



In Ontario, businesses can't get out of arbitration agreements by joining class action lawsuits with consumers, the Supreme Court has ruled.

When a large group of people have the same legal problem, they might decide to get together and sue as a group. This is called a “class action” lawsuit. (The “class” is the group, so it’s a group action.) A class action lets the whole group get their complaint dealt with in court at once. Otherwise, each person would have to go to court on their own. Before a class action can go ahead, a court needs to “certify” (approve) it.

Mr. Wellman had a cellphone contract with TELUS. He said that, for a certain time, TELUS rounded up calls to the next minute without telling customers. He said customers were overcharged and not given their full number of minutes. He asked the court to certify a class action against TELUS on behalf of himself and about two million other customers in Ontario. About 1.4 million of these customers were consumers (who bought cell services for personal use). The rest were business customers (who bought services for business use). Mr. Wellman was asking for over \$500 million in damages on behalf of the group.

All of TELUS’s customers agreed to standard terms and conditions when they signed up. One of these terms was that billing disagreements had to be decided in “arbitration.” Arbitration is when a neutral third party (other than a judge or a court) decides a legal dispute. Businesses often use it because it can be more efficient and less costly than going to court.

In Ontario, arbitration rules are set out in the *Arbitration Act*. One of the Act’s main principles is that people who agree to go to arbitration should have to live up to their agreement. There are some exceptions, like when the agreement isn’t valid.

One exception is for consumers. The Ontario *Consumer Protection Act* says consumers can join a class action like Mr. Wellman’s even if they agreed to arbitration. Because of this, everyone agreed that the consumers could ask for compensation in court. But business customers weren’t covered by the *Consumer Protection Act*. TELUS said this meant they should be held to their agreement to go to arbitration. It asked the court to “stay” the claims of the business customers, or stop them from going forward in court.

The main issue in this case was how to interpret section 7(5) of the *Arbitration Act*. Mr. Wellman said the section meant courts could decide to let a claim go to court, even if it was covered by an arbitration agreement. He said this could happen if it wouldn’t be reasonable to separate claims covered by the agreement (like the business customer claims) from claims that weren’t (like the consumer claims). For him, that meant that *both* groups should be allowed to ask for compensation in court. TELUS, on the other hand, said courts *had to* stay claims covered by valid arbitration agreements. It said courts could let claims *not* covered by an agreement go to court. But claims that *were* covered (in this case, the business customer claims) had to be stayed.

Both the motions judge and the Court of Appeal agreed with Mr. Wellman. They said the business customers could join the class action.

The majority at the Supreme Court disagreed. It said section 7(5) didn’t allow the court to refuse to stay claims dealt with in a valid arbitration agreement. Otherwise, the principle that people should respect their agreements would be weakened. People would be able to avoid their agreements just by piggybacking on, or joining their claims to, those of people who *weren’t* bound to go to arbitration. The majority noted that the only dispute in this class action was about billing. All customers agreed this would be dealt with through arbitration. Normally, this would mean everyone’s claims in the class action would be stayed. It would not be heard in court at all. But because of the exception in the *Consumer Protection Act*, consumers were protected from a stay. Their claims could still be heard. Business customers weren’t covered by the exception, so they had to respect their agreement. Their claims were stayed, and they would have to go to arbitration instead.

This decision didn’t deal with Mr. Wellman’s claim that TELUS overbilled its customers. It only decided that the business customers weren’t allowed to go to court to argue that.

Breakdown of the Decision: *Majority:* Justice Michael [Moldaver](#) allowed the appeal (Justices [Gascon](#), [Côté](#), [Brown](#), and [Rowe](#) agreed) | *Dissenting:* Justices Rosalie Silberman [Abella](#) and Andromache [Karakatsanis](#) would have dismissed the appeal and allowed the class action for both consumer and business customers, because forcing each business consumer to go to the expense of individual arbitration would effectively immunize TELUS from their claims (Chief Justice [Wagner](#) and Justice [Martin](#) agreed)

More information (case # 37722): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

Lower court rulings: [certification of class action](#) (Ontario Superior Court of Justice) | [appeal](#) (Court of Appeal for Ontario)
