

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-000870-176

(Class Action)
SUPERIOR COURT

[...]

SHAY ABICIDAN

Applicant

-vs-

[...]

BANQUE DE MONTRÉAL

and

THE TORONTO-DOMINION BANK

and

**JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION**

and

ROYAL BANK OF CANADA

and

**CANADIAN IMPERIAL BANK OF
COMMERCE**

and

THE BANK OF NOVA SCOTIA

and

LAURENTIAN BANK OF CANADA

[...]

Defendants

2ND RE-AMENDED APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF[...]
(ARTICLES 571 AND FOLLOWING C.C.P.)

TO THE HONOURABLE PIERRE-C. GAGNON, J.C.S., ACTING AS THE DESIGNATED JUDGE IN THE PRESENT CASE, YOUR APPLICANT[...] STATES AS FOLLOWS:

I. GENERAL PRESENTATION

A) THE ACTION

1. to 4 [...];
5. [...] During the Class Period, all of the Defendants promote their credits cards by offering to waive the annual fee for the first year;
- 5.1 [...] The Defendants [...] are institutions within the meaning of article 1 of the Negative Option Billing Regulations, SOR/2012-23, (the “NOBR”) and fail to comply with the disclosure requirement provided for at section 8(2)(a) NOBR (save for BMO for a period) that provides as follows concerning promotional and introductory offers such as the “no annual fee for the first year” introductory offer in dispute in the present class action. The [...] failure of the Defendants is that they do not to send a “subsequent disclosure statement at least 30 days before the expiry of the promotional period” [...], which is required by law:
 - 8 (2)** If a person agrees to a promotional, preferential, introductory or special offer for an optional product or service, the institution must disclose to the person in a **subsequent disclosure statement**
 - (a)** not less than **30 days before the expiry** of an offer that comes to an end after a set period of time, the date on which the offer will come to an end and the charges that will be imposed for use of the product or service after that date;
- 5.2 Since the purpose of s. 8(2)(a) NOBR is for the Defendants to inform class members of certain information that the legislator considered important enough to create a law for, namely that their promotional offer is coming to an end, the date on which it ends and the charges that will be imposed, it follows that by omitting to send the disclosure containing this information to class members, the Defendants have inescapably violated s. 228 CPA (s. 216 CPA provides that a representation includes a behaviour or an omission, which is exactly what occurs here);
6. Consequently, Applicant[...] wishes to institute a class action on behalf of the

following class of which he is a member[...], namely:

Class:

All consumers who since July 4th, 2013 (the “**Class Period**”), were charged an annual fee for their credit card, which was preceded by a determined period during which the annual fee was either waived (free) or discounted and then automatically renewed for an indeterminate term at the regular price as of July 4th, 2013;

(hereinafter referred to as “**Class**”)

or any other Class to be determined by the Court;

II. THE DEFENDANTS AND THEIR CREDIT PRODUCTS IN DISPUTE [...]:

7. Defendants [...] Banque de Montréal (“**BMO**”), The Toronto-Dominion Bank (“**TD**”), JPMorgan Chase Bank National Association (“**Chase**”), Royal Bank of Canada (“**RBC**”), Canadian Imperial Bank of Commerce (“**CIBC**”), Bank of Nova Scotia (“**Scotia**”) [...] and the Laurentian Bank of Canada (“**Laurentian**”) are merchants carrying on in the financial services industry as credit card issuers, among the other services they provide. All have a principal establishment in the judicial district of Montreal, as it appears from extracts of the CIDREQ, disclosed *en liasse* as Applicant’s **Exhibit P-1**;
8. The Defendants are [...] “institutions” within the meaning of article 1 NOBR and must comply with its requirements;
9. Defendants’ online presence enables them to enter into distance contracts with Class members and thus carry on business in the province of Quebec;
10. Class members can also contract with the Defendants by other means, such as by telephone, in their banks or at their kiosks;
11. During the Class Period, [...] BMO, TD, Chase, RBC, CIBC, Scotia [...] and Laurentian have advertised and issued credit cards to Class members with an introductory offer whereby they offer their respective credit cards either free of charge or at a reduced-price for the first year (that is, they waived the annual fee or a portion thereof) and thereafter automatically charged Class members annual fees (i.e. the Regular Price) ranging from \$39 and up for each subsequent year (unless the Class member called in to cancel or “downgrade” to an option with no annual fees as explained at paragraph 21.7 below);
12. [...];
13. For the **BMO**, Applicant[...] has identified the following credit card offering the first year free of charge and then automatically charging an annual fee for an

indeterminate term, as it appears from **Exhibit P-3**:

- a) *BMO World Elite MasterCard* (\$150 per year);
14. For the **TD**, Applicant[...] has identified the following credit cards offering the first year free of charge and then automatically charging an annual fee for an indeterminate term, as it appears *en liasse* from **Exhibit P-4**:
- a) *TD Aeroplan Visa Infinite Card* (\$120 per year);
 - b) *MBNA Rewards World Elite MasterCard* at \$89 per year (MBNA is a division of the TD and the MBNA trademark is property of the TD);
15. For the **RBC**, Applicant[...] has identified the following credit card offering the first year free of charge and then automatically charging an annual fee for an indeterminate term, as it appears from **Exhibit P-5**:
- a) *RBC Visa Infinite Avion Card* (\$120 per year);
16. For the **CIBC**, Applicant[...] has identified the following credit cards offering the first year free of charge and then automatically charging an annual fee for an indeterminate term, as it appears from the CIBC document titled “*20,000 Bonus Aventura Points/Aeroplan Miles and Annual Fee Rebate Offer* (January 1st to March 31st, 2014)” and screen captures from the CIBC website, disclosed *en liasse* as **Exhibit P-6**:
- a) *CIBC Aerogold Visa Infinite* (\$120 per year);
 - b) *CIBC Aerogold Visa Card* (\$120 per year);
 - c) *CIBC Aventura Visa Infinite Card* (\$120 per year);
 - d) *CIBC Aventura Gold Visa Card* (\$120 per year);
 - e) *CIBC Dividend Visa Infinite Card* (\$99 per year);
 - f) *CIBC Dividend Platinum Visa Card* (\$99 per year);
17. For **Scotia**, Applicant[...] has identified the following credit cards offering the first year free of charge and then automatically charging an annual fee for an indeterminate term, as it appears *en liasse* from **Exhibit P-7**:
- a) *Scotia Momentum Visa Infinite Card* (\$99 per year);
 - b) *Scotiabank Gold American Express Card* (\$99 per year);
 - c) *Scotiabank American Express Card* (\$39 per year);
 - d) *Scotiabank GM Visa Infinite Card* (\$79 per year);

18. For **Laurentian**, Applicant[...] has identified the following credit cards offering the first year free of charge and then automatically charging an annual fee for an indeterminate term, as it appears *en liasse* from **Exhibit P-8**:
 - a) *Laurentian Bank Visa Infinite* (\$130 per year);
 - b) *Visa EXPLORE* (\$110 per year);
 - c) *Visa DOLLARS* (\$65 per year);
19. For **Chase**, Applicant[...] has identified the following credit card offering the first year free of charge and then automatically charging an annual fee for an indeterminate term, as it appears from **Exhibit P-9**:
 - a) *Marriott Rewards Premier Visa* (\$120 per year); Chase mentions that the credit card will be charged annually thereafter, whether Class members activated it or not;
20. [...];
21. All of the Defendants entice Class members to contract with them by providing their credit cards free of charge for a Fixed Period (generally for the first year), but then automatically start charging Class members the Regular Price (without sending them the information required under s. 8(2)(a) NOBR) if the Class members didn't take steps to either renegotiate or cancel their contracts;

III. THE [...] DEFENDANTS' [...] VIOLATIONS OF s. 8(2)(a) NOBR;

- 21.1 [...] None of the Defendants (save for BMO for a period of time as of 2016) sent Class members a subsequent disclosure statement at least 30 days before the expiry of the promotional period (which is a fixed 1 year period), disclosing the date on which the free offer (i.e. no annual fee) will come to an end and the charges that will be imposed for use of the credit card (i.e. the annual fee) after that date. A copy of the BMO's disclosure statement is disclosed herewith as **Exhibit P-14** (Applicant[...] cannot confirm whether BMO only started sending these statements after the initial class action application making these allegations was filed on July 4, 2016);
- 21.2 The Defendants [...] will try to argue that s. 8(2)(a) does not apply because the annual fees they charge after the introductory offer period are not on account of an "*optional product or service*" as defined in s. 1 NOBR;
- 21.3 The Applicant's position – supported by objective evidence provided by the Defendants' representatives themselves – is that the additional "perks" or services (such as travel insurance, automobile insurance and extended insurance on purchases to name a few) that he and class members receive in

exchange for the annual fees they pay to the Defendants can only be qualified in fact and in law as “optional”;

