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THE COMPETITION TRIBUNAL

CT-2022-002

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

AND IN THE MATTER OF the proposed 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*.

B E T W E E N:

COMMISSIONER OF COMPETITION

Applicant

- and -

ROGERS COMMUNICATION INC. AND SHAW COMMUNICATIONS INC.

Respondents

- and -

THE ATTORNEY GENERAL OF ALBERTA and VIDEOTRON LTD.

Interveners

**ROGERS' COMPENDIUM FOR ORAL ARGUMENT
(BCE Inc. and Telus' Motions to Quash Subpoenas)**

October 26, 2022

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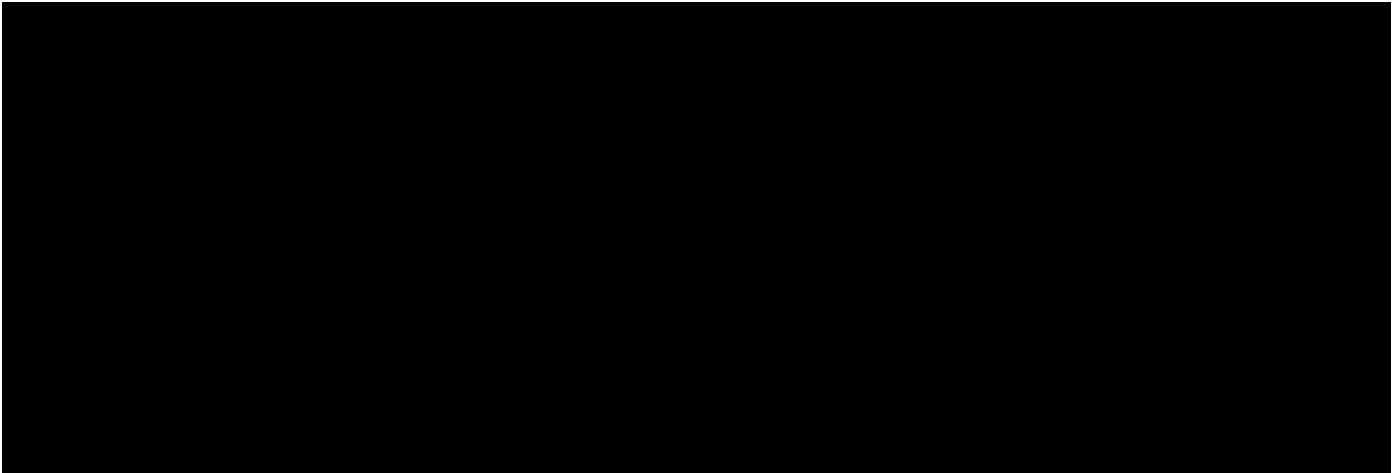
From: [Zain Naqi](#)
To: [Henderson, Nicole](#); [Ricci, Derek](#); [Hirsh, Adam](#)
Cc: [Jonathan Lisus](#); [Matthew Law](#); [Brad Vermeersch](#); [Thomson, Kent](#); [Frankel, Steven](#); [Sethi, Chanakya](#); [Tyhurst, John \(CB/BC\)](#); [Leschinsky, Derek \(CB/BC\)](#); [Hofley, Randall](#); [McGrade, 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: October-14-22 3:45:06 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](#)

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 Our October 4 summonses are withdrawn.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:



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

Thanks,

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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***

PUBLIC

To

À

Nazim Benhadid
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VP, Consumer, Controller
TELUS Garden
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Daniel Stern
Director, Regulatory Law and Policy
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[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 Telus Communications Inc.'s ("Telus") board of directors or executive leadership team considering the proposed divestiture of Freedom Mobile Inc. to Videotron Inc.

[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

PUBLIC

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

Crawford G. Smith (LSO# 42131S)
LAX O'SULLIVAN LISUS GOTTLIEB LLP
Suite 2750
145 King Street West
Toronto, ON M5H 1J8
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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.

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

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.

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*.

BETWEEN :

ENTRE :

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
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**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***

PUBLIC

To

À

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Vice President, Legal and Regulatory
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[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*.

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



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THE COMPETITION TRIBUNAL

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

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

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B E T W E E N :

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Applicant

- and -

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

Respondents

- and -

**ATTORNEY GENERAL OF ALBERTA AND
VIDEOTRON LTD.**

Intervenors

**FRESH AS AMENDED REPLY to the Response of Rogers Communications Inc.
of the Commissioner of Competition**

I. OVERVIEW

1. The within application seeks to block Canada's largest wireless company from acquiring its closest competitor because the Proposed Transaction is anti-

the incumbent facilities-based carriers, not increased competition as Rogers has suggested

D. Shaw Planned to Continue to Grow its Business Before the Announcement of the Proposed Transaction

14. Counter to the Respondent's claims,⁶ Shaw planned to make 5G investments, enter new areas and expand into wireless Business Services. Shaw has a proven track record of investing in and expanding its business and Shaw would have continued but for the Proposed Merger. Shaw's decisions to cease these investments and to compete less vigorously are a result of the Proposed Transaction.

E. MVNO Entry is Unlikely to be Timely or Sufficient to Replace Competition from Shaw

15. The CRTC's MVNO Policy will not cure the substantial lessening and prevention of Competition the Proposed Transaction creates.⁷ Rogers does not deny that MVNO entry is not likely in a period or on a scale that would constrain the likely increase in market power attributable to the Proposed Transaction.
16. Rather, the CRTC's MVNO Policy sought to protect and enhance the pre-merger competition brought about by regional carriers like Shaw who would have been the main beneficiary of the CRTC's policy. The diminishment of Shaw's Wireless business due to the Proposed Transaction and Divestiture will thus substantially reduce the effectiveness of the CRTC MVNO policy and further compound the anti-competitive effects of the Proposed Transaction.

F. There Would be No Increase in Competition

17. While Rogers pleads that the Proposed Transaction and the Divestiture would increase competition,⁸ as noted above, that is not the case, given factors which include Rogers' different market position and incentives from Shaw and the difficulties and reduced competitiveness which Vidoetron will face without wireline

⁶ Subparagraphs (d) and (e) of the Response.

⁷ See paragraphs 28-30 of the Response.

⁸ Paragraphs 38-40 of the Response.

assets and other benefits derived by Shaw from its wireline business. These factors make it likely that there will be increased post-merger coordination and reduced competition in Wireless Services. Contrary to Rogers' assertions, prior to the proposed transaction being announced, Shaw was poised to expand, by steps including extending its network in Ontario and the west, participating in the acquisition of new spectrum and offering 5G services.

G. Claimed Efficiencies Do Not Save this Anticompetitive Merger

18. Rogers attempts to justify its anticompetitive merger with Shaw by asserting that it, and the divestiture of Freedom to Videotron, will achieve productive and dynamic efficiencies. The Respondents bear the burden of establishing the likelihood and the extent of each efficiency gain that they claim, and that such gains, if realized, would provide cognizable benefits to the Canadian economy and that they are likely to be greater than, and offset, the anticompetitive effects of the Proposed Transaction.
19. The efficiencies claims made cannot save this anti-competitive merger, as they:
 - a. are speculative, unproven and unlikely to be achieved in whole or in part or are grossly exaggerated;
 - b. are based on unrealistic assumptions and flawed methodologies;
 - c. are not brought about by the Proposed Transaction or Divestiture or would likely have been achieved irrespective of the Proposed Transaction; and
 - d. fail to account or to properly account for the cost to achieve the claimed efficiencies.
20. Additionally, the efficiencies Rogers claims⁹ are not cognizable under the Act as:

⁹ Paragraphs 43-44 of the Response.

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

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Respondents

- and -

**ATTORNEY GENERAL OF ALBERTA AND
VIDEOTRON LTD.**

Intervenors

Response to Demand for Particulars

Rogers seek particulars of the underlined language in the following paragraph of the Fresh as Amended Reply. These matters are already specified in the applicant's pleadings. The following response is provided without prejudice to the applicant's position that no further particulars were or are needed. What follows is subject to

amendment or supplement on receipt of the complete information currently sought in the on-going discoveries of Shaw, Rogers and Videotron.

17. While Rogers pleads that the Proposed Transaction and the Divestiture would increase competition, as noted above, that is not the case, given factors which include Rogers' different market position and incentives from Shaw and the difficulties and reduced competitiveness which Videotron will face without wireline assets and other benefits derived by Shaw from its wireline business. These factors make it likely that there will be increased post-merger coordination and reduced competition in Wireless Services. ...

1. **Request:** "What difficulties, if any, the Commissioner alleges Videotron will face?"

Response: The words are taken out of context. The "difficulties and reduced competitiveness that Videotron will face without wireline assets and other benefits derived by Shaw from its wireline business" include the following:

- a. the barriers to entry faced by Videotron in the relevant markets identified at paras. 38-49 of the Notice of Application;
- b. the decline of Freedom since the merger was announced, as specified at para. 70 of the Notice of Application;
- c. the impacts of the divestiture on Freedom identified at para. 95 of the Notice of Application;
- d. the impacts of the separation of Freedom from Shaw on Freedom as proposed to be divested to Videotron, as identified at para. 96 of the Notice of Application;
- e. Videotron's challenges associated with access to devices, network equipment and spectrum as specified at para. 97 of the Notice of Application;

- f. Videotron's greater hurdles related to expansion and deployment of elements of a network, including a 5G network, as specified at paras. 98 and 99 of the Notice of Application;
- g. Videotron's reliance and dependence on Rogers created by various agreements with Rogers, some of which are still being concluded, as referenced at para. 100 of the Notice of Application;
- h. Videotron's inability to replace competition from Shaw Mobile, including in competition through bundled products and pricing, as specified in paras. 101 and 102 of the Notice of Application;
- i. Videotron's reduced access to wireline assets as specified in para. 102 of the Notice of Application and further specified at para. 12 of the Fresh as Amended Rogers Reply ("Rogers Reply");
- j. the different competitive circumstances of Videotron, which affect the likelihood or ability to replicate or to approximate Shaw's competitive vigour, tactics and incentives as specified in paras. 103 and 104 of the Notice of Application and further specified at paras. 12 and 13 of the Rogers Reply;
- k. the loss to Videotron of the benefits of Freedom's integration with Shaw including those specified at para. 16 of the Fresh as Amended Shaw Reply ("Shaw Reply"); and
- l. the matters which reduce the competitive effectiveness of a divested Freedom specified in para. 14 of the Shaw Reply:
 - i. additional capital requirements of a standalone wireless entity in B.C. and Alberta;
 - ii. incremental costs to develop 5G network;

- iii. incremental capital or operating costs to build out or purchase from third parties backhaul previously provided by Shaw wireline business;
- iv. inability to bundle or cross-sell competitively and the challenge of competing against incumbents who can cross-sell multiple telecommunication products;
- v. dependence on Rogers and competitive vulnerability as a result of the numerous contractual arrangements included in the proposed divestiture to Videotron; and
- vi. loss of access, in whole or part, to “Go Wi-Fi” hotspots, resulting in increased costs and inferior coverage.

2. **Request:** “The manner in which the Commissioner alleges Videotron’s competitiveness will be reduced?”

Response: See above.

3. **Request:** “What ‘other benefits’ the Commissioner alleges Shaw’s wireless business derives from its wireline business?”

Response: See above.

Dated: September 12, 2022.



ATTORNEY GENERAL OF CANADA

Department of Justice Canada
Competition Bureau Legal Services
Place du Portage, Phase I
50 Victoria Street, 22nd Floor
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Fax: 819.953.9267

PUBLIC

- 5 -

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Katherine Rydel
Ryan Caron
Kevin Hong et al
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Competition

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Steven G. Frankel
Chanakya Sethi
Counsel to Shaw Communications Inc.

CT-2022-002

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Respondents

- and -

**ATTORNEY GENERAL OF ALBERTA AND
VIDEOTRON LTD.**

Intervenors

WITNESS STATEMENT OF BLAIK KIRBY

INTRODUCTION

1. I am the Group President, Consumer and Small & Medium Business (SMB) for BCE Inc. (“**Bell**”). In this role I lead the teams responsible for sales, marketing, and product development for Bell’s consumer and SMB wireless and wireline businesses. From 2015 to 2020, I was President of Bell Mobility and prior to that I held a series of progressively senior roles in marketing and sales for Bell Mobility.

22. In 2021, Shaw Mobile continued to expand its competitive impact. Our 2021 plan for wireless (prepared in October 2020) identified [REDACTED]

[REDACTED]

23. Based on my experience at Bell, operating as an integrated service provider has allowed Bell to spread common costs over a larger base and enhance the value of our brand marketing (which reinforces both our wireline and wireless offerings). It creates more points of contact between Bell and our customers and affords us the opportunity to create bundled offerings that appeal to consumers. My experience at Bell indicates that subscribers of multiple services from a provider (i.e. internet and mobile wireless services) tend to have a lower churn rate and a higher expected lifetime value [REDACTED] proposition than customers who only subscribe to a single service.

24. For example, in 2022 [REDACTED]
[REDACTED]
[REDACTED] This is due in part to the fact that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

25. Without our wireline infrastructure and operations, Bell would not be as effective a wireless competitor as we are today.³⁶ My experience in the Canadian telecommunications industry indicates that is true for all integrated wireless competitors in Canada, including Shaw/Freedom Mobile. For example, I have

³⁴ See p. 8 of Bell0774470, attached to my witness statement as Exhibit "DD".

³⁵ See p. 20 of Bell0856841, attached to my witness statement as Exhibit "I".

³⁶ See p. 9 of Bell0773643, attached to my witness statement as Exhibit "EE".

observed that Videotron’s position as an integrated wireless and wireline competitor in Quebec, leveraging tactics such as cross-selling wireless services and offering large multiproduct discounts, has been essential to its ability to succeed as a disruptive competitor in that province.

