protected by the *Wireless Services Agreements Act, 2013*³⁴ (WSAA), which expressly requires WS providers (or vendors) to provide consumers with information in writing, in a clear, comprehensible and prominent manner (sec. 7 and 10 WSAA). In addition, the Act requires WSPs to ensure that the all-inclusive cost is the most prominent cost information on the advertising (sec. 8(2) WSAA).

Prior to the conclusion of the contract, the provider must bring the following information to the consumer’s attention: provider’s name and contact information, contract term, service details (minimum price, maximum usage, description of all technological restrictions and features, explanation of the method for calculating the price of using optional services, descriptions of other fees to pay, such as penalties, interest, etc.), description of merchandise provided with the contract if applicable, description of the warranty if applicable, payment terms and conditions, total amount to pay when the contract is entered into, rights of return, exchange and refund, etc. (sec. 9 WSAA). That same information must afterward be written in the contract, which must be in writing, along with the consumer’s name and the contract’s conclusion and expiry dates (sec. 10 WSAA). The merchant “shall deliver a copy of the agreement to the consumer as soon as practicable after entering into the agreement or by the prescribed time, if a time is prescribed” (sec. 10(2) WSAA).

If the WS provider does not comply with the rules set out in WSAA section 10, the consumer may cancel his contract and obtain a full refund within one year after entering into the agreement (sec.11(1) WSAA).

³³ *Ibid.*, sec. 79.8. Given that those contracts must be set out in writing, they are also subject to a series of other obligations on the form and transmission (sec. 23 and fol. CPA).

³⁴ *Wireless Services Agreements Act, 2013*, S.O. 2013, chap. 8, government of Ontario, Ottawa, Ontario, Canada, update April 1, 2014. [Online] <http://www.ontario.ca/laws/statute/13w08>, (page consulted on May 4, 2015).

2.5.3 Manitoba

In Manitoba, the *Consumer Protection Act*³⁵ (CPA-MA) specifically governs cell phone service contracts, while explicitly excluding prepaid service contracts (sec. 181(3) CPA-MA). For prepaid services, the contract must be in writing, and all documents constituting the contract must be delivered to the consumer before the conclusion of the contract, within a sufficient period for him to examine it and ask questions before being invited to sign it (sec. 183(1) and (2) CPA-MA). Of course, the consumer must also receive a copy after signing the contract (sec. 183(3) CPA-MA).

The Act indicates all the elements that must be included in the pages of the contract, in a clear and comprehensible manner: parties' names and contact information, contract date and location, duration, monthly cost and detailed list of all included fees, nature of the services, rates for supplementary uses, nature of other charges, fees, penalties, etc., features of telephones provided free of charge by the provider under the contract, how the consumer may cancel the contract, nature of warranties, if applicable, how the customer may contact customer service, etc. (sec. 185 CPA-MA).

The *Consumer Protection Act* also regulates prepaid cards, i.e., any “device with a monetary value, that is issued or sold in exchange for the future purchase or delivery of goods or services” (sec. 170 CPA-MA). As in Quebec, the Act prohibits expiry dates (sec. 170 CPA-MA), but the regulation exempts from the application of that section any card “that is issued or sold for a specific good or service” (sec. 4(1) of the Prepaid Purchase Cards Regulation³⁶).

During the sale of such cards, the merchant must draw the consumer's attention to clear and comprehensible information on:

- a) *all restrictions, limitations and conditions that the supplier imposes on the use of the card, including any permitted fee or expiry date;*
- b) *a description of the way in which the holder can obtain information respecting the card, including any remaining balance*³⁷.

2.5.4 Nova Scotia

The *Consumer Protection Act*³⁸ (CPA) provides a specific framework for cell phone services (sec. 25K and fol. CPA), which however does not apply to prepaid services (sec. 25L(3) CPA).

The postpaid cell phone contract concluded in person must be in writing, and the merchant must deliver to the consumer, prior to its conclusion, a copy of all documents constituting the contract, and give him time to review them before agreeing to it. Once the contract is concluded, a copy

³⁵ *Consumer Protection Act*, C.C.S.M. c. C200, government of Manitoba, Winnipeg, Manitoba, Canada, update June 19, 2015. [Online] <https://web2.gov.mb.ca/laws/statutes/ccsm/c200e.php> (page consulted on June 20, 2015).

³⁶ *Règlement sur les cartes prépayées*, Règl. du Man 98/2007, The Canadian Legal Information Institute, Ottawa, Ontario, Canada, 2007. [Online] <http://canlii.ca/t/69fvt>, (page consulted on May 5, 2015).

³⁷ *Ibid.*, sec. 3(1).

³⁸ *Consumer Protection Act*, R.S.N.S. 1989, c 92, government of Nova Scotia, Halifax, Nova Scotia, Canada, 2013. [Online] <http://nslegislature.ca/legc/statutes/consumer%20protection.pdf> (document consulted on May 5, 2015).

of all documents constituting it must be delivered to the consumer (sec. 25N CPA). As for the content of the contract, the CPA requires the following information to be shown prominently, clearly and comprehensibly: the parties names and contact information, the contract's date and the location of its conclusion, the expiry date, the minimum monthly payment, a description of basic services (including restrictions of any type and how the consumer can obtain more information on services, their costs and applicable restrictions), the price for options, a description of fees such as penalties, interest and others, a description of the cell phones provided by the merchant under the contract, how the consumer can cancel the contract, information on the warranty if applicable, etc. (sec. 25P CPA).

Nova Scotia has adopted the *Cellular Telephone Contracts Regulations*³⁹ (CTCR), which indicate how information must be communicated when a contract is not entered into in person (sec. 4 CTCR):

Before a contract not made in person is entered into, a supplier must, at no additional cost to the prospective customer,

- (a) give or make available to the prospective customer*
 - i) the information required to be set out in the contract under clauses 25P(1)(a) to (r) of the Act, and*
 - ii) in the case of a contract made over the Internet, copies of all documents that comprise the contract; and*
- (b) give the prospective customer a reasonable opportunity to review the information provided under clause (a) and to ask and receive answers to any questions the customer may have, before requesting that the customer enter into the contract.*

2.5.5 Newfoundland and Labrador

The *Consumer Protection and Business Practices Act*⁴⁰ (CPBPA) also regulates distance service contracts (sec. 35.1 and fol.). Under those provisions, the merchant must disclose the following information to the consumer: merchant's name and contact information, date and location of the contract, detailed description of each service offered, monthly price of the basic service and optional services, total monthly price, service restrictions, how to obtain more information on service charges not included in the contract, contract expiry date, circumstances allowing the consumer to cancel his contract, warranty information if applicable, rates for exceeding usage limits, etc. (sec. 35.2 CPBPA). But the Act does not specify the moment when that information must be given to the consumer. Moreover, the contract must be clear and concise, and a paper copy must be delivered to the consumer, unless a distance contract is being entered into (sec. 35.3 CPBPA).

³⁹ *Cellular Telephone Contracts Regulations*, NS Reg. 36/2013, the Canadian Legal Information Institute, Ottawa, Ontario, Canada, 2013. [Online] <http://canlii.ca/t/52181> (page consulted on May 5, 2015).

⁴⁰ *Consumer Protection and Business Practices Act*, SNL2009 ch. C-31.1, government of Newfoundland and Labrador, St-John, Newfoundland, Canada, 2009. [Online] <http://assembly.nl.ca/legislation/sr/statutes/c31-1.htm> (page consulted on May 5, 2015).

2.5.6 Distance Contracts

The five provinces whose laws we have reviewed have also specifically regulated distance contracts. In Quebec and in Newfoundland and Labrador, consumer protection laws regulate with the same provisions all types of distance contracts, whether concluded on the Internet or otherwise. Ontario also regulates all those types of contracts, but has separated the provisions for Internet contracts from those applicable to other methods of distance purchase. Manitoba and Nova Scotia only regulate Internet distance contracts⁴¹. Given that the legislations of those five provinces have in common the regulation of Internet distance contracts, we will only examine the regulation of those contracts here.

Again, Nova Scotia expressly regulates WS Internet contracts⁴².

The provinces' regulations are largely equivalent, if not identical. Among the common provisions are the precontractual disclosure requirement regarding a certain amount of information (some of the provinces have added elements to this list):

- *Merchant's name and, if different, name under which the company operates;*
- *Company's address and, if different, merchant's postal address;*
- *Telephone number and, if applicable, fax number and e-mail address;*
- *Description of goods/services sold, including all technical requirements or specifications;*
- *Detailed list of prices, including related fees (shipping charges and taxes);*
- *Extra charges likely to be added to the product's price, or description of those charges if the merchant cannot determine the amount;*
- *Total amount of the contract or amount of instalments;*
- *Clauses, terms, payment terms and conditions;*
- *Delivery data (date, carrier's identity, delivery method and location);*
- *Cancellation policies, returns, exchanges and refunds, if applicable;*
- *All restrictions/conditions/limitations likely to apply to the purchase.*

In Ontario and Nova Scotia, provisions for distance contracts apply only if a purchase has a value of at least \$50⁴³. That exclusion may well mean that those provisions for distance contracts do not apply to prepaid wireless service contracts: indeed, the value of those contracts can be as low as \$15.

⁴¹ For a more thorough study of distance contract regulations in Canada, see:

DELAPETA I. *Regulating Distance Contracts: Time to Take Stock*, Union des consommateurs, Montreal, Quebec, Canada, June 2014, 194 pages. See p. 27. [Online] <http://uniondesconsommateurs.ca/docu/rapports2014/04-Contrats-a-distance-Eng.pdf>

⁴² *Internet Sales Contract Regulations*, NS Reg 91/2002, The Canadian Legal Information Institute, Ottawa, , Ontario, Canada, 2002. [Online] <http://canlii.ca/t/jmpc> (page consulted on May 5, 2015).

⁴³ *Op. Cit.*, Note 41, **DELAPETA, I.**, *Regulating Distance Contracts*.

2.5.7 Practices Prohibited by Provincial Laws

Provincial consumer protection laws (PCPLs) have provisions of general application that prohibit certain practices, and that also apply to WS contracts. Those provisions have been adopted to effect a balance of power between merchants and consumers, and to ensure that the consumer receives truthful information in order to make an informed decision when making a purchase.

Certain practices are thus expressly forbidden, qualified as *prohibited* or *unfair*. Those practices are highly similar among the provinces. In some respects, particularly regarding recourses, Quebec stands out by creating an assumption that the consumer would not have contracted or agreed to so high a price, had he known that the merchant was using a prohibited practice (sec. 253 CPA).

a) Prohibition against charging a price higher than advertised

Consumers facing problems with monthly charges (for example, fees that are higher or don't correspond to the information disclosed when the contract was signed) – 20% of respondents to our survey report having encountered this type of problem – may be victims of prohibited practices. As mentioned above, the law requires the service to correspond to the description made of it in the contract; differences in such substantive aspects as monthly fees would doubtless constitute a violation. Quebec law additionally prohibits (sec. 224(c) CPA) merchants from charging more than advertised.

b) False and misleading representations

Based on the assumption of contractual good faith, the laws forbid merchants from ever making false, misleading or deceptive representations, by any means whatsoever (in Quebec, for instance: sec. 219 CPA). Quebec's CPA emphasizes that any statement, behaviour or omission may constitute a representation (sec. 216 CPA) and that, "To determine whether or not a representation constitutes a prohibited practice, the general impression it gives, and, as the case may be, the literal meaning of the terms used therein must be taken into account" (sec. 218 CPA).

In Ontario, a common law province, false, misleading or deceptive representations (statement, declaration or proposal) are unfair practices (sec. 14(1), 15(1), 17(1) CPA-ONT).

c) Omitting an important fact

In Quebec, the law expressly states that "No merchant, manufacturer or advertiser may fail to mention an important fact in any representation made to a consumer" (sec. 228 CPA).

If the common law provinces have no specific provision to that effect, it's often, as in Ontario, because silence is counted among the false, misleading or deceptive representations likely to be made by a merchant engaging in "exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if such use or failure deceives or tends to deceive" (sec. 14(2) CPA-ONT).

2.6 At the Federal Level – The Wireless Code

In summer 2013, the Canadian Radio-television and Telecommunications Commission (CRTC or Commission) created a *Wireless Code*, “so that consumers of retail mobile wireless voice and data services (wireless services) will be better informed of their rights and obligations contained in their contracts with wireless service providers (service providers)⁴⁴.”

In effect since December 2, 2013, the Code applies to all wireless services (WS), and all wireless service providers (WSPs) must comply with it. However, many of its provisions apply only to postpaid WS; merchants selling prepaid WS are thus subject to less information disclosure obligations than when selling postpaid WS. Indeed, an examination of the decision reveals that this is what WS providers were advocating⁴⁵.

What information disclosure obligations must WS providers meet? What impact does this difference in treatment between prepaid and postpaid services have on consumers who purchase prepaid services?

2.6.1 Requirements Applicable to All Types of WS Contracts

The Canadian Code requires providers to “communicate with customers using plain language” and states that written contracts and related documents must be “written in a way that is clear and easy for customers to read and understand” (part A.1). This requirement results from the Commission’s finding that “confusion around contract terms and conditions has been a significant source of consumer frustration [...]; customers continue to be surprised by elements of their contract that they were unaware of, either because the information was hidden in small print, contained in a separate document, or otherwise not brought to their attention⁴⁶.” The CRTC provides no details of what it precisely means by “plain language.” But it points out that:

[...] in order to facilitate consumers’ understanding of their contracts with WSPs, certain information should be required to be included in all written wireless service contracts. The Commission considers that this minimal information should include (i) how and when the customer can incur additional charges; (ii) what limitations may exist on their services; (iii) how changes to their services will be handled; (iv) how disputes will be handled; and (v) what avenues are available to them if they are not satisfied with their service⁴⁷.

The Commission indicates what the written contract must contain; however, it does not explicitly impose in the Code the obligation to have a written contract in all cases, but only for postpaid contracts.

⁴⁴ *Op. Cit.*, Note 1, CRTC, *Wireless Code*.

⁴⁵ **CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION (CRTC)**. *Telecom Regulatory Policy CRTC 2013-271 - The Wireless Code*, CRTC, Ottawa, Ontario, Canada, June 3, 2013. See par. 22. [Online] <http://www.crtc.gc.ca/eng/archive/2013/2013-271.pdf> (document consulted on August 5, 2014).

⁴⁶ *IBID.*, par. 43 and 44.

⁴⁷ *IBID.*, par. 45.

In fact, the CRTC specifies that:

Given the different business model for prepaid services, including the decreased risk of bill shock and the transactional nature of the services, the Commission considers that the above-mentioned information can be conveyed through a much shorter and less formal manner than for postpaid services⁴⁸.

2.6.2 Postpaid vs. Prepaid Service Contracts

Under section A.1 (ii) of the Code, a WSP must ensure that its written contracts are written in plain language. The prepaid contract, if not produced in writing, will thus avoid this clarity requirement.

Section A.2 of the Code, which applies to all WS, indicates that providers must clearly present the price of services (and indicate whether taxes are included) in the contract.

Section B.1 requires WSPs to provide, in the case of postpaid contracts, a permanent copy that must clearly present all elements of the above provision. For prepaid WS, the Code specifies, in a separate section, the few mandatory elements of information.

The Code expressly requires the postpaid service provider to give the customer a permanent copy of the contract and related documents, along with a summary of the contract's essential information. Those obligations do not apply to the provider of prepaid services.

a) Permanent copy of the contract

Accordingly, the service provider must provide the consumer with a *permanent copy* of the contract and related documents as soon as the customer agrees to the contract (if it is entered into in person), or within 15 days following its acceptance (if it is a distance contract), or at any time, on request – this last obligation being limited to postpaid services. The CRTC, with the sole explanation being “the nature of prepaid card services,” did not think it necessary to require WSPs to provide on request a paper copy of the contract⁴⁹.

Should the merchant fail to deliver that permanent copy at the moment the contract is concluded, or provide a copy containing provisions differing from those agreed to, the consumer may cancel the contract within 30 days⁵⁰, without fee or penalty.

The permanent copy must be in paper form, unless the consumer decides otherwise.

⁴⁸ *IBID.*, par. 46.

⁴⁹ *IBID.*, par. 52.

⁵⁰ The Code sets a period of 30 days “within 30 calendar days of receiving the permanent copy of the contract”; of course, calculating that period will be difficult if the provider is blamed precisely for not having sent the copy.

The decision to adopt that measure was motivated by the fact that a permanent copy of the contract gives the consumer *proof of the content of their contract as it was agreed to, should a dispute arise*:

[...] The Commission also notes the evidence on the record of the proceeding that WSPs may not be retaining copies of customer contracts in all cases. Rules requiring WSPs to retain a permanent copy of the contract and provide it to the customer upon request will ensure that customers have the information they need to properly understand their contracts and to make their case should there be a dispute about their service. It is necessary for WSPs to retain a copy of their customers' written contracts for the duration of the commitment period, so that the contract can be produced for the customer or the CCTS in the event of a dispute⁵¹.

