

C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF SAINT-FRANÇOIS

(Class Action)
SUPERIOR COURT

NO: 450-06-000001-176

CAROLE [REDACTED]
[REDACTED]

Applicant

-vs-

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

Defendant

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 JUSTICE SYLVAIN PROVENCHER, J.C.S, DESIGNATED TO HEAR THE PRESENT CLASS ACTION, YOUR APPLICANT STATES AS FOLLOWS:

I. GENERAL PRESENTATION

1. This class action seeks the reimbursement of the amounts that the Class members disbursed to accept collect calls processed and/or connected by the Defendant (hereinafter "**Bell Canada**") that were not precisely indicated in the contract or disclosed prior to their acceptance of a collect call, in violation of consumer protection legislation and Canada's *Competition Act*, as well as punitive damages for the exploitation of consumers;
2. Bell Canada is a merchant carrying on in the business of diverse telecommunications services, as it appears from an extract of the Quebec enterprise's information statement from the enterprise register (CIDREQ), Applicant disclosing **Exhibit P-1**;
3. Applicant is a consumer as defined in Quebec's *Consumer Protection Act* (hereinafter the "**CPA**");

4. On its website, Bell Canada defines a collect call (*un appel à frais virés* in French) as “*The person receiving the call is billed instead of the person making the call*”, Applicant disclosing an excerpt of Bell Canada’s website titled “*How to make a collect call and how much does it cost*” as **Exhibit P-2**;
5. During the Class period Bell Canada never disclosed the rates in the contracts it entered into with Class members, in violation of section 12 of the *CPA*, nor did it mention an important fact (i.e. the price), in violation of section 228 CPA, as well as in violation of the general obligation to inform as recognized by the Supreme Court of Canada. Bell Canada’s conduct, as demonstrated herein, is also in bad faith and contrary to articles 6, 7 and 1375 C.C.Q;
- 5.1 For example, an audio recording of a collect call processed by Bell Canada on June 28, 2021, placed within the island of Montreal, leaves no doubt that Bell Canada fails in its duty to disclose important information, including the price as required by law, Applicant disclosing the audio recording and a transcript thereof as Exhibit P-6, which includes the following exchange:

Bell Operator: Hello, this is the operator. I’ve got Sandy on the other line, she wishes to make a collect call – do you accept the charges?

Receiver: Sorry. Charges for what?

Bell Operator: Collect call...

Receiver: OK. What are the charges?

Bell Operator: For a collect call...

Receiver: OK, but how much are the charges? What are these charges?

Bell Operator: I don’t have any information how much ma’am, this is for a collect call. This is the operator...

- 5.2 It appears that: (i) Bell Canada does not provide its own operators with the pricing information for collect calls, and (ii) Bell Canada’s operators do not even know where to find the information about these costs. It is therefore unreasonable for Bell Canada to expect the Applicant and the class members to find or to be aware of this information **before** accepting a collect call;
- 5.3 Another example of Bell Canada’s own operators being uninformed of the collect call rates is evidenced in an audio recording of a collect call processed by Bell Canada on June 29, 2021, placed within the island of Montreal, which includes the following exchange, as it appears from a copy of the recording and the transcript thereof disclosed as **Exhibit P-7**:

Bell Operator: This is the operator. I have Sandy on the other line, she wishes to place a collect call to your number – do you accept the charges?

Receiver: What are the charges?

Bell Operator: Um, for collect calls, for a collect call.

Receiver: But how much am I going to be charged?

Bell Operator: For collect calls it should be just, um, regular rate.

Receiver: And do you know what are the regular rates?

Bell Operator: Just a moment [pause]. One moment [pause]. One moment [long pause]. **I am not getting any information – it just says here zero...**

- 5.4 The reason why the recordings in Exhibits P-6 and P-7 are relevant is because in his affidavit (at para. 33), Bell Canada’s representative, Normand Caron, states that the collect call rates are indicated on the Applicant’s invoices and available on Bell Canada’s website. His suggestion is that they are easy to find. It follows that if Bell Canada’s own operators do not know and cannot find the rates – even after searching – then one cannot accept the proposition that the average person should have this knowledge. Additionally, indicating a price on an invoice *ex post facto* does not exonerate Bell Canada from its obligation to disclose *ex ante*. Finally, it is impossible for the Applicant or the class members to know the rates because they are never the same and always vary from one call to the other, even when they are of the same duration;
6. Applicant also invokes section 8 of the *CPA* on behalf of Class members residing in Quebec, because the fees charged by Bell Canada for collect calls during the class period are disproportionate, exploitative and abusive, and bear no relation to the underlying cost of completing collect calls;
7. Moreover, Applicant alleges on behalf of Class members residing in all other Canadian provinces that Bell Canada’s misconduct is unconscionable (as the term is defined in the various consumer protection legislation listed at paragraph 76 below) and is also a breach of section 52 of Canada’s *Competition Act*;
8. It is safe for Applicant to assume that Bell Canada has generated tens of millions of dollars during the Class period from collect calls completed across Canada, as it appears from the relevant pages of the response to an access to information request dated March 3, 2021 disclosed as **Exhibit P-8** (pages 52 to 57 of the PDF document contain charts showing how much revenue Bell Canada generated from collect calls originating from Quebec penitentiaries and jails);