26. Prior to the announcement of the Proposed Acquisition, Shaw Mobile was beginning to play a similarly disruptive role in Alberta and British Columbia. I expected Shaw Mobile to continue to play this role and to increase its impact on the market, just as Videotron had done previously, given that it was in a similar position to the one occupied by Videotron when it launched – namely, a well-capitalized company with a large established wireline subscriber base, a well-established local brand, and a small wireless subscriber base and market share. If the Proposed Acquisition does not proceed, I expect Shaw Mobile will return to playing this disruptive role in the market.

27. [REDACTED] According to surveys Bell conducted [REDACTED] for purposes of informing its market strategies, and which Bell relies on in the operation of its business, [REDACTED]

Rogers and Shaw Are Often Each Other’s Closest Wireless Competitor

28. Based on my observation of the wireless market in Canada since 2008, I consider that Rogers and Shaw are often each other’s closest wireless competitor. By this I mean that Shaw’s competitive behaviour (pricing, promotions, etc.) in the wireless market appears to be most heavily influenced by the competitive behaviour of Rogers and, conversely, that Rogers’ competitive behaviour appears to be most heavily influenced by the competitive behaviour of Shaw.

³⁷ See p. 2 of Bell0545066, attached to my witness statement as Exhibit “Z”.

the fact that it accounts for [REDACTED] of Shaw's net port swing and captures [REDACTED] of port outflows from Shaw to be a consequence of the particularly close competition between Rogers and Shaw prior to the Proposed Acquisition. These data are reflected in the graph below, which Bell prepared based on the data from [REDACTED]
[REDACTED]

VIDEOTRON'S COMPETITIVE STRATEGY IN QUEBEC

42. Bell competes with Videotron in Quebec with respect to both wireless and wireline services, among others. Quebec is the second largest region in which we operate, after Ontario. As a result, I am highly familiar with Videotron's approach to competing in the market.
43. Videotron's primary competitive strategy and, I believe, a significant contributing factor to their wireless results in the province of Quebec has been their ability to cross-sell wireless services to their large existing Internet subscriber base and to offer large multiproduct discounts. This strategy plays a disproportionate role in

Videotron's wireless business. For example, an analysis I presented to [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

44. This analysis is consistent with the results of surveys Bell conducted [REDACTED]
[REDACTED] for purposes of informing its market strategies, and
which we rely on in the operation of our business. These surveys showed that [REDACTED]
[REDACTED]
[REDACTED]

45. In addition to its ability to cross-sell services to its large existing customer base and
offer large multiproduct discounts, Videotron's results in wireless are supported by
its strong brand in the province of Quebec and status as a local champion. For
Videotron, all of these factors are unique to Quebec. For example, according to the
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

46. Our internal strategy and planning documents consistently reflect the unique factors
supporting Videotron's success specifically in Quebec. For example, Bell Mobility's
2019 business plan noted [REDACTED]
[REDACTED]
[REDACTED]

⁴⁵ Bell0773643, attached to my witness statement as Exhibit "EE".

⁴⁶ Bell0229823, attached to my witness statement as Exhibit "A".

and its 2022-2024 strategic plan (produced in May 2021) noted [REDACTED]
[REDACTED]

47. For these reasons, I do not expect that, if Videotron expands into other provinces, it could or would play the same large and disruptive role as it has done in Quebec, given that it will be very differently positioned. Rather, it is the combination of Shaw and Shaw Mobile that I would expect to play a more disruptive role in the market in Alberta and British Columbia.
48. Moreover, I expect that even if Videotron expands into other provinces they will continue to prioritize retention and cross-selling to their large Internet and wireless subscriber base in Quebec, even at the expense of growth in other areas. This is because that has been core to their strategy and success, and because the Quebec market will continue to be most important to their financial performance.

INFORMATION SUPPLIED TO THE COMPETITION BUREAU

49. In response to an order pursuant to section 11 of the *Competition Act*, RSC 1985, c C-34 (the “**Act**”) on August 1, 2021, Bell supplied to the Competition Bureau certain records specified by their record numbers and listed in Appendix “A” (“**Records**”).
50. Copies of the Records listed in section a. of Appendix “A” are referred to above and attached to my witness statement as Exhibits “A” to “KK”.
51. Copies of the Records listed in section b. of Appendix “A” are attached to my witness statement as Exhibits “LL” to “VV”.
52. I am informed by Robert Malcolmson, Chief Legal & Regulatory Officer of Bell and believe that each of the copies of the Records attached as Exhibits “A” to “VV” are true copies of the originals that are in the possession, power, or control of Bell and that the contents thereof are true to the best of my knowledge, information and belief. A certificate from Robert Malcolmson, Chief Legal & Regulatory Officer of

⁴⁷ Bell0765850, attached to my witness statement as Exhibit “J”.

CT-2022-002

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, RSC 1985, c C-34;

AND IN THE MATTER OF the proposed 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*.

B E T W E E N :

COMMISSIONER OF COMPETITION

Applicant

- and -

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

Respondents

- and -

**ATTORNEY GENERAL OF ALBERTA AND
VIDEOTRON LTD.**

Intervenors

WITNESS STATEMENT OF STEPHEN HOWE

INTRODUCTION

1. I am Chief Technology and Information Officer of BCE Inc. ("**Bell**") since February 2022. I became Chief Technology Officer of Bell on January 1, 2010 and prior to that I was Senior Vice President and Chief Technology officer for Bell Mobility, Bell's wireless operations. I joined Bell in 2006 and have been a network executive in the Canadian telecommunications industry for 25 years. I hold a Bachelor of

Mobility [Why Bell](#) [Our network](#) [Devices](#) [Bring your own device](#) [Plans](#) [Prepaid](#) [Accessories](#) [Connected things](#) [Promotions](#) [Travel](#)

The Bell 5G difference.

Not all 5G networks are created equal. While many may say they have 5G, it takes a leader in network innovation to build Canada's best 5G network. Bell has the world-class infrastructure required to provide the coverage, reliability and support needed to deliver the network of the future.



- [Most awarded 5G network²](#)
- [Fibre](#)
Bell's 5G is backed by fibre, the world's best network technology. This allows for a faster and more reliable network. Bell has Canada's largest fibre-optic network with more than 240,000 total kilometres – providing the best foundation for 5G.
- [More cell towers](#)
- [Investing in innovation](#)
- [Network professionals](#)

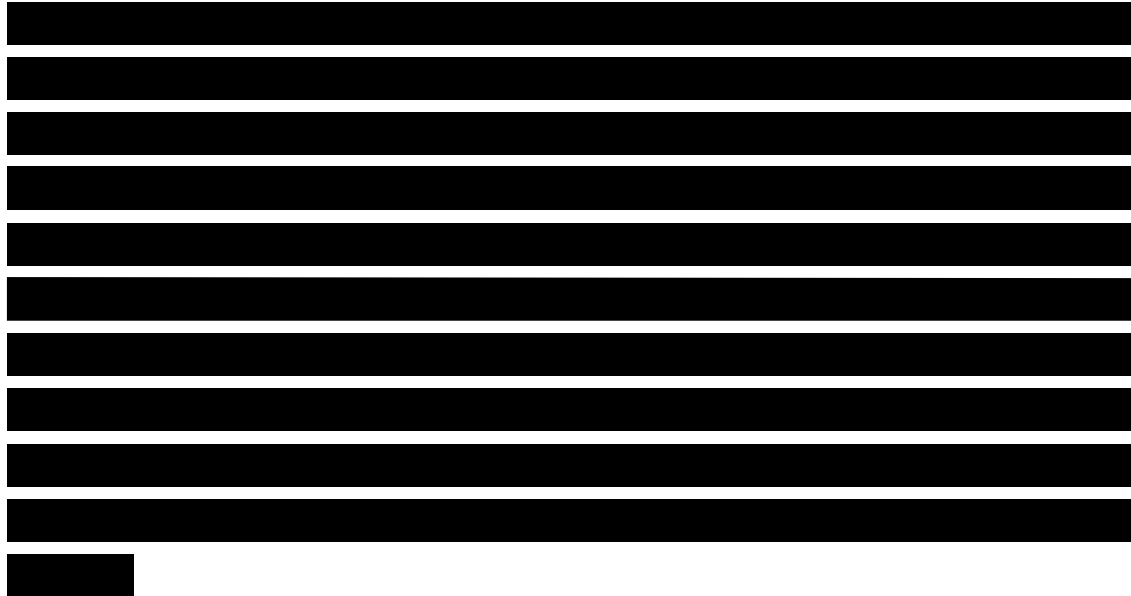
RELATIONSHIP BETWEEN BELL'S WIRELINE AND WIRELESS NETWORK DEPLOYMENTS

- Bell's wireless network is deployed in part through a network reciprocity arrangement with Telus, pursuant to which, among other things, Bell and Telus each build and operate radio access networks ("**RANs**") in certain regions of Canada and provide reciprocal access to each other to those RANs. A RAN comprises the radios, base station, and radio controller (including backhaul to the radio controller). Bell and Telus each deploy separate network components for the remainder of their wireless networks. The network reciprocity arrangement does not extend to wireless transport or core networks or to any aspect of Bell and Telus' respective wireline networks.
- The locations in which each of Bell and Telus have deployed Radio Access Networks in connection with the network reciprocity arrangements overlap to a large

degree – but not entirely – with our respective wireline network footprints. Accordingly, in most areas in Alberta / British Columbia, where Telus operates an extensive residential wireline network, Telus has deployed a RAN and Bell has not, while in most areas in Ontario / Quebec / Atlantic Canada, where Bell operates an extensive residential wireline network, Bell has deployed a RAN and Telus has not. This is because there are significant advantages to deploying a wireless network within your wireline network footprint. While our experience demonstrates that it is possible for an established national wireless operator to successfully deploy a wireless network outside an existing wireline network footprint, deploying in an area where we have such a footprint provides us with significant opportunities to reduce costs, reduce deployment timelines, and increase innovation. The same would be true for other companies, including Shaw (Shaw Mobile and Freedom), deploying a wireless network within their traditional wireline footprint.

11. *First*, it makes it possible to leverage a single construction process to build infrastructure for both the wireline and wireless networks. For example, when building FTTP in a given area [REDACTED]
[REDACTED]
[REDACTED] This strategy is enabled by the fact that we are deploying both wireline and wireless networks in the area. To illustrate the benefits of this strategy:

- In a typical suburban community in Ontario where the fibre and cable infrastructure is found in underground ducts, the cost to Bell of building backhaul fibre from a wireless tower back to a location such as a Bell central office (“CO”), from which transport back to the carrier’s core network is available, would be in the range of approximately [REDACTED] depending on specific characteristics of the community and the distance from the wireless tower to the CO. By contrast, the cost of [REDACTED]
[REDACTED]
[REDACTED]



- Build more economical, targeted, and complete service offerings for enterprise customers. For example, dedicated WiFi, 4G and 5G in-building systems, and Internet of Things (“IoT”) solutions can be integrated with wireline connectivity at key locations to provide a comprehensive service offering. Similarly, a wireless back-up service could be included with wireline connectivity to provide a more reliable overall service offering for enterprise customers.

BELL’S INVESTMENT IN NETWORK RESILIENCY

15. In my experience, network resiliency is a critical element of network quality and a reduction in the resiliency of the networks serving customers – even if it is not experienced day to day but instead only when there is a problem – is a reduction in the quality of the services made available to them. The importance of network resiliency in competition between carriers, and the focus carriers place on it, is reflected in the fact that for many years carriers in Canada have competed to offer Canadian consumers and businesses the “most reliable” network.
16. Bell engineers its networks and directs its investments to support network reliability and resiliency. First, our wireless and wireline networks use different network infrastructures so that a major disruption on the wireline network will not create an outage on the national wireless network. Second, we have segmented our national

PUBLIC**THE COMPETITION TRIBUNAL**

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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.

SHAW COMMUNICATIONS INC.

Respondents

WITNESS STATEMENT OF CHARLIE CASEY

I, Charlie Casey, of the City of Richmond Hill, in the Province of Ontario state as follows:

1. I am Vice President Consumer, Controller at TELUS Corporation (“TELUS”). I have worked at TELUS for 23 years, and my current responsibilities are financial planning

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and reporting for our consumer segment. In this capacity, I support all financial and subscriber key performance indicators for our consumer business.

2. I make this statement in connection with the application under section 92 of the *Competition Act* made by the Commissioner of Competition (the “Commissioner”) against Rogers Communications Inc. (“Rogers”) and Shaw Communications Inc. (“Shaw”), relating to their merger (the “Proposed Transaction”).

OPERATIONS OF TELUS

3. TELUS is a communications company that provides wireless and wireline services to individual subscribers, governments, and businesses across Canada. TELUS’ mobile wireless business includes TELUS’ 3G, 4G LTE, and 5G network through which it offers subscribers voice, data transmission and messaging services across Canada and worldwide delivered on subscribers’ mobile devices, as well as TELUS’ smartphone, tablet, and mobile devices offered to subscribers across the country. TELUS also offers a number of other services, including Internet access, TV, and virtual health care.

COMLINK DATA

4. As of October 2020, TELUS commenced subscribing to Comniscient Technologies Inc. (“Comlink”) for porting data and analytics for the Canadian wireless industry. TELUS believes Comlink is a reliable source of porting data and analytics for the Canadian wireless industry.
5. TELUS provides its porting data to Comlink. For context, a port occurs when a subscriber switches from one wireless carrier (e.g., Shaw) or a landline carrier to another wireless carrier (e.g., TELUS) and keeps their phone number. The term “net ports” refers to the number of ports into a carrier minus the number of ports out from the carrier during the same defined time period. For purposes of this statement, unless I specifically indicate otherwise, references to Shaw relate to Shaw’s wireless business which operates under the Shaw Mobile and Freedom Mobile brands.

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Comlink uses the term “Freedom” to cover both Shaw Mobile and Freedom Mobile, and does not provide a breakdown as between the two Shaw brands.

