

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

(Class Action)
SUPERIOR COURT

NO: 500-06-000740-155

SHAY ABICIDAN

Petitioner

-VS-

BELL CANADA

Respondent

**2ND RE-AMENDED MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND TO
APPOINT THE STATUS OF REPRESENTATIVE
(ARTICLE 571 AND FOLLOWING C.C.P)**

TO THE HONOURABLE DONALD BISSON, J.C.S., DESIGNATED TO HEAR THE PRESENT CLASS ACTION, YOUR PETITIONER STATES AS FOLLOWS:

I. GENERAL PRESENTATION

A) THE ACTION

1. Petitioner wishes to institute a class action on behalf of the following group, of which he is a member, namely:

English:

All consumers within the meaning of Quebec's Consumer Protection Act ("CPA") who subscribed to any of the following Bell Canada services: (i) "Fibe TV"; (ii) "Fibe Internet"; (iii) "Fibe Home telephone" (hereinafter the "**FIBETM Services**") since February 1st, 2010, and who were not connected to a 100% fibre optic network, or, who were not connected to a network composed entirely of fibre optics;

or any other group to be determined by the Court;

(hereinafter referred to as the “**Group**”)

French translation:

Tous les consommateurs au sens de la Loi sur la protection du consommateur (« **LPC** ») qui ont souscrit à un des services de Bell Canada suivants : (i) “*Télé Fibe*”; (ii) “*Internet Fibe*”; (iii) “*Téléphonie Fibe*” (ci-après les « **services FIBE^{MC}** ») depuis le 1^{er} février 2010, et qui n’étaient pas branchés à un réseau 100% fibre optique, ou, qui n’étaient pas branchés à un réseau composé entièrement de fibres optiques;

(ci-après le “**Groupe**”)

ou tout autre groupe qui sera déterminé par le Tribunal;

2. Since the inception of its Fibre Optic Services in Quebec in February of 2010, Respondent continuously made and continues to make false and misleading representations to consumers across Quebec concerning its **FIBETM** Services;
3. From the outset in February 2010 and until this date, Respondent misleadingly uses the term “*Fibe*” to describe services that are in fact hybrid (because its **FIBETM** Services are composed of both fibre optics and copper wiring);
- 3.1 Since at least **February 18th, 2010**, Bell Canada failed to mention an important fact concerning its **FIBETM** 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*;
- 3.2 Since at least **February 18th, 2010**, through **July 28th, 2012**, Bell Canada made the following representations concerning “*Fibe*” and Bell Canada’s **FIBETM** Services on its website, Petitioner disclosing the French version of the representations as **Exhibit P-16**, an excerpt of which is reproduced below:

Bell bell.ca English

Téléchargements plus rapides Partage de contenu le plus rapide Surveillance de la vitesse Options de sécurité Parfait pour les portables

Accès Internet plus rapide

L'Internet à la vitesse de la lumière

Voici Fibe.

Bell Internet Fibe^{MC} redéfinit le mot « vite ». Grâce au service Internet Fibe de Bell, vous profitez de vitesses de téléchargement plus rapides et du partage de contenu le plus rapide sur le marché¹. Maintenant, vous pouvez partager vos vidéos et vos photos préférées plus rapidement que jamais. Et avec quatre niveaux de vitesses variant de jusqu'à 6 Mbit/s à jusqu'à 25 Mbit/s, il est facile de choisir le débit qui vous convient.

Pourquoi est-ce le meilleur service?

« Fibe » est synonyme de fibre optique. Bell possède plus de fibres optiques que tout autre fournisseur et la rapproche de votre domicile afin que vous profitiez d'une navigation plus rapide et plus agréable. 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 – jusqu'à 3 fois supérieure.²

3.3 In the above representation, Exhibit P-16, under the heading “*Pourquoi est-ce le meilleur service*”, Bell Canada **falsely states** that: « ***“Fibe” est synonyme de fibre optique*** »;

3.4 *Le Petit Robert* defines the term French term “*synonyme*” as follows:

Mot qui a le même sens qu'un autre. « *Beau* » est un synonyme de « *joli* ».

[emphasis in bold].

3.5 Fibre optic **is not synonymous** with copper (“*cuivre*” in French);

3.6 Bell has admitted in the present dossier¹ that in the province of Quebec, from February 18th 2010 through January 1st, 2012, its **FIBETM 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, Exhibit I-1, an excerpt of which is reproduced below:

¹ Paragraphes 6 à 11 de la déclaration sous serment de Madame Evelyne Lepage, **pièce I-1**.

6. Les services FIBE^{mc} ont été lancés au Québec en 2010;

Technologie de la fibre optique jusqu'au quartier

7. Au départ, les services FIBE^{mc} étaient transmis uniquement en utilisant la technologie de fibre optique jusqu'au quartier, dite *Fibre to the Node* ou *Fibre to the Neighbourhood* (FTTN);
8. Avec la technologie FTTN, la fibre optique se rend de la centrale de Bell Canada jusqu'à un point de connexion dans le quartier de l'abonné. Des fils de cuivre relient ce point de connexion au domicile de l'abonné;

3.7 Bell Canada not only failed to mention an important fact in its representations (that its FIBETM services are composed of fibre optic **and** copper, as it appears in Exhibit P-16), but further mislead consumers into believing that its FIBETM services is made up superior components (i.e. fibre optics only) to **all other cable products on the market**, by stating:

*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 câbles** sur le marché...*

[emphasis in bold].

3.8 Under the CPA, Bell Canada had a legal obligation to mention this important fact (that its FIBETM services are composed of fibre optic **and** copper) to Group members, because even Bell Canada acknowledges that this fact (concerning the quality and components of its FIBETM services) is essential in the decision making process of consumers to either contract for Bell Canada's FIBETM services, or with "tout autre produit du câbles sur le marché";

3.9 Bell Canada's failure to adequately and legally inform consumers, as well as to mislead consumers, was first reported in *La Presse* on **November 19th, 2010**, Petitioner disclosing 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-17**,² which mentions the following:

Contrairement à ce que leur nom suggère, les réseaux Fibe, de Bell, et Optik, de TELUS, ne sont pas entièrement composés de fibre optique, constate l'Union des consommateurs. Elle estime ces **services trompeurs**, et incite l'industrie canadienne des télécoms ainsi que l'organisme qui les supervise, le Conseil de la radiodiffusion et des télécommunications canadiennes (CRTC), à **plus de transparence** en matière technologique...

² Petitioner himself did not read this article prior to 2016.

L'Union des consommateurs n'est pas d'accord. Selon l'organisme québécois, **la publicité faite autour de ces réseaux est trompeuse.** « **Leur réseau est fait de fibre en partie seulement et ne se rend pas jusqu'au domicile, sauf dans quelques quartiers où la technologie est présentement à l'essai** », fait valoir Me Anthony Hémond, spécialiste des questions liées aux télécommunications pour l'Union des consommateurs...

