

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Class Actions)

No.: 500-06-000740-155

SHAY ABICIDAN

Plaintiff

v.

BELL CANADA

Defendant

SETTLEMENT

WHEREAS on March 30, 2017, the Honourable Superior Court Justice Donald Bisson authorized a Class Action against the Defendant on behalf of all persons in the following group:

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 1st, 2012 and March 30, 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.

WHEREAS on August 15, 2017, the Plaintiff filed his Originating Application, amended on December 28, 2017, in which he alleges *inter alia* that the Defendant's advertisements and representations regarding its FIBE™ Internet and television services give the false or misleading impression that the services are always provided through a connection that is entirely composed of fibre optics;

WHEREAS on February 18, 2019, the Defendant filed its Defence, denying any wrongdoing or liability to the Plaintiff or the Class Members in connection to this Class Action;

WHEREAS in its Defence, the Defendant sets out *inter alia* that it has never concealed the fact that, in some locations, its FIBE™ Internet and television services are provided through fibre optics to the neighbourhood (FTTN connection) as opposed to fibre optics to the home (FTTH connection), nor has it ever intended to mislead the Plaintiff or the Class Members;

WHEREAS in its Defence, the Defendant also sets out the various ways in which, throughout the Class Period, it provided relevant information concerning its network and the distinction between and availability of FTTH and FTTN connections;

WHEREAS the above referenced information is provided to this day, notably on bell.ca;

WHEREAS the Parties acknowledge that the Plaintiff and the Class Members have the means to validate whether they have an FTTN or FTTH connection;

WHEREAS on December 10, 2020, the Parties entered into an agreement in principle to settle the Class Action, in accordance with the terms set out below, this Settlement being intended to fully and finally resolve all claims relating directly or indirectly to this Class Action;

WHEREAS the Parties are of the opinion that this Settlement is fair and reasonable and that it is in the best interests of Class Members;

WHEREAS this Settlement and its approval by the Court, if any, will not constitute an admission of fault, liability or of the existence of damages of any kind by the Defendant;

WHEREAS this Settlement is entered into solely to avoid the inconveniences and the costs associated with a trial;

NOW THEREFORE, subject to the approval of this Settlement by the Court, in consideration of the undertakings, agreements and releases set forth herein and for the purpose of being legally bound, the Parties agree as follows:

1. INTERPRETATION

- 1.1. **"Approval Hearing"** means the hearing to be conducted by the Court to determine whether the Settlement should be approved pursuant to article 590 of the *Quebec Code of Civil Procedure (CCP)*;
- 1.2. **"Approval Judgment"** means the judgment approving the Settlement;
- 1.3. **"Balance"** refers to the Settlement Amount, less the cost of the publication of the Notice to Members, Class Counsel Fees and Other Costs;
- 1.4. **"Class Action"** refers to the class action brought against the Defendant before the Superior Court of Quebec in this matter bearing the number 500-06-000740-155, as well as all pleadings, examinations, expert opinions, and documents filed or communicated by the Parties;
- 1.5. **"Class Counsel"** refers to the law firms LPC Avocat Inc. and Renno Vathilakis Inc.;
- 1.6. **"Class Counsel Fees"** means an amount representing not more than 30% of the Settlement Amount, plus taxes, which represents the total amount of six hundred eighty-nine thousand, eight hundred fifty Canadian dollars (**\$689,850.00**) or such other amount as may be determined by the Court;
- 1.7. **"Class Members"** refers to all persons included in the group definition of the Class Action;