Whereas a prepaid service consumer is likely to need those same protections, that last obligation, as we have seen, applies only to postpaid WS.

b) Content

The CRTC has established a list of information that a postpaid WS contract must contain (B.1), particularly in the contract's principal terms: the services included in the contract and the limits on the use of those services that could trigger overage charges or additional fees; the minimum monthly charge for services included in the contract; the commitment period, including the end date of the contract; etc. Under the heading "Other aspects of the contract" we read: an explanation of all related documents; a full list of one-time costs; rates for optional services; whether the contract will be extended automatically on a month-to-month basis when it expires, and if so, starting on what date; where to find information on certain items (rates for optional and pay-per-use services, tools for consumers to manage their bills and monitor their usage, the service's coverage area, the way to communicate with the customer service and to complain and/or contact the *Commissioner for Complaints for Telecommunications Services Inc. (CCTS)*, the Wireless Code).

The list of information items that must be disclosed is considerably shorter for the conclusion of a prepaid contract (B.2):

- i. WSPs must inform their customers of all conditions and fees that apply to the prepaid balance.
- ii. WSPs must explain to their customers how they can:
 - a. check their usage balance;
 - b. contact the WSP's customer service department;
 - c. complain about the service, including how to contact the CCTS.
- iii. WSPs must provide this information separately if it does not appear on a prepaid card or in the written contract.

The choice of how to provide that information is thus left to the providers, as is apparently the time of its disclosure.

⁵¹ *Op. Cit.*, Note 45, **CRTC**, *Regulatory Policy 2013-271*, par. 49.

c) Critical information summary

For postpaid WS contracts, the CRTC has adopted, in response to the proposal made by consumer groups, a provision offering increased protection by requiring information to be disclosed even more clearly:

68. The requirements set out in paragraphs 53 to 61 regarding the content and clarity of contracts are necessary but not sufficient to ensure that consumers have clear and concise information about important aspects of their wireless services.

69. A requirement to provide a Critical Information Summary – a one- or two-page summary of a contract – would greatly help consumers to quickly understand the fundamental aspects of their contracts. However, the contract delivery model of many prepaid services limits the benefits of a Critical Information Summary to consumers, and much of the Summary’s content would not apply to prepaid services.

70. The Commission considers that the Critical Information Summary should use plain language and contain, at a minimum, (i) a complete description of all key contract terms, as listed in sections a) to e) in paragraph 58 above; (ii) the total monthly charge for the services; (iii) information on all one-time charges and additional fees; and (iv) information on how to contact the WSP’s customer service department and the CCTS with a complaint.

71. The Commission considers that the Critical Information Summary should be provided to customers when the permanent copy of the contract is provided, taking into account contracts agreed to at a distance [...] ⁵².

Such an obligation for providers to provide a critical information summary has thus been included in the Code (C.1). The summary’s content must of course correspond exactly to the contract; it may be presented in a distinct document or on the first two pages of the contract, in a prominent, clear and concise manner, and “using an easy-to-read font.”

Providers advocated that most of the information that the parties had proposed to include in the contract’s summary would not apply to prepaid service customers, because such a requirement “would simply not be practical” in the case of prepaid services and would be costly. Accordingly, the Commission decided not to impose that requirement for prepaid services, but encouraged providers to do so where possible, “in particular, for contracts made in person ⁵³.”

2.6.3 Conclusion

The above analysis clearly shows that most provincial laws, by generally making no distinction between the rights of postpaid and prepaid WS consumers, offer prepaid WS consumers better protection than does the Code. For example, Quebec, Ontario, and Newfoundland and Labrador require contracts to be in writing and to include precise information. In several provinces, copies of contracts must also be sent to consumers when such contracts are concluded at a distance ⁵⁴.

⁵² *Op. Cit.*, Note 45, **CRTC**, *Regulatory Policy 2013-271*.

⁵³ *Ibid.*, par. 76.

⁵⁴ For more details, see section 2.5 of our report.

3. Field Survey of Prepaid Wireless Service (WS) Providers and Vendors

After examining providers' disclosure requirements during prepaid WS sales, we conducted a field survey of certain providers/vendors of this type of services, to verify how such disclosure actually takes place.

The field survey's purpose was to determine how and when contracts and their terms are disclosed to consumers, and to what extent the contracts comply with the current legal and regulatory framework. Our survey verified whether the means used by WSPs to comply with their legal and regulatory obligations are most appropriate for protecting consumers.

We also briefly studied the compliance reports that Canadian WSPs submitted to the CRTC after the Canadian Code took effect, and we compared the reports with the results of our field survey.

3.1 CRTC Compliance Reports Submitted by Wireless Service Providers (WSPs) to the CRTC

We briefly studied the Code compliance reports ordered by the CRTC⁵⁵ and submitted by Canadian WSPs in January 2014⁵⁶. It should be noted that those reports are not the result of an external investigation – rather, the WSPs answered a questionnaire the CRTC sent them. We focused on reports submitted by providers that were also the object of our field survey, i.e., those that provide prepaid WS services in Montreal: Bell Mobility (and Virgin Mobile), Telus (and Koodo), and Rogers (and Fido and chatr)⁵⁷.

All the providers whose compliance reports we examined stated that they fully complied with the Code sections applicable to prepaid WS. The providers say that the documents they provide consumers are clear and written in plain language, and that prices are also clearly indicated. Most of the providers pointed out that consumers had access to the documents that constitute the contract concluded with them (in this case, the Terms of Service: several providers tell the CRTC in their compliance reports that the Terms of Service act as a contract in the case of prepaid services), either online or in-store. Some providers said there was no need to amend their contracts after the Code's adoption, since they were applying the practices made mandatory by the Code.

⁵⁵ *Op. Cit.*, Note 45, CRTC, *Regulatory Policy 2013-271*, par. 396.


⁵⁶ CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION (CRTC). "Compliance Reports," in *Related Documents*, file number 2012-557, CRTC, Ottawa, Ontario, Canada, 2012. [Online] <https://services.crtc.gc.ca/pub/instances-proceedings/Default-Default.aspx?YA=2012&S=C&PA=t&PT=nc&PST=a> (page consulted on May 15, 2015).

⁵⁷ However, we did not find the compliance report of Petro-Canada Mobility Online on the CRTC website.

Table 4
CRTC, Wireless Code:
Implementation Report Card⁵⁸

1. CLARITY		
1.	Plain language	✓
2.	Prices	✓
3.	Unlimited services	✓
2. CONTRACTS AND RELATED DOCUMENTS		
1.	Postpaid service contracts	✓
2.	Prepaid service contracts	✓

Legend

-  All service providers have implemented the Code.

However, we may question the claims made by WSPs in their compliance reports.

In October 2014, about eight months after Rogers submitted its compliance report to the CRTC, the television program *La Facture* conducted a study of the *Rogers Terms of Service, Acceptable Use Policy and Privacy Policy*. That document, which constitutes Rogers' contract with WS consumers, was submitted to a group of law students from the University of Montreal to have them evaluate its legibility. The results are quite convincing:

The students had one hour to read a Rogers mobile telephone contract, and then one more hour, with the document in hand, to complete a questionnaire produced by Option consommateurs and Me Marie Annik Grégoire, their professor of consumer law, who then corrected the test.

The results are disquieting: the average mark was 57.5%. All the students were surprised at their difficulty in understanding the contract⁵⁹.

⁵⁸ CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION (CRTC). *Wireless Code: Implementation Report Card*, CRTC, Ottawa, Ontario, Canada, September 18, 2014.

[Online] <http://www.crtc.gc.ca/fra/publications/reports/rp140918.htm> (page consulted on May 15, 2015).

⁵⁹ ROSSIGNOL, Agnès. "Des étudiants en droit à la télé," Droit inc., Montreal, Quebec, Canada, October 17, 2014. [Online] <http://www.droit-inc.com/article13823-Des-etudiants-en-droit-a-la-tele> (page consulted on May 15, 2015). Our translation.

The following are some of the students' comments in relation to that survey:

"Even if we understand at the beginning, by the end we don't remember what we've read. Despite our training and the fact that we're among the best students in the contract law course, we only understand about half of the contract."

[...]

According to them, consumer contracts are not made to be read.

"It took me an hour to read the contract, it's impossible to do so in a store. The illegal clauses are included to scare the customer and dissuade him from going to court."

The students added that the contract is incomprehensible. Professor Marie Annick Grégoire, doctor in law, reported having taken several hours to understand it⁶⁰.

Given that second-year law students and their professor find the contract difficult to understand, how can Rogers seriously claim that its contracts meet the Code's clarity and legibility requirements? It's a safe bet that the average consumer doesn't understand the contract.

La Fature then contacted Rogers for an interview related to that survey. Rogers refused an on-camera interview, but recognized, in writing, that some contracts may be complex; the company added that it was modifying its "Terms of Services contract" to simplify it, and said it was concerned "that it's very important for all its contracts to be read and understood by its customers⁶¹."

What is the situation today? Do WSPs comply with all Code requirements as well as they seem to think?

⁶⁰ This information is obtained from a video available online on the Radio-Canada website. See: **CRAIG, Pierre**. "Ces contrats qu'on ne lit pas," La Fature, Radio-Canada, Montreal, Quebec, Canada, October 7, 2014. [Online] <http://ici.radio-canada.ca/tele/la-fature/2014-2015/segments/reportage/247/contrat-clause-incomprehension-signature-test-etudiant?isAutoPlay=1> (video viewed on May 15, 2015). Our translation.

⁶¹ *Ibid.* Our translation.

3.2 Methodology of the Field Survey

Following our study of the Canadian Code, we drew up a list of questions that seemed relevant to be asked during a purchase of prepaid WS.

We concluded contracts for 22 prepaid wireless services (WS) to verify ourselves the content and means of disseminating information when a consumer makes such a purchase. We varied the ways of entering into such contracts, to obtain as varied a portrait as possible of the companies offering such services and of the ways of concluding the contracts.

We had planned to enter into the following agreements:

- Eight prepaid service agreements concluded online with Bell, Fido, Virgin Mobile, chatr, Koodo, PC Mobile, Petro-Canada Mobility and Telus;
- Eight prepaid service agreements concluded by telephone with Bell, Fido, Virgin Mobile, chatr, Koodo, PC Mobile, Petro-Canada Mobility and Rogers;
- Four prepaid service agreements concluded at Bell, Fido, Virgin Mobile and Telus kiosks;
- Two agreements concluded in retail stores in Montreal: chatr and Rogers.

As described below, not everything in our initial project proved possible.

Table 5
Purchases made as part of our field survey

COMPANIES		Bell	Fido	Virgin Mobile	Chatr	Koodo	PC Mobile	Petro-Canada Mobility	Rogers	Telus
Online		X	X	X	X	X	X	X		X
By telephone		X	X	X	X	X	X	X	X	
In person	Kiosks	X	X	X					X	
	Retail stores				X			X		

The specific aspects about which we wanted to find information, and the moment when that information was disclosed during the purchasing process, were: the SIM card's price, the existence of activation fees, the possibility of activating the card without the obligation to purchase a package, the existence of a document recording the contract, the method of payment for the purchased service, the service's price, the terms and fees applied to the balance, the way of verifying that balance, the means of contacting the customer service and making a complaint to the CCTS, the possibility of additional charges, the possibility of exceeding prepaid amounts, and if applicable the billing and payment methods for those amounts. We also wanted to verify whether a copy of the service agreement and related documents was delivered systematically.

a) How to purchase WS in Canada?

To be able to use prepaid WS, the consumer must of course have a cell phone. If he has to obtain one, he will likely have to pay the full price for it. To conduct our field survey, we thus had to obtain an unlocked cell phone (since we wanted to use it with several providers). Afterward, we had to buy SIM cards, i.e., chip cards giving access to providers selling them. Those SIM cards are issued by WSPs, in their name, and give access only to their own services:

The SIM card (Subscriber Identity Module) designates the chip inserted in mobile terminals (portable phones, including smartphones, tablets, etc.) to access a network. The card makes it possible to identify the user and record all the information about the network of the provider to which he is subscribing⁶².

Those SIM cards are always present for sale in a *support card*, on which appear the provider's name and a 16-digit identification number. The price of the SIM cards we obtained varied between \$5 and \$23, depending on the provider⁶³.

SIM cards can be ordered online or by telephone, but the consumer must generally wait 3 to 5 days to receive it. So we purchased the cards directly in-store (from the WSPs themselves or major retailers). The method of purchasing SIM cards made no difference for our survey, which aimed at studying the disclosure of information only for the purchase of prepaid services; purchasing the SIM card was just a prerequisite – only during its activation could we consider our survey to begin. It remains that some information about the service was likely to be provided when the SIM card was acquired or on the card itself or its packaging.

After purchasing those cards, we had to activate them (on the Internet, by telephone or in person) with the WSPs that sold them to us. A phone number was attributed to us when each SIM card was activated. Afterward, of course, we had to choose the package/pay-per-use services.

Thus, purchasing prepaid services involves three distinct steps: purchasing the SIM card, activation, and then choosing the package/pay-per-use services, which constitutes the prepaid service contract. To be able to use the service and make/receive calls and perform other operations, we had to supply the customer account we held with each provider. For example, if we chose, during activation of the SIM card and attribution of our phone number, a package allowing us to send/receive unlimited text messages (for \$15/month), we needed to put \$15 in the account to use the service.

We should mention that the goal of our survey was precisely to verify the information provided to the consumer during purchase of prepaid WS, and not during purchase of the SIM card for example, but rather from the moment that card was activated and especially from the moment when the consumer chooses his package.

⁶² TELECOM-INFOCONSO.FR, *Carte SIM, verrouillage et déverrouillage des terminaux : mode d'emploi* Telecom-Infoconso.fr, Autorité de régulation des communications électroniques et des postes, Paris, France, May 2, 2012. [Online] <http://www.telecom-infoconso.fr/carte-sim-verrouillage-et-deverrouillage-des-terminaux-mode-demploi> (page consulted June 11, 2015). Our translation.

⁶³ However, when we told the agents of two providers that we only wanted to purchase the SIM card and then activate it online, they gave it to us free of charge, without giving any particular reason.

Activation of the service with providers enabled us to verify whether documents could be sent to the consumer at that moment, and if so to examine them (content and clarity).

Half of the transactions were made for pay-per-use services, and half for services included in a package. However, since we have observed no difference in that regard between the purchases, we will present our data for prepaid services taken as a whole, to avoid a cumbersome duplication.

Purchases from kiosks took place in Montreal only.

It should be pointed out that we encountered problems with some purchases and that some of the planned transactions were not completed. But those problems did not significantly affect our research, since our survey was intended to be qualitative and since, from what we observed in the field, the data are very similar from one company to another (the difference mainly being between the various purchasing methods). The partial absence of data on one of the purchasing methods is unlikely to lead to an erroneous conclusion.

But first, we will report here the problems we encountered, which illustrate some of the difficulties that consumers will likely face when trying to obtain prepaid WS, and which available data did not reveal until we encountered those problems.

b) Online purchases - PC Mobile

In the case of PC Mobile, online purchases are made by filling out a form and submitting it to the provider. Afterward, the consumer must wait to receive e-mail confirming the activation of his service.

Given that we used a cell phone already registered with PC Mobile (for a prepaid service previously purchased), the provider refused activation for a second number. We then contacted the company, and were informed that only one number can be activated for a given device (so that only one SIM card can be used per device). An agent advised us not to identify the device (to replace the device's IMEI serial number with a series constituted only by the digit 1). When we followed those instructions, our attempt was no more successful.

We made a third attempt by using another phone's IMEI number. That attempt yielded the following response:

Nous sommes désolés d'apprendre que vous éprouvez des problèmes. Notre site Web ne permet d'activer que les appareils provenant de notre gamme de produits actuelle, car un seul site Web ne pourrait contenir les modèles plus anciens. Pour activer votre Samsung Galaxy Ace avec PC mobile, veuillez contacter le service des activations de PC mobile en composant 1-877-284-6361. Un agent pourra vous aider sur-le-champ.

Our attempts ended there. It was therefore impossible for us to activate the online service with PC Mobile and thus to conclude a prepaid service agreement.

c) Purchase by telephone - Virgin Mobile

After transferring us four times from one agent to another, the customer service undertook to activate our SIM card and enter our data in the system. We were told that activation of the card could take up to two hours. We received a text message 30 minutes later, informing us that the service was activated.

We immediately called back to purchase minutes. Although in previous calls we very clearly explained how we intended to proceed, we were told that minutes could be purchased only with a credit card registered in the account holder's name. Since we had opened the account under a fictitious name, it was impossible for us to complete the purchase.

d) Purchase at a kiosk - Virgin Mobile

In early March 2015, we went to Complexe les Ailes, in Montreal, to purchase prepaid WS from Virgin Mobile. We undertook the activation with a customer service agent, but at the validation step, the system stopped functioning. The agent then asked us to return a little later to try again, which we did. Our second attempt also failed (the agent informed us that the problem was generalized and affected all WSP kiosks). A third attempt, at the end of the day, was no more successful. We approached the same agent the next day. The system's problem was still not resolved: our fourth attempt to activate a SIM card also failed. The agent then recommended that we make the transaction by telephone – she also offered her assistance in case of a problem or if we had any questions during that procedure. We declined her invitation because as part of our research, that purchase was intended to be made entirely at a kiosk.

e) Purchase at a retail store - Rogers

In early March 2015, we went to a Future Shop store, in Montreal, to purchase Rogers prepaid WS. The customer service agent informed us that they performed in-store activations only for chatr. We then decided to verify online on the Rogers website which retailers performed the activation in-store and we called them. Several of the retailers listed told us they performed in-store activations only for chatr; others told us that they were exclusive Rogers retailers; other numbers were simply no longer in service. A search of subscribers to those numbers revealed that one of the latter belonged to a business that had simply changed its phone number: Sans-fil Etc., which is located in a Costco outlet. When we called them, we found that first we needed a Costco membership card (which costs around \$100) and that it was possible to activate Rogers services in person only if the amount of the prepaid card was \$100 or more, but that it was possible to activate it for a lesser amount only if we also paid activation fees. We went in person, a few days later; the agent then informed us that it was absolutely impossible (under a Costco policy) to activate a SIM card valued at less than \$100. That restriction, in addition to contradicting the information we had received by telephone a few days earlier from the same kiosk, does not seem to be mentioned anywhere on the retailer's website⁶⁴. So we gave up making that purchase.

