

**COMMISSIONER FOR COMPLAINTS  
FOR TELECOMMUNICATIONS SERVICES INC./COMMISSAIRE AUX PLAINTES  
RELATIVES AUX SERVICES DE TÉLÉCOMMUNICATIONS INC.**

**PROCEDURAL CODE**

**(Amended and Restated July, 2008)**

**1. Interpretation**

**1.1** In this Code,

- (a) “**Business Day**” means any day of the week other than a Saturday, Sunday or other day on which banks operating in any province or territory of Canada are authorized by law to close;
- (b) “**CCTS**” means the Commissioner for Complaints for Telecommunications Services Inc./Commissaire aux plaintes relatives aux services de télécommunications inc.;
- (c) “**Code**” means this Procedural Code, as amended from time to time;
- (d) “**Commissioner**” means the Chief Executive Officer of CCTS;
- (e) “**Complainant**” means a Customer who has filed a complaint against a TSP Member with the Commissioner;
- (f) “**CRTC**” means the Canadian Radio-television and Telecommunications Commission;
- (g) “**Customer**” means an individual or Small Business that was party to a contract with a TSP Member to receive Eligible Services from such TSP Member at the time the facts on which the complaint is made arose;
- (h) “**Effective Date**” means the date on which this Code comes into effect, being the date of incorporation of CCTS;
- (i) “**Eligible Complainants**” means any individuals or Small Businesses who receive Eligible Services;
- (j) “**Eligible Complaints**” means complaints from Eligible Complainants in respect of Eligible Services only with regard to: (a) billing; (b) delivery of service (including installation, repair, and disconnection); (c) credit management; and (d) unauthorized transfer of service or “slamming” but does not include:
  - A. complaints with respect to all of the following services and/or subject matters: (e) Internet applications; (f) Internet content; (g) broadcasting services; (h) emergency services; (i) payphones; (j) equipment; (k) inside

wiring; (l) yellow page or business directories; (m) telemarketing or unsolicited messages; (n) security services; (o) networking services; and (p) premium services (including, without limitation, 900 and 976 services); and

B. notwithstanding the definition of “Eligible Services” and the preceding text of this definition of “Eligible Complaints”, complaints with respect to all of the following subject matters: (q) general operating practices not covered in customer contract terms or commitments; (r) contracts or contract terms (other than compliance with a TSP Member’s service contract); (s) prices; (t) rights of way; (u) plant (including, without limitation, poles, towers, conduits, trenches and other support structures); (v) privacy issues; (w) confidentiality issues; (x) claims of false or misleading advertising; (y) policy matters; and (z) complaints otherwise barred by this Code.

(k) **“Eligible Services”** means: (a) local exchange and voice over Internet protocol services (including calling features); (b) Internet access services; (c) long distance services (including pre-paid calling cards); (d) wireless telephone services; (e) white page directories; (f) directory assistance; and (g) operator services, in each case above, delivered by a TSP Member on a forborne retail basis in Canada on or after the date of incorporation of CCTS;

(l) **“Small Business”** means a business whose:

(i) net monthly invoice for all telecommunications services from a TSP Member in the month preceding the month in which a complaint is made against such TSP Member; or

(ii) average net monthly invoices for all telecommunications services from a TSP Member in the three (3) month period preceding the month in which a complaint is made against such TSP Member;

did not exceed \$2,500;

(m) **“TSP Members”** means any persons for the time being admitted to membership of CCTS as a TSP Member (for as long as those persons have not withdrawn their membership in accordance with the CCTS By-Laws and Membership Agreement); and

(n) **“Telecommunications Services Providers”** means, collectively, telecommunications services providers that provide Eligible Services to Eligible Complainants in Canada and **“Telecommunications Services Provider”** means any one of such telecommunications services providers.