« Il y a un manque de transparence vis-à-vis des services offerts au Canada. Le consommateur n'obtient qu'une information partielle et très limitée... Les fournisseurs se livrent une guerre de chiffres à travers leur publicité, qui induit les consommateurs en erreur. C'est une très mauvaise pratique, et c'est le consommateur qui paie la note. Si l'industrie ne veut pas revoir ses pratiques, c'est au CRTC de les ramener à l'ordre », dit Anthony Hémond.

[emphasis in bold].

4. As first acknowledged in 2010 in the above cited *La Presse* article, Exhibit P-17, Group members are in fact connected with *Fibre to the Node* (“FTTN”), whereby fibre optics are connected only as far as to their neighbourhood junction box, from which point conventional copper (category 5 and/or 5e) and coaxial cables are used;
5. The terms “*Fibe TV*”, “*Fibe Internet*” and “*Fibe Home phone*” employed by Respondent in their advertising is missing important information, is false and is misleading to Group members and consumers, as it appears from a copy of a September 2012 Bell Canada brochure titled “*Fibe brings you more. A lot more*”, Petitioner disclosing **Exhibit P-1:**

Light up your home with Fibe.

Bell Fibe™ is here. Now's the time to enjoy it since we are the only ones offering you the best network technology, **made up of 100% fibre optic connected directly to each home.** With this fibre optic technology, you'll always get access to the best home services, whether you're surfing the Web, watching your favourite TV shows and movies, or staying in touch – now, and in the future (page 2).

...

2. Fibe Internet

The fastest total speeds on the market. Always.

Fibre optic to the home is the best network technology, which means you always have access to the absolute fastest total speeds on the market...

Bell Fibe is the only service that's **as fast whether you're downloading or uploading** – up to 175 Mbps either way... (page 7).

[emphasis added in bold].

- 5.1 Even if Exhibit P-1 was only sent out to 4 349 targeted consumers having access to FTTH, the fact remains that Bell Canada falsely claimed, in all its publicity using one term or another, that its network was “made up of 100% fibre optic connected directly to each home”, which is untrue to reality until present date;
6. The general impression that Respondent's representations convey to a credulous and inexperienced consumer – even to an experienced consumer – is that the slogan **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”, referred to by Bell Canada only as of 2012³ as Fibre to the Home (“FTTH”);
7. 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 fibe”);
8. Notwithstanding the fact that Respondent fails to inform Group members of the differences between FTTN and FTTH (that is, since Bell Canada began advertising the terms FTTN and FTTH after January 1st 2012), when the Petitioner first subscribed to Bell Canada's FIBE™ Internet services in December 2011, Bell Canada admits in the present dossier that it did not mention to consumers the distinctions between FTTN and FTTH:⁴

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.

³ Paragraphes 10 et 11 de la déclaration sous serment de Madame Evelyne Lepage, **pièce I-1**.

⁴ Interrogatoire de Madame Lepage du 21 juin 2016 (page 12, lignes 16 à 20).

- 8.1 Petitioner and Group members believed what was conveyed to them by Bell Canada, which is confirmed by Madame Lepage, notably that Bell “*parlait que ça fonctionnait sur fibre optique*” and no other components;
- 8.2 From February 2010 through January 1st, 2012, Bell Canada did not bother explaining to Group members that “Fibe” in fact meant FTTN, and that “Bell FIBETM Internet” was made up of both fibre optic and copper wiring components;
9. Group members who subscribed to Bell Canada’s FIBETM services **before** January 1st, 2012 subscribed to and received a service that was not the one Respondent advertised as “*synonymous to fibre optic*” and “*on our fibre optic network*”;
- 9.1 Group members who subscribed to Bell Canada’s FIBETM services **after** 2012 subscribed to and received a service that was not the one Respondent advertised in its mass marketing publicity as being “*on our fibre optic network*” (see paragraphs 22.7 to 22.12 below concerning Bell Canada’s publicity);
- 9.2 Instead, all Group members received a hybrid service composed of fibre optics and copper/coaxial wiring (which Bell Canada admits to failing to inform consumers about);
10. Respondent operates this way intentionally and with complete disregard to its obligations not to:
 - a) make false or misleading representations about its services to Group members, by any means whatever;
 - b) falsely ascribe certain special advantages to its services
 - c) falsely hold out that its services include certain parts, components or ingredients;
 - d) falsely hold out that its services are of a specified standard;
 - e) falsely represent that its services are of a particular category or type;
 - f) falsely ascribe certain characteristics of performance to its services;
 - g) fail to mention an important fact in representations it makes to Group members;
 - h) distort the meaning of the information it addresses to the Group members;

11. 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 member of the Group been aware, he/she would not have agreed to subscribe to Respondent's FIBE™ Services or would not have paid such a high price for their FIBE™ Services;
12. Under Quebec consumer protection law, the prohibited behaviour is against public order;
13. Consumers must be given correct information when contracting with Respondent for their FIBE™ Services and it is unlawful for Bell Canada not to have mentioned an important fact in its representations;
14. [...];
15. By employing these tactics, Respondent distorts the ability of Group members to make informed decisions about their FIBE™ Services;
16. The Respondent has engaged in unlawful conduct to the detriment of all the Group members, which constitutes prohibited business practices as defined in the *CPA*;
17. It is evident that the Respondent engages 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 a service;
18. Moreover, the Respondent failed in its obligation and duty to act in good faith in their representations and performance of their obligations;

B) THE PARTIES

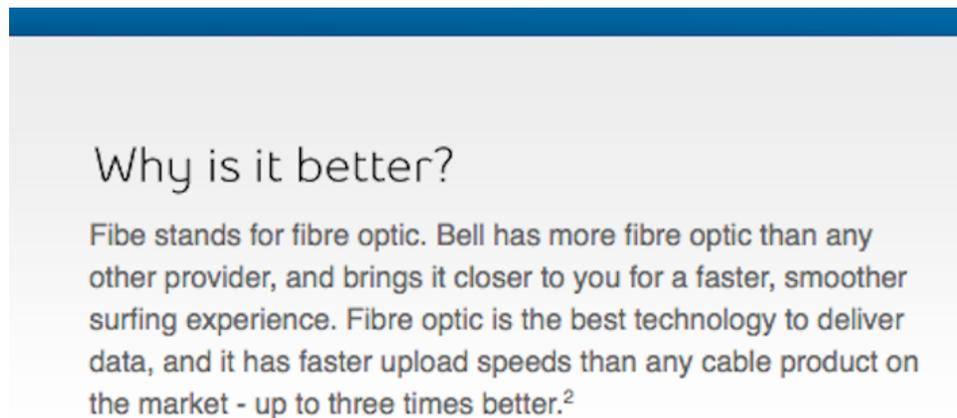
19. The Petitioner is a consumer within the meaning of the *CPA*;
20. The Respondent is carrying on the business of diverse telecommunications services, as appears from an extract of the enterprise's information statement from the enterprise register (CIDREQ), disclosed as Petitioner's **Exhibit P-2**;
21. The Respondent is a merchant within the meaning of the *CPA* and its activities are governed by this legislation, among others;

II. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF (SECTION 575 C.C.P.):

1) THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT

22. Commencing around the month of **October, 2011**, Petitioner began noticing publicity concerning Bell Canada’s “Fibe” services;

22.1 The publicity concerning Bell “Fibe” captured Petitioner’s attention because Bell Canada marketed and introduced “Fibe” as a “new”⁵ technology, with superior qualities to “any **cable product on the market**”, Petitioner disclosing 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 5th, 2010 through at least July 8th, 2012, as **Exhibit P-18**, a portion of which is reproduced below:⁶



22.2 Petitioner had previously subscribed to Bell Canada’s traditional Internet (DSL) ever since moving into his residence in 2007;

22.3 In **December 2011**, Petitioner subscribed to Bell FIBE™ Internet and in **October 2012** he subscribed to Bell FIBE™ Television;

22.4 Prior to Petitioner subscribing to Bell Canada’s FIBE™ services, Bell Canada failed to inform Petitioner of an important fact concerning its FIBE™ services and Bell Canada’s publicity mislead Petitioner into subscribing for a service (**falsely stating that “Fibe” is synonymous to fibre optic**, Exhibit P-16 and P-18) that was not the one advertised by Bell Canada leading up to his subscriptions (both in December 2011 and in October 2012);

⁵ See Exhibit P-18: “It’s **new** and it **ROCKS**”.

⁶ The French version of this webpage is disclosed above as Exhibit P-16.

22.5 Vidéotron, Bell Canada's major competitor in Quebec, did not advertise that it had a completely fibre optic network (it did advertise having a "hybrid fibre" network at some points in time), and so Petitioner did not even bother considering Videotron's offer because he was excited to benefit from the "new" fibre optic technology being advertised by Bell Canada online and in mass media;

Publicity seen by Petitioner concerning Bell FIBE™ TV:

22.6 In the month of **October 2011**, Petitioner recalls seeing several of Bell Canada's advertisements in the Montreal Gazette promoting its new fibre optic services;

22.7 Although he does not remember on which exact date in the month of October 2011, or the *exact* wording of each newspaper ad, Petitioner does recall Bell Canada emphasizing that Fibe was a "new" technology "*delivered through a fibre optic network*";

22.8 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, Petitioner disclosing *en liasse* copies of the Bell Fibe publicity in the *Montreal Gazette* on **October 14th, 2011** and **October 19th, 2011** as **Exhibit P-19**;

22.9 On its website (<http://www.montrealgazette.com/media-kit/newspaper/index.html>) the Montreal Gazette states 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*", Petitioner disclosing **Exhibit P-20**;

22.10 Petitioner was really interested in this new "Fibe" technology and Bell Canada's so-called "*fibre optic network*" referred to in the publicity, Exhibit P-19, a portion of which is reproduced below:

Plus, Fibe TV is delivered through our fibre optic network, no dish required.

Add Fibe TV to an Internet and Home phone bundle and get this great offer:

	<p>FROM \$9⁹⁵/MO. For 12 months³</p> <p>All monthly fees included. One-time \$30.40 professional installation fee⁴</p>	<p>+</p> <p>FREE WHOLE HOME PVR rental for 36 months⁵ Choose to own it afterwards at no additional charge.</p>
---	--	---

22.11 After seeing the “Fibe” ad in the *Montreal Gazette*, Petitioner wanted to learn more about “Fibe” and the promotions being offered by Bell Canada for this new service;

22.12 It was at this point (on a handful of occasions in the months of October/November 2011) that Petitioner consulted the Bell Canada 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;

22.13 As for the publicity that he saw on Bell Canada’s website in October/November 2011, Petitioner particularly remembers seeing the following publicity appearing on Bell Canada’s webpage, Petitioner disclosing **Exhibit P-21**, excerpts of the English and French versions are reproduced below:



Bell Magasiner

Mobilité Internet Télé Téléphonie Forfaits Soutien

Aperçu Forfaits et récepteurs Divertissement Canaux Accessoires Clients existants Télé Fibe

Accueil > Magasiner

Télé

Il est temps de débrancher la vieille technologie du câble.

PLUS D'INFO

Télé satellite
Grâce au large éventail d'options de programmation et de récepteurs, il y en a pour tous les goûts.
[Voir tous les forfaits et récepteurs](#)

Télé Fibe
Vous vivez à Montréal ou à Toronto? Le plus récent et plus étonnant service de télé au pays est maintenant offert dans de plus en plus de quartiers.
[Vérifier si Bell Télé Fibe est offert chez vous](#)

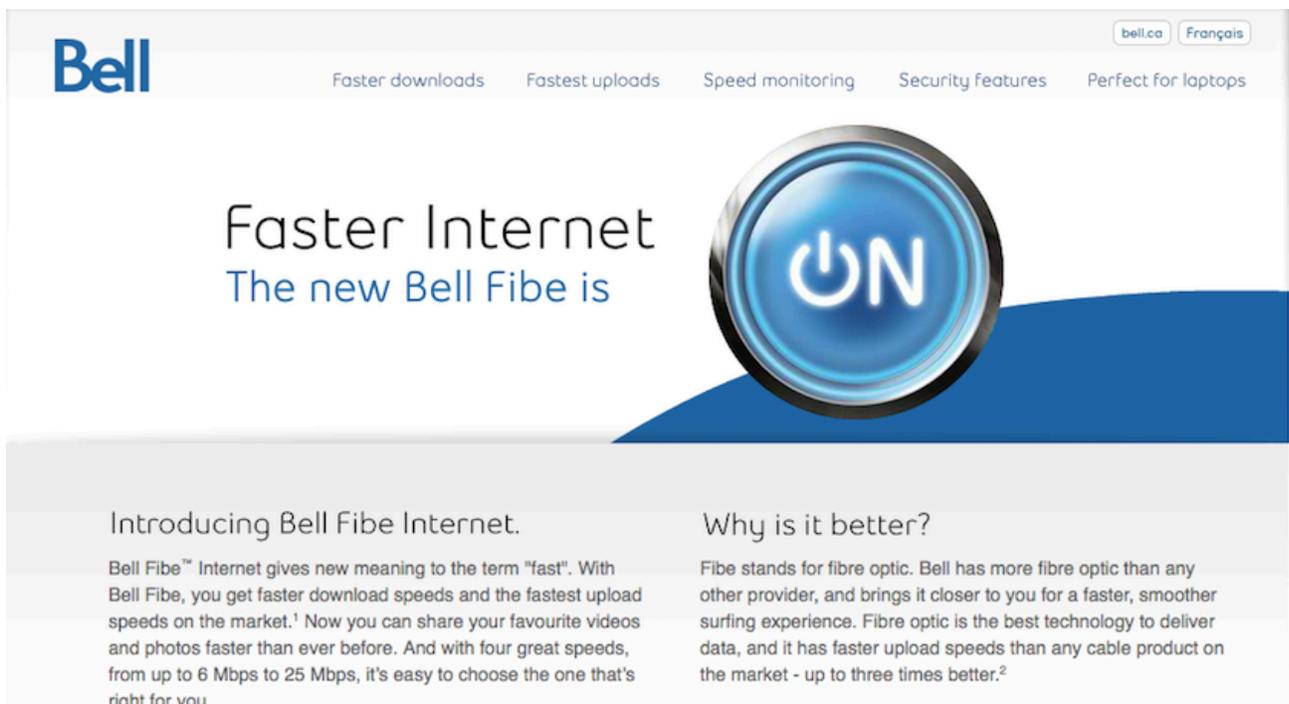
Déjà client de Bell Télé?
Rehaussez votre programmation et votre équipement, voyez ce que la télé à la carte vous propose, gérez votre compte et plus encore.
[Gérer votre compte en ligne](#)