We had also made verifications for a purchase at Walmart. An agent informed us by telephone that it was possible to make a prepaid activation for Rogers services. When we went in person

⁶⁴ **COSTCO.CA**. *Talk Anytime*, Costco.ca, Quebec, Canada, 2014. [Online] <http://mobility.costco.ca/en/qc/mobile-plans/rogers-mobility-196-talk-anytime/> (page consulted on April 7, 2015).

the next day, the agent told us that while such an activation was possible, they performed it only if we purchased what he presented to us as a Rogers *prepaid device*, sold for around \$100. We declined that offer, of course.

3.3 General Observations

As described in the preceding section, the purchase of prepaid packages/minutes is done in steps: purchasing and activating the SIM card, followed by choosing the package/pay-per-use services.

However, it should be pointed out that, as we will see in greater detail in the following sections, providers occasionally present details about the contract between consumer and provider on the support card of the SIM card itself, which can cause confusion, because purchasing and activating the SIM card does not necessarily imply the purchase of a package/pay-per-use services.

Given that the purchasing method is where we observed major differences, rather than between providers, we will first present the data on the online survey conducted directly among prepaid WS providers, then we will continue with the telephone survey, and finally with purchases made in person.

3.4 Results of the Online Survey

After purchasing SIM cards in providers' stores, we activated them directly online, on the websites of those providers. We made our online purchases of prepaid WS from Bell, Telus, Fido, Virgin, chatr, Koodo, PC Mobile and Petro-Canada Mobility.

It should be noted that the online purchasing method for this type of product turns out to be quite complex in itself. We expected our transaction to proceed as with any other purchase of goods or services that a consumer can make online: choosing the good/service, entering the purchaser's name and contact information (when required), agreeing to the *Terms and Conditions*, and payment. We were surprised that in the case of prepaid WS, online purchasing can take much more time, and that the process is far from being as easy and user-friendly as we had imagined, but at times had nothing in common with the usual process of online purchases.

For example, Bell appears to offer on its website a platform for online purchases of prepaid services – but this isn't what is usually understood by online purchasing. The purchase is indeed possible, but takes place through a chatbox that seems generally designed for communicating with the WSP rather than dedicated to online purchases.

We also had to use a chat box to make our purchase with Telus: before completing the purchase directly on the website, we had to check a box to indicate our agreement with the *Terms of Service*. However, the link that was supposed to lead to those terms was not functional, so it was impossible to access it. We could still have completed the transaction, simply by checking the box without ever knowing the terms and by continuing the purchasing process. But since it was precisely the access to that document that was of interest to us, we

decided to pursue the process instead by chatting, in the hope of gaining access to the terms in that way.

The purchase from Fido, despite access to a platform allowing direct online purchases, was not simple either. The website refused to proceed with validating our purchase during our first attempts, so we had to redo the process on the next day.

The online purchase on the Petro-Canada website was also very complicated. The online purchasing platform doesn't seem to operate properly: we restarted the activation process four times, because the system kept giving us error codes. We called the provider to verify whether the activation had taken place despite the error codes; we were informed that the account had in fact been activated. But we again encountered problems when opening an account online: being unable to create one, for reasons we still don't know, we again called the provider to request assistance; the agent answered that she couldn't create one either and recommended that we make a note of the problem – she would call us back. Around 24 hours later, having received no call, we called the provider again, and were told a text message had been sent to us to the effect that it was now possible to open an account. And yet, a new attempt revealed that the problem persisted. Finally, after several calls to the provider, the agents succeeded in opening an account online for us.

With the other companies – Virgin, chatr and Koodo – the online purchase was simpler.

3.4.1 Activation Fees

When we drew our list of purchases in view of our field survey, we observed that some companies charge consumers an activation fee; this was not the case for the prepaid WS purchases we made online with various providers.

3.4.2 Is SIM Card Activation Possible without a Purchase of Prepaid WS?

In all the eight cases studied, we activated our SIM cards, chose (or were assigned) phone numbers and chose our packages, without having to pay for the latter immediately. So it remained for us to supply our account in order to use the selected service. In two of those cases (Telus and Koodo), we didn't have to supply the accounts, because the company offered a promotional credit, which allowed us already to use the selected service.

3.4.3 Disclosing the Contract

In the case of three (Bell, Virgin and Telus) of our online purchases (those we made in the chatbox, in response to our inquiry on the subject⁶⁵), the provider stated there is no contract between provider and consumer when the latter purchases prepaid WS.

⁶⁵ The Virgin purchase was made on the online platform of that WSP. But when we opened a chat session to request clarifications about our contract with Virgin, the agent flatly told us there was no contract.

a) Bell

Bell's SIM support card mentions that any use of the SIM card confirms the user's agreement with Bell's Terms of Service, which can be amended from time to time, and invites the user to visit Bell.ca/SIMterms for the Terms of Service in effect. It should be noted that the Terms of Service to which that link leads clearly state that all the parts of the Agreement constitute a contract "about" the services:

You should review the entire Agreement. All of the parts are important and together create a legal contract about the Services (defined below) and the Device that applies to you once you have accepted it. Bell relies upon your promise that you have reached the legal age of majority in your province or territory of residence and are authorized to enter into this Agreement⁶⁶.

The Agreement in question covers all Bell services, prepaid or postpaid, "which include any wireless telecommunications services provided by or through Bell Mobility, including voice, text, data (including content) or other services, and account administration (for example, account changes and Customer support)⁶⁷." The document presents a table of contents, which may make it easier for the customer wanting to go directly to a specific section of the agreement.

The document is very long (around thirty pages, when printed) and the information lacks clarity; it is often difficult to see which sections apply solely to postpaid WS (paragraphs 36 and 37, which pertain to billing and payment, are notable exceptions).

As mentioned above, given that Bell does not offer an activation platform for the online service, we had to proceed with the chat to make an online transaction. So information was provided to us along the way by the agent(s). We requested the most inexpensive prepaid monthly package; the agent answered (our translation):

We have the following plan for \$16.15 per month, and the first 8 months \$11.15:

- *Calls for \$0.20/min.*
- *Unlimited texting in Canada*

ALSO INCLUDED:

- *Call Display and Basic Message Centre*
- *Unlimited text messages, photos and videos across Canada*
- *Call Waiting and Conference Calls*

Because we opened an account online to verify the information, we observed that on Bell's website the most inexpensive package was offered for \$15.75 per month (rather than \$16.15); it was in fact the same package – the price difference is due to a \$0.40 charge for the 911 service, added to our account. The promotion was not indicated on the website.

The agent's information about the package was not complete, however. For example, only after asking the question did we learn that the discount offer was valid only for 30 days. How does the information provided to us comply with the Wireless Code? (References in bold at the beginning of the sections indicate sections of the Code.)

⁶⁶ **BELL CANADA**. "Bell Mobility Terms of Service," Bell, Ottawa, Ontario, Canada, 2015 [Online] http://www.bell.ca/Bell_Mobility_Terms_of_service (page consulted on May 19, 2015).

⁶⁷ *Ibid.*

A.2: The WSP must “ensure that the prices set out in the contract are clear and must indicate whether these prices include taxes”: during our online purchase from Bell, that information, on prices as well as taxes, was neither clear nor easy to find. During the chat session, the agent mentioned nothing on the subject; and nothing on the existence of Bell’s Terms of Service, whereas in other purchases we made online, that information is provided to the consumer before he proceeds to make a purchase. As we have seen, the price indicated to us included a charge commonly known as the “911 tax” but that inclusion was not mentioned.

Information on sales taxes may be found (with difficulty) in the *Bell Mobility Terms of Service*, under Billing and Payment: “You must pay all Charges, plus applicable Fees and taxes” and “Taxes are extra.” (par. 36 and 36b)). In short, during that specific purchase, the only way for us to obtain that information was to consult the page indicated by the link on the SIM card and leading to the Terms of Service. But as mentioned above, the SIM card purchase is a totally distinct operation.

B.2 i): The provider must inform the customer about the conditions and fees applied to the balance of prepaid WS: before concluding the contract through the chat box, we received no information about the conditions applicable to the balance. Only after choosing the package did the agent send us a hyperlink containing information on the way to supply the account:

Les réapprovisionnements de 15 \$ expirent après 30 jours, les réapprovisionnements de 25 \$ et 50 \$ après 60 jours, et les réapprovisionnements de 100 \$ après 365 jours. Vous devez utiliser vos minutes prépayées avant la date d’expiration. Toutefois, si vous ajoutez des fonds à votre compte avant la date d’expiration, vous pouvez reporter vos minutes inutilisées.

We also find information on the subject in the *Terms of Service*, to which the agent never alluded. But that information is far from easy to find or clear – the consumer may instead drown in an ocean of information... and be discouraged from searching for that specific information. Still, the agent pointed out that our minutes must be used before their expiry date and that if we add minutes before that date, unused minutes are added to the next period. The agent did not mention the seven-day grace period prescribed by the Code.

B.2 ii): The provider must explain to the customer how to verify his balance, contact the customer service and make a complaint to the CCTS: during our chat session, before concluding the contract, the agent did not tell us how to verify our account balance, but did tell us how to contact the customer service. Only after concluding the contract did we obtain information on how to verify the balance, and then only in answer to the questions we asked after verifying whether the agent would spontaneously give us any other information.

We never received information, either before or after the purchase, about the CCTS and its complaint-handling service (nor is that information found in the customer account). However, the information is found in the *Terms of Service*, in paragraph 63, in the General section.

As mentioned above, we had access to the *Terms of Service* only after activating the SIM card and choosing the package, i.e., when supplying our account, online, through our Bell customer account (\$15 for 30 days) – when we were invited to check a box confirming that we had read them. It was then impossible for us to print the terms directly from the website – they can be read in a drop-down box. We printed the terms after copying the drop-down box content and

pasting it in a text document. As opposed to the page to which we were led by the Internet link indicated on the SIM card, this document had no table of contents, thus making it even more confusing to the consumer.

b) Virgin Mobile

In the case of **Virgin Mobile**, with regard to the statement that appears on the SIM support card, we find a mention similar to Bell's, that using the SIM card implied our agreement with the Service Terms at virginmobile.ca/terms. This statement is written on the back of the support card, at the bottom, in tiny characters. The front highlights, in very large characters: "POUSSE-MOI / RENTRE-MOI / AIME-MOI," in French and English.

Once purchased, the SIM card has to be activated. To that end, we visited the Web address indicated in the card, and from there to the Terms of Service, where we are informed at the start about the importance of reading the entire Agreement. The terms state that "All of the parts are important and together create a legal contract that applies to you once you have accepted it⁶⁸."

Acceptance of the terms is done by checking a box to confirm having read and understood in full the terms that appear under that acceptance box, in a small drop-down box. We were also informed, in a strange statement, that acceptance of the terms is mandatory: "Veuillez lire et accepter les Modalités d'activation. (Vous devez le faire... sinon nous ne pouvons effectuer l'Activation. C'est un truc du département légal.)".

The Agreement in question pertains to all Virgin services, prepaid or postpaid, "including voice (exclusively for the purpose of making and receiving person-to-person voice calls and/or accessing voicemail), text, data (including content) or other services, and account administration (for example, account changes and Member support)."

The Terms of Service are presented in the form of questions and answers, which may make reading easier. The document is very long (around thirty pages, when printed) and the information is anything but clear. So it's quite difficult to find sections that apply solely (or those that don't apply) to postpaid services (paragraphs 34 and 35, which cover billing and payment, are notable exceptions).

The package information (on the page from which activation is done) seemed complete, but not in compliance with Code requirements:

A.2: The WSP must "ensure that prices set out in the contract are clear and must indicate whether these prices include taxes": the pricing information is given us during activation of our SIM card and our package choice (of minutes to be used in this case). The tax information is found in the Terms of Service: "You must pay all Charges and Fees, plus applicable taxes" and "Taxes are extra" (par. 34 and 34b)).

⁶⁸ **VIRGIN MOBILE CANADA.** "Terms and Conditions of Service," Virgin Mobile, Ottawa, Ontario, Canada, no date. [Online] <http://www.virginmobile.ca/en/support/legal-terms.html> (page consulted on May 15, 2015).

When the customer wants to subscribe to automatic supply (which authorizes WSPs to resupply his account, each time his balance reaches \$5 or less or is at the point of expiring), the resupply amount is indicated – which he chooses himself – and he is advised that taxes will be extra.

We should add that Virgin Mobile seems to be the only WSP among the 8 we studied that asks consumers to accept its Terms of Service again at each resupply he performs online⁶⁹.

B.2 i): The provider must inform the customer of the terms and fees applicable to the balance of prepaid WS: information to that effect is found in the Terms of Service, but is unclear:

Unused funds will expire at the end of the Active Period. Expired Prepaid funds will be restored if you Top Up your account within 7 calendar days of their expiry. If you Top Up your account before your existing Prepaid funds expire (or are used up), then your Top Up will be added to your existing Prepaid funds and the Active Period for the Top Up will apply to the combined amount of Prepaid funds. (par. 34b)

B.2 ii): The provider must explain to the customer how to verify his balance, contact the customer service and make a complaint to the CCTS: we find two of those elements in the Terms of Service – how to contact the customer service (par. 64) and how to make a complaint to the CCTS (par. 60). But nothing indicates how to verify the customer balance.

However, the balance can be verified online, in the customer account, once the contract is entered.

C) Telus

As opposed to Bell and Virgin Mobile, **Telus** writes nothing on the SIM card about acceptance of its Terms of Service.

While the previously purchased SIM card was being activated, the following mention appeared on the page of Telus's activation platform:

Modalités de service de TELUS - Les modalités de service s'appliquent à l'utilisation des services de TELUS. En cochant la case ci-dessous et en effectuant la mise en service, vous acceptez que les modalités de service et la politique de protection de la vie privée de TELUS s'appliquent à l'utilisation du service.

The link to those Service Terms was not accessible when we tried (two days in a row) to activate the SIM card and thus the Telus account, so we had to perform the operation through the chat box. We contacted an agent and explained our problem to him. He then gave us a link to the page "How Prepaid Works"⁷⁰, which does not necessarily reproduce all the information contained in the Service Terms found on the provider's website, but which has the advantage of specifying what applies to prepaid services.

⁶⁹ Except PC Mobile, for which we didn't succeed in opening an account online. Moreover, in the case of Bell, only after paying for the "Top Up" does a link appear to a page where we can consult our "Service Agreement" and from there the "Bell Mobility Terms of Service."

⁷⁰ **TELUS COMMUNICATIONS COMPANY**. "How Prepaid works" Telus, Vancouver, British Columbia, Canada, no date. [Online] <http://www.telus.com/en/on/get-help/mobility/prepaid-plan/activation/telus-prepaid-account/support.do> (page consulted on January 27, 2015).

After again trying unsuccessfully to purchase online (since the link to the Terms of Service was still not functional), we used the chat box again to contact an agent, who activated our SIM card, and we concluded the prepaid WS contract (the desired package already having been entered in our account). The agent then assured us that “there is no contract.” At no time did she give us a link to any document.

To verify nevertheless what the Service Terms indicate, we found the document ourselves, directly on the Telus website. That document states the following:

These Service Terms describe your wireless voice and data services and cover the use of your device and account, billing and warranty information, your privacy rights and service cancellation. As part of our commitment to putting customers first, we want to make sure that we are clear and transparent in helping you fully understand what TELUS provides. By using our services, you agree to the terms and conditions outlined below⁷¹.

The document contains around ten pages, including a small section on prepaid services, but also information on other subjects.

As for the information that should be provided according to the Code:

A.2: The WSP must “ensure that the prices set out in the contract are clear and must indicate whether these prices include taxes”: we were not able to obtain tax information when purchasing by chat, because right after activation, the agent told us she had added \$10 to the account (as an ongoing promotion). As for the price, the agent indicated the cost per minute and the cost of a text message (we had chosen usage per minute rather than a pre-established package).

We could find that information neither on the WSP’s website nor in the Service Terms.

B.2 i): the provider must inform the customer about the terms and fees that apply to the balance of prepaid WS: information on that subject was not provided to us in a clear and direct manner during the activation by chat. However, after the online activation we received this text message: “*You have 7 days to qualify for activation credits. Call #123 for more info. If you have a rate plan, the first credit will be applied within 3 days. For detail on the program, visit telus.com/prepaidpromo.*”

But information on the prepaid balance is contained in that WSP’s Terms of Service.

