

**Canadian Human  
Rights Tribunal**



**Tribunal canadien  
des droits de la personne**

**Citation:** 2017 CHRT 1

**Date:** January 24, 2017

**File No.:** T2132/0616

**Between:**

**Linda Mills**

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**Bell Mobility Inc.**

**Respondent**

**Decision**

**Member:** Edward P. Lustig

I.	Background.....	1
II.	Applicable provisions of the <i>Act</i> .....	2
III.	Facts .....	4
	A. Ms. Mills' health and disability.....	4
	B. The events of July 11, 2014.....	5
	C. Bell Mobility and its Retail Activation Standards .....	8
IV.	Analysis.....	13
	A. Legal Framework .....	13
	B. Issues.....	15
	C. Positions of the parties.....	16
	(i) Ms. Mills and the Commission's position .....	16
	(ii) Bell's position .....	18
	D. <i>Prima facie</i> case established .....	20
	E. <i>Bona fide</i> justification not established.....	22
V.	Complaint substantiated.....	25
VI.	Order .....	26
	A. Positions of the parties.....	26
	(i) Ms. Mills and the Commission's position .....	26
	(ii) Bell's position .....	28
	B. Measures to redress and prevent the discriminatory practice .....	28
	C. Compensation for pain and suffering.....	30
	D. Special compensation for wilful or reckless discrimination .....	30
	E. Interest .....	31

## I. Background

[1] Ms. Linda Mills filed a complaint with the Commission dated March 16, 2015. She alleges Bell Mobility Inc. (“Bell”) discriminated against her on the grounds of her physical and cognitive disabilities, pursuant to section 5 of the *Canadian Human Rights Act* (the “Act”). She claims Bell refused to provide her with same-day activation service for a new cellular phone she needed on July 11, 2014, unless she appeared in person to be visually identified at one of Bell’s retail stores to purchase the phone. At that time, Ms. Mills was primarily bedridden due to ongoing chemotherapy and was not to go out except in emergencies as her immune system was at risk.

[2] The Canadian Human Rights Tribunal (the “Tribunal”) was requested by the Commission to initiate an inquiry into the complaint on January 14, 2016, pursuant to section 44(3)(a) of the *Act*.

[3] A hearing was held in London, Ontario from the 12<sup>th</sup> to the 18<sup>th</sup> of October, 2016. At the hearing, Ms. Mills attended and testified as a witness on her own behalf and her son, Mr. Ian Philp, also testified as a witness for her. Mr. Philp is a lawyer who works in New York from where he testified by Skype. Ms. Ikram Warsame, counsel for the Commission, also attended the hearing to represent the public interest. While Ms. Mills put several questions to the witnesses and made closing submissions, it was Ms. Warsame who examined Ms. Mills and her son, cross-examined Bell’s witnesses and made opening and closing submissions for the Commission. Three employees testified on behalf Bell: Mr. Serdar Yavuz, Senior Manager, Credit and Collections; Ms. Rosanna Caporuscio, Senior Manager, Customer Care; and, Mr. Lawrence Lau, Director, Business Process.

[4] I found all of the witnesses who testified in this case to be forthright, and credible. Additionally, I found Ms. Mills to be both courageous and inspirational. Finally, I am grateful for the cooperation and excellent work in this case by Ms. Warsame and Bell’s counsel, Mr. VanDyk.

[5] For the reasons that follow, I find Ms. Mills’ complaint is substantiated.

## II. Applicable provisions of the Act

[6] Sections 2, 3(1), 5, 15(1)(g), 15(2), 53(2)(a) and (e), 53(3) and 53(4) of the Act are applicable in this case and provide as follows:

**2** The purpose of this Act is to extend the laws in Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

**3 (1)** For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

...

**5** It is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public

(a) to deny, or to deny access to, any such good, service, facility or accommodation to any individual, or

(b) to differentiate adversely in relation to any individual,

on a prohibited ground of discrimination.

...

**15 (1)** It is not a discriminatory practice if...

(g) in the circumstances described in section 5 or 6, an individual is denied any goods, services, facilities or accommodation or access thereto or occupancy of any commercial premises or residential accommodation or is a victim of any adverse differentiation and there is bona fide justification for that denial or differentiation.

**(2)** For any practice mentioned in paragraph (1)(a) to be considered to be based on a bona fide occupational requirement and for any practice mentioned in paragraph (1)(g) to be considered to have a bona fide justification, it must be established that accommodation of the needs of an individual or a class of individuals affected would impose undue hardship on the person who would have to accommodate those needs, considering health, safety and cost.

...

**53 (2)** If at the conclusion of the inquiry the member or panel finds that the complaint is substantiated, the member or panel may, subject to section 54, make an order against the person found to be engaging or to have engaged in the discriminatory practice and include in the order any of the following terms that the member or panel considers appropriate:

**(a)** that the person cease the discriminatory practice and take measures, in consultation with the Commission on the general purposes of the measures, to redress the practice or to prevent the same or a similar practice from occurring in future, including

**(i)** the adoption of a special program, plan or arrangement referred to in subsection 16(1), or

**(ii)** making an application for approval and implementing a plan under section 17;

...

**(e)** that the person compensate the victim, by an amount not exceeding twenty thousand dollars, for any pain and suffering that the victim experienced as a result of the discriminatory practice.

**(3)** In addition to any order under subsection (2), the member or panel may order the person to pay such compensation not exceeding twenty thousand dollars to the victim as the member or panel may determine if the member or panel finds that the person is engaging or has engaged in the discriminatory practice wilfully or recklessly.

**(4)** Subject to the rules made under section 48.9, an order to pay compensation under this section may include an award of interest at a rate and for a period that the member or panel considers appropriate.

### **III. Facts**

#### **A. Ms. Mills' health and disability**

[7] The parties either agreed with or did not contest the facts concerning Ms. Mills' health and disability and the events that took place on July 11, 2014.

[8] Ms. Mills became ill and was diagnosed with pancreatic cancer in December of 2013. At the time, she was working as a school Principal. She underwent unsuccessful abdominal surgery to remove the cancer in January 2014. As a result of a biopsy of the tumor, it was determined that she had acute lymphoblastic leukemia rather than pancreatic cancer. After a two week period of recovery from the surgery, she commenced an inpatient phased chemotherapy program for the leukemia in February of 2014. However, the effects of the strong dosages of this therapy caused her to have a stroke, followed by seizures between March 12<sup>th</sup> and 14<sup>th</sup> that almost caused her death. Following the seizures, she needed assistance to breathe and was placed in intensive care. She has no recollection for about 10 days of that dark period of her life. Fortunately, she survived and was then sent for rehabilitation from the stroke and seizures. She also resumed her chemotherapy at 50 per cent of the dosage she had previously received.

