

FILED / PRODUIT

Date: October 20, 2022

CT- 2022-002

Sara Pelletier for / pour
REGISTRAR / REGISTRAIRE

CT-2021-002

OTTAWA, ONT.

Doc. # 433

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF the acquisition by Rogers Communications Inc. of Shaw Communications Inc.;

AND IN THE MATTER OF an Application by the Commissioner of Competition for one or more orders pursuant to section 92 of the *Competition Act*;

BETWEEN

THE COMMISSIONER OF COMPETITION

Applicant

- and -

ROGERS COMMUNICATIONS INC. AND SHAW COMMUNICATIONS INC.

Respondents

**SUPPLEMENTARY MOTION RECORD
(Motion to Quash Subpoenas Issued on October 3 & 5, 2022)**

October 19, 2022

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Counsel for the Moving Party, BCE Inc.

TO:

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Counsel for Shaw Communications Inc.

AND TO:

Attorney General of Canada

Department of Justice Canada

Competition Bureau Legal Services

Place du Portage, Phase I

50 Victoria Street, 22nd Floor

Gatineau, QC K1A 0C9

John S. Tyhurst

Derek Leschinsky

Katherine Rydel

Ryan Caron

Kevin Hong

Ellé Nekiar

Counsel to the Commissioner of Competition

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TAB 1

CT-2021-002

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF the acquisition by Rogers Communications Inc. of Shaw Communications Inc.;

AND IN THE MATTER OF an Application by the Commissioner of Competition for one or more orders pursuant to section 92 of the *Competition Act*;

BETWEEN

THE COMMISSIONER OF COMPETITION

Applicant

- and -

**ROGERS COMMUNICATIONS INC. AND SHAW COMMUNICATIONS
INC.**

Respondents

**AFFIDAVIT OF JENNIFER MARINGOLA
(Affirmed October 18, 2022)**

I, Jennifer Maringola, of the City of Richmond Hill, in the Province of Ontario,

AFFIRM AND SAY:

INTRODUCTION

1. I am a law clerk at Blakes Cassels & Graydon LLP. As such, I have knowledge of the matters contained in this affidavit. Where I rely on information received from others, I state

the source of that information and believe it to be true. Nothing in this affidavit is intended to waive any applicable legal privilege with respect to any information or documents contained or referenced herein.

COMMUNICATIONS BETWEEN COUNSEL

2. I have reviewed communications between counsel at Blakes and counsel for Rogers and Shaw with respect to the motion brought by Bell and two of its employees to quash subpoenas issued by the Tribunal Registrar at the request of Rogers and Shaw (the “**Respondent Subpoenas**”).
3. On October 7, 2022, external counsel for Bell, Ms. Henderson, sent a letter to external counsel for Rogers and Shaw advising that Bell intended to bring a motion to quash the Respondent Subpoenas. A copy of this letter is attached as Exhibit “**A**” to my affidavit.
4. On October 7, 2022, external counsel for Shaw, Mr. Ricci, responded to Ms. Henderson’s letter by email. Mr. Ricci proposed that the motions be heard on October 14, and that Bell provide motion materials by October 11, 2022. A copy of this email is attached as Exhibit “**B**” to my affidavit.
5. On October 11, 2022 Ms. Henderson delivered a letter to the Competition Tribunal notifying the Tribunal of Bell’s intention to bring a motion to quash the Initial Subpoenas and requesting a case conference to discuss the scheduling of the motion. A copy of this letter is attached as Exhibit “**C**” to my affidavit.

6. On October 11, 2022, external counsel for Telus, Mr. Hirsh, proposed an expedited schedule for the motions to quash on behalf of Bell and Telus to external counsel for Rogers and Shaw, inviting discussion ahead of any case conference. On Wednesday October 12, external counsel for Shaw replied on behalf of Rogers and Shaw agreeing to the proposed schedule, with minor proposed changes. On October 13, Ms. Henderson replied on behalf of Bell and Telus accepting the proposed changes to the schedule. Later that day, counsel to Rogers replied to Ms. Henderson's email proposing a call to discuss the scope of the Subpoenas. A copy of this email chain is attached as Exhibit "D" to my affidavit.

7. I am advised that on October 14, 2022 external counsel for Bell, Telus, Rogers, Shaw and counsel for the Commissioner attended a call where counsel for Rogers and Shaw advised that they would be withdrawing the initial subpoenas in favour of a second set of more narrowly tailored subpoenas. Shortly after the call, external counsel for Shaw sent an email to external counsel for Bell and Telus attaching the narrowed Shaw subpoena, with a cover email referencing various interactions between external counsel for Rogers, Shaw, Bell and Telus. Ms. Henderson replied shortly after accepting service of the second Shaw subpoena, and contesting Shaw's characterization of the interactions to date. External counsel for Rogers provided the second Rogers subpoenas to external counsel to Bell and Telus via email shortly after on October 14, 2022. A copy of this email chain is attached as Exhibit "E" to my affidavit.

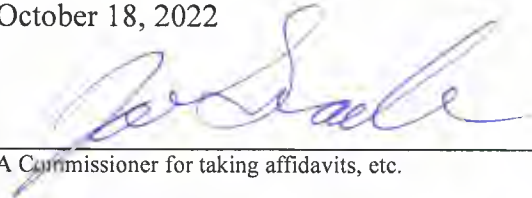
8. I am advised that counsel for Rogers, Shaw, Bell, Telus and the Commissioner attended a case conference before Chief Justice Crampton at 4:00pm on Friday, October 14, 2022. Following this case conference, external counsel for Shaw sent an email to external counsel

for Bell and Telus regarding the issue of costs on the motions to quash, and referring to a proposal made by counsel to Rogers at the case conference regarding a counsel-eyes only review of the documents subject to the Respondent Subpoenas. On October 17, 2022 counsel for Rogers replied to this email chain inquiring as to Bell and Telus's position on the newly issued subpoenas. On October 17, 2022 external counsel to Telus, and later that day, external counsel to Bell, responded to this email indicating their intention to continue with the motions to quash, and rejecting the external-counsel-only document review proposal. A copy of this email chain is attached as Exhibit "F" to my affidavit.

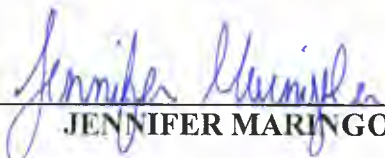
CONCLUSION

9. I affirm this affidavit for the purposes of Bell's motion to quash the Respondent Subpoenas and for no other purpose.

AFFIRMED before me at the City of Toronto, in the Province of Ontario on October 18, 2022



A Commissioner for taking affidavits, etc.



JENNIFER MARINGOLA

This is Exhibit "A" referred to in the Affidavit of Jennifer
Maringola Affirmed October 18, 2022



Commissioner for Taking Affidavits (or as may be)



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Barristers & Solicitors
Patent & Trademark Agents
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9 Canada
Tel: 416-863-2400 Fax: 416-863-2653

Nicole Henderson

Partner

Dir: 416-863-2399

nicole.henderson@blakes.com

October 7, 2022

VIA E-MAIL

Reference: 69556/235

Crawford Smith

Lax O'Sullivan Lisus Gottlieb LLP
Suite 2750, 145 King St W,
Toronto, ON M5H 1J8

Derek Ricci

Davies Ward Phillips & Vineberg LLP
155 Wellington Street West
Toronto, ON M5V 3J7

**RE: Commissioner of Competition ats Rogers/Shaw (CT-2022-002)
Summons to witness**

Dear Counsel:

As you know, we are counsel to BCE Inc. ("**Bell**") in the above-captioned matter. We write further to the subpoenas served on our client effective October 4, 2022 and October 6, 2022.

We have been instructed to bring a motion to quash the subpoenas to the extent that they purport to require our client to produce the confidential and highly commercially sensitive documents listed therein. (Bell does not object to either Messrs. Howe or Kirby attending at the hearing of the application to be cross-examined on their witness statements.)

Without in any way limiting the arguments our client may raise on the motion, our position is that the subpoenas (separately and taken together) amount to a fishing expedition and an attempt to do an end-run around the limitations on discovery provided for under the *Competition Tribunal Rules*. Regardless, that subpoenas demand the production of documents in overly broad and imprecise terms. The subpoenas are, in short, an abuse of the Tribunal's process.

Beyond that, there is no legal basis for the demand that Bell produce any documents in advance of the witnesses' attendance at the hearing. Further and regardless, it is entirely unreasonable to demand that Bell produce such a large volume of documents by October 14, even if the subpoenas were otherwise proper (which they are not). Indeed, considering the volume of material sought, we expect that it would take several months at a minimum to collect, review, and produce these documents.

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Enclosed is a draft letter, which we intend to send to the Tribunal the morning of Tuesday, October 11, requesting a case conference to timetable Bell's motion. We are available to discuss this matter with you in advance of any scheduled case conference should you wish to do so.

