



**LAX J.**

[1] This is a bondholders' action in which Sun Life Assurance Company of Canada ("Sun Life") acts as representative plaintiff on behalf of the named plaintiffs. Each of the plaintiffs held a BC Tel Series AL 11.35% bond (or bonds) issued by BC Tel, the predecessor corporation to the defendant, Telus Communications Inc ("Telus"). The trust deed pursuant to which the bonds were issued had a "No Financial Advantage Covenant" prohibiting Telus from redeeming the bonds prior to November 15, 2000 with proceeds of a borrowing having a lower interest cost than the bond interest cost of 11.35%. The Court of Appeal has determined that Telus, by its early redemption of the bonds on December 30, 1997, breached the covenant and is liable to the bondholders. Leave to appeal to the Supreme Court of Canada was refused.

[2] During the liability phase of the trial, Sun Life acted as representative plaintiff on consent. By court order dated December 11, 2006, Sun Life was designated representative plaintiff on behalf of the bondholders for the damages portion of the trial and the trial judge directed that a trial be held to resolve the following issues:

- (a) the method by which the principal loss of the Bondholders is to be calculated;
- (b) whether the principal (sic) of mitigation applies to the losses claimed by the Bondholders;
- (c) the applicable rate(s) of pre and post-judgment interest; and
- (d) whether compound interest should be calculated on the applicable interest rate(s).

[3] As a result of the retirement of the trial judge, a consent order appointed me as the continuing trial judge.

**Overview of Evidence at Trial**

[4] Each party presented evidence at trial from an expert witness: Dr. Marlene Puffer on behalf of the plaintiff and Mr. Leon Dadoun, for the defendant. As well, Candace Shaw, Senior Managing Director and Head of North American Public Fixed Income for Sun Life, testified on behalf of the plaintiff on the basis of a Will Say statement. The task for the court was simplified

by the agreement of the parties and their experts on many of the issues. This was accomplished by a cooperative and collegial approach prior to trial whereby the experts exchanged and critiqued each others' reports and then delivered amended reports in response. This is a commendable approach that I hope will be emulated in other trials involving complex methodology.

[5] The evidence is that Sun Life held \$26,845,000 of bonds on the redemption date. When Sun Life received the proceeds of the redemption, it deposited these proceeds into Sun Life's general account. It was therefore unable to track how the proceeds of redemption were used and does not know what return it earned with the proceeds of redemption. Accordingly, both experts needed to rely to varying degrees on assumptions about the bondholders' expected investment behaviour on the redemption date in order to opine on the amount of loss that resulted from the early redemption. Since Sun Life is the representative plaintiff, its conduct was examined, but as the trial proceeded on a representative basis, the methodology found by the court to be the most appropriate will later be used to quantify the losses of each individual bondholder in this case.

[6] The experts agreed that the damage amount is the difference between the value of the bonds on the redemption date and the amount received by the bondholders on that date. The amount received by the bondholders is known and agreed as \$102.95 in respect of principal and \$1.399 in respect of interest for a total amount of \$104.349. The value of the bonds on the redemption date was determined by both experts by calculating the present value of the expected cash flows that would have been received by the bondholders if the bonds had been redeemed on the first date that would not have breached the contract. That date was agreed as November 16, 2000 as Telus would have paid a higher pre-payment penalty by redeeming on November 15. As the option to redeem was "deep in the money" with prevailing interest rates in the 6% range and well below the coupon rate of 11.35%, it is reasonable to assume that the bonds would have been redeemed on November 16, 2000 and this is in fact, what Sun Life had anticipated.

[7] If Telus had performed the contract, it would have continued to pay the interest and sinking fund payments between December 30, 1997 and November 15, 2000 and the final principal and early redemption premium on November 16, 2000. The experts agreed on the cash

flows that would have been received by the bondholders including the bond coupon of 11.35%, sinking fund payments on November 15 in each year, maturity payments, and the call premium on November 15, 2000, if the bonds had not been redeemed early. They further agreed that the appropriate discount rate is the rate that a reasonable investor would have earned by investing the foregone cash flows in an investment like the bonds.<sup>1</sup> In other words, they agree that the discount rate is the rate that assumes that each bondholder would have earned a return on funds equivalent to the return that the market was then paying on investments “like” the redeemed BC Tel bonds. The significant area of disagreement and the central issue at trial was the discount rate or reinvestment rate to be used in calculating this. This turned on the kind of investment the bondholders would have made with the proceeds of redemption.

[8] To arrive at the discount rate, both experts used the risk free Government of Canada (“GoC”) rate as of December 30, 1997 plus a spread or premium. There was a minor disagreement on the methodology for converting GoC rates into discount factors, but significant disagreement on the spread as well as the basis for determining the spread for a like investment. Specifically, they disagreed on the kind of investment Sun Life would have made with the money it received.

[9] Dr. Puffer based her discount rate on an amortizing callable 3-year corporate bond having a spread of 50 basis points. She concluded that the most likely value of the bond on December 30, 2007 was conservatively \$116.447, but she provided a range of values from \$116.923 to \$117.339. After deducting the amount of \$104.339 received on redemption, her opinion is that the damage amount is \$12.098 per \$100 par outstanding at the redemption date. Sun Life submits that Dr. Puffer’s methodology is consistent with the “real life” world of bond valuation and that as her opinion of bond value is corroborated by contemporaneous evidence from bond dealers, Ms Shaw and others who calculated a bond value in excess of \$116 at the time of or just prior to redemption, the most reasonable bond value is \$117.00, resulting in a damage amount of \$12.651 per \$100.

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<sup>1</sup> Other terms for “discount rate” are “reinvestment rate” or “yield”. All refer to the rate at which the cash flows are discounted to December 30, 1997.

[10] Mr. Dadoun based his discount rate on the bondholders reinvesting in long-term commercial mortgages having a spread of 253 basis points. He thought that the value of the bond at the redemption date was closer to \$110.686 but provided a range up to \$116.214. After deducting the amount received on the redemption date, it is Mr. Dadoun's opinion that the damage amount fell within a range from \$6.337 (reflecting reinvestment in commercial mortgages) to \$11.865 (reflecting reinvestment in corporate bonds) per \$100 par outstanding at December 30, 1997. Telus submits that it is reasonable to apply the simple return on Sun Life's mortgage portfolio of 7.93% as the discount rate in present valuing the foregone cash flows as the mortgage portfolio met Sun Life's investment objectives, was in line with their appetite for risk, maximized their yield and was of a category in which they were underinvested. This results in a damage amount of \$6.337. Alternatively, should I conclude that commercial mortgages are not like investments, Mr. Dadoun proposes that it is possible to equate the two potential investments on a risk-adjusted basis at a yield of 7.23% resulting in a damage amount of \$8.217.