[9] As a result of the stroke and seizures, Ms. Mills was initially paralyzed on her whole right side and could not speak. After seven weeks of rehabilitation in Toronto, she was cleared to go back home to London for further recovery, physiotherapy and chemotherapy in May of 2014. After she returned home to London, she was still in a severely weakened state both physically and mentally. As a result of the chemotherapy and her illnesses, her weight decreased from her pre-surgery weight of 150 pounds to just over 100 pounds in July and 97 pounds in November of 2014. She was medically certified as disabled with a negative prognosis, including a proposed 3 year chemotherapy treatment plan. She was approved for permanent long term disability benefits and did not return to work when the next school year started in September of 2014. In November of 2014 she was hospitalized again for 3 weeks as a result of her deteriorated health condition and lack of protein caused by the chemotherapy.

**B. The events of July 11, 2014**

[10] The events giving rise to this case occurred on July 11, 2014. At that time, Ms. Mills was completely bed ridden at home in a very weak condition both physically and mentally. She could not walk on her own and had significant cognitive and immune system deficiencies as a result of her stroke, seizures, leukemia and the chemotherapy. She was then still partially paralyzed and could not speak properly or go to the bathroom by herself. She was unable to focus or concentrate properly as a result of the stroke and seizures and suffered from aphasia and apraxia. She had orders from her doctor not to go out except in emergencies as she was too weak and her immune system was at risk. Physiotherapy was given to her at home and she only left home for chemotherapy and then only with a wheelchair and with the help of others.

[11] She needed a new cellular phone as the phone she had from her employer needed to be returned as she was not going back to work. She wanted to be able to have the new cellular phone available in case she needed to contact her family or medical help when she was alone. As such, she made arrangements with her son, Mr. Philp, on a planned visit from him on July 11, 2014, to have him go to a store for her and pick up a new cellular phone and set up the phone so she could use it on the same-day.

[12] Mr. Philp was her “go to” person for technical matters, like setting up a cell phone, especially given her state of health as it existed on July 11, 2014. According to Ms. Mills, she could not possibly have programmed a cellular phone herself given her cognitive deficiencies as they existed at that time and she could not have safely gone to a store to pick up the phone given her physical and health restrictions.

[13] Ms. Mills has been a loyal customer of Bell Canada for over 42 years for various residential services including internet, fax, television and land line phone service that she was satisfied with and always paid for in full and on time. Bell Canada had her address, phone number and credit history as a result of her being a long-time customer. On July 11, 2014, Mr. Philp contacted Bell by phone from his mother’s residence on three occasions to try to make arrangements to buy and pick up a new cell phone for her by bringing all her required identification to a retail store and have the phone activated that

day so that he could bring it back to her and set it up for use while he was visiting her. He was not able to make those arrangements as he was told by Bell representatives who he spoke with that, despite her disabilities, if his mother wanted to purchase, obtain and activate a new cell phone that day, she would have to appear in-person at a retail store as Bell had a policy requiring in-person attendance at the store for same-day activation by the person buying the phone.

[14] Mr. Philp fully advised the Bell representatives that he spoke with on that day about his mother's physical and mental condition, and inability to attend in-person due to her health and disabilities. He explained that it was not that she was unwilling to attend in person, rather that she was unable through no fault or choice of her own to attend in person at a store. He also explained that she could not program the phone herself without him and that he was visiting only that day. He told the Bell representatives that attending in-person at a store was contrary to his mother's doctor's orders and prejudicial to her health.

[15] He also told the Bell representatives that he was willing to bring in all of the identification required, including a government approved photo of her, such as a passport, and a credit card. She did not have a driver's licence then as it had been revoked as a result of her disability and medical condition. He further suggested to the Bell representatives that they access her long and excellent credit history with Bell Canada to confirm her identity and capacity to pay. He also offered to put her on the telephone to verify that she was there and willing to have him act for her. He also offered to bring in a Power of Attorney that she had signed in his favour several years earlier, and that was still valid, authorizing him to act for her. He also offered to take the contract for the purchase of the phone back to her at her residence to be signed by her and bring it back to the store after which they could call her at her home phone and speak to her to verify her identity. None of these offers by Mr. Philp were acceptable to the Bell representatives he spoke with that day.

[16] In the end, the Bell representatives advised Mr. Philp that there was no room for discretion or accommodation in Bell's rule that, if his mother wanted to buy a new cell phone and have it activated for herself on the same day, she had to attend in person at a

retail store--even in her disabled condition. They did suggest that she could go online or phone a toll free number from home and order a phone with a credit card showing her residential address; and, the phone would be delivered by courier within a few days at the residential address given. While other in-store options were available, the Bell representatives did not advise Mr. Philp of these options. Those additional options are discussed below at paragraphs 33 and 34.

[17] Finally, as Ms. Mills felt that she needed a new cellular phone that day, and was frankly angered, she decided to get out of bed and get dressed with the help of her son and go to a Bell store in a shopping mall in London. She bought the new cellular phone on a postpaid basis and had it activated that day after being identified with picture ID and a credit card in the store and signing a contract. It was an arduous and dangerous thing for her to do in her condition, but she felt she had no choice given she wanted it activated that day so her son could help her start using it while he was visiting her. It took her over an hour to get ready and be driven to the mall and moved by wheelchair into the store in order to get the phone and be visually identified in the store. Once in the store, the process took no more than 5 minutes. She testified that the store employees were kind to her when she was there and she felt that they were embarrassed to see her there then, bald from chemotherapy, in a wheelchair, weighing around 100 pounds and having to identify herself in-person in that condition, despite her and her son's unsuccessful efforts to try to avoid such a scene.

[18] Later that day, with her son's help, Ms. Mills emailed a letter of complaint to Bell Canada Customer Service explaining what had occurred. She asked Bell to change its policy to allow disabled people, who cannot attend in-person at a store and need same-day cellular phone activation, to be able to obtain that service like other able bodied Canadians. She testified that she sent the email that day, but never received a response from Bell.

[19] Once she felt better in March of 2015, Ms. Mills filed the complaint in this matter. According to Ms. Mills, she did not file the complaint for herself, as she had already obtained the new cellular phone she needed on July 11, 2014. Rather, she sent the email and filed the complaint for other people who were disabled, ill and alone and not able to

move around their residence, or get to a store themselves; and, need a cellular phone handy to keep them in touch with family and medical help without waiting for a phone to be delivered several days later. In Ms. Mills' opinion, she was more fortunate than many disabled Canadians as she had the resources and the help of family to be able to get the new cellular phone she needed on July 11, 2014. In her view, a cell phone is a "life line" for her and many disabled people, particularly in emergencies when they are bed ridden and without someone to care for them.

