

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2019 CHRT 26

Date: June 12, 2019

File Nos.: T2231/5317 & T2232/5417

Between:

Roger Khouri & Francois Khouri

Complainants

- and -

Canadian Human Rights Commission

Commission

- and -

Virgin Mobile Canada

Respondent

Ruling

Member: Colleen Harrington

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I. Introduction

[1] The Complainants, Roger Khouri and Francois Khouri, are brothers, and are mobile phone customers of the Respondent, Virgin Mobile Canada (“Virgin Mobile”), a brand operated by Bell Mobility Inc. Both Roger Khouri and Francois Khouri are legally blind and are unable to read printed material. François has been a Virgin Mobile customer since February of 2014, and Roger since June of 2015.

[2] The Complainants filed complaints with the Canadian Human Rights Commission (the “Commission”) in 2016, both alleging that Virgin Mobile has treated them in an adverse differential manner in, and/or denied them access to, the provision of services, in a way that is linked to their disability, contrary to section 5 of the *Canadian Human Rights Act* (the “Act”).

[3] The Commission requested that the Tribunal institute an inquiry into these complaints and, in January of 2019, filed this Motion for an Order compelling Virgin Mobile to produce certain documents it says relate to facts, issues, defences and remedies identified by the parties to these complaints. The Complainants support the Commission’s Motion.

[4] Following receipt of Virgin Mobile’s response to the Motion, the Commission revised its request by reducing the number of documents it is seeking, although the Complainants are of the view that all of the documents originally requested in the Motion should be produced by Virgin Mobile.

[5] I am of the view that the majority of the documents requested by the Commission in its revised request are arguably relevant to the facts, issues and remedies raised in these complaints, and I agree to require their production, as set out in the Order below.

[6] In order to provide context for my decision I will start by summarizing the positions of the parties with respect to the complaints, as set out in their Statements of Particulars (SOP). In doing so, I make no findings of fact.

II. Allegations Contained in the Complaints and Statements of Particulars of the Parties

[7] The Complainants allege discrimination in accessing certain services offered by Virgin Mobile, as a result of their visual impairments.

A. 411 Directory Service

[8] Due to their visual impairments, the Complainants use the 411 Directory Assistance service (“411 service”) to obtain, and be connected to, telephone numbers. The Complainants say their previous mobile phone providers automatically waived the 411 service fees for vision impaired users, and so the fees did not appear on their phone bills. However, the Complainants’ Virgin Mobile phone bills include the fees for any 411 services they have used during the billing period. Unlike sighted customers who can access and pay their bills online whenever they like, the Complainants say they have no choice but to phone Virgin’s call centre each month to establish the actual amount owing, which often involves explaining to call centre employees why the 411 fees should be removed from their bills in what they describe as, “frustrating and often lengthy calls”.¹ The Complainants believe there is no notation in Virgin Mobile’s system that identifies them as visually impaired, and therefore entitled to the 411 service fee waiver. The Commission alleges that the frustration and time involved in utilizing the 411 service for the Complainants or other vision impaired people, “constitutes adverse differentiation in which the Complainants’ vision impairment is a factor.”²

[9] Virgin Mobile says that it provides its customers with access to Bell Mobility’s Accessibility Services Centre (“ASC”), which assists in accommodating customers who self-identify as having a disability. It says the ASC maintains a list of visually impaired customers who qualify for 411 service credits. Virgin says that, although its billing system is not capable of applying the 411 credits in advance, once the ASC applies the credits to those on the list, the updated account balance is viewable by the customer online prior to

¹ Complainants’ Statement of Particulars (SOP), filed April 30, 2018 at para.14.

² Commission’s SOP, filed April 30, 2018 at para.37.

the payment due date. As such, Virgin disputes the allegation that customers are required to phone in to the call centre to have the 411 credits applied.

[10] Virgin Mobile also argues that the Complainants will not be able to prove discrimination under section 5 of the *Act*, as the 411 credits offered to the Complainants are a “voluntary benefit” offered to assist vision impaired customers, as opposed to “services” offered to members of the “general public”, as required by the *Act*.³

[11] In the alternative, if the Complainants are able to prove *prima facie* discrimination with respect to the 411 service, Virgin Mobile says it will rely on the statutory exceptions set out in subsection 15(1)(g) of the *Act* (that there is a *bona fide* justification for the alleged discriminatory conduct or practice) and 16(1) of the *Act* (which it refers to as the “Ameliorative Program” exception). The Commission says Virgin Mobile’s accommodation of providing 411 credits to the Complainants and other vision impaired customers is not “exempt from being a discriminatory practice” under the *Act*, as Virgin alleges.

B. Accessibility of information using VoiceOver

[12] The Complainants also allege that some features of Virgin Mobile’s My Account and My Benefits Apps, its website, and some text messages sent to them by Virgin Mobile, are not accessible to customers with vision impairments who use the text-to-speech program application that is built into the iOS operating system of all Apple devices, including iPhones, which Virgin Mobile sells to its customers. The program, called “VoiceOver”, provides auditory descriptions of each onscreen element, and is the only text-to-speech application produced by Apple.

[13] Virgin Mobile says that mobile application technology is always evolving and it is continually developing and updating its My Account App to improve the customer experience, including by improving its accessibility. Virgin says it engages testers with visual impairments to evaluate the accessibility of the App so that any issues can be proactively identified and remediated, including the issues raised by the Complainants with respect to making the My Account App compatible with VoiceOver. The Complainants

³ Respondent’s SOP, filed May 28, 2018 at para.39(b) and (c).

dispute that the updates to the My Account App fixed all of the accessibility issues they raised, and deny that it is currently fully accessible to non-sighted customers.

[14] Virgin's response to the allegation that links in its text messages are not accessible using VoiceOver is that, "this is not an issue with the My Account App".⁴ The Commission and Complainants disagree with Virgin's narrowing of the scope of the complaint, saying that all information about Virgin Mobile's services must be, but unfortunately is not, accessible to customers with visual impairments, and this includes text messages sent to its customers.

C. Accessible service contracts

[15] Roger Khouri also alleges that he requested many times to receive an accessible copy of his service contracts, but that he has never received an E-TXT or AudioCD version from Virgin Mobile. Virgin Mobile says its records indicate that it did in fact send e-text and audio CDs to him on multiple occasions, including as recently as January of 2018. Roger Khouri disputes this, saying rather that he has received alternative format versions of his monthly bills, which he did not request, and which were not compatible with his screen reader in any event.