6. TELUS utilizes the porting data and analytics provided by Comlink (via an electronic portal which TELUS can access at any time) in its regular course of business, together with other information, to better inform its competitive response. Most importantly, the Comlink data and analytics provides TELUS with directional insights on:
 - a) TELUS’ wireless performance relative to our principal wireless competitors (Bell, Rogers, Shaw, Videotron, SaskTel, and Eastlink) by, for example, identifying which competitors are gaining or losing subscribers on a daily, weekly, monthly or quarterly basis nationally and by province; and
 - b) the competitive impact of promotional and advertising activities undertaken by TELUS and/or our wireless competitors (as listed above) in terms of which competitors lost subscribers and which competitors gained subscribers during the period where such activities were undertaken.
7. The types of business decisions impacted by the insight provided by the Comlink data and reports include, for example:
 - a) During Black Friday 2021, TELUS used the porting data to understand how TELUS was performing relative to competitors after promotions were launched, and whether or not TELUS would match the promotions of its competitors.
 - b) Post-Black Friday 2021, TELUS undertook a detailed post-mortem analysis using porting data to understand how TELUS performed during the Black Friday promotion period and more specifically what type of promotions worked and what did not work (i.e., did not drive the desired performance). This analysis informed TELUS’ December 2021 Boxing Week promotional strategy.
 - c) The data regularly informs TELUS’ determination to undertake competitor-targeted campaigns and promotional activity to increase share and win back

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subscribers and it informs TELUS' actions during the time period of such campaigns. For example, in Q3 and Q4 2020 TELUS launched Operation Freedom which included: (a) win back offers targeting subscribers who ported out from TELUS to Shaw; and (b) promotions to win share against Shaw by offering Shaw subscribers incentives to port-in (i.e., switch) to TELUS.

CHANGES IN SHAW'S COMPETITIVE INTENSITY SINCE ROGERS ANNOUNCED ITS PROPOSED ACQUISITION OF SHAW

8. I believe that Shaw's competitive intensity in Alberta, British Columbia and in Ontario has decreased materially since the announcement of the Proposed Transaction on March 15, 2021. My belief is based on a number of data points and observations, including the following:

a) The Comlink data: Attached to my witness statement as Exhibit A are true copies of three Comlink reports which show the net ports for Shaw on a monthly basis for the period commencing January 1, 2021 (prior to the announcement of the Proposed Transaction) and ending August 31, 2022, on a national basis, on a combined Alberta and British Columbia basis; and on an Ontario only basis. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] More specifically,

- i. The national report shows that Shaw gained [REDACTED] net ports in April 2021 and lost [REDACTED] net ports in December 2021. This is an approximate 235% decrease in the number of net ports. This trend has continued throughout 2022. Shaw commenced 2022 by losing [REDACTED] net ports and in August lost [REDACTED] net ports.
- ii. The combined Alberta and British Columbia report shows that Shaw gained [REDACTED] net ports in April 2021 and lost [REDACTED] net ports in December 2021. This is an approximate 103% decrease in net ports. Shaw has experienced a drastic decline in net ports in 2022. It commenced the year by gaining [REDACTED]

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net ports and then the decline commenced and in August it lost [REDACTED] net ports.

iii. [REDACTED] since the Proposed Transaction was announced. Shaw lost [REDACTED] net ports in April 2021 and lost [REDACTED] net ports in December 2021. This is an approximate 374% decrease in net ports. This trend has continued throughout 2022. Shaw lost [REDACTED] net ports in January 2022 and in August it lost [REDACTED] net ports.

iv. A common element of each of these reports, each of which covers a time period after the announcement of the Proposed Transaction, is Shaw's substantial loss of net ports in the Black Friday-Cyber Monday period (late November) and the Boxing Week period (late December) which suggests that Shaw was not competing vigorously for subscribers during these heavy price promotional periods.

b) TELUS' review of Shaw's Third Quarter Results for the three-month periods ending May 31, 2021, and May 31, 2022 shows, among other matters, that in Q3 2021, immediately after the Merger was announced, Shaw reported 46,604 postpaid net adds. In Q3 2022, approximately a year after the Merger was announced, Shaw reported 19,392 postpaid net adds, less than 50% of the net adds in the quarter immediately following the announcement of the Merger. This activity occurred despite the fact that the number of wireless subscribers in each of British Columbia, Alberta, and Ontario (being the provinces in which Shaw competes) increased in Q3 2022 relative to Q3 2021.

c) TELUS' own internal porting data shows that in the three quarters between April 1, 2020 and December 31, 2020 Shaw won [REDACTED] net ports from TELUS and in the three quarters in 2021 following the announcement of the Proposed Transaction, being April 1 2021 to December 31, 2021, Shaw only won [REDACTED] net ports from TELUS, a decrease of over 90%. From January 1, 2022 to August 31,

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2022, the decline continued: Shaw lost [REDACTED] net ports to TELUS, representing a [REDACTED] decrease in net ports won from TELUS year-over-year.

9. The data also show that Shaw has reduced its promotional activity during heavy price promotional periods since the Proposed Transaction was announced. These periods include the Back-to-School period (mid-August to mid-September), the Black Friday-Cyber Monday period (late November) and the Boxing Week period (late December). In the third and fourth quarters of 2020, TELUS lost [REDACTED] net ports to Shaw. In the third and fourth quarters of 2021 (following the announcement of the Proposed Transaction) not only did TELUS not lose any net ports to Shaw, TELUS won [REDACTED] net ports from Shaw. I further observed Shaw's continued decreased competitive intensity in its 2022 Back-To-School promotions where TELUS won [REDACTED] net ports from Shaw in August 2022.

DATA SUPPLIED PURSUANT TO SECTION 11 ORDER

10. In response to an order the Federal Court issued under section 11 of the Competition Act, R.S.C. 1985, c. C-34 on August 1, 2021 (the "Order"), TELUS supplied data, records and information to Laura Sonley at the Competition Bureau relating to its wireless business and such production was completed November 29, 2021 ("Records").
11. The Records were reviewed by Andrea Wood, Chief Legal and Governance Officer of TELUS, who certified that the information so supplied is, to the best of her knowledge and belief, correct and complete in all material respects. Following this certification TELUS provided clarifications to the Bureau about certain data aspects of the Records. Andrea Wood, Chief Legal and Governance Officer of TELUS, has certified that these such clarifications are to the best of her knowledge and belief, correct and complete in all material respects.
12. Included with the Records TELUS produced to the Competition Bureau, and pursuant to the Order, TELUS provided the Competition Bureau with internal company data and access to Comlink's porting data and analytics.

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13. Attached to my witness statement as Appendix 1 is a list of certain data sets included in the Records TELUS produced to the Competition Bureau pursuant to the Specifications 11, 17 and 19 of the Order (the "Data"). I attest that the Data was collected and maintained by TELUS in the usual and ordinary course of business.



Charlie Casey

September 20, 2022

THE COMPETITION TRIBUNAL

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

AND IN THE MATTER OF the proposed acquisition by Rogers Communications Inc. or an affiliate thereof 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.

SHAW COMMUNICATIONS INC.

Respondents

WITNESS STATEMENT OF NAZIM BENHADID

I, Nazim Benhadid, of the City of Montreal, in the Province of Quebec state as follows:

1. I am the Senior Vice President, Network Build & Operate of TELUS Corporation (“TELUS”). I have worked at TELUS for over 22 years, with experience across multiple services, including voice, wireless, and core infrastructure. In my present

capacity, I am responsible for all key areas of wireless and wireline network build and maintenance.

2. I make this statement in connection with the application under section 92 of the *Competition Act* made by the Commissioner of Competition (the “Commissioner”) against Rogers Communications Inc. (“Rogers”) and Shaw Communications Inc. (“Shaw”), relating to their merger (the “Proposed Transaction”).

OPERATIONS OF TELUS

3. TELUS is a communications company that provides wireless and wireline services to individual subscribers, governments, and businesses across Canada. TELUS’ mobile wireless business includes TELUS’ 3G, 4G LTE, and 5G network through which it offers subscribers voice, data transmission and messaging services across Canada and worldwide delivered on subscribers’ mobile devices, as well as TELUS’ smartphone, tablet, and mobile devices offered to subscribers across the country. TELUS also offers a number of other services, including Internet access, TV, and virtual health care.

WIRELINE NETWORK OWNERSHIP IS CRITICAL TO WIRELESS NETWORK PERFORMANCE AND RELIABILITY

4. TELUS’ wireline and wireless networks are highly integrated. In general, the only truly wireless portion of the wireless network is the link between our customers’ wireless phones and the cell sites where our antennas are located. The rest of the network can be thought of in two components. The “core” networks are the high-speed backbone through which almost all data passes as it is transported across our network. Backhaul, in turn, is the portion of the network that links our cell sites to our cores. All of TELUS’ core networks and almost all of TELUS’ backhaul facilities are comprised of terrestrial fibre to optimize the performance and reliability of long-distance and large-scale wireless data transfers. As a result, the quality, performance, and reliability of our wireless network is heavily dependent upon the quality, performance, and reliability of our wireline network.

5. A network is only as fast as its slowest link. This is why TELUS' wireline fibre infrastructure is an integral part of the wireless network performance and reliability. Without a fibre network, TELUS would have to either duplicate fibre infrastructure at additional cost or lease it from other carriers. Leasing fibre backhaul facilities reduces TELUS' ability to control their performance (including speed, latency, jitter, capacity and upgrades to equipment), routings, and timely maintenance of critical facilities. Owning facilities (as opposed to leasing them) allows TELUS to build redundancies and other reliability features into the architecture of the network and to respond more quickly to incidents and outages through consistent and timely traffic monitoring. For example:
- a) **Containing disruptions from outages:** Operators that own their own facilities are able, in their sole discretion, to determine the number of cell sites that share a connection to the core networks, in accordance with their own risk tolerances. By controlling the number of cell sites that share a connection, and how such a connection is shared, an operator is able to contain the impact of outages or network failures. The greater the number of cell sites that share a connection, the greater the effects will be in the event there is an outage affecting that connection. Accordingly, the experience that an operator that leases fibre backhaul is able to provide its downstream customers in terms of reliability may be substantially different, and in any event will be largely out of its control, instead resting in the hands of the operator from whom they lease the facilities.
 - b) **Reducing risk of outages:** TELUS ensures that certain key cell sites have two independent connections to the cores and have back-up generators, to ensure optimum performance and reliability. We are thus able to protect against a substantial outage by building two connections that are physically separate from each other, so that if one connection goes down, the other can still carry the traffic. Other wireline carriers upon whom operators that lease fibre will be dependent may not have a similar network design.

- c) **Adapting to sudden spikes in demand:** When TELUS anticipates increased network traffic in an area where it owns the facilities (for example, the Calgary Stampede) and there is insufficient backhaul capacity for that traffic, TELUS can readily upgrade capacity within [REDACTED]. In comparison, where TELUS leases backhaul, we must request an upgrade from the provider and such an upgrade can take up to one week or longer to implement. Where such events can be forecasted at the time the wholesale contract is entered into, it may be possible for the lessee to negotiate established timeframes for responding to such requests. However, in TELUS' experience this is not done, and in any event, many such events – such as natural disasters, sporting events or protests – cannot be forecast accurately.
- d) **Rectifying performance anomalies quicker:** Where TELUS owns its own network, it can address performance anomalies in voice and/or data quality substantially more quickly by having end to end visibility into all the elements traversed by that traffic than could be addressed by a lessee who would need to persuade its wholesale provider to investigate and resolve the performance issues.
6. Therefore, in order to maintain and enhance its ability to compete for wireless and wireline subscribers, TELUS prioritizes investments to convert its legacy copper infrastructure to fibre, thereby improving not only TELUS' wireline network, but equally improving the quality of TELUS' wireless network.

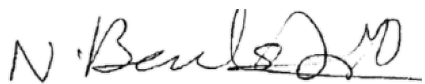
THE IMPORTANCE OF NETWORK OWNERSHIP IS DEMONSTRATED BY TELUS' SUBSTANTIAL NETWORK INVESTMENTS

7. In my experience, competition between network operators leads to substantial network investments to improve the speed, reliability and performance of wireless (and wireline) services that would not otherwise be made. This is an important reason why TELUS decided to build the vast majority of its own fibre backhaul to serve our wireless operations outside of our traditional wireline serving area, for example, in Montreal.

8. Competition on the basis of network speed, reliability and performance requires massive capital investments. For example, from 2013 to date, TELUS has built fibre to 2.9 million households and businesses in British Columbia, Alberta and Quebec, and has invested approximately \$6.3 billion in the build. Leveraging the fibre for improved wireless services was an essential component of the business case for TELUS fibre to the home build. The copper-to-fibre migrations are being undertaken at substantial cost not only because of the inherent benefits to TELUS' wireline network, but also because they lead to significantly improved experiences for wireless services. This, in turn, increases TELUS' ability to more effectively compete for downstream wireless customers.

INTENSE COMPETITION FOR CUSTOMERS BASED ON NETWORK RELIABILITY AND PERFORMANCE

9. TELUS constantly competes for customers with Rogers, Bell, Shaw, and others on the basis of network reliability and capability. TELUS and other providers regularly make comparative marketing and advertising claims about the reliability and performance of their respective networks.
10. TELUS regularly relies upon industry reports such as those produced by Opensignal and Ookla to understand and assess its network performance and reliability relative to its wireless competitors and support performance-based marketing and advertising claims for its wireless network and capabilities. Opensignal is an independent global standard for analyzing consumer mobile experience. Ookla's Speedtest Awards are elite designations based on consumer-initiated tests and background scans from Speedtest applications and represent real world network performance and the internet speeds and coverage provided to customers.



Nazim Benhadid

September 20, 2022

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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

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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.

THE COMPETITION TRIBUNAL

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

AND IN THE MATTER OF the proposed 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*.

B E T W E E N:

THE COMMISSIONER OF COMPETITION

Applicant

– and –

ROGERS COMMUNICATIONS INC. and SHAW COMMUNICATIONS INC.

Respondents

– and –

ATTORNEY GENERAL OF ALBERTA and VIDEOTRON LTD.