B.2 ii): The provider must explain to the customer how to verify his account, contact the customer service and make a complaint to the CCTS: information on balance verification and on contacting the customer service is disclosed by text message after conclusion of the contract. As for information on the ways of making a complaint to the CCTS, the agents who assisted us never alluded to it. Nor did we find anything on this subject in the Terms of Service.

⁷¹ **TELUS COMMUNICATIONS COMPANY.** “TELUS Standard Mobility Service Terms” Telus, Vancouver, British Columbia, Canada, no date. [Online] <http://www.telus.com/en/on/get-help/service-terms/support.do> (page consulted on May 15, 2015).

Given that we were experiencing problems with the account online, we called Telus's customer service to obtain information. During that call, two points drew our attention:

- The agent who assisted us asked us if we wanted to block data transfer on our account, to avoid using up our credit. At no time during or after the purchase did we obtain information on this subject. Was that information contained in the Service Terms, which we had been unable to access? It's a document of around 13 pages containing all kinds of information, and in which provisions for prepaid services are mixed with those for postpaid services. But reading it online revealed nothing about blocking data transfer.
- During our conversation with the agent, we noticed in our account online, in the section on the history of our transactions, that a \$2 charge had appeared under the heading "Account adjustment – feature add/change-cr". When we asked the agent what that meant, she simply answered that it wasn't important, since she was going to credit us that amount, which we had fortunately detected.

That purchase prompted us to question the fees that can be charged to the consumer in a prepaid contract, and their disclosure before and after the contract. It appears that surprise fees can appear on the bill.

d) Fido

Fido states on its brochure: "No commitment." The SIM card is silent on this subject. However, during activation of the SIM card and the choice/purchase of the prepaid package, as performed on the online platform, we found the following mention, at the validation step:

Cette page contient de l'information au sujet de votre ou vos ententes de service. Veuillez confirmer l'exactitude de tous renseignements et accepter votre ou vos ententes de service, ainsi que les Modalités de service, la Politique d'utilisation et la Politique de protection de la vie privée de Fido avant de soumettre votre demande.

On the same page, we found additional information on the customer's service agreement(s) and Terms of Service, the use of website policy, and the privacy policy of Fido, in a drop-down window. That document is eleven pages long and written in very small characters that are difficult to read. Then we found the mention: "En sélectionnant *J'accepte*, vous reconnaissez avoir lu, compris et accepté les détails de l'Entente de service et des Modalités de service et de la Politique d'utilisation acceptable..." But the document seems incomplete, in mentioning nothing, for example, about the balance terms. Moreover, it pertains to numerous different subjects, is difficult to read and even more so to understand.

As for the information that the WSP must provide the customer to comply with the Code (references in bold at the beginning of the sections pertain to sections of the Code):

A.2: The WSP must "ensure that the prices set out in the **contract** are clear and must indicate whether these prices include taxes": those elements are clearly indicated only during the online purchase.

B.2 i): The provider must inform the customer about the terms and fees applicable to the balance of prepaid WS: during the online purchase, at the stage of acceptance of the terms, we

can read near the end of the document a few terms applicable to the balance (par. 44). Of course, the consumer first must take the time to read or at least scroll the document to find that information, which is drowned in an ocean of information (e.g.: on the warranties of devices when they are provided with the service, etc.).

B.2 ii): The provider must explain to the customer how he can verify his account, contact the customer service and make a complaint to the CCTS: information on how to verify the balance is provided to the consumer neither before nor after the purchase. A link to that information appears only after an account online is opened.

Information on how to contact the customer service is written near the end of the Terms of Service document (par. 45). However, nowhere in the document is the CCTS's contact information mentioned.

e) Koodo

Koodo states on its website that there are no fixed-term contracts for this type of service. The SIM card mentions the following: "En utilisant ce service, vous confirmez à Koodo que vous acceptez les modalités de service (disponibles en magasin sur demande ou à koodomobile.com/noteslegales). Pour obtenir de l'information sur les tarifs et les modalités du service prépayé, accédez à koodomobile.com/infoprepayee."

That link leads to a list of elements that invite in turn, according to the subject, to use other hyperlinks to access information. In the middle of the Web page, a hyperlink leads to the Terms of Service⁷² under text announcing: "By using our services, you agree to the terms and conditions outlined below."

The very first page of the SIM card's online activation indicated: "Les Modalités de service s'appliquent à l'utilisation des services Koodo. En cochant la boîte à gauche et en activant votre service, vous acceptez que les modalités de service de Koodo et la politique en matière de confidentialité s'appliquent à votre utilisation du service." When we accessed the page from the Terms of Service link, the information was no more present or clear – the consumer has to access other pages from hyperlinks indicating the subject⁷³. The terms are written in the form of questions and answers, which can make it easier to search for information. However, what applies to prepaid WS is not always clearly indicated.

As for the information that the WSP must provide the customer to comply with the Code (references in bold at the beginning of the sections pertain to sections of the Code):

A.2: The WSP must "ensure that the prices set out in the **contract** are clear and must indicate whether these prices include taxes": when choosing the package, we are told the total amount to pay, with the mention "before taxes."

⁷² **KOODO**. "Koodo Modalités de service" Koodo Mobile, Montreal, Quebec, Canada, no date. [Online] <https://www.koodomobile.com/fr/service-terms> (page consulted on May 15, 2015).

⁷³ On May 22, 2015, we rechecked that information to see whether changes had been made since, but were incapable of accessing that link – the website's answer (in French as well as English) was: "Oh no! That page cannot be found." <https://www.koodomobile.com/en/en/legal>.

B.2 i): The provider must inform the customer about the terms and fees applicable to the balance of prepaid WS: this information is found in the WSP's Terms of Service.

B.2 ii): The provider must explain to the customer how he can verify his account, contact the customer service and make a complaint to the CCTS: when the consumer completes the online activation and purchase, he is informed that he may verify his balance by consulting his balance online or calling a telephone number.

No information is provided during the purchase or in the Terms of Service about the ways of contacting the customer service or making a complaint to the CCTS.

f) PC Mobile

The packaging of PC Mobile's SIM card stated the following:

Visitez pcmobil.ca/simtermfr pour connaître les modalités de service de la carte SIM. [...] L'utilisation de cette carte SIM, ainsi que de tout service et tout appareil sur le réseau sont sujets à l'entente de service à laquelle vous avez adhéré lors de l'activation de cette carte SIM, incluant les modalités de service que vous pouvez consulter au pcmobil.ca/simtermsfr.

The hyperlink leads to "Prepaid FAQ"; after a section on EVDO network changes, the FAQ generally explain the Texto 911 service and the service's extended coverage.

The SIM card also contained the following mention, in tiny characters:

Toute utilisation de cette carte SIM confirme votre accord avec les modalités de service de PC mobile, lesquelles peuvent être modifiées de temps à autre. Rendez-vous au pcmobil.ca/modaliteservice et cliquez sur l'onglet "Prépayés" pour consulter les modalités de service en vigueur.

During the first stage of activation, we were asked to read and accept PC Mobile's Terms of Service; to learn about them, a hyperlink leads to a drop-down window. The Terms are very legible, written in very large characters, but the document, although written in the form of questions and answers, contains a very large quantity of information, applicable both to prepaid and postpaid WS, and includes a series of questions about the service, its use or any other type of policy that the consumer is bound to comply with or know. The document clearly indicates that it constitutes a contract binding the consumer. A box confirming acceptance of the terms must be checked to continue the online activation process. It should be mentioned that we could not complete that purchase, because our cell phone was not among the devices that the WSP's website accepted for activation.

As for the information that the WSP must provide to the customer to comply with the Code (references in bold at the beginning of the sections pertain to sections of the Code):

A.2: The WSP must "ensure that the prices set out in the **contract** are clear and must indicate whether these prices include taxes": in the document that must be read and agreed to at the beginning of the online activation, titled "Terms of Service," we read that when the account is resupplied, taxes will be extra. However, the WSP's website, when presenting existing packages, indicates their prices without specifying whether taxes will be extra.

B.2 i): The provider must inform the customer about the terms and fees applicable to the balance of prepaid WS: in the Terms of Service, again in the “Charges and Payment “ section, the WSP also addresses the subject of terms and charges applicable to the balance.

B.2 ii): The provider must explain to the customer how he can verify his account, contact the customer service and make a complaint to the CCTS: information on the ways of verifying one’s balance is nowhere to be found during the purchasing process. The contact information of the customer service and the CCTS appears near the end of the Terms of Service.

g) Petro-Canada Mobility

The SIM card of **Petro-Canada Mobility** indicates “No-contract mobile plans,” which is repeated several times on the website in that form or another (“prepaid plans **with no contract**”).

That statement appears to contradict what the WSP’s website contains for activating the service. When we tried to activate the SIM card online, we were asked to accept the “Terms and Conditions – Petro-Canada Mobility” by checking a statement confirming that we had read and understood them. Those terms and conditions indicate, at the start:

This Agreement governs the sale and delivery of wireless services ("Service" or "Services") to you by Petro-Canada and Ztar Mobile and any of its parent and subsidiaries ("us," "we," "our" or "Petro-Canada Mobility™"). This Agreement is between you (the purchaser or user of the Services) and us. Certain other laws may also govern our provision of Services to you and such laws are incorporated in their entirety by this reference into this Agreement as if set forth in this Agreement. Please read these Terms and Conditions of Service carefully. These Terms and Conditions of Service are a legally binding agreement between you and us. They contain important information about your legal rights, and require that certain disputes be resolved through Arbitration instead of a court trial. We reserve the right to change or modify any of these Terms and Conditions of Service at any time and in its sole discretion. Any changes or modifications to these Terms and Conditions of Service will be binding upon you once posted on the website found at mobility.petro-canada.ca⁷⁴.

The text of the Terms and Conditions only mentions the contract’s existence; that will not be repeated when an account is opened online, or during purchase of a package/pay-per-use services, or when the account is resupplied.

The Terms of Service contain the same type of information as the other WSPs studied – always in large quantify and never very clear. To access some of the information on the service, one must also access additional hyperlinks indicated in the document. The document that presents the Terms of Service provides information on numerous subjects, often in a single long paragraph (including an impressive one of around 70 lines), which makes reading difficult.

⁷⁴ **PETRO-CANADA MOBILITY.** “Terms and Conditions” Mobility.petro-canada.ca, Calgary, Alberta, Canada, no date. [Online] [http://mobility.petro-canada.ca/en/independent/221.aspx?_utma=128820109.1108915054.1432119308.1432119308.1432119308.1&_utmb=128820109.15.8.1432119458310&_utmc=128820109&_utmz=-&_utmz=128820109.1432119308.1.1._utmcsr=google%257Cutmccn=\(organic\)%257Cutmcmd=organic%257Cutmctr=\(not%20provided\)&_utmv=-&_utmkl=129442828](http://mobility.petro-canada.ca/en/independent/221.aspx?_utma=128820109.1108915054.1432119308.1432119308.1432119308.1&_utmb=128820109.15.8.1432119458310&_utmc=128820109&_utmz=-&_utmz=128820109.1432119308.1.1._utmcsr=google%257Cutmccn=(organic)%257Cutmcmd=organic%257Cutmctr=(not%20provided)&_utmv=-&_utmkl=129442828) (page consulted on February 26, 2015).

It should be pointed out that the information we received from this WSP about the service chosen is deficient: we had to choose and supply the service without ever being told the cost of a minute or of a sent/received text message (given that we had chosen what Petro-Canada Mobility calls the “Anytime Plan”). We had to do a search ourselves – apart from the purchasing process – on the WSP’s website to find that information.

As for the information that the WSP must provide the customer to comply with the Code (references in bold at the beginning of the sections pertain to sections of the Code):

A.2: The WSP must “ensure that the prices set out in the **contract** are clear and must indicate whether these prices include taxes”: during the online supply process, at the start, when we choose what we want to purchase (i.e., the refill amount we want to add to our account – Anytime Plan”), we are told the refill price, but not whether taxes are included (and not the costs of per-minute use). During payment, though, we’re told that taxes are extra, as well as their amount separately and the total amount due.

B.2 i): The provider must inform the customer about the terms and fees applicable to the balance of prepaid WS: we find balance information in various parts of the Terms and Conditions: “Registering, Activating and Using Our Phones and Services,” “Refill Your Petro-Canada Mobility Account,” etc. So the information exists, but it isn’t easy to group together, because it isn’t clearly identified and is scattered in several sections.

B.2 ii): The provider must explain to the customer how he can verify his account, contact the customer service and make a complaint to the CCTS: no information about those three elements can be found in the terms and conditions.

Information on balance verification is found online in the customer account. Regarding how to contact the customer service, we are given, during the online activation, the telephone number for contacting that service if we need help with the activation. As for the CCTS, we find no mention of it in the terms and conditions of Petro-Canada Mobility.

h) Chatr

Chatr stands out by handing the consumer, during purchase of the SIM card, a kit including a brochure that contains essential information (e.g.: how to activate the SIM card, to pay, resupply the account, verify the balance, etc.) presented in clear language, as well as a booklet titled “Terms of Service, Acceptable Use Policy and Privacy Policy,” which includes all the documents binding the consumer. This document is very legible, written in large characters, but is not always very clear; despite its great quantity of information, it has no table of contents that would make consulting it less arduous.

During online activation, a box must be checked to confirm that the provider’s Terms of Service have been read, understood and accepted. There is a similar mention on page 5 of the booklet handed to the consumer during the SIM card purchase, to the effect that the customer acknowledges having taken cognizance of **all** the documents and having accepted all their provisions:

The following terms and conditions of service (these "Terms") govern your use of the Services. Your service agreement (as may be amended), any chatr brochure or online material describing the plans, features, services or products you have subscribed to or purchased and any other materials incorporated by reference (collectively, the "Materials") together with these Terms constitute our agreement with you (collectively, the "Agreement")⁷⁵.

As for the information that the WSP must provide the customer to comply with the Code (references in bold at the beginning of the sections pertain to sections of the Code):

A.2: The WSP must “ensure that the prices set out in the **contract** are clear and must indicate whether these prices include taxes”: during the online payment, we are informed that the package’s price does not include taxes.

B.2 i): The provider must inform the customer about the terms and fees applicable to the balance of prepaid WS: on page 5 of the booklet, in a section titled “Charges; Account and Payment Information,” information on the terms and charges applicable to the account. But the information turns out to be quite complex.

B.2 ii): The provider must explain to the customer how he can verify his account, contact the customer service, and make a complaint to the CCTS: that information is found in several locations in the booklet, which contains the Terms of Service; the first two elements are found in the brochure.

i) In short

Most of the companies state that no contract exists for prepaid WS. However, all of them require the consumer, during online activation of the service, to acknowledge having read, understood and accepted the Terms of Service that constitute a contract between the parties.

It goes without saying that those documents are far from being easily understandable, and are often almost illegible: the sentences and paragraphs are uselessly long, the formulations often complex or even convoluted – legal jargon continues to be the norm. This finding contradicts the WSP’s claims, made in 2014, that their contracts were clear and required no modification.

The Terms of Service are often accompanied by several other documents (such as privacy policies). Much of the information therein is important. Taken together, the texts, information and provisions, written in language that is rather inaccessible to the average consumer, make it illusory to believe that the consumer will take cognizance of them in their entirety and understand them fully. As noted above, that volume could be reduced considerably if the documents to be read only contained information relevant to the service acquired by the consumer.

⁷⁵ Chatr’s Terms of Service can also be read at the following address [Online]: https://www.chatrwireless.com/web/chatr.portal;jsessionid=Pzh9VJ1hGJRJ6tRxSFCK2GRrJ15HDCwp1jR01LQtqNf5K1RpyqyHI-41530798!806384919?_nfpb=true&_pageLabel=GCT&_nfls=true&setLanguage=en&template=termsofservice (page consulted on February 26, 2015).

Indeed, the Terms of Service offered to consumers usually cover (except for companies providing only one service) all mobile services: prepaid and postpaid, text messages, data services, account management. So information about all the types of WS ends up in the same contract, and is alternately scattered or mixed, which occasionally makes it impossible to know exactly what provisions apply to prepaid services. Even though the WSP points out in certain cases that some of the information applies specifically to prepaid services, other information submerged in the document may also apply to them.

In addition to being unclear, that information is often deficient with regard to the Code's requirements for wireless services. The majority of the WSPs studied provide prepaid customers, during online transactions, with information about the charges and terms that apply to the balance. The ways of verifying the balance, contacting the customer service or the CCTS, are generally communicated. However, some of the WSPs, at the time of our survey, never gave consumers information regarding the CCTS⁷⁶.

3.4.4 Presence and Content of Documents Provided after Conclusion of the Contract

Following conclusion of postpaid WS contracts, WSPs are obliged to give consumers a summary of the contract, including information prescribed by the CRTC. As we have seen, this obligation has not been imposed to providers in the case of prepaid services, but the CRTC was strongly recommending that they adopt that practice. Unfortunately, the providers have not done so.

Five of the eight providers nevertheless contacted us after conclusion of the contract. Of four e-mails received, one included the invoice (Petro-Canada); another acknowledged receipt of our activation application (PC Mobile); another confirmed the purchased package (Koodo); and the fourth (Bell) gave us again the link to our "Terms of Service" (i.e., the Terms and Conditions which we had accepted from the link written on the SIM card) and invited us to open a customer account online to be able to:

- Consult your balance and make payments
- View a detailed explanation of the charges
- Consult and change your package or options
- Check your data usage
- Manage your shareable Package

Telus sent us two text messages, informing us about ways to verify our balance by telephone or to contact the customer service. The three other providers (Fido, Virgin, chatr) sent us neither a text message nor e-mail with summarized or personalized information.