22.14 The combination of Petitioner seeing several of Bell Canada’s publicities in the *Montreal Gazette*, including Exhibit P-19 (which promotes that “**Fibe TV is delivered through our fibre optic network**”), in addition to the publicity appearing on Bell Canada’s website shortly thereafter (Exhibits P-16, P-18 and P-21), gave Petitioner the impression that Bell “Fibe” was:

- a) 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 fibre optic instead of copper wiring) because Bell Canada’s internet publicity states “débrancher la vieille technologie du câble”;
- c) delivered and connected through a completely fibre optic network;

Publicity seen by Petitioner concerning Bell FIBE™ Internet:

- 22.15 Around the same time (October/November 2011), Petitioner 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 fibre optic (versus the standard network which competitors such as Videotron had at the time);
- 22.16 And then Petitioner landed on a page explaining Bell FIBE™ Internet, with the heading "**Why is it Better?**", Exhibit P-18, a screen capture of which is reproduced below:



- 22.17 On the French version of its webpage illustrated above, Bell Canada states that "**Fibe**" est synonyme de fibre optique (see Exhibit P-16);
- 22.18 According to Bell Canada, with Bell FIBE™ Internet, the Petitioner would "**get faster download speeds and the fastest upload speeds on the market**";
- 22.19 Bell Canada made the following representations, which the Petitioner saw on Bell Canada's website in **October/November 2011** (these representations remained on Bell Canada's website until at least **July 8th, 2012**):

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.

[**emphasis underlined in bold**].

22.20 After seeing this publicity on Bell's website, Bell Canada had convinced Petitioner:

- a) that Bell Canada had a **fibre optic** network and not a network made up of the "old cable technology". Bell Canada even includes a graphic image, Exhibit P-21, of what its network cables do not look like (because *Fibe* is "new" and the copper cables are "old");
- b) that "***Fibe stands for fibre optic***"; and
- c) that Bell Canada's Fibre Optic Network is the most superior service to have for the aforementioned reasons;

22.21 The information obtained by Petitioner from Bell Canada's publicity (on its website and from the *Montreal Gazette*), convinced him to subscribe to Bell Canada's Internet service as of **December 2011**;

22.22 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 8th, 2012;

22.23 Evelyne Lepage, Director of Marketing and Communication at Bell Canada, candidly admitted during her June 21st, 2016, examination that:⁷

Q- Donc, avant février deux mille... je dois comprendre, vous n'avez fait aucune publicité concernant spécifiquement le service Fibe FTTH ?

R- Exactement.

Q- O.K.

R- ***La technologie n'existait pas à ce moment-là.***

Q- À partir de quand elle a existé ?

R- À partir du lancement de la Ville de Québec, février... bien, mars deux mille douze (2012).

⁷ Transcription de l'interrogatoire de Madame Lepage à la page 13, lignes 19 et suivant.

Q- Est-ce que... quand vous dites la technologie n'existait pas...

R- Bien, on était en train de construire le réseau amélioré.

Q- **Donc, c'est le réseau qui n'était pas encore construit ?**

R- ***Exactement.***

22.24 Contrary to all of the representations Bell made to consumers in its advertising, Bell Canada's fibre optic network was not even built when Petitioner subscribed to the FIBE™ Services, nor was "Fibe" synonymous to fibre optics as Bell Canada falsely claimed (see Exhibits P-16 and P-18);

22.25 The important facts, which Bell Canada failed to inform the Petitioner, were that:

- a) by "**Fibe**" they meant: fibre **with** copper wiring; and
- b) by "**fibre optic network**" they meant: "**hybrid**" fibre optic network;

Petitioner's discovery of Bell Canada's false representations and omissions:

22.26 In **April of 2015**, Petitioner was discussing the advantages of his Bell "Fibe" services with a friend in his neighbourhood who was subscribed to Videotron for internet and television;

22.27 Petitioner was actually trying to convince his friend to switchover from Videotron's hybrid-fibe services to, what Petitioner believed up until this point, was Bell Canada's complete fibre optic network (Petitioner insisted to his friend that "Fibe" was synonymous to fibre optic, just as Bell Canada had represented);

22.28 However, Petitioner'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), had informed the Petitioner that his Bell "Fibe" services were not connected to his house with fibre optics;

22.29 Said friend further explained to Petitioner 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;

22.30 Petitioner first acquired knowledge of Bell Canada's omissions and misrepresentations in **April of 2015**;

22.31 Upon acquiring said knowledge in April of 2015, Petitioner immediately contacted his attorney's office to explain the aforementioned factual situation and gave them the mandate to file the present class action his behalf;

22.32 Petitioner 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 (which Bell failed to mention);

22.33 Had Petitioner been aware of the information Bell Canada intentionally withheld, distorted and misrepresented, he would have likely never subscribed to their 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);

22.34 In consequence of the foregoing, the Petitioner is justified in claiming damages as detailed in the following paragraphs;

(i) Petitioner's claim for a reduction of his obligation due to Bell Canada's failure of its obligation to inform (section 228 and paragraph c of section 272 CPA)

23. The Petitioner has been paying Respondent monthly for "Home Phone Lite package", "Bell Fibe Internet 15" and "Bell Fibe TV", as it appears from a copy of the Bell Canada invoice dated April 10, 2015, disclosed as Petitioner's **Exhibit P-3**;

24. For the reasons detailed in this Motion it is clear that at no point did the Respondent provide the Petitioner, or any of the Group members, with the FIBE™ Services it promised (notably that "*Fibe means fibre optic*") and in respect of which it collects payments, as it appears from paragraph 24 of Ms. Evelyne Lepage's Affidavit:

24. M. Abicidan n'a pas accès à la technologie FTTH. D'ailleurs, la pièce P-1 qui a été envoyée à 4 349 personnes ayant accès à la technologie FTTH ne lui a pas été envoyée;

24.1 Bell Canada further admits to the following timeline:

- a) **February 2010 to January 2012: La technologie n'existait pas à ce moment-là⁸;**
- b) **February 2010 to at least July 8th, 2012: Bell Canada makes representations on its English and French websites that Fibe means fibre optic ("*Fibe*" est synonyme de fibre optique)⁹;**

⁸ Transcription de l'interrogatoire de Madame Lepage à la page 13, lignes 19 et suivant.