Intervenors

**SUPPLEMENTARY AFFIDAVIT OF DANIEL STERN
(Affirmed October 17, 2022)**

I, DANIEL STERN, of the City of Toronto, in the Province of Ontario MAKE OATH

AND SAY:

1. I am the Director, Regulatory Law and Policy of TELUS Corporation (collectively with its subsidiaries “**TELUS**”), a position that I have held since December 2017. I have affirmed this affidavit (my “**Supplementary Affidavit**”) to supplement the affidavit that I delivered on October 13, 2022 (“**Original Affidavit**”) in support of TELUS’ motion to quash the documentary production demands set out in the subpoena issued by the

Shaw's spectrum licenses to Rogers, on the expectation that they would be subject to a claim of public interest privilege.

15. Further, the TELUS Witnesses did have not any involvement with any discussions with ISED or any submissions to ISED and will not be in a position to speak to these documents.

B. The Rogers Second Subpoena

16. Paragraph 2(1) of the Rogers Replacement Subpoena demands the production of: "All memoranda or presentations dated on or after May 7, 2022 to Telus Communications Inc.'s ("Telus") board of directors or executive leadership team considering the proposed divestiture of Freedom Mobile Inc. to Videotron Inc."

17. Given that Telus Communications Inc.'s board would not have any such documents and Telus Communications Inc. does not have an executive leadership team, I understand this to be a reference to TELUS Corporation's board and TELUS' executive leadership team.

18. Based on TELUS' reading of the Rogers Second Subpoena, I understand this request to cover non-privileged presentations directed to the board or executive leadership team as a whole relating to the "proposed divestiture of Freedom Mobile Inc. to Videotron Inc.", and as excluding discrete communications or emails relating to a single member of the board or the team.

19. I am still making inquiries regarding the scope of work involved in producing documents in response to the Rogers Second Subpoena. However, given the nature of the request, the documents sought will necessarily contain highly confidential,

competitively sensitive forward-looking information regarding TELUS' commercial plans in light of a potential divestiture of Freedom Mobile to Videotron. Such information is highly confidential even within TELUS itself. The TELUS Witnesses are not on the TELUS board or executive leadership team, and it is highly unlikely that the TELUS Witnesses would have been involved in the preparation of any such documents, nor will they be in a position to speak to them.

C. Costs of this Motion

20. Between the time period when the Original Subpoenas were served on TELUS' external counsel through the Thanksgiving long-weekend, to the date of filing the Original Affidavit, I, together with other TELUS employees and our external counsel, made substantial efforts and incurred material cost to immediately respond to the Original Subpoenas.

21. First, on Friday October 7, 2022, TELUS' external counsel promptly advised the Respondents that TELUS believed the Original Subpoenas were extraordinarily broad and a fishing expedition, and that TELUS would be moving to quash them. TELUS' counsel advised that many of the documents requested were already produced by TELUS in response to the section 11 Order, and that the balance of the demand would require TELUS to collect a significant volume of confidential and highly commercially sensitive documents from dozens of custodians, and would require several months to comply with. A copy of this letter is attached as **Exhibit "D"** to this Affidavit.

22. Shaw's counsel, Mr. Ricci, responded that same day, to deny that the Original Subpoenas were framed in extremely broad terms, and to allege that the requests "are highly focused both in the subject matter and time frame." Mr. Ricci further advised that

File No. CT-2022-002

THE COMPETITION TRIBUNAL

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

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

AND IN THE MATTER OF an Application by the
Commissioner of Competition for an order pursuant
to section 92 of the Competition Act;

AND IN THE MATTER OF an Application by the
Commissioner of Competition for an interim order
pursuant to section 104 of the Competition Act;

B E T W E E N:

COMMISSIONER OF COMPETITION

Applicant

- and -

ROGERS COMMUNICATIONS INC. AND
SHAW COMMUNICATIONS INC.

Respondents

--- This is the Cross-Examination of MARK GRAHAM,
on his affidavits sworn October 13, 2022 and
October 18, 2022 respectively, taken via Neesons, a
Veritext Company's virtual Zoom platform, with all
participants attending virtually, on the 24th day
of October, 2022.

Job No. ON5548724

1 A P P E A R A N C E S:

2 KATHERINE RYDEL, Esq., for the Applicant,

3 RYAN CARON, Esq., the Commissioner of

4 Competition

5
6 STEVE FRANKEL, Esq. for the Respondent,

7 MAUREEN LITTLEJOHN, Esq., Shaw Communications

8 WILL MAIDMENT, Esq., Inc.

9
10 CRAWFORD SMITH, Esq., for the Respondent,

11 RONKE AKINYEMI, Esq., Rogers Communications

12 Inc.

13
14 NICOLE HENDERSON, Esq., for the Affiant,

15 JOE McGRADE, Esq., Mark Graham and BCE

16 Inc.

17
18 ALSO PRESENT:

19 JOHN ROOK, Esq. (For Videotron)

20 ADRIANO IMPERADEIRO (Competition Bureau)

21 RAE MIN (IN-HOUSE COUNSEL, BCE)

22 TANYA BARBIERO (DAVIES)

23
24 REPORTED BY: Deana Santedicola, RPR, CRR, CSR

25 VIRTUAL ZOOM TECHNICIAN: Chris Delic

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I N D E X

WITNESS: Mark Graham

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CROSS-EXAMINATION BY MR. FRANKEL..... 56 - 131

**The following list of undertakings, advisements
and refusals is meant as a guide only for the
assistance of counsel and no other purpose**

INDEX OF UNDERTAKINGS

The questions/requests undertaken are noted by U/T
and appear on the following pages: [None]

INDEX OF ADVISEMENTS

The questions/requests taken under advisement are
noted by U/A and appear on the following pages:

81:4, 84:15, 85:10, 85:25, 87:18, 89:19, 93:4,
93:16, 94:2, 95:1, 95:9, 96:12, 104:14, 106:21,
116:13, 117:11, 118:6, 120:25, 128:9, 129:9

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INDEX OF REFUSALS

The questions/requests refused are noted by R/F and appear on the following pages: 11:12, 11:21, 15:14, 16:9, 16:17, 16:21, 17:1, 17:6, 17:21, 18:8, 18:16, 19:24, 29:16, 30:25, 53:15, 53:19, 69:12, 71:10, 72:10, 99:16, 100:6, 101:19, 103:7, 109:2, 110:9, 111:8, 111:19, 112:2, 112:8, 113:4, 115:20, 118:20, 119:3, 119:17, 120:8, 124:22, 125:13, 125:22, 129:18, 130:2, 130:13, 131:3

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NO.	DESCRIPTION	PAGE/LINE NO.
1	List of BCE's Board of Directors.....	6:16
2	List of BCE's Executive Leadership Team.....	7:2
3	Cross-Examination Brief of Shaw Communications for the cross-examination of Mark Graham.....	57:21

1 -- Upon commencing at 9:00 a.m.

2

3 MARK GRAHAM; AFFIRMED.

4 CROSS-EXAMINATION BY MR. SMITH:

5 1 Q. Mr. Graham, my name is Crawford
6 Smith. I am one of the lawyers for Rogers
7 Communications in this matter. Good morning.

8 A. Good morning.

9 2 Q. You have been affirmed?

10 A. Yes.

11 3 Q. Okay. Do you have my
12 Cross-Examination Brief, sir?

13 A. It just landed. Would you like me
14 to open it?

15 4 Q. I would.

16 A. It's just spinning the wheel here.
17 Give me a second.

18 Okay, I have got it open in front of
19 me.

20 5 Q. So, sir, you would agree with me
21 that BCE has a Board of Directors?

22 A. Yes.

23 6 Q. And if you look at tab 1 of our
24 brief, we have set out there the Board of Directors
25 as set out on B CE's -- sorry, we have set out

1 BCE's -- I guess it is tab 2. Take a look at tab
2 2. We have set out BCE's Board members. Take a
3 moment to flip through that and confirm that those
4 are indeed the members of BCE's Board of Directors.

5 A. [Witness reviews document.]

6 That looks right to me, although I
7 don't interact regularly with the Board, so if some
8 people have changed -- I am not sure when you
9 produced this. You know, it is possible, but that
10 looks right to me.

11 MR. SMITH: Okay. Well, let's mark
12 that as the first exhibit, Exhibit 1. Ms.
13 Henderson, I take it that is okay?

14 MS. HENDERSON: Oh, yes, no objection.

15 MR. SMITH: Thank you.

16 EXHIBIT NO. 1: List of BCE's
17 Board of Directors.

18 BY MR. SMITH:

19 7 Q. And likewise, Mr. Graham, BCE has
20 an Executive Leadership Team. If you turn to tab
21 1, you will see the BCE Executive Leadership Team
22 there.

23 A. Yes.

24 MR. SMITH: Okay, confirmed. Let's
25 mark that as Exhibit 2.

1 MS. HENDERSON: Okay.

2 EXHIBIT NO. 2: List of BCE's
3 Executive Leadership Team.

4 BY MR. SMITH:

5 8 Q. And, Mr. Graham, you are neither a
6 member of the Board, nor a member of the Executive
7 Leadership Team; correct?

8 A. Correct.

9 9 Q. And you do not attend Board
10 meetings?

11 A. I do not regularly attend Board
12 meetings.

13 10 Q. Okay. Have you attended any Board
14 meetings since May 7th, 2022?

15 A. I have not.

16 11 Q. Okay. And you are not a member of
17 the Executive Leadership Team?

18 A. I am not.

19 12 Q. And who do you report to, sir?

20 A. Rob Malcolmson, BCE's Chief Legal
21 and Regulatory Officer.

22 13 Q. Okay. And he is a member of the
23 Executive Leadership Team?

24 A. Yes, he is.

25 14 Q. And am I right that he is also the

1 Secretary of the Board of Directors?

2 A. I do not believe that is correct.

3 15 Q. Who is the Secretary of the Board?

4 A. The Corporate Secretary is Martin
5 Cossette.

6 16 Q. Okay. And we'll come to -- is it
7 Mr. Cossette or Ms. Cossette?

8 A. Mr.

9 17 Q. Okay. Sir, I take it you would
10 agree with me that the proposed acquisition of
11 Freedom Mobile by Videotron is a highly significant
12 event in the telecommunications industry in Canada?

13 A. The proposed acquisition of
14 Freedom Mobile by Videotron --

15 18 Q. Yes.

16 A. -- you are asking about
17 specifically?

18 19 Q. Yes.

19 A. I am not sure that the
20 individual -- yeah, of course it is highly
21 significant, any transaction of that size. I find
22 it difficult to think about it in isolation of the
23 acquisition of Shaw by Rogers.

24 20 Q. Okay, so you would agree with me
25 that the acquisition of Shaw and the related sale

1 of Freedom to Videotron is a significant
2 transaction in the Canadian telecommunications
3 industry?

4 A. Yes, certainly.

5 21 Q. And it has broad implications for
6 Bell's business?

7 A. I mean, the two sort of related
8 transactions combined have broad implications for
9 the industry that were -- for the various
10 businesses that we participate in for sure.

11 22 Q. Well, sir, do you have your
12 affidavit handy?

13 A. I do.

14 23 Q. Do you have your affidavit?

15 A. I do.

16 24 Q. Okay, take a look at your
17 supplementary affidavit.

18 A. Okay.

19 25 Q. Take a look at paragraph 7.

20 A. [Witness reviews document.]

21 26 Q. Look halfway through paragraph 7.
22 Do you have that?

23 A. Yes, I agree with that completely,
24 yes.

25 27 Q. Right, and just so that we are

1 perfectly clear, what you are saying in paragraph 7
2 is -- at the second sentence, it says:

3 "In particular, the Second
4 Rogers Subpoena requires production
5 [...]", and then it goes on "[...]
6 memoranda or presentations [...] on
7 two of the most high-profile topics
8 in the Canadian telecommunications
9 industry [...]"

10 And you are aware, sir, that the Rogers
11 subpoena asks for documents in relation to the
12 proposed acquisition of Freedom by Videotron;
13 correct?

14 A. I am aware of what the subpoena
15 asks for, yes.

16 28 Q. Okay. And it asks for documents
17 in relation to the acquisition of Freedom Mobile by
18 Videotron; correct?

19 A. Yes, that is what it asks for. I
20 think the reason -- I am not sure if this is what
21 you are driving at. I don't think anyone in
22 practice considers that transaction separately from
23 Rogers' acquisition of Shaw.

24 29 Q. Sir, I am just looking at the
25 words in your affidavit that you have affirmed are

1 true, and what you say is that the acquisition of
2 Freedom by Videotron is one of the most high
3 profile topics in the Canadian telecom industry in
4 recent years; correct?

5 MS. HENDERSON: The affidavit says what
6 it says. You have already put this question to him
7 and he has already stated what he meant.

8 MR. SMITH: Sorry, no, Ms. Henderson,
9 this is cross-examination. Please do not
10 interfere. I am entitled to put my questions to
11 the witness and --

12 R/F MS. HENDERSON: And I am entitled to
13 refuse questions that have already been asked and
14 answered.

15 BY MR. SMITH:

16 30 Q. Mr. Graham, you would agree with
17 me that, as you said there, the Videotron
18 acquisition of Freedom Mobile is one of the most
19 high profile topics in the Canadian telecom
20 industry. Do you agree with me?

21 R/F MS. HENDERSON: Don't answer that. He
22 has already answered.

23 BY MR. SMITH:

24 31 Q. And it has broad implications
25 across Bell's business; correct?

1 A. It does insofar as it -- well, it
2 does potentially on its own and insofar as it
3 relates to what is clearly I think the largest
4 transaction in the history of the
5 telecommunications industry in Canada.

6 32 Q. And likewise, sir, the other
7 aspect of the Rogers subpoena you refer to in your
8 affidavit is the July 8th outage; correct?

9 A. Yeah, that's correct.

10 33 Q. And it likewise has broad
11 implications across Bell's business?

12 A. It certainly does.

13 34 Q. Okay. Now, you are aware that in
14 this proceeding Bell has provided two witness
15 statements?

16 A. Yes.

17 35 Q. One from Mr. Kirby; correct?

18 A. Correct.

19 36 Q. And one from Mr. Howe; correct?

20 A. Yes.

21 37 Q. And it did so voluntarily?