⁷⁶ Among those companies, it should be noted that in January 2014, Rogers had mentioned in its compliance report that Fido had not yet included that information in its contract. However, our inquiry revealed that as of May 15, the addition has still not been made.

See: **CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION (CRTC)**. "Compliance Reports," *DM#2054759 – 2012-557 – Compliance Report – Rogers – RogersCRTC26Nov13-1 Abridged*, CRTC, Ottawa, Ontario, Canada, January 15, 2014, 21 pages. See p. 1. [Online] <https://services.crtc.gc.ca/pub/instances-proceedings/Default-Defaut.aspx?YA=2012&S=C&PA=t&PT=nc&PST=a> (document consulted on May 15, 2015).

3.4.5 Payment

In accordance with our research methodology, our purchases of prepaid minutes/packages were made online, on each provider's website. Frequently, we chose a package during activation of the SIM card, and were not required to pay immediately. In those cases, we had to proceed instead with a resupply.

But we did observe this: when we had to supply our account to have access to a certain package (costing \$15.75, for example), we had to add more money than the price of that package (since the prepaid service cards or blocks are often sold for \$10, \$15, \$20, etc.). In our example – the \$15.75 package – we had to purchase a \$10 “card” to cover the price, because it is impossible to simply pay the exact amount of the package. That \$20 “card” then paid the price of the package, and the \$3.75 surplus could be used for “uses per minute,” even though the consumer had chosen to have a package. For example, he can choose a package of \$15 plus taxes, to be able to send and receive unlimited text messages, but no call minutes. The surplus could then be used for making calls, billed per minute, according to the price charged by the WSP (a price that is not always known during conclusion of the contract – particularly during conclusion of a package contract). The consumer can also purchase options with the surplus, when the amount allows it (when it is sufficient to pay for the option); when, for example, the surplus is \$5, at times the WSP makes him the offer of purchasing access to 200 minutes at that price, instead of paying \$0.50 per minute.

3.4.6 Billing of Overage Charges

Our survey of prepaid WS purchases made online revealed that in the case of prepaid WS, it is impossible to use minutes or other services in excess of a contract: the consumer can use the service only if sufficient credit has been deposited in his account. For the service to continue being used, the account must be resupplied once depleted.

However, that information is not presented very clearly in WSP Terms of Service, which contain provisions should a customer exceed the limit, but do not specify if those provisions apply only to postpaid WS⁷⁷.

The consumer thus cannot use more than the amount deposited in advance in his account, but the latter can still be debited unforeseen amounts. As we have seen, when we purchased pay-per-use minutes (rather than a package) from Telus, our account was debited to defray mysterious charges that were never explained to us.

Some providers give the option of resupplying the account by preauthorized credit card payments – whether at fixed dates or as soon as the balance approaches a certain threshold.

⁷⁷ See for example: **VIRGIN MOBILE**. “Terms and Conditions of Service,” Virgin Mobile, Ottawa, Ontario, Canada, section 9 [Online] <http://www.virginmobile.ca/fr/support/legal-terms.html?province=ON&geoResult=failed> (page consulted on May 25, 2015). “What happens if I exceed the usage limits of my Plan or Add-on? You will pay extra for that. Additional Usage will be charged to you at Pay-Per-Use rates published at virginmobile.ca/rates, unless your Plan or your selected Add-ons specify a different rate”. The same type of formulation can be found with Bell. See: **BELL CANADA**. “Bell Mobility Terms of Service,” Bell, Ottawa, Ontario, Canada, 2015, section 9 [Online] http://www.bell.ca/Bell_Mobility_Terms_of_service (page consulted on May 15, 2015).

Although those payments are not for overage charges, this payment method certainly doesn't correspond to a service giving the consumer full control over his wireless expenditures.

3.4.7 Copy of the Contract

None of the eight providers sent us a personalized copy of the contract or of its summary after we entered online into the prepaid WS agreements.

The Terms of Service displayed during purchases are often impossible to print easily as presented (in a drop-down window, for example); Koodo makes it easier by providing a button for printing. With other providers, the Terms of Service were printable, but only by means of the browser's functions and only, for the copy displayed at that moment, before acceptance of the contract.

It is generally possible to find a provider's terms elsewhere on the website, through a quick search; still, in those cases, the contract has not actually been "provided" by the provider itself. And again, those documents are not presented with a print button.

3.5 Results of the Telephone Survey

Following the online survey, which proved longer and more complex than we had expected, we conducted our telephone survey. We activated SIM cards purchased for that purpose and then purchased prepaid packages/pay-per-use minutes.

The companies that were the object of this part of the survey are: Koodo, Virgin Mobile, Rogers, Petro-Canada Mobility, Bell, chatr, PC Mobile and Fido.

To present our results in a way that facilitates reading, and because we used the same questions for all the purchasing methods, we will use here the same subtitles as in the preceding section (5.1). However, when the answers that applied to Internet purchases apply here as well, we will refer to the relevant part of the preceding section.

3.5.1 Activation Fee

Koodo and Fido were the only ones of the eight WSPs studied that charged an activation fee – of \$15 and \$1, respectively. In both cases, the agents assisted us by telephone to complete the purchase and informed us of the costs before the contract was concluded.

3.5.2 Is SIM Card Activation Possible without a Purchase of Prepaid WS?

As with online purchases, it was possible in all the cases studied to activate the SIM card without having to purchase packages/minutes immediately.

3.5.3 Disclosing the Contract

As mentioned above, some WSPs already state on their SIM cards that by using the service, the consumer accepts the company's Terms of Service (Bell, Virgin, Koodo and PC Mobile), which constitute a contract between the WSP and the consumer. Rogers' SIM card (which was not discussed in the preceding section) does not carry such a mention.

Given that all the WSPs, including Rogers, have a similar document presenting the essence of the agreement between provider and customer, under headings such as "Terms of Service" or "terms and conditions of service," we will focus here on the disclosure of those terms.

During telephone transactions, do the WSPs disclose to the consumer the existence and scope of that document? If so, at what moment? If not, what information is offered to the consumer during the telephone purchase, particularly regarding the critical elements and the rights and obligations stated in the document?

In six of the eight cases (Koodo, Virgin, Rogers, Petro-Canada Mobility, Bell, PC Mobile, Fido), the agents with whom we made our purchases clearly told us that there simply exists no contract in the case of prepaid WS. In the case of four of those WSPs (Koodo, Rogers, Petro-Canada Mobility and Fido), no document or even indication of the existence of a document stating the terms of the agreement was given to us, and none of the agents asked if we had taken cognizance of the Terms of Service (to which most of the SIM cards refer, as we have seen) or if we agreed to them.

Although its agent told us we would not have a contract with Virgin, that WSP stood out from the four others, because at the beginning of the call, its automatic phone service asked us to press "1" on our phone to confirm, before we could continue with the transaction, that we had read and accepted their "super terms and conditions," and it indicated an Internet address where we could access them.

At Bell, it was during our account resupply that the automatic phone service notified us, without asking us to confirm our acceptance, that by resupplying our account, we understood and agreed to the terms and conditions that could be consulted at the address bell.ca/mobilityterms. When activating the SIM card and obtaining the phone number, we had received no such information.

The chatr agent told us there was no contract, but rather an agreement... After we chose our package, she asked us if we agreed to chatr's terms and conditions. When we asked what they were, she gave us some information about them (e.g., chatr's way of calculating the payment date, the fact that purchases of minutes are not refundable, the maximum time that chatr reserves the phone number if the account is not resupplied, etc.). After several minutes, she said she couldn't read all the terms, otherwise "it would take the whole evening." Indeed, the list seemed inexhaustible, and reading it all by telephone was becoming tiresome.

As mentioned above, Rogers' SIM card does not mention the existence of any other document or Terms of Service the consumer should consult before activating and using the service. During the telephone purchase, the agent did not tell us anything to that effect either. But when we consulted its website, Rogers specified that there was no fixed-term contract in the case of

prepaid WS. When we registered the account online, we noticed that as opposed to the other WSPs, at no time were we asked to read and accept any terms and conditions of use. And yet, at the bottom of Rogers' website is a link to Terms of Service that closely resemble those of the other WSPs we have discussed:

The following terms and conditions of service (these Terms) govern your use of the Services. Your service agreement (as may be amended), any Rogers brochure or online material describing the plans, features, services or products you have subscribed to or purchased, any applicable user guides that are currently in effect, and any other materials incorporated by reference (collectively, the Materials) together with these Terms constitute our agreement with you (Service Agreement). You may have more than one Service Agreement with us. If there is any inconsistency between the Materials and these Terms, these Terms will prevail⁷⁸.

Like those of the other WSPs, that document contains much to much information on various unrelated subjects, and is written in language that is neither clear nor understandable.

As for the information that the WSP must provide the customer to comply with the Code (references in bold at the beginning of the sections pertain to sections of the Code):

A.2: The WSP must “ensure that the prices set out in the contract are clear and must indicate whether these prices include taxes”: the agents we spoke with by telephone always gave us the price of the chosen package. Regarding tax information, in most cases the agents did not give us that information spontaneously. We received it a few times when we asked the agents that question (Koodo – after payment, Rogers, Petro-Canada Mobility, Bell and Fido).

Only the chatr and PC Mobile agents clearly gave us the amount before and after taxes.

With Virgin, we activated the SIM card and the account, without being able to resupply by telephone⁷⁹; at those stages, we received no tax information.

B.2 i): The provider must inform the customer about the terms and fees applicable to the balance of prepaid WS: as with contracts concluded online, information on terms and charges applied to the balance of prepaid WS is found, if applicable, online in the Terms of Service. With Bell, Virgin, Koodo and PC Mobile, the answers are thus the same as in the preceding section of our report.

It should be noted that during the purchase by telephone with Koodo, Rogers⁸⁰, Petro-Canada Mobility, PC Mobile and Fido, we received no information on the terms and charges applicable to the balance. The Bell agent indicated only the moment when the balance expires, but only after we asked her about it. With Fido, we asked the question and the agent answered that the balance expires after 30 days if the account is not resupplied, but that we have a 7 days' grace period to do so.

⁷⁸ **ROGERS COMMUNICATIONS.** “Rogers Terms of Service,” Rogers, Toronto, Ontario, 2015, 9 pages, p. 1. [Online] http://www.rogers.com/cms/pdf/en/About/TOS_En.pdf (document consulted on May 20, 2015).

⁷⁹ The purchase of minutes required payment to be made with a credit card issued in the name of the holder of the account, which we had activated under a fictitious name.

⁸⁰ *Op. Cit.*, Note 71, **ROGERS.** “Rogers Terms of Service”. And yet, page 10 (paragraph 51) contains information on the subject.

The chatr agent who made the transaction told us the exact time of day when our balance would expire, and the fact that resupplying cannot be done for less than a full month, even if we need the service for only one day. She also informed us that our phone number will be reassigned if we make no payment for 6 consecutive months.

Given that we were not able to complete the transaction with Virgin, we could not verify if that information was provided.

B.2 ii): The provider must explain to the customer how he can verify his account, contact the customer service, and make a complaint to the CCTS: the answers here are the same as in the preceding section in the cases of Bell, Virgin, Koodo and PC Mobile.

During the purchase by telephone, Koodo gave us a number to call for contacting the customer service and/or verifying our balance. But at no time were we informed about any possibility of making a complaint to the CCTS, or even about its existence.

In the cases of Rogers and Petro-Canada Mobility, during the activation and the choice of package by telephone we were told nothing about verifying the balance or the ways of contacting the customer service or making a complaint to the CCTS.

When we asked the Rogers and Fido agents⁸¹ how we could verify our balance, we were informed and also told how to contact the customer service. With PC Mobile, we also obtained information on the way of verifying our balance after requesting that information.

The three companies' agents made no allusion about how to make a complaint to the CCTS.

In the purchase from Bell, during the first call – when we activated the SIM card and obtained the phone number – we asked the agent how to verify our balance, but he answered that this information would be given only when we would call to supply our account. After the activation, we received a text message telling us that we could verify the balance at a certain Internet address. Despite our expectations, the agent, when we proceeded with the resupply by telephone, informed us clearly and directly neither about the way of verifying our account nor about the ways of contacting the customer service or the CCTS. But as mentioned above, the automatic system did tell us, with no further details, that by resupplying our account, we agreed to the WSP's Terms of Service⁸².

The chatr agent explained how to verify our account and contact the customer service. No mention was made about the CCTS. But that information is contained in the booklet provided with the SIM card.

Since we could not complete the transaction with Virgin, we could not verify if that information was provided.

⁸¹ After activation, Fido sent us a text message indicating how to check our balance.

⁸² *Op. Cit.*, Note 66, **BELL CANADA**. "Bell Mobility Terms of Service." Information on ways to contact customer service and CCTS is found in paragraphs 63 and 65.

3.5.4 Presence and Content of Documents Provided after Conclusion of the Contract

After the purchase, four of the WSPs sent us text messages:

- Koodo – only to confirm our PIN⁸³;
- Virgin – to notify us of the connection, confirm the phone number assigned to us and our package; another text message informed us that our balance was zero;
- Bell – to tell us how to verify our balance ;
- Fido – to confirm our number and tell us how to consult the balance and its expiry date.

No e-mail was received from those WSPs – most of them had not even asked us our e-mail address.

Chatr sent us an e-mail, to give us the temporary password to use for opening an online session.

Three of the WSPs – Rogers, Petro-Canada Mobility and PC Mobile – that were the object of our telephone survey sent us nothing after the conclusion of our prepaid WS contract: no text messages, e-mails or other messages.

3.5.5 Payment

At that stage, we purchased by telephone all the packages/pay-per-use minutes.

For the purchase by telephone, it was possible to use a credit card. However, in most cases we had to use a credit card issued in the name of the prepaid WS account holder.

In some cases, the agents told us that the credit card absolutely had to be registered in the account to enable us to make the payment. The credit card could then be erased from the account (for example, Rogers and Fido⁸⁴).

Regarding the moment of paying for prepaid services, the same observations apply as those made in the preceding section of our report.

3.5.6 Billing of Overage Charges

In almost all the cases studied (Fido being the exception), when we asked the agents, they answered that it was impossible to exceed the limit and use more minutes/text messages than allowed in our balance account. If the balance was exhausted, we absolutely must add money

⁸³ The code that the customer has to give customer service representatives to identify himself.

⁸⁴ After paying for the package, we asked the Fido agent to remove the credit card from the account, and he confirmed having done that. But after opening an account online to verify, we were surprised to find that the credit card was still linked to the account.

in the account be able to make calls or other operations; otherwise it was impossible to use the prepaid service.

We could not obtain that information from the Fido agent. So we tested the matter by exhausting the minutes we had purchased, and we observed that it was in fact impossible to exceed the limit with that WSP.

3.5.7 Copy of the Contract

With all the WSPs that were the object of our telephone survey, we received no copy of any contract or summary after completing the purchase by telephone.

In short

In addition to the fact that the WSPs don't meet the Wireless Code's requirements, the information received by the customer paying by telephone is even more deficient than that to which he has access when purchasing on the Internet. Moreover, an activation fee is sometimes charged to the consumer for purchasing by telephone, as opposed to when the consumer activates the SIM card otherwise.

3.6 Results of the In-Store Survey Conducted in Person

The survey's last stage was to make in-store purchases of prepaid WS. To do so, we visited the kiosks of four WSPs (Fido, Telus, Bell, Petro-Canada Mobility), as well as two retail stores in Montreal (purchase of chatr WS at Wave Wireless and of Rogers WS at Future Shop). We planned to purchase SIM cards on site, ask the agents to activate them, and then purchase packages/minutes.

This stage was no simpler than the purchases made on the Internet or by telephone, and was at times even more difficult.

Since we noticed no difference between purchases made at WSP kiosks and in retail stores, we will present together the data on this part of our survey.

3.6.1 Activation Fee

The WSPs did not charge us an activation fee during our in-store purchases⁸⁵.

⁸⁵ However, one of the Bell agents we spoke with at the kiosk asked us to pay a \$20 activation fee, while telling us that this was standard procedure for an activation made in person. We approached another agent, who didn't charge us any fee.

3.6.2 Is SIM Card Activation Possible without a Purchase of Prepaid WS?

In all cases, as for purchases made online and by telephone, it was possible to activate the SIM cards without having to purchase packages/minutes immediately.

3.6.3 Disclosing the Contract

The Fido and Telus agents told us that their prepaid WS involved no contract. They did not mention the existence of any Terms of Service.

Nor did the agents of the other WSPs studied mention their companies' Terms of Service. But the Bell agent gave us, during the purchase, a one-page document titled "Résumé des renseignements essentiels," and had us sign a one-page document titled "Notre entente," at the end of which we read:

Vous convenez (a) avoir lu et compris le résumé des renseignements essentiels, les modalités de service de Bell ci-jointes et toute déclaration et/ou autorisation de prélèvement automatique qui y sont jointes (collectivement appelées notre "entente"); (b) être lié par toutes les modalités figurant dans votre entente et (c) qu'il vous incombe de payer tous les frais engagés conformément aux dispositions de l'entente, y compris les frais engagés par des personnes utilisant vos services ou votre appareil. (Our underlined)

However, the Terms of Service were never provided to us.