III. The Commission's Motion for the Disclosure and Production of Documents

[16] The Commission filed its Motion for Disclosure on January 18, 2019, requesting nineteen categories of documents (articulated at paragraphs 39(a)-(s) in its Written Representations in support of its Motion). The Complainants agreed with and supported the Commission's Motion.

[17] Following Virgin Mobile's Response to the Motion, in which it stated that it had already produced some of the requested documents, that it does not possess some of them or they do not exist, and that it agrees to produce others, the Commission revised its request for disclosure to include only those documents that Virgin Mobile is opposed to producing.

⁴ Respondent's SOP at para.22(c).

[18] The Commission now asks the Tribunal to order Virgin Mobile to deliver the documents it has agreed to produce, as set out at paragraph 13 of the Commission's Reply submissions in this Motion, which I agree to do.

[19] In addition, the Commission continues to request that Virgin Mobile be ordered to produce several categories of documents that it submits are arguably relevant to facts, issues, defences and/or remedies identified by the parties. The Commission argues that, as the party entrusted with representing the public interest pursuant to section 51 of the *Act*, it must have a "full and ample opportunity to participate in the inquiry".⁵ It says that the requested documents will also allow the parties to identify the scope of potential remedies at issue in the proceedings.

[20] The Commission now requests the Tribunal to order Virgin Mobile to produce the following documents that I have compiled into six categories:

1. All of the Complainants' account notes, as well as all available audio recordings, transcriptions of calls, and call notes related to phone calls made by the Complainants to Virgin Mobile since the time they became customers to the present.
2. All documents related to Virgin's work to improve the accessibility of the Virgin Mobile App from 2014 to the present.
3. All documents explaining the history and operations of Virgin's Accessibility Services Centre (ASC), as well as information confirming the Complainants were informed of its existence and that they had been placed on its "special exemption list" for 411 service fees.
4. All documents related to the interaction of Virgin Mobile employee Andrea Roworth with the 411 Credits Program and her knowledge of the history of Virgin Mobile's customer service with the Complainants.
5. All documents related to any undue hardship Virgin may incur by accommodating the Complainants.
6. Copies of promotional text messages that the Complainants have received from Virgin since they became customers.

⁵ Written Representations of the Commission in support of its Motion for Disclosure, filed January 18, 2019 at para.4.

IV. Issue

[21] The parties agree that the only issue engaged by this Motion is whether the requested documents are arguably relevant to facts, issues or forms of relief sought in these complaints.

V. Legal Principles

[22] The Commission notes that the reason the parties exchange documents prior to a hearing is to ensure that all parties have a sufficient opportunity to present their cases, by being able to adequately prepare for the hearing. In support of its Motion, the Commission relies on subsection 50(1) of the *Act*, which provides that all parties must be given “a full and ample opportunity” to appear at the inquiry, present evidence, and make representations. It also relies on Rule 6 of the Tribunal’s *Rules of Procedure (Rules)*, requiring all parties to list and produce, on an initial and ongoing basis, all documents in their possession, for which no privilege is claimed, and that are “arguably relevant” to a fact, issue, or form of relief sought in the case.

[23] In order to be arguably relevant pursuant to Rule 6, there must be a “nexus or rational connection” between the document sought and a fact, issue or remedy identified by a party to the proceeding.⁶ The arguable relevance of a document must be determined on a case-by-case basis.⁷ The burden of proving the rational connection rests with the moving party.⁸

[24] To explain the meaning of “relevance” in this context, the Tribunal has stated:

... On the question of relevance, the Supreme Court noted that a defendant must show not that the evidence is relevant in the traditional sense, but that disclosure of the document will be useful, is appropriate, is likely to contribute to advancing the debate and is based on an acceptable objective

⁶ *Clegg v. Air Canada*, 2017 CHRT 27 at para.21; *Turner v. CBSA*, 2018 CHRT 1 at paras.30, 31.

⁷ *Seeley v. Canadian National Railway*, 2013 CHRT 18 at para.6.

⁸ *Turner*, *supra* note 6 at para.31.

that he or she seeks to attain in the case, and that the document is related to the dispute (at para.23).⁹

[25] The request for disclosure must not be speculative or amount to a "fishing expedition". Rather, the documents requested should be identified with reasonable particularity, meaning that the request, "should not subject a party or a stranger to the litigation to an onerous and far-ranging search for the documents".¹⁰

[26] However, the threshold for the production of arguably relevant documents is low, and the trend is towards broader disclosure at this stage.¹¹ Also, simply because a document is ordered to be produced at this stage of the proceeding does not mean it will necessarily be admissible into evidence at the hearing, or that the Tribunal will give it significant weight.¹²

VI. Analysis

[27] In considering the documents requested by the Commission, I will summarize the positions of the parties with respect to whether I should order their disclosure. I will then indicate my decision with respect to each request. I note that, for each request, the Commission seeks the production of documents that are in a format accessible to the Complainants.

1. All account notes related to the Complainants' accounts with the Respondent, as well as all available call notes, call transcriptions and audio recordings related to phone calls made by the Complainants to Virgin Mobile since the time they became customers of the Respondent to the present.¹³

[28] Virgin takes the position that it has already produced all account notes and transcriptions of audio calls in its possession, up to October 31, 2018, that are arguably relevant to the issues raised in these complaints which are, in its view: the 411 charges,

⁹ *Communications, Energy and Paperworkers Union of Canada v. Bell Canada*, 2005 CHRT 34 at para.11, referring to *Smith & Nephew Inc. v. Glegg*, 2005 SCC 31 at para.23.

¹⁰ *MacEachern v. Correctional Service Canada*, 2014 CHRT 31 at para.14.

¹¹ *Turner, supra* note 6 at paras.30-33; *Egan v. Canada Revenue Agency*, 2017 CHRT 33 at para.31.

¹² *Egan, ibid* at para.33.

¹³ These requests were encompassed by paragraphs 39(a), (c) and (d) of the Commission's Written Representations in support of its Motion.

the Virgin Mobile App, and the accessible contracts. It says it will continue to comply with its ongoing disclosure obligations.

[29] The Commission and Complainants object to Virgin's narrow characterization of the issues in these complaints, saying the complaints are not about discrete issues encountered by the Complainants during Virgin's ongoing accommodation efforts. Rather, the scope of the matter encompasses information from various Virgin Mobile services that must be compatible with screen readers in order to be accessible to vision impaired customers, including the 411 service, Virgin Mobile's Apps, its service contracts and monthly statements, text messages sent to customers, and its website. The Commission says that the broader accessibility of Virgin's services is a public interest issue, which is why it is seeking public interest remedies.