- 21.4 First, it is important to properly qualify the “primary financial product or service” offered by Defendants to Class members as “*an open credit contract*” or “*credit card contract*” as defined in section 118 of the *Consumer Protection Act* (the second paragraph of this section provides that “*Open credit contracts include credit card contracts*”);
- 21.5 Second, the reason that these annual fees can only be qualified as “optional” is because, at any time, Class members can “downgrade” from the *credit card contract* (that is accessible to them by way of a plastic card with a catchy name such as “*gold*”, “*elite*” or “*infinite*” to name a few) where the Defendants are charging them annual fees and can opt for another plastic card – with a less catchy name – but for the **exact same credit card contract** and that has no annual fees;
- 21.6 Since the primary financial product or service is the *credit card contract*, it follows that any other products or services from which Class members have the option to opt-out from (all the while continuing to use the same *credit card contract*) can only be qualified as optional and covered by s. 8(2)(a) NOBR;
- 21.7 To demonstrate that his legal syllogism applies to each Defendant [...], on January 23rd and 29th, 2020, the [...]Applicant recorded his phone calls with the customer service centres for the Defendants listed in the chart below (as well as Amex who is no longer a Defendant for the reason explained below):

Defendant	Date	Transcript
CIBC	January 23, 2020	Exhibit P-19;
BMO	January 29, 2020	Exhibit P-20;
RBC	January 29, 2020	Exhibit P-21;
TD	January 29, 2020	Exhibit P-22;
SCOTIA	January 29, 2020	Exhibit P-23;
LAURENTIAN	January 29, 2020	Exhibit P-24;
AMEX	January 29, 2020	Exhibit P-25;

- 21.8 As it appears from the transcripts of these recordings [...] all of the “institution” Defendants (save for Amex and Chase, the latter who appears to have recently ceased its operations in Canada) confirmed that:
- a) Class members can “downgrade” at any time from a credit card with an annual fee to a credit card with no annual fee;
 - b) Class members **do not** have to go through a credit application in order to “downgrade” to this credit card with no annual fee;

- c) the credit limit of the Class members would remain the exact same after the “downgrade” to a credit card with no annual fee; and
- d) the representative of the Laurentian expressly referred to the different types of credits cards as “options” (that have advantages such as “insurance” – which are part of the annual fees that Class members pay for and which are being claimed back by Class members when s. 8(2)(a) is not complied with by Defendants).

21.9 The four points above are pertinent because of sections 119.1, 120 and especially 121 CPA which provide:

119.1. A credit card application form or the accompanying documents must contain or state the following:

...

120. No person may issue or send a credit card to a consumer unless the consumer has **applied for it in writing**.

121. Section 120 does not apply to the renewal or replacement, **on the same conditions**, of a credit card which the consumer has applied for or used...

21.10 By not requiring Class members to make an application to “downgrade” or opt for a credit card with no annual fees, all of the “institution” Defendants (save for Amex) recognize that the “downgrade” is for the **same credit card contract** and on the same conditions (and, if fact, all that the banks are doing is replacing the “wrapping paper” on the physical plastic card – with the *catchy* brand name – for another “wrapping paper” and plastic card that gives access to the **same credit card contract**, only without the options – including insurance – that come with paying the annual fee);

21.11 In light of the above, the “institution” Defendants had a legal obligation to send the disclosure statement provided for by s. 8(2)(a) and committed a fault by not doing so (save for the BMO for at least a portion of the Class Period);

21.12 The Applicant[...] consents in advance to the “institution” Defendants adducing evidence proving that the disclosures (similar to the BMO’s in Exhibit P-14 as of September 2016) were sent in compliance with s. 8(2)(a) during the entire class period [...];