[11] Mr. Dadoun is a chartered accountant and has enjoyed a lengthy career in the financial world in various roles at Manulife Financial, Canada Trust Corporation and as Managing Director for Structured Debt Origination in the Debt Capital Markets/Securitization group of CIBC World Markets. Currently, he operates his own structured credit firm specializing in securitizations. Mr. Barrack accepted him as a financial expert, but challenged his qualifications to offer opinion evidence on bond valuation as before this trial, Mr. Dadoun had no specific experience in bond valuation per se. I found that Mr. Dadoun's analogous experience in valuing and aggregating a range of debt instruments, including corporate bonds, qualified him to offer opinion evidence on the discount rate as the methodology is common across a range of securities. I ruled that his qualifications and experience met the threshold for the admissibility of opinion evidence and should be assessed on the basis of weight.

[12] Dr. Puffer has high academic qualifications in business and finance and considerable and specialized experience trading and valuing bonds for leading financial institutions such as RBC Dominion Securities, Nesbitt Burns, Legg Mason and PIMCO, one of the world's largest managers of bonds. In her various roles, she has managed and assessed large bond portfolios and advised issuers, particularly infrequent issuers such as BC Tel, on valuing their securities into the

market. She has taught finance at the University of Toronto. She currently operates her own financial consulting firm focusing on fixed income markets and including evaluating major bond programs for large institutional issuers. Her qualifications as a financial expert and, in particular, as an expert in valuing corporate bonds, were not challenged and were accepted.

[13] In the reasons that follow, I will explain why I prefer the methodology of Dr. Puffer to that of Mr. Dadoun. It is first necessary to consider how Sun Life would have invested the proceeds of redemption.

### **Issue No. 1: Calculation of the Damage Amount**

#### Is it more likely than not that Sun Life would have invested in commercial mortgages?

[14] Telus submits that the preferable and more appropriate methodology to be used in valuing the foregone cash flows is to examine how a bondholder actually reinvested the redemption proceeds, but where reinvestment behaviour is unknown, it is reasonable for the court to consider what the most likely use of the funds was in all the circumstances. According to Telus, this entails reviewing evidence of the bondholders' investment objectives in order to determine what "like" or comparable investment within the bondholders' portfolio yields maximum or risk adjusted return, bearing in mind the bondholders' business motivation to minimize its damages while acting within its existing tolerance for investment risk. The return on that investment is then used as the discount rate for the purpose of assessing damages. It submits that Sun Life's Senior Investment Policy Committee package for the 4<sup>th</sup> Quarter of 1997 (the "Q4 1997 Investment Report") provides the best evidence of Sun Life's investment objectives at the redemption date. In contrast, Sun Life submits that the best evidence about how the proceeds of early redemption were invested is found in the evidence of Ms Shaw who testified that it was most likely that the proceeds were reinvested in bonds of similar term and rating.

[15] A factor that led to Mr. Dadoun's initial opinion that it was likely that Sun Life would invest the redemption proceeds in long-term assets (mortgages or bonds) was his assumption that "as a Lifeco", the vast majority of Sun Life's liabilities were long-dated liabilities, a typical profile for a life insurance company. He selected segment 223 from the Q4 1997 Investment

Report for his analysis in part because this segment was used at Sun Life to match long-dated liabilities. As between mortgages and bonds, his review of the Q4 1997 Investment Report led him to conclude that at the time of redemption, Sun Life was relatively overinvested in corporate bonds and underinvested in commercial mortgages. He opined that Sun Life's overall investment goal would therefore be to shift its investments away from corporate bonds toward mortgages. After concluding that commercial mortgages were a 'like' investment to the BC Tel bonds, he then used the yield on long-term commercial mortgages of 7.93% from segment 223 as the discount rate.

[16] Mr. Dadoun's assumption that Sun Life's liabilities were predominantly long-term and it would have purchased long-term assets to hedge these liabilities was based on his experience at Manulife, but it is not borne out by Ms Shaw's testimony. She described the various business segments at Sun Life and explained that the majority of its products are short term in nature (for example, health insurance claims or GIC's) with cash flows that begin as early as one month after the contract begins and therefore require matching short term assets. Less than one-third of Sun Life's liabilities in Canada are life-insurance related. Segment 223 was used for long-dated liabilities, but this was an individual payout annuity account and not a death benefits account. The payments from this account are made over a long term and in this sense are long-dated, but as Ms Shaw explained, most annuities that are paid over a long term have intermittent payments requiring cash flows in the early years, very often within months. As with other products, short-term assets are required to match these liabilities as they fall due.

[17] Ms Shaw acknowledged that long-term mortgages and bonds are sometimes the best fit to match liabilities such as death benefits, but Sun Life's liabilities were predominantly short-term and not long-term. Mr. Dadoun stated that Sun Life's core investment strategy would reflect this. He acknowledged that it was unlikely that an investment manager would purchase long-dated investments if the liability profile was short-term in nature. Sun Life was therefore not a "prime candidate" (using Mr. Dadoun's words) for the purchase of long-dated mortgage bonds and commercial mortgages.

[18] At the time of early redemption, Sun Life held the bonds in nine of its segments of which four were 'total return' segments and five were 'asset/liability' segments. In the total return segments, the assets are not held to match liabilities, but to yield the highest return possible within Sun Life's investment policy parameters. Approximately 30% of Sun Life assets are allocated to total return segments. At the time of redemption, the total return segments held about 37.25% of the bonds, slightly disproportionate to the overall percentage of Sun Life assets in the total return segments.

[19] While Mr. Dadoun agreed that on a portfolio basis insurance companies attempt to match assets and liabilities, he testified that Sun Life's portfolio segments are arbitrary in determining Sun Life's objectives as the bonds were held in various segments covering liabilities of different tenors and different risk profiles that have a wide range of investment objectives. For this reason, he concluded that asset/liability matching was not indicative of what Sun Life would have done, on a company-wide basis, to reinvest the proceeds.