- 1.8. **"Class Members Entitled to an Amount"** refers to Class Members who had an FTTN connection at the time of their subscription and are still FIBE™ Internet or television customers at the Distribution Date;
- 1.9. **"Class Members Not Entitled to an Amount"** refers to Class Members who do not fit the definition of "Class Members Entitled to an Amount", including but not limited to Class Members who had an FTTH connection at the time of their subscription and Class Members who had an FTTN connection at the time of their subscription but are no longer FIBE™ Internet or television customers at the Distribution Date of the Settlement;
- 1.10. **"Class Period"** refers to the period between May 1st, 2012 and March 30, 2017 inclusively;
- 1.11. **"Court"** refers to the Superior Court of Quebec;
- 1.12. **"Defendant"** refers to Bell Canada;
- 1.13. **"Defendant's Counsel"** refers to the law firm of Audren Rolland LLP;
- 1.14. **"Distribution Date"** means thirty (30) days after the Effective Date;
- 1.15. **"Effective Date"** means thirty (30) days after the date on which the Approval Judgment is no longer subject to appeal and becomes a final judgment;
- 1.16. **"Exclusion Period"** means the period of thirty (30) days from the date of publication of the Notice to Members during which Class Members may opt out of the Class Action;
- 1.17. **"Notice to Members"** means the notice to inform Class Members of the Approval Hearing, of the main terms of the Settlement, and of their right to opt out of the Class Action or object to the Settlement, as set out in Appendix A hereto;
- 1.18. **"Parties"** refers to the Plaintiff and the Defendant;
- 1.19. **"Plaintiff"** refers to Shay Abicidan;
- 1.20. **"Other Costs"** refers to the maximum amount of one hundred thousand Canadian dollars plus tax, which represents a maximum total amount of one hundred fourteen thousand, nine hundred seventy-five Canadian dollars (**\$114,975.00**) or such other amount as may be determined by the Court, to be paid out of the Settlement Amount to Class Counsel as compensation for their expenses and disbursements, including any amount that must be reimbursed to the Fonds d'aide aux actions collectives by Class Counsel in relation to the present Class Action, the whole subject to the Court's approval. The Plaintiff's disbursements applied for and approved by the Court shall also be paid from the amount provided for in this section;
- 1.21. **"Settlement"** means this agreement, including the appendices;

- 1.22. **"Settlement Amount"** means a total amount of two million Canadian dollars (\$2,000,000.00);

2. THE SETTLEMENT

Settlement Amount

- 2.1. The Parties agree that payment of the Settlement Amount by the Defendant shall settle definitively all claims by the Plaintiff and the Class Members relating directly or indirectly to or that may relate to the facts alleged or that could have been alleged in the Class Action, including Class Counsel Fees, Other Costs, cost of the publication of the Notice to Members, court costs, and applicable taxes.

Right of Class Members to opt out of the Class Action or to object to the Settlement

- 2.2. Class Members may opt out of this Class Action by sending the opt-out form set out in Appendix B hereto duly completed to Mtre. Joey Zukran of LPC Avocat Inc. The form must be received no later than thirty (30) days following the date of publication of the Notice to Members, failing which Class Members will be barred from opting out.
- 2.3. In the event that more than two-hundred (200) Class Members opt out of the Settlement, the Defendant may, at its sole discretion, decide to proceed with payment of the Settlement Amount. The Defendant may also elect to terminate this Settlement, in which case the Settlement will be deemed null and void and the Parties and the Class Members will then be returned to the condition they were in prior to its signing. The Defendant shall notify Class Counsel of its choice within thirty (30) days of the end of the Exclusion Period.
- 2.4. Class Members may comment on or object to the Settlement as provided for in the Notice to Members.

Distribution of the Settlement Amount

- 2.5. Subject to the approval of the Court, the Settlement Amount will be remitted and distributed:
- (a) Within thirty (30) days of the Effective Date, the Defendant will pay the Class Counsel Fees and the Other Costs approved by the Court to Class Counsel;
 - (b) On the Distribution Date, the Defendant will distribute the Balance to Class Members Entitled to an Amount as follows:
 - (i) The Balance will be divided equally among the Class Members Entitled to an Amount as a one-time price reduction of the monthly fees paid pursuant to their May 2017 invoice (*i.e.* equivalent to a cash payment credited towards their monthly balance owed to the Defendant for that month). The price reduction, along with all applicable taxes, will be

credited to each member's account and appear on their invoice within two (2) billing cycles following the Distribution Date. The price reduction applied to each eligible account will be the same regardless of the number of services subscribed to or the number of subscribers on the account;

- (ii) Class Members Not Entitled to an Amount will not be entitled to any credit on their invoice or other compensation;

Accountability

- 2.6. Within ninety (90) days of the Distribution Date, the Defendant shall file with the Court a report of its distribution of the Settlement Amount.

Closing Judgment

- 2.7. Within thirty (30) days of the filing in the court record of the Defendant's report of its distribution of the Settlement Amount, the Parties shall request the Court to issue a closing judgment.

Condition

- 2.8. Subject to Section 2.10 hereof, the Settlement is conditional upon its approval by the Court, failing which it shall be deemed null and void and the Parties and Class Members shall then be returned to the state in which they were prior to the signing of the Settlement.

Approval of the Settlement

- 2.9. The Approval Hearing will be held on the date set by the Court after the Exclusion Period and the time limit set out in Section 2.3 have expired.

Class Counsel Fees and Other Costs

- 2.10. Class Counsel will not claim any other fees, disbursements or expenses from anyone in relation to the Class Action, except for Class Counsel fees and the Other Costs.
- 2.11. In the event that the Court does not approve in full the requested Class Counsel Fees or the Other Costs, the difference between the fees requested and the approved fees will be added to the benefit of the Class Members Entitled to an Amount in order to increase the Balance to be distributed.