IV. [...] THE DEFENDANTS’ VIOLATIONS OF S. 228 CPA

22. [...] Since they omitted to send the important information required in the disclosure statement, the Defendants have violated s. 228 CPA by failing to mention several important facts to class members before they were charged the annual fee;

23. [...] This “omission” to provide important information (including that the promotion will be coming to an end and the price that the class members will be charged for future use) is contemplated by s. 216 CPA;
24. As a result of the foregoing, the Applicant[...] and Class members are justified in claiming compensatory damages, as well as punitive damages based on repeated violations of [...] section 228 CPA pursuant to section 272 CPA and damages against the “institution” Defendants for non-conformity with s. 8(2)(a) NOBR pursuant to articles 1434 and 1458 C.C.Q.;

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

A) THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT

[...]

25. to 57 [...];

[...]Applicant’s direct cause of action against CIBC

- 57.1 In December 2016, Mr. Abicidan applied for *an open credit contract* (i.e. a *credit card contract* as defined at s. 118 CPA) and was issued the *CIBC Aventura Visa Infinite Card* by Defendant CIBC;
- 57.2 The CIBC was offering an introductory promotional offer at the time of Mr. Abicidan’s application;
- 57.3 The CIBC’s introductory promotional offer was that if a person agreed to a *credit card contract*, the CIBC would waive the annual fee of \$120.00 that it charges for the options that it gives people who choose to pay for its *CIBC Aventura Visa Infinite Card* (as opposed to people who agree to a *credit card contract* and choose a card that does not have any annual fees and comes with less or no options, such as the *CIBC Dividend Visa Card*);
- 57.4 The CIBC waived the annual fee of \$120.00 for Mr. Abicidan’s *CIBC Aventura Visa Infinite Card*, as it appears from a copy of his December Statement disclosed as **Exhibit P-26**;
- 57.5 The options that come with the *CIBC Aventura Visa Infinite Card* for an annual fee of \$120.00 include what the CIBC advertises as “*Valuable insurance included with your card*”, notably the following types of insurance, as it appears from a screen capture of CIBC’s website as of January 30, 2020, **Exhibit P-27**:
 - a) Out-of-Province Emergency Travel Medical Insurance;

- b) Flight Delay and Baggage Insurance;
- c) Trip Cancellation and Trip Interruption Insurance;
- d) Auto Rental Collision and Loss Damage Insurance;
- e) \$500,000 Common Carrier Accident Insurance;
- f) Purchase Security and Extended Protection Insurance;
- g) Hotel Burglary Insurance; and
- h) Mobile Device Insurance.

57.6 The inclusion of such a menu of different types of insurance received in consideration of the annual fee of \$120.00 is relevant because the Financial Consumer Agency of Canada gives only some types of insurance as examples of “optional product or service”, Applicants disclosing the Government of Canada’s webpage titled “*Giving your express consent for financial products and services*”, as **Exhibit P-28** (all of the Defendants offer similar types of insurance on account of the annual fees they charge and the Applicants consent in advance to the Defendants adducing into evidence all of the “perks” that come with paying the annual fees);

57.7 The CIBC never sent Mr. Abicidan a subsequent disclosure statement at least 30 days before the expiry of the one-year promotional period disclosing the date on which the free offer (i.e. no annual fee) will come to an end and the charges that will be imposed for use of the *CIBC Aventura Visa Infinite Card* after that date (such as the one the BMO sends since at least September 2016, **Exhibit P-14**), in violation of s. 8(2)(a) NOBR and section 228 CPA;

57.8 We reemphasize that the annual fee of \$120.00 is optional because it is not charged on account of Mr. Abicidan’s *credit card contract*, rather for options – including eight (8) different types of insurances – that come with a plastic card labelled “*CIBC Aventura Visa Infinite Card*”. Indeed, his phone conversation with the CIBC (**Exhibit P-19**) confirms that the CIBC would not charge Mr. Abicidan anything at all for the **exact same and existing credit card contract** (i.e. primary product or service) if he chose the option of having another plastic card labelled the “*Classic Dividend Card*”, for instance;

57.9 On December 22nd, 2017, the CIBC charged Mr. Abicidan \$120.00 for the “annual fee”, despite never sending him the disclosure required under s. 8(2)(a) NOBR until this day (which is also a failure to provide important information pursuant to s. 228 CPA);