### **C. Bell Mobility and its Retail Activation Standards**

[20] BCE Inc. is a publicly traded holding company that is Canada's largest communications company and one of the largest companies in Canada by market capitalization, revenues and net income, all of which is in the billions of dollars annually. One of its main assets is Bell Canada which is Canada's largest telecommunications company. Bell Mobility is a subsidiary of Bell Canada and sells mobile communication devices such as cellular phones and cellular voice and data usage plans to consumers and businesses across Canada.

[21] Bell has several hundred corporate-owned retail stores across Canada. The stores employ 350 managers and 2,200 front-line, non-management employees (commonly referred to as "Sales Representatives"). In the retail stores, Sales Representatives sell Bell's services and products, including new cellular phones, to the public and assist with the activation of new accounts.

[22] Cellular phones can either be purchased in a retail store outright (prepaid) or subsidized by Bell over a two year contract (postpaid). They can also be purchased online or over the phone. The vast majority (99%) of Bell's customers choose to attend at retail stores to buy, activate and receive their new cell phones the same day, rather than purchase online or over the phone.

[23] With a two year postpaid contract, the customer whose name is on the account pays the cost of the phone, as well as ongoing usage costs, over the two year term rather than prepaying all costs upfront. Currently, a cell phone may cost as much as \$1400 for

the latest and best model. A customer can buy up to 10 devices postpaid and when doing so, after signing the contract, will leave the store with the devices fully activated for use and a promise to pay over the term of the contract.

[24] Because of the nature of the mobile device market, where an individual can agree to pay for the devices on a subsidized basis and then walk out of the retail store with one or more activated devices, Bell is a target for fraud by individuals seeking to commit identity theft fraud and profit by activating mobile devices and plans in the name of other people. This occurs thousands of times each year, resulting in losses to Bell (and in some cases to fraud victims, and finance/insurance companies) of millions of dollars annually. The specific incidence and monetary statistics of fraud that were presented at the hearing are not included in this decision as agreed to, but they represent between 1 and 2 percent of activations and several millions of dollars lost annually. The statistics presented by Bell did not identify the losses that were directly attributable to identify theft fraud, as opposed to any other type of fraud.

[25] Identity fraud can occur in various ways, including stolen identification documents, forged identification documents (that today can be “doctored” in very sophisticated ways digitally and otherwise even with government ID), or paying customers for their identification documents with no intention of paying for the device or the services. In identity theft fraud, the fraudster is leaving the store with the activated device and, in addition to the subsidy on the device, the fraudster is likely using a stolen credit card to pay for any upfront cost of the device. The device can then be used by the fraudster or sold to someone else. Furthermore, the cellular phone has a SIM card inside that can be taken out and sold, and/or used by someone else, resulting in unauthorized data and long distance charges that can run to the tens of thousands of dollars before being detected and shut down.

[26] The victim of the fraud whose identification or identity has been stolen pays for the devices and services before the fraud is detected by Bell or reported. It can take up to 3 or 4 months before the situation is corrected. These victims are put in the difficult position of demonstrating to Bell that they were the victim of a crime and that they did not actually activate the device or services. Credit ratings can be impacted because of this.

Credit card companies and insurers may also end up being on the hook for losses and, as mentioned above, Bell as well.

[27] In order to prevent this type of fraud and protect members of the public from identity theft fraud, Bell has put in place retail fraud policies which, it submits, are consistent with industry standards. These policies are found in its Retail Activation Standards and require that any person activating a new cellular phone, without exception, must appear in-person, show government photo identification and pass a credit check before they are permitted to enter into a postpaid contract, activate an account for the cellular phone and leave the store with the phone. Bell accepts a valid Driver's License, Canadian passport, Canadian Citizenship Card, Indian Status Identity Card or an official Provincial Photo ID. These pieces of identification have various hallmarks of authenticity that make them difficult to forge: they can be read by ID scanners and they represent that, before issuing them, the government has taken appropriate steps to verify the identity of the person holding the ID. According to Bell, these same standards are applied similarly by all of its competitors in the market it operates in.

[28] Bell Sales Representatives are trained to follow, without any discretion or exception, the Retail Activation Standards and not deviate from them even in cases involving disabled people like Ms. Mills. This is because of the threat of fraud and the potential monetary losses from the fraud that may be incurred by Bell (and possibly the fraud victim, credit companies and insurance companies, as the case may be). Potential fraud is the sole reason for the standard requiring the person buying a new cellular phone on a postpaid basis to attend at a retail store in person to be visually identified by a sales representative.

[29] The Bell Sales Representatives are not trained for exceptions like the use of Powers of Attorney, which are handled offsite, over a number of days, by a small centralized group of highly trained and very experienced service agents. This is because Powers of Attorney have none of the hallmarks of authenticity that government issued identification has. Moreover, according to Bell, its sales workforce at its retail stores has a high turnover rate, resulting in heightened chance of errors being made if Sales Representatives have the opportunity to use discretion to make exceptions to rules.

[30] There was no evidence adduced by Bell as to how much it would cost to provide accommodation for disabled persons from its rule requiring in-person attendance at retail stores for visual inspection to purchase a new cellular phone on a postpaid basis in cases like Ms. Mills'; or, whether such accommodation would increase the incidence or cost of fraud. Nor was there any evidence given by Bell that it ever looked into the possibility of accommodation from its rule for Ms. Mills in this case; that it ever considered making any changes to its rule in this regard to accommodate disabled people; or, that it ever turned its mind to an assessment of the potential costs and implications of doing so in order to accommodate disabled people by relaxing or changing its rule for them. Also, the evidence was that Bell does not have policies for or provide training to its Sales Representatives in human rights or its obligations under the *Act*.

[31] It was suggested by Mr. Philp that the disabled group of people his mother was part of that needed to be accommodated would likely be very small and the costs likely very low, given the statistics provided by Bell about the annual numbers of activations and fraud costs. Mr. Philp testified that he felt that even if there was a chance of fraud, the costs would be extremely minimal in the big picture for Bell and would be akin to the costs of providing other types of accommodation for physically disabled people, such as access ramps that are seen to be an acceptable cost of doing business in Canada.

[32] According to Bell, if a customer wishes to purchase and activate a new postpaid cellular phone, but is unable or unwilling to visit a retail store in-person to be visually identified with proper identification, they may do so online or over the phone. Bell does not require visual identification for over the phone or online orders, because the phone will be shipped to the address on the credit card given. Bell is further protected from fraud in online and phone activations because it can track the transaction with other information made available to it, including telephone numbers and IP addresses.

[33] However, if the customer is purchasing the new cell phone either by phone or on line, the new cell phone will not be delivered until several days after it is ordered. As mentioned above, instead of waiting days for a new phone to be delivered after ordering it online or over the phone, 99% of Bell's customers choose to buy their new cellular phones in retail stores where they can pick them up there, post pay, and have them activated on

the same day after signing a contract. While the online and phone purchase ordering alternatives were offered by Bell as an option to Ms. Mills on July 11, 2014, she was not willing to do this because the phone would not have been delivered or activated that day that she needed it.

