

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

(Class Action)  
SUPERIOR COURT

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NO: 500-06-000740-155

SHAY ABICIDAN, [REDACTED]  
[REDACTED]

Representative Plaintiff

-vs-

**BELL CANADA**, legal person its head office at Tour  
A-7, 1 Carrefour Alexander-Graham-Bell, Verdun,  
District of Montreal, Province of Quebec, H3E 3B3

Defendant

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**ORIGINATING APPLICATION**  
(Articles 141 and 583 C.C.P.)

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**THE PLAINTIFF RESPECTFULLY DECLARES THE FOLLOWING:**

**I. INTRODUCTION**

1. On March 30<sup>th</sup>, 2017, the Honourable Justice Donald Bisson, J.C.S., authorized the Plaintiff to bring a class action for the benefit of the persons forming part of the group hereinafter described, namely:

English:

All consumers within the meaning of Quebec's *Consumer Protection Act*, residing in Quebec, who subscribed to "FIBE TV" and/or "FIBE Internet" offered by Bell Canada between May 1<sup>st</sup>, 2012 and March 30<sup>th</sup>, 2017, and who were not connected to a 100% fibre optics network, or, who were not connected to a network entirely composed of fibre optics.

French:

Tous les consommateurs au sens de la *Loi sur la protection du*

*consommateur* résidant au Québec qui ont souscrit à la « Télé FIBE » et/ou à « Internet FIBE » de Bell Canada entre le 1<sup>er</sup> mai 2012 et le 30 mars 2017 et qui n'étaient pas branchés à un réseau 100% de fibres optiques, ou qui n'étaient pas branchés à un réseau composé entièrement de fibres optiques.

2. The Honourable Justice Bisson appointed the status of representative to the Plaintiff and identified the principal questions of law or fact to be dealt with collectively in the class action as follows:

English:

- a) Did Bell Canada engage in false, misleading, or deceptive acts or practices regarding the marketing, distribution and/or the sale of its TV and Internet FIBE Services?
- b) Is Bell Canada liable to the Group members for reimbursement of a portion of the monthly price paid as a result of its fault?
- c) Did Bell Canada conceal or fail to mention an important fact in any of the representations made to Quebec consumers concerning its TV and Internet FIBE Services?
- d) Is Bell Canada liable to the Group members for reimbursement of a portion of the monthly price paid, in reason of its concealment or failure to inform them?
- e) Should an injunctive remedy be ordered to prohibit Bell Canada from continuing to perpetrate its unfair, false, misleading, and/or deceptive conduct, as well as its concealment of important facts?
- f) Is Bell Canada responsible to pay compensatory, moral and/or punitive damages to Group members and in which amount?

French:

- a) Est-ce que Bell Canada s'est engagée dans des actes ou des pratiques fautifs, mensongers ou trompeurs concernant la commercialisation, la distribution et/ou la vente des services de télévision et d'internet FIBE?
- b) Bell Canada est-elle sujette envers les membres du groupe au remboursement d'une partie du prix mensuel payé, suite à sa faute?
- c) Est-ce que Bell Canada a passé sous silence un fait important ou a-t-elle manqué à son obligation d'information dans une représentation qu'elle a faite aux consommateurs québécois concernant ses services de télévision et d'internet FIBE?

- d) Bell Canada est-elle sujette envers les membres du groupe au remboursement d'une partie du prix mensuel payé suite à son manquement à l'obligation d'information ou du fait d'avoir passé sous silence un fait important?
- e) Une action en injonction devrait-elle être ordonnée afin d'interdire à Bell Canada de continuer à adopter son comportement injuste, fautif, trompeur et/ou mensonger ainsi que de passer un fait important, sous silence?
- f) Bell Canada, devrait-elle payer des dommages compensatoires, moraux et/ou punitifs aux membres du groupe et pour quel montant?

## II. THE PARTIES

- 3. The Plaintiff is a consumer within the meaning of Quebec's *Consumer Protection Act* (hereinafter the "**CPA**");
- 4. The Defendant, Bell Canada, is carrying on the business of diverse telecommunications services, as it appears from an extract of the enterprise's information statement from the enterprise register (CIDREQ), filed as Plaintiff's **Exhibit P-1**;
- 5. Bell Canada is a merchant within the meaning of the *CPA* and its activities are governed by this legislation, among others;

## III. BACKGROUND

- 6. Since the inception of its Fibre Optic Services in Quebec in February of 2010, Bell Canada made and continues to make false and misleading representations to consumers across Quebec concerning its FIBE™ Internet and FIBE™ TV services (hereinafter "**FIBE™ Services**");
- 7. From the outset in February 2010 and during the class period, Bell Canada misleadingly used the term "*Fibe*" to describe services that are in fact hybrid (because its FIBE™ Services are composed of both fibre optics and copper wiring);
- 8. In the Canadian Trademark description for "FIBE", Bell Canada defines FIBE™ as "*Telecommunication services, namely, internet service provider (ISP) services, telephone services and television services **over fiber-optic cable***", the whole as appears from a copy of the document filed herewith as **Exhibit P-2**;
- 9. Since at least February 18<sup>th</sup>, 2010 and during the class period, Bell Canada failed to mention an important fact concerning its FIBE™ Services in the representations it made to Group members through its mass media advertising (on its website and in major newspapers), in violation of section 228 *CPA*;