[30] In addition, Virgin says it does not have audio recordings of all of the calls referenced in the account notes. Francois Khouri questions why this is so, as he is under the impression that Virgin Mobile used to record all customer service calls. He and Roger Khouri also question whether any of their recorded phone calls have been deleted since their complaints were filed. Roger Khouri argues that Virgin was obliged to maintain and preserve all material since this human rights process began.

[31] Virgin also says the audio recordings of phone calls contain the personal information of third parties that would need to be redacted. The Commission notes that Virgin call centre employees are employed to communicate with the public and Francois Khouri questions what personal information could be contained in these phone calls, aside from the agent's name and his own personal information, which he agrees may be disclosed as part of this process. The Commission suggests that Virgin could manage its concern about third party information by redacting identifying information, either on audio or written files, and notes that the Tribunal may also direct that these documents be placed under a confidentiality order.

[32] Virgin also argues that it would be unreasonable to require it to transcribe all of the audio calls made by the Complainants, especially since Francois Khouri has been a Virgin customer since April of 2014, over a year before he allegedly encountered the problems

that form the basis for the complaints. The Commission says the Complainants' accessibility difficulties with Virgin's services generally are at issue, and information from the time of their enrolment as Virgin customers may relate to Virgin having early knowledge of their accessibility needs.

[33] Francois Khouri suggests that, in order to reduce the time and cost of having Virgin Mobile prepare transcripts of the requested calls, only the audio recordings of the calls themselves need to be disclosed, as this is his preference in any event. The Complainants note that the audio of these calls conveys both the length of time spent on the phone by the Complainants to try to resolve their accessibility issues, and the lack of information and understanding from Virgin employees regarding the needs of the Complainants as visually impaired customers.

[34] **Tribunal's decision:** I do not agree at this stage that the issues raised by the Complainants are as narrow as those articulated by Virgin Mobile. As this Tribunal has previously stated, in order to be arguably relevant, a requested document should be useful and likely to contribute to advancing the case.¹⁴ Based upon a review of the human rights complaints and the parties' SOPs, I accept that Virgin Mobile's disclosure obligations extend to all aspects of the Complainants' interactions with Virgin Mobile in which accessibility has been an issue for them as vision impaired customers. This includes the text messages sent by Virgin Mobile, its website, and any of Virgin's Apps that were utilized by the Complainants, in addition to the 411 service fees and credits, and the provision of accessible service contracts and monthly statements. I also agree with the Commission that information from the time of the Complainants' enrolment as customers may relate to Virgin having early knowledge of their accessibility needs.

[35] While it is possible that some of the notes relating to the Complainants' accounts may be unrelated to accessibility issues, I do not have any information at this point about how extensive the notes are. I would ask Virgin to review all of its account notes relating to the Complainants from the time they became customers and disclose those relating to the

¹⁴ *Supra* note 9

issues I have articulated.¹⁵ If there is a question about whether certain account notes are arguably relevant, the notes may be provided to the Tribunal for review and a decision as to whether they should be disclosed.

[36] I will also order Virgin to disclose all call notes and audio recordings related to phone calls made by the Complainants to Virgin Mobile since the time they became customers. I agree that, depending on the number of recorded calls in Virgin's possession, it could cause a delay to require that all of these calls be transcribed. I would assume that an audio recording may be more accessible to a person who is legally blind than a written transcript of a call that must then be read by a screen reader, and this is the Complainants' preference as well. As such, I agree to order the audio recordings only and not the transcripts at this time.

[37] Also, as the Complainants allege that they had to phone Virgin Mobile to deal with certain matters, as they were unable to do so through the Apps or website, the Complainants should be provided with the audio recordings and call notes of all of their calls that are in Virgin's possession. It is not only the content of the calls that could make them relevant to the complaints, but also the fact of having to call in because they could not access Virgin's services in any other way.

[38] Virgin Mobile has not explained what personal information of third parties may be contained in the audio recordings of the phone calls. If it is simply the names of the customer service agents, I see no need to redact this information unless Virgin decides it must do so. Doing so will obviously cause some delay. These recordings will not automatically become evidence at hearing so, if Virgin wishes to request that certain personal information be redacted or remain confidential at the hearing, it may also do so then.

¹⁵ Being, all aspects of the Complainants' interactions with Virgin Mobile in which accessibility has been an issue for them as vision impaired customers. This includes the text messages sent by Virgin Mobile, its website, and any of Virgin's Apps that were utilized by the Complainants, in addition to the 411 service fees and credits, and the provision of accessible service contracts and monthly statements.

[39] Further, Virgin Mobile should advise the Complainants if any of their recorded calls to Virgin Mobile have been deleted, when this occurred, and why they were deleted.

2. All documents related to Virgin’s work to improve the accessibility of the Virgin Mobile App from 2014 to the present, including, *inter alia*:
 - i. All documents used as guidelines and/or references by Virgin developers and testers prior to these complaints and subsequent to these complaints in the development and testing of Virgin’s Mobile App and Virgin’s website in relation to testing for potential accessibility issues for blind and vision impaired individuals.
 - ii. All documents related to Virgin’s update of its Mobile App in 2015 and 2016 wherein it remediated issues raised by the Complainants¹⁶, including investigation notes and documents showing which issues were remediated and any evidence of further updates to the Mobile App since that time to the present¹⁷.
 - iii. All documents related to Virgin’s engagement of testers with vision impairments to test the accessibility of the Virgin Mobile App to proactively identify and remediate issues, and all documents related to any other accessibility audits conducted on Virgin’s Mobile App or website from 2014 to the present.

¹⁶At paragraphs 20-21 of the Respondent’s SOP, Virgin stated that it is committed to making the “My Virgin App” accessible, and so it investigated concerns raised by the Complainants in 2015 and 2016 and released App updates on October 29, 2015, August 24, 2016, and November 20, 2016 to remediate several accessibility issues, including changes to make the My Account App more compatible with VoiceOver.