Telus and chatr didn't provide us with any document during the kiosk purchase, and did not mention the Terms of Service. The agents did not give us the SIM support card; so we could not see any mention of an agreement.

3.6.4 Presence and Content of Documents Provided after Conclusion of the Contract

As opposed to what occurred during the purchases made by telephone and on the Internet, some (three) WSPs gave us a document containing the transaction's critical information.

The agent with whom we completed the Bell transaction handed us – prior to payment – a one-page document titled "Résumé des renseignements essentiels" (which he also e-mailed us), accompanied by a copy of the Terms of Service and of a document on Bell's privacy protection policy.

Fido gave us post-purchase a two-page document titled "Entente de service sans fil – Renseignements essentiels" (despite having made sure to tell us that no contract existed for prepaid WS). No e-mail followed.

After the chatr WS purchase made with a retailer selling the services of various WSPs, as well as a variety of electronic equipment, the agent gave us a one-page document titled "Your Chatr

Order Confirmation” containing information on the service subscriber (name, address, number), details of the purchased service, etc.

After the purchase, the Telus agent handed us a calling card on which he wrote information: the numbers to call for verifying the balance and contacting the customer service. Telus sent us an e-mail inviting us to open an online account.

As for the information that the WSP must provide the customer to comply with the Code (references in bold at the beginning of the sections pertain to sections of the Code):

A.2: The WSP must “ensure that prices set out in the contract are clear and must indicate whether these prices include taxes”: information on the price of the purchased service was always provided to us during the purchase made in person.

However, there was no mention of the inclusion of taxes during the purchase made directly at the kiosk in the case of Fido, Telus, Bell and chatr. But when the agents told us the final price, we deduced that the prices indicated initially stated did not include taxes. The chatr document titled “Your Chatr Order Confirmation,” handed after the transaction was concluded, mentions that the amount does not include taxes.

B.2 i): The provider must explain to the customer how to verify his balance, contact the customer service and make a complaint to the CCTS: there was no mention of the terms of fees applied to the balance of prepaid WS during our Fido purchase at a kiosk. However, the agreement summary indicates that if the account balance is not sufficient to pay the package, we will be billed on a pay-per-use basis. No additional information appears on this subject.

Bell provides information about prepaid WS terms and fees on the “voucher” handed after conclusion of the purchase, which makes it possible to resupply the account. The information includes a mention that unused funds expire after the purchased period, and that a new balance and expiry date will be added to the account within 48 hours of the addition of funds. This type of information is not found in the “Critical Information Summary,” but that document does specify that if the use mentioned in the package is exceeded, overage charges may apply, that such charges may vary over time, and that we should consult bell.ca/mobility for the charges in effect.

Chatr’s document, “Your Chatr Order Confirmation,” gives a bit of information that seems to pertain indirectly to certain fees or terms applied to the balance, but the document is not clear:

Pay-per-use services (including long distance calling not included with your plan) are made available to you on a per-usage basis with sufficient funds in your account and may be changed by chatr at any time without notice. For more information on pay-per-use services and charges not listed above, visit chatrwireless.com.

Telus provides no information on the terms and fees applied to the balance of prepaid WS.

B.2 ii): The provider must explain to the customer how he can verify his account, contact the customer service and make a complaint to the CCTS: the Fido agent did not inform us spontaneously about the ways of verifying our balance, contacting the customer service of making a complaint to the CCTS. He told us how to verify the balance after we asked him the

question directly. Information about the customer service and the CCTS is found on the second page of the document provided by Fido.

Nor did the Bell and chatr agents mention anything about the ways of verifying our balance, contacting the customer service or making a complaint to the CCTS. However, the information is contained in the “Critical Information Summary” provided by Bell, and, except for information on the ways of verifying our balance, in the document provided by chatr.

To indicate how to verify our balance and contact the customer service, the Telus kiosk agent wrote the phone numbers on a calling card...

3.6.5 Payment

All the payments were made by credit card. As opposed to what occurred during the purchases made on the Internet and by telephone, we were never compelled to use a credit card in the name of the WS account holder.

3.6.6 Billing of Overage Charges

During the purchases made in person, the agents of the WSPs surveyed told us nothing about possible overage charges.

3.6.7 Copy of the Contract

Bell, Fido and chatr appear to follow the CRTC’s suggestion to give consumers a summary of the prepaid WS contract when the purchase is made in person.

Telus handed or sent us no copy after the purchase.

No copy of those WSPs’ Terms of Service was provided to us by three of those WSPs; only Bell e-mailed us a copy after the purchase.

In short

There is great disparity between the WSPs’ practices during in-store sales of prepaid WS. Although three of the WSPs we surveyed follow CRTC recommendations by providing a critical information summary after the contract is concluded, it remains that none of the WSPs mentions the contracts or Terms of Service during the purchase. The WSPs don’t always meet the Code’s requirements for indicating prices and taxes, and they provide incomplete information on the terms and fees applied to prepaid WS balances. Lastly, there was no mention of the CCTS or of possible overage charges during our in-store survey.

3.7 General Comments about Prepaid Wireless Contracts

During our field survey, we noticed a problem defining prepaid and postpaid WS. We also noticed doubtful clauses (or Terms of Service) in the contracts. We will address those issues in the following subsections.

3.7.1 The Joys of Purchasing Prepaid WS

a) *Purchasing Bell prepaid WS on the Internet*

When we visited Bell Canada's website to activate the SIM card, we found no platform for Internet purchasing. We then tried to open an account on the site, which proved impossible because we did not yet have the necessary information (account number, phone number, etc.). However, Bell invites consumers on its site to chat with a member of its team, which we ended up doing.

We then told the agent who was online at that moment that we wanted to activate the SIM card directly online and then to purchase online a prepaid monthly package; we asked her how to open an account if we needed an open account to do all that. We were transferred twice to different agents, in that one chat session. Each time we asked if the Bell website had an integrated platform for purchasing online their prepaid services, the agents insisted to activate our SIM card themselves, but without answering that question. We finally agreed to proceed as they indicated.

b) *Purchasing Bell prepaid WS directly in-store*

In March 2015, we went to the Eaton Centre in Montreal to purchase Bell WS. The agents of the first kiosk we visited told us, without further explanation, to go to the neighbouring Best Buy to make the purchase. Best Buy informed us that it sold that WSP's SIM cards, but did not activate services on-site. When we returned to the initial kiosk, we were warned that Bell prepaid services are very expensive... The agent seemed reticent, so we decided to visit another kiosk in the same shopping centre. An agent then started activating a SIM card, but required an identification card, while explaining that all the providers (except chatr) required one for activation (which is untrue, as we knew from our experience with previous purchases). The agent then tried to dissuade us from activating on-site, and explained that Internet activation was preferable, because it would save us the \$20 activation fee he would charge us.

We pulled out... but returned the next day to that same kiosk, where a different agent was on duty. At no time did he ask us for an identity card or to pay an activation fee. And he gave us a discount for the package we wanted to acquire.

That purchase from Bell left us perplexed. Receiving such different information (and charges) from the same WSP, and especially at the same kiosk, is very surprising. If this is what the average consumer experiences, we must question the level of protection granted to consumers purchasing prepaid WS.

3.7.2 Doubtful Contractual Terms

As we have seen, although several companies insist that there is no contract between WSP and consumer regarding prepaid WS, the document titled “Terms of Service” (which consumers must agree to in many cases before being able to continue with the transaction) demonstrates the opposite. Indeed, that document presents the agreement that the consumer concludes with his provider when purchasing any of the latter’s services.

A contract is a voluntary agreement between parties committing themselves to a service. If two parties agree, one to provide a service and other to pay for it, there is a contract. Naming that meeting of minds otherwise changes nothing. Whether the provision of services is instantaneous or extended, fixed-term or indefinite, changes nothing either. A contract of monthly or indeterminate duration is not an absence of contract. Claiming the contrary could well be considered a false or misleading representation.

How important is this? It must be realized that consumer law is based essentially on the consumer contract. Consumer law pertains to adhesion contracts, external contractual terms, unfair or prohibited terms inserted in contracts; Quebec’s *Consumer Protection Act* applies to contracts concluded between a consumer and a merchant. In that context, what exactly does the consumer believe are his rights, when he is repeatedly told that the agreement he is about to conclude or has just concluded is absolutely not a contract?

It is important to beware such obfuscations that, innocuously, lead consumers to believe that they may have less rights than they have in reality. Virgin gently boasts that “Our lawyers are very good at explaining everything⁸⁶.” In the collective and individual interest of consumers, it may be time to intervene to make sure the good lawyers’ skills aren’t used to mislead consumers and deny them the protections that consumer law attempts to guarantee them.

We are left perplexed by numerous terms contained in the documents presented with such titles as “Terms of Service.”

The Wireless Code mentions contract-related documents a few times (including *privacy protection policies* and *fair use policies*): they must, to the same extent as the contract, be clear, easy to read and understand; their content, in a postpaid contract, must be described in the contract; and a permanent copy of them must be delivered to the customer. The Code thus insists that the consumer must be aware of those company policies, which may be invoked by a merchant wanting to include their provisions among those binding the consumer.

How far do WSPs go in attempting to include *related documents* in the contract? For example, the following clause is excerpted from Rogers’ Terms of Service:

The following terms and conditions of service (these Terms) govern your use of the Services. Your service agreement (as may be amended), any Rogers brochure or online material describing the plans, features, services or products you have subscribed to or purchased, any applicable user guides that are currently in effect, and any other materials incorporated by reference (collectively, the Materials) together with these Terms constitute our agreement with

⁸⁶ VIRGIN MOBILE CANADA. “Legal,” Virgin Mobile, Ottawa, Ontario, Canada, no date. [Online] <http://www.virginmobile.ca/en/support/legal.html?itcid=FOT:24> (document consulted on May 20, 2015).

you (Service Agreement). You may have more than one Service Agreement with us. If there is any inconsistency between the Materials and these Terms, these Terms will prevail⁸⁷. (Our underlined)

It seems obvious that Rogers goes too far in including in the contract, for example, any online documents that might be related to the service, in addition to Terms of Service already filling 9 pages and addressing several different subjects. As we have seen, the CRTC has not decided to extend to prepaid services the provider's obligation to describe in the contract the content of its related documents and provide a copy of them. So this provision of Rogers' Terms of Service contravenes the Code with regard to postpaid services, but would be acceptable for a prepaid service contract. That hardly seems acceptable. We detected a similar clause in chatr's Terms of Service⁸⁸.

But it should be emphasized that the Civil Code of Québec addresses external clauses as follows:

1435. An external clause referred to in a contract is binding on the parties.

In a consumer contract or a contract of adhesion, however, an external clause is null if, at the time of formation of the contract, it was not expressly brought to the attention of the consumer or adhering party, unless the other party proves that the consumer or adhering party otherwise knew of it⁸⁹.

All the provisions of those external documents are therefore, despite references in the contract and unless expressly brought to the consumer's attention, without any effect other than to mislead the consumer.

We found other clauses problematic:

a) Clauses pertaining to representations:

Clauses whereby a company excludes its responsibility for representations/promises that its vendors may make or that may appear, for example, in promotional documents, as well as warranties:

All representations, warranties and conditions of any kind, express or implied, are excluded to the maximum extent permitted by applicable law. To the maximum extent permitted by applicable law, no advice or information, whether oral or written, obtained by you from the Rogers Parties creates any term, condition, representation or warranty not expressly stated in a Service Agreement⁹⁰.

⁸⁷ *Op. Cit.*, Note 78, **ROGERS COMMUNICATIONS**, *Rogers Terms of Service*. See p. 1.

⁸⁸ **CHATR**. "chatr Terms of Service," chatr, Toronto, Ontario, Canada, no date. [Online] https://www.chatrwireless.com/web/chatr.portal;jsessionid=ljqbVFPSYPC9b3DfBTJYQ1Dj5yfP6326lzNQJYLsBp15FS hnJGW7!-1874340859!986246377?_nfpb=true&_pageLabel=GCT&_nfs=true&setLanguage=en&template=termsofservice (page consulted on May 20, 2015).

⁸⁹ *Civil Code of Québec*, Québec City, Quebec, Canada. Update June 1, 2015. [Online] http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/CCQ_1991/CCQ1991_A.html (page consulted on June 23, 2015).

⁹⁰ *Op. Cit.*, Note 78, **ROGERS**, *Rogers Terms of Service*. See p. 5.

Rogers' clause provides of course that those exclusions have effect only "to the maximum extent permitted by applicable law." Quebec law is clear regarding the exclusions and requires a more explicit mention of inapplicability than the usual vague declarations, so the above clause is preceded by a note indicating that it is inapplicable in Quebec. We can only hope that consumers in other provinces are sufficiently aware of applicable laws to be able to determine on their own which representations, guarantees and terms the WSP can or cannot exclude; and that those consumers will not be impressed by such blanket exclusions stated in the document that should bind the parties – exclusions that the provider could attempt to invoke against them on the basis of the letter of the agreement.

This type of clauses is irreconcilable, for example, with Quebec's *Consumer Protection Act*⁹¹, which in section 41 states that "The goods or services provided must conform to the statements or advertisements regarding them made by the merchant or the manufacturer. The statements or advertisements are binding on that merchant or that manufacturer." Section 42 adds that "A written or verbal statement by the representative of a merchant or of a manufacturer respecting goods or services is binding on that merchant or manufacturer."

b) Clauses to the effect that amounts may be charged, but without specifying the amounts

Some of the WSPs studied⁹² indicate in their Terms of Service that fees may apply and be charged, such as administrative or other fees, without specifying either the amount or the way of calculating them. Charging such fees is prohibited in Quebec, where the *Consumer Protection Act* obliges the merchant to mention precisely the amount of additional costs (CPA, sec. 12).

⁹¹ *Regulation respecting the application of the Consumer Protection Act*, Québec City, update June 1, 2015. See chapter P-40.1 [Online] http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=3&file=/P_40_1/P40_1R3_A.HTM (page consulted on June 4, 2015).

⁹² *Op. Cit.*, Note 78, **ROGERS COMMUNICATIONS**, *Rogers Terms of Service*. See p. 2, sections 5 and 6.

3.8 Conclusion

During our field survey, we noticed first that most WSPs usually indicate on their SIM support cards a link to the documents binding consumers once they start using the service. But that indication, in tiny characters, risks remaining unnoticed. Moreover, during purchases made in person, the consumer may not have occasion to see the indication, since the agents activating and inserting the SIM card in the mobile device don't usually provide the support card as well.

We observe marked differences between the ways of communicating information, depending on the payment method for prepaid WS: the WSPs provide consumers with much more information during online purchases (at times even giving them a quantity difficult to assimilate). Is the consumer nevertheless, whatever the purchasing method, informed about the service's critical features? And is he able to distinguish between the critical information and the rest?

As for online purchases, the consumer most often must agree to the provider's Terms of Service before being able to make the purchase. No matter what the providers claim, those documents constitute the contract concluded between WSP and consumer. However, given the providers' representations, are consumers inclined to read those documents? Are they able to do so? Are the documents designed to ensure that the consumer takes cognizance and is aware of the critical elements of the contract to which he is preparing to agree?

As we have seen, the Terms of Service are general documents about all of the provider's mobile services, notably prepaid services, but also about postpaid services, and about a range of other subjects, such as warranties, privacy, acceptable use policy, etc.; the documents often contain dozens of pages (up to forty pages). The answer to the above questions is, of course, no.

Although the WSPs we studied unanimously declared in the compliance reports they submitted to the CRTC in January 2014 that the information and documents provided to consumers purchasing prepaid services were clear and that all the elements required by the Canadian Code were disclosed to consumers, our survey demonstrated that those claims were not quite accurate. The information contained in the Terms of Service is not clear: the texts' length and complexity likely discourage the reader, and relevant information is drowned in a large quantity of provisions that may not be applicable; this naturally affects the clarity of essential information. In addition, with half of the companies, we found that some mandatory information was missing; particularly regarding the obligation to explain to the consumer how he can contact the CCTS⁹³.

The situation is obviously even worse when, for purchases made in-store or by telephone, no mention is made of the existence of the Terms of Service binding the consumer simply by his use of the service.

We have emphasized a few problems raised by the content of certain Terms of Service in relation to consumer protection laws. What about the WSPs' disclosure of critical information in relation to the application of those laws?

⁹³ That information was nowhere to be found, no even in the *Terms of Service*.

As mentioned above, the Wireless Code requires providers concluding postpaid contracts to provide their customer with a copy of a written contract and with a summary of the critical elements of that contract. While the Code does not require this for sales of prepaid services, don't provincial laws extend those disclosure obligations to all types of contracts?

It should also be noted that for the contracts we entered into at a distance, the great majority of WSPs do not comply with provincial CPAs with respect to precontractual disclosure.

4. Overview of Foreign Legislation

What is the situation abroad? Do foreign measures more equally protect consumers choosing prepaid or postpaid services? Have more-protective measures been adopted in other jurisdictions?

The following is an overview of applicable legislation for prepaid WS in the United States, Australia, the United Kingdom and France, to determine whether those countries have adopted specific regulations in that regard and, if so, to point out their distinctive aspects.