- c) December 2011: Petitioner initially subscribes to Bell's FIBE™ Services for TV;
 - d) October 2012: Petitioner subscribes to FIBE™ Internet;
 - e) December 2011 to Present; That in the actual "FIBE™" services which Petitioner has, "Fibe" does not mean fibre optic (rather it means FTTN);
- 24.2 In sum, although at the terms FTTN and FTTH were not yet used by Bell at the time Petitioner initially subscribed to the FIBE™ Services in December 2011, in reality Bell Canada had falsely advertised the term "Fibe" as meaning FTTH,¹⁰ when Petitioner in fact received FTTN;
- 24.3 The fact that Bell Canada's so-called "fibre optic network" is actually composed of fibre optics and copper is an important fact concealed by Bell Canada and is in and of itself grounds for Petitioner's claim for a reduction of his obligations (pursuant to paragraph c of section 272 CPA for a violation of 228 CPA);
- 24.4 Had Petitioner been made aware of this important fact in a timely fashion, he would have either never subscribed to Bell's FIBE™ Services, or would have certainly contracted on different terms (for instance, not pay such a high price);
- 24.5 In sum, Bell Canada's reticence, with respect to an important fact, that it was well aware of, influenced the Petitioner to subscribe to services he would have likely never subscribed to (or would have at a lower price);
- 24.6 Bell Canada operates in the province of Quebec by unlawfully derogating from the CPA and is therefore in violation of section 228 CPA;
- 24.7 Consequently, Petitioner is justified in demanding that his obligations flowing from his contract of services be reduced, as well as punitive damages;
- 24.8 Petitioner benefits from an absolute presumption of prejudice because:
- a) Petitioner is a consumer within the meaning of the CPA;
 - b) Bell Canada is a merchant within the meaning of the CPA;
 - c) Bell Canada misrepresented its FIBE™ Services and failed to inform the Petitioner of an important fact (a fact that was so vitally important to describe its service that Bell Canada later marketed its FIBE™ services using

⁹ See Exhibits P-16 and P-18.

¹⁰ Since 2010 Bell advertises that "FIBE TV is delivered through our fibre optic network" and from 2010-2012 that "Fibe means fibre optic";

the terms *FTTN* and *FTTH*, which did not appear in its publicity when Petitioner first subscribed to FIBE™ services);

- d) Petitioner saw Bell Canada's representations concerning "Fibe Internet" and "Fibe television" on Bell Canada's website and in the *Montreal Gazette* prior to subscribing to the FIBE™ Services;
- e) After seeing Bell Canada's representation concerning "Fibe", Petitioner subscribed and entered into a consumer contract;
- f) There existed a sufficient nexus between the content of Bell Canada's representations and the services covered by the subscription and contract (Bell Canada's practice influenced the Petitioner's behavior with respect to the formation of the consumer contract);

24.9 Petitioner's damages are a direct and proximate result of Bell Canada's misconduct;

(ii) Petitioner's claim for punitive damages (arts. 219, 228 and 272 CPA)

25. Respondent exposes the Petitioner and a significant number of Group members to its prohibited business practices in several forms including, without limitation, through its website, telephone representatives, retail stores, flyers, emails and kiosks;

26. **to 33. [...];**

34. Internet and television services "delivered through our fibre optic network"¹¹, or that are connected via a "100% fibre optic network",¹² as Respondent represented to Petitioner (prior to his subscription), as well as to Group members, that it has and uses, is of substantially superior quality, reliability and performance as compared to a hybrid network which uses conventional copper/coaxial cabling;

35. Respondent employs sales tactics whereby it falsely ascribes certain special advantages attributed to the use of their FIBE™ Services, notably that the Respondent's services are of superior quality to their competitors because Bell Canada's FIBE™ Services are delivered to consumers' homes via fibre optics;

35.1 Prior to the date of Petitioner's subscription to both Bell Fibe Internet (**December 2011**) and to Bell Fibe TV (**October 2012**), the abundant documentary evidence and

¹¹ False representations seen by Petitioner before subscribing to Bell's FIBE™ Services, Exhibit P-19, and made by Bell Canada since the introduction of its FIBE™ Services to the present date.

¹² False representations made by Bell Canada in its marketing since at least 2012, Exhibit P-1, and made in mass media advertisements as of January 2015, Exhibit P-12 and P-13;

admissions contained herein demonstrate that Bell Canada failed to mention an important fact to Petitioner (that is, that Fibe did not mean delivery of FIBE™ Services through fibre optics only, but also via copper wiring for an important distance from the node to the Petitioner's home);

36. **to 46. [...];**

47. After Petitioner subscribed to Bell's FIBE™ Services and even after the filing of the present class action, Bell Canada continued misrepresenting its FIBE™ Services and failed in its obligation to inform the Petitioner of an important fact. Without restricting the generality of the preceding, the existence of a systemic response regarding *Fibe* given by Bell Canada representatives is confirmed on **August 17, 2015**, date upon which Petitioner himself had a telephone conversion with Bell Canada, a transcript of which was filed as Respondent's **Exhibit I-2**, and includes the following misrepresentations about FIBE™ Services being provided to Petitioner:

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.