9. Consequently, Applicant wishes to institute a class action on behalf of the following classes of which she is a member, namely:

Class:

All natural and legal persons in Canada who received a collect call processed by Bell Canada since September 25th, 2014;

Toutes les personnes physiques et morales au Canada qui ont reçu un appel à frais virés traité par Bell Canada depuis le 25 septembre 2014;

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

Subclass:

All natural and legal persons in Canada who, since September 25th, 2014, received a collect call processed by Bell Canada and were charged an amount greater than \$1.00;

Toutes les personnes physiques et morales au Canada qui ont reçu un appel à frais virés traité par Bell Canada depuis le 25 septembre 2014 et qui ont payé plus que 1.00 \$ pour cet appel à frais virés;

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

or any other Class to be determined by the Court;

II. JURISDICTION

10. The Applicant suggests that this class action be exercised before the Superior Court of the province of Quebec, in the district of Saint-François, for the following reason:
- a) The Applicant is a consumer and has her domicile and residence in the judicial district of Saint-François;

III. NATIONAL CLASS

11. The Applicant wishes to represent a national class before the Superior Court of the province of Quebec (subsidiarily a provincial class), for the following reasons:
- a) Bell Canada has its domicile in Quebec, Exhibit P-1;
- b) Quebec’s Court of Appeal has already authorized a multi-jurisdictional class action against Bell Canada concerning consumer protection;

- c) The various provincial consumer protection legislation across Canada do not involve significant divergences from one to the other concerning the alleged misconduct.

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

A) THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT

Applicant's Claim against Bell Canada under ss. 12 and 228 CPA

12. Applicant's son has been in prison on several occasions during the Class period;
13. Applicant has been receiving collect calls from her son, who calls her collect from prison using Bell Canada's payphones;
14. Applicant is never aware of the exact cost of a collect call she receives from her son, because it is never mentioned or disclosed to her by Bell Canada;
15. The only Interactive Voice Response (hereinafter "IVR") that Bell Canada plays to Applicant (and Class members) before she accepts a collect call consist of the following offer:
- « -Vous avez un appel à frais virés de [name of caller].
- Pour accepter les frais, veuillez appuyer sur le "1" maintenant.
- Pour les refuser, appuyez sur le 2, ou répondez seulement par oui ou non à la question suivante : « acceptez-vous les frais ? »
16. The contract for the service of receiving a collect call is formed between Bell Canada and Applicant when Applicant presses 1 or says "yes" to accept the call;
17. At no time does Bell Canada precisely indicate the rates to the Applicant for accepting the collect call. Consequently, Bell Canada cannot claim any costs from the Applicant because sections 12 and 228 of the CPA provide as follows:
- 12.** No costs may be claimed from a consumer unless the amount thereof is precisely indicated in the contract.
- 228.** No merchant, manufacturer or advertiser may fail to mention an important fact in any representation made to a consumer.
18. Even if Applicant visited Bell Canada's website, Exhibit P-2, which she never did, Bell Canada does not even disclose the precise rates for the collect calls on its

website (which, in any event, is not the contract);

19. And yet, in the only three months of recent billing cycles alone (May, July and September 2017), Bell Canada has unlawfully charged Applicant the following amounts for “long-distance” collect calls (all calls were placed within Quebec, i.e. from Montreal or Trois-Rivières to Richmond), as it appears from Applicant’s Bell Canada invoices disclosed *en liasse* as **Exhibit P-3**:

Invoice Date	Amount for Collect Calls	Call Duration (minutes)
May 3, 2017	\$14.52	14
May 3, 2017	\$4.22	2
May 3, 2017	\$15.38	15
May 3, 2017	\$11.08	10
July 3, 2017	\$5.53	3
July 3, 2017	\$9.37	8
July 3, 2017	\$18.66	16
July 3, 2017	\$3.51	1
July 3, 2017	\$12.60	10
July 3, 2017	\$21.69	19
Sept. 3, 2017	\$17.95	18
Sept. 3, 2017	\$23.10	24
TOTAL:	\$157.61	140 minutes