10. Moreover, the FIBE™ Internet and TV services provided by Bell Canada during the class period did not conform to the statements and advertisements regarding them made by Bell Canada, in violation of article 41 CPA;
11. To entice Group members to subscribe to its services, Bell Canada made representations concerning “Fibe” and Bell Canada’s FIBE™ Services on its website, the whole as appears from the French and English versions used by Bell since at least February 18<sup>th</sup>, 2010, through July 28<sup>th</sup>, 2012, filed as **Exhibit P-3**;
12. Bell Canada falsely stated that: « *“Fibe” est synonyme de fibre optique* »;
13. Bell Canada has admitted in the present dossier that in the province of Quebec, from February 18<sup>th</sup>, 2010 through January 1<sup>st</sup>, 2012, its FIBE™ Services were, in reality, composed of “*fibre optique*” from the Bell Canada central until a connection point at the subscriber’s neighbourhood, from which point “*Des fils en cuivre (copper wires)*” connect this connection point to the subscriber’s domicile, as it appears from Evelyne Lepage’s Affidavit dated April 21<sup>st</sup>, 2016, which the Plaintiff files herewith as **Exhibit P-4**;
14. Bell Canada not only failed to mention this important fact in its representations (that its FIBE™ Services are composed of fibre optic and copper), but further misleads consumers into believing that its FIBE™ Services is made up superior components (i.e. fibre optics only) when compared to all other cable products on the market. Indeed, it stated that:

*La fibre optique est la meilleure technologie pour la transmission de données puisqu'elle permet des vitesses de partage de contenu plus rapide que tout autre produit du câble sur le marché...*

The whole as it appears from Exhibit P-3;

15. Pursuant to the CPA, Bell Canada had a legal obligation to mention this important fact (that its FIBE™ Services are composed of fibre optics and copper) to Group members;
16. Indeed, this information is important to the decision-making process of consumers who had to choose between Bell FIBE™ Services and “*tout autre produit du câble sur le marché*”;
17. Even Bell Canada acknowledged that this consideration (concerning the quality and components of its FIBE™ Services) is critical to the decision-making process of Group members;
18. Bell Canada’s failure to adequately and legally inform Group members regarding its FIBE™ Services – and its misleading statements regarding the type of cabling used – was first reported in *La Presse* on November 19<sup>th</sup>, 2010, the whole as appears from a copy of the article titled “*Des doutes sur les réseaux de fibre optique de Bell et TELUS - L’Union des consommateurs parle de tromperie*” as **Exhibit P-5**;

19. As appears from that article, actual fibre optics only connect the Bell Canada central to the junction box of a particular neighbourhood, from which point conventional copper (category 5 and/or 5e) and coaxial cables are used;
20. As such, the terms “Fibe TV” and “Fibe Internet” used by Bell Canada in its advertising are false and misleading as they do not disclose the fact that fibre optics are only partially used, thereby giving the Group Members a mistaken impression regarding the services;
21. The general impression that Bell Canada’s representations convey to the average consumer – and even to an experienced consumer – is that the term Bell FIBE™ is synonymous with fibre optic (as Bell Canada publicly defined the term in its publicity from February 2010 through at least July 2012) and that subscribing to FIBE™ Services means that consumers will be connected to a network “*made up of 100% fibre optic connected directly to each home*”;
22. It was only as of 2012 that Bell Canada began making the distinction between *Fibre to the Home (“FTTH”)* and *Fibre to the Node or to the Neighbourhood (“FTTN”)*, as it appears from Evelyne Lepage’s Affidavit, Exhibit P-4;
23. From February 2010 through January 1<sup>st</sup>, 2012, Bell Canada failed in its obligation to explain to Group members that “Fibe” in fact meant FTTN, and that Bell FIBE™ Internet and TV was made up of both fibre optic and copper wiring components;
24. Bell contaminated the term “Fibe” and deceived Group members by marketing and describing its FIBE™ Services in the aforementioned manners;
25. Group members who subscribed to Bell FIBE™ TV and Internet subscribed to and received a service that was not the one Bell advertised for years (both on its website and in its mass marketing advertising as “*synonymous to fibre optic*” and “*on our fibre optic network*”);
26. Instead, all Group members received a hybrid service composed of fibre optics and copper/coaxial wiring;
27. By employing these tactics, Bell Canada misled consumers and impeded the ability of Group members to make informed decisions about FIBE™ Services;
28. In Plaintiff’s submission, it is obvious that Bell Canada willfully engaged in the abovementioned prohibited business practices as a means of convincing Group members and consumers to contract with them and to pay a premium for the service;
29. Moreover, Bell Canada failed in its obligation and duty to act in good faith in their representations and performance of their obligations;

#### IV. IMPORTANT DIFFERENCES BETWEEN FTTN & FTTH

30. The main difference between FTTN and FTTH is that with FTTH the higher quality and higher performing fibre optic cables are connected directly to the consumer's home (hence "100% fibre optics connected directly to each home"), whereas with FTTN the fibre optics are connected only as far as to the node, from which point conventional copper and coaxial cables are used to connect to the consumer's home (hence the term "hybrid fibre" used by Videotron), the whole as more fully explained in the expert report of Professor Odile Liboiron-Ladouceur's filed herewith as **Exhibit P-6**;
31. After the filing of the original *Motion to Authorize the Bringing of a Class Action and to Ascribe the Status of Representative*, Mr. Shaun Omstead, Vice-President of Residential Products, acknowledged Bell Canada's policy not to distinguish between FTTH and FTTN, in a statement made to Christina Pellegrini of the Financial Post between May 1<sup>st</sup> and 26<sup>th</sup>, 2015, the whole as appears from a copy of the article filed herewith as **Exhibit P-7**:

In the latest earnings call on April 30, BCE's CEO George Cope said the company is in the middle of a costly multi-year process to migrate its fibre-to-the-node subscribers to fibre-to-the-home, adding that "if we're building, it's fibre directly to the home."

