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# The Bell-Chitrakar Privacy Decision – Taking a credit check without consent

November 5, 2013

By [Rob Aske](#)

Some of the key facts in this case are summarized by Justice Phelan of the Federal Court of Canada in five early paragraphs of his October 29, 2013 decision:

“On December 1, 2010, Chitrakar ordered satellite television service from Bell. He was a first-time Bell customer and had no credit history with Bell.

The service was installed on December 31, 2010. At that time Chitrakar was required to provide his signature on what is known as a POD Machine (Proof of Delivery device). A photo of a similar type machine was entered as an exhibit. It is a 3” x 3” digital box which allows only for a signature. Chitrakar believed that he was simply confirming delivery of the satellite system.

What Bell did with the signature was to embed it on its Bell TV Rental Agreement – a multi-page document in small print – and to then use the Rental Agreement. Chitrakar was not given a copy of the Rental Agreement at that time.

This dubious contracting process was compounded by the provision in the Rental Agreement (Clause 5) which authorizes Bell to perform credit checks on a customer.

After service was installed, Chitrakar ordered his credit report at which time he learned that Bell had accessed his credit history on December 1, 2010. It was not until December 31, 2010 that the service was installed at Chitrakar’s home and he signed the POD Machine. Leaving aside concerns with the validity of Bell transferring Chitrakar’s signature from the POD Machine to the Rental Agreement, **the credit check was conducted one month before Mr. Chitrakar signed anything.** [emphasis added]

Mr. Chitrakar filed a complaint with Canada's federal Privacy Commissioner, who found that his complaint was well founded.

The credit check carried out by Bell in this case was described by the courts as a "hard pull", where credit information is received. If there are a number of "hard pulls" within a certain time frame, it can negatively affect one's credit score.

Mr. Chitrakar had various dealings with Bell in 2011 trying to sort the situation, and eventually received an apology from Bell left by voicemail.

Bell did agree to release Chitrakar from his contract but the parties could not resolve the privacy concerns he had raised.

The court found that Bell had violated Mr. Chitrakar's privacy rights, by conducting a credit check without his prior consent. The court stated:

"Bell's conduct in this matter is reprehensible in respect to Chitrakar's privacy rights. Not only did Bell violate those rights, it has shown no interest in compensation or apparently any interest in addressing the CSR's actions nor in following the Privacy Commissioner's remedial recommendations. Its failure to appear in this Court is consistent with its disregard of Chitrakar's privacy rights."

Chitrakar sought damages of \$20,000 for breach of his privacy, and a further \$15,000 for anguish and humiliation. The federal Personal Information Protection and Electronic Documents Act permits an award of damages under section 16(c) for humiliation.

The Court awarded Chitrakar damages of \$10,000, plus an exemplary award of \$10,000 for Bell's conduct, including its "failure to take these proceedings seriously", plus \$1,000 for disbursements and costs. The Court concluded:

"In this case, Chitrakar had his rights violated in a real sense with potentially adverse consequences. Bell is a large company for whom a small damages award would have made little material impact. Chitrakar spent a considerable period dealing with the Bell bureaucracy and in pursuing his claim. These factors suggest that a damages award should not be minimalistic."

Bell is quoted at [cbc.ca](http://cbc.ca) as responding as follows:

"Credit checks protect customers from identity theft and companies from fraud and they're standard procedure for most service providers, including Bell, spokesman Albert Lee said.

He said in the case of Rabi Chitrakar, the man who successfully sued Bell TV, the policy was unclear to the customer.

After he brought this to our attention, we apologized and retroactively waived all fees and contract obligations. When we hear about incidents like this from customers, we work to ensure that processes are well understood by our service representatives," Lee said."

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