¹⁷ At paragraph 22 of the Respondent’s SOP, Virgin says that it is not aware of any further accessibility concerns with the My Account App, although the Complainants have identified three “allegedly ongoing issues”, relating to: (1) Roger’s allegation that he must call Virgin’s Customer Care centre to obtain information about his “real-time data usage” because he is vision impaired, rather than receiving more timely information through the My Account App. This is disputed by Virgin, which says data usage is not updated in real time on the My Account App, so sighted customers are not able to access better information than the Complainants can, either through the App or by phoning Customer Care, and so this is not an accessibility issue; (2) The Complainants’ allegation that the “Need Help” option in the My Account App does not always work with VoiceOver. Virgin says it requires more information to investigate this to determine whether further remediation can be implemented; (3) The Complainants say they have received text messages to web links that are not compatible with their VoiceOver program, but Virgin says this is “not an issue with the My Account App.”

- iv. All documents related to the role of Jeremie Racine as project Design & Delivery Leader and his work on remedial actions, and on any ongoing testing of the Virgin Mobile App for accessibility.¹⁸

[40] The Commission argues that information demonstrating Virgin's efforts from 2014 to the present to improve its Mobile App relates directly to the issues before the Tribunal, including whether Virgin has accommodated the Complainants and other blind or vision impaired customers. It says documents relating to Virgin's investigation into concerns raised by the Complainants in 2015 and 2016 would provide information about what knowledge Virgin had of accessibility issues and when, as well as what steps it took to respond to the Complainants' concerns. The Commission says this would also provide information about Virgin's established practices and procedures when responding to accessibility concerns. It says this is directly linked to public interest remedies identified by the Complainants, including that Virgin have dedicated technical employees to assist blind and visually impaired customers when they encounter difficulties with its website and Apps, and that Virgin engage a consultant to test its Apps for accessibility for blind and visually impaired users.¹⁹

[41] In addition, the Commission notes that Virgin has indicated that it intends to call Mr. Racine as one of its witnesses, and so the Commission argues that the documents related to his work must be produced so that all parties can prepare for the hearing.

[42] Virgin asserts that the Commission's request is overbroad, unspecific and irrelevant, as it fails to particularize any specific accessibility improvements that may be relevant to these complaints. In response, the Commission clarifies that its request is not for documents related to *all* accessibility improvements, but rather to relevant accessibility improvements for vision impaired customers, and that it is specifically requesting documents related to App updates where issues raised by the Complainants were remediated, as well as further App updates since then that are arguably relevant to this matter.

¹⁸ These four requests are encompassed by paragraphs 39(e), (n) and (o) of the Commission's Written Representations in support of its Motion

¹⁹ Commission's Written Representations in support of its Motion at paras. 39(e) & (n).

[43] Virgin says the complaints were filed in 2016, yet the Commission is requesting documents relating to work on the App or website from 2014 to the present, which is too large a time frame and not rationally connected to the complaints. Virgin also argues that the accessibility of its website is not rationally connected to the complaints.

[44] The Commission and Complainants argue that this matter relates to the general accessibility of Virgin's services for vision impaired customers, including the Complainants, since they became Virgin Mobile customers. The Complainants say that the inaccessibility of the Virgin Mobile My Account App, the My Benefits App, and the website have always been at the heart of their complaints.

[45] Virgin also suggests that, if the Commission is only seeking documents relating to the investigations conducted into the complaints, such investigations would have been done at the instruction of counsel and Virgin would take the position that such documents are privileged. The Commission questions this argument, stating that a document is not necessarily privileged simply because it relates to a lawyer's direction. It notes that Virgin has not cited case law to support a privilege claim over any of the requested documents. The Commission says it is not requesting privileged documents that may fall within this request, but submits that a general claim of privilege over this request is untenable.

[46] In addition, Virgin argues that this request is so broad that it could capture documents consisting of a huge number of pages. Virgin says it does not keep these documents in one central repository and many individuals, including contractors, worked on modifying and upgrading the Virgin App from 2014 to the present. It says it would take too much time to conduct the search and then for the parties to review the documents, which could delay the proceedings. Also, many of the documents requested could contain confidential and proprietary information which is unrelated to accessibility issues, such as product design documents that contain information relating to commercial practices, pricing and product structuring. Virgin argues that the probative value of this evidence does not outweigh its prejudicial effect on the proceedings. The Commission says it appreciates that this production request may be large and is willing to work with Virgin to suggest ways to narrow it, for example through the production of documents that summarize Virgin's accessibility efforts.

[47] Finally, Virgin says it is currently working on making the Virgin Mobile App WCAG 2.0 AA compliant within the next year and submits that it is a better use of its time to continue to work on rendering the App WCAG compliant than to search for the documents captured by this request.

[48] The Complainants say it is “great news” that Virgin is working on making its App WCAG 2.0 AA compliant, but disagree with Virgin’s statement that it is a better use of its time to continue working to make the App compliant than to search for the requested documents.²⁰ François Khouri says Virgin is legally obliged to find these documents and so it should do so while also working on the App. He says that, if Virgin does not provide the arguably relevant information requested in the Motion, the Complainants will not have an ample opportunity to present their cases before the Tribunal.

[49] **Tribunal’s decision:** Again, I agree that the scope of the complaints is broader than that asserted by Virgin Mobile. I agree that any efforts on Virgin’s part to improve the accessibility of its Apps (including both the My Account App and the My Benefits App referred to by the Complainants) or website for vision impaired customers from 2014 to the present are relevant to the complaints. This encompasses the time the Complainants have been Virgin Mobile customers and should reflect any improvements in accessibility that would have benefited them as vision impaired customers.

[50] With respect to Virgin’s allegation that the Commission’s request is “overbroad and unspecific”, I am satisfied that the Commission has clarified that it is seeking documents relevant to these complaints, and not all accessibility improvements made to the Apps.

[51] With regard to the documents set out in request (2)(i) above, I agree to order Virgin to produce all documents used as guidelines and/or references by Virgin developers and testers in the development and testing of Virgin Mobile’s My Account App and My Benefits App and website in relation to testing for potential accessibility issues for blind and vision impaired individuals, from 2014 to the present.

²⁰ Paras.20-21 of the Reply of Francois Khouri (filed March 21, 2019) to the Respondent’s Responding Written Representations in this Motion (filed March 8, 2019).

[52] As for the documents requested at (2)(iii) above, I agree to order Virgin to produce all documents related to its engagement of testers with vision impairments to test the accessibility of the Virgin Mobile Apps (My Account and My Benefits) to proactively identify and remediate accessibility issues, and all documents related to any other accessibility audits conducted on these Apps or website from 2014 to the present *relating to accessibility for blind or vision impaired customers*.