- 19.1 The long-distance rates charged by Bell Canada are not regulated by the CRTC and Bell Canada appears to charge Class and Subclass members whatever they see fit;
- 19.2 In his affidavit sworn on January 7, 2021, Bell Canada’s representative admits at paragraph 9 that « Le tarif des appels à frais virés locaux est réglément par le Conseil de la radiodiffusion et des télécommunications canadiennes (« CRTC ») à 1,00 \$ par appel... ». Of note is that nowhere in paragraphs 10 to 19, under the heading « **Le service d’appel à frais virés offert aux détenus des établissements carcéraux** », does Mr. Caron declare that Bell Canada discloses the rate for a collect call to the recipient before they accept the call. Nor does Mr. Caron contradict the Applicant’s paragraph 15 above;
- 19.3 Therefore, Bell Canada failed in its duty to disclose the price for every single collect call accepted by the Applicant and by all Class Members. It also failed in its duty to act in good faith, as the same problem alleged since the initial filing on September 25, 2017 is ongoing (see paras. 5.1 to 5.3 for examples);
- 19.4 The fact that the price for “local” collect calls are regulated at \$1.00 per call does not release Bell Canada from its statutory obligation under sections 12 and 228

CPA to disclose the price to the recipient prior to acceptance. Additionally, the parties to a consumer contract cannot derogate from the requirements of the CPA (s. 261 and 262 CPA);

- 19.5 Mr. Caron also filed as Annexe NC-I all of the Applicant's invoices from November 2014 to September 2018. With the information contained in Annexe NC-I, the Applicant communicates herewith as **Exhibit P-9** a chart of all the collect calls she received during the Class Period for which Bell Canada did not disclose the price prior to her acceptance. Bell Canada charged the Applicant a total of **\$767.56 for 54 collect calls** (all within the province of Quebec, i.e. from Montreal or Trois-Rivières to Richmond) that were for a combined duration of **689 minutes**. Bell Canada charged the Applicant \$101.00 for 101 "local" collect calls within the province of Quebec;
- 19.6 There is no way for the Applicant to know the price for a given call because: (i) Bell Canada's operators do not even know this information; and (ii) the price varies significantly even for a call of the same duration (for example, Exhibit P-9 shows that the Applicant was charged the following varying amounts for a nine (9) minute call: \$10.23, \$11.07, \$11.59 and \$12.58);
- 19.7 Notwithstanding the preceding paragraphs, as it concerns the issue of Bell Canada's duty to inform under the CPA, the Court of Appeal held that the answer cannot be nuanced or deferred from one consumer to another: either Bell Canada complies with the law or not, as the fault Bell Canada's is accused of here is objective and statutory (*Apple Canada inc. c. Badaoui*, 2021 QCCA 432, par. 45);
- 19.8 Given that Bell Canada failed in its strict obligation under s. 12 CPA to disclose the price, the consequence of a violation of this provision is that these amounts could have never been charged and that the Applicant is entitled to compensatory damages in the amount of the \$868.56 plus TPS/TVQ that she paid to Bell Canada;

Applicant's Claim against Bell Canada under s. 8 CPA & art. 1437 CCQ

20. Applicant further and subsidiarily alleges that the costs claimed by Bell Canada for these collect calls contravene section 8 of the CPA and article 1437 of the *Civil Code of Québec* ("**CCQ**"), which provide as follows:

S. 8 CPA: The consumer may demand the nullity of a contract or a reduction in his obligations thereunder where the disproportion between the respective obligations of the parties is so great as to amount to exploitation of the consumer or where the obligation of the consumer is excessive, harsh or unconscionable.

Art. 1437 CCQ: An abusive clause in a consumer contract or contract of adhesion is null, or the obligation arising from it

may be reduced.

An abusive clause is a clause which is excessively and unreasonably detrimental to the consumer or the adhering party and is therefore not in good faith; in particular, a clause which so departs from the fundamental obligations arising from the rules normally governing the contract that it changes the nature of the contract is an abusive clause.