Bell has a mixture of both configurations, which makes selling the product to a wide audience difficult since it depends on where a consumer lives and if the wiring that gets the Fibe service to them has been put in the ground or in the air. Fibre reached 2.1 million homes directly, per the company's 2014 annual report.

Shawn Omstead, vice-president of residential products who manages Fibe, says the Fibe experience the consumer receives doesn't differ in either set-up.

**"I don't think, at the end of the day, a customer cares how it gets delivered," he said in an interview. "If I have Fibe on FTTH (fibre to the home) or FTTN (fibre to the node), in terms of the way [customers] watch, there's nothing that we differentiate in the service. We haven't felt the need to talk about that difference."**

[our emphasis in bold].

32. According to expert Odile Liboiron-Ladouceur, contrary to Bell Canada's assertions, the way Group members watch is in fact affected because there is more interference on a FTTN connection, as compared to a FTTH connection. This affects their experience under a number circumstances;
33. Additionally, according to expert Odile Liboiron-Ladouceur, wires in FTTN deteriorate over time (including due to thermal changes between winter/summer) which affects the quality of the signal for both Internet and TV;

34. Water infiltration in FTTN is an additional factor which could affect the signal and, consequently, the experience for both Internet and TV for Group members;

## **V. THE PLAINTIFF'S PERSONAL EXPERIENCE**

35. Commencing around the month of October 2011, Plaintiff began noticing publicity concerning Bell Canada's "Fibe" services;
36. The publicity concerning Bell "Fibe" captured Plaintiff's attention because Bell Canada marketed and introduced "Fibe" as a "new" technology, with superior qualities to "any cable product on the market", the whole as appears from a screenshot of the statements he read, made by Bell Canada concerning its FIBE™ Services on the English version of its website from at least March 5<sup>th</sup>, 2010 through at least July 8<sup>th</sup>, 2012, Exhibit P-3;
37. Plaintiff was previously subscribed to Bell Canada's traditional Internet (DSL) since 2007;
38. In December 2011, Plaintiff subscribed to Bell FIBE™ Internet and in October 2012 he subscribed to Bell FIBE™ Television;
39. Prior to Plaintiff subscribing to Bell Canada's FIBE™ Services, Bell Canada failed to inform him of an important fact concerning its FIBE™ Services, namely that the services were not entirely provided through fiber optic cables;
40. Instead, Bell Canada's advertising and representations misled Plaintiff into subscribing for a service (by falsely stating that "Fibe" is synonymous to fibre optic) that was not the one advertised by Bell Canada leading up to his subscriptions (both in December 2011 and in October 2012);
41. When the Plaintiff first subscribed to Bell Canada's FIBE™ Internet services in December 2011, Bell – by its own admission – did not mention to Group members the distinctions between FTTN and FTTH, the whole as appears from an extract of Evelyne Lepage's examination of June 21<sup>st</sup>, 2016 filed as **Exhibit P-8** (page 12, lines 16 to 20):

Non, FTTN, si je peux me permettre, c'est un terme technique que je n'utilise pas dans mes publicités, justement par souci de vulgariser. Donc, si on parlait, à cette époque-là, de la technologie, on parlait que ça fonctionnait sur fibre optique.
42. Plaintiff and Group members believed what was conveyed to them by Bell Canada, notably that Bell "*parlait que ça fonctionnait sur fibre optique*" and no other components;
43. Vidéotron, Bell Canada's major competitor in Quebec, did not advertise that it had a completely fiber optic network (it did advertise having a "hybrid fibre" network at some points in time), and so Plaintiff did not even bother considering Videotron's offer because

he was excited to benefit from the “new” fiber optic technology being advertised by Bell Canada online and in mass media;

**i) Advertising seen by Plaintiff concerning Bell FIBE™ TV:**

44. In the month of October 2011, Plaintiff saw several of Bell Canada’s advertisements in the *Montreal Gazette* promoting its new fiber optic services;
45. Although he does not remember on which exact date in the month of October 2011, or the *exact* wording of each newspaper ad, Plaintiff does recall Bell Canada emphasizing that Fibe was a “new” technology “*delivered through a fibre optic network*”;
46. In October 2011, Bell Canada ran an ad in the *Montreal Gazette* titled “*It’s new and it ROCKS*”, which appeared in at least two editions of the *Montreal Gazette* that month, the whole as appears from copies of the Bell Fibe advertising in the *Montreal Gazette* on October 14<sup>th</sup>, 2011 and October 19<sup>th</sup>, 2011 filed *en liasse* as **Exhibit P-9**;
47. The *Montreal Gazette* states on its website that “*The Gazette is the dominant medium for reaching Montreal’s large English market, and in total 554,800 Montrealers read its print and online editions throughout the week*”, the whole as appears from the extract of said website filed herewith as **Exhibit P-10**;
48. Plaintiff was really interested in this new “Fibe” technology and Bell Canada’s so-called “*fibre optic network*”;
49. After seeing the “Fibe” ad in the *Montreal Gazette*, Plaintiff wanted to learn more about “Fibe” and the promotions being offered by Bell Canada for this new service;
50. It was at this point (on a handful of occasions in the months of October/November 2011) that Plaintiff consulted Bell Canada’s website to see what services and promotions were available to him for TV, Internet and telephone, since the ad in the *Gazette* referred only to Bell Fibe TV;
51. As for the advertising that he saw on Bell Canada’s website in October/November 2011, Plaintiff particularly remembers seeing the ads appearing on Bell Canada’s webpage which are filed *en liasse* herewith as **Exhibit P-11**;
52. The combination of Plaintiff seeing several of Bell Canada’s advertisements in the *Montreal Gazette*, in addition to the advertisements appearing on Bell Canada’s website shortly thereafter, gave Plaintiff the impression that Bell “Fibe”:
  - a) Was a new technology that was different from the “*old cable technology*” (as referred to by Bell Canada themselves);
  - b) delivered and connected using a different technology (thus a different type of