[20] Ms Shaw strongly disagreed that the portfolio segments were arbitrary and explained that the reason Sun Life had different segments (there were 20 in 1997) was that each of the products it sells are slightly different in nature and have different cash flow patterns. She described the considerable time and attention devoted to estimating or re-estimating what the actual liability cash flows will be and testified that an asset mix is set with reference to an asset profile of cash flows for a particular product. Bonds, as well as other asset classes, are placed in segments to match liabilities and bonds, due to their relative liquidity, are responsible to fill in gaps in the cash flow stream to ensure that the liability is payable when due and that the movement of interest rates does not impact the profitability of any particular product. It can be seen on the Q4 1997 Investment Report that the duration of the investments in the five asset/liability segments, substantially match the duration of liabilities and the asset mix is consistent for each of these segments over the time period of December 1996 to December 1997, lending support to Ms Shaw's evidence that the asset mix in the portfolio segments are not arbitrary.

[21] Both Dr. Puffer and Ms Shaw testified that even if Sun Life had wanted to invest in commercial mortgages, there was limited market supply. This is demonstrated by the Q4 1997 Investment Report. It shows that Sun Life had been unable to meet its target for mortgage purchases. Its actual investment in mortgages was about \$46 million less than had been targeted at the beginning of 1997 and it had adjusted its target downward from \$282.1 million to \$236 million. Thus, even if Sun Life wanted to shift its investments from bonds to mortgages, this was constrained by market supply. In cross-examination, Mr. Dadoun conceded that the downward adjustment could be explained by a lack of market availability.

[22] Dr. Puffer pointed out that if Sun Life had been able to find mortgages at a yield of 7.93% and if these mortgages had matched Sun Life's desired term and risk profile, it could have liquidated a portion of the bond portfolio for mortgages well before the redemption of the bonds.<sup>2</sup> In cross-examination, Mr. Dadoun agreed with this. He also agreed that a bondholder, in purchasing the BC Tel bonds, had demonstrated an appetite for this kind of investment. As a matter of intuition, it seems evident that an investor who has invested in a bond of this kind would not have a need or desire to replace it with a long-term mortgage. Ms Shaw and Dr. Puffer explained why this is so. The high yield on the mortgages in segment 223 (a yield that Ms Shaw believed was exaggerated) reflects the market's assessment of their much higher risk profile. This accounts for the 200 basis point differential<sup>3</sup> between Dr. Puffer and Mr. Dadoun in their respective discount rates.

[23] Telus relies on Sun Life's Q1 1998 asset summary for various business segments (Tab 37, Joint Compendium), which shows that Sun Life invested in commercial mortgages considerably in excess of \$26 million in that quarter. However, it also shows that it made even larger investments in bonds. I can draw no conclusion from this. Similarly, the 2001 Mansfield Trust offering memorandum (Ex. 5) that describes Sun Life as having originated mortgage loans since 1996 having an aggregate principal amount of between \$700 and \$970 million per year is

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<sup>2</sup> Mr. Dadoun did not specify a term in his report, but Ms Shaw testified that a 7.93 yield at a duration of 5.8 years implies a 10-year term mortgage. Mr. Dadoun believed the term was 9 years, but in either case, the duration is different than for a bond of equivalent term. Duration is a measure of interest rate risk and this affects the risk profile of the instrument.

<sup>3</sup> Dr. Puffer used a 50 basis point spread; Mr. Dadoun used a 253 basis point spread.

of limited assistance. Ms Shaw agreed that the figures in the Mansfield Trust document were accurate, but commented that these figures could include NHA mortgages or mortgages given to NHA-type loans, which have a much different credit and risk profile than conventional commercial mortgages.

[24] Although Mr. Dadoun opined in his report that there was a range of reinvestment options for Sun Life, he clarified in cross-examination that it was his opinion that it was more likely than not that Sun Life actually invested the proceeds of redemption in long-term commercial mortgages. I understand that this flows, in part, from his analysis of the Q4 1997 Investment Report, which informed his view that Sun Life was underinvested in mortgages relative to bonds.

[25] The data extracted from the Q4 Investment Report as shown on Exhibit 17 reveals that the mortgage portfolio was underinvested in only two of the five asset/liability matching segments where the bonds were held, was overinvested in two other segments and in balance in the remaining segment. In comparison, the bond portfolio was overinvested in one segment, modestly underinvested in two segments and in balance in two segments. This data does not support his conclusion that Sun Life would have shifted its investments from bonds to mortgages. The fact that Sun Life's overall portfolio was underinvested in long-term commercial mortgages is evidence, as Dr. Puffer and Ms Shaw said, that these mortgages were not available in the market at that time at a yield of 7.93%. It follows that Sun Life could not have invested the redemption proceeds in commercial mortgages and earned this return.

[26] Ultimately, Mr. Dadoun agreed in cross-examination that the most he could conclude was that Sun Life would be "motivated" to invest in commercial mortgages and he knew nothing to the contrary about whether they did or didn't. This is an insufficient basis for finding that Sun Life would likely have invested the proceeds of redemption in long-term commercial mortgages and contrasts starkly with Ms Shaw's evidence that Sun Life would likely not have done this for the reasons she gave.

[27] The redemption occurred on December 30 in the middle of the Christmas holiday period. Ms Shaw testified that Sun Life would have likely purchased a Canada bond with the redemption proceeds to protect interest rates and look to replace it with a three-year bond soon after. In

cross-examination, it was suggested that a plausible scenario was that the proceeds of redemption were used initially to purchase a Canada bond, but that early in 1998, a commercial mortgage, rather than a bond was funded. She agreed that this was a plausible scenario, but only if a comparable term mortgage was available. Commercial mortgages normally have a five, ten or twenty year maturity and a three year commercial mortgage is very unusual and rarely traded. She thought it highly unlikely that Sun Life would sell a three-year Canada bond and replace it with a long-term commercial mortgage, given its need to match its cash flows in 2000, the expected redemption date for the bonds.

[28] I have taken account of Ms Shaw's evidence on discovery (Tab 10, Read-Ins) that a mortgage investment would have been "a rational choice" for Sun Life, but she qualified this by adding "if [mortgages] were available at the right term". She further testified that while Sun Life might have gone into mortgages, they would do this out of cash and wouldn't necessarily sell the bonds. This is consistent with other evidence that Sun Life had an appetite for this rating of bond in their investment portfolio before redemption and makes it less likely that they would have replaced this investment with one of different tenor and risk.