22 A. Yes.

23 38 Q. Bell was not summonsed to put in
24 those witness statements?

25 A. No.

1 39 Q. And it was not otherwise the
2 subject of any order from the Competition Tribunal
3 or Federal Court?

4 A. That's correct.

5 40 Q. Now, you are aware, sir, that
6 Mr. Kirby in his statement comments directly on
7 Videotron's expected competitive effect in Alberta
8 and British Columbia?

9 A. Yes.

10 41 Q. And he gives his view of
11 Videotron's competitiveness compared to Shaw; you
12 are aware of that?

13 A. Yes.

14 42 Q. And you are aware, sir, that he
15 says that Videotron will be less competitive than
16 Shaw?

17 A. I don't have it open in front of
18 me, so without parsing the words, yes.

19 43 Q. Do you need to open it to agree
20 with that statement?

21 A. Well, I think you appreciate there
22 are probably -- I imagine, as I recall, there are
23 both retrospective- and prospective-related
24 statements in Mr. Kirby's affidavit, and I am just
25 not certain which of those you have in mind when

1 you ask the question, but --

2 44 Q. Why don't you turn to
3 paragraph --

4 A. -- I don't -- sorry.

5 45 Q. Why don't you turn to paragraph
6 47, which you can find at my Cross Brief at page
7 33.

8 A. Okay.
9 Okay, I have it.

10 46 Q. Right, and you would agree with me
11 that the implication of paragraph 47 is that
12 Videotron will be less effective a competitor than
13 Shaw?

14 A. I mean, they are Blaik's words,
15 but yes, I think that's what it says. I am not
16 going to -- or I don't think I would parse the last
17 sentence to say whether it says less effective than
18 they are now or less effective than they would be.
19 I think that paragraph says what it says on that.

20 47 Q. And you are aware that it is the
21 Commissioner's position in this proceeding that
22 Videotron will be less effective a competitor than
23 Shaw is?

24 A. Again, without parsing everything
25 that the Commissioner has written, if you said is

1 or would be, I would agree without hesitation.

2 48 Q. Okay, that is fine. With your
3 qualification, you agree with that?

4 A. Yes.

5 49 Q. Okay. Did you prepare Mr. Kirby's
6 witness statement?

7 A. I was involved in the preparation
8 of it.

9 50 Q. Yes. I take it you drafted it?

10 A. I drafted some portions of it. I
11 drafted some portions of it.

12 51 Q. Okay, which portions of the
13 witness statement did you draft?

14 R/F MS. HENDERSON: Don't answer that.

15 THE WITNESS: I don't recall
16 any -- okay.

17 BY MR. SMITH:

18 52 Q. Okay. You are aware that Mr. Howe
19 in his witness statement comments on the advantages
20 of deploying a wireless network in Bell's wireline
21 footprint?

22 A. Yes.

23 53 Q. And you are also aware that in
24 this proceeding the Commissioner likewise takes the
25 position that it is advantageous to deploy a

1 wireless network in a wireline footprint?

2 A. Yes.

3 54 Q. And I take it, sir, you also
4 prepared or drafted Mr. Howe's witness statement?

5 A. Again, I was involved in the
6 preparation of it and drafted some portions of it.

7 55 Q. Okay, which portions did you
8 draft?

9 R/F MS. HENDERSON: Don't answer that.

10 BY MR. SMITH:

11 56 Q. But, sir, I take it the
12 Commissioner met or the Commissioner -- I am just
13 going to say the "Commissioner", but I mean not
14 Mr. Boswell himself, but the Commissioner, his
15 Counsel and staff met with representatives of Bell
16 before these witness statements were submitted?

17 R/F MS. HENDERSON: Don't answer that.

18 BY MR. SMITH:

19 57 Q. When was Bell asked for witness
20 statements?

21 R/F MS. HENDERSON: Don't answer that.

22 BY MR. SMITH:

23 58 Q. Were you the person who dealt with
24 the Commissioner in relation to the production of
25 the witness statements?

1 R/F MS. HENDERSON: Don't answer that.

2 BY MR. SMITH:

3 59 Q. And did the Commissioner tell you
4 the topics that he wanted covered in his witness
5 statements?

6 R/F MS. HENDERSON: Don't answer that.

7 BY MR. SMITH:

8 60 Q. Sir, you are aware in this
9 proceeding that Bell provided at least one or more
10 submissions to the Competition Bureau?

11 A. Yes.

12 61 Q. And one such submission was
13 prepared in December 2021, I believe?

14 A. Yes.

15 62 Q. And I take it that is a submission
16 that you prepared?

17 A. I was -- again, I mean, I was
18 involved in the preparation of it, and I drafted
19 portions of it.

20 63 Q. And which portions did you draft?

21 R/F MS. HENDERSON: Don't answer that.

22 BY MR. SMITH:

23 64 Q. And I take it you reviewed and
24 commented on the submission in its entirety?

25 A. Yes.

1 65 Q. Okay. And is it likewise true
2 that you -- for those portions of Mr. Kirby's
3 statement that you did not draft, you nevertheless
4 reviewed and commented on them?

5 A. I reviewed the entire statement
6 before it was produced.

7 66 Q. And you provided comments?

8 R/F MS. HENDERSON: Don't answer that.

9 BY MR. SMITH:

10 67 Q. Same is true of Mr. Howe's
11 statement, sir?

12 A. I reviewed the entire statement
13 before it was produced, yes.

14 68 Q. And you provided comments in
15 relation to it?

16 R/F MS. HENDERSON: Don't answer that.

17 MR. SMITH: On what basis are you
18 refusing, Ms. Henderson?

19 MS. HENDERSON: Those communications
20 would be privileged.

21 MR. SMITH: Whose privilege?

22 MS. HENDERSON: Bell's.

23 MR. SMITH: And what sort of privilege
24 are you asserting?

25 MS. HENDERSON: Solicitor-client

1 privilege given that Mr. Graham is internal Counsel
2 for Bell and litigation privilege given that the
3 documents were prepared for the dominant purpose of
4 litigation.

5 MR. SMITH: Okay, let's take those in
6 pieces, reverse order. Are you asserting
7 litigation privilege that Bell is a litigant in
8 this proceeding?

9 MS. HENDERSON: No.

10 MR. SMITH: Okay, so you are asserting
11 a privilege on behalf of the Commissioner; is that
12 correct?

13 MS. HENDERSON: I understand that the
14 Commissioner is claiming privilege over those
15 communications.

16 MR. SMITH: Okay, and you are asserting
17 solicitor-client privilege over comments made in
18 relation to a fact witness statement that has been
19 filed in this proceeding?

20 MS. HENDERSON: By Mr. Graham, yes.

21 BY MR. SMITH:

22 69 Q. Okay. Mr. Graham, were your
23 comments in the nature of legal advice?

24 R/F MS. HENDERSON: Don't answer that.

25 BY MR. SMITH:

1 70 Q. Okay. Mr. Graham, what steps have
2 you taken to determine whether the proposed
3 acquisition of Freedom Mobile by Videotron was
4 discussed at the Board of BCE?

5 A. I contacted our Corporate
6 Secretary Department, I think it was prior to the
7 finalization of the second subpoena, although not
8 certain of the date, to ask them broadly about
9 whether presentations had taken place or had been
10 made regarding the Rogers acquisition of Shaw or
11 the Rogers network outage.

12 71 Q. Who did you speak with?

13 A. There are -- Assistant Corporate
14 Secretary, Alexis Cloutier.

15 72 Q. Did you speak to the Board
16 Secretary?

17 A. Are you asking about Martin
18 Cossette?

19 73 Q. If he is the Board Secretary, did
20 you speak to the Board Secretary?

21 A. He is the Corporate Secretary, and
22 I did not speak to him.

23 74 Q. When you say "the Corporate
24 Secretary", does that mean he is the Secretary of
25 the Board of Directors?

1 A. I think so, yes.

2 75 Q. Okay, and his responsibility is to
3 attend Board meetings?

4 A. I mean, he has a broader set of
5 responsibilities than that, but he regularly
6 attends Board meetings.

7 76 Q. Let's just cut through this. I
8 take it we can agree that the Rogers acquisition of
9 Shaw and the sale of Freedom Mobile to Videotron
10 was discussed at the Board of Directors between May
11 and today?

12 A. Yes, that -- yes, the way you have
13 put the question, yes.

14 77 Q. Okay. How many Board meetings
15 were there between May 7th and today?

16 A. I don't know.

17 78 Q. Have you made any efforts to
18 determine how many Board meetings there were?

19 A. No. No.

20 79 Q. Okay. You don't know whether
21 there were one, two or three such Board meetings?

22 A. No.

23 80 Q. Or more.

24 A. No.

25 81 Q. I take it, sir, that there is a

1 process associated with BCE's Board meetings?

2 A. I would make the same assumption.

3 82 Q. Okay. There is an agenda prepared
4 in relation to every Board meeting; correct?

5 A. I don't know.

6 83 Q. Okay. I take it, sir, you have
7 not asked the Board Secretary and you have not
8 reviewed any agendas for Board meetings?

9 A. I have not.

10 84 Q. Okay. You are aware, sir, that
11 there would be a package of material that the Board
12 Secretary would be responsible for distributing in
13 relation to Board meetings?

14 A. I believe that is true for regular
15 Board meetings.

16 85 Q. Okay. And how about in relation
17 to ad hoc Board meetings?

18 A. I don't know the process.

19 86 Q. Okay. Have you reviewed any
20 agenda in relation to the Board meetings?

21 A. No.

22 87 Q. Have you reviewed any of the
23 material provided to the Board of Directors?

24 A. I have reviewed material I have
25 been involved in the preparation of.

1 88 Q. Okay, that wasn't my question.
2 Maybe I'll ask the question differently. There is
3 a package that goes to the Board in relation to
4 Board meetings; correct?

5 A. I think I answered it. I believe
6 that is correct for regular Board meetings.

7 89 Q. All right. Are you aware, sir,
8 that one of the responsibilities of the Board
9 Secretary is to keep a copy of the material that
10 goes to the Board?

11 A. Yes.

12 90 Q. Okay. Have you looked at that
13 material?

14 A. I have not reviewed the packages
15 of material kept by the Board Secretary.

16 91 Q. Have you asked the Board Secretary
17 whether or not the Freedom Mobile transaction was
18 discussed at the Board and is included in those
19 materials?

20 A. As I said, I asked the Assistant
21 Corporate Secretary whether the Rogers/Shaw
22 transaction broadly or the Rogers network outage
23 were discussed at the Board.

24 92 Q. Okay, and what was the answer to
25 that question?

1 A. That, yes, there were discussions
2 of at least one of those topics at the Board.

3 93 Q. Which topic?

4 A. So the Rogers/Shaw transaction
5 broadly and the Rogers network outage I believe
6 were both discussed.

7 94 Q. Okay, when?

8 A. I don't know the date off the top
9 of my head.

10 95 Q. Did the Secretary give you any
11 materials associated with that Board discussion?

12 A. So the Assistant Corporate
13 Secretary sent me materials related to the Rogers
14 network outage and materials that I was aware of
15 that I was involved in the preparation of related
16 to the Rogers/Shaw transaction.

17 96 Q. Okay. What is the date of the
18 materials as it relates to the July 8th outage? At
19 what Board meeting were those discussed?

20 A. I don't know the date.

21 97 Q. Okay. How lengthy are those
22 materials?

23 A. I would be estimating ten pages,
24 something like that.

25 98 Q. Okay. Do you know whether or not

1 the outage was the only item -- I take it you don't
2 know whether the July 8th item -- July 8th outage
3 was the only or one of several items discussed at
4 that Board meeting?

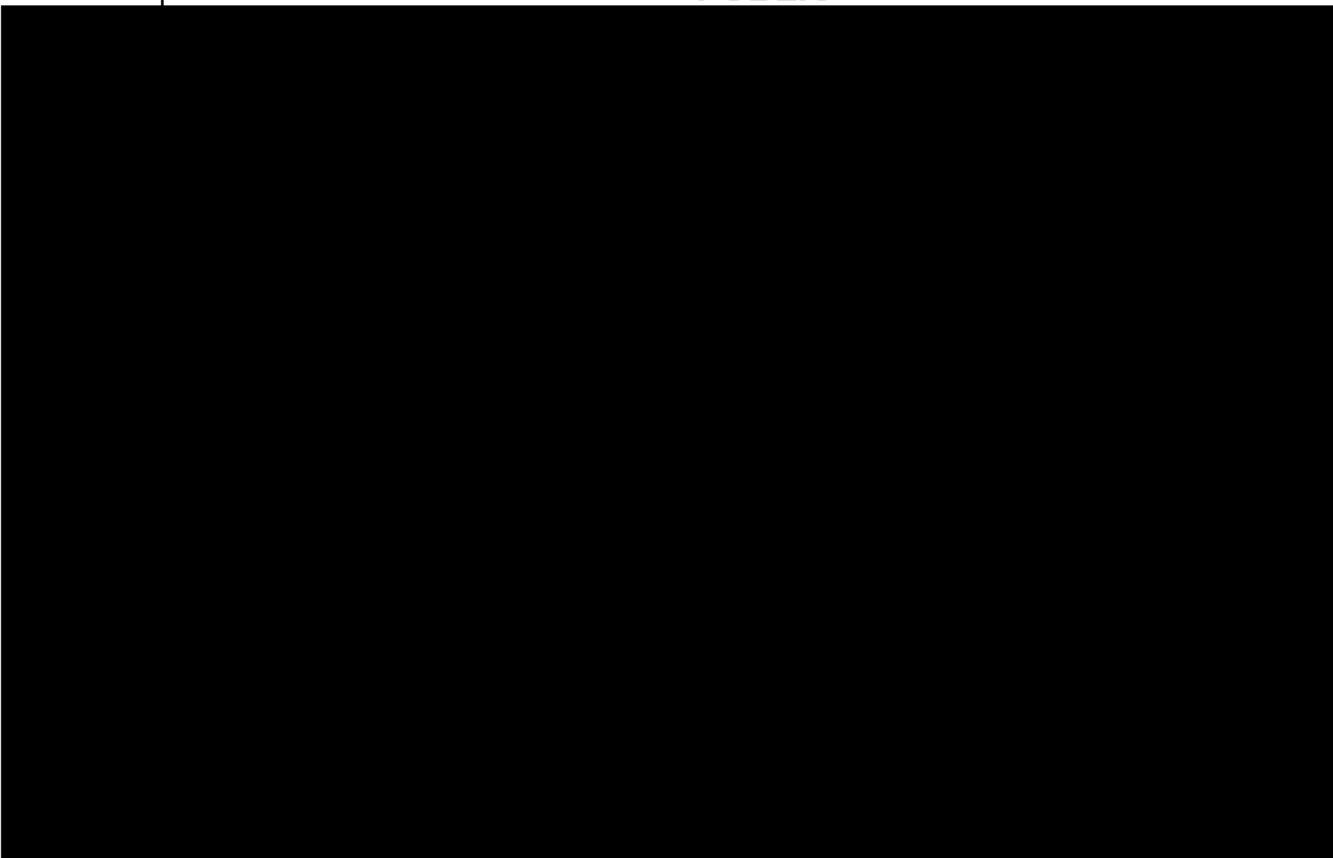
5 A. I don't know for sure. I assume
6 it is one of several, but I don't know.