[34] As mentioned above, Bell also had two other options that were not presented to Ms. Mills on July 11, 2014 that allow a customer who is unable or unwilling to visit a retail store in person to be able to acquire and activate a new cell phone on the same day without attending at the store in-person to be visually identified. The first such option is for the customer to prepay the entire retail cost of the phone and also a certain amount of usage (data or calling minutes) in advance through another person who attends on their behalf at the store. However, Ms. Mills submits this option is only feasible if the customer has the means to cover the prepaid costs of the phone. That is, this option imposes a financial burden on customers who cannot attend in-store that is not imposed on other customers. Again, the vast majority of Bell's customers, whether disabled or not, opt to purchase their cellular phone on a postpaid basis, with same-day activation.

[35] The second option is for another individual to attend at the retail store in person to purchase and activate the cell phone that day in their name but, thereafter, to transfer the account and device into the name of the customer who is unable or unwilling to attend at the store. However, again, the device must be prepaid in order to be able to transfer it. Under this option, Ms. Mills submits not only must the customer have the means to cover the prepaid costs of the phone, but it also assumes they can find someone who is willing and able to obtain the phone in their name and take on the payment responsibility pending the transfer process being completed.

[36] As previously stated, neither of these last two options were provided by Bell to Ms. Mills or her son on July 11, 2014. In fact, they were not presented to Ms. Mills until just before the start of the hearing and were only made into a Bell policy in August of 2016 after the hearing dates were set and not that long before the hearing commenced. In any event, as indicated above, Ms. Mills and her son both testified that these options do not address the issue of substantively equal treatment for disabled people who want to have same-day activation of new cell phone purchases, on a postpaid basis, without having to

prepay the cost or find and rely on someone else who is willing and able to obtain the phone in their name and take on the payment responsibility pending the transfer of responsibility process being completed.

#### **IV. Analysis**

##### **A. Legal Framework**

[37] Disabled individuals should have an opportunity equal with all other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices (see s. 2 of the *Act*). A company that provides a service customarily available to the general public, cannot deny or deny access to the service, or differentiate adversely in relation to any individual, based on disability (see s. 5 of the *Act*).

[38] In the adjudication of human rights complaints before the Tribunal, a complainant has the burden of proof of establishing a *prima facie* case of discrimination. A *prima facie* case is "...one which covers the allegations made and which, if they are believed, is complete and sufficient to justify a verdict in the complainant's favour in the absence of an answer from the respondent".<sup>1</sup> In this case, under section 5 of the *Act*, Ms. Mills must establish that 1) she has or had a disability; 2) that she was denied a service or was adversely differentiated against in the provision of a service customarily made available by Bell to the general public; and, 3) that her disability was a factor, though not necessarily the sole or only factor, in that denial or adverse treatment.<sup>2</sup>

[39] A respondent may avoid an adverse finding by calling evidence to show its action is not discriminatory or by establishing a statutory defense that justifies the discrimination.

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<sup>1</sup> *Ont. Human Rights Comm. v. Simpsons-Sears*, 1985 CanLII 18 (SCC) at para. 28.

<sup>2</sup> *Moore v. British Columbia (Education)*, 2012 SCC 61 at para. 33; and, *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39 at paras. 44-52.

In this case, Bell argues its Retail Activation Standards had no adverse impact on the complainant. Alternatively, it submits the application of its Retail Activation Standards are not discriminatory because reasonable alternative accommodations were available and removing the standards would constitute an undue hardship given the additional risk of fraud and identity theft to Bell and the public.

[40] With regard to Bell's undue hardship argument, section 15(1)(g) of the *Act* provides that it is not a discriminatory practice if there is a *bona fide* justification for any denial or adverse differentiation in services. Section 15(2) of the *Act* further provides that, to be considered to have a *bona fide* justification, Bell must establish that accommodation of Ms. Mills' needs would impose an undue hardship on it, considering health, safety and cost. To establish a *bona fide* justification and corresponding undue hardship, the parties agree that Bell must, on a balance of probabilities, prove that<sup>3</sup>:

- a. *it adopted the standard for a purpose or goal that is rationally connected to the function being performed;*
- b. *it adopted the standard in good faith, in the belief that it is necessary for the fulfillment of the purpose or goal; and*
- c. *the standard is reasonably necessary to accomplish its purpose or goal, in the sense that the defendant cannot accommodate persons with the characteristics of the claimant without incurring undue hardship.*

[41] Establishing a *bona fide* justification for a *prima facie* violation of human rights legislation requires a respondent to show that it has made every possible accommodation short of undue hardship.<sup>4</sup> That is, "[i]f a reasonable alternative exists to burdening members of a group with a given rule, that rule will not be *bona fide*".<sup>5</sup>

[42] Again, disability related needs attract accommodative protection for the disabled under the law. The concept of reasonable accommodation recognizes "the right of persons

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<sup>3</sup> *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 SCR 868 at para. 20 ("*Grismer*").

<sup>4</sup> *Grismer* at para. 21.

<sup>5</sup> *Central Alberta Dairy Pool v. Alberta (Human Rights Commission)*, [1990] 2 SCR 489 at p. 518.

with disabilities to the same access as those without disabilities”.<sup>6</sup> That access is generally not achieved by simply providing alternatives or treating everyone the same. Substantive equality may require that positive steps be taken to ensure that disadvantaged groups benefit equally from services offered to the general public.<sup>7</sup> That is, “[u]ndue hardship implies that there may necessarily be some hardship in accommodating someone’s disability, but unless that hardship imposes an undue or unreasonable burden, it yields to the need to accommodate”.<sup>8</sup>

[43] Finally, if a complaint is substantiated, an order can be made against the person found to be engaging or to have engaged in the discriminatory practice. Otherwise, if the complaint is not substantiated, it is dismissed (see s. 53 of the *Act*).

## **B. Issues**

[44] Based on the legal framework outlined above, the issues to be determined in this case are as follows:

1. Has Ms. Mills met her burden of proving a *prima facie* case of discrimination, on the basis of a disability, pursuant to section 5 of the *Act*?
2. If Ms. Mills has proven a *prima facie* case of discrimination, has Bell established a *bona fide* justification for its *prima facie* discriminatory practice, on the basis of sections 15(1)(g) and 15(2) of the *Act*?
3. If Bell cannot establish a *bona fide* justification, should an order be made against it?

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<sup>6</sup> *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, 2007 SCC 15 at para. 121 (“*Via*”).

<sup>7</sup> See *Eldridge v. British Columbia (Attorney General)*, [1997] 3 SCR 624 at para. 78.

<sup>8</sup> *Via* at para. 122.