[53] With regard to the documents requested at (2)(iv) above, I note that, in its SOP, Virgin lists Jeremie Racine as a witness it intends to call to testify about, “the issues relating to the My Account App, including the steps taken by Virgin Mobile to investigate the Complainants’ concerns, the subsequent remedial actions and the ongoing process for testing the My Account App for accessibility.”²¹ The Commission’s request for documents relating to his role as a project leader working on remediating and testing accessibility issues with Virgin Mobile’s My Account App reflects what Mr. Racine will testify about and so is arguably relevant to facts, issues and possible remedies in this matter. I will order that this information be disclosed.

[54] With regard to the argument that documents relating to Virgin’s investigations of the Complainants’ accessibility complaints are solicitor-client privileged because they were done at the direction of counsel, I agree with the Commission that Virgin has provided nothing more than a bald assertion that all documents relating to a lawyer’s direction are automatically privileged. It has already provided some documents from an investigation into the Complainants’ inaccessibility issues done by its employee Jamelia Boland, so it is unclear why it is claiming privilege over other investigation documents.

[55] Solicitor-client privilege has been articulated by the Supreme Court of Canada as follows: “Where legal advice of any kind is sought from a professional legal advisor in his capacity as such, the communications relating to that purpose, made in confidence by the client, are at his instance permanently protected from disclosure by himself or by the legal advisor.”²² Even documents between employees which transmit or comment on

²¹ Respondent’s SOP at para.52.

²² *Descoteaux v. Mierzwinski*, [1982] 1 S.C.R. 860, 1982 CanLII 22 (SCC)

communications subject to legal advice privilege could be covered by solicitor-client privilege, provided the exchange is in the context of seeking or receiving legal advice.²³

[56] In this case, it is difficult to determine if these documents fall into this category without additional information to support the claim. Indeed, even if legal counsel suggested that Virgin investigate these concerns, it is unlikely that all the documents used during the investigations would automatically become solicitor-client privileged. If Virgin is claiming solicitor-client privilege over these documents, it has the burden of showing that the documents are subject to this privilege, and I am not satisfied that Virgin has satisfied its burden of establishing solicitor-client privilege based on the information set out in its submissions.

[57] In any event, the Commission confirms it is not requesting privileged documents that may fall within this request. If Virgin takes the position that any of the documents in question are subject to solicitor-client privilege, it must list these documents as required by the Tribunal's Rule 6(1)(e) and explain why it is claiming this privilege. If the Commission or Complainants take issue with any of these claims of privilege, this may be raised with the Tribunal, which could then review the documents for a determination as to whether they are subject to solicitor-client privilege, or if they must be disclosed to the other parties.

[58] As such, subject to the direction with respect to solicitor-client privilege, I agree to order Virgin to disclose any further documents in its possession that are captured by the request at (2)(ii) above, relating to updates to its Mobile Apps in 2015 and 2016, wherein it remediated issues raised by the Complainants, including investigation notes and documents showing which issues were remediated and any evidence of further updates to the My Account App and My Benefits App relating to accessibility for blind or vision impaired customers from that time to the present.

[59] Finally, with regard to Virgin's submission that it is a better use of its time to continue working on making the App WCAG 2.0 AA compliant now, rather than to look for the requested documents, the message this sends to the other parties, and especially the Complainants, is that this complaint is somehow interfering with Virgin's current

²³ *Slansky v. Canada (Attorney General)*, 2013 FCA 199

accessibility efforts, which is unfair. The Respondent is a large company and should have the resources to do both and, in any event, the Complainants are entitled to pursue their complaint before the Tribunal, and they are entitled to all arguably relevant documents in Virgin's possession in order to have an ample opportunity to present their case to the Tribunal.

[60] I note that the Commission has offered to work with Virgin Mobile to narrow these requests, for example by accepting summary documents as opposed to all of the documents themselves. If this would be of assistance to Virgin, I am not opposed to this solution, although the Tribunal has previously concluded that Rule 6 of the Tribunal's Rules of Procedure does not permit the Tribunal to require a party to *create* documents for disclosure.²⁴ If the Commission and Respondent fail to agree in a timely way on a method to reduce the number of documents to be disclosed, then Virgin must produce all of the documents referred to in the Order.

[61] With respect to Virgin's concern that the requests may capture proprietary and design documents that are unrelated to accessibility issues, such information may be redacted or removed, or Virgin may request a confidentiality order from the Tribunal.

3. (a) All documents explaining the history and operations of Virgin's Accessibility Services Centre (ASC), including all documents and communications demonstrating that Virgin notified the Complainants of the ASC at least by May of 2015 (the date the Respondent maintains that Francois Khouri was inadvertently removed from the ASC's "special exemption list"), and that it had placed them on its special exemption list.²⁵

(b) Francois Khouri is still requesting the production of: "all documents (notes, emails or other forms of communications) related to the comment that 'in or around May 2015, a Virgin Mobile agent inadvertently removed François Khouri from the ASC's 'special exemption list'"²⁶, although the Commission is no longer seeking these documents as part of this Motion.

²⁴ *Gaucher v. Canadian Armed Forces*, 2005 CHRT 42, at para.17.

²⁵ These requests are contained in paragraphs 39(f) and (g) of the Commission's Written Representations in support of its Motion.

²⁶ This information was sought at paragraph 24(h) of the Commission's Written Representations in support of its Motion.

[62] Virgin says the ASC is an internal business unit within Bell Canada that handles issues relating to customer accessibility for Bell and its related entities and brands, including Virgin Mobile, and that the ASC has been in place at all material times that the Complainants have been customers of Virgin Mobile. It says the ASC page was added to the Virgin Mobile website on July 22, 2017.

[63] The Commission says information about the history and operations of the ASC is rationally connected to the issue of Virgin's alleged failure to accommodate, as there are facts yet to be established about the Complainants' knowledge of the ASC or lack thereof, and whether Virgin notified the Complainants that they had been added to the special exemption list. The Commission says the Complainants deny having been notified of this action and Virgin has not provided information to date to confirm otherwise.

[64] The Commission also says that documents relating to these issues would shed light on Virgin's established practices and procedures for meeting the needs of customers with disabilities and accessibility requirements, and are rationally connected to the remedies sought in this case. For example, the Complainants are requesting that Virgin establish a department of trained staff to assist customers with disabilities encountering accessibility issues with Virgin's services.

[65] Virgin takes the position that these requests are overbroad and disproportionate to the complaints. It says whether or not the Complainants were informed of the ASC is irrelevant to the issues to be decided by the Tribunal. It also says that Francois Khouri's removal from the special exemption list occurred in May of 2015 and was quickly resolved, and in any event took place six months prior to the filing of his complaint, so is not in a relevant timeframe. Virgin also argues that his removal from the special exemption list is not relevant to the subject matter of the complaints, which is about the method in which the 411 fees are credited to the Complainants' accounts, not the fact that this method was inadvertently suspended and promptly resolved.