57.10 To date, the CIBC has charged Mr. Abicidan the amount of \$360.00 (\$120.00 x 3 years) on account of annual fees for the option (i.e. choosing the *CIBC Aventura*

Visa Infinite Card as opposed to the *Classic Dividend Card*) that is available with his *credit credit contract*;

- 57.11 Therefore, until such time that the CIBC remedies its breach for subsequent years by sending the disclosure, Mr. Abicidan is entitled to claim a reimbursement of \$120.00 per year for past years pursuant to articles 1434 and 1458 C.C.Q., as well as ss. 228 and 272 CPA;
- 57.12 [...] Additionally, Mr. Abicidan is entitled to claim punitive damages in amount to be determined pursuant to s. 272 CPA, since the CIBC violated s. 228 CPA by failing to inform Mr. Abicidan of several important facts prior to charging him (i.e. the information that the CIBC is required by federal law to send him, namely a reminder at least 30 days before the end of the promotional period that the promotional period is coming to an end, that he will be charged at that time and how much he will be charged);

B) THE CLAIMS OF THE MEMBERS OF THE CLASS RAISE IDENTICAL, SIMILAR OR RELATED ISSUES OF LAW OR FACT:

58. All Class members, regardless of which of the Defendants they contracted with, have a common interest both in proving the commission of a prohibited businesses practice ([...] non-compliance with s. 8(2)(a) NOBR [...] and s. 228 CPA) by all of the Defendants and in maximizing the aggregate of the amounts unlawfully charged to them by Defendants;
59. The nature of the interest necessary to establish the standing of the Applicant[...] must be viewed from the perspective of the common interest of the proposed Class and not solely from the perspective of the representative plaintiff[...];
60. In this case, the legal and factual backgrounds at issue are common to all the members of the Class, namely whether the Defendants [...] fail to comply with s. 8(2)(a) NOBR[...] and s. 228 CPA;
61. The claims of every member of the Class are founded on very similar facts to the [...] Applicant's claim against CIBC;
62. Requiring a separate class action against each Defendant based on very similar questions of fact and identical questions of law would be a waste of resources;
63. Every member of the Class applied for and received a credit card free of charge (i.e. the annual fee waived) for a Fixed Period from one of the Defendants and was required to advise one of the Defendants at the end of the Fixed Period that they did not wish to pay the Regular Price (they were automatically charged the Regular Price each year by the Defendants if they failed to advise them) and did not receive the disclosure pursuant to s. 8(2)(a) from one of the "institution" Defendants;
64. The same legal issues are present in the action of each Class member against

each Defendant (each Defendant faces more or less the same issues regarding the interpretation and application of [...] s. 8(2)(a));

65. By reason of Defendants' unlawful conduct, Applicant[...] and members of the Class have suffered damages, which they may collectively claim against the Defendants;
66. Although the Applicant[...] does not have a personal cause of action against, or a legal relationship with, each of the Defendants, the Class contains enough members with personal causes of action against each Defendant;
67. The facts and legal issues of the present action support a proportional approach to class action standing that economizes judicial resources and enhances access to justice;
68. Every member of the Class has suffered damages equivalent to the Regular Price charged by Defendants after the Fixed Period during which Defendants initially offered their services free of charge (as well as the interest on these amounts) [...];
69. The questions of fact and law raised and the recourse sought by this Application are identical with respect to each member of the Class;
70. In taking the foregoing into account, all members of the Class are justified in claiming the sums which they unlawfully overpaid to Defendants, as well as punitive damages pursuant to section 272 CPA;
71. Each Class member is justified in claiming at least one or more of the following as damages:
 - Overpayment of the fees which were automatically charged each year by Defendants at the Regular Price after the Fixed Period; and
 - Punitive damages;
72. All of the damages to the Class members are a direct and proximate result of the Defendants' misconduct;
73. Individual questions, if any, pale by comparison to the numerous common questions that are significant to the outcome of the present Application;
74. The damages sustained by the Class members flow, in each instance, from a common nucleus of operative facts, namely, Defendants' requirement that Class members advise them that they do not wish to pay the Regular Price (instead of the inverse), and if Class members do not advise, Defendants automatically and unlawfully charge them at the Regular Price after the Fixed Period ([...] i.e. without sending the disclosure under s. 8(2)(a) or the important information required under s. 228 CPA);