Yours truly,

Nicole Henderson

cc: Randall Hofley and Joe McGrade, Blake Cassels & Graydon LLP
John Tyhurst and Derek Leschinsky, Competition Bureau Legal Services
Jonathan Lisus, Matthew Law, Bradley Vermeersch, Lax O'Sullivan Lisus Gottlieb LLP
Kent Thomson, Steven Frankel, Chanakya Sethi, Davies Ward Phillips & Vineberg LLP
Chris Naudie and Adam Hirsh, Osler Hoskin & Harcourt LLP

24558477.2

TORONTO

CALGARY

VANCOUVER

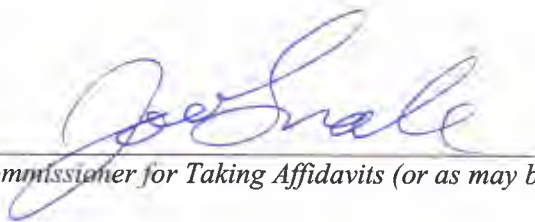
MONTRÉAL

OTTAWA

NEW YORK

LONDON

This is Exhibit “**B**” referred to in the Affidavit of Jennifer
Maringola Affirmed October 18, 2022



Commissioner for Taking Affidavits (or as may be)

From: Ricci, Derek <dricci@dwpv.com>
Sent: Friday, October 7, 2022 5:03 PM
To: Henderson, Nicole; Crawford Smith
Cc: jlisus@lolg.ca; mlaw@lolg.ca; bvermeersch@lolg.ca; Thomson, Kent; Frankel, Steven; Sethi, Chanakya; Hofley, Randall; McGrade, Joe; Naudie, Chris; Hirsh, Adam
Subject: RE: Rogers/Shaw ats Commissioner of Competition - summons to witness served on Bell

External Email | Courrier électronique externe

Nicole:

Thank you for your letter of this afternoon.

While we firmly disagree with the purported bases set out in your letter for seeking to quash the subpoenas, we would be happy to have a discussion with you concerning the scope of the subpoenas to see if we can achieve some common ground. At the same time, there are a number of specific documents requested in the subpoenas that must be readily available to your client and which should be set aside for possible production as soon as possible.

With respect to the timing of your client's proposed motion to quash, as it happens, the parties were advised today during a Case Conference with Chief Justice Crampton that the Chief Justice is available on Friday, October 14 to hear motions such as your client's proposed motion. If this motion is going to proceed on October 14, we will require your client's motion materials by no later than Tuesday, October 11.

We are open to having a discussion with you concerning the motion over the weekend or on Monday.

Regards,

Derek.

Derek Ricci

T 416.367.7471
dricci@dwpv.com
[Bio](#) | [vCard](#)

DAVIES

155 Wellington Street West
Toronto, ON M5V 3J7
[dwpv.com](#)

DAVIES WARD PHILLIPS & VINEBERG LLP

This email may contain confidential information which may be protected by legal privilege. If you are not the intended recipient, please immediately notify us by reply email or by telephone. Delete this email and destroy any copies.

From: Henderson, Nicole <nicole.henderson@blakes.com>
Sent: October 7, 2022 2:36 PM
To: Crawford Smith <csmith@lolg.ca>; Ricci, Derek <dricci@dwpv.com>
Cc: jlisus@lolg.ca; mlaw@lolg.ca; bvermeersch@lolg.ca; Thomson, Kent <KentThomson@dwpv.com>; Frankel, Steven <sfrankel@dwpv.com>; Sethi, Chanakya <CSethi@dwpv.com>; Hofley, Randall <randall.hofley@blakes.com>; McGrade,

Public

Joe <joe.mcgrade@blakes.com>; Naudie, Chris <CNaudie@osler.com>; Hirsh, Adam <AHirsh@osler.com>

Subject: Rogers/Shaw ats Commissioner of Competition - summons to witness served on Bell

External Email / Courriel externe

Counsel, please see attached our letter of today's date.

Kind regards,
Nicole

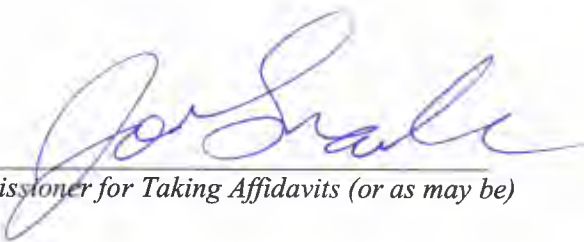
Nicole Henderson (she, her, hers)
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This is Exhibit "C" referred to in the Affidavit of Jennifer
Maringola Affirmed October 18, 2022



Commissioner for Taking Affidavits (or as may be)



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Nicole Henderson

Dir: 416-863-2399

nicole.henderson@blakes.com

October 11, 2022

VIA E-MAIL

The Registrar

Competition Tribunal of Canada
Thomas D'Arcy McGee Building
90 Sparks Street, Suite 600
Ottawa, ON K1P 5B4

**RE: Commissioner of Competition v Rogers Communications Inc., et al.
(Tribunal File No. CT-2022-002)**

Dear Registrar:

We are counsel to BCE Inc. ("**Bell**") and write with respect to two subpoenas *duces tecum* issued by this Tribunal at the request of the respondents and served on our client effective October 4 and 6, 2022, respectively. Considering the time-sensitivity of this matter, discussed further below, we would appreciate it if this letter could be put before the Tribunal member case managing this application at the earliest possible opportunity.

Copies of the subpoenas are attached for your reference. They are addressed to Stephen Howe and Blaik Kirby, both of whom are senior employees of Bell and who have provided witness statements in connection with this application. The subpoenas purport to require Messrs. Howe and Kirby to attend at the hearing of the application on November 7, 2022, and to bring with them a large volume of confidential and highly commercially sensitive documents falling within a total of 18 specifications set out in the subpoenas. Counsel for the respondents have further demanded that Bell produce these documents to them by no later than October 14, 2022.

We have been instructed to bring a motion to quash the subpoenas to the extent they purport to require production of documents, including on but not limited to the basis that they constitute an abuse of process. (Bell does not object to the request that Messrs. Howe and Kirby attend at the trial of the application for cross-examination on their witness statements.) We therefore respectfully request that a virtual case conference be convened this week to discuss the timetabling of Bell's intended motion. We can make ourselves available for the case conference any day this week as required.

Thank you for considering this request, and please do not hesitate to contact us should you have any questions or require further information.

24558471.1

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Yours respectfully,



Nicole Henderson

c: Randall Hofley and Joe McGrade, Blake Cassels & Graydon LLP
John Tyhurst and Derek Leschinsky, Competition Bureau Legal Services
Jonathan Liss, Crawford Smith, Matthew Law, Bradley Vermeersch,
Lax O'Sullivan Liss Gottlieb LLP
Kent Thomson, Derek Ricci, Steven Frankel, Chanakya Sethi,
Davies Ward Phillips & Vineberg LLP
Chris Naudie and Adam Hirsh, Osler Hoskin & Harcourt LLP

This is Exhibit “D” referred to in the Affidavit of Jennifer
Maringola Affirmed October 18, 2022



Jon Dale

Commissioner for Taking Affidavits (or as may be)

Public

From: [Nekiar, Elle \(CB/BC\)](#)
To: [Leschinsky, Derek \(CB/BC\)](#); [Henderson, Nicole](#); [Ricci, Derek](#); [Hirsh, Adam](#); [Crawford Smith](#)
Cc: [Jonathan Lius](#); [Matthew Law](#); [Brad Vermeersch](#); [Thomson, Kent](#); [Frankel, Steven](#); [Sethi, Chanakya](#); [Tyhurst, John \(CB/BC\)](#); [Hofley, Randall](#); [McGrade, Joe](#); [znaqi@lolg.ca](#); [Naudie, Chris](#); [Lally, Michelle](#); [Kuzma, Kaeleigh](#); [Littlejohn, Maureen](#); [Rydel, Katherine \(CB/BC\)](#)
Subject: RE: Rogers/Shaw ats Commissioner of Competition
Date: Friday, October 14, 2022 10:07:19 AM
Attachments: [image001.png](#)
[image002.jpg](#)
[image003.gif](#)

External Email | Courrier électronique externe

Thanks Derek. Hi everyone, I'm also available to join the call at 12pm.

Thanks,
Ellé

From: Leschinsky, Derek (CB/BC) <derek.leschinsky@cb-bc.gc.ca>
Sent: October 14, 2022 9:46 AM
To: Henderson, Nicole <nicole.henderson@blakes.com>; Ricci, Derek <dricci@dwpv.com>; Hirsh, Adam <AHirsh@osler.com>; Crawford Smith <csmith@lolg.ca>
Cc: Jonathan Lius <jlius@lolg.ca>; Matthew Law <mlaw@lolg.ca>; Brad Vermeersch <bvermeersch@lolg.ca>; Thomson, Kent <KentThomson@dwpv.com>; Frankel, Steven <sfrankel@dwpv.com>; Sethi, Chanakya <CSethi@dwpv.com>; Tyhurst, John (CB/BC) <John.Tyhurst@cb-bc.gc.ca>; Hofley, Randall <randall.hofley@blakes.com>; McGrade, Joe <joe.mcgrade@blakes.com>; znaqi@lolg.ca; Naudie, Chris <CNaudie@osler.com>; Lally, Michelle <MLally@osler.com>; Kuzma, Kaeleigh <KKuzma@osler.com>; Littlejohn, Maureen <MLittlejohn@dwpv.com>; Nekiar, Elle (CB/BC) <Elle.Nekiar@cb-bc.gc.ca>; Rydel, Katherine (CB/BC) <Katherine.Rydel@cb-bc.gc.ca>
Subject: RE: Rogers/Shaw ats Commissioner of Competition

Dear counsel,

Please include our colleagues Ellé and Katherine on all communications with respect to these matters.