### **C. Positions of the parties**

#### **(i) Ms. Mills and the Commission's position**

[45] According to Ms. Mills and the Commission, a *prima facie* case has been established on the evidence adduced. Bell subjected Ms. Mills to adverse or negative treatment in respect of a service customarily available to the public, namely same-day activation of a new cellular phone purchased on a subsidized postpaid basis. It did not accommodate her when it knew that she was prevented by her physical and cognitive disabilities from attending at a retail store to be visually inspected before obtaining the cellular phone.

[46] Same-day activation service in the purchase of a new subsidized cellular phone is the service customarily available to the general public that is not provided to physically disabled, bedridden individuals, like Ms. Mills. This is because of the requirement that customers attend at retail stores in-person to be visually identified before purchasing the new cellular phone on a postpaid basis--a requirement that disabled individuals like Ms. Mills are unable (rather than being unwilling) to comply with. Accordingly, the service customarily made available by Bell to the general public is not simply the provision of access to its services and products as argued by Bell. Rather, it is same-day activation for the purchase of postpaid new cellular phones, like other Canadians are able to obtain, as they are able to attend in person at a retail store to be visually identified, unlike disabled people like Ms. Mills. Reasonable accommodation for disabled people like Ms. Mills is necessary to eliminate the inequity in providing the service of same-day phone activation. None was provided in this case, in spite of there being no tangible evidence that it would have been impossible for Bell to do so without suffering undue hardship.

[47] Online and over the phone purchase ordering alternatives do not provide Ms. Mills and other disabled Canadians, who cannot leave their homes due to a disability, with the needed same-day activation service of a new postpaid subsidized cellular phone like other Canadians are able to obtain by attending in-person at a retail store. This is because shipping and delivering these orders takes a number of days to occur.

[48] Moreover, prepaying for a new cellular phone in order to obtain same-day service is not substantively equal to the service that most other Canadians enjoy when purchasing a new cellular phone on a postpaid subsidized basis. But for her disabilities preventing her from attending in-person at a store to be visually identified, Ms. Mills could have access to same-day postpaid service like other customers of Bell. It was not her choice or preference to be disabled and unable to access the service by personal attendance at a store on the day she needed the cellular phone. Her ultimate attendance at the store on July 11, 2014, when all other suggestions by her and her son were refused by Bell, was undertaken only at great risk and difficulty to her. This would not be possible for many other disabled persons who do not have a son, friend or family member to help them leave their bed and take them to the store.

[49] Ms. Mills and the Commission further argue that Bell has failed to meet the legal test established in *Grismer* for a *bona fide* justification defense, and provided no tangible evidence that accommodating Ms. Mills and other disabled persons like her would be impossible without suffering undue hardship. Moreover, despite the fact that Bell adopted its Retail Activation Standards in good faith to try to abate fraud, it made no attempt to come up with a viable alternative to its rule requiring in-store personal identification to try to accommodate Ms. Mills' disability when it knew she could not attend at a store. Hence, Bell had no idea whether any accommodation alternative to the rule would cause it undue hardship. In this regard, the Commission points out that Bell admitted that it did not train its employees in human rights to address the needs of the disabled.

[50] Bell failed to consider various alternatives to its Retail Activation Standards that would help disabled people, who are prevented by their disabilities from attending in-person for visual inspections at a store, to purchase a new cellular phone on a postpaid subsidized basis and obtain and activate the phone on the same day. These alternatives may also help to prevent fraud and include various different types of better and faster ID checking and credit checking; technologies such as "Skyping" or "Facetiming" with disabled customers allowing them to be visually inspected; training in store Sales Representatives to be able to take ID from a representative of the disabled, home bound, person as a guarantor or by way of Power of Attorney; and, same-day home courier

service for phone and online orders within larger centres, as is currently being worked on by Bell.

[51] Finally, Ms. Mills and the Commission submit that Bell did not provide evidence of a single case of fraud committed by an individual who opened an account on behalf of another customer, despite the evidence establishing that it allows anyone to order and activate a phone on behalf of a customer online or over the phone.

**(ii) Bell's position**

[52] According to Bell, the application of the Retail Activation Standards to Ms. Mills had no adverse impact on her. She was able to go to a retail store on July 11, 2014, in-person, and purchase and receive a new activated cellular phone on a postpaid subsidized basis. Furthermore, there were a number of additional options available to her that did not require her to go to a retail store in-person on that day in order to purchase a device and activate an account. One of these options was purchasing the phone from her home, online or over the phone, and having it shipped directly to her door. While this would not have resulted in her getting the phone on the same day, the expectation of same-day delivery is not reasonable. It is in the nature of a personal preference related to Ms. Mills' personal choice to have her son program the phone that day and is not a service or a disability-related need protected by the *Act*. Ms. Mills already had an activated cellular phone from her employer that she could have used on the day in question and until her son or someone else programmed a new phone delivered to her house several days after ordering it online or by phone.

[53] The service being offered by Bell is its products and services that are available to all Canadians, whether disabled or not, on the same basis with various alternatives to access. A delivery time on the same day as the purchase of one of its products, such as a new cellular phone, is not the service but is rather a choice or personal preference. Delivery time for a cellular phone a couple of days after, rather than on the same day of purchase, is a consequence of a choice by the customer of the alternative he or she chooses to receive the product, whether disabled or not. The personal or preferred choice

of Ms. Mills in the case at hand was brought about by her desire to have her son available on the day in question and not because of any disability related reason. The service that she would have got had she used any of the alternatives would not have been a diminished service. It would have been the same service offered to an able bodied person who made the same choice.

[54] Alternatively, Bell argues that, if there was an adverse impact to Ms. Mills by the use of the Retail Activation Standards rule requiring in-person attendance at a retail store to purchase and have a cellular phone activated that day, and plan usage on a postpaid basis, the rule meets the three part *Grismer* test. Hence, the burden of proving the existence of a *bona fide* justification has been met by Bell.

[55] With respect to the first part of the test, the Retail Activation Standards are clearly rationally connected to the objective of preventing fraud through identity theft. The evidence showed that the most reliable means of preventing fraud in the mobile device market is to ensure that the person walking out of the retail store with a device and a SIM card is the same person who will be responsible for paying the costs of the account.

[56] With respect to the second part of the test, there is no evidence to suggest that the standard was adopted in bad faith for anything but its stated purpose, which is to combat fraud and potential fraud. Bell believes this standard is necessary to prevent fraud in the retail setting. It is applied neutrally to everyone seeking to purchase and activate a device on a postpaid subsidized basis. In other settings where there is little risk of fraud, such as online and telephone sales, Bell applies other standards as appropriate in the circumstances.