wiring, in this case fiber optic instead of copper wiring) because Bell Canada's internet advertisement expressly stated that consumers were offered the opportunity to "*débrancher la vieille technologie du câble*";

ii) Advertising seen by Plaintiff concerning Bell FIBE™ Internet:

53. Around the same time (October/November 2011), Plaintiff continued browsing Bell Canada's website for information concerning the advantages of obtaining his television and internet services from a company (i.e. Bell Canada) offering a completely fiber optic connection (versus the standard network which competitors such as Videotron had at the time);
54. Plaintiff landed on a webpage explaining Bell FIBE™ Internet, with the heading "***Why is it Better?***", Exhibit P-3;
55. On the French version of that same webpage, Bell Canada expressly stated that "***Fibe***" est ***synonyme de fibre optique***, Exhibit P-3;
56. According to Bell Canada, with Bell FIBE™ Internet, the Plaintiff would "*get faster download speeds and the fastest upload speeds on the market*", Exhibit P-3;
57. Bell Canada made the following representations, which the Plaintiff saw on Bell Canada's website in October/November 2011, Exhibit P-3:

**Fibe stands for fibre optic.** Bell has more fibre optic than any other provider, and **brings it closer to you** for a faster, smoother surfing experience. **Fibre optic is the best technology** to deliver data, and it has faster upload speeds than any **cable product** on the market - up to three times better.

[our emphasis in bold]

58. These representations appeared on Bell Canada's website until at least July 8<sup>th</sup>, 2012
59. With these representations on its website, Bell Canada had convinced Plaintiff that:
  - a) Bell Canada had a *fibre optic network* and not a network made up of the "*old cable technology*". Bell Canada even included a graphic image (Exhibit P-11) of what its network cables do not look like (because *Fibe* is "new" and the copper cables are "old");
  - b) "*Fibe stands for fibre optic*"; and
  - c) Bell Canada's fibre optic network was superior to all others for the aforementioned reasons;

60. The information obtained by Plaintiff from Bell Canada's publicity (on its website and from the *Montreal Gazette*), convinced him to subscribe to Bell Canada's FIBE™ Internet service as of December 2011;
61. Unbeknownst to him until 3 ½ years later, Bell did not have a "*fibre optic network*" nor was "Fibe" synonymous with fibre optic, as Bell Canada falsely advertised from February 2010 through at least July 8<sup>th</sup>, 2012;
62. Evelyne Lepage, Director of Marketing and Communication at Bell Canada, candidly admitted during her June 21<sup>st</sup>, 2016, examination that: (i) FTTH technology did not exist at this time; and (ii) Bell's "fibre optic network" was not yet built (page 13, lines 19 and following of the extracts produced as Exhibit P-8);
63. Contrary to all of the representations Bell Canada made to consumers in its advertising, Bell Canada's fibre optic network was not even built when Plaintiff subscribed to the FIBE™ Services, nor was "Fibe" synonymous with fibre optics as Bell Canada falsely claimed;
64. The important facts, which Bell Canada failed to inform the Plaintiff and Group members, were that:
  - a) by "**Fibe**" they meant: fibre *with* copper wiring; and
  - b) by "**fibre optic network**" they meant: "*hybrid*" network;
- iii) Plaintiff's discovery of Bell Canada's false representations and omissions:**
65. In April of 2015, Plaintiff was discussing the advantages of his Bell "Fibe" services with a friend in his neighbourhood who was subscribed to Videotron for internet and television;
66. Plaintiff was actually trying to convince his friend to switchover from Videotron's hybrid-fibre services to - what Plaintiff believed up until this point - was Bell Canada's complete fibre optic network (Plaintiff insisted to his friend that "Fibe" was synonymous to fibre optic, just as Bell Canada had represented);
67. However, Plaintiff's friend, who is a software engineer with an important role in the IT department of a public institution in Montreal (thus with far more knowledge about telecom cabling than the average consumer), informed the Plaintiff that his Bell "Fibe" services were not connected to his house with fibre optics;
68. Said friend further explained to Plaintiff how his "Fibe" services are connected, that is via fibre optics from the Bell Canada central until the neighbourhood node, from which point conventional copper cables are used;
69. That is how Plaintiff first acquired knowledge of Bell Canada's omissions and

misrepresentations in April of 2015;

70. Upon acquiring said knowledge, Plaintiff immediately contacted his attorney's office to explain the aforementioned factual situation and gave them the mandate to file the present class action on his behalf;
71. Plaintiff has suffered ascertainable loss as a result of Bell Canada's omissions and/or misrepresentations concerning its FIBE™ Services, including - but not limited to - his overpayment for a service represented as synonymous to fibre, when the FIBE™ Services were in fact composed of both copper and fibre;
72. Had Plaintiff been aware of the information Bell Canada intentionally withheld, distorted and misrepresented, he would have likely never subscribed to its FIBE™ Services - and certainly not have paid such a high price - and would have given more consideration to services offered by others, something he never did because he was swayed by Bell Canada's misrepresentations;
73. In consequence of the foregoing, the Plaintiff is justified in claiming damages as detailed in the following paragraphs;