## 2. Functions, Powers and Duties of Commissioner

2.1 The Commissioner shall, as and from the Effective Date:

(a) receive and assess the eligibility of complaints;

- (b) investigate, assist in the resolution of and make recommendations and decisions in relation to Eligible Complaints, in an impartial, timely, efficient and informal manner, after direct communication between an Eligible Complainant and a TSP Member has proven ineffective;
- (c) carry out the functions, powers and duties prescribed in this Code, and such other functions, powers and duties as may be directed by the Board of Directors of CCTS from time to time; and
- (d) be bound by and at all times act within and give effect to this Code.

2.2 In carrying out his or her functions, powers and duties, the Commissioner shall act in a manner that is independent and impartial, accessible and efficient. Without limiting the generality of the foregoing, the Commissioner shall:

- (a) remain impartial to the interests of the TSP Members, as between the TSP Members, and from and as between their respective customers;
- (b) not act as an advocate for telecommunications service providers, customers, or any other person;
- (c) provide the services of his or her office in English and French and in such other languages as the Commissioner deems appropriate;
- (d) endeavour to secure the appropriate, most expeditious and least expensive resolution of every Eligible Complaint on its merits;
- (e) provide the services of his or her office without charge to Complainants;
- (f) provide the services of his or her office in a non-legalistic manner that does not require the use of legal counsel; and
- (g) follow cost-effective business practices in order to provide the services of his or her office in an economically efficient manner.

### **3. Standard of Review by Commissioner**

3.1 In exercising the Commissioner's functions, powers and jurisdiction, the Commissioner shall investigate, assist in the resolution of, and make recommendations and decisions in relation to, Eligible Complaints with a view to determining whether the TSP Member reasonably performed its obligations pursuant to the applicable contract.

### **4. Services in Scope**

4.1 The Commissioner may only investigate, attempt to facilitate the resolution of, or make recommendations or decisions with respect to Eligible Complaints.

4.2 For greater certainty, and without expanding the telecommunications services with respect to which the Commissioner may investigate, attempt to facilitate the resolution of, or make recommendations or decisions as set out in Section 4.1, the Commissioner may not investigate, attempt to facilitate the resolution of, or make recommendations or decisions with respect to any services described in Section 1.1(j)A.

## 5. **Matters in Scope**

5.1 For greater certainty, and without expanding the telecommunications services with respect to which the Commissioner may investigate, attempt to facilitate the resolution of, or make recommendations or decisions as set out in Section 4.1, the Commissioner may only investigate, attempt to facilitate the resolution of, or make recommendations or decisions with respect to those matters described in Section 1.1(j) (a) through (d).

5.2 For greater certainty, and without expanding the matters with respect to which the Commissioner may investigate, attempt to facilitate the resolution of, or make recommendations or decisions, the Commissioner may not investigate, attempt to facilitate the resolution of, or make recommendations or decisions with respect to those matters described in Section 1.1(j)B.

## 6. **Complaints**

6.1 Subject to Section. 6.2, a complaint shall be in writing and shall:

- (a) set out the Complainant's name, address, phone number and, where possible, the account number assigned by the TSP Member to which the complaint relates;
- (b) indicate the TSP Member to which the complaint relates;
- (c) set out the details of the complaint;
- (d) indicate the date or dates on which the matters complained of occurred and came to the attention of the Complainant;
- (e) set out what steps the Complainant has taken to seek to resolve the complaint directly with the TSP Member, including details of the TSP Member's response;
- (f) indicate what the Complainant would regard as a reasonable resolution of the complaint; and
- (g) indicate the Complainant's consent to be bound by this Code and such procedures as may be established by the Commissioner.

6.2 In order to ensure reasonable access to CCTS, including, in particular, by persons with disabilities, the Commissioner may accept complaints by telephone, e-mail, teletypewriter, in person or by such other means as the Commissioner deems appropriate, provided all other requirements set out in Section 6.1 are satisfied.

6.3 Upon receipt of a complaint, the Commissioner shall assess whether the complaint, or any part thereof, constitutes an Eligible Complaint.