3. RELEASE

- 3.1. In consideration of the Settlement, the Plaintiff and the Class Members, on their own behalf and on behalf of their heirs, directors, predecessors, successors, assignees, beneficiaries and successors in title, give full and final release to the Defendant, its predecessors, representatives, parent companies, affiliates, member companies, subsidiaries and/or other related companies, officers, directors, employees, shareholders, agents, mandataries, sales representatives, successors, assignees, beneficiaries and successors in title, attorneys and insurers with respect to any past, present or future claim (including any claim for injunctive relief, cause of action, action, mode of action) and any event arising, directly or indirectly from the facts alleged or that could have been alleged in the Class Action.
- 3.2. The Parties declare that they understand the meaning of this release and/or any relevant legislation relating to restrictions on releases. In this respect, the Parties declare that they have benefited from the advice of their respective lawyers.

4. MISCELLANEOUS PROVISIONS

- 4.1. The Settlement reflects the entire agreement between the Parties and replaces all previous agreements between them, if any. The Parties declare and confirm that no declaration, including an oral declaration, has been made that is not contained in the Settlement. The Parties also agree that the Settlement may only be amended by a written instrument signed by all signatories of this Settlement and submitted to the Court for approval and that such amendment shall only take effect if the Court issues a final judgment approving it.
- 4.2. This Settlement constitutes a transaction within the meaning of article 2631 CCQ and article 590 CCP.
- 4.3. The Settlement is without admission of liability of any kind whatsoever.
- 4.4. The Notice to Members shall be the only notice with respect to the Settlement and, following the Approval Judgment or closing judgment, no other notice shall be published or disseminated to Class Members, notwithstanding article 591 of the *Quebec Code of Civil Procedure*. The Notice to Members will be published for one day, on a Saturday, in *The Gazette*, *Le Journal de Montréal* and *La Presse* in 1/4 of a page format or its digital equivalent.
- 4.5. The Court retains exclusive and continuing jurisdiction over the Class Action and any dispute relating to the Settlement, including any dispute relating to its interpretation.
- 4.6. The Parties and their counsel agree that they will not prepare any press release, convene any press conference or otherwise publicly advertise or comment on the settlement, except to refer the media or any other third-party to the Settlement (if need be).

- 4.7. Any communication with respect to the implementation and execution of the Settlement must be made in writing, either by mail, courier or email, or by phone to Mtre. Joey Zukran of LPC Avocat Inc.
- 4.8. The Settlement is signed in six (6) copies, each of which is an original.
- 4.9. The Settlement is governed by the law in force in Quebec.
- 4.10. The Parties acknowledge that they have requested that the Settlement be drawn in English. Les parties reconnaissent avoir exigé que la présente transaction soit rédigée en anglais.

IN WITNESS WHEREOF, Shay Abicidan, the Defendant and their counsel have signed the Settlement:

Signed in _____, on __ July 2021

Signed in _____, on __ July 2021

Shay Abicidan

LPC Avocat Inc.

Signed in _____, on __ July 2021

Signed in _____, on __ July 2021

Renno Vathilakis Inc.

Bell Canada
Melanie Schweizer,
SVP Legal and General Counsel

Signed in _____, on __ July 2021

Audren Rolland LLP

APPENDIX A

NOTICE OF CLASS ACTION SETTLEMENT

Shay Abicidan v. Bell Canada
(500-06-000740-155)

Please be advised that a settlement has been reached between the plaintiff Shay Abicidan and the defendant Bell Canada ("Bell") in a class action regarding FIBE™ Internet and television services.

The Superior Court will hold a hearing to approve the settlement on [Date] at [time] in room [number] of the Montreal Court house located at 1 Notre-Dame Street East, Montréal, Quebec, H2Y 1B6, or via TEAMS. You can attend the hearing by simply showing up, but you are not obligated to. The date and time of the settlement approval hearing may be subject to adjournment by the Court without further publication notice to the Class Members, other than a copy of the notice which will be posted on Class Counsel's website www.lpclex.com/bell-fibe.

What is the subject of this class action?

The Plaintiff alleged that Bell's advertisements and representations regarding its FIBE™ services gave the false or misleading impression that the services are always provided through a connection that is entirely composed of fibre optics.

Who are the Class Members?

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 1st, 2012 and March 30, 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.

What does the Settlement provide for?