#### **VI. BELL CANADA'S LIABILITY**

74. Bell Canada marketed, designed, implemented, sold and collected payment for Fibe Internet and TV services to Group members;
75. At all relevant times, Bell Canada knew that its FIBE™ Services were not being delivered to Group members on a fiber optic network;
76. Bell Canada failed to fulfill the obligations imposed on it by Titles I and II of the *CPA*, notably sections 41, 219, 220(a), 221(a), 221(c), (d) and (g), 228 and 239(a), and are thus liable to Group members pursuant to section 272 *CPA*;

#### **VII. THE DAMAGES**

77. Group members benefit from the legal presumption in the *CPA* that comes into effect when a merchant makes use of a prohibited business practice, that had the Group member been aware, he/she would not have agreed to subscribe to Bell Canada's FIBE™ Services or would not have paid such a high price for their FIBE™ Services;
78. Plaintiff and Group members benefit from an absolute presumption of prejudice because:
  - a) They are consumers within the meaning of the *CPA*;
  - b) Bell Canada is a merchant within the meaning of the *CPA*;

- c) Bell Canada misrepresented its FIBE<sup>TM</sup> Services and failed to inform Plaintiff and Group members of an important fact - a fact that was so vitally important to describe its service that Bell Canada later marketed its FIBE<sup>TM</sup> Services using the terms *FTTN* and *FTTH*;
  - d) Plaintiff and Group members saw Bell Canada's representations concerning "Fibe Internet" and "Fibe TV" prior to subscribing to the FIBE<sup>TM</sup> Services;
  - e) After seeing Bell Canada's representations concerning "Fibe", Plaintiff and Group members subscribed and entered into consumer contracts;
  - f) There existed a sufficient nexus between the content of Bell Canada's representations and the services covered by the subscription and contract;
79. Plaintiff and Group members hereby seek compensation in the form of a reimbursement of a portion of their monthly payments to Bell Canada for FIBE<sup>TM</sup> Internet and TV, as well as punitive damages;
80. The damages are a direct result of Bell Canada's misconduct;
- i) Reimbursement of part of monthly fees paid for Bell FIBE<sup>TM</sup> Internet and TV:**
81. When he filed his application for authorization, Plaintiff had been paying Bell Canada monthly for "*Bell Fibe Internet 15*" and "*Bell Fibe TV*", as it appears from a copy of the Bell Canada invoice dated April 10<sup>th</sup>, 2015 filed herewith as **Exhibit P-12**;
82. Plaintiff is currently paying Bell Canada monthly for "*Fibe 25*" and "*Bell Fibe TV*", as it appears from a copy of the Bell Canada invoice dated August 10<sup>th</sup>, 2017, filed herewith as Plaintiff's **Exhibit P-13**;
83. For the reasons detailed in this Application, it is clear that at no point did Bell Canada provide the Plaintiff, or any of the Group members, with the FIBE<sup>TM</sup> Services it promised and in respect of which it collects payments, as it appears from paragraph 24 of Evelyne Lepage's Affidavit, Exhibit P-4;
84. In sum, although at the terms *FTTN* and *FTTH* were not yet used by Bell Canada at the time Plaintiff initially subscribed to FIBE<sup>TM</sup> Internet in December 2011, in reality Bell Canada had falsely advertised the term "*Fibe*" as meaning *FTTH* when Plaintiff in fact received *FTTN*;
85. The fact that Bell Canada's so-called "*fibre optic network*" is actually composed of fiber optics *and copper* is an important fact concealed by Bell Canada and is in and of itself grounds for Plaintiff's claim for a reduction of his obligations pursuant to paragraph c of section 272 *CPA*;

86. Had Plaintiff been made aware of this important fact in a timely fashion, he would not have subscribed to Bell Canada's FIBE™ Services, or would have contracted on different terms;
87. In sum, Bell Canada's reticence with respect to an important fact influenced the Plaintiff to subscribe to its services;
88. Videotron does make sure to explain these differences to consumers and promotes its virtually identical service "*Hybrid Fibre*" to consumers as follows: "*Take full advantage of your Internet service with our high-performance hybrid network, which combines fibre optic and coaxial cables*", the whole as appears from the document produced herewith as **Exhibit P-14**;
89. Bell Canada justifies levying a premium for similar, if not identical, services as those offered by Videotron, on the false grounds that its fibre optic technology is to the home and provides Group members with superior quality, performance and reliability, when, in fact, no such wiring is connected to the Group members' homes;
90. For example, as of September 6<sup>th</sup>, 2015, both Videotron and Bell Canada offered similar trio bundles for internet, television and home telephone, but Group members end up paying more for Bell Canada's services;
91. Videotron offered consumers an "UNLIMITED SUPER TRIO" that includes: (i) unlimited Hybrid Fibre 30 internet with 30 Mbps download speed; (ii) custom 20 package television with Club illico; and (iii) an exclusive special residential telephone line, all for \$82.95 plus taxes for the first 6 months and \$140.85 plus taxes for every month thereafter, the whole as appears from a copy of Videotron's Unlimited Super Trio offer produced herewith as **Exhibit P-15**;
92. For its part, Bell Canada offered consumers a *Fibe* Bundle Program that included: (i) *Fibe* 25 with download speeds of up to 25 Mbps; (ii) *Fibe* TV with 30 à-la-carte channels; and (iii) home telephone, all for \$78.90 plus taxes for the first 6 months and \$147.85 for every month thereafter, the whole as appears from a copy of Bell Canada's *Fibe* Bundle Program offer filed herewith as **Exhibit P-16**;
93. As previously mentioned, in its *Fibe* Bundle Program, Bell Canada unlawfully fails to mention an important fact in the representations it makes to consumers, namely that the connection offered as part of the *Fibe* Bundle Program is not "*made up of 100% fibre optic connected directly to each home*";
94. On the other hand, Videotron clearly highlights the fact that they offer hybrid fibre "*which combines fibre optic and coaxial cables*";
95. Not only do Group members pay approximately \$5.00 per month more for Bell Canada's *Fibe* Bundle Program, but the representations made by Bell Canada to attract Group