47.1 In its **Exhibit I-1**, Bell Canada admits that its FIBE™ Services were never delivered to Petitioner through a fibre optic network. Bell Canada further admits that its FIBE™ Services were delivered to Petitioner through a hybrid network composed of fibre optics and copper;

- 47.2 Consequently, Bell Canada lied to Petitioner and failed to inform him of an important fact **before** he subscribed to its FIBE™ Services, **at the time** he subscribed to its FIBE™ Services and even **after** Petitioner filed a class action against Bell Canada concerning its FIBE™ Services!
48. Considering the whole of Bell Canada's conduct at the time of and after the violations (as more detailed herein), the record shows that Bell Canada:
- a) displayed ignorance from February 2010, until at least July 8th 2012 (see Exhibit P-16 and P-18);
 - b) was careless by not providing Applicant 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 (from the date of the introduction of its FIBE™ Services in February 2010 until at least August 17th, 2015;¹³
49. **to 55. [...];**
56. Respondent Bell Canada unlawfully fails to mention an important fact in the representations it makes to Petitioner and to consumers, notably that the connection offered as part of its FIBE™ Services is composed of copper (meaning that "Fibe" does just mean fibre optics, but copper as well);
- 56.1 Bell Canada's omission is essential because even Bell Canada admits that an exclusively fibre optic connection is superior to a hybrid connection composed of fibre optics and copper:¹⁴
- 14. L'avantage de la technologie FTTH touche plutôt le service Internet, le FTTH permettant l'accès à des vitesses encore plus grandes de téléchargement et de partage;
 - 15. Certaines vitesses de téléchargement et de partage ne sont d'ailleurs offertes que lorsque la technologie FTTH est disponible à l'adresse de l'abonné;
- 56.2 This failure of its obligation to inform on the part of Bell Canada is in and of itself an important reason for this Court enforce measures that will punish Bell Canada, as well as deter and dissuade other entities from engaging in similar reprehensible conduct to the detriment of Quebec consumers;

¹³ See Bell Canada's **Exhibit I-2**, a transcript of a telephone conversation between Mr. Shay Abicidan and a Bell Canada customer service representative on August 17th, 2015;

¹⁴ Paragraphs 14 and 15 of Ms. Evelyne Lepage's Affidavit, **Exhibit I-1**.

- 56.3 The punitive damages provided for in section 272 CPA have a preventive objective, that is, to discourage the repetition of such undesirable conduct;
- 56.4 Not only did Bell Canada violate the CPA by failing to inform the Petitioner of an important fact, it intentionally continues to misleadingly advertise its FIBE™ Services;
- 56.5 After the conversation with his friend in early April 2015, Petitioner 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 of its bottom line than about its obligations towards consumers under the CPA;
- 56.6 In these circumstances, Petitioner's claim for punitive damages is justified;
57. **to 62. [...];**

III. DAMAGES:

63. In light of the foregoing, the following damages may be claimed by the Petitioner and the members of the Group against the Respondent:
- a) Compensatory damages, in an amount to be determined, on account of the damages suffered, pursuant to section 272 CPA; and
 - b) Punitive damages, in an amount to be determined, for the breach of several obligations imposed on the Respondent by the CPA, notably sections 219, 220(a), 221(a), 221(c), (d) and (g), 228 and 239(a), pursuant to section 272 of the CPA;
64. [...];

2) THE CLAIMS OF THE MEMBERS OF THE GROUP RAISE IDENTICAL, SIMILAR OR RELATED ISSUES OF LAW OR FACT:

65. Every member of the Group subscribed to the Respondent's FIBE™ Services;
- 65.1 All Group members are entitled to expect that Bell Canada inform the public of important facts concerning the services it markets, sells, installs, services and maintains;
- 65.2 Bell Canada remained silent and concealed information concerning an essential element of the contract from all of the Group members;
66. No member of the Group received the service represented, advertised and promised

by the Respondent, that is Internet, television, or telephone services “delivered through a fibre optic network” (in French, “transmis par le biais de la fibre optique¹⁵”);

- 66.1 No member of the Group received “Fibe” that was synonymous with fibre optics, despite Bell Canada making explicit representations of such in its publicity since the inception of the FIBE™ Services in February of 2010;
67. Instead of delivering a service both **composed** of fibre optics – and – **delivered** via fibre optics as the Respondent represented, advertised and promised, the fibre optics are connected only as far as the Group members’ neighbourhood junction box, from which point conventional category 5 and/or 5e cables are used;
68. Consequently, each member of the Group 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;
- 68.1 Approximately 554,800 Montrealers read the Montreal Gazette’s print and online editions throughout the week, Exhibit P-20, and a very large number of Group members likely saw the exact same publicity as Petitioner, such as Exhibit P-19 for instance;
69. 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*”, as it appears from a copy of an ad in the *Journal de Montréal* on January 22, 2015, Petitioner disclosing **Exhibit P-12**;
70. On January 22, 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, 2015, Montreal Gazette ad, Petitioner disclosing **Exhibit P-13**;
71. 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;
72. Respondent thus intentionally misleads Group members, since the inception of its FIBE™ Services, to falsely believe, and to subscribe to its FIBE™ Services based on this false belief, 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*”, which is untrue;
73. Every member of the Group has suffered damages equivalent to the difference

¹⁵ Paragraph 6 of Ms. Evelyne Lepage’s Affidavit;

between the inflated prices that they have paid for FIBE™ Services and what they should have paid, either to the Respondent or to another provider, had the Respondent not made the misrepresentations referred to above or concealed important facts;

74. All of the damages to the Group members are a direct and proximate result of the Respondent's misconduct;

74.1 By reason of Bell Canada's unlawful conduct, Petitioner and members of the Group have suffered damages, which they may collectively claim against Bell Canada;

74.2 Each member of the Group is justified in claiming at least one or more of the following as damages:

- Overpayment for services falsely advertised as composed of fibre optics, that were in reality composed of copper and fibre optics;
- Trouble and inconvenience;
- Punitive damages;

74.3 Individual questions, if any, pale by comparison to the numerous common questions that are significant to the outcome of the present Motion;

74.4 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™ Services;

75. The questions of fact and law raised and the recourse sought by this Motion are identical, related, or similar with respect to each member of the Group, namely;

QUESTIONS OF FACT AND LAW:

- a) **Did Bell Canada engage in unfair, false, misleading, or deceptive acts or practices regarding the marketing, distribution and/or the sale of its FIBE™ Services?** (Est-ce que Bell Canada s'est engagée dans des actes ou des pratiques injustes, fautifs, mensongers ou trompeurs concernant la commercialisation, la distribution et/ou la vente des services FIBE^{MC}?)
- b) **Is Bell Canada liable to the Group members for reimbursement of a portion of the monthly price paid as a result of their misconduct?** (Bell Canada, est-elle sujette envers les membres du groupe au remboursement d'une partie du prix mensuel payé suite à sa faute ?)