Without admission of any kind, Bell will pay \$2,000,000 to fully and finally settle this action for the purpose of avoiding further costs and put a final end to this litigation and to all related claims.

This amount will be shared equally among the class members entitled to an amount of money by way of a one-time price reduction on their monthly invoice in the form of a credit to their Bell account, after deduction of Class Counsel fees (\$600,000.00 plus taxes) and others costs and expense (\$100,000.00 plus taxes), subject to Court approval. The price reduction applied to each eligible account will be the same regardless of the number of services subscribed to or the number of subscribers on the account.

Who will receive money?

A credit of approximately \$8 plus tax will be applied to the accounts of class members who meet all three of the following criteria:

- (1) they subscribed to Bell's FIBE™ Internet or television services between May 1st, 2012 and March 30, 2017;
- (2) they were connected to Bell's network through a fibre-to-the-neighbourhood connection (FTTN); and

(3) they remain subscribed to Bell's FIBE™ Internet or television services as of [date].

Class members who do not meet the above criteria are not entitled to any money.

How can I receive this credit?

The credit will be applied automatically by Bell to your monthly invoice within five (5) months of the date of the final judgment approving the settlement.

Objection to the settlement

If you wish to object to the settlement, you can attend the hearing of [Date] at [time] in room [number] of the Montreal Court house located at 1 Notre-Dame Street East, Montréal, Quebec, H2Y 1B6, or via TEAMS, to explain why you disagree with the settlement.

Although it is not mandatory, you should complete the objection form and send it to Mtre. Joey Zukran of LPC Avocat Inc. no later than [date]. You can object without being represented by a lawyer. If you wish, you may also be represented by a lawyer at your own expense.

Exclusion from the class action

If you do not wish to be bound by the settlement, you must exclude yourself from the class action. If you exclude yourself, you will not be able to object to the settlement and you will not be entitled to any amount. You will have the right to take your own legal action against Bell at your own expense.

To exclude yourself, you must send a written request for exclusion to Mtre. Joey Zukran of LPC Avocat Inc. The form must be received no later than [date]. If you do not exclude yourself, you will be bound by the settlement.

To obtain more information

For more information or to obtain the full text of the settlement and the objection or exclusion forms, contact:

LPC Avocat Inc.
c/o Mtre. Joey Zukran
276 Saint-Jacques Street, Suite 801
Montreal, Quebec, H2Y 1N3
jzukran@lpclex.com

No other notices will be published or disseminated in connection with the settlement. In the event of any discrepancy between the content of this notice and that of the settlement, the text of the settlement will prevail. The publication of this notice was approved by the Court.

APPENDIX B

EXCLUSION FORM

Shay Abicidan v. Bell Canada
(500-06-000740-155)

I wish to exclude myself from the class action mentioned in the title and not be bound by the settlement reached in this class action.

By completing this form, I understand that:

- I will not receive any money under the settlement;
- To the extent that I wish to pursue my individual action against Bell Canada, I will have to do so at my own expense.

Personal information: (Attach a separate sheet if additional space is required)

Name:	Phone number:
Current address (civic number, street, apartment, city, province and postal code):	
Address appearing on your Bell invoice (civic number, street, apartment, city, province and postal code):	
9-digit Bell account number, if available (appears on your invoice):	

I therefore request to be excluded from the class action and the settlement

Signature:	Date: (dd/mm/yyyy)
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Send this exclusion form preferably by email, registered or certified mail to the following address:

LPC Avocat Inc.
c/o Mtre. Joey Zukran
276 Saint-Jacques Street, Suite 801
Montreal, Quebec, H2Y 1N3
jzukran@lpclex.com

The form must be received no later than [date]

APPENDIX C

FORM TO STATE YOUR REASONS TO OBJECT (optional)

Shay Abicidan v. Bell Canada
(500-06-000740-155)

Please use this form only if you wish to object to the settlement. Do not use this form if you wish to exclude yourself from the class action.

Personal information: (Attach a separate sheet if additional space is required)

Name:	Phone number:
Current address (civic number, street, apartment, city, province and postal code):	
Address appearing on your Bell invoice (civic number, street, apartment, city, province and postal code):	
9-digit Bell account number, if available (appears on your invoice):	

REASONS WHY YOU OBJECT [Please attach an additional page if this space is insufficient.]

Signature:	Date: (dd/mm/yyyy)
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We invite you to send this duly completed form no later than [Date] to the following address:

LPC Avocat Inc.
c/o Mtre. Joey Zukran
276 Saint-Jacques Street, Suite 801
Montreal, Quebec, H2Y 1N3
jzukran@lpclex.com