members to subscribe to its FIBE™ Services are misleading and deceptive;

96. By reason of this unlawful conduct, the Plaintiff and Group members have subscribed under false pretenses and paid higher prices for specific services which Bell Canada promised to provide, but which they ultimately never received, causing damages which they now claim;
97. Over a two-year period, Group members subscribing to Bell Canada's *Fibe* Bundle Program will end paying at least \$3,604.12, while consumers subscribing to Videotron's Unlimited Super Trio will end paying at least \$3,487.19;
98. Plaintiff presently estimates the damages to Group members during the class period at \$5.00 per month. This number is *sauf à parfaire* and will be further specified when the Plaintiff obtains the relevant documentation from Bell Canada and his expert has had the opportunity of preparing his expert report;

**ii) Punitive Damages**

99. Bell Canada subjected the Plaintiff and Group members to its prohibited business practices in several forms including, without limitation, through its website, telephone representatives, retail stores, flyers, emails and kiosks;
100. Bell Canada employed sales tactics whereby it falsely ascribed certain special advantages attributed to the use of its FIBE™ Services, notably that the Bell Canada's services are of superior quality to their competitors because Bell Canada's FIBE™ Services are delivered to Group members' homes exclusively via fibre optics;
101. Prior to the date of Plaintiff's subscription to both Bell Fibe Internet (December 2011) and to Bell Fibe TV (October 2012), Bell Canada failed to mention an important fact to Plaintiff, namely that "*Fibe*" did not mean the delivery of FIBE™ Services through fibre optics only, but also via copper wiring for an important distance from the node to the Plaintiff's home;
102. After Plaintiff subscribed to Bell's FIBE™ Services and even after the filing of the present class action, Bell Canada continues misrepresenting its FIBE™ Services and fails in its obligation to inform the Plaintiff and other Group members of an important fact;
103. Without restricting the generality of the preceding, the existence of a systemic response regarding *Fibe* given by Bell Canada representatives is confirmed by the transcript of the telephone conversation of August 17<sup>th</sup>, 2015 between the Plaintiff and a representative of Bell Canada, which is filed herewith as **Exhibit P-17**. Said transcript highlights the following misrepresentations about FIBE™ Services being provided to Plaintiff:

25 **BELL** Yes. So, however, the FIBE...what...what we're talking is Gigabit FIBE. Not your FIBE Internet [INAUDIBLE].

**SA** I don't have the Gigabit, but I have the....I still have...

**BELL** Yes...

**SA** Now, what...what I have now is also fibre optic to my home, is that correct?

30 **BELL** Correct.

[...]

45 **SA** Oh, I...I understand. But, OK, but, right outside of my house, it's fibre optic, and inside, it's copper.

**BELL** Oh, it should be fibre optics...it should be fibre optics both inside and outside your house.

**SA** OK, but right now, I have just outside?

**BELL** Uh, no. So it's...it is fibre optics inside your house.

50 **SA** Right now I have fibre optics inside my house?

**BELL** Correct.

104. Bell Canada now admits that its FIBE™ Services were never delivered to Plaintiff through a fiber optic network. Bell Canada further admits that its FIBE™ Services were delivered to Plaintiff through a hybrid network composed of fiber optics and copper;
105. Consequently, Bell Canada lied to Plaintiff and failed to inform him of an important fact *before* he subscribed to its FIBE™ Services and even *after* Plaintiff filed a class action against Bell Canada concerning its FIBE™ Services;
106. Considering the whole of Bell Canada's conduct prior to, at the time of and after the violations (as more detailed herein), the record shows that Bell Canada:
  - a) made willful misrepresentations from February 2010, until at least July 8<sup>th</sup> 2012;
  - b) was careless by not providing Plaintiff and Group members with the proper information concerning its FIBE™ Services;
  - c) was negligent overall with respect to its obligations and consumers' rights under the CPA;
107. Bell Canada's willful omission is essential because an exclusively fiber optic connection is superior to a hybrid connection composed of fiber optics and copper, something that even Bell Canada admits;
108. This failure of its obligation to inform on the part of Bell Canada is in and of itself an

important reason for this Court to punish Bell Canada, as well as deter and dissuade other entities from engaging in similar reprehensible conduct to the detriment of Quebec consumers;