- c) Did Bell Canada conceal, or fail to mention an important fact in any of the representations it made to Quebec consumers concerning its FIBE™ Services? (Est-ce que Bell Canada a passé sous silence un fait important, ou a manqué à son obligation d'information dans une représentation qu'elle a faite aux consommateurs québécois concernant ses services FIBE^{MC}?)
- d) Is Bell Canada liable to the Group members for reimbursement of a portion of the monthly price paid as a result of its concealment or failure to inform? (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) 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? (Une action en injonction devrait-elle être ordonnée afin d'interdire à Bell Canada de continuer à perpétuer son comportement injuste, fautif, trompeur et/ou mensonger, ainsi que de passer sous le silence un fait important ?)
- f) Is Bell Canada responsible to pay compensatory, moral and/or punitive damages to Group members and in what amount? (Bell Canada, devrait-elle payer des dommages compensatoires, moraux et/ou punitifs aux membres du groupe et pour quel montant ?)
- g) **to x) [...];**

76. In taking the foregoing into account, all members of the Group are justified in claiming damages;

3) THE COMPOSITION OF THE GROUP

77. The composition of the Group makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings;

78. Petitioner is unaware of the exact number of the Respondent's *Fibe TV* customers in Quebec contemplated by this application, but Respondent has boasted that as of the first quarter of 2015 it had a total 2,658,106 television subscribers overall, which it implies are all "*fibe*" related, as appears from the BCE news release dated April 30, 2015, disclosed as Petitioner's **Exhibit P-14**;

79. In addition, Petitioner is unaware of the exact number of the Respondent's *Fibe Home telephone* customers, or the number of their *Fibe Internet* clients in Quebec,

but Respondent has boasted that as of the first quarter of 2015 it had a total of 3,297,745 internet subscribers overall, which it implies are all “fibe”, as it appears from Exhibit P-14 described above;

79.1 The number of persons included in the Group is likely in **tens of thousands**, if not more;

80. Group members who at any time were residing in Quebec since the inception of the FIBE™ Services are very numerous and are dispersed across the province, if not elsewhere;

80.1 The names and addresses of all persons included in the Group are not known to the Petitioner, however, are in the possession of the Respondent;

81. In these circumstances, a class action is the only appropriate procedure for all of the members of the Group to effectively pursue their respective rights and have access to justice without overburdening the court system;

IV. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT:

82. The action that the Petitioner wishes to institute on behalf of the members of the Group is an action in damages;

83. The conclusions that the Petitioner wishes to introduce by way of an Originating Application are:

GRANT Plaintiff’s action against Defendant;

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 a sum to be determined 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 an amount to be determined, 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 motion 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;

83.1 The interests of justice favour that this Motion be granted in accordance with its conclusions;

4) THE GROUP MEMBER APPOINTED AS REPRESENTATIVE IS IN A POSITION TO PROPERLY REPRESENT THE GROUP MEMBERS:

84. Petitioner is a member of the Group;

85. Petitioner is ready and available to manage and direct the present action in the interest of the members of the Group that he wishes to represent and is determined to lead the present dossier until a final resolution of the matter, the whole for the benefit of the Group, as well as, to dedicate the time necessary for the present action and to collaborate with his attorneys;

86. Petitioner has the capacity and interest to fairly and adequately protect and represent the interest of the members of the Group;

87. Petitioner has given the mandate to his attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;

88. Petitioner, with the assistance of his attorneys, is ready and available to dedicate the time necessary for this action and to collaborate with other members of the Group and to keep them informed;

89. Petitioner is comfortable with the legal system, is able to work with his attorneys and considers his attorneys competent from having worked with them in the past

and obtaining satisfactory results;

90. Petitioner is an advocate of consumer rights by nature;

90.1 Petitioner was very upset when finding out from a friend in April of 2015 the extent to which he - and others - were misled by Bell Canada;

90.2 Petitioner feels that Bell Canada should be held accountable towards Group members for failing in its obligation to inform them about an extremely important fact;

90.3 Petitioner realizes that on his own, his claim may be small, but this should not vindicate Bell Canada of its obligation to adequately inform consumers concerning the services they market, sell and maintain;

91. Petitioner has acted in the past as an administrator for the Meadows Condominium Syndicate of Co-owners, and is currently the Syndicate's treasurer, as it appears from an extract of the enterprise's information statement from the enterprise register (CIDREQ), disclosed as Petitioner's **Exhibit P-15**;

91.1 Petitioner is your average *père de famille*, married with five (5) children, working a 9:00 a.m. to 6:00 p.m. job as an inventory comptroller;

91.2 Petitioner makes an effort to pay his Bell Canada bills on time, but it has so happened in the past that he made payments **in full** after the due date indicated on his invoice;

91.3 Since 2007, Petitioner does not recall a single instance where Bell Canada interrupted the services it provides to him for being late on an invoice. Given the fact the Bell Canada tolerated this, he never thought that paying his invoices **in full** a little late was something out of the ordinary;

92. Petitioner is in good faith and has instituted this action for the sole goal of having his rights, as well as the rights of other Group members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of the Respondent's conduct;

93. Petitioner understands the nature of the action;

94. Petitioner's interests are not antagonistic to those of other members of the Group;

94.1 Petitioner's interest and competence are such that the present class action could proceed fairly;

V. JURISDICTION

95. The Petitioner suggests that this class action be exercised before the Superior Court in the District of Montreal for the following reasons:
96. A great number of the members of the Group reside in the judicial district of Montreal;
97. Bell Canada has its principal establishment in the judicial district of Montreal;
98. The Petitioner's attorneys practice their profession in the judicial district of Montreal.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present motion;

AUTHORIZE the bringing of a class action in the form of an Originating Application in damages;

APPOINT the Petitioner the status of representative plaintiff of the persons included in the Group herein described as:

Group:

English

All consumers within the meaning of Quebec's Consumer Protection Act ("CPA") who subscribed to any of the following Bell Canada services: (i) "Fibe TV"; (ii) "Fibe Internet"; (iii) "Fibe Home telephone" (hereinafter the "FIBETM Services") since February 1st, 2010, and who were not connected to a 100% fibre optic network, or, who were not connected to a network composed entirely of fibre optics;

(hereinafter referred to as the "**Group**")

or any other group to be determined by the Court;

French translation:

Tous les consommateurs au sens de la Loi sur la protection du consommateur (« LPC ») qui ont souscrit à un des services de Bell Canada suivants : (i) "Télé Fibe"; (ii) "Internet Fibe"; (iii) "Téléphonie Fibe" (ci-après les « services FIBE^{MC} ») depuis le 1^{er}

février 2010, et qui n'étaient pas branchés à un réseau 100% fibre optique, ou, qui n'étaient pas branchés à un réseau composé entièrement de fibres optiques;

(ci-après le "Groupe")

ou tout autre groupe qui sera déterminé par le Tribunal;

IDENTIFY the principle questions of fact and law to be treated collectively as the following:

QUESTIONS OF FACT AND LAW:

- a) **Did Bell Canada engage in unfair, false, misleading, or deceptive acts or practices regarding the marketing, distribution and/or the sale of its FIBE™ Services?** (Est-ce que Bell Canada s'est engagée dans des actes ou des pratiques injustes, fautifs, mensongers ou trompeurs concernant la commercialisation, la distribution et/ou la vente des services FIBE^{MC}?)
- b) **Is Bell Canada liable to the Group members for reimbursement of a portion of the monthly price paid as a result of their misconduct?** (Bell Canada, est-elle sujette envers les membres du groupe au remboursement d'une partie du prix mensuel payé suite à sa faute ?)
- c) **Did Bell Canada conceal, or fail to mention an important fact in any of the representations it made to Quebec consumers concerning its FIBE™ Services?** (Est-ce que Bell Canada a passé sous silence un fait important, ou a manqué à son obligation d'information dans une représentation qu'elle a faite aux consommateurs québécois concernant ses services FIBE^{MC}?)
- d) **Is Bell Canada liable to the Group members for reimbursement of a portion of the monthly price paid as a result of its concealment or failure to inform?** (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) **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?** (Une action en injonction devrait-elle être ordonnée afin d'interdire à Bell Canada de continuer à perpétuer son comportement injuste,

fautif, trompeur et/ou mensonger, ainsi que de passer sous le silence un fait important ?)