6.4 If the Commissioner is of the view that the complaint is not an Eligible Complaint, the Commissioner shall forthwith advise the Complainant of such assessment and the reasons therefor.

6.5 If the Commissioner is of the view that the complaint is an Eligible Complaint, the Commissioner shall forthwith provide a copy of the Eligible Complaint to the relevant TSP Member and the Complainant.

6.6 The TSP Member shall, within twenty (20) Business Days of receipt from the Commissioner of an Eligible Complaint under Section 6.5, either:

- (a) advise the Commissioner in writing, with a copy to the Complainant, that the TSP Member objects to the complaint on the basis that, in the TSP Member's view, the complaint may not or should not be investigated pursuant to this Code or for any other lawful reason; or
- (b) advise the Commissioner in writing, with a copy to the Eligible Complainant, that the complaint has been resolved to the mutual satisfaction of the Eligible Complainant and the TSP Member; or
- (c) advise the Commissioner in writing, with a copy to the Eligible Complainant, that the complaint remains unresolved and of the TSP Member's intention to file a written response thereto.

6.7 Where the TSP Member has advised the Commissioner pursuant to Section 6.6(a), the Commissioner shall, following receipt of any additional information or representations from the Complainant and/or the TSP Member as the Commissioner may in his or her discretion deem appropriate, decide whether or not the complaint or any part thereof is an Eligible Complaint and whether or not to take action with respect to the complaint or any part thereof that is determined by the Commissioner to be an Eligible Complaint. The Commissioner's decision shall be in writing and shall be delivered to the Complainant and the TSP Member.

6.8 Where the Commissioner has concluded that a complaint, or any part thereof, is not an Eligible Complaint, the Commissioner shall advise the complainant in accordance with Section 6.4 and where applicable, forward such complaint or part thereof to the applicable TSP Member, and to any appropriate agency, body or organization that the Commissioner reasonably believes may have jurisdiction in relation to the complaint. If the complaint is not an Eligible Complaint by virtue of the fact it relates to a TSP that is not a TSP Member, the Commissioner shall advise the complainant in accordance with Section 6.4 and forward the complaint to the applicable TSP Member and the CRTC.

6.9 The Commissioner shall maintain a record of complaints determined by the Commissioner not to be Eligible Complaints.

6.10 Where the TSP Member has advised the Commissioner, pursuant to Section 6.6(b), of the mutual resolution of the complaint, the complaint shall be deemed to be resolved unless the Eligible Complainant, within twenty (20) Business Days of the date of the communication in writing from the TSP Member to the Commissioner and the Eligible Complainant under Section 6.6(b), advises the Commissioner that the complaint has not been resolved to the satisfaction of the Eligible Complainant.

6.11 If,

- (a) after twenty (20) Business Days from receipt of the Eligible Complaint under Section 6.5, the TSP Member has not advised the Commissioner under either Section 6.6(a), Section 6.6(b) or Section 6.6(c); or
- (b) the TSP Member has advised the Commissioner under Section 6.6(c) that the complaint remains unresolved; or
- (c) the Commissioner has made a determination under Section 6.7 that the Commissioner will take action with respect to the complaint; or
- (d) the Eligible Complainant has advised the Commissioner that the complaint has not been resolved to the satisfaction of the Eligible Complainant as described in Section 6.10;

the Commissioner shall proceed to investigate such Eligible Complaint.

6.12 The TSP Member may, within twenty (20) Business Days from the commencement of the Commissioner's investigation by operation of Section 6.11, file a written response to an Eligible Complaint, with a copy to the Eligible Complainant.

6.13 In assessing the eligibility of a complaint and in the course of investigating an Eligible Complaint, the Commissioner may require such assistance of the Complainant and the TSP Member as the Commissioner considers reasonable and appropriate.

6.14 Subject to Section 13.2, the Commissioner may require the TSP Member and the Complainant to disclose any documents and to provide such information as the Commissioner may lawfully and reasonably request relating to his or her consideration of a complaint.