[57] With respect to the third part of the test, when Ms. Mills' preferred accommodation of relaxing the standard increases the risk of fraud and identity theft to Bell and the public, and there are several reasonable alternatives available to her, it would be undue hardship to require Bell to relax its standard. Various reasonable alternatives, such ordering a phone online or over the phone, or prepaying the cost of the phone, are available. While none of them relax the standard, as preferred by Ms. Mills, they are applied equally to all persons and they provide a high level of service. The increased risk, with all of the

attendant costs of relaxing the standard as preferred by Ms. Mills, in a competitive world where all of Bell's competitors have the same standard, would create undue hardship for Bell.

[58] A disabled individual like Ms. Mills claiming accommodation does not have a claim or entitlement to their preferred form of accommodation if other reasonable accommodation is available. She must accept a reasonable alternative accommodation that meets her disability-related needs even if it may not be the preferred or most convenient one. In this case the accommodation alternatives offered were reasonable and she did have another cellular phone available to her on the day in question and its return was not imminent.

[59] There may be financial consequences to Ms. Mills of a reasonable disability accommodation, but that does not render it unreasonable or discriminatory. The financial consequences of not being able to purchase a postpaid subsidized cellular phone and have it activated on the same day, as a result of not being able to attend at the store in-person to be identified visually (ie. foregoing the potential subsidy), is not a disadvantage related to disability, and it is not one that is remedied under human rights law.

[60] In sum, Bell submits that the one thing that Ms. Mills is insisting on, which is relaxing the Retail Activation Standards when a disabled person requests it, is the one thing that cannot be done by Bell without causing undue hardship. The point of undue hardship is reached when reasonable means of accommodation are exhausted, as in this case, and only unreasonable and impractical options remain. The accommodation requested by Ms. Mills is an unreasonable accommodation as it increases the risk of fraud to Bell and of identity theft to the public.

#### **D. *Prima facie* case established**

[61] I find Ms. Mills **has met her burden** of proving a *prima facie* case of discrimination under section 5 of the *Act*, on the facts of this case as outlined above, for the following reasons:

1. Clearly Ms. Mills was disabled and her disability prevented her from attending at a store in-person to be visually identified on the day in question, without risking her health and safety. Her inability to attend in-person at a store without risking her health and safety was not some sort of personal preference or choice. It was the sad and unfortunate consequence and reality of her physical and mental disabilities.
2. Regardless of Ms. Mills' reasons for wanting a cellular phone on the day in question or the availability of her other cellular phone, Bell offers the benefit of cellular phones for purchase by the public on a postpaid subsidized basis and with same-day activation. In fact, this purchase option is the preference of the vast majority of Bell's customers versus other purchasing options offered by Bell, such as ordering it on the phone or online and waiting days for it to be delivered; or, prepaying for it and foregoing the subsidy. In the circumstances of this case, the option to purchase a cellular phone on a postpaid basis, with same-day activation, is the essential nature of the benefit or service offered by Bell to the general public<sup>9</sup>. Ensuring disabled customers can access this benefit or service, on the same basis as all other customers, is part and parcel of making the service customarily available to the general public.
3. Unfortunately, this benefit or service is denied to customers who are incapable of attending at a retail store to be visually identified in accordance with Bell's Retail Activation Standards. The alternatives made available by Bell to customers who are unable to attend at a store to purchase the phone in-person do not offer the same benefit or service: a postpaid cellular phone with same-day activation.
4. In the circumstances of this case, Ms. Mills had to risk her health and safety to be able to access the benefits of a postpaid cellular phone with same-day activation. Contrary to Bell's submissions, I find the fact that Ms. Mills did ultimately attend in-

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<sup>9</sup> See *Watkin v. Canada (Attorney General)*, 2008 FCA 170 at para. 31 and 33; and, *Canada (Canadian Human Rights Commission) v. Pankiw*, 2010 FC 555 at para. 42.

person at the store had a negative impact on her as it caused her great difficulty, was dangerous to her health and contrary to the medical advice of her doctor. Her attendance at the store was only made possible with the help of her son and was an act of desperation, frustration and anger brought about by Bell's adherence to its Retail Activation Standards.

5. Therefore, Ms. Mills was adversely impacted by Bell only offering postpaid cellular phones, with same-day activation, for purchase in-store only; and, Ms. Mills' disability was a factor in her having to assume risks to her health and safety to ultimately be able to access the benefit of a postpaid cellular phone with same-day activation. While the Retail Activation Standards apply to all individuals, it has an adverse effect on those who cannot attend a Bell store in-person; or, those who may be able to attend, but with great difficulty and risk to their health, like Ms. Mills. Ms. Mills cannot benefit equally from Bell's provision, to the general public, of postpaid cellular phones with same-day activation.
6. As such, Ms. Mills was adversely differentiated against in the provision of a service by Bell within the meaning of section 5 of the Act.

[62] For these reasons, I find Ms. Mills **has** established a *prima facie* case.

#### **E. *Bona fide* justification not established**

[63] I find Bell **has not met its burden** of proving that the events in this case are non-discriminatory, in that it had a *bona fide* justification for its policy or rule (of requiring individuals to appear in-person at a retail store to be visually identified before purchasing a cellular phone on a postpaid basis and have it activated the same day); and, that accommodating the needs of individuals like Ms. Mills would impose an undue hardship on Bell pursuant to sections 15(1)(g) and 15(2) of the *Act*.

[64] Ms. Mills and the Commission did not dispute that the first two parts of the *Grismer* test are met by Bell in the sense that the Retail Activation Standard rule (requiring a person's attendance at a store for visual identification before purchasing a cellular phone

on a postpaid subsidized contract and having it activated the same day) was adopted in good faith, in the belief that it was necessary for the purpose or goal of preventing identity fraud, and that it is rationally connected to the function of preventing that fraud. I agree. The real issue in this case relates to the third part of the test regarding “undue hardship”, as the parties have opposite positions on whether Bell has attained that threshold.

[65] In *Via*, Abella J reviewed the law on the scope of the duty to accommodate and the meaning of undue hardship and affirmed that undue hardship can be established where:

...a standard or barrier is “reasonably necessary” insofar as there is a “sufficient risk” that a legitimate objective like safety would be threatened enough to warrant the maintenance of the discriminatory standard (*Ontario Human Rights Commission v. Borough of Etobicoke*, [1982] 1 S.C.R. 202); where “such steps as may be reasonable to accommodate without undue interference in the operation of the employer’s business and without undue expense to the employer” have been taken (*Ontario Human Rights Commission v. Simpsons-Sears Ltd.*, [1985] 2 S.C.R. 536, at p. 555); where no reasonable alternatives are available (*Central Okanagan School District No. 23 v. Renaud*, [1992] 2 S.C.R. 970); where only “reasonable limits” are imposed on the exercise of a right (*Eldridge*, at para. 79); and, more recently, where an employer or service provider shows “that it could not have done anything else reasonable or practical to avoid the negative impact on the individual” (*Meiorin*, at para. 38). The point of undue hardship is reached when reasonable means of accommodation are exhausted and only unreasonable or impracticable options for accommodation remain.<sup>10</sup>

[66] I find Bell has failed to establish the third part of the *Grismer* test. It failed to produce any evidence that it assessed the cost or feasibility of any measures that could accommodate persons like Ms. Mills and whether those measures would result in undue hardship. This is likely a result of Bell’s strict adherence to its Retail Activation Standards and its approach to this case generally.