[29] I have also taken account of her evidence on discovery (Tab 9, Read-Ins) that the asset classes in Segment 223 (Cash, Canadas, Publics, Privates and Mortgages) were "somewhat interchangeable". However, Ms Shaw went on to explain (Tab 11, Read-Ins) that mortgage purchases tended to go into liability accounts to match off the liabilities at the spread targets Sun Life wanted. Ms Shaw's evidence contradicts Mr. Dadoun's assumption that Sun Life would be motivated to purchase long-term commercial mortgages to maximize yield.

[30] Ms. Shaw was an impressive witness with impressive qualifications. In her current position, she oversees a group of thirty people (roughly nineteen in the United States and ten in Canada), who manage the public fixed income or debt portfolio for North America of about 45 to 50 billion dollars. She has held various positions at Sun Life since 1987, including Vice-President, Corporate Investments, where she was responsible for overseeing Sun Life's entire investment portfolio worldwide. Telus submits that Ms Shaw's "narrow experience as a bond trader" is not indicative of what Sun Life would have done. I disagree with and reject this

characterization of her experience. Ms Shaw acknowledged that she was “a bond person” and not a mortgages specialist, but she demonstrated a detailed first hand understanding not only of the way in which Sun Life conducts its business, but also of patterns of reinvestment behaviour of investors that hold these types of bonds. I found her to be a credible and informed witness who was entirely capable of providing a reliable account of how Sun Life and industry participants would likely have behaved when the unexpected redemption occurred.

[31] The bonds were purchased beginning in 1991 at various times and amounts. At the time of purchase, they were deemed to be appropriate assets for the different accounts into which they were placed. The majority of the bonds were held in asset/liability matching segments. Mr. Dadoun agreed that when redemption occurs and leaves a hole in a portfolio, investment managers would be expected to rebalance the book and would do so based on what their asset maturity profile was, which on a company-wide basis was short-term, and in this particular case, was a three-year matching requirement. I found Ms Shaw’s evidence compelling and it is supported by the evidence of Dr. Puffer, who is a bond expert. I conclude that when the funds were received, it is most likely that they would have been invested for a short period in Canada bonds until they could be reinvested in bonds of similar term and rating.

[32] After the evidence in the trial concluded, Ms Shaw located transaction records while in the process of moving her office indicating that on December 29 and 31. Sun Life purchased approximately \$14.7 million in Nova Scotia Municipal Corporation Bonds and \$19 million in Canada Savings Bonds respectively. By agreement, these records were admitted for the sole purpose of corroborating Ms Shaw’s evidence that it is most likely that the proceeds of early redemption would have been used by Sun Life to purchase similar term bonds. I accept Telus’ submission that these documents should be accorded no or little weight as neither the amounts invested nor the dates match the quantum of redemption proceeds received by Sun Life on December 30. They were never subjected to any testing or cross-examination and there is no supporting evidence of how these investments were managed over time, whether they were held to maturity, or traded for higher yielding instruments. The conclusion I have reached is without regard to these documents.

Are Commercial Mortgages “like” investments?

[33] Although I have concluded that Sun Life would not have invested the proceeds of redemption in commercial mortgages, I will go on to explain why I reject the risk adjustment methodology Mr. Dadoun proposed. In his initial report, Mr. Dadoun concluded, based on the loss and default data provided by Sun Life, that commercial mortgages and corporate bonds were “like” investments such that it would be reasonable to apply the simple return on the Sun Life mortgage portfolio of 7.93% as the discount rate. In considering whether mortgages and bonds were “like” investments, Mr. Dadoun compared historical loss data for both asset classes. In his analysis, he removed the data for mortgage losses in the years 1993 and 1994, which he regarded as “outliers”. He supported this by a comment in the Fitch Report (Ex. 6)<sup>4</sup> that in 1994, mortgage lenders changed their strategy of dealing with problem loans and this supported his deletion of the data.

[34] A more complete reading of this document discloses that there were several reasons for the defaults that occurred in these years, including an overall downturn in the economy that hit the mortgage industry harder than other sectors, resulting in the bankruptcy of some insurance companies such as Confederation Life and Sovereign Life. The Fitch Report supports Ms Shaw’s evidence that mortgage losses are “lumpy” or episodic. Therefore, a meaningful comparison of historical loss experiences between bonds and mortgagors would measure mortgage losses over a longer period of time so that business cycles can be reflected. Mortgage losses occur less frequently but when they do occur, they are very large. Removing the data for these years effectively eliminates the risk of high default years, making historical loss experiences for mortgages and bonds appear comparable when they are not.

[35] After Sun Life provided more complete data, Mr. Dadoun opined that even if the historical loss experience between mortgage and bond portfolios were not sufficiently similar to one another to consider them “like” investments, they can be brought into equivalency by calculating a risk-adjusted return between the two portfolios. The risk-adjusted analysis appeared in later versions of Mr. Dadoun’s reports, but Mr. Dadoun continued to state his opinion that the

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<sup>4</sup> The Fitch Report studied Canadian commercial mortgage defaults and was published in October 1998.

damage amount is closer to the amount calculated using a 7.93% discount rate or non-risk-adjusted rate. This was not explained. I note parenthetically that 7.93% was the highest yield for commercial mortgages by about 80 basis points and results in the lowest bond rate and damage amount.

[36] According to Mr. Dadoun, the risk adjustment methodology he employed is used routinely in securitization transactions to group investments by relative risk, but Ms Shaw and Dr. Puffer were both very critical of it. Ms Shaw described it as “simplistic” and “a simple subtraction after the fact”, which neither reflected the risk that Sun Life would be assuming, nor would ever have been used at Sun Life to determine the relative risks between two different types of investments. Similarly, Dr. Puffer testified that Mr. Dadoun’s approach was unknown to her and did not result in a reinvestment rate that made a commercial mortgage “like” a BC Tel bond. She explained that a simple subtraction of a loss rate from a yield suggests that there is a one for one relationship between default loss and yield compensation for that loss in the marketplace, but that this is not what is observed in the marketplace. If this model worked, one should be able to subtract the average loss rate for commercial mortgages (25.7 basis points) from the rate of return of 7.93% and arrive at a yield comparable to the risk free rate since the risk has been adjusted for. However, this exercise actually produces a number that is almost 200 basis points over the 10-year Government of Canada rate in December 1997.

[37] Dr. Puffer explained that incorporating relative risks into relative spreads is in many ways more of an art than a science and she enumerated the factors to be considered as including an assessment of term, credit risk profile, rating, special features, risk of merger or acquisition, leveraged buy-out activity, restructuring, risk of new issue supply coming to market and risk of rating downgrade. These risk factors are incorporated into the relative value of corporate bonds in a complex way. Adjusting for risk involves measuring, through experience or mathematical modelling, the volatility of the value of an investment and she explained why the use of standard deviation made no sense in the context of Mr. Dadoun’s methodology.