109. The punitive damages provided for in section 272 *CPA* has a preventive objective, that is, to discourage the repetition of such undesirable conduct;
110. Not only did Bell Canada violate the *CPA* by failing to inform the Plaintiff of an important fact, it subsequently continued to misleadingly advertise its FIBE™ Services to the public;
111. After the conversation with his friend in early April 2015, Plaintiff now realizes that Bell Canada's violations were intentional and malicious. Bell Canada demonstrated through its behavior that it was more concerned about increasing the number of its subscribers and its bottom line than about its obligations towards consumers under the *CPA*;
112. In these circumstances, Plaintiff's claim for punitive damages in the amount of \$100.00 per Group member is justified;
113. Estimating that Bell Canada has 2 million FTTN subscribers in the province of Quebec, the Plaintiff requests that this Honorable Court condemn Bell Canada to pay Group members **\$200,000,000.00** on account of punitive damages for violations of obligations imposed on Bell Canada by the *CPA*, notably sections 41, 219, 220(a), 221(a), 221(c), (d) and (g), 228 and 239(a), pursuant to section 272 *CPA*;
114. Bell Canada's patrimonial situation is so significant that the foregoing amount of punitive damages is appropriate in the circumstance;

#### **VIII. THE PERSONAL CLAIMS OF EACH OF THE GROUP MEMBERS AGAINST BELL CANADA:**

115. Every Group member subscribed to the Bell FIBE™ Internet and/or TV services;
116. All Group members are entitled to expect that Bell Canada inform consumers of important facts concerning the services it markets, sells, installs, services, maintains and collects payments for;
117. Bell Canada remained silent and concealed information concerning an essential element of the contract from all of the Group members;
118. No member of the Group received the service represented, advertised and promised by Bell Canada, that is Internet or television services "delivered through a fibre optic network" (in French, "*transmis par le biais de la fibre optique*" as Ms. Evelyne Lepage's states at paragraph 6 of her Affidavit, Exhibit P-4);
119. No Group member received "*Fibe*" that was synonymous with fibre optics, despite Bell Canada making explicit representations of such in its advertising since the inception of



the FIBE™ services in February of 2010;

120. Instead of delivering a service both *composed* of fiber optics and *delivered* via fiber optics as Bell Canada represented, advertised and promised, the fiber optics are connected only as far as the Group members' neighbourhood junction box, from which point conventional copper cables are used;
121. Consequently, each Group member is paying an inflated cost for their FIBE™ Services, and is presumed to have suffered a prejudice as a result of Bell Canada's prohibited practices;
122. Approximately 554,800 Montrealers read the Montreal Gazette's print and online editions throughout the week and a very large number of Group members likely saw the exact same advertising as Plaintiff;
123. Furthermore, Bell Canada continued misleading Group members by advertising its *Bundle Program* to Group members and to the public at large, under the name "*Forfait 100% fibre: le trio de l'heure au Québec*", the whole as appears from a copy of an ad in the *Journal de Montréal* on January 22<sup>nd</sup>, 2015 filed herewith as **Exhibit P-18**;
124. On January 22<sup>nd</sup>, 2015, a similar Bell Canada ad appeared in the *Montreal Gazette* titled "*Upgrade to the 100% fibre bundle*", as it appears from a copy of the January 22<sup>nd</sup>, 2015, Montreal Gazette ad filed herewith as **Exhibit P-19**;
125. The ads in both the *Journal de Montréal* and the *Montreal Gazette* state that the service is "*100% fibre*", which is untrue and misleads Group members, and also fails to inform consumers of an important fact;
126. Bell Canada thus intentionally misleads Group members, since the inception of its FIBE™ services, and causes them to falsely believe that the term "FIBE™" implies a connection "*delivered through our fibre optic network*" or "*made up of 100% fibre optic connected directly to each home*";
127. Every member of the Group has suffered damages equivalent to the difference between the inflated prices that they have paid for FIBE™ Internet/TV and what they should have paid, either to the Bell Canada or to another provider, had Bell Canada not made the misrepresentations referred to above or concealed important facts;
128. All of the damages to the Group members are a direct result Bell Canada's misconduct;
129. By reason of Bell Canada's unlawful conduct, Plaintiff and Group members have suffered damages, which they may collectively claim against Bell Canada;
130. The damages sustained by the Group members flow, in each instance, from a common nucleus of operative facts, namely, Bell Canada's misrepresentations concerning "*Fibe*"

and its failure mention an important fact to Group members with respect to its FIBE™ Internet and TV services;

131. Plaintiff is accordingly entitled to claim and does hereby claim from Bell Canada the following as damages on behalf of each member of the Group:
- a) Reimbursement of \$5.00 per month, *sauf à parfaire*, of Bell Fibe Internet/TV services during the class period; and
  - b) \$100.00 on account of punitive damages.

#### **IX. INJUNCTION**

132. In addition to the damages sought above, the Plaintiff and Group members are entitled to seek injunction relief against Bell Canada in order to stop the false and misleading representations made by it;
133. Indeed, as appears from the allegations above, Bell Canada has falsely represented the merits of its FIBE™ Internet and TV services and its misrepresentations cause substantial harm;
134. As such, the Plaintiff is well-founded in asking for injunctive relief in order to bar Bell Canada from continuing to make misrepresentations regarding its FIBE™ Internet and TV services;

#### **FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANT** the class action of the Plaintiff on behalf of all of the members of the Group;

**DECLARE** the Defendant liable for the damages suffered by the Plaintiff and each of the members of the Group;

**ORDER** the Defendant to cease from continuing its unfair, false, misleading, and/or deceptive conduct, as well as its concealment of important facts;

**CONDEMN** the Defendant to pay each member of the Group \$5.00 per month, *sauf à parfaire*, for each month subscribed to FIBE™ Services, in compensation of the damages suffered, and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendant to pay to each of the members of the Group punitive damages in the amount of \$100.00 per member, and **ORDER** collective recovery of these sums;

**CONDEMN** Defendant to pay interest and the additional indemnity on the above sums according to law from the date of service of the application to authorize a class action;

**ORDER** the Defendant to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

**ORDER** that the claims of individual Group members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

**CONDEMN** the Defendants to bear the costs of the present action including the cost of notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

**RENDER** any other order that this Honourable Court shall determine;

Montreal, August 15<sup>th</sup>, 2017

*(s) Joey Zukran*

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**LPC AVOCAT INC.**

Per: Me Joey Zukran  
Attorney for Plaintiff

**SUMMONS**  
(ARTICLES 145 AND FOLLOWING C.C.P)

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**Filing of a judicial application**

Take notice that the plaintiff has filed this originating application in the office of the Superior Court in the judicial district of **Montreal**.