21. Applicant suffered objective lesion by paying Bell Canada \$767.56 (before taxes) for 54 collect calls, all of which were made and received within the province of Quebec and for which Bell Canada's wholesale cost is likely a few cents;
- 21.1 As a comparative example, the Applicant refers to the contract signed between Synergy Inmate Phone Solutions Inc. ("Synergy") and Her Majesty the Queen in March of 2020, disclosed as Exhibit P-10. Synergy recently replaced Bell Canada in Ontario prisons. Page 54-PDF of this contract stipulates that "Table 2 sets out the calling rates for each type of inmate call..." and page 55-PDF of this contract stipulates that the "Canada Wide Collect Call Rate Per Minute" is \$0.061 and there is no connection fee;
- 21.2 With Synergy, it appears that the cost for the Applicant's 689 minutes of "long distance" collect calls would be \$42.03 (689 minutes x \$0.061), whereas Bell Canada charged her \$767.56 plus taxes for those same calls, which is a markup of 1,722.22%; In the case of a 1-minute collect call (see row 8 in the chart at para. 19 above), Bell Canada's markup is 5,654.10% based on these figures;
- 21.3 The Court of Appeal has noted that a 400% markup can be abusive (*Jasmin c. Société des alcools du Québec*, 2015 QCCA 36, para. 28). Similarly, the doctrine notes that Courts "ne sanctionne[ent] pas toute disproportion mais celle qui équivaut au double de la valeur marchande du bien ou du service" (Claude MASSE, *Loi sur la protection du consommateur, analyse et commentaires*, Cowansville, Éditions Yvon Blais, 1999, p. 135);
22. For instance, Bell Canada charges \$1.00 to receive a "local" collect call (regardless of the duration of the "local" call), but charges **more than \$1.00 per minute** to the person receiving the collect call, even when these calls are made within the province;
23. The jurisprudence indicates that objective lesion requires a comparison of what the consumer paid for a collect call (in this case, \$767.56 for 689 minutes) and the "wholesale" cost to the merchant for providing this service to a consumer accepting a collect call (in this case, a few cents);
24. There is an important disproportion between the \$767.56 charged to Applicant for receiving 54 collect calls versus the service provided by Bell Canada. It is worth noting that Bell Canada charges others receiving collect calls only \$101 for 101 "local" collect calls (even though the calls are being made and received within a

given province);

25. As such, the disproportion for these 54 of Applicant's "long distance" collect calls appears to be at least \$713.56 (\$767.56 - \$54.00 = \$713.56);
26. The Applicant believes that further evidentiary support for her allegations will come to light after a reasonable opportunity for discovery. This evidence will confirm the level at which the disproportion becomes exploitative and abusive;
27. Applicant's damages are a direct and proximate result of Bell Canada's misconduct;
28. As a result of the foregoing, the Applicant is justified in claiming, for herself and on behalf of Class and Subclass members, compensatory damages, as well as punitive damages based on repeated and ongoing violations of sections 8, 12 and 228 CPA (pursuant to section 272 *CPA*), as well as compensatory damages and a declaratory judgment pursuant to article 1437 *CCQ*;
29. Applicant is accordingly entitled to claim and does hereby claim from Bell Canada the aggregate of the sums paid on account of collect calls by all Class and Subclass members;

Applicant's Claim against Bell Canada under s. 52 of the *Competition Act*

30. Applicant alleges that Bell Canada violates s. 52 of the *Competition Act* because it knowingly and recklessly makes representations to the public that is misleading in a material respect, by never mentioning the price of a collect call to Class and Subclass members in its IVR (as described at paragraph 15 above);

Applicant's claim for punitive damages

31. Bell Canada's overall conduct before, during and after the violation, is lax, careless, passive and ignorant with respect to consumers' rights and to its own obligations;
32. In this case, Bell Canada continues to breach consumer protection legislation across Canada and the *Competition Act*, without any explanation, for a significant period;
- 32.1 In fact, it has been almost 4 years since this application was initially filed and Bell Canada still has not modified its practice – even Bell Canada's operators are not informed of the rates for collect calls (see Exhibits P-6 and P-7);
- 32.2 The damages that Bell Canada's conduct inflicts on vulnerable consumers is egregious. For instance, a January 30, 2020, Globe and Mail article titled "A mom's \$6,000 phone bill in three months: The push to rein in Ontario's costly prison phone system" describes the situation of a 65-year-old resident of a Montreal seniors' home whose phone bill totalled \$6,072.12 due to Bell Canada

charging her for collect calls and causing her to commit to a \$50 per month payment plan for 11 years, as it appears from **Exhibit P-11**;