[67] As set forth in paragraphs 62(2) and (3), Bell wrongly concluded that the alternatives it offered to Ms. Mills provided her with the same level of service offered to the rest of its customers. Aside from those alternatives, no further alternatives were examined

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<sup>10</sup> *Via* at para. 130.

by Bell, such as those referred to in paragraph 50, to determine whether they could accommodate Ms. Mills' disability and provide her with a postpaid cellular phone with same-day activation without having her appear in-store and without Bell suffering undue hardship. Instead, it wrongly concluded that any alternatives proposed to its Retail Activation Standards were simply personal preferences of Ms. Mills, rather than a human rights issue that arises as part and parcel of the service it customarily makes available to the rest of the public. This incorrect conclusion was based upon Bell's characterization of the "service" at issue in this case which, according to Bell, is the availability to all of its products and services; and, that all its services and products were available to be accessed through the alternatives it offered to Ms. Mills.

[68] The alternatives Bell offered Ms. Mills do not provide her with substantive equity vis a vis the service Bell offers to the rest of its customers. The Federal Court's decision in *Jodhan*<sup>11</sup> is instructive on this point. In that case, the Court found that the fact that a visually impaired individual could have obtained the same government information available online by other means (phone, in person or by mail) did not reasonably accommodate the disabled person. The Court found that by failing to make government information and services on the internet accessible to visually impaired Canadians, the government denied the individual equal access to government services. Paragraphs 170, 172 and 174 of *Jodhan* are instructive to the main issue in this case:

[170] In reviewing the Supreme Court of Canada jurisprudence on reasonable accommodation, it is clear that these alternatives do not constitute substantively equal treatment. For example, in *Via Rail*, the proposed accommodation of thinner wheelchairs and employee assistance for the disabled was not substantively equal treatment. The new *Via Rail* cars had to be designed so that the disabled could use their own wheelchairs on the railcar. Similarly the websites must be designed so they are accessible. In *Eldridge*, deaf individuals who generally communicated using sign language had to be able to communicate at hospitals when obtaining medical services and the hospitals had to provide sign language

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<sup>11</sup> *Jodhan v. Canada (Attorney General)*, 2010 FC 1197 ("*Jodhan*").

interpretation services. Other forms of communication, such as by writing, were not a reasonable alternative.

...

[172] In the case at bar, for a blind person to rely on telephoning a government number is not substantive equality with a sighted person who can obtain the same information and services online. First, there is the frustration of trying to reach a government number. Second, there is a loss of independence and dignity when having to rely on a sighted person to provide the information and services which the blind person could obtain online if the website was accessible. Third, the loss of freedom and instantaneous responses is significant. Fourth, there is evidence before the Court of how unreliable government information is when being mailed.

...

[174] Based on the jurisprudence, the use of alternative channels is not a reasonable accommodation unless the respondent proved that it is not technically feasible to implement the CLF Standard or it would be so expensive that it would cause undue hardship in the context of a section 1 of the Charter defence. (Emphasis added)

[69] Without ever considering possible alternatives for accommodation to its Retail Activation Standards, such as to ones referred to in paragraph 50, Bell could not have made a determination of whether putting them into place would have increased the risk of fraud and costs related thereto; affected its competitiveness in the market place; or, generally, imposed an undue hardship. As previously noted, there was no tangible evidence produced by Bell of the cost or feasibility of putting such alternatives into place.

[70] For these reasons, I find Bell **has not satisfied** the third part of the *Grismer* test and, therefore, has not advanced a *bona fide* justification to the *prima facie* discrimination suffered by Ms. Mills.

## V. Complaint substantiated

[71] For the foregoing reasons, I find Ms. Mills' complaint has been substantiated.

## **VI. Order**

[72] Having found the complaint to be substantiated, I may make an order against Bell pursuant to section 53(2) of the *Act*.

### **A. Positions of the parties**

#### **(i) Ms. Mills and the Commission's position**

[73] Under section 53(2)(a) of the *Act*, the Commission asks the Tribunal to order that Bell take measures, in consultation with the Commission on the general purposes of the measures, to prevent the same or similar discriminatory practices from occurring in the future. Without limiting the generality of this request, the Commission submits that the following sorts of measures are warranted:

- a. An order requiring Bell to adopt an accommodation policy for its wireless customers, in consultation with the Commission, in order to accommodate disabled customers who require same-day activation service for new cellular phones purchased on a postpaid basis but cannot appear in-person at a retail store due to a disability. To that end, Bell should ensure that its same-day activation service is available, in this regard, to customers who cannot appear in person at a retail store due to a disability.

Ms. Mills also offered the following "Suggestions for Potential Policy Changes to Accommodate Disabled Persons Unable to Go to a Bell Mobility Outlet":

- Have an agent bring the required ID to a store for verification and then deliver the cell phone to the verified address that day by taxi, courier or a designated Bell Mobility employee.
- Use some type of video link, such as Skype, Facetime, etc. to verify that the ID brought in by the agent matches and actually belongs to the person wanting the account and that the agent is following the disabled person's directions.

- Limit the agent opening an account under these circumstances to one phone thus limiting Bell Mobility's exposure. Other units could be added later if needed once the account is in good standing.
  - If possible, put a cap on the amount of money charged to that account until the account is confirmed as being in good standing.
  - Put a flag in the account until it is confirmed that the account is in good standing.
  - If the disabled person has a home phone and/or email account, use one or both of those to give the disabled person a unique password that he/she could use to confirm the authenticity of the person's agent in a phone conversation with a Bell Mobility outlet employee.
  - In the case of a person who already uses other Bell services (home phone, internet, TV) have some internal process to allow at least some Bell Mobility employees to access this information to verify the disabled person's address and account history.
- b. An order requiring Bell Mobility to retain an external expert to provide training on accommodation to its retail and all other employees involved in making decisions about access to wireless services and products. The training should include discrimination prevention and Bells accommodation obligation as a service provider under the *Act*.

[74] Ms. Mills and the Commission also request an order for pain and suffering pursuant to section 53(2)(e) of the *Act* in the amount of \$20,000; and, an order for special compensation for willful and reckless discrimination, pursuant to section 53(3) of the *Act*, in the amount of \$20,000. They submit that there was pain and suffering as a result of Ms. Mills having to go to a retail store when she was very ill and, thereby, she was subjected to a loss of dignity. Furthermore, Bell knew she was disabled and could not attend in-person without great difficulty and risk. Bell willfully continued to refuse her requests for reasonable accommodation for 27 months up to the hearing, putting her to additional

strain and anxiety. Ms. Mills testified that her case was never about the money but that maximum awards should be applied in this case, not to punish Bell, but to remind it of its obligations under the *Act* and to send a clear message to get its attention that this discriminatory conduct needs to be prevented in the future to protect other disabled people, like Ms. Mills, who do not have the same resources.