6.15 If a TSP Member or Complainant supplies information to the Commissioner and requests that the Commissioner treat it as confidential, the Commissioner shall not disclose that information or the fact or existence of that information to any other party without the consent of the party who has made the confidentiality request, provided that:

- (a) maintaining the confidentiality of such information does not unduly impede the Commissioner's ability to attempt to investigate, assist in the resolution of and/or make a recommendation or decision with respect to the complaint; and
- (b) the Commissioner is satisfied that the confidentiality request has been made in good faith.

6.16 The Commissioner may consolidate, and treat as a single Eligible Complaint, two or more Eligible Complaints filed by or on behalf of the same Eligible Complainant relating to the same TSP Member and arising from the same transaction or occurrence or series of transactions or occurrences.

6.17 The Commissioner may consolidate, and take action with respect to, two or more Eligible Complaints filed by or on behalf of two or more Eligible Complainants relating to the same TSP Member and arising from the same transaction or occurrence or series of transactions or occurrences.

6.18 Subject to Section 6.19, the Commissioner shall not consider and shall take no action with respect to a single complaint filed by or on behalf of more than one Eligible Complainant.

6.19 Notwithstanding Section 6.18, the Commissioner may take action with respect to an Eligible Complaint filed by or on behalf of one or more Eligible Complainants, provided that:

- (a) each Eligible Complainant to which the complaint relates is specifically identified and has authorized that the complaint be filed on behalf of such Eligible Complainant;
- (b) the Eligible Complaint relates to the same TSP Member and arises from the same transaction or occurrence or series of transactions or occurrences; and
- (c) the Commissioner considers that it is appropriate and efficient to do so.

6.20 The Commissioner may, in his or her discretion, extend or abridge the time for taking any action under this Code, save and except for the time limitation for filing a complaint pursuant to Sections 8.3 through 8.5.

## **7. Discretion to Decline to Take Action**

7.1 The Commissioner may decline to take action or continue to take action with respect to a complaint if the Commissioner considers:

- (a) that the complaint is frivolous or vexatious;
- (b) that the Complainant does not have a sufficient interest in the subject matter of the complaint;
- (c) that the complaint should more properly be brought before another tribunal, court, or agency;
- (d) that an investigation, or further investigation, is not warranted in the circumstances;
- (e) that the Complainant has failed to cooperate in a timely manner in the Commissioner's efforts to assess, investigate, attempt to facilitate the resolution of, or make a recommendation or decision in relation to the complaint; or

- (f) that the TSP Member is offering a resolution that, in the view of the Commissioner, constitutes a reasonable resolution to the matter, even if such resolution is not acceptable to the Complainant.

## 8. **Duty to Decline to Take Action**

8.1 The Commissioner shall take no action with respect to a complaint unless the Commissioner is satisfied that the Complainant has previously brought the matter to the attention of the TSP Member and that the TSP Member has been afforded a reasonable opportunity to investigate and resolve the matter.

8.2 The Commissioner shall take no action with respect to any complaint purported to be brought under this Code that has been the subject of a previous determination or is currently under consideration by another tribunal, court, or agency.

8.3 The Commissioner shall take no action with respect to a complaint:

- (a) received by the Commissioner more than one year after the date when the Complainant knew or with reasonable diligence ought to have known the facts upon which the complaint is based; or
- (b) based upon or in relation to facts having arisen prior to the Effective Date or, in the case of a TSP Member having become a TSP Member subsequent to the Effective Date, based upon or in relation to facts having arisen prior to the date on which the TSP Member became a TSP Member.

8.4 For the purposes of Section 8.3(a), a complaint shall be deemed to be received by the Commissioner on:

- (a) the date it is actually received; or
- (b) four (4) Business Days after it was sent to the Commissioner by regular mail;

whichever is earlier.