Thank you,

Derek Leschinsky
Senior Counsel
Competition Bureau Legal Services
Department of Justice / Government of Canada
Derek.Leschinsky@cb-bc.gc.ca / 613-818-1611

Avocat principal
Services juridiques Bureau de la concurrence Canada
Ministère de la Justice / Gouvernement du Canada
Derek.Leschinsky@bc-cb.gc.ca / 613-818-1611

From: Henderson, Nicole <nicole.henderson@blakes.com>
Sent: October 14, 2022 9:08 AM
To: Ricci, Derek <dricci@dwpv.com>; Hirsh, Adam <AHirsh@osler.com>; Crawford Smith <csmith@lolg.ca>
Cc: Jonathan Lisus <jlisus@lolg.ca>; Matthew Law <mlaw@lolg.ca>; Brad Vermeersch <bvermeersch@lolg.ca>; Thomson, Kent <KentThomson@dwpv.com>; Frankel, Steven <sfrankel@dwpv.com>; Sethi, Chanakya <CSethi@dwpv.com>; Tyhurst, John (CB/BC) <John.Tyhurst@cb-bc.gc.ca>; Leschinsky, Derek (CB/BC) <derek.leschinsky@cb-bc.gc.ca>; Hofley, Randall <randall.hofley@blakes.com>; McGrade, Joe <joe.mcgrade@blakes.com>; znaqi@lolg.ca; Naudie, Chris <CNAudie@osler.com>; Lally, Michelle <MLally@osler.com>; Kuzma, Kaeleigh <KKuzma@osler.com>; Littlejohn, Maureen <MLittlejohn@dwpv.com>
Subject: RE: Rogers/Shaw ats Commissioner of Competition

Derek, I can speak at 12:00 today and will wait for your appointment.

Thanks,
Nicole

Nicole Henderson (she, her, hers)
Partner
nicole.henderson@blakes.com
T. +1-416-863-2399

From: Ricci, Derek <dricci@dwpv.com>
Sent: Thursday, October 13, 2022 9:49 PM
To: Henderson, Nicole <nicole.henderson@blakes.com>; Hirsh, Adam <AHirsh@osler.com>; Crawford Smith <csmith@lolg.ca>
Cc: Jonathan Lisus <jlisus@lolg.ca>; Matthew Law <mlaw@lolg.ca>; Brad Vermeersch <bvermeersch@lolg.ca>; Thomson, Kent <KentThomson@dwpv.com>; Frankel, Steven <sfrankel@dwpv.com>; Sethi, Chanakya <CSethi@dwpv.com>; Tyhurst, John (CB/BC) <John.Tyhurst@cb-bc.gc.ca>; Leschinsky, Derek (CB/BC) <derek.leschinsky@cb-bc.gc.ca>; Hofley, Randall <randall.hofley@blakes.com>; McGrade, Joe <joe.mcgrade@blakes.com>; znaqi@lolg.ca; Naudie, Chris <CNAudie@osler.com>; Lally, Michelle <MLally@osler.com>; Kuzma, Kaeleigh <KKuzma@osler.com>; Littlejohn, Maureen <MLittlejohn@dwpv.com>
Subject: RE: Rogers/Shaw ats Commissioner of Competition

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Nicole:

Thank you for your email.

With respect to the timetable, we agree that it should be sent to the Tribunal in advance of the Case Conference. I believe all of the parties are now signed off on the timetable, except for Adam on behalf of TELUS. Once we hear from him, we are happy to provide the timetable to the Tribunal.

With respect to the balance of your email, it seems to reflect a continued and significant misunderstanding of what Shaw and Rogers are seeking. As I indicated in my email of October 12 (at 6:47 pm), we are not expecting or requesting that your client re-collect or re-produce any documents that have already been produced to the Commissioner in response to section 11 orders in connection with this matter. To be perfectly clear, we are not seeking from Bell or TELUS documents that have already been produced to Rogers and Shaw by the Commissioner. We are seeking what we believe to be a very discrete number of relevant documents that should be readily accessible to your client and that have not to date been provided to Shaw and Rogers.

While I understand you believe it may be difficult to find common ground, I remain optimistic that through discussion we may be able to narrow or focus the issues in dispute, including with respect to your client's concerns regarding confidentiality. I also believe the Chief Justice will expect us to have discussed the motions in advance of tomorrow's Case Conference.

Accordingly, please let us know if you are available at 12:00 pm tomorrow for a brief discussion.

Thanks and regards,

Derek.

From: Henderson, Nicole <nicole.henderson@blakes.com>

Sent: October 13, 2022 6:08 PM

To: Ricci, Derek <dricci@dwpv.com>; Hirsh, Adam <AHirsh@osler.com>; Crawford Smith <csmith@lolg.ca>

Cc: Jonathan Lisus <jlisus@lolg.ca>; Matthew Law <mlaw@lolg.ca>; Brad Vermeersch <bvermeersch@lolg.ca>; Thomson, Kent <KentThomson@dwpv.com>; Frankel, Steven <sfrankel@dwpv.com>; Sethi, Chanakya <CSethi@dwpv.com>; Tyhurst, John (CB/BC) <John.Tyhurst@cb-bc.gc.ca>; Leschinsky, Derek (CB/BC) <derek.leschinsky@cb-bc.gc.ca>; Hofley, Randall <randall.hofley@blakes.com>; McGrade, Joe <joe.mcgrade@blakes.com>; znaqi@lolg.ca; Naudie, Chris <CNaudie@osler.com>; Lally, Michelle <MLally@osler.com>; Kuzma, Kaeleigh <KKuzma@osler.com>

Subject: RE: Rogers/Shaw ats Commissioner of Competition

External Email / Courriel externe

Derek,

The adjustment to the proposed timetable regarding the delivery of factums is acceptable to Bell if it is to Telus. Of course, we recognize that the ultimate timetable will be subject to the Tribunal's availability and directions at the case conference tomorrow. In any event, as you have seen, we have now served our motion materials in accordance with the draft timetable.

To the balance of your email, it strikes us as disingenuous to suggest that these subpoenas relate to "discrete categories of documents" or to suggest that these categories are not in significant respects

(obviously) duplicative of documents we understand to have already been produced by the Bureau. If that is truly the respondents' position, it is difficult to see how we will find any common ground. That said, we have set out our client's concerns regarding the subpoenas in our earlier correspondence and in even greater detail in our motion materials, on which we have been focused so as to deliver them today. We are available to discuss your responses to those concerns in advance of the case conference tomorrow or thereafter.

Once all parties are signed off on the proposed timetable for the motions, we suggest that it be sent to the Tribunal in advance of the case conference.

Regards,

Nicole Henderson (she, her, hers)
Partner
nicole.henderson@blakes.com
T. [+1-416-863-2399](tel:+14168632399)

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From: Ricci, Derek <dricci@dwpv.com>
Sent: Wednesday, October 12, 2022 6:47 PM
To: Hirsh, Adam <AHirsh@osler.com>; Crawford Smith <csmith@lolg.ca>
Cc: Jonathan Lissus <jlissus@lolg.ca>; Matthew Law <mlaw@lolg.ca>; Brad Vermeersch <bvermeersch@lolg.ca>; Thomson, Kent <KentThomson@dwpv.com>; Frankel, Steven <sfrankel@dwpv.com>; Sethi, Chanakya <CSethi@dwpv.com>; Tyhurst, John (CB/BC) <John.Tyhurst@cb-bc.gc.ca>; Leschinsky, Derek (CB/BC) <derek.leschinsky@cb-bc.gc.ca>; Henderson, Nicole <nicole.henderson@blakes.com>; Hofley, Randall <randall.hofley@blakes.com>; McGrade, Joe <joe.mcgrade@blakes.com>; znaqi@lolg.ca; Naudie, Chris <CNaudie@osler.com>; Lally, Michelle <MLally@osler.com>; Kuzma, Kaeleigh <KKuzma@osler.com>
Subject: RE: Rogers/Shaw ats Commissioner of Competition

External Email | Courrier électronique externe

Adam:

Crawford and I have conferred regarding your proposed schedule. We are generally fine with your proposal, subject to the following:

1. The Moving parties' factums to be delivered by noon on Friday, Oct 21.

2. We may need to be flexible concerning the proposed hearing date, including to ensure that Chief Justice Crampton is available. If necessary, we may need to adjust the schedule to accommodate the Chief Justice's availability.

We look forward to receiving the Moving Parties' records by 5:00 pm tomorrow.

As I have indicated to you and Nicole on multiple occasions now, we would be happy to discuss any specific concerns your clients may have regarding the scope of the subpoenas with a goal of narrowing the issues that must be resolved by the Chief Justice.

I also want to make it clear – in the event it was not already clear to both Bell and TELUS – that we are not expecting or requesting that your clients to re-collect or re-produce any documents that have already been produced to the Commissioner in response to section 11 orders in connection with this matter. Rather, the intention of the subpoenas was to focus on a small number of discrete categories of documents that do not appear to us to have been produced to date by your clients.