7 99 Q. And why do you assume that?

8 A. I can't imagine there would be a
9 Board meeting held specifically to discuss that one
10 item.

11 100 Q. And why do you say that?

12 A. It wasn't our network that
13 crashed.



12 105 Q. Okay. When did you go and ask
13 the -- what is the person's -- Assistant Secretary
14 for materials responsive to the subpoena?

15 MS. HENDERSON: Which subpoena are you
16 talking about, the one issued on October --

17 BY MR. SMITH:

18 106 Q. Well, let's take them in pieces.
19 There is --

20 A. Yeah --

21 107 Q. There is a first subpoena; you are
22 aware of that?

23 A. Yes.

24 108 Q. And then there was a second
25 subpoena?

1 A. Yes.

2 109 Q. Okay. Let's focus on the October
3 14th subpoena, which is the second subpoena. It is
4 attached to your affidavit, sir. You are aware of
5 that?

6 A. Yes.

7 110 Q. Okay. When you got that subpoena,
8 what did you do to collect materials in relation to
9 item number 1?

10 A. So again, I can't recall whether
11 this was done shortly before or shortly after
12 receiving the second subpoena, but I contacted the
13 Assistant Corporate Secretary and asked whether
14 there were materials presented to the Board related
15 to the Rogers/Shaw transaction or the Rogers
16 network outage. The fact that I asked the question
17 in the way I recall asking it makes me think it may
18 have been asked prior to receiving this -- the
19 second subpoena rather than after. I just don't
20 know for sure. And -- sorry, go ahead.

21 111 Q. Okay. So you asked for material
22 of the Corporate Secretary, and you think that you
23 asked prior to receipt of the second subpoena; is
24 that right? Is that the implication of your
25 evidence?

1 A. Yes, that is what I think.

2 112 Q. Okay. So is it fair to say, sir,
3 then that you have done nothing to satisfy yourself
4 that there is material that is responsive to item 1
5 of the second subpoena?

6 A. To satisfy myself that there is
7 material that is responsive did you say?

8 113 Q. Yes.

9 A. I'm a bit lost in the question
10 here, but --

11 114 Q. Well, sir, it is pretty simple.
12 Before the second subpoena was received, you went
13 and spoke to the Assistant Secretary; correct?

14 A. Yes.

15 115 Q. Okay. Subsequent to getting the
16 second subpoena, did you do anything to satisfy
17 yourself that there were documents responsive to
18 item 1?

19 A. I did not ask again.

20 116 Q. Did anyone?

21 A. Not that I am aware of.

22 117 Q. Okay. So not you and not anybody
23 at Bell has done anything to determine whether or
24 not there are documents responsive to item 1 of the
25 second subpoena; is that your evidence?

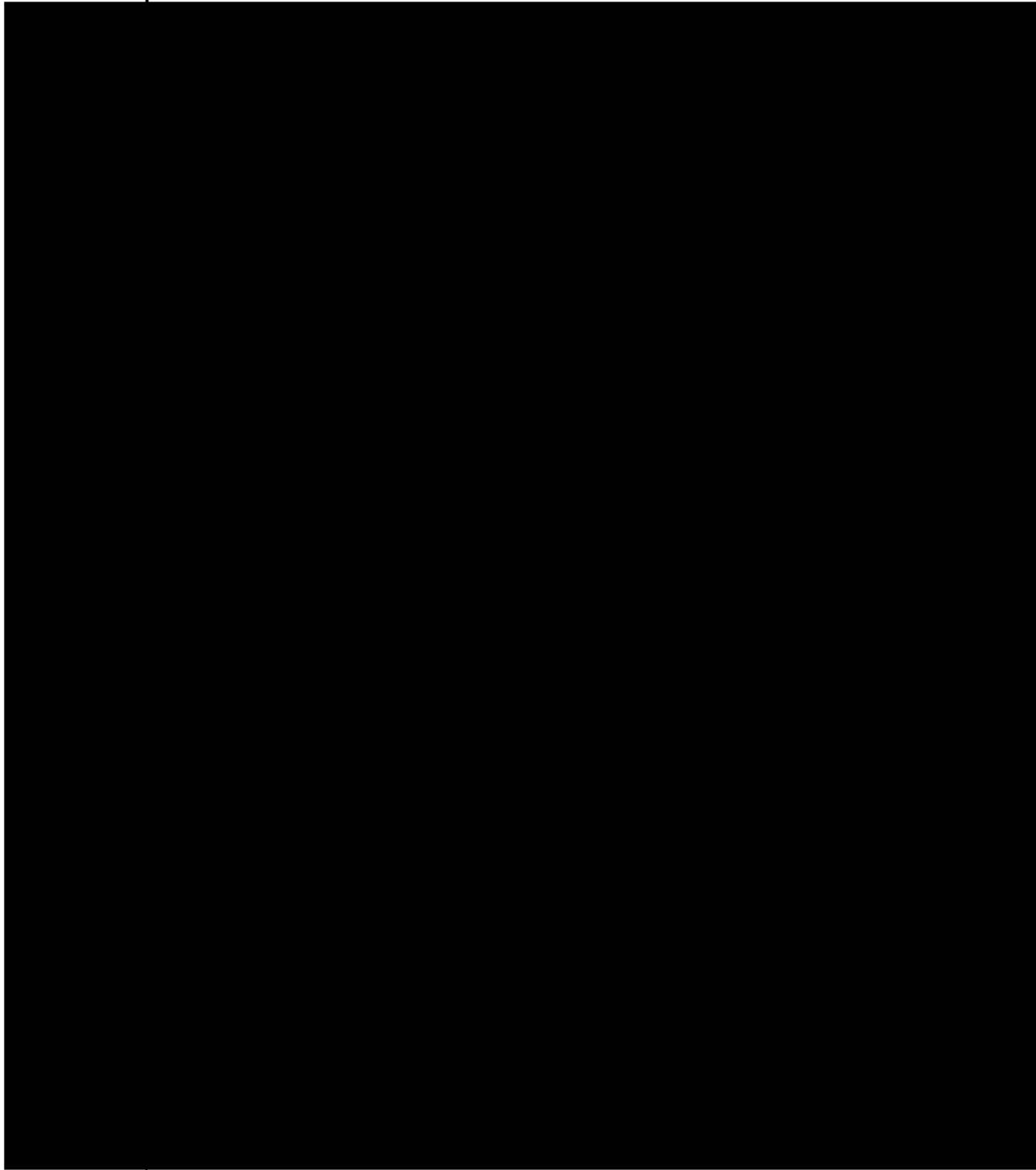
1 A. No, I don't think that is my
2 evidence. I think I said I reviewed materials that
3 I had available to me. I had not sought additional
4 materials that may be responsive to item 1 of the
5 second subpoena.



14 119 Q. Do you consider those materials
15 that you do have responsive to this subpoena?
16 R/F MS. HENDERSON: Don't answer that.
17 MR. SMITH: Well, on what basis, Ms.
18 Henderson? The witness has identified that he has
19 some material that he prepared that was then given
20 back to him by the Assistant Secretary. I want to
21 know whether that material -- it is ten pages,
22 whether that material is responsive to the
23 subpoena.
24 MS. HENDERSON: Whether it is
25 responsive or not is asking him for a legal

1 position. He has told you what he has seen.

2 BY MR. SMITH:



23 123 Q. Okay. So it is in that respect

24 responsive?

25 R/F MS. HENDERSON: Don't answer that.

1

BY MR. SMITH:



8

A. That's correct.

9

125

Q. And you don't know whether there

10

were documents prepared; correct?

11

A. That's correct.

12

126

Q. And you have made no effort to

13

speak to anybody subsequent to October 14th, 2022,

14

to determine the answer to those questions, have

15

you?

16

A. That's correct.

17

127

Q. And you are not aware of anybody

18

else either at or on behalf of Bell making any

19

effort to determine whether it has documents

20

responsive to that item of the subpoena?

21

A. Correct.

22

128

Q. Okay. Let's turn to --

23

A. Or sorry, I should add - let me

24

just be really again precise - subsequent to the

25

issuance of the second subpoena.

1 129 Q. That's right.

2 A. Yes.

3 130 Q. Okay. Let's look at item number
4 2, okay. Now, you have told me that you have an
5 eight- to fifteen-page, I believe, presentation
6 discussing the Rogers outage; correct?

7 A. Correct.

8 131 Q. Okay. Other than that
9 presentation, I take it it is also true that you
10 have made no effort to speak to anybody at Bell or
11 acting for Bell about any documents responsive to
12 item number 2 of the subpoena?

13 A. Sorry, any documents -- I am
14 being -- I am getting into my habit as a lawyer. I
15 haven't subsequent to the issuance of the second
16 subpoena sought Board documents related to
17 specification to. I am not meaning to be obtuse.
18 I just want to make sure I am answering your
19 question.

20 132 Q. Well, I can break the question
21 down. You haven't spoken to anybody subsequent to
22 October 14th about whether or not there are any
23 documents responsive to item 2 of the subpoena;
24 correct?

25 A. I think that is correct.

1 133 Q. And you haven't reviewed any
2 documents? You haven't reviewed --

3 A. Are you asking --

4 134 Q. Yes, you haven't reviewed any
5 documents subsequent to October 14th for the
6 purpose of determining whether or not Bell has
7 documents responsive to item 2 of the subpoena;
8 correct?

9 A. I think that is correct.

10 135 Q. You didn't review any Board
11 agendas; correct?

12 A. I have not reviewed any Board
13 agendas.

14 136 Q. You didn't ask to see any of the
15 Board material; correct?

16 A. Again, I am going to repeat, I
17 asked to see Board material on two topics, the
18 Rogers acquisition of Shaw and the July 8th Rogers
19 network outage. I believe I asked prior to the
20 issuance of the second subpoena.

21 137 Q. Right. So subsequent to the
22 issuance of the second subpoena, you have done
23 nothing to look at any documents; correct?

24 A. I think I reviewed documents that
25 I received in response to my requests. Whether I

1 reviewed them before or after the date of the
2 second subpoena, I don't know.

3 138 Q. Okay. Let's not be silly about
4 this, Mr. Graham. You made your request prior to
5 the second subpoena. After the second subpoena,
6 you didn't make another request, did you?

7 A. Correct.

8 139 Q. Right. So you didn't -- after the
9 second subpoena, you didn't go and ask to review
10 the agendas associated with Board meetings, did
11 you?

12 A. No, I don't believe I am entitled
13 to review the agendas associated with Board
14 meetings.

15 140 Q. Okay, so if you are not entitled
16 to do it, you didn't ask somebody who is entitled
17 to review them?

18 A. No.

19 141 Q. Okay, and you didn't ask anybody
20 to look at the Board material, did you?

21 A. No.

22 142 Q. And are you even entitled to look
23 at the Board material?

24 A. Not unless it is sent to me by
25 someone who is.

1 143 Q. Other than you, sir, I take it
2 Mr. Malcolmson as the Chief Legal Officer would
3 have authority to look at the agendas and the Board
4 material?

5 A. I doubt it is true that he can
6 look at any agenda and any Board material.

7 144 Q. Okay. How about Mr. Bibic, he
8 would have --

9 A. Pardon me?

10 145 Q. How about the Chief Executive
11 Officer, he would have authority?

12 A. We are getting into an area where
13 I don't really know. I think everyone can
14 appreciate even the CEO may not always be entitled
15 to look at all material discussed at the Board.

16 146 Q. I am not asking about all
17 material, sir. I am asking about the material that
18 is responsive to the summons.

19 MS. HENDERSON: Well, you were asking
20 about all the Board material, and he answered that
21 question. If you are narrowing the question, that
22 is fine.

23 BY MR. SMITH:

24 147 Q. All right. I am talking about the
25 items that are responsive to the subpoena, Mr.

1 Graham.

2 A. Yes, I am sure he would be.

3 148 Q. Okay. And you didn't ask him and
4 you didn't ask anybody else whether there were any
5 such materials, did you?

6 A. I did not ask the CEO of Bell to
7 review materials for me.

8 149 Q. Or anybody? Or anybody, for that
9 matter?

10 A. Yeah, I think I told you that,
11 yes.

12 150 Q. So I just want to be perfectly
13 clear about this so I have it on the record. There
14 is nobody that you have spoken to or that you, to
15 your knowledge, has made any effort to determine
16 subsequent to October 14th whether there are
17 documents responsive to items 1 and 2 of the
18 subpoena?

19 A. Again, I have reviewed and others
20 have reviewed material provided to me in response
21 to the request I made prior, which I believe I made
22 prior to October 14th. I have not made a
23 subsequent request in addition --

24 151 Q. You have not. I just want to make
25 sure the record is clear, you have not?

1 A. Correct, I have not made a
2 subsequent request for --

3 152 Q. And nobody has?