8.5 Notwithstanding Section 8.3(a), the Commissioner may take action with respect to a complaint received by the Commissioner more than one year but no more than eighteen (18) months after the date when the Complainant knew or with reasonable diligence ought to have known the facts upon which the complaint is based where:

- (a) the Complainant brought the matter to the attention of the TSP Member no more than one year after the date when the Complainant knew or with reasonable diligence ought to have known the facts upon which the complaint is based; and
- (b) the Complainant and the TSP Member continued to be engaged in an attempt to resolve the matter more than one year after the date when the Complainant knew or with reasonable diligence ought to have known the facts upon which the complaint is based.

## 9. Investigation

9.1 The procedure for the conduct of any investigation under this Code will be such as the Commissioner considers proper to secure the appropriate, most expeditious, efficient and most cost effective resolution of an Eligible Complaint on its merits.

9.2 In the course of his or her investigation, the Commissioner may continue to seek to facilitate a mutually acceptable resolution of an Eligible Complaint wherever practical and appropriate.

## 10. Recommendations

10.1 Upon completing his or her investigation, the Commissioner may either reject the Eligible Complaint or make a recommendation to the Eligible Complainant and the TSP Member regarding what the Commissioner considers to be a reasonable and appropriate resolution of the complaint in view of the TSP Member's obligations pursuant to the applicable contract, without having regard to any monetary limitations of liability contained therein.

10.2 The Commissioner's recommendation:

- (a) shall be in writing;
- (b) shall include a summary of the Commissioner's reasons;
- (c) is not binding on the Eligible Complainant or the TSP Member; and
- (d) is subject to the monetary limits set out in Article 12.

## 11. Decisions

11.1 Within twenty (20) Business Days of receipt of the Commissioner's recommendation, the Eligible Complainant and the TSP Member shall each advise the Commissioner in writing either that:

- (a) the party accepts the Commissioner's recommendation; or
- (b) the party does not accept the Commissioner's recommendation and the reasons why, in the party's view, the Commissioner's recommendation is not appropriate or acceptable.

11.2 If the Eligible Complainant and the TSP Member both accept the Commissioner's recommendation, the recommendation shall become the Commissioner's decision.

11.3 If either the Eligible Complainant or the TSP Member fails to respond to the Commissioner's recommendation within twenty (20) Business Days of receipt, the recommendation shall be deemed to have been accepted by that party.

11.4 If either the Eligible Complainant or the TSP Member, or both, do not accept the Commissioner's recommendation, the Commissioner shall consider the reasons set out by either

or both parties for rejecting the recommendation, and shall thereafter issue a decision in writing, including his or her detailed reasons therefor.

11.5 The Commissioner's decision shall be binding on the TSP Member.

11.6 The Eligible Complainant may elect whether or not to accept the Commissioner's decision within twenty (20) Business Days of receipt of the Commissioner's decision described in Section 11.4.

11.7 If the Eligible Complainant accepts the decision, the Eligible Complainant shall be deemed to fully release the TSP Member from any and all losses, damages, claims, actions, causes of action, applications, suits or demands whatsoever arising from the matters relating to the complaint, including any losses, damages, claims, actions, causes of action, applications, suits or demands not then known or anticipated but which then exist or may arise in the future and all effects and consequences thereof.

11.8 If the Eligible Complainant rejects the decision, the Eligible Complainant may pursue his or her remedies in any other forum the Complainant may choose, and the TSP Member shall be deemed to be fully released from the Commissioner's decision.

11.9 If the Eligible Complainant fails to respond to the Commissioner's decision within twenty (20) Business Days of receipt, the decision shall be deemed to have been accepted by the Eligible Complainant.