[66] The Commission notes that the ASC was in place at all material times that the Complainants have been Virgin customers, yet they allege encountering accessibility difficulties over a number of years. The Commission argues that notifying the

Complainants of its specialized centre for assisting customers with accessibility needs is highly relevant to the central issue of whether Virgin treated the Complainants in an adverse manner and/or denied them access to services based on their disabilities.

[67] Francois Khouri says the requested information about the ASC and when Virgin notified the Complainants about it is relevant because Virgin, “hangs its hat on the fact that the ASC is there to help visually impaired Virgin Mobile customers like Roger and myself, but they never told us about the ASC.”²⁷ He also says, “the Complainants take issue with both Francois being removed, and how the credits are being applied.”²⁸ He disagrees with Virgin’s allegation that the removal of the 411 waiver and the resolution of this issue is not relevant because it took place six months before he filed his complaint. He says that the discrimination by Virgin was ongoing, and commenced prior to them making their complaints. Specifically, he says that, after his 411 fee waiver was suspended, he contacted the Commission on May 5, 2015 about this and, shortly after speaking with a Human Rights Officer, his fee waiver was reinstated by Virgin Mobile. He says that, only after spending eight months working to assist Virgin to make its services and App and website more accessible, did they launch their complaints, when their efforts did not prove successful.

[68] **Tribunal’s decision:** I agree that knowing whether, when, and/or how Virgin notified the Complainants about the ASC is arguably relevant to the issue of how Virgin has treated them, as well as to its established practices and policies for meeting the needs of customers with disabilities and accommodation requirements, which the Commission has identified as a principal issue in this proceeding.

[69] As such, I will order Virgin to disclose all documents and communications demonstrating that it notified the Complainants both of the existence of the ASC, and of their placement on the special exemption list.

²⁷ Reply of Francois Khouri to the Respondent’s response to the Motion, at para.16.

²⁸ *Ibid*

[70] In addition, I will order Virgin to disclose all documents, additional to those already provided, relating to Francois Khouri's removal from the special exemption list and reinstatement on that list, in or around May 2015.

[71] I note that, in his human rights complaint, Roger Khouri says he had previously been a customer of Bell Mobility, the parent company of Virgin Mobile, and that he was not charged for use of the 411 service with Bell as, "All visually impaired persons automatically receive a credit on their account for any 411 charges applied." Information about the history and operations of the ASC is arguably relevant to this allegation, given that the ASC is an internal business unit within Bell Canada that, according to Virgin, has been in place at all material times that the Complainants have been Virgin Mobile customers, and it is the ASC that maintains the "special exemption list" for 411 services. It is also arguably relevant to the remedies sought by the Complainants, for example, their request that Virgin have technical staff to assist vision impaired customers.

[72] However, I am concerned that the scope of the request for "all documents explaining the history and operations of" the ASC may be overly broad, given that we do not know when the ASC was established. I agree that Virgin should produce further documents about the history and operations of the ASC; however, rather than providing all documents about the ASC from its inception, I will order the Respondent to disclose documents that answer the following questions: When was the ASC established and why? When did it begin serving Virgin Mobile and its customers? Who is it meant to serve? How does it assist Virgin Mobile and its customers? Who works in the ASC, and what special qualifications or training do they have, if any? This information would presumably be relevant to Virgin's own position with respect to the complaints, as the ASC seems to be a central aspect of its argument that it accommodates people with disabilities and provides accessible services to them.

[73] If, following the disclosure of this information, the Commission feels it requires further documents about the history and operations of the ASC that the Respondent refuses to provide, a further request for disclosure can be made to the Tribunal at that time.

4. All documents (notes, emails or other forms of communications) related to the interaction of Andrea Roworth (Client Representative, Legal Affairs Support, Executive Care Office) with the 411 Credits Program and her knowledge of the history of Virgin Mobile's customer service with the Complainants.²⁹

[74] The Commission says that this information links directly to the Complainants' allegation that Virgin Mobile discriminated against them by failing to ensure that they would not be charged 411 fees, despite assurances to the contrary, and by maintaining a cumbersome process for the removal of the 411 fees.³⁰

[75] Virgin says this request is irrelevant as Ms. Roworth is not involved in the manner in which 411 charges are credited to the Complainants or to anyone else. In her affidavit filed in support of Virgin's written response to this Motion, Ms. Roworth says that she first became aware of the Complainants' issues with the 411 Credits Program in October of 2017, after she was advised of their complaints to the Commission, and any work she did relating to the 411 credit program was at the request of Virgin's lawyers. She further states that there are potentially hundreds of documents that could be responsive to this request. Virgin contends that the Commission has not demonstrated why the requested documents will be useful and advance their case, which is particularly important because this request would burden Virgin with an onerous search for documents, many of which are privileged.

[76] The Commission points out that Virgin intends to call Ms. Roworth as a witness to speak to, among other things, how 411 credits have been applied for the Complainants and about Virgin's customer service with the Complainants.³¹ The Commission says that documents related to the 411 credits program, the Complainants' experiences with the program, and their customer service experiences with Virgin Mobile go to the heart of this complaint about the accessibility of Virgin's services for vision impaired customers. The Commission says it is willing to enter into any appropriate confidentiality agreement, or would welcome a confidentiality order from the Tribunal to protect proprietary information.

²⁹ This request was set out at paragraph 39(i) of the Commission's Written Representations in support of its Motion.

³⁰ At paragraph 3(1) of the Complainants' SOP, filed April 30, 2018.

³¹ As stated at paragraph 51 of the Respondent's SOP.

[77] **Tribunal's decision:** I note that Virgin intends to call Ms. Roworth to testify about, "the 411 Credits program, including the history of the program and how the 411 Credits have been applied, both for the Complainants and in general. Ms. Roworth will also speak to the history of Virgin Mobile's customer service with the Complainants, including the account notes and call records that Virgin Mobile will produce."³²

[78] Virgin suggests that, because the work Ms. Roworth did relating to the 411 credit program was done at the request of Virgin's lawyers after the complaint was received by the Tribunal in August of 2017, certain documents captured by this request would be privileged. It appears that Virgin may be referring to litigation privilege rather than solicitor-client privilege. Litigation privilege applies when the documents have been generated for the dominant purpose of litigation, when litigation is contemplated, anticipated, or ongoing.³³

[79] It seems fair to assume that litigation was contemplated at the point at which Ms. Roworth became involved, and it is possible that some of the documents requested by the Commission about the 411 credits program will be protected by litigation privilege. However, Virgin says Ms. Roworth will testify about the account notes and call records that it will produce relating to its customer service, so it seems that it should also be able to produce documents already in its possession that Ms. Roworth has referred to in order to inform herself about the 411 credits program, and that these documents should be readily available, rather than requiring an onerous search.