- 32.3 As explained in Exhibit P-11, phone calls are “important for rehabilitation and successful reintegration into society” and there is “voluminous research showing the value of family contact to a prisoner’s mental health and prospects following release”. In this regard, Bell Canada’s conduct is particularly reprehensible, especially since it boasts in the media and on its website via its “Bell Let’s Talk” campaign that it is a “Leader in mental health”, as it appears from **Exhibit P-12**.
- 32.4 The paradox in the present case is that the combination of “talking” and “mental health” is extremely profitable for Bell Canada. The Applicant discloses herewith a January 29, 2020 CBC article titled “Company behind Bell Let’s Talk profits off vulnerable inmates through phone deal with jails: lawyer” as **Exhibit P-13**. This article states that “Bell Canada contract hurts inmates with mental health issues”;
- 32.5 Exorbitant phone costs from prison negatively impact prisoners and their families, who often do not have the budget to afford such a “luxury”. Some parents work multiple jobs just to be able to afford speaking to their child in prison and some families have to skip meals to be able afford the long awaited call from a parent in jail. Also, given that many of these calls are placed from prisoners to a lawyer, the high costs limit a prisoner’s ability to communicate with their lawyer about their case effectively, as many of the mandates are legal aid that do not cover these costs (and even when legal aid does cover a portion of the costs, the result is that state funds are being used to pay a publicly traded corporation excessive amounts for calls that costs pennies - at most - to process).
33. The breach is unconscionable given that Bell Canada is likely very well aware (or ought to be aware) that the majority of people making collect calls do so while incarcerated, likely dealing with mental health issues and do not have access to mobile phones;
34. In fact, placing a collect call is the only way for a prisoner to call a loved one when he/she does not have any credit in their canteen account (which enables them to place phone calls using a calling card in certain prisons). In some provinces (such as Ontario), a collect call is the only way for inmates to dial out;
- 34.1 Bell Canada is the exclusive provider of payphones and collect calls for inmates incarcerated at federal penitentiaries across Canada (at least up until Synergy replaced them in Ontario in March of 2020, which Mr. Caron’s affidavit signed on January 7, 2021 omits);
35. This complete disregard for consumers’ rights and to its own obligations under various legislation on the part of Bell Canada is in and of itself an important reason for this Court to enforce measures that will punish Bell Canada, as well as deter and dissuade others from engaging in similar reprehensible conduct to the detriment of consumers;

36. The reality is that Bell Canada has likely generated tens of millions of dollars in revenues over the years by charging for collect calls, without disclosing the rates to Class members beforehand;
- 36.1 Worse yet, it appears that Bell Canada also charges Class members
37. Punitive damages have a preventive objective, that is, to discourage the repetition of such undesirable conduct;
38. Bell Canada's violations are unconscionable, intentional, calculated, malicious and vexatious;
39. Bell Canada demonstrates through its behavior (before, during and after the violation) that it is more concerned about its bottom line than about consumers' rights and its own obligations under consumer protection legislation;
40. Applicant is accordingly entitled to claim and does hereby claim on behalf of Class and Subclass members from Bell Canada \$30 million, save for adjustments, on account of punitive damages to be recovered collectively amongst the members who are consumers within the meaning of the CPA. This amount in punitive is also appropriate so that Bell Canada does not benefit from the passage of time which makes it more difficult to locate class members (because of a change of phone number or address for instance);
41. Bell Canada's patrimonial situation is so significant that the foregoing amount of punitive damages is appropriate in the circumstance;

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

42. All Class and Subclass members have a common interest both in proving violations of the CPA (sections 8, 12 and 228 CPA) and of 1437 CCQ by Bell Canada (as well violations of the *Competition Act* and consumer protection legislation in other Canadian provinces listed at paragraph 76 below), and in maximizing recovery of the aggregate of the amounts unlawfully charged to them by Bell Canada;
43. Class members include consumers and legal persons in Quebec and across Canada who accepted a collect call from Bell Canada, regardless of whether the collect call originated from a prison (as in the case of the Applicant) or from anywhere else, given that the IVRs used are very similar (in both cases the rates are never disclosed to Class members beforehand);
- 43.1 Subclass members include consumers and legal persons [...]. The most prominent example are criminal defence law attorneys/law firms that receive and pay for collect calls from their clients calling them from detention centers or prisons, as it appears from an invoice of a Quebec law firm filed herewith under seal as Exhibit P-14;