## 12. Remedies

12.1 If the Commissioner determines in a decision that a TSP Member did not reasonably perform its obligations under the applicable contract, he or she may require the TSP Member to:

- (a) provide the Eligible Complainant with an explanation or apology;
- (b) undertake to do or cease doing specified activities with respect to the Eligible Complainant;
- (c) pay the Eligible Complainant monetary compensation in an amount not to exceed:
  - (i) in relation to any single Eligible Complaint, or any two or more Eligible Complaints consolidated pursuant to Section 6.16, five thousand dollars (\$5,000) in the aggregate; or
  - (ii) in relation to any two or more Eligible Complaints consolidated pursuant to Section 6.17, five thousand dollars (\$5,000) in respect of each such Eligible Complaint so consolidated; or
  - (iii) in relation to any Eligible Complaint filed on behalf of two or more Eligible Complainants in respect of which the Commissioner has taken action pursuant to Section 6.19, five thousand dollars (\$5,000) in the aggregate; or

(d) any combination thereof.

12.2 In granting a monetary remedy, the Commissioner shall not make an award that is punitive, exemplary or of a similar nature, or that is in the nature of indirect or consequential damages, nor be of greater amount than is appropriate to compensate the Eligible Complainant for any loss, damage or inconvenience actually incurred by the Complainant and arising from the facts on which the complaint is based.

12.3 In rendering a decision, where such decision is in respect of a monetary remedy for Direct Damages, the Commissioner may, where appropriate in light of the provisions of the applicable contract and on a complaint by complaint basis, exercise his or her discretion whether or not to apply any limitations of liability contained in the applicable contract. For purposes of this Code, "Direct Damages" means losses directly and actually incurred by the Complainant, as demonstrated by the Complainant to the reasonable satisfaction of the Commissioner, and excludes indirect, incidental, and consequential damages.

12.4 For greater certainty, amounts that the Commissioner determines are to be refunded or credited as a result of billing errors shall not constitute monetary compensation within the meaning of Section 12.1(c).

### **13. Evidence**

13.1 The Commissioner may receive, weigh and rely upon any information, document, including reliable copies thereof, or other thing that is relevant to the complaint, whether or not such information, document or other thing is given under oath or affirmation or admissible as evidence in a court of law.

13.2 The Commissioner may not receive or rely upon any evidence that:

- (a) would be inadmissible by reason of any privilege under the law of evidence; or
- (b) is inadmissible by any Act of Parliament.

### **14. Deemed Undertaking**

14.1 The discussions, documents and correspondence of the Complainant, the TSP Member, and the Commissioner created for, arising from or in relation to a complaint shall be deemed to be without prejudice and shall not be disclosed or used in any subsequent legal or other proceeding.

**15. Confidentiality**

15.1 In the course of carrying out his or her functions, powers and jurisdiction, the Commissioner shall, subject to Section 15.3 below, maintain the confidentiality of the Complainant and the TSP Member, save as between the parties to the complaint and as may be necessary to carry out the Commissioner's functions in relation to the complaint.

15.2 Without limiting the generality of the foregoing, all conciliations, investigations or, recommendations shall maintain the anonymity of the TSP Member and the Complainant.

15.3 Notwithstanding Section 15.1, a decision of the Commissioner made pursuant to Section 11.4, whether accepted by the Eligible Complainant or not, shall be available to the public, including the name of the relevant TSP Member. The name and identity of the Eligible Complainant shall remain confidential and any identifying information shall be removed from any public disclosure of such decision.

**16. Immunity**

16.1 The TSP Member and Complainant acknowledge that the Commissioner and his or her staff and agents are immune from suit in relation to the good faith exercise of their functions, powers and jurisdiction. The TSP Member and the Complainant undertake not to call the Commissioner or members of his or her staff or agents to testify in any subsequent legal or other proceeding and not to seek production or disclosure of any document, discussion or correspondence arising from a complaint or any document or information contained in the files of the Commissioner.

**17. Recommendations and Decisions Do Not Establish Precedents**

17.1 In considering each complaint, the Commissioner's discretion shall not be fettered by, and the Commissioner shall not be bound by, any previous recommendation or decision made by the Commissioner or by any predecessor in that office.

**18. Effective Date**

18.1 The Code shall be effective on and from the date of incorporation of CCTS.