[80] The Commission has indicated it is not requesting privileged documents that may fall within this request. However, Virgin is required by Rule 6(1)(e) of the Tribunal's *Rules* to list all documents captured by the request for which privilege is claimed. In doing so, Virgin should explain why it is claiming this privilege, as Virgin bears the onus of

³² *Ibid*

³³ The Supreme Court of Canada in *Blank v. Canada (Minister of Justice)*, 2006 SCC 39 said that litigation privilege is, "applicable to communications between a lawyer and client or third parties, or to documents generated by the lawyer or upon instruction by the lawyer, where the dominant purpose of such documents or communications is to prepare for or conduct actual or reasonably anticipated litigation. This privilege generally applies to documents that counsel or persons under counsel's direction have prepared, gathered, or annotated. The purpose of the litigation privilege is to create a 'zone of privacy' in relation to pending or anticipated litigation." (at paras. 26-27)

establishing that the documents in question should be protected by privilege. If the Commission or Complainants take issue with these claims of privilege, this may be raised with the Tribunal. The Tribunal could then review the documents for a determination as to whether they are subject to privilege, or if they must be disclosed to the other parties.

[81] If Virgin is concerned about the confidentiality of certain documents and is unable to come to an agreement with the Commission and Complainants, it may request a confidentiality order from the Tribunal prior to disclosing the documents.

5. All documents related to any undue hardship Virgin may incur by accommodating the Complainants as set forth in its Statement of Particulars.³⁴

[82] The Commission says the requested documents are rationally connected to the central issue in these proceedings, of whether Virgin failed to accommodate the Complainants as visually impaired customers.

[83] In its SOP, Virgin said that it, “is continuing to investigate whether it would be feasible to implement the automation of 411 Credits within the bill itself, and if so, what would be required to implement that automation. Virgin Mobile reserves the right to supplement this Statement of Particulars once it has further information.”³⁵ In its written response to this Motion, Virgin confirms that this continues to be the case. Virgin says it commits to providing particulars and relevant, non-privileged documents relating to undue hardship that it would incur when they are available.

[84] In reply, the Commission points out that Virgin raised undue hardship in its SOP and it bears the onus of producing such evidence in a timely way, if it exists. It says that Virgin cannot, “reserve undue hardship as a defence without providing an evidentiary basis and by continuing to investigate whether undue hardship may occur.”³⁶

[85] **Tribunal’s decision:** I agree with the Commission that Virgin must disclose these documents at this stage, prior to the hearing. Virgin has raised a *bona fide* justification defence in its SOP, so it must produce documents relating to undue hardship. If it is

³⁴ This request was set out at paragraph 39(m) of the Commission’s Written Representations in support of its Motion.

³⁵ Respondent’s SOP at para.40(c).

³⁶ Commission’s Reply submissions in its Motion, at para.23.

continuing to investigate whether automation is feasible, it should be in possession of some documents already, which it is to produce now, and then on an ongoing basis.

6. Copies of promotional text messages that the Complainants have received from Virgin Mobile since they became Virgin customers.³⁷

[86] The Commission says that these documents are rationally connected to the crux of this matter: that Virgin denied services to, and differentiated adversely against, and failed to accommodate blind and vision impaired customers, by providing information and offering services in ways that were not accessible to them.

[87] Virgin Mobile argues that this request is not rationally connected to the complaints, which are only about the 411 credits, the Virgin Mobile App, and alternative format contract delivery.

[88] As before, the Commission and Complainants argue that Virgin is unfairly narrowing the scope of the complaints, which are about access to Virgin's services, including its Apps, website, text messages with web links, as well as the alternative format contracts and the 411 credit waiver.

[89] **Tribunal's decision:** I have previously indicated that I accept that Virgin Mobile's disclosure obligations extend to all aspects of the Complainants' interactions with Virgin Mobile in which accessibility has been an issue for them as vision impaired customers, including the text messages sent by Virgin Mobile. I also note that Roger Khouri's experiences with not being able to access text messages from Virgin is detailed in the Complainants' SOP; as such, I agree that they are arguably relevant at this stage and I will order that Virgin disclose these text messages.

VII. Conclusion

[90] The Tribunal's *Rules* and case law state that the parties must disclose to one another documents that are arguably relevant to facts, issues or remedies identified by any of the parties to the proceeding. In its written response to the Commission's Motion for the

³⁷ This request was set out at paragraph 39(r) of the Commission's Written Representations in support of its Motion.

disclosure and production of additional documents, Virgin Mobile has attempted to narrow the scope of the complaints, and thus narrow the facts, issues and remedies in this matter. I do not agree that this is appropriate at this stage of the proceeding, as the material filed by the parties thus far does not support Virgin's narrow characterization of the issues. I agree that the parties' disclosure obligations extend to all aspects of the Complainants' interactions with Virgin Mobile in which accessibility was an issue for them as vision impaired customers.

[91] Virgin requests that the Tribunal dismiss the Commission's Motion. I decline to do so. Virgin has also requested, if the Tribunal grants any portion of the Motion, that the Order allow it to make redactions as appropriate. I have indicated above that Virgin may redact information that is confidential or proprietary, and that is unrelated to the accessibility issues identified.

[92] Where there is disagreement about privileged or redacted material or, where the Respondent believes that a document or audio recording is not arguably relevant, these documents or recordings may be provided to the Tribunal in order to determine whether they must be disclosed.

[93] Where the Order results in a large number of documents, I would encourage the parties to work together to come to an agreement by which the information may be summarized, in the interest of expediency.

[94] Finally, as I noted in the Introduction to this Ruling, the Complainants maintain that all of the documents originally requested by the Commission in its Motion should be produced by Virgin Mobile, not just the documents requested in its revised request. Except where the Complainants have specifically addressed these additional categories of documents in their submissions, which I have dealt with in this Ruling, I decline to deal with any further requests for documents in this Ruling.

