

C A N A D A
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-06-000436-085

(Class Action)
SUPERIOR COURT

UNION DES CONSOMMATEURS

Plaintiff

-and-

MYRNA RAPHAEL

Designated person

v.

BELL CANADA

Defendant

**NOTICE TO MEMBERS: CLASS ACTION AGAINST BELL
CANADA**

SLOW DOWN OF PEER TO PEER (P2P) APPLICATIONS
FOR RESIDENTIAL ADSL INTERNET SERVICES
SUBSCRIBERS BETWEEN OCTOBER 28TH, 2007 AND
FEBRUARY 29, 2012

1. TAKE NOTE that a class action was authorized on July 12, 2012 by a judgment from the Court of Appeal on behalf of persons belonging to the group described in the judgment of the Superior Court dated October 13, 2015, namely:

All natural persons residing in Quebec or Ontario who, between October 28th, 2007 and February 29, 2012, were subscribed to, or became subscribed to, a Bell Canada residential ADSL Internet service (that service being or having been marketed notably under one of the following trade names or marks: Total Internet Essential, Total Internet Essential Plus, Total Internet Performance, Total Internet Performance Plus, Total Internet Max, Sympatico High Speed, Sympatico Internet High Speed Ultra, Sympatico Basic) and who, during that period, have used peer to peer file sharing applications, between 4:30 p.m. and 2 a.m.

2. The Chief Justice of the Superior Court has decreed that the class action must be instituted in the district of Montréal.

3. The addresses of the Plaintiff, the Designated person and the Defendant are as follows:

PLAINTIFF

Union des consommateurs
6226 Saint-Hubert Street
Montreal (Québec)
H2S 2M2

DESIGNATED PERSON
Ms. Myrna Raphaël
6818 Laurendeau Street
Montréal (Québec)
H4E 3Z4

DEFENDANT
Bell Canada
1, Carrefour Alexander-Graham-Bell
Tour A-7
Verdun (Québec)
H3E 3B3

4. The status of representative for the institution of the class action was attributed to UNION DES CONSOMMATEURS and that of Designated person to MYRNA RAPHAËL.

5. The principal questions of fact and law that will be dealt with collectively are as follow:

- a) Is the Defendant, while voluntarily limiting data transfer speeds, offering to the members of the Group a service in accordance with the representations it makes concerning its “ADSL Internet Service”?
- b) In the negative, did the Defendant make, and does it continue to make, misleading representations as defined by the *Consumer Protection Act* (L.R.Q., c. P-40.1) and the *Consumer Protection Act, 2002* (L.O. 2002, chap. 30, appendix A);
- c) Did the Defendant violate section 52 of the *Competition Act*?
- d) As a provider of a high speed internet service, can the Defendant contractually reserve its right to knowingly deprive a significant portion of its subscribers of the “high speed” aspect of the service that it is selling them?
- e) Does the service contract allow the Defendant to systematically reduce the speed of the service provided to certain customers without advising them beforehand?
- f) By voluntarily limiting data transfer speeds, did the Defendant limit without right the services that the members of the Group are entitled to as of right under the contract between them and the Defendant?
- g) In the affirmative, are the members of the Group entitled to claim a reduction of their monthly subscription fees for the “ADSL Internet Service” and the reimbursement of overpaid fees and, if applicable, determine the amount or the method of calculation thereof?
- h) Are the members of the Group entitled to claim punitive damages from the Defendant under the applicable consumer protection laws? In the affirmative, what would be the amount payable to each?

i) Are the members of the Group entitled to the interest and additional indemnity on the aforementioned amounts provided for by law and, if applicable, to the reimbursement of costs for expert witnesses?

6. The conclusions sought in relation to the above questions are as follow:

GRANT the class action of the Plaintiff, the Designated person, and the members of the Group against the Defendant;

DECLARE that the “ADSL Internet Service” provided by the Defendant does not respect the representations made about such service to the members of the Group and does not offer them one of the elements that constituted an essential consideration;

CONDEMN the Defendant to pay to the Designated person the amount of \$2,323.68, which includes the reimbursement of 80% of the monthly subscription fees paid until May 28th, 2008, the whole subject to amendment;

CONDEMN the Defendant to pay each of the members of the group an amount equal to 80% of the subscription fees for the “ADSL Internet Service” paid starting October 28th, 2007;

ORDER the Defendant to reduce the subscription fees for the “ADSL Internet Service” by 80% for the members of the group for as long as it continues to fail to offer an “ADSL Internet Service” that complies with the representations made;

CONDEMN the Defendant to pay to each of the members of the Group six hundred dollars (\$600) as “punitive damages” for violation of sections 40, 41, 219, 220 a), 221 g) and 228 of the *Consumer Protection Act* (L.R.Q., c. P.40.1), of sections 14(2) par. 1, 3, 14 and section 17(1) of the *Consumer Protection Act, 2002* (L.O. 2002, chap. 30, Appendix A) and pursuant to section 52 of the *Competition Act*;

THE WHOLE with interests and the additional indemnity on the aforementioned amounts;

ORDER that the above condemnations be the subject of an order for collective recovery;

RENDER any other order that the Tribunal might deem to be in the interest of the members of the Group;

CONDEMN the Defendant to costs, including the costs of notices and expert reports.

7. The class action to be instituted by the representative on behalf of the members of the Group will consist of an action for compensatory and punitive damages.
8. Any member of the Group that will not have excluded itself in the manner described below will be bound by any judgment rendered in the class action.
9. The date after which a member will no longer be able to exclude themselves (except by special permission) has been fixed to **April 30, 2016**. After that date the members who have not availed themselves of one of the methods of exclusion will be bound by any judgment rendered.
10. A member who has not already instituted a personal action can exclude himself from the group by notifying the Superior Court Registrar of the district that will be determined by the Chief Justice of the Superior Court by certified or registered mail before the expiry of the time limit for exclusion.
11. Any member of the Group who has instituted a personal action that would be dealt with in the final judgment on the class action will be deemed to have excluded themselves from the Group unless they desist themselves from their action before the expiry of the time limit for exclusion.
12. No member of the Group, except for a representative or an intervener, can be ordered to pay the costs of the class action.
13. A member can have its intervention heard by the Court if it is considered useful for the Group. An intervening member may have to submit to an examination on discovery or a medical examination (depending on the case) at the request of the Defendant. A member that is not an intervener cannot be ordered to submit to an examination on discovery or a medical examination unless the Court finds it to be necessary.

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