75. **The recourses of the Class members raise identical, similar or related questions of fact or law, namely:**
- a) Do the [...] Defendants violate s. 8(2)(a) of the *Negative Option Billing Regulations*, SOR/2012-23, and, if so, are Class members entitled to damages?
 - b) [...] Do the Defendants violate s. 228 CPA, and, if so, are Class members entitled to damages and/or punitive damages?
 - c) [...];
 - d) [...];
 - e) [(... relocated to question a)]

C) THE COMPOSITION OF THE CLASS

76. The composition of the Class 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;
77. Combined, the Defendants undoubtedly have issued hundreds of thousands of credit cards and other financial products to Class members across the province of Quebec using the contested practice;
78. The number of persons included in the Class is likely in the hundreds of thousands in the province of Quebec (many members may have claims against multiple Defendants and for multiple services);
79. The names and addresses of all persons included in the Class are not known to the Applicant[...], however, are in the possession of the Defendants;
80. Moreover, the information concerning the other types of credit cards and services offered by Defendants by means of the contested practice during the Class Period (which would help identify other Class members) are not all known to Applicant[...], however, is in the possession of the Defendants;
81. Class members are very numerous and are dispersed across the province, across Canada and elsewhere;
82. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Class member to obtain mandates and to join them in one action;
83. In these circumstances, a class action is the only appropriate procedure for all of the members of the Class to effectively pursue their respective rights and have access to justice without overburdening the court system;

D) THE CLASS MEMBER[...] REQUESTING TO BE APPOINTED AS REPRESENTATIVE PLAINTIFF[...] IS IN A POSITION TO PROPERLY REPRESENT THE CLASS MEMBERS

84. Applicant[...] requests that he be appointed the status of representative plaintiff[...];
85. Applicant[...] is a member[...] of the Class [...];
86. to 88.3 [...];
89. Applicant[...] also spoke to friends and realized that others encountered similar experiences with banks (that is that they too were automatically charged the Regular Price after the promotional period, and that they never received the disclosure required under s. 8(2)(a) NOBR);
90. Applicant was initially under the impression that this is how things were done in the banking industry and that this is how banks compete against each other in order to promote their credit cards and other financial services in order to gain market share;
91. For instance, [...] the Applicant learnt that at the Montreal airport on October 29, 2018, [...] the CIBC had a banner advertising a credit card with “*Aucuns frais annuels la 1^{ere} année*” followed by “*Inscrivez-vous dès maintenant et obtenez 15 000 points Aventura*”. [...] The Applicant realizes that this type of promotional offer is likely an effective tactic because consumers are naturally inclined to accept what will initially cost them less, without necessarily considering the future costs [...];
92. to 94 [...];
95. As for identifying other Class members, Applicant[...] draws certain inferences from the situation, and this based on the number of previous and current *Annual fee waived for the first year* promotions that he has seen being marketed by the Defendants. Applicant[...] realizes that by all accounts, there is a very important number of consumers that find themselves in an identical situation, and that it would not be useful for him to attempt to identify them given their sheer number;
96. Applicant[...] feels that Defendants should be held accountable for their misconduct and is continuing this action so that he and the Class members can recover sums overpaid after the promotional Period;
97. Applicant is ready and available to manage and direct the present action in the interest of the members of the Class 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 Class, as well as to dedicate the time necessary for the present action and to collaborate with his attorneys;

98. Applicant[...] has given the mandate to his attorney to obtain all relevant information with respect to the present action and intends to continue to keep informed of all developments;
99. Applicant[...] has the capacity and interest to fairly and adequately protect and represent the interest of the Class members;
100. Applicant[...], with the assistance of his attorney, is ready and available to dedicate the time necessary for this action and to collaborate with other Class members and to keep them informed;
101. Applicant[...] is available on social media to inform and to respond to Class members on platforms such as Facebook;
102. Applicant[...] is in good faith and continues this action for the sole purpose of having his rights, as well as the rights of other Class members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of Defendants' misconduct;
103. Applicant[...] has read the present Application prior to its court filing and reviewed the exhibits in support thereof;
104. Applicant[...] understands the nature of the action;
105. Applicant's interests are not antagonistic to those of other members of the Class;
106. Applicant's interest and competence are such that the present class action could proceed fairly;