4.1 United States

Each year, the Federal Communications Commission (FCC) reports a significant increase in wireless subscribers. In June 2013, that country numbered almost 306 million subscribers to those services, as opposed to barely more than 265 million in 2009⁹⁴.

What agency has jurisdiction in the United States over contractual issues regarding mobile telephony?

The American legal system also originated from common law; common law defences against contractual unfairness are therefore found there, in all types of contracts.

Although private law is mainly a jurisdiction of the federated States (hereinafter the States) and not of the federal government (hereinafter the federal government), the American Constitution allows the federal government to legislate in regulating economic relations between the States.

[...]

*The federal government recognized, in the early XXth century, that common law was not protecting consumers adequately against certain unfair commercial practices. In an attempt to remedy those shortcomings, it adopted, in 1914, the **Federal Trade Commission Act (FTCA)**⁹⁵. (references omitted)*

That Act created the Federal Trade Commission (FTC), with the following powers:

Under this Act, the Commission is empowered, among other things, to (a) prevent unfair methods of competition, and unfair or deceptive acts or practices in or affecting commerce; (b) seek monetary redress and other relief for conduct injurious to consumers; (c) prescribe trade regulation rules defining with specificity acts or practices that are unfair or deceptive, and establishing requirements designed to prevent such acts or practices; (d) conduct investigations

⁹⁴ **WIRELINE COMPETITION BUREAU**, *Local Telephone Competition: Status as of June 30, 2013*, U.S. Federal Communications Commission, Washington DC, United States, June 2014, 36 pages. See p. 29, table 18. [Online] https://apps.fcc.gov/edocs_public/attachmatch/DOC-327830A1.pdf (document consulted on December 16, 2014).

⁹⁵ **UNION DES CONSOMMATEURS**, *Ending Abusive Clauses in Consumer Contracts*, Montreal, Quebec, Canada, September 2011, 113 pages. See p. 56. [Online] http://uniondesconsommateurs.ca/docu/protec_conso/EndAbusiveClauses.pdf

relating to the organization, business, practices, and management of entities engaged in commerce; and (e) make reports and legislative recommendations to Congress⁹⁶.

The American regulatory authority over telecommunications is the FCC. But that Commission does not handle contractual complaints regarding communications, including cellular telephony. On the other hand, it can help consumers find the responsible organization and refer them to it, depending on the problem encountered:

- The FCC handles complaints regarding services provided from one state to another (interstate services), as well as foreign communications (international calls).
- The FCC handles complaints about wireless service, but does not regulate contractual arrangements with cellular providers. If you have a complaint about a wireless contract or billing you may still file a complaint with the FCC, who will help to resolve the issue with your carrier and forward the complaint to the appropriate regulatory agency when necessary⁹⁷.

The industry's voluntary code of conduct

In the United States, the wireless services industry has adopted a voluntary code of conduct, overseen by CTIA – the Wireless Association (formerly the Cellular Telephone Industries Association):

Originally developed in 2003, CTIA periodically reviews the Code to ensure it reflects the industry's innovations and consumers' needs and expectations. The Code's signatories have adopted the principles, disclosures and practices for wireless service, including voice, messaging and data services for postpaid or prepaid consumers. In July 2010, the Code was updated to reflect new and increasingly popular offerings by carriers for consumers⁹⁸.

As for the obligation of precontractual disclosure, the CTIA Code (Consumer Code for Wireless Service – CCWS) provides that telecommunications companies offering consumers wireless services must disclose information related to: the service's coverage area; activation fees; monthly access fees; the quantity and nature of services offered and included in a plan (minutes, data, etc.); overage charges or charges for minutes used beyond the coverage area, and if applicable, their amount; late fees; cancellation fees; the contract term; and the trial period during which the consumer may cancel his contract at no charge. The CCWS requires the information to be communicated at the point of sale and on websites, but without offering details on acceptable means of communication. Those elements apply to prepaid as well as postpaid services⁹⁹.

⁹⁶ **FEDERAL TRADE COMMISSION.** *Statutes Enforced or Administered by the Commission*, Federal Trade Commission, Washington DC, United States, no date. [Online] <https://www.ftc.gov/enforcement/statutes> (page consulted on January 8, 2014).

⁹⁷ **CIVIC AGENCY.** *FAQs, Complaints: Phone Companies*, United States, December 30, 2011. [Online] <http://usa-faq.civicagency.org/answers/10295> (page consulted on May 11, 2015).

⁹⁸ **CTIA.** *Consumer code for Wireless Service*, CTIA, Washington DC, United States, no date. [Online] <http://www.ctia.org/policy-initiatives/voluntary-guidelines/consumer-code-for-wireless-service>, (page consulted on January 8, 2014).

⁹⁹ *Ibid.*

CCWS section 8 also vaguely and incompletely mentions one of the Canadian Code's obligations: the provider must provide the consumer, online and on invoices, a toll-free number for calling the customer service. On all invoices, in written answers sent to consumers and on its website, The WSP must also inform its customers about how to contact it by phone (toll-free), on the Internet or otherwise, for any information request or complaint. That contact information must also be provided to consumers making the request by phone to the customer service, if applicable.

The CTIA's CCWS is, however, criticized by the American regulator:

However, the American regulator claimed the fact the CTIA Code does not include any obligation to provide notification on usage or services allowing usage control by the consumer. It also states that the voluntary Code, which does not include any constraint measures or sanctions, is not sufficient to solve the problems related to unexpected charges¹⁰⁰.

For its part, the Canadian Code has corrected those shortcomings.

4.2 Australia

The Australian telecommunications system is peculiar and complex. It is mainly committed to deregulation: industry is responsible for adopting codes and guidelines in that field, and government retains certain powers to ensure compliance with the rules adopted:

The current regulatory landscape for telecommunications is complex, with responsibility for various sections of the industry shared between a government department, two regulatory bodies, an industry ombudsman and an industry peak body.

Consistent with the policy commitment to self-regulation, programs tend to be the responsibility of industry with oversight from regulators. One regulator, the Australian Competition and Consumer Commission (ACCC), is an independent statutory authority which, under the Competition and Consumer Act 2010 (previously Trade Practices Act 1974) has some powers relevant to telecommunications and general responsibility for competition issues. The other regulator is the Australian Communications and Media Authority (ACMA), whose scope and purpose is laid out in the Telecommunications Act 1997 and Telecommunications (Consumer Protection and Service Standards) Act 1999. The ACMA is responsible for overseeing technical and consumer issues, often taking a "co-regulatory" approach through approving and overseeing industry codes. Within the self-regulatory scheme the industry peak body, the Communications Alliance, uses working groups to develop industry codes and guidelines. The ACMA is able to register codes but also has the power to create an industry standard if codes are lacking; compliance with an industry standard is mandatory¹⁰¹. (References omitted)

¹⁰⁰ LAMBERT-RACINE, **Sophy**, *The Usage Limits of Mobile Internet Services: Information and Protection of Consumers*, Union des consommateurs, Montreal, Quebec, Canada, June 2013, 202 pages. See p.105. [Online] <http://uniondesconsommateurs.ca/docu/telecom/18-donnees-mobiles-rapport-F-complet-Eng.pdf>

¹⁰¹ TURNER, **Erin**, *Pre-paid calling cards: advertising, use and complaints processes in Australia*, 2013, ACCAN, Sydney, Australia, 29 pages. See p. 5. <https://accan.org.au/files/Reports/REPORT%20Pre-paid%20calling%20cards%20-%20advertising%20use%20and%20complaints%20processes%20in%20Australia.pdf> (document consulted on January 26, 2015).

In the case of wireless cell phone contracts, the *Telecommunications Consumer Protections Code*¹⁰² (TCP) applies to prepaid as well as postpaid services, except for specific mentions. That Code replaced the one that had been published by the Communications Alliance in 2007¹⁰³.

After a first revision, the TCP, which aims at promoting the efficiency and growth of the telecommunications sector while guaranteeing “appropriate” protections to consumers, pertains to:

- *Customer information on prices, terms and conditions;*
- *Consumer contracts;*
- *Billing;*
- *Credit management;*
- *Customer transfer;*
- *Complaint handling;*
- *Code administration and compliance*¹⁰⁴.

The commitment to Australian consumers is based on seven key principles:

1. Consumers will enjoy open, honest and fair dealings with their Supplier, and have their privacy protected.
2. Consumers will receive clear, accurate and relevant information on products and services from their Supplier; before, during and, where appropriate, after the point of sale.
3. Consumers will have disputes resolved quickly and fairly by their Supplier.
4. Promotion of products and services by Suppliers will be clear, accurate and not misleading.
5. Disadvantaged and vulnerable consumers will be assisted and protected by appropriate Supplier policies and practices.
6. Consumers will receive an effective remedy from any Supplier who breaches the Code.
7. Suppliers will use monitoring and reporting tools to ensure successful implementation of the Code.

¹⁰² **COMMUNICATIONS ALLIANCE LTD.** *Telecommunications Consumer Protections Code C628:2012*, Industry Code, Communications Alliance, North Sydney, Australia, 2012, 102 pages. [Online] http://www.commsalliance.com.au/_data/assets/pdf_file/0017/33128/TCP-C628_2012_May2012-Corrected-July12.pdf (document consulted on January 26, 2015).

¹⁰³ *Telecommunications Consumer Protections Code (C628:2012) - Explanatory Statement*, Australia, September 2007, 5 pages. See p. 1. [Online] http://www.commsalliance.com.au/_data/assets/pdf_file/0018/33129/C628_2012-TCP-Code-Explanatory-Statement.pdf (document consulted on May 14, 2015).

¹⁰⁴ *Ibid.*, p. 2.

Here are some of the general obligations that the Code creates for WS providers:

- *A Supplier must communicate with consumers in plain language (3.1.1);*
- *A Supplier must provide accurate, relevant and current information to Consumers in a Timely manner (3.2.1);*
- *A Supplier must communicate with a Consumer in a way that is appropriate to the Consumer's communications needs including those with special needs (3.3.1);*
- *A Supplier must ensure that Consumers can view and download all relevant terms and conditions of its Telecommunications Products from a website and that the website is accessible (3.3.3);*
- *comply with all applicable laws in dealing with Consumers (3.4.1);*
- *A Supplier must ensure that its staff interact with Consumers courteously (3.5.1)*¹⁰⁵.

Offers are also regulated (sec. 4.1): they must be accurate, clear, without exaggeration or omission of key information, and not be misleading. The language used in offers (whether written or oral) must be suited to the intended audience.

WS providers must, for prepaid as well as postpaid services, provide consumers with summaries of each available offer so that the various offers on the market can be compared. That summary must be titled "Critical Information Summary." The TCP also specifies the information that must be contained in the summary, as well as the order of presentation (sec. 4.2.1 a). Among the elements that must be part of the summary are:

- A section titled "Information About the Service" containing a description of the service, the contract term, the inclusions/exclusions, and any other important term, limitation or restriction, etc.
- A section titled "Information About Pricing" containing, when it can be calculated, the minimum/maximum payment, etc. When the service offered is unlimited, the Supplier must also include, in that section, information on standard calls/SMS messages, as well as the price of using one MB of data across the country, etc.
- A section titled "Other Information" which must contain the following, when applicable:
 - a link to the area on the Supplier's website where the customer can obtain call and data usage information or instructions on where the customer can obtain call and data usage information;
 - warnings about roaming costs;
 - customer service contact details;
 - information about how to access internal dispute resolution processes; and
 - contact details for the Telecommunications Industry Ombudsman.

The summary must be contained in a separate document, to avoid any confusion. It may also contain any other information the provider deems relevant (sec. 4.1.2b). In addition, it must be easily accessible on the provider's website and its stores, written in comprehensible language, be at most two A4 pages long, and contain up-to-date information only (4.1.2 d) to h)).

¹⁰⁵ *Op. Cit.*, Note 78, **COMMUNICATIONS ALLIANCE LTD.** *Telecommunications Consumer Protections Code C628:2012*, Industry Code.

The TCP also requires the provider to post some elements of information on its website, such as a description of the service and its main technical features, or the way to find those elements, as well as billing information (invoice format, options, period), service coverage, etc. (sec. 4.1.3).

The TCP goes even further: if the consumer tells the provider he has a specific need, the provider must indicate the service that would best meet that need, must provide complete information on that service, and must give him the opportunity to verify whether the service meets a specific need (4.1.4). Moreover, the provider is required to train its personnel to understand the needs of consumers and guide them while taking those needs into account.

The TCP also regulates the advertising of WSPs (4.2) and their sales practices (4.3). A WSP must give a full and honest description of its products, without exaggeration or omission of key information likely to matter in the consumer's decision-making.

The provider must obtain the consumer's express consent to concluding the contract and must retain proof of that consent (sec. 4.3.4).

Section 4.5 of the TCP requires a provider to make available to consumers, at an easy place to find on its website, a "Supplier's Standard Form Customer Contract," and provide on request a copy free of charge. The standard contract must be written in language as plain as possible, be clear and consistent, and contain in logical order all the terms of the agreement. The standard contract must of course contain no unfair terms.

Although it does not specify the manner or the exact moment, the TCP also requires providers – as does the Canadian Code – to inform consumers about the ways of contacting the customer service, but adds that customers' requests must be responded to quickly and effectively. Providers must retain files on their interactions with consumers and use a system enabling customer service personnel to use the data history in order to better assist consumers.

If providers do not meet the information obligations provided by the TCP, and especially if that non-compliance is systemic, the ACMA may investigate and oblige them to comply. If the provider refuses to do so, it risks receiving a notice of infraction.

Australia goes further than Canada in regulating sales of wireless services, by imposing obligations regarding relations with consumers (and not only with WSP customers, as the CRTC's Code unfortunately does), and by requiring providers to make available – before the sale – its standard contracts and a summary of the service offered.

4.3 France

In France, the *Autorité de régulations des communications électroniques et des postes* (ARCEP) is responsible for regulating wireless services.

ARCEP, in results published in early 2015, notes that the use of prepaid services has been declining since 2012:

Le nombre de cartes SIM en service atteint 79,9 millions au 31 décembre 2014, dont 15 % sont des cartes " non-voix " (cartes SIM internet exclusives et cartes " MtoM " [Machine to Machine]). La croissance du marché (+ 3,1 millions en un an au quatrième trimestre 2014) reste portée par les forfaits classiques, en hausse de 2,9 millions en un an, et les cartes " MtoM ," en croissance de 1,4 million. A l'inverse, le nombre de cartes prépayées baisse depuis le milieu de l'année 2012 (- 1,1 million au quatrième trimestre 2014).

[...]

Le nombre de cartes prépayées se réduit depuis le milieu de l'année 2012 (-7,2 % en rythme annuel au quatrième trimestre 2014 soit -1,1 million), de même que le nombre de cartes prépayées actives (en recul de 1,3 million par rapport au quatrième trimestre 2013¹⁰⁶).

The Code des postes et des communications électroniques (CPCE) states that the provision of electronic communications services to the public must comply with rules regarding information, “notamment sur les conditions contractuelles de fourniture du service, et la protection des utilisateurs,” which require providers to, among other things, “mettre à disposition des utilisateurs les informations mentionnées à l'article L. 121-83-1 du code de la consommation¹⁰⁷”:

L. 121-83 Tout contrat souscrit par un consommateur avec un fournisseur de services de communications électroniques [...] doit comporter au moins les informations suivantes sous une forme claire, détaillée et aisément accessible :

L'identité et l'adresse du fournisseur ;

- a) Les services offerts, leur niveau de qualité et le délai nécessaire pour en assurer la prestation;*
- b) Le détail des tarifs pratiqués, notamment les frais de résiliation et les frais de portabilité des numéros et autres identifiants, les moyens par lesquels des informations actualisées sur l'ensemble des tarifs applicables et des frais de maintenance peuvent être obtenues et les modes de paiement proposés ainsi que leurs conditions ;*
- c) Les compensations et formules de remboursement applicables si le niveau de qualité des services prévus dans le contrat n'est pas atteint ;*
- d) La durée du contrat, les conditions de renouvellement et d'interruption des services et du contrat ;*

¹⁰⁶ **AUTORITÉ DE RÉGULATIONS DES COMMUNICATIONS ÉLECTRONIQUES ET DES POSTES.** *Observatoire des marchés des communications électroniques en France – Observatoire des investissements et de l'emploi – 4^e trimestre 2014 – résultats définitifs (2 avril 2015)*, Paris, France, April 2015. [Online] <http://www.arcep.fr/index.php?id=12773> (page consulted on May 15, 2015).

¹⁰⁷ **AUTORITÉ DE RÉGULATIONS DES COMMUNICATIONS ÉLECTRONIQUES ET DES POSTES.** *Code des postes et des communications électroniques*, art. L 33-1, Paris, France, July 26, 2013, 122 pages. See p. 35, art. L32, 1) and 6) for the definitions. [Online] <http://www.arcep.fr/fileadmin/reprise/textes/lois/cpce-legis.pdf> (document consulted on May 15, 2015).

- e) *Les modes de règlement amiable des différends notamment la possibilité de recourir à un médiateur ;*
- f) *Les procédures mises en place par le fournisseur pour mesurer et orienter le trafic de manière à éviter de saturer ou sursaturer une ligne du réseau et sur leurs conséquences en matière de qualité du service ;*
- g) *Les services après-vente fournis, ainsi que les modalités permettant de contacter ces services ;*
- h) *Les restrictions à l'accès à des services et à leur utilisation, ainsi qu'à celle des équipements terminaux fournis ;*

[...]