4 A. And nobody has that I am aware of.

5 153 Q. Okay. Mr. Kirby, I understand it,
6 is the Group President, Consumer Small and Medium
7 Business?

8 A. Yes.

9 154 Q. And in that role, Mr. Graham, I
10 take it Mr. Kirby is responsible for Bell's
11 wireless business?

12 A. Yes.

13 155 Q. And that includes its wireless
14 business in British Columbia and Alberta?

15 A. Yes, and again, to be -- just to
16 be very precise, there would be an aspect of the
17 wireless business related to enterprise customers
18 that wouldn't be included in that role, but broadly
19 speaking, I agree.

20 156 Q. And just so we are clear for the
21 record, I am sure you and I are on the same page,
22 but his responsibility is consumer wireless and
23 small and medium business; correct?

24 A. Yes.

25 157 Q. Right. And when you say

1 "enterprise", you are talking about large -- very
2 large customers; correct?

3 A. Yes, yeah.

4 158 Q. And Bell's wholesale business?

5 A. Yeah, correct.

6 159 Q. Okay. And I take it that as the
7 President of Consumer and Small Business, he would
8 have primary responsibility for considering the
9 competitive impact of the Rogers/Shaw/Videotron
10 transaction on Bell's wireless business?

11 A. I think, yes, he and members of
12 his team.

13 160 Q. All right, but ultimately, it is
14 his group and his responsibility; correct?

15 A. Yes, that's right.

16 161 Q. And I take it, am I right, sir,
17 that Ms. Gillies reports to Mr. Kirby?

18 A. Yes.

19 162 Q. Okay, and she has the title of
20 Executive President, Marketing, and President of
21 Consumer, and that includes responsibility for
22 strategy and pricing in relation to Bell's wireless
23 business; correct?

24 A. Yes, in the consumer and small and
25 medium business segments.

1 163 Q. In the same area as Mr. Kirby?

2 A. Correct.

3 164 Q. And Mr. Howe is the Chief

4 Technology Officer?

5 A. Chief Technology and Information

6 Officer.

7 165 Q. Right, and I take it it would be

8 his responsibility to analyze the Rogers July 8

9 outage?

10 A. Yes, in the same fashion, him and

11 members of his team.

12 166 Q. Right, and ultimately, though,

13 they would report up to him, and it is his area of

14 responsibility?

15 A. Yes.

16 167 Q. Have you spoken to Mr. Kirby about

17 documents responsive to the second Rogers subpoena?

18 A. No.

19 168 Q. So you don't know whether

20 Mr. Kirby has given, received or prepared any

21 memoranda or presentation in relation to the

22 proposed sale of Freedom Mobile to Videotron?

23 A. No.

24 169 Q. I take it --

25 A. So --

1 170 Q. Sorry, let's just go through this.
2 I take it the same is true of Ms. Gillies, you
3 don't know, you have not spoken to her?

4 A. I have not spoken to her.

5 171 Q. Okay. And you have not spoken to
6 Mr. Howe, have you?

7 A. I have not spoken to Mr. Howe.
8 Again, I'm importing the premise of all your
9 questions about -- regarding the second Rogers
10 subpoena. If that is not correct, let me know.

11 172 Q. No, that is fair. So for the
12 record, in relation to the second Rogers subpoena,
13 you have not spoken to Ms. Gillies about whether or
14 not she has prepared or given or received any
15 memoranda or presentations in relation to the
16 proposed sale of Freedom Mobile to Videotron;
17 correct?

18 A. Correct.

19 173 Q. And as it relates to Mr. Howe, you
20 have not asked him whether he has given, received
21 or prepared any memoranda or presentation in
22 relation to the July 8th outage?

23 A. Correct. So subsequent to the
24 issuance of the second subpoena, that's correct.

25 174 Q. Okay. Have you spoken to any

1 member of the Executive Leadership Team about
2 whether they have either given, received or
3 prepared any memoranda or presentations in relation
4 to the proposed sale of Freedom Mobile to
5 Videotron?

6 A. I discussed the questions in the
7 second subpoena with Rob Malcolmson.

8 175 Q. Okay, we'll come to that. And so
9 when you say you discussed it, did you ask him both
10 about the sale of Freedom Mobile to Videotron and
11 the July 8 outage?

12 A. So I asked him the same questions
13 I asked the Assistant Corporate Secretary at one
14 time, and then we discussed a number of items
15 related to the second subpoena subsequent to its
16 issuance, although - and Nicole will keep me out of
17 trouble here - those were more in our capacity as
18 Counsel for Bell.

19 176 Q. I just want to make sure that I
20 have a record. Subsequent to the issuance of the
21 second subpoena, did you speak to Mr. Malcolmson?

22 A. I did speak to him, yes.

23 177 Q. Okay, and what did you ask him?

24 A. We -- subsequent to the issuance
25 of the second subpoena, we discussed the second

1 subpoena. I did not ask him whether he had
2 prepared any presentations or memoranda related to
3 the divestiture of Freedom Mobile to Videotron or
4 the July 8th Rogers network outage.

5 178 Q. Okay. And because we know, sir,
6 from your earlier answers, you also did not ask him
7 whether he was aware of any presentations or memos
8 that were given to the Board of Directors; correct?

9 A. Not subsequent to the issuance of
10 the second subpoena, and when we did discuss the
11 first subpoena, he referred me to the Assistant
12 Corporate Secretary.

13 179 Q. Okay. So as it relates to the
14 second subpoena, you did not ask him whether he had
15 received, given or prepared any memoranda or
16 presentations in relation to the proposed sale of
17 Freedom Mobile to Videotron; correct?

18 A. Correct.

19 180 Q. And you did not ask him whether he
20 had received, given or prepared any memoranda or
21 presentations in relation to the July 8th outage?

22 A. Correct.

23 181 Q. And I take you also did not ask
24 him whether he was aware of any presentations,
25 whether given, prepared or received by him, in

1 relation to the sale of Freedom Mobile to
2 Videotron?

3 A. Again, subject to what I just
4 said, that is correct.

5 182 Q. What does that mean, subject to
6 what you just said?

7 A. That I did discuss it with him
8 prior to the issuance of the second -- in broad
9 terms, prior to the issuance of the second Rogers
10 subpoena and was referred to the Assistant
11 Corporate Secretary.

12 183 Q. And I take it likewise you did not
13 ask Mr. Howe whether, even if he hadn't received,
14 given or prepared any presentations, he was aware
15 of any such presentations or memoranda in relation
16 to the July 8 outage?

17 A. Correct.

18 184 Q. And other than Mr. Malcolmson, you
19 did not speak to anybody else on the Executive
20 Leadership Team?

21 A. Subsequent to the issuance of the
22 second subpoena, that's correct.

23 185 Q. Prior to the issuance of the
24 second subpoena, did you speak to anybody on the
25 Executive Leadership Team and ask them for

1 documents responsive to the second subpoena?

2 A. No.

3 186 Q. And just so that you and I are on
4 the same page, I am not trying to be difficult
5 about that, the documents -- I just want to make
6 sure that I have a clear record. You didn't speak
7 to anybody on the Executive Leadership Team other
8 than Mr. Malcolmson about documents responsive to
9 the first subpoena either, did you?

10 A. No, I did.

11 187 Q. Who did you speak to?

12 A. I sent the subpoena to both Blaik
13 and Stephen, of course, given they are the subjects
14 of the first subpoena, and so I got their reaction
15 to the nature of the questions asked.

16 188 Q. Did Mr. Kirby -- did you ask
17 Mr. Kirby whether he had received, given or
18 prepared any memoranda or presentations in relation
19 to the proposed sale of Freedom Mobile to
20 Videotron?

21 A. No.

22 189 Q. Did he tell you whether he had
23 done that?

24 A. No.

25 190 Q. Did he give you any materials

1 responsive to the subpoena?

2 A. No.

3 191 Q. What did he tell you?

4 MS. HENDERSON: I assume you don't --
5 you are not trying to elicit any privileged
6 information, Counsel?

7 BY MR. SMITH:

8 192 Q. No, I am not.

9 A. He gave me his opinion on the
10 breadth of the questions asked.

11 193 Q. All right. So he told you the
12 subpoena was very broad?

13 A. Yeah, words to that effect.

14 194 Q. Right, and probably with several
15 expletives in there, just for good measure.

16 Since you received the second subpoena,
17 did you go back to him and say, Hey, Mr. Kirby, the
18 second subpoena is narrower. Let's talk about
19 whether or not you have any documents responsive.
20 That didn't happen, did it?

21 A. No.

22 195 Q. Okay, and you didn't speak to
23 anybody else on the Executive Leadership Team,
24 including Mr. Howe?

25 A. I discussed the second subpoena

1 with Rob Malcolmson, but that was largely in the
2 context -- or that was in the context of our role
3 as Counsel for Bell.

4 196 Q. Okay. So other than speaking to
5 Mr. Malcolmson in your role as a lawyer reporting
6 to him, what steps have you taken subsequent to the
7 issuance of the second subpoena to satisfy yourself
8 whether there are documents responsive at the ELT
9 level to that subpoena?

10 A. At the ELT level?

11 197 Q. Yes, we talked about the Board. I
12 know you didn't do anything. At the ELT level.

13 A. I reviewed agendas that I was able
14 to access for a regular meeting that involves
15 members of the Executive Leadership Team.

16 198 Q. Okay, so the Executive Leadership
17 Team meets regularly?

18 A. I mean, it is a different group
19 than precisely the people set out in your I think
20 you called it Cross Brief, but it includes largely
21 that group. Like I am not trying to be difficult.
22 It is not coterminous with that group, but I think
23 of it as a meeting of members of the Executive
24 Leadership Team.

25 199 Q. Okay, and who is on the group that

1 meets that you are referring to?

2 A. I am just going to refer to your
3 brief for a second, if that is okay.

4 200 Q. Yes, that is fine.

5 A. So I believe it would be the
6 individuals included in -- is it everyone? Yeah, I
7 think it would include everyone included in your
8 brief as the Executive Leadership Team, and I
9 believe there would be additional attendees as
10 well.

11 201 Q. And how often does this group
12 meet?

13 A. Weekly.

14 202 Q. Okay.

15 A. Most weeks, I should say.

16 203 Q. Okay. And there are agendas
17 prepared in relation to these meetings?

18 A. That's correct.

19 204 Q. And where are these agendas kept?

20 A. I don't know where they are
21 centrally stored. I obtained at least some of them
22 from an Administrative Assistant.

23 205 Q. Whose Administrative Assistant?

24 A. It is mine and Rob's.

25 206 Q. And when you say you received some

1 of them, do you mean you received some agendas or
2 some of the agendas you have you got from the
3 Administrative Assistant?

4 A. I received -- all of the agendas I
5 have I got from her. I have no way to confirm that
6 those are all of the agendas that exist. I believe
7 they are all of the agendas that exist in the time
8 period referred to in the second subpoena.

9 207 Q. Okay, and when did you speak to
10 the -- or when did you receive these from the
11 Executive Assistant?

12 A. I don't know the day.

13 208 Q. Approximately.

14 A. I am looking at the second
15 subpoena. It would have been in the days following
16 receipt of the second subpoena.

17 209 Q. Was it before or after you swore
18 your affidavit?

19 A. I am trying to remember. I
20 suspect it was -- I apologize, I don't want to
21 guess. I am just not sure with the pace that
22 things have moved, they have been moving at over
23 multiple weekends, so it is becoming a bit of a
24 blur for me.

25 210 Q. Well, the second subpoena is dated

1 October 14th; you are aware of that?

2 A. Yes.

3 211 Q. And your affidavit is dated
4 October 18, so it is only four days apart. Does
5 that help?

6 A. Not really.

7 212 Q. Okay. So you don't know whether
8 you spoke to her before or after you swore your
9 affidavit?

10 A. I am just not sure.

11 213 Q. Okay. How many agendas do you
12 have?

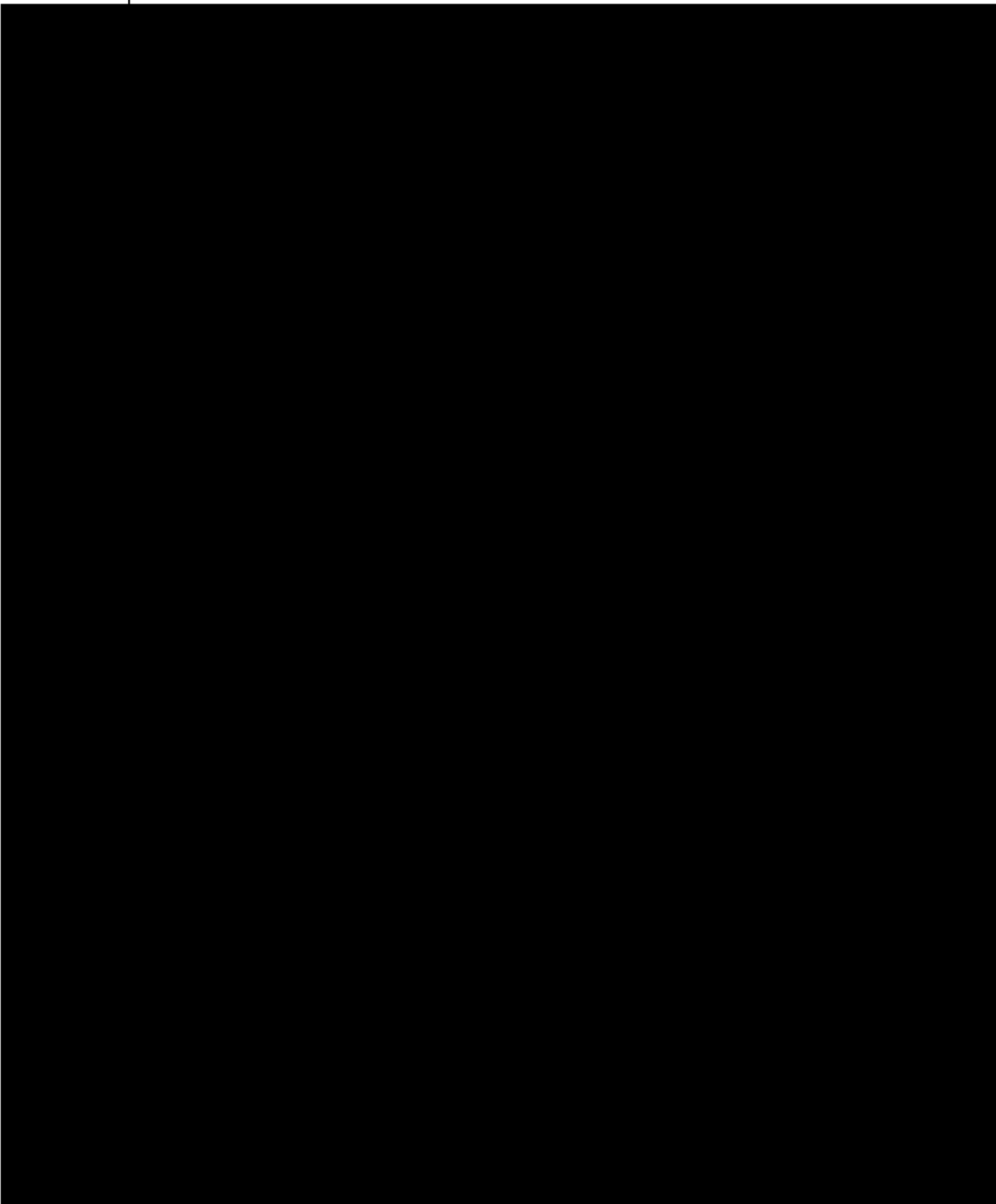
13 A. I mean, I don't have them in front
14 of me, but I suspect it is in the range of, again,
15 I want to say twelve, something like that, twelve
16 to fifteen.