44. In this case, the legal and factual backgrounds at issue are common to all the members of the Class and Subclass, namely whether: (i) Bell Canada unlawfully claimed costs from consumers in amounts that were not disclosed or were not precisely indicated in the contract; and (ii) the fees charged for collect calls by Bell Canada are unconscionable, abusive, disproportionate and/or constitute objective lesion;
45. The claims of every Class and Subclass member are founded on very similar facts to the Applicant's claim, regardless of who their own telephone provider is (Bell Canada's IVR is the same even when it connects a collect call to Class and Subclass members subscribed to Videotron's, Telus or Rogers' telephone service, for instance);
- 45.1 As alleged at paragraph 9.1 of Mr. Caron's affidavit, Bell Canada processes the collect calls made to customers other telecom providers, such as Videotron and Telus. The Applicant files herewith **under seal** a copy of a class member's Videotron invoice as **Exhibit P-15** (see charges titled "Bell Canada" on pages 5, 8 & 15 of the PDF, and charges titled "Canada Operator Services" on page 9-PDF), as well as a copy of a class members' Telus invoice as **Exhibit P-16** (see heading titled "Bell Canada" on page 5-PDF);
- 45.2 In the case of the Videotron invoice (Exhibit P-15), it shows that Bell Canada charged this class member **\$539.53** for **30 collect calls** on one invoice. Bell Canada charged **\$404.81** for **24 collect calls** on another invoice. Bell Canada charged **\$234.54** for **12 collect calls** on the third invoice. All of these collect calls were placed within the province of Quebec. In the case of the Telus invoice (Exhibit P-16), it shows that Bell Canada charged this class member **\$202.36** plus taxes for **10 collect calls** received in Saint-George de Beauce from Orsainville prison in Quebec City;
46. Every Class and Subclass member was charged an amount that was not expressly provided for in the contract and not disclosed by Bell Canada prior to acceptance;
47. Every Class and Subclass member was also charged an abusive and/or disproportionate fee to receive a collect call by Bell Canada;
48. By reason of Bell Canada's unlawful conduct, Applicant and every Class and Subclass member have suffered damages, which they may collectively claim against Bell Canada;
49. In taking the foregoing into account, all Class and Subclass members are justified in claiming the sums which they unlawfully paid to Bell Canada for collect calls, as well as punitive damages;
50. Each Class and Subclass member is justified in claiming at least one or more of the following as damages:

- Reimbursement of the whole (or a portion) of the fees charged for receiving a collect call; and
 - Punitive damages in the aggregate amount of \$30 million.
51. All of the damages to the Class and Subclass members are a direct and proximate result of Bell Canada's misconduct;
52. Individual questions, if any, pale by comparison to the common questions that are significant to the outcome of the present Application;
53. **The recourses of the Class and Subclass members raise identical, similar or related questions of fact or law, namely:**
- a) Does Bell Canada violate section 12 or section 228 CPA and, if so, are Class members entitled to compensation and in what amount?
 - b) Does the disproportion between the collect call fees charged to the Class/Subclass members and the value of the service provided by Bell Canada constitute exploitation and objective lesion under section 8 of the CPA or art. 1437 C.C.Q. and, if so, are Class and Subclass members entitled to compensation and in what amount?
 - c) Does Bell Canada violate section 52 of the *Competition Act*?
 - d) Does Bell Canada violate the consumer protection legislation in the other Canadian provinces by processing collect calls without first disclosing the price?
 - e) Are the class members entitled to punitive damages and if so, what amount must Bell Canada pay?
 - f) Did Bell Canada fail in its general duty to disclose information to all Class members?
 - g) Did Bell Canada act in bad faith, contrary to arts. 6, 7 and 1375 C.C.Q.?

C) THE COMPOSITION OF THE CLASS

54. 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;
55. According to Statistics Canada, in 2015-2016, there were 40,147 adults in custody on an average day (25,405 in provincial and territorial custody and 14,742 in federal custody), Applicant disclosing **Exhibit P-4**. Also, Exhibit P-8 shows that Bell Canada generated close to \$20 million in revenues from collect calls originating from Quebec prisons since 2015;

56. Assuming that most of Bell Canada's collect calls originate from prisons across Canada, the size of the Class is conservatively estimated to include tens of thousands of consumers across Canada;
57. The names and addresses of all persons included in the Class and Subclass are not known to the Applicant, however, the Call Detail Records (hereinafter "**CDRs**") are in the possession of Bell Canada;
- 57.1 To date, Applicant and her attorneys have been able to identify over 200 Class members via the Applicant's attorneys' website;
58. Class members are very numerous and are dispersed across the province, across Canada and elsewhere;
59. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Class and Subclass member to obtain mandates and to join them in one action;
60. 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 to 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