[75] Finally, the Commission has requested an award of interest on any compensation awarded pursuant to section 53(4) of the *Act*.

**(ii) Bell's position**

[76] According to Bell, this case does not warrant an award of compensation. The evidence showed no pain and suffering as a result of the application of the Retail Activation Standards. Ms. Mills received the phone on the day she wanted it. There was no aggravation of her condition on the day in question or following that date. Bell has the right to seek full adjudication of the complaint and to provide a full defence thereto and to follow the process under the *Act* however long it takes to follow the process. Furthermore, compensation in excess of \$10,000 for pain and suffering is not usually awarded by the Tribunal and any such order should reflect the difference in seriousness between this case and other cases where such awards were made. Finally, the Retail Activation Standards were adopted by Bell in good faith to prevent fraud to it and the public, and not out of willful or reckless conduct. Therefore, any award of special compensation should not be greater than \$5000.

**B. Measures to redress and prevent the discriminatory practice**

[77] I find the orders sought by Ms. Mills and the Commission under section 53(2)(a) of the *Act* are justified on the facts of this case.

[78] There needs to be a modification to Bell's Retail Activation Standards to ensure disabled people, in the same position as Ms. Mills found herself in on July 11, 2014, can purchase a cellular phone on a postpaid basis and obtain it on the same day without having to appear in a retail store to be identified in-person at risk to their health and safety.

The various suggestions to accomplish this referred to in paragraphs 50 and 73, as well as any others that are reasonable and feasible, need to be considered by Bell and the Commission.

[79] According to Mr. Lau, Bell is currently working on a same-day delivery solution for all persons using its online and phone ordering options that will not require visual identification for postpaid orders. If such an option was available on July 11, 2014, there would not likely have been a complaint in this matter. If it becomes available in the future, it would likely solve similar problems encountered by other disabled people who cannot get to a store to be visually identified and need a cellular phone that day for emergencies, but want to pay on a postpaid basis and have their phones activated on the same day as the vast majority of Bell's other customers are able to do.

[80] With this in mind, within six months of the date of this decision, and in consultation with the Commission, Bell shall modify its Retail Activation Standards to redress the discriminatory practice found in this decision and prevent it from occurring in the future. Namely, Bell must ensure individuals like Ms. Mills have substantively equal access to the benefit of purchasing a postpaid cellular phone with same-day activation. Thereafter, the modified Retail Activation Standards shall be submitted to me for approval as I will retain jurisdiction over this matter for that purpose.

[81] With respect to the training order sought, Bell has admitted that it has lacked training for its employees in human rights obligations under the *Act*. Therefore, I find that this remedy is justified and, hopefully, will help Bell avoid situations in the future like the one that occurred in this case. Within a year of the date of this decision, and in consultation with the Commission, Bell shall train those employees who are involved in the development and application of the Retail Activation Standards on (1) the purpose of the *Act* and the human rights obligations arising therefrom; (2) the reason for the modifications to its Retail Activation Standards arising from this decision; and, (3) the modifications to its Retail Activation Standards arising from this decision.

### **C. Compensation for pain and suffering**

[82] With respect to the compensation sought for pain and suffering, Ms. Mills seeks \$20,000 as a result of the discriminatory practice. This is the maximum amount of compensation the Tribunal can award under paragraph 53(2)(e) of the *Act*. The Tribunal only awards the maximum amount in the most egregious of circumstances: where the extent and duration of the complainant's suffering as a result of the discriminatory practice warrants the full amount.

[83] I find Ms. Mills was exposed to pain and suffering as described in paragraph 75. However, I agree with Bell that any award of compensation must be related to the discriminatory practice and not the litigation of the complaint through the process under the *Act*. Unfortunately, the complaint and hearing process under the *Act* can take some time. Having considered the evidence and arguments of the parties on this issue, I feel that an award of \$10,000 is appropriate under the circumstances pursuant to section 53(2)(e) of the *Act*.

### **D. Special compensation for wilful or reckless discrimination**

[84] Section 53(3) of the *Act* is a punitive provision intended to provide a deterrent and discourage those who deliberately discriminate. A finding of wilfulness requires the discriminatory act and the infringement of the person's rights under the *Act* is intentional. Recklessness usually denotes acts that disregard or show indifference for the consequences such that the conduct is done wantonly or heedlessly<sup>12</sup>. Again, \$20,000 is the maximum amount that can be awarded under section 53(3) of the *Act* and the Tribunal generally reserves the maximum award for the very worst cases.

[85] Bell is an iconic and excellent company that is well managed and usually cares about its customers, including disabled Canadians. One needs only to watch television these days to see its commitment to helping Canadians understand and deal with

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<sup>12</sup> See *Canada (Attorney General) v. Johnstone*, 2013 FC 113, aff'd 2014 FCA 110, at paragraph 154.

problems related to mental health to know that this is a socially responsible company. Unfortunately, in this case it slipped in its obligations. I'm sure it will come up with an acceptable modification to its Retail Activation Standards to deal with the problem presented by the circumstances in this case and that were probably never contemplated by it. As such, I decline to order compensation under section 53(3) of the *Act*.

#### **E. Interest**

[86] Section 53(4) of the *Act* allows me to include an award of interest on an order to pay compensation and I so order.

[87] Rule 9(12) of the Tribunal's *Rules of Procedure (03-05-04)* provides any award of interest shall be simple interest calculated on a yearly basis at the Bank Rate (monthly series) established by the Bank of Canada; and, shall accrue from the date on which the discriminatory practice occurred, until the date of payment of the award of compensation. As such, Ms. Mills' award of \$10,000 shall include an award of interest calculated pursuant to Rule 9(12) of the Tribunal's *Rules of Procedure (03-05-04)* and shall accrue from July 11, 2014 until the date of the payment of the award of compensation.

*Signed by*

Edward P. Lustig  
Tribunal Member

Ottawa, Ontario  
January 24, 2017

## **Canadian Human Rights Tribunal**

### **Parties of Record**

**Tribunal File:** T2132/0616

**Style of Cause:** Linda Mills v. Bell Mobility Inc.

**Decision of the Tribunal Dated:** January 24, 2017

**Date and Place of Hearing:** October 12 to 17, 2016

London, Ontario

#### **Appearances:**

Linda Mills, for herself

Ikram Warsame, for the Canadian Human Rights Commission

Evan VanDyk, for the Respondent