Regards,

Derek.

From: Hirsh, Adam <AHirsh@osler.com>

Sent: October 11, 2022 9:28 AM

To: Ricci, Derek <dricci@dwpv.com>; Crawford Smith <csmith@lolg.ca>

Cc: Jonathan Lissus <jlissus@lolg.ca>; Matthew Law <mlaw@lolg.ca>; Brad Vermeersch <bvermeersch@lolg.ca>; Thomson, Kent <KentThomson@dwpv.com>; Frankel, Steven <sfrankel@dwpv.com>; Sethi, Chanakya <CSethi@dwpv.com>; Tyhurst, John (CB/BC) <John.Tyhurst@cb-bc.gc.ca>; Leschinsky, Derek (CB/BC) <derek.leschinsky@cb-bc.gc.ca>; Henderson, Nicole <nicole.henderson@blakes.com>; Hofley, Randall <randall.hofley@blakes.com>; McGrade, Joe <joe.mcgrade@blakes.com>; znaqi@lolg.ca; Naudie, Chris <CNaudie@osler.com>; Lally, Michelle <MLally@osler.com>; Kuzma, Kaeleigh <KKuzma@osler.com>

Subject: RE: Rogers/Shaw ats Commissioner of Competition

External Email / Courriel externe

Good morning Derek, Crawford,

We hope you enjoyed the long weekend.

Neither we nor Bell will be in a position to argue these motions on Friday. However, we've conferred with Blakes over the weekend and would propose the following expedited schedule, which we also intend to propose to Tribunal. We'd be pleased to discuss this with you in advance of any case conference.

Public

1. Moving parties' records (notice of motion & affidavits): Thursday October 13 by 5 pm
2. Responding parties' record (if any): Monday October 17 by 5 pm
3. Reply evidence (if any): Tuesday, October 18 by 5 pm
4. Cross examination (if any): Wednesday Oct. 19 (Telus witness) & Thursday Oct. 20 (Bell witness); Respondents' witness(s) TBD.
5. Moving parties' factums: Friday October 21
6. Responding parties' factums: Monday October 24
7. Reply factum: Wednesday October 26 by noon
8. Hearing: Thursday October 27 or Friday October 28

Regards,

Adam



Adam Hirsh

Partner

416.862.6635 | AHirsh@osler.com

Osler, Hoskin & Harcourt LLP | osler.com

From: Ricci, Derek <dricci@dwpv.com>

Sent: Friday, October 07, 2022 6:26 PM

To: Hirsh, Adam <AHirsh@osler.com>; Crawford Smith <csmith@lolg.ca>

Cc: Jonathan Lissus <jlissus@lolg.ca>; Matthew Law <mlaw@lolg.ca>; Brad Vermeersch <bvermeersch@lolg.ca>; Thomson, Kent <KentThomson@dwpv.com>; Frankel, Steven <sfrankel@dwpv.com>; Sethi, Chanakya <CSethi@dwpv.com>; Tyhurst, John (CB/BC) <John.Tyhurst@cb-bc.gc.ca>; Leschinsky, Derek (CB/BC) <derek.leschinsky@cb-bc.gc.ca>; Henderson, Nicole <nicole.henderson@blakes.com>; Hofley, Randall <randall.hofley@blakes.com>; McGrade, Joe <joe.mcgrade@blakes.com>; znaqi@lolg.ca; Naudie, Chris <CNaudie@osler.com>; Lally, Michelle <MLally@osler.com>; Kuzma, Kaeleigh <KKuzma@osler.com>

Subject: RE: Rogers/Shaw ats Commissioner of Competition

Adam:

Thank you for your letter, which we received a few minutes ago on behalf of your client, TELUS.

We strongly disagree with your client's proposed bases for seeking to quash the subpoenas, including the suggestion that the subpoenas are "framed in extremely broad terms" that require responses by TELUS to "sweeping categories" of documents. To the contrary, the requests are highly focused both in terms of their subject matter and time frame.

Public

You will, by now, have seen my email to Ms. Henderson sent at 5:03 pm today concerning the virtually identical position being taken by her client, Bell, concerning the two summonses. As I indicated in my email to Ms. Henderson, the parties were advised today during a Case Conference with Chief Justice Crampton that the Chief Justice is available on Friday, October 14 to hear motions such as your client's proposed motion. If this motion is going to proceed on October 14, we will require your client's motion materials by no later than Tuesday, October 11.

We would be happy to discuss the subpoenas and scheduling with you over the weekend or on Monday.

Regards,

Derek.

Derek Ricci

T 416.367.7471

dricci@dwpv.com

[Bio](#) | [vCard](#)

DAVIES

155 Wellington Street West

Toronto, ON M5V 3J7

dwpv.com

DAVIES WARD PHILLIPS & VINEBERG LLP

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From: Hirsh, Adam <AHirsh@osler.com>

Sent: October 7, 2022 5:13 PM

To: Ricci, Derek <dricci@dwpv.com>; Crawford Smith <csmith@lolg.ca>

Cc: Jonathan Lissus <jlissus@lolg.ca>; Matthew Law <mlaw@lolg.ca>; Brad Vermeersch <bvermeersch@lolg.ca>; Thomson, Kent <KentThomson@dwpv.com>; Frankel, Steven <sfrankel@dwpv.com>; Sethi, Chanakya <CSethi@dwpv.com>; Tyhurst, John (CB/BC) <John.Tyhurst@cb-bc.gc.ca>; Leschinsky, Derek (CB/BC) <derek.leschinsky@cb-bc.gc.ca>; Henderson, Nicole <nicole.henderson@blakes.com>; Hofley, Randall <randall.hofley@blakes.com>; McGrade, Joe <joe.mcgrade@blakes.com>; znaqi@lolg.ca; Naudie, Chris <CNAudie@osler.com>; Lally, Michelle <MLally@osler.com>; Kuzma, Kaeleigh <KKuzma@osler.com>

Subject: Rogers/Shaw ats Commissioner of Competition

External Email / Courriel externe

Good afternoon Derek, Crawford:

Please see our letter attached.

Regards,

Adam



Adam Hirsh

Partner

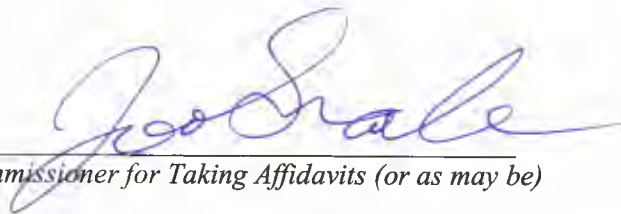
416.862.6635 | AHirsh@osler.com

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This is Exhibit "E" referred to in the Affidavit of Jennifer
Maringola Affirmed October 18, 2022



Commissioner for Taking Affidavits (or as may be)

Public

From: [Zain Naqi](#)
To: [Henderson, Nicole](#); [Ricci, Derek](#); [Hirsh, Adam](#)
Cc: [Jonathan Lisus](#); [Matthew Law](#); [Brad Vermeersch](#); [Thomson, Kent](#); [Frankel, Steven](#); [Sethi, Chanakya](#); [Tyhurst, John \(CB/BC\)](#); [Leschinsky, Derek \(CB/BC\)](#); [Hofley, Randall](#); [McGrade, Joe](#); [Naudie, Chris](#); [Lally, Michelle](#); [Kuzma, Kaeleigh](#); [Littlejohn, Maureen](#); [Elle.Nekiar@cb-bc.gc.ca](#); [Rydel, Katherine \(CB/BC\)](#); [Crawford Smith](#)
Subject: RE: Rogers/Shaw ats Commissioner of Competition - Bell and TELUS [LOLG-DMS.FID125335]
Date: Friday, October 14, 2022 3:45:39 PM
Attachments: [image001.png](#)
[image002.png](#)
[2022_10_14 - Summons to Bell \(Final\).pdf](#)
[2022_10_14 - Summons to Telus \(Final\).pdf](#)
[RBCH00008_000001572.PDF](#)

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Nicole and Adam,

We echo Derek's note below and also acknowledge your willingness to move forward in a spirit of cooperation.

We attach fresh summonses from our client. Our October 4 summonses are withdrawn. Can you please confirm that you will accept service? Let us know if another call would be helpful to see if we can reach common ground on delivery of the requested documents.

We also have a couple of discrete inquiries, which we believe will be of assistance to the Tribunal:

1. We understand that ten network sharing agreements were produced by Telus to the Commissioner in response to Specifications #7(a) / (c). We attach, for ease of reference, the index that Telus produced. Can each of you, on behalf of your clients, please confirm that this list represents all of the currently in-force network sharing agreements between Bell and Telus?
2. We also understand that there was a Next Generation Network Reciprocity letter agreement dated October 9, 2008 (which was amended by various letter agreements dated October 21, 2009, February 10, 2011, February 8, 2012, April 1, 2012, September 1, 2013, April 30, 2014, July 18, 2014, April 13, 2015, June 25, 2015, September 1, 2015, December 1, 2015, and July 12, 2016). That document does not appear to be on Telus' list. Can you please advise if this agreement is still in force?