**Defendant's answer**

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal situated at **1, Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the plaintiff's lawyer or, if the plaintiff is not represented, to the plaintiff.

**Failure to answer**

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

**Content of answer**

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the plaintiff in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

**Change of judicial district**

You may ask the court to refer the originating application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the Plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

### **Transfer of application to Small Claims Division**

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

### **Calling to a case management conference**

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

### **Exhibits supporting the application**

In support of the Originating Application, the Plaintiff intends to use the following exhibits:

- EXHIBIT P-1:** Extract of enterprise's information statement from the enterprise register (CIDREQ) for Bell Canada;
- EXHIBIT P-2:** Copy of Canadian Trademark Details 1448245 for "FIBE";
- EXHIBIT P-3:** Screen captures of the French and English versions of Bell Canada's *Fibe* website from at least February 18<sup>th</sup>, 2010 through at least July 28<sup>th</sup>, 2012, stating that "*Fibe stands for fibre optic*" and "*“Fibe” est synonyme de fibre optique*";
- EXHIBIT P-4:** Copy of Evelyne Lepage's Affidavit dated April 21<sup>st</sup>, 2016;
- EXHIBIT P-5:** Copy of November 19<sup>th</sup>, 2010, article in *La Presse* titled: "*Des doutes sur les réseaux de fibre optique de Bell et TELUS - L'Union des consommateurs parle de tromperie*";
- EXHIBIT P-6:** Copy of Professor Odile Liboiron-Ladouceur's expert report;
- EXHIBIT P-7:** Copy of May 26<sup>th</sup>, 2015, Financial Post article titled: "*Bell rolls out 'second*

*screen' viewing with Fibe TV expansion app”;*

- EXHIBIT P-8:** Transcript of Evelyne Lepage’s examination of June 21<sup>st</sup>, 2016;
- EXHIBIT P-9:** *En liasse*, copies of Bell Canada’s *Fibe* publicity in the Montreal Gazette on October 14<sup>th</sup> and 19<sup>th</sup>, 2011, introducing “Fibe” as a “new” technology: “*It’s new and it ROCKS*”;
- EXHIBIT P-10:** Extract of Gazette webpage confirming 554,800 readers weekly in Montreal (<http://www.montrealgazette.com/media-kit/newspaper/index.html>);
- EXHIBIT P-11:** *En liasse*, screen captures of the English and French publicity on Bell Canada’s website stating: “*Time to pull the plug on old cable technology*” and “*il est temps de débrancher la vieille technologie du câble*”;
- EXHIBIT P-12:** Copy of Shay Abicidan’s Bell Canada invoice dated April 10<sup>th</sup>, 2015;
- EXHIBIT P-13:** Copy of Shay Abicidan’s Bell Canada invoice dated August 10<sup>th</sup>, 2017;
- EXHIBIT P-14:** Copy of Videotron’s webpage titled “*Hybrid Fibre 30 Internet*”;
- EXHIBIT P-15:** Copy of Videotron’s “*Unlimited Super Trio*” offer;
- EXHIBIT P-16:** Copy of Bell Canada’s “*Fibe Bundle Program*” offer;
- EXHIBIT P-17:** Transcript of the August 17<sup>th</sup>, 2015, telephone conversation between the Plaintiff and a representative of Bell Canada;
- EXHIBIT P-18:** Copy of Bell Canada’s *Fibe* ad in the Journal de Montréal on January 22<sup>nd</sup>, 2015, titled “*Forfait 100% fibre: le trio de l’heure au Québec*”;
- EXHIBIT P-19:** Copy of Bell Canada’s *Fibe* ad in the Montreal Gazette on January 22<sup>nd</sup>, 2015, titled “*Upgrade to the 100% fibre bundle*”;

The exhibits in support of the application are available on request.

### **Notice of presentation of an application**

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montreal, August 15<sup>th</sup>, 2017

*(s) Joey Zukran*

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**LPC AVOCAT INC.**

Per: Me Joey Zukran

Attorney for Plaintiff

N°: 500-06-000740-155

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(Class Action)  
SUPERIOR COURT  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

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SHAY ABICIDAN, domiciled at

[REDACTED]

**Representative Plaintiff**

-vs-

**BELL CANADA**, legal person its head office at Tour A-7, 1 Carrefour Alexander-Graham-Bell, Verdun, District of Montreal, Province of Quebec, H3E 3B3

**Defendant**

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**ORINATING APPLICATION**  
(ARTICLE 141 AND 583 C.C.P.)

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**ORIGINAL**



5800, boulevard Cavendish, Suite 411  
Montréal (Québec) H4W 2T5  
T: (514) 379-1572 • F: (514) 221-4441  
E: [jzukran@lpclex.com](mailto:jzukran@lpclex.com)

**ME JOEY ZUKRAN**  
**CODE: BL 6059**

**N/D: JZ-102**