L. 121-83-1 Tout fournisseur de services de communications électroniques au sens du 6° de l'article L. 32 du code des postes et des communications électroniques met à la disposition des consommateurs, sous une forme claire, comparable, actualisée et facilement accessible, et tient à jour dans ses points de vente et par un moyen téléphonique ou électronique accessible en temps réel à un tarif raisonnable les informations suivantes :

- les informations visées aux articles L. 111-1, L. 121-83 et, le cas échéant, L. 121-18 du présent code ;*
- les produits et services destinés aux consommateurs handicapés ;*
- les conséquences juridiques de l'utilisation des services de communications électroniques pour se livrer à des activités illicites ou diffuser des contenus préjudiciables, en particulier lorsqu'ils peuvent porter atteinte au respect des droits et des libertés d'autrui, y compris les atteintes aux droits d'auteur et aux droits voisins¹⁰⁸ ;*

Article 121-18 covers off-premises contracts. Article 111-1 pertains to the general obligation of precontractual information:

Avant que le consommateur ne soit lié par un contrat de vente de biens ou de fourniture de services, le professionnel communique au consommateur, de manière lisible et compréhensible, les informations suivantes :

- 1° Les caractéristiques essentielles du bien ou du service, compte tenu du support de communication utilisé et du bien ou service concerné ;*
- 2° Le prix du bien ou du service, en application des articles L. 113-3 et L. 113-3-1 ;*
- 3° En l'absence d'exécution immédiate du contrat, la date ou le délai auquel le professionnel s'engage à livrer le bien ou à exécuter le service ;*
- 4° Les informations relatives à son identité, à ses coordonnées postales, téléphoniques et électroniques et à ses activités, pour autant qu'elles ne ressortent pas du contexte, ainsi que, s'il y a lieu, celles relatives aux garanties légales, aux fonctionnalités du contenu numérique et, le cas échéant, à son interopérabilité, à l'existence et aux modalités de mise en œuvre des garanties et aux autres conditions contractuelles.*

[...]

¹⁰⁸ Code de la consommation, Droit.org, Paris, France, May 8, 2015. [Online] <http://codes.droit.org/cod/consommation.pdf> (document consulted on May 15, 2015).

The Code de la consommation states in article L. 121-85-1 that “*Tout manquement aux articles L. 121-83 à L. 121-84-11 est passible d'une amende administrative dont le montant ne peut excéder 3000 € pour une personne physique et 15 000 € pour une personne morale.*” The same penalty is found in article L. 111-6 for violations of article L. 111-1.

France has thus not adopted specific disclosure provisions for prepaid WS contracts. But the consumer law provisions of general application already cover precisely enough the issues arising in WS. Moreover, those provisions, belonging to the consumer protection law, open the door, if a merchant violates them, to civil actions launched by consumers and to administrative or penal recourses.

4.4 United Kingdom

The regulatory agency for telecommunications in the United Kingdom, the Office of Communications (Ofcom), is an independent organization that also oversees competition in the field of telecommunications.

Prepaid WS purchases made by consumers are not specifically regulated in the United Kingdom. However, the General Conditions (GC)¹⁰⁹ governing providers of mobile phone services contain certain obligations that apply to prepaid¹¹⁰ as well as postpaid services.

Regarding WS sales and advertising, the GC prohibit providers from engaging in dishonest, misleading, deceptive, aggressive or inappropriate conduct (sec. 23.2¹¹¹).

The GC also require providers to make clear to consumers the providers' obligations under the GC, by making accessible a summary of those obligations and, on request, a copy of the GC:

23.3 **The Mobile Service Provider must:**

- a) *publish a comprehensive summary of its obligations under this General Condition 23 in an easily accessible and reasonably prominent manner on its website or, where there is no such website, by making it available in its registered office during normal office hours for inspection free of charge by members of the general public; and*
- b) *provide a copy of this General Condition to a Customer free of charge upon reasonable request*¹¹².

¹⁰⁹ **Ofcom**, *Consolidated Version of General Conditions as at 26 February 2016 (including annotations)*. Ofcom, London, United Kingdom, February 26, 2015, 100 pages. [Online]

http://stakeholders.ofcom.org.uk/binaries/telecoms/ga/CONSOLIDATED_VERSION_OF_GENERAL_CONDITIONS_AS_AT_26_FEBRUARY_2015_.pdf (document consulted on May 11, 2015).

¹¹⁰ *Ibid.*, “Prepaid Mobile Telephony Service” means a Mobile Telephony Service for which the Customer pays charges in advance of the service being provided,” CG, sec. 23.22e).

¹¹¹ *Op. Cit.*, Note 102, **Ofcom**, *Consolidated version of general conditions as at 26 February 2016 (including annotations)*.

¹¹² *Ibid.*

Moreover, the General Conditions provide a whole series of obligations for the information that must be provided to the consumer before conclusion of the contract. Unfortunately, the text states that those obligations are not applicable to the sale of prepaid services. As in Canada, the regulations for those two types of service, prepaid and postpaid, are thus asymmetrical, by better protecting consumers purchasing postpaid WS.

Prepaid contracts are, fortunately, covered by the provisions of GC section 9, which specify the information that must be contained in contracts concluded between provider and consumer, including: provider's name and address, service provided, price and rate details, contract term, renewal and cancellation terms, and the way to initiate proceedings for resolving contract disputes.

5. Conclusion

The lack of take-up of prepaid plans in Canada is primarily a problem of supply not demand (OECD, 2013, pp. 21-22). As we saw above, prepaid, no-commitment plans are becoming standard in many countries, notably the UK, France, Israel and, most significant in light of cultural, market and geographical proximity, the US, especially since TMUS doubled down on its 'challenger brand' image after the DOJ foiled its bid to merge with AT&T. The rapid growth of MVNOs and prepaid subscriptions in the United States is moving that country closer to the rest of the world, while leaving Canada further on its own and laying bare the dubious assertion [...] that prepaid plans are somehow foreign to the North American mentality. Indeed, on the measures of penetration and the FCC's range of price measures, the U.S. now ranks in the top ten and well-ahead of Canada.

CANADIAN MEDIA CONCENTRATION RESEARCH PROJECT

*Mobile Wireless in Canada: Recognizing the problems and approaching solutions*¹¹³.

The Canadian Radio-television and Telecommunications Commission adopted in 2013 a Wireless Code containing provisions for postpaid and prepaid wireless services (WS). While the Code offers postpaid consumers some substantial protections, it offers much less to consumers of prepaid services. In addition, the way it does so – by only mentioning that certain sections don't apply to prepaid services – makes the scope of remaining protections unclear. For example, a reading of applicable sections and their a contrario interpretation based on inapplicable sections raise doubts about the obligation to conclude a written contract for prepaid services.

Consumers who choose prepaid services are less informed and less protected. One of the advancements of the Code, for example, is to require wireless service providers (WSPs) to provide their customers with a summary of the contract's critical elements, which otherwise can be lost in the voluminous Terms of Service. It would certainly have been preferable for the CRTC to require providers to provide that document before the contract is concluded, which would have enabled consumers to clearly understand their commitment and easily compare the offers of other providers; this is Australia's approach, which also specifies the content and form of that summary. The usefulness of the document as required by the CRTC is still not negligible. It confirms, briefly and legibly, the obligations agreed to by the parties, and allows the consumer to have clear proof in case of a dispute. So it is difficult to understand how that usefulness would be less to consumers of prepaid services. Our field survey has revealed that this obligation would certainly not be exorbitant: some of the WSPs surveyed have in fact followed the CRTC's recommendation, and spontaneously provide their customers with such a summary during prepaid service purchases made in person. But too few WSPs have done so to date – the CRTC will likely have to impose the practice if it actually wants to see it adopted by all providers.

¹¹³ **CANADIAN MEDIA CONCENTRATION RESEARCH PROJECT.** *Mobile Wireless in Canada: Recognizing the problems and approaching solutions*, March 2014, 73 pages. See p. 38. [Online] <http://www.cmcrp.org/wp-content/uploads/2014/03/Mobile-Wireless-in-Canada-Final-Report.pdf> (document consulted on December 18, 2014).

Moreover, the Code requires the provider, in sales of postpaid services, to hand its customers a copy of the contract and related documents, but it does not do so in the case of prepaid services. Why do customers of those services, many of whom are more vulnerable consumers, not deserve equivalent protections?

Users of prepaid services are thus shortchanged: they are less adequately informed due the asymmetrical disclosure obligations between postpaid and prepaid services, all the more so because the WSPs appear, as our survey revealed, to comply poorly with the few obligations that the Wireless Code imposes on them – the information provided is often unclear, and not all the information required by the Code is always disclosed.

Indeed, although the providers, in the compliance reports presented to the CRTC in January 2014 after the Code came into effect, claim to meet all their new obligations during prepaid service sales, our survey demonstrated that, for example, the providers, in one out of two cases, make no mention of the CCTS when the prepaid services contract is being concluded. Nor is any such information found in the providers' Terms of Service – a document that is not even provided during or after the contract is entered into.

Generally, provincial laws also impose disclosure obligations and, in some cases, obligations regarding the form of contracts. Provincial laws for protecting WS consumers don't discriminate between consumers of postpaid and prepaid services. In Quebec, for example, contracts involving sequential performance for a service provided at a distance, including wireless service contracts, whether fixed-term or unlimited-term, must be in writing. This is also generally the case for distance contracts, so that the absence of a copy of the contract may even constitute sufficient reason for cancellation. So how can we tolerate not only that no written contract in the prescribed form is provided to the consumer, but also that the providers even assure the consumer that no contract binds them?

The CRTC established the Wireless Code to ensure uniformity among some of the providers' practices, so that consumers may be better protected and, notably, may submit their complaints to the CCTS for prompt handling. In disputes about prepaid services, the consumer has the recourses guaranteed by provincial laws. The consumer also has those civil recourses when concluding a postpaid service contract. It thus seems inexplicable that the CRTC hesitates to extend to prepaid services the obligations it has imposed for postpaid services: many of those obligations are already imposed by provincial laws; and the Code's exclusions have the sole effect of depriving consumers of access to a dispute settlement method, the CCTS, available to postpaid service consumers.

Between prepaid and postpaid WS, there are more similarities than notable differences. The major distinction is probably that postpaid service contracts still very often include financing of a device, which is obviously not the case for prepaid service contracts. Both the CRTC and provincial lawmakers have examined this issue, and this aspect of postpaid contracts is now largely regulated, so that previously frequent abuses (regarding cancellation fees) are prevented.

There now appears to be no valid reason to discriminate against consumers by allowing less information to be provided and less rights conferred to them when they opt for prepaid WS. Given that this type of services is often chosen by more-vulnerable clientele, for whom special

efforts at information and protection should be made, the time has come to revise the Wireless Code in order to establish a better balance between the two types of services.

Our study has once again shown us the importance of disclosure before conclusion of a contract. If in adopting the Code the CRTC intended to better protect consumers through clearer and more complete information, and to improve competition by lowering barriers to mobility, we think those two objectives could be met more effectively. In particular, instead of focusing solely on information provided once the contract is concluded, the Code should impose strict rules for precontractual information – starting with a summary of the contract’s critical information. For example, Australia and the Canadian provinces require more complete precontractual information in certain areas, to ensure that consumers clearly understand what they are about to purchase, the terms that will bind them and the obligations to which the merchant is committing itself. Likewise, the CRTC should consider requiring that before a contract is entered into, a summary of the contract’s critical information be provided, for prepaid as well as postpaid services.

6. Recommendations

- Whereas there are great similarities between postpaid and prepaid wireless services (WS);
- Whereas consumers who opt for prepaid WS are offered inferior protections by the Wireless Code;
- Whereas prepaid services are often chosen by more-vulnerable clientele;
- Whereas consumer protection laws do not usually distinguish between those two types of services when regulating WS;
- Whereas many of the obligations that the Code does not impose on wireless service providers (WSPs) when the latter offer prepaid services are in any case imposed by provincial laws;
- Whereas in its 2012-2013 report the CCTS mentioned that 21.5% of WS billing problems reported involved the prepaid sector;
 1. **Union des consommateurs recommends** that the CRTC revise the Wireless Code to ensure that the latter offers equal protections to prepaid and postpaid WS consumers, particularly in terms of information and delivery of documents;
- Whereas the Canadian Code requires WSPs' written contracts to be written in clear language the consumer can easily read and understand;
- Whereas in compliance reports submitted to the CRTC in January 2014, the WSPs indicated that they meet that obligation;
- Whereas the WSPs, in their compliance reports, also indicate that when referring to contracts they generally refer, in the case of prepaid services, to their Terms of Service;
- Whereas our field survey demonstrates that the WSPs' Terms of Service are excessively verbose, which likely dissuades consumers from reading them;
- Whereas the language used in those documents is too often uselessly complex, convoluted, even incomprehensible;
- Whereas those Terms of Service contain information mainly on postpaid WS, but also critical information applicable to prepaid WS, and that it is often very difficult to detect which parts exactly apply (or not) to the prepaid WS;
- Whereas our field survey demonstrated that a consumer can find it very difficult to find his bearings in the disorderly mass of contractual documents filled with information on many different subjects unrelated to each other or to his service (when such information is provided not separately, but by reference to the Terms of Service);
 2. **Union des consommateurs recommends** that the CRTC revise the Canadian Code to specify the meaning of the terms "clear language" and "plain language" for documents intended to inform consumers honestly;
 3. **Union des consommateurs recommends** that the CRTC evaluate the relevance of forming a committee for studying how to communicate more clearly to consumers the content, notably, of WSPs' contracts, Terms of Service and related documents, in order to ensure that they are legible for an average consumer and comply with existing regulations;
 4. **Union des consommateurs recommends** that the CRTC, should it find the establishment of such a committee appropriate, ensure that consumer groups be part of

that committee, and that sufficient resources be allocated to guarantee their adequate participation.

- Whereas the Canadian Code requires WSPs to provide consumers, after the conclusion of a postpaid WS contract, with a summary of the contract's critical terms;
 - Whereas users of postpaid and prepaid services are entitled to equal protections;
 - Whereas a summary of the contract's critical terms should help the consumer know, before entering into a contract, the parties' rights and obligations under the contract being considered;
 - Whereas a summary of the contract's critical terms should help the consumer compare the various providers' offers, thus enabling him to make a more informed choice and allowing competition to work effectively;
 - Whereas some provincial legislatures have adopted provisions requiring online merchants to provide consumers, before conclusion of the contract, with a summary of the contract's critical terms;
 - Whereas a great many Canadians conclude wireless phone contracts each year or are bound by such contracts;
 - Whereas those services attract many complaints each year;
 - Whereas a large portion of those complaints pertain to the discrepancy between the contract and what was reportedly advertised to the consumer before its conclusion;
5. **Union des consommateurs recommends** that the CRTC extend to prepaid contracts the WSPs' obligation to provide the consumer with a summary of the contract's critical provisions;
 6. **Union des consommateurs recommends** that the CRTC amend the Code to require providing consumers with a summary of the contract's critical provisions before its conclusion;
 7. **Union des consommateurs recommends** that provincial legislatures adopt a provision that, as in several provinces with regard to distance contracts, require wireless service providers and other vendors of this type of services to provide the consumer, before conclusion of the contract, with a summary of its critical provisions;
 8. **Union des consommateurs recommends** that provincial legislatures grant consumers a right of cancellation, in case the summary of critical terms is not provided or the contract does not correspond with the critical terms that had been disclosed to the consumer in the summary before the contract was entered into.
-
- Whereas WS compliance with the obligations of the Canadian Code is currently verified on the basis of the compliance reports produced by the providers themselves;
 - Whereas an examination of the documents provided to consumers by the providers demonstrates that the compliance reports show complacency and minimal critical sense on certain points;
 - Whereas that examination reveals, for example, a frequent absence of any mention of the CCTS and its capacity to receive and handle complaints;
 - Whereas only rigorous compliance reports will likely enable the CRTC to verify the necessity of making adjustments to providers' practices or to the Code itself;

9. **Union des consommateurs recommends** that the CRTC take necessary measures to obtain rigorous compliance reports giving it an objective portrait of the situation;
10. **Union des consommateurs recommends** that the CRTC entrust to an independent neutral organization the analysis of WSPs' practices and documentation regarding compliance with the Code;
11. **Union des consommateurs recommends** that the CRTC require the WSPs to defray the costs of those compliance reports.

- Whereas, apart from the Wireless Code and consumers' option of relying on the CCTS to resolve their disputes regarding wireless phone services, the users of telecommunications services are entitled, whatever type of services they use, to the full protection of provincial consumer protection laws;
- Whereas the provincial laws do not offer equal levels of protection, regarding telephone contracts or distance contracts;
- Whereas the Consumer Measures Committee has the mandate of overseeing the harmonization of provincial consumer protection laws;

12. **Union des consommateurs recommends** that provincial lawmakers work, within the Consumer Measures Committee, to harmonize those provisions of their consumer protection laws that apply to WS, in order to ensure that all Canadian consumers are offered the best possible protection in this area.

Mediagraphy

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