Please let us know if you'd like to discuss.

Thanks,

Zain Naqi (he/him)
Direct 416 645 3789
Cell 647 980 4134
znaqi@lolg.ca

Lax O'Sullivan Lisus Gottlieb LLP
Suite 2750, 145 King St W
Toronto ON M5H 1J8 Canada

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From: Henderson, Nicole <nicole.henderson@blakes.com>

Sent: October-14-22 3:25 PM

To: Ricci, Derek <dricci@dwpv.com>; Hirsh, Adam <AHirsh@osler.com>

Cc: Jonathan Lissus <jlissus@lolg.ca>; Matthew Law <mlaw@lolg.ca>; Brad Vermeersch <bvermeersch@lolg.ca>; Thomson, Kent <KentThomson@dwpv.com>; Frankel, Steven <sfrankel@dwpv.com>; Sethi, Chanakya <CSethi@dwpv.com>; Tyhurst, John (CB/BC) <John.Tyhurst@cb-bc.gc.ca>; Leschinsky, Derek (CB/BC) <derek.leschinsky@cb-bc.gc.ca>; Hofley, Randall <randall.hofley@blakes.com>; McGrade, Joe <joe.mcgrade@blakes.com>; Zain Naqi <znaqi@lolg.ca>; Naudie, Chris <CNaudie@osler.com>; Lally, Michelle <MLally@osler.com>; Kuzma, Kaeleigh <KKuzma@osler.com>; Littlejohn, Maureen <MLittlejohn@dwpv.com>; Elle.Nekiar@cb-bc.gc.ca; Rydel, Katherine (CB/BC) <Katherine.Rydel@cb-bc.gc.ca>; Crawford Smith <csmith@lolg.ca>

Subject: RE: Rogers/Shaw ats Commissioner of Competition - Bell and TELUS

Derek,

This is to confirm that we have instructions to accept service of the fresh subpoena issued to Bell.

We are surprised by the tone of your email considering the call we had this afternoon and, frankly, astonished at the suggestion that there was any “misapprehension” about the scope of your client’s initial subpoena. It is entirely disingenuous to suggest that the initial subpoena was “precise” or tailored to the documents your client apparently now seeks—that is made all the more clear by the issuance of this fresh subpoena (which among other things, drops several of the specifications in the earlier document). The companion subpoena issued by your co-respondent, Rogers, was of course even more obviously burdensome and overbroad, and a blatant abuse of process.

Had you truly wanted to “clarify” that—contrary to the express language of the initial subpoena—Shaw was only interested production of a narrower subset of those documents, you could have done so at any time over the past two weeks instead of vaguely inviting us to calls to identify concerns that we had already set out in writing. Instead, by serving the initial subpoena with no prior notice and a demand that Bell produce the documents sought within ten days (which included a holiday weekend), you immediately put our client to the burden of investigating what efforts would be required to comply with the subpoena and preparing motion materials to quash it.

It does not escape us that this is the second time in the last four months that our client has been put to enormous inconvenience and expense to respond on an expedited basis to a tactical maneuver by Rogers and Shaw, only to have the respondents drop their initial demands once Bell’s materials have been served. Regardless of the outcome of the motions to quash, we expect that Bell will be seeking its costs.

We appreciated the desire to cooperate that Kent expressed on the call earlier, and hope that we can move forward in that spirit rather than exchanging self-serving emails. As discussed, we will need to take instructions from our client after reviewing the fresh subpoena, including as to whether we intend to file additional or different evidence on the motion to quash. We will revert on that as soon as we are able, but it will not be before the case conference at 4:00 today.

Regards,
Nicole

Nicole Henderson (she, her, hers)
Partner
nicole.henderson@blakes.com
T. [+1-416-863-2399](tel:+14168632399)

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9 ([Map](#))
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From: Ricci, Derek <dricci@dpvp.com>
Sent: Friday, October 14, 2022 2:03 PM
To: Henderson, Nicole <nicole.henderson@blakes.com>; Hirsh, Adam <AHirsh@osler.com>
Cc: Jonathan Lissus <jlissus@lolg.ca>; Matthew Law <mlaw@lolg.ca>; Brad Vermeersch <bvermeersch@lolg.ca>; Thomson, Kent <KentThomson@dpvp.com>; Frankel, Steven <sfrankel@dpvp.com>; Sethi, Chanakya <CSethi@dpvp.com>; Tyhurst, John (CB/BC) <John.Tyhurst@cb-bc.gc.ca>; Leschinsky, Derek (CB/BC) <derek.leschinsky@cb-bc.gc.ca>; Hofley, Randall <randall.hofley@blakes.com>; McGrade, Joe <joe.mcgrade@blakes.com>; znaqi@lolg.ca; Naudie, Chris <CNaudie@osler.com>; Lally, Michelle <MLally@osler.com>; Kuzma, Kaeleigh <KKuzma@osler.com>; Littlejohn, Maureen <MLittlejohn@dpvp.com>; Elle.Nekiar@cb-bc.gc.ca; Rydel, Katherine (CB/BC) <Katherine.Rydel@cb-bc.gc.ca>; Crawford Smith <csmith@lolg.ca>
Subject: Rogers/Shaw ats Commissioner of Competition - Bell and TELUS

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Nicole and Adam:

Thank you for the productive call that we just completed.

As discussed, we have received your Motion Materials that were served late yesterday, including the Affidavit affirmed by Mark Graham on October 13, 2022, as well as the Affidavit affirmed by Daniel Stern on October 13, 2022.

It is apparent from these Motion Materials that your clients have been labouring under a misapprehension concerning the documents Shaw seeks production of pursuant to its subpoenas in relation to the hearing that will be conducted by the Competition Tribunal commencing on November 7, 2022.

It is disappointing that we were unable to speak before these Motion Materials were served. You will no doubt recall that I wrote to you on a number of occasions to invite such a discussion, in an effort to avoid the very confusion that appears to have arisen.

My objective in doing so was to engage in a constructive discussion with you to clarify with precision the documents Shaw seeks production of. I wanted to ensure that Shaw receives documents it requires to proceed properly and fairly with the hearing of this matter without imposing on your client unnecessary or excessive burdens that can easily be avoided.

That said, we have reviewed your clients' Motion Materials carefully with a view to addressing on a timely basis the concerns they have raised.

In that regard, we have obtained fresh subpoenas that specify with precision and limits carefully the scope of documents Shaw seeks production of.

A copy of these fresh subpoenas are attached.

You will see that the enclosed subpoenas are addressed to each of Stephen Howe, Blaik Kirby and Mark Graham (in the case of Bell), and Nazim Benhadid, Charlie Casey and Daniel Stern (in the case of TELUS).

We are confident having regard to the contents of the Affidavits included in your clients' Motion Materials that Messrs. Stern and Graham will have readily available to them all of the documents in question, with the result that there will be no need for Bell or TELUS to search the records of multiple employees to respond properly and immediately to the enclosed subpoenas.

Please advise as soon as possible if you are authorized to accept service of the enclosed subpoenas on behalf of your respective clients. If you are not, we will make the necessary arrangements to have them served.

Shaw's original subpoenas served on Bell and TELUS dated October 5 are formally withdrawn.

Please be advised that in view of the position taken by Bell and TELUS in its Motion Materials served late yesterday that it is immunized from producing to Shaw documents it previously provided to the Competition Bureau, Shaw intends to bring a Cross-Motion against the Commissioner returnable at the same time as the motions of Bell and TELUS, in which Shaw will seek an Order compelling the production by the Commissioner of documents that fall within the scope of the enclosed subpoenas.

We wish to ensure that the demands for production made in the enclosed subpoenas are well understood by your clients and that those demands can easily be complied with if an Order dismissing your clients' Motions is made by the Tribunal.

Public

Although we have made every effort to ensure that the enclosed subpoenas are carefully confined in scope, we would be happy to modify the wording of these subpoenas if doing so is necessary or appropriate to address remaining concerns your clients may have.

Best regards,

Derek

Derek Ricci

T 416.367.7471

dricci@dwpv.com

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Toronto, ON M5V 3J7

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DAVIES WARD PHILLIPS & VINEBERG LLP

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This is Exhibit "F" referred to in the Affidavit of Jennifer
Maringola Affirmed October 18, 2022



Commissioner for Taking Affidavits (or as may be)

From: Henderson, Nicole
Sent: Monday, October 17, 2022 3:36 PM
To: Hirsh, Adam; Crawford Smith
Cc: Thomson, Kent; Ricci, Derek; Jonathan Lisus; Matthew Law; Brad Vermeersch; Frankel, Steven; Sethi, Chanakya; Tyhurst, John (CB/BC); Leschinsky, Derek (CB/BC); Hofley, Randall; McGrade, Joe; Zain Naqi; Naudie, Chris; Lally, Michelle; Kuzma, Kaeleigh; Littlejohn, Maureen; Elle.Nekiar@cb-bc.gc.ca; Rydel, Katherine (CB/BC); Ronke Akinyemi
Subject: RE: Rogers/Shaw ats Commissioner of Competition - Bell and TELUS [LOLG-DMS.FID125335]

Counsel,

Our instructions are also to continue to move to quash both subpoenas. In that regard, we adopt Adam's comments about why the fresh subpoenas are—despite being narrowed from the initial demands—still improper.