[38] I am not persuaded by Mr. Dadoun’s risk-adjustment methodology. I accept the evidence of Dr. Puffer that the actual losses experienced by Sun Life for commercial mortgages were three

to four times greater than for bonds. Mortgages and bonds are different as to risk, but also as to term, duration and capital and provisioning requirements. I find that long-term commercial mortgages are not “like” investments to the BC Tel bonds, nor can they be brought into equivalency using Mr. Dadoun’s methodology. For the reasons given by Ms Shaw and Dr. Puffer, I reject the risk-adjustment methodology Mr. Dadoun proposed. Mr. Dadoun accepted in cross-examination that if the court were to conclude this, it should use a bond rate to value the bonds. It is to this issue that I turn.

What is the bond value?

[39] Dr. Puffer and Mr. Dadoun agreed that the fair market value of the bonds is based on the value of the expected future cash flows discounted to December 30, 1997. The reinvestment rate assumed for calculation of bond value consists of Government of Canada (“GoC”) rates (the “risk-free rate”) plus a spread. They disagreed on two points: (1) the calculation of GoC rates; and (2) the appropriate spread.

[40] Dr. Puffer used different GoC rates for each cash flow (“zero curve”), while Mr. Dadoun used a constant rate. The resulting difference in the bond valuation and damage amount is very minor, \$.098 per \$100 par. There is a much larger difference (approximately \$9.00 per \$100 par) depending on the reinvestment rate assumed for the calculation. Mr. Dadoun selected the highest rate available (7.93%) from segment 223 and assumed a reinvestment in commercial mortgages. Dr. Puffer used a spread that reflects an investment in a bond from the same issuer or one with a similar credit profile with comparable tenor, risk and structure, but without any additional spread that would reflect a forced sale situation.

[41] Dr. Puffer calculated the bond value in the same manner used by bond traders, including Ms Shaw when she was valuing bonds for trading purposes. She used a 50 bps spread consisting of 30 bps for the credit risk generally of a comparable bond and an additional 20 bps to account for the special features of the redeemed bonds, including the sinking fund payments and the fact this was a callable bond.

[42] Dr. Puffer used reliable market indicators to determine the spread on a newly issued “plain vanilla” (i.e. non-amortizing and non-callable) BC Tel bond of three or five year term, that is, bonds of the same credit quality, by canvassing dealers whose historical records she considered to be reliable (Scotia, CIBC and BMO Nesbitt Burns). All were within the range of 29 to 32 basis points. The indicative spreads quoted by the dealers reflect the market view of BC Tel’s credit profile before the redemption announcement. She selected a 30 bps spread, at the lower end of their range.

[43] Bonds with special features are usually assigned an additional spread of 15 to 25 bps. I accept Dr. Puffer’s evidence that this spread is routinely used by market participants. The only trades conducted by Sun Life in these bonds were purchases, not sales. In her opinion, Sun Life would likely have sought spreads of 25 basis points or more in pricing these transactions. Dr. Puffer conservatively selected the mid-point of the range and assigned 20 bps to reflect this. Dr. Puffer’s method and spread is consistent with that of Ms Shaw as shown on her contemporaneous handwritten notes. She assigned a yield of 54.5 bps above the GoC rate and included a risk premium of 18.5 bps to reflect the special features of these bonds.

[44] The BC Tel bonds were mortgage bonds, making them more creditworthy and likely to trade at a tighter spread than a comparable bond without collateral. Dr. Puffer ignored this as she considered it a minor point. Had she taken account of it, she would have selected a lower spread which would have raised the damage amount. Using a spread of 50 bps, Dr. Puffer concluded that the fair market value of the bond at December 30, 1997 was \$116,447.

[45] Dr. Puffer verified the accuracy of her methodology with a number of calculations using different credit spreads over different terms, for example, using the assumption of a one year term with a credit spread of 30 bps. This produced a bond value of \$116,530. As a comparison point, she also used the generic Scotia “A” rated 3-year spread of 39 bps. This is derived by taking the average yield of short term corporate bonds (1 to 5 year term) and comparing these to similar Government of Canada bonds. This index reflects the average spread on a diversified bond portfolio of 15-20 short-term bonds in December 1997. This produced a bond value of \$116,751. Dr. Puffer applied the same methodology for Scotia “BBB” 3-year spread of 54 basis

points to recognize that at the time of early redemption, the BC Tel bonds were a weak as opposed to a strong “A” credit. This produced a bond value of \$116.336. As can be seen, these calculations produced only nominal differences in bond value.

[46] Mr. Dadoun advocated the use of “market convention” to determine the price at which the bonds might have been sold in the market at the time of early redemption. Dr. Puffer argued for a fundamental valuation based on specific rates for each cash flow as the bond is amortizing, and for a spread that reflects the risk of the issuer and the special features of these bonds assuming they were held to maturity, which she believed they would be in order to capture the liquidity premium. She disputed a valuation based on yields or spreads that reflect an estimated transaction in a forced sale situation. Mr. Dadoun accepted Dr. Puffer’s approach of using a zero curve and a spread to reflect a ‘like’ investment, if the only acceptable alternative reinvestment was an open market purchase of the bonds. However, as Dr. Puffer pointed out, an open market purchase of these bonds was not possible as they were all redeemed and identical bonds with the same issuer did not exist.

[47] The BC Tel bonds were in the major Canadian bond indices. Dr. Puffer explained why the indicative prices did not provide an accurate estimate of a transaction price and that a more refined calculation would be done manually by a dealer to assess the price for a transaction. For this reason, Dr. Puffer did not use the index price for the bonds as of November 26, 1997 (the day prior to the redemption announcement), but used reliable historical information for spreads on bonds of the same credit quality (BC Tel “plain vanilla” bond). The only component of her methodology that could seriously be in question is the additional spread of 20 bps she selected for the bond’s amortization and sinking fund features. I am satisfied that this is a reasonable spread.

[48] Dr. Puffer provided a range of bond values from \$116.923 to \$117.339, but in her opinion the likely value of the bond on December 30, 1997 was \$116.447. Sun Life asks me to find that an appropriate bond value is \$117.00. It relies on contemporaneous estimates of bond value that suggest a range of values between \$116 and \$119. Ms Shaw calculated the bond value on October 30, 1997, which was less than one month before Telus announced the redemption. I

believe that her calculation of bond value of \$117.20 as of this date is a reliable one, but as Dr. Puffer acknowledged, there was a change in interest rates between this date and December 30, 1997.