VIII. Order

- i) That the Respondent immediately produce the following documents to the Commission and Complainants, in an accessible format and additional to those already disclosed:
- 1) All documents Virgin Mobile has agreed to produce in its response to this Motion, including:
 - a) Accessible versions of the Complainants' monthly account statements;³⁸
 - b) Call notes, transcripts and audio recordings of phone calls made by Roger Khouri in July and December of 2018;³⁹
 - c) All guidance or policies relating to alternative format contracts;⁴⁰
 - d) All relevant and non-privileged documents related to Jeremie Racine's investigation into the Complainants' concerns;⁴¹
 - e) Training materials for Virgin employees who deal with blind and vision impaired clients;⁴² and
 - f) Guidance and policy documents that apply to Virgin employees who deal with Virgin's vision impaired clients.⁴³
 - 2) All account notes related to all aspects of the Complainants' interactions with Virgin Mobile in which accessibility has been an issue for them as vision impaired customers. This includes issues related to the text messages sent by Virgin Mobile, its website, and any of Virgin's Apps that were utilized by the Complainants, in addition to the 411 service fees and credits, and the provision of accessible service contracts and monthly statements. If there is a question about whether certain account notes are arguably relevant, the notes may be provided to the Tribunal for review and a decision as to whether they should be disclosed.

³⁸ Corresponding to paragraph 24(b) of the Commission's Written Representations in support of its Motion, and paragraphs 14-15 of Virgin's response to the Motion.

³⁹ Corresponding to paragraph 24(d)(ii)&(iii) of the Commission's Motion, and paragraphs 20 and 22 of Virgin's response to the Motion.

⁴⁰ Corresponding to paragraph 24(k) of the Commission's Motion, and paragraphs 43-44 of Virgin's response to the Motion.

⁴¹ Corresponding to a portion of paragraph 24(o) of the Commission's motion, and paragraph 60 of Virgin's response to the Motion.

⁴² Corresponding to paragraph 24(p) of the Commission's motion, and paragraphs 62-63 of Virgin's response to the Motion.

⁴³ Corresponding to paragraph 24(q) of the Commission's Motion, and paragraphs 64-65 of Virgin's response to the Motion.

- 3) All call notes and audio recordings related to phone calls made by the Complainants to Virgin Mobile since the time they became customers. Further, Virgin Mobile is to advise the Complainants if any of their recorded calls with Virgin Mobile have been deleted, when this occurred, and why they were deleted.
- 4) All documents for which no privilege is claimed, including investigation notes, relating to Virgin Mobile's update of its My Account App and My Benefits App in 2015 and 2016, wherein it remediated issues raised by the Complainants, including documents showing which issues were remediated and any evidence of further updates to these Apps relating to accessibility for blind or vision impaired customers from that time to the present.
- 5) All documents used as guidelines and/or references by Virgin developers and testers in the development and testing of Virgin Mobile's My Account App and My Benefits App and its website in relation to testing for potential accessibility issues for blind and vision impaired individuals, from 2014 to the present.
- 6) All documents related to Virgin Mobile's engagement of testers with vision impairments to test the accessibility of the Virgin Mobile My Account App and My Benefits App to proactively identify and remediate issues, and all documents related to any other accessibility audits conducted on these Apps or website from 2014 to the present relating to accessibility for blind or vision impaired customers.
- 7) All documents related to the role of Jeremie Racine as project Design & Delivery Leader and his work on remedial actions, and on any ongoing testing of the Virgin Mobile My Account App for accessibility.
- 8) All documents and communications demonstrating that Virgin Mobile notified the Complainants both of the existence of the ASC, and of their placement on the special exemption list.
- 9) All documents, additional to those already provided, relating to François Khouri's removal from the special exemption list and reinstatement on that list, in or around May of 2015.
- 10) Documents that answer the following questions about the ASC: When was the ASC established and why? When did it begin serving Virgin Mobile and its customers? Who is it meant to serve? How does it assist Virgin Mobile and its customers? How many people work in the ASC and what special qualifications do they have, or training do they receive, if any?⁴⁴
- 11) All documents for which no privilege is claimed, including notes, emails or other forms of communications, related to Andrea Roworth's knowledge of the

⁴⁴ I note that there may be overlap between these documents and those set out in paragraphs 1(e) and (f) of this Order.

411 Credits Program and her knowledge of the history of Virgin Mobile's customer service with the Complainants.

- 12) All documents related to any undue hardship Virgin may incur by accommodating the Complainants as set forth in its Statement of Particulars, including documents relating to the feasibility of automating the 411 credits.
- 13) Copies of all promotional text messages that the Complainants have received from Virgin Mobile since they became customers.

on the following conditions:

- a. Virgin may redact information in the documents that is not arguably relevant or that contains the personal information of third parties, or that contains proprietary information. In the alternative, Virgin may seek a confidentiality order to protect this information prior to disclosing it;
 - b. These documents and audio recordings may only be relied upon for the purposes of this human rights hearing, and not for any other purpose or legal proceeding;
 - c. The parties must not provide these documents to any outside person or entity, aside from legal counsel or witnesses retained as experts in the proceeding;
 - d. If Virgin Mobile objects to providing any documents set out in this Order, and the other parties disagree with the objection, they should be provided to the Tribunal for review and a determination as to whether they should be produced, and whether there should be any redactions; and
 - e. Disclosure of these documents does not mean that they will be admissible as evidence at hearing, and any issues in this regard shall be dealt with during the hearing. If the Respondent objects to these documents becoming part of the public record, this should also be raised at the hearing.
- ii) That the Respondent immediately serve and file a list of all documents in its possession, for which privilege is claimed, which are captured by this Order or otherwise relate to a fact, issue or form of relief sought in the case, including those facts, issues and forms of relief identified by other parties, as required by Rule 6(1) of the Tribunal's *Rules of Procedure*. The Respondent should include an explanation as to why privilege is being claimed.

Signed by

Colleen Harrington
Tribunal Member
Ottawa, Ontario
June 12, 2019

Canadian Human Rights Tribunal

Parties of Record

Tribunal Files: T2231/5317 & T2232/5417

Style of Cause: Roger Khouri and Francois Khouri v. Virgin Mobile Canada

Ruling of the Tribunal Dated: June 12, 2019

Motion dealt with in writing without appearance of parties

Written representations by:

Roger Khouri and Francois Khouri, for the Complainants

Sheila Osborne-Brown and Jessica Walsh, for the Canadian Human Rights Commission

Sacha Liben and Lisa Alleyne, for the Respondent