VI. DAMAGES

107. During the Class Period, it is reasonable to estimate that the Defendants have generated aggregate amounts in the millions of dollars while engaging in the contested practice;
108. All of the Defendants' misconduct is [...] to the detriment of vulnerable [...] consumers;
109. All of the Defendants must be held accountable for the breach of obligations imposed on them by consumer protection legislation in Quebec, including;
 - a) Quebec's *Consumer Protection Act*, notably sections 215, 216, 228 [...], 261, 262 and 272 CPA; and
 - b) Section 8(2)(a) NOBR [...].
110. In light of the foregoing, the following damages may be claimed against the Defendants:

- a) compensatory damages, in an amount to be determined, on account of the damages suffered; and
- b) punitive damages, in an amount to be determined, for the breach of obligations imposed on Defendants pursuant to section 272 CPA;

VII. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

- 111. The action that the Applicant[...] wishes to institute on behalf of the members of the Class is an action in damages;
- 112. The conclusions that the Applicant[...] wishes to introduce by way of an originating application are:

GRANT Plaintiff's action against Defendants on behalf of all the Class members;

[...]

CONDEMN the Defendant CIBC to pay Plaintiff Shay Abicidan \$360.00 in compensation of the damages suffered;

CONDEMN the Defendants to pay to each of the Class members a sum to be determined in compensation of the damages suffered, and **ORDER** collective recovery of these sums;

CONDEMN the Defendants to pay to each of the Class members punitive damages, in an amount to be determined, and **ORDER** collective recovery of these sums;

CONDEMN the Defendants to pay interest and the additional indemnity on the above sums according to law since July 4th, 2016;

ORDER the Defendants 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 Class 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;

- 113. The interests of justice favour that this Application be granted in accordance with its conclusions;

VIII. JURISDICTION

114. The Applicant[...] suggests that this class action be exercised before the Superior Court of the province of Quebec, in the district of Montreal because he is a consumer[...] and resides in Montreal.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present application;

AUTHORIZE the bringing of a class action in the form of an originating application in damages;

APPOINT the Applicant the status of representative plaintiff of the persons included in the Class herein described as:

Class:

All consumers who since July 4th, 2013 (the “**Class Period**”), were charged an annual fee for their credit card, which was preceded by a determined period during which the annual fee was either waived (free) or discounted and then automatically renewed for an indeterminate term at the regular price as of July 4th, 2013;

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

or any other Class to be determined by the Court;

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

- a) Do the [...] Defendants violate s. 8(2)(a) of the Negative Option Billing Regulations, SOR/2012-23, and, if so, are Class members entitled to damages?
- b) Do the Defendants violate s. 228 CPA, and, if so, are Class members entitled to damages and/or punitive damages?
- c) [...];
- d) [...];
- e) [(... relocated to question a)]

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

GRANT Plaintiff's action against Defendants on behalf of all the Class

members;

[...]

CONDEMN the Defendant CIBC to pay Plaintiff Shay Abicidan \$360.00 in compensation of the damages suffered;

CONDEMN the Defendants to pay to each of the Class members a sum to be determined in compensation of the damages suffered, and **ORDER** collective recovery of these sums;

CONDEMN the Defendants to pay to each of the Class members punitive damages, in an amount to be determined, and **ORDER** collective recovery of these sums;

CONDEMN the Defendants to pay interest and the additional indemnity on the above sums according to law since July 4th, 2016;

ORDER the Defendants 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 Class 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 Class 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 Class 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 Class 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 LA PRESSE and the MONTREAL GAZETTE;

ORDER that said notice be published on the Defendants' various websites,

Facebook pages and Twitter accounts, in a conspicuous place, with a link stating “Notice to Quebec Consumers”;

ORDER the Defendants to send an Abbreviated Notice by e-mail to each Class 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 publication fees.

Montréal, June 15, 2020

(s) Joey Zukran

LPC AVOCAT INC.

Per: Me Joey Zukran

Attorney for Applicant

500-06-000870-176

(Class Actions)
SUPERIOR COURT
DISTRICT OF MONTRÉAL

SHAY ABICIDAN

Applicant

v.

CANADIAN IMPERIAL BANK OF COMMERCE
ET ALS

Defendants

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

ORIGINAL

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