[49] Sun Life relies on a letter sent by Mr. Sutcliffe of Sun Life to BC Tel on December 29, 2007 in which a without prejudice offer was made to settle this matter for a payment based on the average quoted dealer price from a survey of five major dealers. Mr. Sutcliffe understood this to be “approximately \$116.” Mr. Dadoun thought that there would likely have been an upward bias to the number coming from the primary aggrieved party, but acknowledged that it could at least be supported as an upper limit.

[50] Dr. Puffer and Ms Shaw disagreed that the dealer prices set an upper limit, pointing out that dealer prices are less precise calculations that would not necessarily reflect the special features of the bonds and that these are bid-side prices reflecting the price dealers would be willing to pay for the bonds rather than a price at which a willing investor would sell a bond normally held to maturity. I have taken into account that on discovery several years later, Sun Life was unable to state who the five surveyed dealers were or produce their quotations, but it is unlikely that Mr. Sutcliffe would have put this forward as a settlement offer on behalf of all bondholders if it was without foundation. The dealer quotations could have been easily determined at the time. It is reasonable to think that the bonds were trading at approximately \$116.

[51] Finally, Sun Life relies on the evidence of Mr. Dowart, former Assistant Treasurer of BC Tel, who testified at the liability phase of the trial that he regarded the bonds as trading at a discount of \$2 to \$3 at the time Telus was considering redeeming them. This evidence formed part of the record at the damages trial and the record of this trial shows that Telus planned to call Mr. Dowart to testify. There is merit to Sun Life’s submission that an inference should be drawn against Telus for failing to adduce evidence from him to explain or resile from this evidence. If this is added to the dealer price of \$116, the bond value was \$118 to \$119.

[52] The estimation of bond value is not a precise science and I regard the contemporaneous evidence as supportive rather than determinative. In all the circumstances, I find that Dr. Puffer’s

opinion of bond value is the most appropriate. It is consistent with dealer quotations at the relevant time. It is based on methodology used by bond traders to calculate the value of a bond with special features. Dr. Puffer has considerable expertise in bond valuation and she persuasively answered Mr. Dadoun's criticisms of her methodology. It is a fair value based on a sound approach. I conclude that the bond value as of December 30, 1997 was \$116.447, producing a damage amount of \$12.098 per \$100 par.

Are Individual Trials required to calculate the damage amount for other bondholders?

[53] Telus criticizes Dr. Puffer's proposed methodology on the basis that her opinion assumes that all bondholders intended to hold the bonds until they were redeemed on November 16, 2000 and would have likely sought out the best substitute for the bonds that was available on the market on the redemption date. It submits that her approach is theoretical, arbitrary and contrary to well-established legal principles that the plaintiff bears the onus of proving damages. Telus submits that, unlike her approach, Mr. Dadoun's methodology can be applied to each bondholder. It is only where a bondholder does not have evidence of actual reinvestment that further discovery of the bondholders' investment objectives and appetite for risk may be required. It submits that any concern over having an efficient process cannot displace the fundamental tenet of damages law that a plaintiff bears the onus of proving its damages.

[54] There are several answers to these submissions.

[55] First, it is clear that all of the bondholders had demonstrated an appetite for this rating of bond in their investment portfolios as they held the bonds at the time of early redemption. The notice of redemption came as a surprise to all bondholders and an early redemption as occurred here is very unusual. Dr. Puffer explained that bonds with special features are generally illiquid and therefore face significant transaction costs and trade infrequently. They are typically put away and held to maturity (in this case the November 2000 first redemption date) to capture the liquidity premium and to avoid selling at prices that would be quoted by dealers. A secondary market price would typically be below the fundamental value of the cash flows. Dr. Puffer's assumption that the bondholders, but for the early redemption, would have most likely continued to hold the bonds in their investment portfolios is a reasonable one and I accept it.

[56] Second, Dr. Puffer's approach is no more or less hypothetical than Mr. Dadoun's approach. In cross-examination, Mr. Dadoun conceded this. He agreed with Dr. Puffer that the formula for calculating the damage amount should not be based on the idiosyncratic behaviour of an individual bondholder. He agreed that a bondholder cannot inflate the damage amount by investing in a less risky investment such as Government of Canada bonds, nor would it be reasonable to expect a bondholder to invest in Google stock or junk bonds. He accepted that if a bondholder decided to use the proceeds of redemption to purchase a riskier investment, a risk-adjustment analysis would be necessary. I have rejected the only methodology proposed for doing this.

[57] Third, Mr. Dadoun agreed with Dr. Puffer that the discount rate to be used assumes that each bondholder would have earned a return on funds equivalent to the return the market was then paying on investments 'like' the BC Tel bonds that were redeemed. The significance of this admission is that it is made in the context of determining the discount rate as part of the agreed formula for calculating bond value. The effect of this admission is to constrain the reinvestment decision of any individual bondholder to an investment in a similarly rated corporate bond as Dr. Puffer proposed. This makes actual investor behaviour or individual reinvestment objectives irrelevant.

[58] Finally, all of the participants in these proceedings, except Mr. Dadoun, were able to calculate the bond value as of the date of redemption without knowing how Sun Life or any other bondholder actually invested the proceeds of redemption. There is no additional evidence that is required from individual bondholders to determine the damage amount that applies to them. I conclude that individual trials are not required.

**Issue No. 2: Does the Principle of Mitigation Apply to the Losses of the Bondholders?**

[59] Both experts agree on the formula for calculating the damage amount as the bond value less the amounts received on December 30, 1997. I have determined the bond value as \$116.447 per \$100 par and the damage amount as \$12.098 per \$100 par. As this amount was not received, there can be no issue of mitigating the damages with respect to this amount. The issue of mitigation arises with respect to the reinvestment of the redemption proceeds.

[60] I do not agree with the submission of Telus that Mr. Dadoun's approach is consistent with the concept of mitigation. Mr. Dadoun's approach incorporates the duty to mitigate in his choice of the mortgage rate as the discount rate in calculating bond value. The yield of 7.93% on a commercial mortgage investment is not mitigation. Rather, it reflects compensation for a higher risk and longer term. Notwithstanding, Mr. Dadoun adopts the position that bondholders are not required to reinvest in this manner and his risk-adjustment methodology does not make a 10-year commercial mortgage like a 3-year amortizing corporate bond. Even on Mr. Dadoun's formulation, the concept of mitigation is only a different terminology for choosing the appropriate discount rate to calculate damages. The principle of mitigation in the conventional sense does not apply.