For the same reasons that Adam has set out, we are also not prepared to agree to share the documents in issue on a "counsel's eyes only basis." The documents sought would only ever be produced on the basis that they would be designated Confidential Level A, and sharing them in advance would entirely pre-empt the issues on the motion.

We are still considering whether we will need to file any additional evidence on the motions to quash, but if we do we expect it to be brief, and will serve it by end of day tomorrow.

Regards,
Nicole

Nicole Henderson (she, her, hers)
Partner
nicole.henderson@blakes.com
T. +1-416-863-2399

From: Hirsh, Adam <AHirsh@osler.com>
Sent: Monday, October 17, 2022 2:34 PM
To: Crawford Smith <csmith@lolg.ca>
Cc: Thomson, Kent <KentThomson@dwpv.com>; Henderson, Nicole <nicole.henderson@blakes.com>; Ricci, Derek <dricci@dwpv.com>; Jonathan Lisus <jlisus@lolg.ca>; Matthew Law <mlaw@lolg.ca>; Brad Vermeersch <bvermeersch@lolg.ca>; Frankel, Steven <sfrankel@dwpv.com>; Sethi, Chanakya <CSethi@dwpv.com>; Tyhurst, John (CB/BC) <John.Tyhurst@cb-bc.gc.ca>; Leschinsky, Derek (CB/BC) <derek.leschinsky@cb-bc.gc.ca>; Hofley, Randall <randall.hofley@blakes.com>; McGrade, Joe <joe.mcgrade@blakes.com>; Zain Naqi <znaqi@lolg.ca>; Naudie, Chris <CNaudie@osler.com>; Lally, Michelle <MLally@osler.com>; Kuzma, Kaeleigh <KKuzma@osler.com>; Littlejohn, Maureen <MLittlejohn@dwpv.com>; Elle.Nekiar@cb-bc.gc.ca; Rydel, Katherine (CB/BC) <Katherine.Rydel@cb-bc.gc.ca>; Ronke Akinyemi <rakinyemi@lolg.ca>
Subject: RE: Rogers/Shaw ats Commissioner of Competition - Bell and TELUS [LOLG-DMS.FID125335]

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Yes.



Adam Hirsh

Partner

416.862.6635 | AHirsh@osler.com

Osler, Hoskin & Harcourt LLP | osler.com

From: Crawford Smith <csmith@lolg.ca>

Sent: Monday, October 17, 2022 2:32 PM

To: Hirsh, Adam <AHirsh@osler.com>

Cc: Thomson, Kent <KentThomson@dwpv.com>; Henderson, Nicole <nicole.henderson@blakes.com>; Ricci, Derek <dricci@dwpv.com>; Jonathan Lisus <jlisus@lolg.ca>; Matthew Law <mLaw@lolg.ca>; Brad Vermeersch <bvermeersch@lolg.ca>; Frankel, Steven <sfrankel@dwpv.com>; Sethi, Chanakya <CSethi@dwpv.com>; Tyhurst, John (CB/BC) <John.Tyhurst@cb-bc.gc.ca>; Leschinsky, Derek (CB/BC) <derek.leschinsky@cb-bc.gc.ca>; Hofley, Randall <randall.hofley@blakes.com>; McGrade, Joe <joe.mcgrade@blakes.com>; Zain Naqi <znaqi@lolg.ca>; Naudie, Chris <CNaudie@osler.com>; Lally, Michelle <MLally@osler.com>; Kuzma, Kaeleigh <KKuzma@osler.com>; Littlejohn, Maureen <MLittlejohn@dwpv.com>; Elle.Nekiar@cb-bc.gc.ca; Rydel, Katherine (CB/BC) <Katherine.Rydel@cb-bc.gc.ca>; Ronke Akinyemi <rakinyemi@lolg.ca>

Subject: Re: Rogers/Shaw ats Commissioner of Competition - Bell and TELUS [LOLG-DMS.FID125335]

Adam,

That is disappointing. We will review your supplementary evidence and revert with our expected timing. Are you still contesting the Shaw summons?

Nicole, may we please have your client's position.

Regards,

Sent from my iPad

On Oct 17, 2022, at 2:13 PM, Hirsh, Adam <AHirsh@osler.com> wrote:

Crawford:

Thank you for your email. As you know, we received your client's revised subpoena on 3:46 PM on Friday, only 14 minutes before our case conference on Friday. That said, we have reviewed the revised Rogers subpoena over the weekend, and we continue to maintain the objections set out our original Notice of Motion. Among other grounds, we are of the view that Rogers' demands for new productions on the eve of trial seek to circumvent the existing discovery process for this matter that has been conducted over a period of months. Moreover, these demands appear to have no connection whatsoever to the discrete evidence that is set out in the witness statements that have been filed by the Commissioner in this matter. During our case conference, Chief Justice Crampton was clear that any documents covered by the subpoenas should have a clear connection to the anticipated evidence of the Commissioner's witnesses at trial, and we do not see any connection at all.

We expect to deliver a supplementary affidavit today that sets out supporting facts relating to our objections. As for your suggestion to share these documents with counsel on an advance basis, we don't believe that is a viable alternative given the time line arising from Rogers' new subpoenas and the nature of the dispute. We are still in the process of assessing the scope of documents covered by the

Public

proposed second subpoena, and we expect that any collection will take time and there will be claims of confidentiality and/or privilege given the nature of these documents. Obviously, we cannot share documents in advance that are subject to such claims, and moreover the very issue in dispute on the motion is whether these documents should be produced to you at all.

Please let us know when you expect to deliver responding materials.

Regards,

Adam

OSLER

Adam Hirsh

Partner

416.862.6635 | AHirsh@osler.com

Osler, Hoskin & Harcourt LLP | osler.com

From: Crawford Smith <csmith@lolg.ca>

Sent: Monday, October 17, 2022 9:36 AM

To: Thomson, Kent <KentThomson@dwvp.com>; Hirsh, Adam <AHirsh@osler.com>

Cc: Henderson, Nicole <nicole.henderson@blakes.com>; Ricci, Derek <dricci@dwvp.com>; Jonathan Lisus <jlisus@lolg.ca>; Matthew Law <mlaw@lolg.ca>; Brad Vermeersch <bvermeersch@lolg.ca>; Frankel, Steven <sfrankel@dwvp.com>; Sethi, Chanakya <CSethi@dwvp.com>; Tyhurst, John (CB/BC) <John.Tyhurst@cb-bc.gc.ca>; Leschinsky, Derek (CB/BC) <derek.leschinsky@cb-bc.gc.ca>; Hofley, Randall <randall.hofley@blakes.com>; McGrade, Joe <joe.mcgrade@blakes.com>; Zain Naqi <znaqi@lolg.ca>; Naudie, Chris <CNaudie@osler.com>; Lally, Michelle <MLally@osler.com>; Kuzma, Kaeleigh <KKuzma@osler.com>; Littlejohn, Maureen <MLittlejohn@dwvp.com>; Elle.Nekiar@cb-bc.gc.ca; Rydel, Katherine (CB/BC) <Katherine.Rydel@cb-bc.gc.ca>; Ronke Akinyemi <rakinyemi@lolg.ca>; Zain Naqi <znaqi@lolg.ca>; Crawford Smith <csmith@lolg.ca>

Subject: RE: Rogers/Shaw ats Commissioner of Competition - Bell and TELUS [LOLG-DMS.FID125335]

Adam and Nicole,

I am following up on Kent's note below and on Friday's case conference for your respective clients' position and to repeat our offer to discuss and to review the requested material on a counsel's eyes only basis.

If you intend to continue with your motions, please confirm that you do not intend to serve any further material or, if you do, that we will receive such material today. Once we have your position, we can revert on the remaining steps in the schedule to the hearing date.

Regards,

Crawford G. Smith

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From: Thomson, Kent <KentThomson@dwpv.com>
Sent: October-14-22 5:45 PM
To: Hirsh, Adam <AHirsh@osler.com>
Cc: Henderson, Nicole <nicole.henderson@blakes.com>; Ricci, Derek <dricci@dwpv.com>; Jonathan Lisus <jlisus@lolg.ca>; Matthew Law <mlaw@lolg.ca>; Brad Vermeersch <bvermeersch@lolg.ca>; Frankel, Steven <sfrankel@dwpv.com>; Sethi, Chanakya <CSethi@dwpv.com>; Tyhurst, John (CB/BC) <John.Tyhurst@cb-bc.gc.ca>; Leschinsky, Derek (CB/BC) <derek.leschinsky@cb-bc.gc.ca>; Hofley, Randall <randall.hofley@blakes.com>; McGrade, Joe <joe.mcgrade@blakes.com>; Zain Naqi <znaqi@lolg.ca>; Naudie, Chris <CNAudie@osler.com>; Lally, Michelle <MLally@osler.com>; Kuzma, Kaeleigh <KKuzma@osler.com>; Littlejohn, Maureen <MLittlejohn@dwpv.com>; Elle.Nekiar@cb-bc.gc.ca; Rydel, Katherine (CB/BC) <Katherine.Rydel@cb-bc.gc.ca>; Crawford Smith <csmith@lolg.ca>
Subject: Re: Rogers/Shaw ats Commissioner of Competition - Bell and TELUS

Adam and Nicole: It was nice chatting with you , Chris , Nicole and others earlier today.