61. Applicant requests that she be appointed the status of representative plaintiff;
62. Applicant is a member of the Class;
63. During the Class period, Applicant has paid hundreds of dollars to Bell Canada for collect calls, without the price ever being disclosed to her in advance;
64. Applicant has the time, energy, will and determination to assume all the responsibilities incumbent upon her in order to diligently carry out the action;
65. Applicant mandated her attorney to file the present application so that she and all Class members can be compensated;
66. Applicant cooperates and will continue to fully cooperate with her attorney, who has experience in consumer protection-related class actions;
67. As for identifying other Class members, Applicant draws certain inferences from the situation, notably from the fact that Bell Canada operates all of the Federal penitentiary payphones across Canada, as well as the payphones in the Quebec and Ontario prison systems (where an important number of collect calls originate from), Applicant disclosing a February 24th, 2017, CBC News article titled "*Province gets 'kickback' from inmates' collect calls*" as **Exhibit P-5**;

68. Consequently, 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 her to attempt to identify them given their sheer number (see Exhibits P-4 and P-5);
69. Applicant has the capacity and interest to fairly and adequately protect and represent the interests of the Class members;
70. Applicant is in good faith and has instituted this action for the sole purpose of having her rights, as well as the rights of other Class and Subclass members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of Bell Canada's illegal and abusive fees;
71. Applicant has read this Application prior to its court filing and reviewed the exhibits in support thereof;
72. Applicant understands the nature of the action;
73. Applicant's interests are not antagonistic to those of other members of the Class;
74. Applicant's interest and competence are such that the present class action could proceed fairly;

V. DAMAGES

75. During the Class Period, Bell Canada has likely generated tens of millions of dollars while intentionally choosing to ignore the law in Quebec and across Canada;
76. Bell Canada's misconduct is *unconscionable* (as the term is defined in the various consumer protection legislation listed below) and to the detriment of vulnerable consumers. Bell Canada must be held accountable for its unconscionable practice and for the breach of obligations imposed on it by the *Competition Act* (s. 52), as well as under consumer protection legislation in Quebec and in other Canadian provinces, including:
 - a) Quebec's *Consumer Protection Act*, notably sections 8, 12, 228 and 272;
 - b) The *Civil Code of Quebec*, notably articles 6, 7, 1375 and 1437;
 - c) Ontario's *Consumer Protection Act*, 2002, SO 2002, c 30, Schedule A, including sections 14, 15 and 17;
 - d) British Columbia's *Business Practices and Consumer Protection Act*, SBC 2004, c 2, including sections 4-10;
 - e) Alberta's *Fair Trading Act*, RSA 2000, c F-2, including sections 6, 7 and 13;

- f) Saskatchewan's *The Consumer Protection and Business Practices Act*, SS 2014, c C-30.2, including sections 6-9 and 93;
 - g) Manitoba's *The Business Practices Act*, CCSM c B120, including sections 2, 3 and 23;
 - h) Prince Edward Island's *Business Practices Act*, RSPEI 1988, c B-7, including sections 2-4;
 - i) Newfoundland and Labrador's *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1, including sections 7-10;
77. The price charged by Bell Canada for its collect call services grossly exceeds the \$1.00 price at which similar services are readily available, in violation of the various provincial legislation listed above (see Bell Canada invoice dated September 3rd, 2017, forming part of Exhibit P-3);
78. In light of the foregoing, the following damages may be claimed against Bell Canada:
- a) compensatory damages, in an amount to be determined, plus interest, on account of the damages suffered; and
 - b) punitive damages, in the amount of \$30 million, for the breach of obligations imposed on Bell Canada pursuant to section 272 CPA and the common law.

VI. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

79. The action that the Applicant wishes to institute on behalf of the members of the Class and Subclass is an action in damages and declaratory judgment;
80. The conclusions that the Applicant wishes to introduce by way of an originating application are:

GRANT the Representative Plaintiff's action against Defendant on behalf of all the Class and Subclass members;

CONDEMN the Defendant to pay the Representative Plaintiff and **Class** members compensatory damages for the aggregate of the amounts charged for collect calls, and **ORDER** collective recovery of these sums;

CONDEMN the Defendant to pay the Representative Plaintiff and **Subclass** members compensatory damages for the aggregate of the amounts charged for long-distance collect calls in excess of \$1.00 per call, and **ORDER** collective recovery of these sums;

DECLARE that **Class** members awarded compensatory damages shall be

precluded from receiving the compensatory damages awarded to **Subclass** members and vice versa;

CONDEMN the Defendant to pay \$30 million, save for adjustment [...], on account of punitive damages, and **ORDER** collective recovery of these sums;

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

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

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

CONDEMN the Defendant to bear the costs of the present action at all levels, including the cost of all exhibits, 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;

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

FOR THESE REASONS, MAY IT PLEASE THE COURT:

1. **AUTHORIZE** the bringing of a class action in the form of an originating application in damages;
2. **APPOINT** the Applicant the status of representative plaintiff of the persons included in the Class herein described as:

Class:

All natural and legal persons in Canada who received a collect call processed by Bell Canada since September 25th, 2014;

Toutes les personnes physiques et morales au Canada qui ont reçu un appel à frais virés traité par Bell Canada depuis le 25 septembre 2014;

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

Subclass:

All natural and legal persons in Canada who, since September 25th, 2014, received a collect call processed by Bell Canada and were charged an amount greater than \$1.00;

Toutes les personnes physiques et morales au Canada qui ont reçu un appel à frais virés traité par Bell Canada depuis le 25 septembre 2014 et qui ont payé plus que 1.00 \$ pour cet appel à frais virés;

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

or any other Class to be determined by the Court;

3. **IDENTIFY** the principle questions of fact and law to be treated collectively as the following:
 - a) Does Bell Canada violate section 12 and section 228 CPA and, if so, are Class members entitled to compensation and in what amount?
 - b) Does the disproportion between the collect call fees charged to the Class/Subclass members and the value of the service provided by Bell Canada constitute exploitation and objective lesion under section 8 of the CPA or art. 1437 C.C.Q. and, if so, are Class members entitled to compensation and in what amount?
 - c) Does Bell Canada violate section 52 of the *Competition Act*?
 - d) Does Bell Canada violate the consumer protection legislation in the other Canadian provinces by processing collect calls without first disclosing the price?
 - e) Are the class members entitled to punitive damages and if so, what amount must Bell Canada pay?
 - f) Does Bell Canada fail in its general duty to disclose information to all Class members?
 - g) Does Bell Canada act in bad faith, contrary to arts. 6, 7 and 1375 C.C.Q.?
4. **IDENTIFY** the conclusions sought by the class action to be instituted as being the following:
 - a) **GRANT** the Representative Plaintiff’s action against Defendant on behalf of all the Class and Subclass members;

- b) **CONDEMN** the Defendant to pay the Representative Plaintiff and Class members compensatory damages for the aggregate of the amounts charged for collect calls, and **ORDER** collective recovery of these sums;
 - c) **CONDEMN** the Defendant to pay the Representative Plaintiff and Subclass members compensatory damages for the aggregate of the amounts charged for long-distance collect calls in excess of \$1.00 per call, and **ORDER** collective recovery of these sums;
 - d) **DECLARE** that Class members awarded compensatory damages shall be precluded from receiving the compensatory damages awarded to Subclass members and vice versa;
 - e) **CONDEMN** the Defendant to pay \$30 million, save for adjustment [...], on account of punitive damages, and **ORDER** collective recovery of these sums;
 - f) **CONDEMN** the Defendant to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to authorize a class action;
 - g) **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;
 - h) **ORDER** that the claims of individual Class and Subclass members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;
 - i) **CONDEMN** the Defendant to bear the costs of the present action at all levels, including the cost of all exhibits, 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;
 - j) **RENDER** any other order that this Honourable Court shall determine;
5. **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;
6. **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 and Subclass that have not exercised their means of exclusion will be bound by any judgement to be rendered herein;
7. **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 the newspapers to be

determined in a subsequent judgment concerning the publication of notices;

8. **ORDER** that said notice be published on the Defendant's website, Facebook page and Twitter account, in a conspicuous place, with a link stating "Legal Notice Concerning Collect Calls";
9. **ORDER** the Defendant to send an Abbreviated Notice by e-mail to each Class and Subclass member, to their last known e-mail address, with the subject line "Notice of a Class Action";
10. **ORDER** the Defendant and its representatives to preserve in digital form all information concerning the Class and Subclass members in their possession or in the possession of their agents, including, but not limited to, their names, phone numbers, addresses, contact information and the details of the collect calls they paid for, and to send this information to the Court in a confidential envelope, under seal, within thirty (30) days of the judgment to be rendered herein;
11. **ORDER** the Defendant and its representatives to supply class counsel, within thirty (30) days of the judgment rendered herein, all CDRs in their possession or under their control evidencing collect calls made and received across Canada;
12. **ORDER** the Defendant and its representatives to supply class counsel, within thirty (30) days of the judgment rendered herein, all IVRs in their possession or under their control that were used in processing collect calls across Canada during the Class period;
13. **RENDER** any other order that this Honourable Court shall determine;
14. **THE WHOLE** with costs including publication fees.

Montreal, July 2, 2021

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Mtre Joey Zukran

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450-06-000001-176

(Class Action)
SUPERIOR COURT
DISTRICT OF SAINT-FRANÇOIS

CAROLE [REDACTED]

Applicant

vs.

BELL CANADA

Defendant

**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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