**Issues No. 3 and 4: What is the Applicable Rate of Pre and Post-Judgment Interest and is Compound Interest Calculated on the Applicable Rates?**

[61] It is convenient to address these last issues together.

[62] The plaintiffs submit, relying on the authority of *Bank of America Canada v. Mutual Trust Co.*, [2002] 2 S.C.R. 601 (S.C.C.), that they are entitled to an award of compound pre-judgment and post-judgment interest. They present three alternatives for the pre-judgment interest rate: the contract rate of 11.35%; the 10-year commercial mortgage rate of 7.93%; or, a rate that assumes bondholders would have continued to reinvest in BC Tel bonds or other like bonds. Dr. Puffer calculated this as a compound rate of 5.59%. The position of Telus is that the plaintiffs are entitled to simple interest at the statutory rate.

[63] The Court of Appeal determined in *Bank of America* that section 130 of the *Courts of Justice Act* does not confer the jurisdiction to award interest on a compounded basis either pre- or post-judgment: *per* Goudge J.A. (2000), 184 D.L.R. (4<sup>th</sup>) 1 (C.A.) at para. 51. The Supreme Court of Canada did not disturb this finding. The basis for awarding compound interest must therefore be found in the court's rationale for this kind of award under sections 128(4)(g) and 129(5) of the *Courts of Justice Act*.

[64] The *Bank of America* case can be read broadly or narrowly. On its facts, *Bank of America* is a narrow decision that can be seen as standing for the proposition that the court has the power to award compound interest where the loan which was the subject of the action provided for compound interest. More broadly, *Bank of America* suggests that an award of compound interest under sections 128(4)(g) and 129(5) of the *Courts of Justice Act* may be appropriate where there are circumstances warranting it:

An award of compound pre- and post-judgment interest will generally be limited to breach of contract cases where there is evidence that the parties agreed, knew or should have known, that the money which is the subject of the dispute would bear compound interest as damages. It may be awarded as consequential damages in other cases but there would be the usual requirement of proving that damage component. (para. 55).

[65] This is a breach of contract case. The interest rate on the bonds was 11.35%, paid semi-annually. Although all the calculated damage amounts include compounded interest payments from December 30, 1997 to November 16, 2000, Telus disputes that the contract between the parties – the Trust Deed – provided for compound interest. It submits that as Telus had no knowledge of what the bondholders intended to do with the proceeds of the bond at and after the time of first redemption, an award of compound interest is not available on the authority of *Bank of America*. This submission ignores the common law right to be awarded the expectation damages that Justice Major recognized should flow in circumstances where the parties knew or should have known that the subject matter of the dispute would bear compound interest as damages.

[66] The bonds were in essence a loan from the bondholders to BC Tel with coupon payments paid every six months. Telus knew that these would be reinvested to earn a compound return. Market participants managing a bond portfolio always put cash flows to work and earn a compound rate of return at prevailing interest rates. Other than money market securities which are issued at a price below par and mature at par, Sun Life does not invest in a security offering only simple interest.<sup>5</sup> If Telus had paid the damage amount on December 30, 1997, it would have

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<sup>5</sup> Telus accepts that Sun Life would have reinvested the coupon payments to earn a compound return. Transcript, pp. 257-8.

expected the bondholders to invest the damages and earn a compound return thereon. In developing their models for the calculation of pre-judgment interest, both experts assumed compound interest because this is the manner in which institutional investors behave. Mr. Dadoun acknowledged that everyone's expectation was that if the bondholders had been paid the damage amount on breach, they would have invested in instruments that would have provided compound return.

[67] Compound interest reflects the time value component to interest payments and should reflect an interest component that returns the value acquired by a defendant between breach and payment. The advance payment that Telus made in June 2006 was intended to stop the interest clock from running. The interest earned on that money, whether in the hands of Telus or in the hands of the bondholders would compound. Telus redeemed the bonds so that it could realize an anticipated saving of approximately \$23 million. Telus shareholders would not have been particularly happy if that saving had been invested at a simple rate of interest. As Dr. Puffer said, even on the most conservative investment, no investor puts its money under the mattress, but invests to earn a compound rate of return.

[68] I accept that the contract in this case did not expressly provide for a compound rate of interest (although it effectively did) and compound interest will of course not be available in every case, but *Bank of America* opens the door to this kind of award in a breach of contract case where the circumstances warrant it. In my opinion, this is the kind of case that fits within the principles articulated by the Supreme Court of Canada in *Bank of America*. I find that a compound rate of interest is appropriate.

[69] The court may exercise discretion to depart from the presumed statutory rates of interest under ss. 28 and 29 of the *Courts of Justice Act*, but the plaintiff bears the onus of displacing these rates. Mr. Barrack accepted that Sun Life and other bondholders would reinvest the bond coupons at current rates and not the contract rate of 11.35% and that this would apply as well to the calculation of pre-judgment interest.<sup>6</sup> The bondholders had no expectation that they would earn the contract rate after November 16, 2000. The contract rate does not apply.

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<sup>6</sup> Transcript, p. 258, 260.

[70] The plaintiffs submit that Telus' conduct in breaching the Trust Deed and "fighting this matter at every turn" for over 10 years is a factor that should be taken into account in setting an appropriate rate of interest. Although the court may consider conduct when determining the rate of pre-judgment interest, an award of interest must be viewed as part of the compensatory package and is not a means of rewarding or punishing a party: *Graham v. Rourke*, 72 O.R. (2d) 622; [1990] O.J. No. 2314 (C.A.) (QL) at p. 7. That the case has taken this length of time to resolve does not establish improper conduct and is not a reason to award interest at a compound rate of 7.93%.

[71] Both experts agreed, that assuming compound interest is available, the rate of interest should be equal to the return that the bondholders would have earned on the damage amount had the amount been reinvested in the same manner as the redemption proceeds. They also assumed that whatever investment was selected by the bondholder for the proceeds of redemption would likely be rolled over into similar instruments until the date of judgment.