With respect to the threats you and Nicole have now both made to seek costs against our clients , we look forward to walking Chief Justice Crampton through: (i) our various efforts to engage with both of you (as well as your colleagues) concerning the original Subpoenas in an effort to minimize the burden to Bell and Telus in the period before your clients' Motion Materials were served late yesterday; and (ii) steps that were taken by Shaw and Rogers immediately after those Materials were served to address concerns that Bell and Telus identified.

We join hands with Mr. Lisus in offering to resolve this matter by reviewing on a counsel's eyes only basis documents that fall within the scope of the fresh Subpoenas issued today by Shaw and Rogers . We look forward to hearing back from you in that regard at your earliest convenience.

Best regards,

Kent

Kent E. Thomson
T 416.863.5566
kentthomson@dwpv.com
[Bio](#) | [vCard](#)

DAVIES

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DAVIES WARD PHILLIPS & VINEBERG LLP

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TAB 2

CT-2021-002

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF the acquisition by Rogers Communications Inc. of Shaw Communications Inc.;

AND IN THE MATTER OF an Application by the Commissioner of Competition for one or more orders pursuant to section 92 of the *Competition Act*;

BETWEEN

THE COMMISSIONER OF COMPETITION

Applicant

- and -

ROGERS COMMUNICATIONS INC. AND SHAW COMMUNICATIONS INC.

Respondents

**AFFIDAVIT OF MARK GRAHAM
(Affirmed October 18, 2022)**

I, Mark Graham, of the City of Burlington, in the Province of Ontario, **AFFIRM AND SAY:**

INTRODUCTION

1. I am Vice President, Legal and Regulatory of BCE Inc. (“**Bell**”). As such, I have knowledge of the matters contained in this affidavit. Where I rely on information received

from others, I state the source of that information and believe it to be true. Nothing in this affidavit is intended to waive any applicable legal privilege with respect to any information or documents contained or referenced herein.

2. This affidavit supplements the affidavit that I swore on October 13, 2022 (my “**Initial Affidavit**”) in this matter in support of the motion by Bell and two of its employees to quash the subpoenas issued by the Registrar of the Tribunal at the request of Rogers and Shaw, which were issued on October 3, 2022 and October 5, 2023, respectively (the “**Initial Rogers Subpoena**”, “**Initial Shaw Subpoena**”, and together the “**Initial Subpoenas**”)¹.
3. I am advised by Bell’s external counsel that Bell delivered its motion to quash the Initial Respondent Subpoenas to Rogers and Shaw on October 13, 2022, and filed these materials with the Tribunal on October 14, 2022. I am further advised that following the delivery of Bell’s motion materials, external counsel to Rogers and Shaw advised Bell’s external counsel that they would be withdrawing the Initial Respondent Subpoenas in favour of a new set of subpoenas which removed and amended certain specifications included in the Initial Respondent Subpoenas.
4. I understand that Rogers and Shaw have since circulated updated subpoenas issued by the Register of the Competition Tribunal on October 14, 2022 (the “**Second Rogers Subpoena**” and the “**Second Shaw Subpoena**”, together the “**Second Subpoenas**”) which were received by Bell on October 14, 2022. I understand that counsel for Shaw circulated

¹ Defined terms in this affidavit have the meaning set out in my Initial Affidavit, unless otherwise noted.

the Second Shaw Subpoena at 2:03pm on Friday, October 14, 2022, and counsel for Rogers circulated the Second Rogers Subpoena at 3:45pm on Friday, October 14, 2022. I attach copies of the Second Rogers Subpoena and Second Shaw Subpoena as exhibits “**A**” and “**B**” to my affidavit. The Second Subpoenas are addressed to Blaik Kirby and Stephen Howe (the “**Bell Witnesses**”) and to me. I have not provided a witness statement in this matter. I am informed by Bell’s external counsel and believe that Rogers and Shaw have confirmed that they are not seeking my attendance at trial in this proceeding for the purposes of examining me and are only seeking that I produce the documents listed in the Second Subpoenas.

THE SECOND SUBPOENAS DO NOT ADDRESS BELL’S CONCERNS

5. The Second Subpoenas do not meaningfully address most of Bell’s concerns with the Initial Subpoenas, which were outlined in Bell’s motion materials and my Initial Affidavit. Notably, the Second Subpoenas continue to seek highly competitively sensitive documents, which would cause significant competitive harm to Bell if they were produced to its closest competitors in Rogers and Shaw (even to outside counsel or designated representatives). The Second Subpoenas encompass confidential submissions to the Bureau and ISED which outline key competitive concerns relating to Rogers, Shaw and the Transaction, including Bell’s strategies in respect of same. Bell provided these submissions under assurances from the Bureau and ISED that such submissions would remain confidential and protected, particularly from Bell’s largest competitors.
6. The Second Rogers Subpoena also requests strategic presentations and memoranda prepared for Bell’s Board of Directors and senior executives, which contain key

competitive assessments and analysis of confidential strategic initiatives and other responses to the Transaction. If Bell were required to comply with the Second Subpoenas and produce these documents to Rogers and Shaw (including only to outside counsel or designated representatives), I expect that Bell would suffer substantial and serious competitive, financial and other harm.

7. The Second Rogers Subpoena also leaves open the possibility that Bell would be required to engage in an extensive document collection and review process, which would impose a significant burden on Bell and its employees, and which could not be complied with ahead of the scheduled commencement of the hearing of the Section 92 application. In particular, the Second Rogers Subpoena requires production of “[a]ll memoranda or presentations to BCE’s board of directors or executive leadership team” on two of the most high-profile topics in the Canadian telecommunications industry in recent years with broad implications across Bell’s business. Bell’s executive leadership team comprises twelve individuals every one of whom would potentially have a large number of presentations or other written materials regarding these two topics. Memoranda and presentations to this group are not stored in a central repository and would typically be shared by email, in hard copy, and/or by projecting / sharing a screen in meetings. Identifying all memoranda or presentations to Bell’s Board of Directors or executive leadership team that address either of the two identified topics would require an extensive collection and review of emails and documents contained in corporate email accounts and on corporate devices. Based on my experience set out in my Initial Affidavit, I anticipate that this process would take 60 to 90 days to complete, at very significant cost to Bell.

8. All concerns relating to Bell's current and future cooperation with the Competition Bureau outlined in my Initial Affidavit remain given the scope of the Second Subpoenas. Bell has cooperated with the Bureau throughout this, and other, review processes. If ordered to comply with the Second Subpoenas, in view of the harm that Bell believes would result, Bell would seek to limit as much as possible any further participation or cooperation in this proceeding by its employees and would explore and to the extent necessary negotiate with the parties how its employees could responsibly withdraw or reduce the scope of their current participation in order to ultimately have any subpoena requiring the production of additional documents withdrawn.

THE DOCUMENTS ARE NOT IN THE POSSESSION OF THE BELL WITNESSES

9. The Bell Witnesses were not involved in the preparation of any regulatory submissions (other than affidavits / witness statements) to the Competition Bureau or ISED, and I do not believe they would have any such materials in their possession.

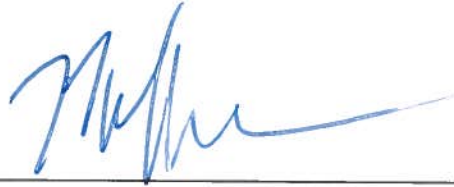
CONCLUSION

10. I affirm this affidavit for the purposes of Bell's motion to quash the Respondent Subpoenas and for no other purpose.

AFFIRMED before me at the City of
Toronto, in the Province of Ontario on
October 18, 2022



A Commissioner for taking affidavits, etc.



MARK GRAHAM

This is Exhibit "A" referred to in the Supplemental Affidavit of
Mark Graham Affirmed October 18, 2022

A handwritten signature in blue ink, consisting of a stylized 'M' followed by a long horizontal stroke.

Commissioner for Taking Affidavits (or as may be)

Competition Tribunal



Tribunal de la concurrence

CT-2022-002

IN THE MATTER of the *Competition Act*,
RSC 1985, c C-34, as amended;

DANS L'AFFAIRE de la *Loi sur la
concurrence*, LRC 1985, ch C-34, et ses
modifications;

AND IN THE MATTER of an application
by the Commissioner of Competition
pursuant to section 92 of the *Competition
Act*.

ET DANS L'AFFAIRE d'une demande par
le commissaire de la concurrence en vertu
de l'article 92 de la *Loi sur la concurrence*.