- f) Is Bell Canada responsible to pay compensatory, moral and/or punitive damages to Group members and in what amount? (Bell Canada, devrait-elle payer des dommages compensatoires, moraux et/ou punitifs aux membres du groupe et pour quel montant ?)
- g) to x) [...];

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

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 a sum to be determined 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 an amount to be determined, 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 motion 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;

DECLARE that all members of the Group that have not requested their exclusion, be bound by any judgement to be rendered on the class action to be instituted in the manner provided for by the law;

FIX the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the Group that have not exercised their means of exclusion will be bound by any judgement to be rendered herein;

ORDER the publication of a notice to the members of the Group in accordance with article 579 C.C.P. within sixty (60) days from the judgement to be rendered herein in the “News” sections of the Saturday editions of *Le Journal de Montréal*, *LA PRESSE*, and the MONTREAL GAZETTE;

ORDER that said notice be published on the Respondent’s various websites, Facebook pages and Twitter accounts, in a conspicuous place, with a link stating “Notice to Bell Fibe Subscribers”;

ORDER the Respondent to send an Abbreviated Notice by e-mail to each Group member, to their last known e-mail address, with the subject line “Notice of a Class Action”;

RENDER any other order that this Honourable Court shall determine;

THE WHOLE with costs including publications fees.

Montreal, September 30th, 2016

(S) Joey Zukran

LPC AVOCAT INC.

Per: Me Joey Zukran

Attorney for Petitioner

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

(Class Action)
SUPERIOR COURT

NO: 500-06-000740-155

SHAY ABICIDAN

Petitioner

-vs-

BELL CANADA

Respondent

RE-AMENDED LIST OF EXHIBITS

- EXHIBIT P-1:** Copy of September 2012 Bell Canada brochure titled "*Fibe brings you more. A lot more*";
- EXHIBIT P-2:** Extract of enterprise's information statement from the enterprise register (CIDREQ) for Bell Canada;
- EXHIBIT P-3:** Copy of Shay Abicidan's Bell Canada invoice dated April 10, 2015;
- EXHIBIT P-4:** *En liasse*, pictures of the copper CAT 5E and coaxial cables connecting to Petitioner's residence at 5657 Merrimac, Côte-St-Luc, Québec, H4W 1S5;
- EXHIBIT P-5:** Financial Post article published May 26, 2015, titled "*Bell rolls out 'second screen' viewing with Fibe TV expansion app*", by Christina Pellegrini;
- EXHIBIT P-6:** *En liasse*, extracts of the *Bell Fibe* website in English and French stating "*100% fibre*";
- EXHIBIT P-7:** *En liasse*, screenshots taken on August 17, 2015, of Bell Canada's webpage titled "*Check availability of Bell Fibe TV*";
- EXHIBIT P-8:** *En liasse*, screenshots taken on July 14, 2015, of Bell Canada webpage titled "*Check availability Bell Internet*";

- EXHIBIT P-9:** Copy of Videotron’s webpage titled “*Hybrid Fibre 30 Internet*”;
- EXHIBIT P-10:** Copy of Videotron’s “*Unlimited Super Trio*” offer;
- EXHIBIT P-11:** Copy of Bell Canada’s “*Fibe Bundle Program*” offer;
- EXHIBIT P-12:** Copy of Bell Canada’s *Fibe* ad in the Journal de Montréal on January 22, 2015, titled “*Forfait 100% fibre: le trio de l’heure au Québec*”;
- EXHIBIT P-13:** Copy of Bell Canada’s *Fibe* ad in the Montreal Gazette on January 22, 2015, titled “*Upgrade to the 100% fibre bundle*”;
- EXHIBIT P-14:** Copy of the BCE news release dated April 30, 2015;
- EXHIBIT P-15:** Extract of enterprise’s information statement from the enterprise register (CIDREQ) for Syndicat des copropriétaires de The Meadows Condominium.
- EXHIBIT P-16:** Excerpt of Bell Canada’s French website from February 18th, 2010, through July 28th, 2012, stating that: “*Fibe*” est synonyme de fibre optique;
- EXHIBIT P-17:** Copy of November 19th, 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-18:** Screen capture of English version of Bell Canada’s *Fibe* website from at least March 5th, 2010 through at least July 8th, 2012, stating that “*Fibe* stands for fibre optic”;
- EXHIBIT P-19:** En liasse, copies of Bell Canada’s *Fibe* publicity in the Montreal Gazette on October 14th and 19th, 2011, introducing “*Fibe*” as a “new” technology: “*It’s new and it ROCKS*”;
- EXHIBIT P-20:** Montreal Gazette webpage confirming 554,800 total readers weekly in Montreal (<http://www.montrealgazette.com/media-kit/newspaper/index.html>);
- EXHIBIT P-21:** 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*”;

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

Montreal, September 30th, 2016

(S) Joey Zukran

LPC AVOCAT INC.

Per: Me Joey Zukran

Attorney for Petitioner

NOTICE OF PRESENTATION

TO: Me Marie Audren
Borden Ladner Gervais, LLP
1000, rue De La Gauchetière Ouest, Suite 900
Montréal (Québec) H3B 5H4
maudren@blg.com
notification@blg.com

Attorneys for Respondent Bell Canada

TAKE NOTICE that Petitioner's *Re-Amended Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff* will be presented before the Superior Court at **1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, on the date set by the Honourable Donald J. Bisson, J.C.S.

GOVERN YOURSELVES ACCORDINGLY.

Montreal, September 30th, 2016

(S) Joey Zukran

LPC AVOCAT INC.

Per: Me Joey Zukran

Attorney for Petitioner

N° : 500-06-000740-155

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

SHAY ABICIDAN

Petitioner

-VS-

BELL CANADA

Respondent

**2nd RE-AMENDED MOTION TO
AUTHORIZE THE BRINGING OF A
CLASS ACTION AND TO APPOINT THE
STATUS OF REPRESENTATIVE
(ARTICLE 571 AND FOLLOWING C.C.P)**

ORIGINAL



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

**ME JOEY ZUKRAN
CODE: AZ 00X4**

N/D: JZ-102