[72] Dr. Puffer and Mr. Dadoun proposed a methodology for calculating pre-judgment interest (Mr. Dadoun refers to it as Theoretical Return) using different assumptions and different spreads. Dr. Puffer's model is a reinvestment rate over time that tests various scenarios to determine what interest the bondholders would have earned between December 30, 1997 and July 11, 2007. She assumed, as she did for calculation of the damage amount, that the reinvestment would have been in a BC Tel bond and based her calculations on spreads that approximate 3-year "A" rated corporate bonds for the first two reinvestments and "BBB" rated corporate bonds for the final two 3-year periods. She performed calculations assuming 1, 3 and 5 year rollovers and using different spread assumptions. She concluded that if the bondholders had invested throughout the period in the same manner as they invested the proceeds of redemption, they would have earned pre-judgment interest of \$8.354 per \$100 par. The reinvestment rates derived from the spreads she used average 5.358%.

[73] She compared this analysis of the value of the pre-judgment interest on July 11, 2007 to a return that could have been earned on the damage amount of \$12.098 using a constant assumption compounded semi-annually (the method used for Canadian bonds) based on the

range of yields (between 4% and 7%) for “A” and “BBB” rated corporate bonds under 5 years maturity. Based on these assumptions, she calculated the pre-judgment interest amount at a constant rate of 5.59% as \$8,366, which is virtually the same as the rate determined using detailed reinvestment assumptions.

[74] As an additional comparison, she used the Scotia Capital Short Corporate A Index and used the actual total return on the Index from December 30, 1997 to July 11, 2007. Based on this assumption, the pre-judgment interest is \$7,718. Dr. Puffer pointed out that this produces a conservative valuation that does not reflect the special features and weakening credit profile of the bond. Mr. Dadoun criticized Dr. Puffer’s continued use of the BC Tel bond as the benchmark for calculation of the pre-judgment interest, which Dr. Puffer addressed in her report and in her evidence. Nothing turns on this as a constant reinvestment rate of 5.59% using the Index rather than a surrogate BC Tel bond produces virtually the same result. I accept Dr. Puffer’s methodology and conclude that the appropriate compound rate for pre and post-judgment interest is 5.59%. Dr. Puffer has calculated the amount of pre-judgment interest with this rate to July 11, 2007 on the damage amount of \$12,098 per \$100 par as \$8,366.

#### Advance Payment

[75] Telus made an advance payment of \$12 million on June 5, 2006. The issue that divides the parties is whether interest should apply with respect to this amount for the period after the advance payment was made. The funds have been segregated and are being held in short-term investments. Mr. Barrack argues that the advance payment could not be distributed to the bondholders until the damage amount was determined. He submits that any interest earned on these funds should be pro-rated to individual bondholders to reduce the total liability of Telus to the bondholders.

[76] Section 128(4)(e) of the *Courts of Justice Act* provides that interest shall not be awarded under subsection (1) “with respect to the amount of any advance payment that has been made towards the settlement of the claim, for the period after the advance payment has been made”.

There is very little jurisprudence on the issue of advance payments. The two decisions I was referred to hold that advance payments are applied first to principal, and then to interest accrued to the date of prepayment: *Baart v. Kumar*, [1985] B.C.J. No. 4265 (B.C.C.A.); *Downey v. Maes*, [1992] O.J. No. 855 (Gen. Div.).

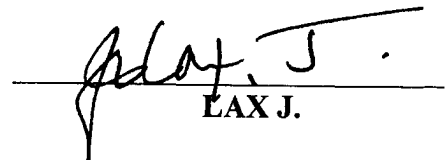
[77] The plaintiffs do not dispute these cases, but assert that judgment interest should continue to run on the whole judgment amount because Sun Life had no way in which to distribute the payment to the bondholders. An advance payment stops the interest clock from running against the defendant because it puts the money in the hands of the plaintiff. I agree with Telus that if Sun Life was uncertain how to proceed, it could have sought instructions from the bondholders' committee or directions from the court. The bondholders did not put this money to work, but this should not operate to the detriment of Telus, who made the prepayment in good faith and from the time of payment, had no ability to earn a return on the money. Failure to take the advance payment into account in determining whether pre-judgment interest should be paid would unfairly over-compensate the plaintiffs.

[78] In summary:

- (a) the principal loss of the bondholders is to be calculated using Dr. Puffer's methodology;
- (b) individual trials are not required to determine the damage amount or the rate of pre- and post-judgment interest;
- (c) the principle of mitigation does not apply;
- (d) the applicable rate of pre- and post-judgment interest is the compound rate of 5.59%;
- (e) no interest will apply to the advance payment after June 5, 2006.

[79] If costs are not agreed, counsel should agree on a schedule and provide me with written submissions. Counsel may seek an attendance if they are unable to agree on the calculations.

**Released:** February 19, 2008

  
LAX J.

**COURT FILE NO.:** 99-CL-003317

**DATE:** 20080219

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SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**B E T W E E N:**

METROPOLITAN TORONTO POLICE WIDOWS AND ORPHANS FUND, VANCOUVER ISLAND MULTIPLE SCLEROSIS SOCIETY, SONS OF SCOTLAND BENEVOLENT ASSOCIATION, SUN LIFE ASSURANCE COMPANY OF CANADA, THE CANADA LIFE ASSURANCE COMPANY, THE STANDARD LIFE ASSURANCE COMPANY, COMMERCIAL UNION LIFE ASSURANCE COMPANY OF CANADA, THE NATIONAL LIFE ASSURANCE COMPANY OF CANADA, THE PROVINCE OF ALBERTA, METROPOLITAN LIFE INSURANCE COMPANY, ZURICH LIFE INSURANCE COMPANY OF CANADA, YIELD MANAGEMENT LTD., EMPIRE LIFE INSURANCE COMPANY, CUMIS LIFE INSURANCE COMPANY, THE MUTUAL LIFE ASSURANCE COMPANY OF CANADA, DOFASCO EMPLOYEES' SAVINGS AND PROFIT SHARING FUND, DOFASCO SUPPLEMENTARY RETIREMENT INCOME PLAN, CANADIAN MEDICAL PROTECTIVE ASSOCIATION, CHEVRON MASTER TRUST, THE CONTRIBUTARY PENSION PLAN FOR SALARIED EMPLOYEES OF MCMASTER UNIVERSITY, MEMORIAL UNIVERSITY OF NEWFOUNDLAND, ABITIBI CONSOLIDATED INC. MASTER TRUST FUND, INTEGRA CAPITAL FINANCIAL CORPORATION, INTEGRA CAPITAL MANAGEMENT CORPORATION

Plaintiffs

- and -

TELUS COMMUNICATIONS INC.

Defendant

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**REASONS FOR JUDGMENT**

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Released: February 19, 2008

**LAX J.**