B E T W E E N :

E N T R E :

Commissioner of Competition
(applicant)
and
Rogers Communications Inc.
Shaw Communications Inc.
(respondents)
and
Attorney General of Alberta
Videotron Ltd.
(intervenors)

Commissaire de la concurrence
(demandeur)
et
Rogers Communications Inc.
Shaw Communications Inc.
(défendeurs)
et
Procureur général de l'Alberta
Videotron Lté
(intervenants)



**SUBPOENA PURSUANT TO SECTION
7 OF THE *COMPETITION TRIBUNAL
RULES***

**ASSIGNATION DE TÉMOIN EN
VERTU DE L'ARTICLE 7 DES *RÈGLES
DU TRIBUNAL DE LA CONCURRENCE***

To

À

Stephen Howe

Chief Technology Officer
BCE Inc.
1 Carrefour Alexander-Graham-Bell
Building A, 4th Floor
Verdun, Québec H3E 3B3

Blaik Kirby

Group President, Consumer and Small & Medium
Business (SMB)
BCE Inc.
1 Carrefour Alexander-Graham-Bell
Building A, 4th Floor
Verdun, Québec H3E 3B3

Mark Graham

Vice President, Legal and Regulatory
BCE Inc.
1 Carrefour Alexander-Graham-Bell
Building A, 4th Floor
Verdun, Québec
H3E 3B3

[1] YOU ARE REQUIRED TO ATTEND TO GIVE EVIDENCE at the hearing of this proceeding, on the 7th day of November, 2022, at 10:00 a.m., before the Competition Tribunal, 90 Sparks Street, 6th floor, Ottawa, ON, and to remain until your attendance is no longer required.

[1] IL VOUS EST ORDONNÉ DE COMPARAÎTRE à l'instruction de la présente instance, le _____ jour du mois de _____, à _____ h, pour y témoigner devant le Tribunal de la concurrence, 90, rue Sparks, 6^{ième} étage, Ottawa (ON), Canada et d'y demeurer jusqu'à ce que votre présence ne soit plus requise.

[2] YOU ARE REQUIRED TO BRING WITH YOU and produce at the hearing the following documents and things:

[2] IL VOUS EST ORDONNÉ D'APPORTER AVEC VOUS et de produire à l'audience les documents et choses suivants :

1. All memoranda or presentations dated on or after May 7, 2022 to BCE Inc.'s ("Bell") board of directors or executive leadership team considering the proposed divestiture of Freedom Mobile Inc. to Videotron Inc.; and

2. All memoranda or presentations to Bell's board of directors or executive leadership team on or after July 8, 2022 containing analysis of Rogers' network outage that occurred on July 8, 2022.

[3] IF YOU FAIL TO ATTEND or remain in attendance as required by this subpoena, you may be in contempt of the Tribunal pursuant to subsection 8(3) of the *Competition Tribunal Act*.

[3] LE DÉFAUT DE COMPARAÎTRE ou de demeurer présent tel que l'ordonne la présente assignation peut constituer un outrage au Tribunal en vertu du paragraphe 8(3) de la *Loi sur le Tribunal de la concurrence*.

DATED at Ottawa, Ontario, this 14th day of October, 2022.

FAIT à Ottawa (Ontario) ce 14^{ième} jour de octobre, 2022.



Michel Parent
Registrar/Registraire

This subpoena was issued at the request of and inquiries may be directed to:

La présente assignation a été émise à la demande de l'avocat dont le nom apparaît ci-dessous et les demandes de renseignements peuvent lui être adressées

Crawford G. Smith (LSO# 42131S)
LAX O'SULLIVAN LISUS GOTTLIEB LLP
Suite 2750
145 King Street West
Toronto, ON M5H 1J8
Tel: 416.598.8648
Email: csmith@lolg.ca

Should the details set out above be provided in only one official language, a translation to the other official language is available from the counsel or party / intervenor serving this summons.

Si les particularités ajoutées ci-haut sont dans une langue officielle seulement, la traduction est disponible auprès de l'avocat ou de la partie / intervenant qui signifie l'assignation.

This is Exhibit "B" referred to in the Supplemental Affidavit of
Mark Graham Affirmed October 18, 2022



Commissioner for Taking Affidavits (or as may be)

Competition Tribunal



Tribunal de la concurrence

CT-2022-002

IN THE MATTER of the *Competition Act*,
RSC 1985, c C-34, as amended;

DANS L'AFFAIRE de la *Loi sur la
concurrence*, LRC 1985, ch C-34, et ses
modifications;

AND IN THE MATTER of an application
by the Commissioner of Competition
pursuant to section 92 of the *Competition
Act*.

ET DANS L'AFFAIRE d'une demande par
le commissaire de la concurrence en vertu
de l'article 92 de la *Loi sur la concurrence*.

B E T W E E N :

E N T R E :

Commissioner of Competition
(applicant)
and
Rogers Communications Inc.
Shaw Communications Inc.
(respondents)
and
Attorney General of Alberta
Videotron Ltd.
(intervenors)

Commissaire de la concurrence
(demandeur)
et
Rogers Communications Inc.
Shaw Communications Inc.
(défendeurs)
et
Procureur général de l'Alberta
Videotron Lté
(intervenants)



**SUBPOENA PURSUANT TO SECTION
7 OF THE *COMPETITION TRIBUNAL
RULES***

**ASSIGNATION DE TÉMOIN EN
VERTU DE L'ARTICLE 7 DES *RÈGLES
DU TRIBUNAL DE LA CONCURRENCE***

To

À

Stephen Howe

Chief Technology Officer
BCE Inc.
1 Carrefour Alexander-Graham-Bell
Building A, 4th Floor
Verdun, Québec
H3E 3B3

Blaik Kirby

Group President, Consumer and Small & Medium
Business (SMB)
BCE Inc.
1 Carrefour Alexander-Graham-Bell
Building A, 4th Floor
Verdun, Québec
H3E 3B3

Mark Graham

Vice President, Legal and Regulatory
BCE Inc.
1 Carrefour Alexander-Graham-Bell
Building A, 4th Floor
Verdun, Québec
H3E 3B3

[1] YOU ARE REQUIRED TO ATTEND TO GIVE EVIDENCE at the hearing of this proceeding, on the 7th day of November, 2022, at 10:00 am, before the Competition Tribunal, 90 Sparks Street, 6th floor, Ottawa, ON, and to remain until your attendance is no longer required.

[1] IL VOUS EST ORDONNÉ DE COMPARAÎTRE à l'instruction de la présente instance, le 7^{ième} jour du mois de Novembre 2022, à 10h00, pour y témoigner devant le Tribunal de la concurrence, 90, rue Sparks, 6^{ième} étage, Ottawa (ON), Canada et d'y demeurer jusqu'à ce que votre présence ne soit plus requise.

[2] YOU ARE REQUIRED TO BRING WITH YOU and produce at the hearing the following documents and things:

[2] IL VOUS EST ORDONNÉ D'APPORTER AVEC VOUS et de produire à l'audience les documents et choses suivants :

1. Written submissions dated on or after March 15, 2021 provided by or on behalf of BCE Inc. and/or its various subsidiaries and affiliates (“**Bell**”) to representatives of the Competition Bureau concerning the proposed transaction involving Shaw Communications Inc. (“**Shaw**”) and Rogers Communications Inc. (“**Rogers**”), including written submissions provided to representatives of the Competition Bureau on September 13, 2021, September 24, 2021, September 29, 2021, October 27, 2021, November 17, 2021 and November 30, 2021;

2. Written submissions dated on or after March 15, 2021 provided by or on behalf of Bell to Industry, Science and Economic Development Canada (“**ISED**”) concerning the proposed transaction involving Shaw and Rogers;

3. Written submissions dated on or after June 17, 2022 provided by or on behalf of Bell to representatives of the Competition Bureau concerning the proposed transaction involving Shaw, Rogers and Quebecor Inc.;

4. Written submissions dated on or after June 17, 2022 provided by or on behalf of Bell to representatives of ISED concerning a proposed transaction involving Shaw, Rogers and Quebecor Inc.;

5. Written submissions dated on or after July 1, 2020 provided by or on behalf of Bell to representatives of the Competition Bureau concerning Bell’s proposed

plans to acquire Shaw;

6. Written submissions dated on or after July 1, 2020 provided by or on behalf of Bell to representatives of ISED concerning Bell's proposed plans to acquire Shaw; and

7. Agreements between Bell and TELUS concerning the network reciprocity arrangement described in paragraph 9 of the Witness Statement of Stephen Howe in this proceeding dated September 23, 2022, to the extent such agreements have not been produced by the Commissioner to the Respondents, Shaw and Rogers.

[3] IF YOU FAIL TO ATTEND or remain in attendance as required by this subpoena, you may be in contempt of the Tribunal pursuant to subsection 8(3) of the *Competition Tribunal Act*.

[3] LE DÉFAUT DE COMPARAÎTRE ou de demeurer présent tel que l'ordonne la présente assignation peut constituer un outrage au Tribunal en vertu du paragraphe 8(3) de la *Loi sur le Tribunal de la concurrence*.

DATED at Ottawa, Ontario, this 14th day of October, 2022.

FAIT à Ottawa (Ontario) ce 14^{ième} jour d'octobre, 2022.



Michel Parent
Registrar/Registraire

This subpoena was issued at the request of and inquiries may be directed to:

La présente assignation a été émise à la demande de l'avocat dont le nom apparaît ci-dessous et les demandes de renseignements peuvent lui être adressées au:

Derek Ricci, Counsel

Davies Ward Phillips & Vineberg LLP
155 Wellington Street West
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Telephone: 416-367-7471
dricci@dwpv.com

Derek Ricci, Counsel

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