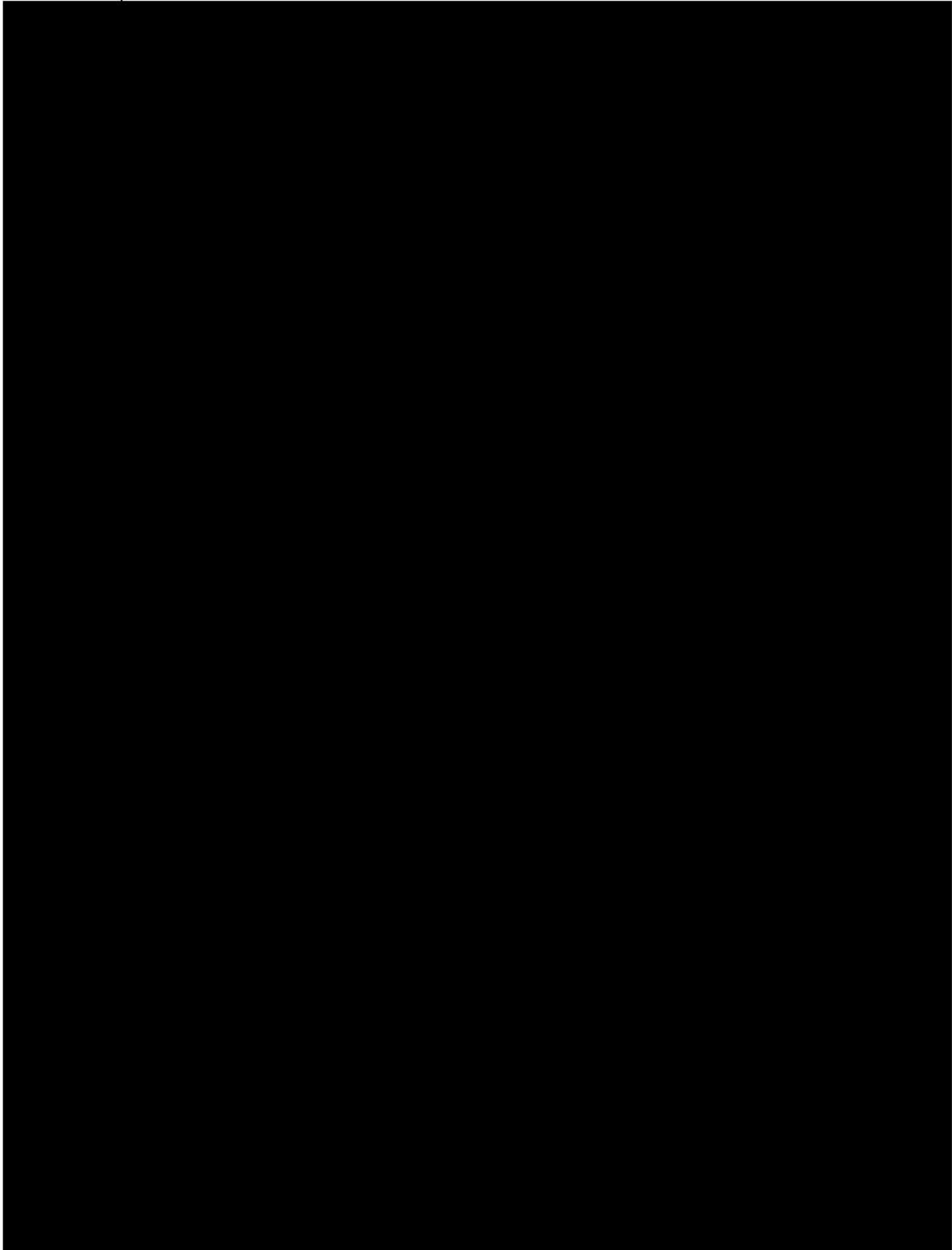
17 214 Q. And I take it each agenda is a
18 page in length?

19 A. Yeah, that's right.

20 215 Q. Okay, so we have got somewhere
21 between ten and fifteen pages of documents. And
22 how did she give you -- I take it there are
23 materials that are distributed to the members of
24 the Executive Leadership Team who attend this
25 meeting?

1 A. I did not ask for all the
2 materials that accompanied the agendas. I will
3 say --





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233 Q. And I apologize if I have asked this, but other than Mr. Malcolmson and your Executive Assistant, you have not spoken to any member of the -- I apologize, and Mr. Kirby, you have not spoken to any member of the Executive Leadership Team about whether they have materials responsive to the first or second subpoena; correct?

A. That's correct.

234 Q. Mr. Graham, other than the witness statements of Mr. Kirby and Mr. Howe, did you review any other witness statements filed in this matter?

R/F MS. HENDERSON: Don't answer that.

BY MR. SMITH:

235 Q. Were you provided with drafts of Telus's witness statements?

R/F MS. HENDERSON: Don't answer that.

MR. SMITH: On what basis?

MS. HENDERSON: It is irrelevant to the issues on this motion.

MR. SMITH: I disagree.

MS. HENDERSON: That is fine.

BY MR. SMITH:

1 236 Q. I apologize, Mr. Graham, if I have
2 asked you this, but other than Mr. Malcolmson and
3 Mr. Kirby and your Executive Assistant, is there
4 anybody at Bell that you spoke to about whether
5 there were documents responsive to the second
6 subpoena?

7 A. I mean, I spoke with other
8 colleagues in the Legal Department regarding the
9 second subpoena. I did not speak with anyone else
10 for the purpose of collecting documents that may be
11 responsive to the second subpoena.

12 237 Q. Okay. And when you say you spoke
13 to colleagues in the Legal Department, what was the
14 nature of those discussions?

15 A. I mean, that was in relation to
16 the motion by affidavit -- communications I would
17 consider privileged.

18 238 Q. Okay, so just so that we are
19 clear, it wasn't for the purpose of determining
20 whether there were documents responsive to the
21 subpoena. It was for the purposes of considering
22 Bell's position in relation to the motion; fair?

23 A. Yes, that's correct.

24 239 Q. Okay. And same question in
25 relation to the first subpoena. Did you speak to

1 anybody other than Mr. Malcolmson, Mr. Kirby, and
2 your Executive Assistant about whether there were
3 documents responsive to the first subpoena?

4 A. I spoke to, again, members of, in
5 that case, Bell's litigation team, I believe, in
6 relation to their view on what would be required to
7 collect documents in response to the first
8 subpoena, which I think would include whether there
9 are documents responsive, where they would be
10 located, and what would be involved in the
11 collection.

12 240 Q. Right, but you did not have the
13 same discussion in relation to the second subpoena?

14 A. No.

15 241 Q. And when you say "Bell's
16 litigation team", who are you talking to?

17 A. The In-House Counsel and people
18 who report to them.

19 242 Q. Okay. But would those people know
20 whether or not there were presentations or
21 memoranda given to the Executive Leadership Team
22 about the Rogers/Shaw transaction or the July 8
23 outage? I take it they wouldn't?

24 A. I mean, they may have, but they
25 would not be my first source for that information

1 for sure.

2 243 Q. Well, more than that. I take it
3 you didn't ask them whether they were aware if
4 there were memoranda or presentations prepared,
5 given or received by the ELT in relation to the
6 Rogers/Shaw/Videotron transaction, did you?

7 A. No.

8 244 Q. Okay. Similarly, you didn't ask
9 them whether they were aware of any documents in
10 relation to the July 8th outage, did you?

11 A. No.

12 245 Q. Give me two minutes, Mr. Graham.
13 Those are my questions, Mr. Graham.
14 Thank you.

15 MR. FRANKEL: So let's go off the
16 record.

17 [Discussion Off The Record.]

18 -- RECESSED AT 10:19 A.M.

19 -- RESUMED AT 10:32 A.M.

20 CROSS-EXAMINATION BY MR. FRANKEL:

21 246 Q. Good morning, Mr. Graham. I am
22 Steve Frankel. I'm a lawyer for Shaw. I am just
23 here to ask you a few questions on behalf of Shaw.

24 Off the record, Nicole, we had chatted
25 about taking my Cross-Examination Brief and marking

1 File No. CT 2022-002

2 THE COMPETITION TRIBUNAL

3
4 IN THE MATTER OF the Competition Act, R.S.C.
1985, C.c 34;

5
6 AND IN THE MATTER OF the proposed acquisition by
Rogers Communications Inc. of Shaw Communications
Inc.; and

7
8 AND IN THE MATTER OF an Application by the
Commissioner of Competition for an order pursuant
to section 92 of the Competition Act;

9
10 AND IN THE MATTER OF an Application by the
Commissioner of Competition for an interim order
pursuant to section 104 of the Competition Act;

11
12 B E T W E E N:

13 COMMISSIONER OF COMPETITION

14 Applicant

15 - and -

16
17 ROGERS COMMUNICATIONS INC. and

18 SHAW COMMUNICATIONS INC.

19 Respondents

20 -----

21 --- This is the transcript of the
22 Cross-Examination of DANIEL STERN, taken by
23 Neesons, a Veritext Company, via Zoom virtual
24 platform, with all participants attending
25 remotely, on the 20th day of October, 2022.

1 A P P E A R A N C E S :

2 KATHERINE RYDEL, Esq., for the Applicant,
3 the Commissioner of
4 Competition

5
6 STEVE FRANKEL, Esq., for the Respondent,
7 & MAUREEN LITTLEJOHN, Esq., Shaw Communications
8 Inc.

9
10
11 CRAWFORD SMITH, Esq., for the Respondent,
12 & BRADLEY VERMEERSCH, Esq., Rogers Communications
13 & RONKE AKINYEMI, Esq.,

14
15
16 ADAM HIRSH, Esq., for the Witness,
17 & KAELEIGH KUZMA, Esq., Daniel Stern

18
19
20 ALSO PRESENT:

21 Adriano Imperadeiro (note taker for Katherine
22 Rydel)

23
24 REPORTED BY: Helen Martineau, CSR

25 Job No. ON5545585

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I N D E X

PAGE

WITNESS: DANIEL STERN

Cross-examination by Mr. Crawford.....6

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The following list of undertakings, advisements
and refusals is meant as a guide only for the
assistance of counsel and no other purpose.

INDEX OF UNDERTAKINGS

The questions/requests undertaken are noted by
U/T and appear on the following page/line:
25/13; 81/23; 82/9; 83/5; 89/7.

INDEX OF ADVISEMENTS

The questions/requests taken under advisement are
noted by a U/A and appear on the following
page/line: 28/20; 33/16; 47/16; 88/16; 88/23.

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INDEX OF REFUSALS

The questions/requests refused are noted by R/F
and appear on the following page/line: 13/11;
14/3; 14/10; 17/5; 21/12; 22/20; 23/24; 25/15;
26/19; 30/1; 30/20; 34/6; 34/24; 35/7; 45/21;
112/13; 112/25.

INDEX OF EXHIBITS

NO./	DESCRIPTION	PAGE
1	Printout from the Telus website	7
	of the names of Telus' Board	
	members.	
2	Printout from the Telus website	8
	of the names of Telus' Executive	
	Leadership Team.	
3	Brief of documents.	65

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1 --- Upon commencing at 3:01 p.m.

2 DANIEL STERN: AFFIRMED.

3 CROSS-EXAMINATION BY MR. CRAWFORD:

4 Q. Good afternoon, Mr. Stern, my
5 name is Crawford Smith, I'm a lawyer for Rogers
6 Communications. Can you hear me?

7 A. I can hear you fine, yes, good
8 afternoon.

9 Q. You've been affirmed?

10 A. I have.

11 Q. Sir, I understand that you are
12 the Director, Regulatory Law and Policy of Telus
13 Corporation?

14 A. Correct.

15 Q. You should have in front of you a
16 cross-examination brief that we've sent to your
17 counsel. Do you have access to that, sir?

18 A. My counsel has it on his laptop
19 next to me, so as long as you're fine with that
20 I can look at anything you refer to.

21 Q. That's fine. If you look at
22 tab 1 of that cross-examination brief, we have
23 set out there, from Telus' website, a list of
24 its Board members. Do you see that?

25 A. I see that, yes.

1 Q. And obviously Telus has a Board?

2 A. Yes, Telus has a Board.

3 Q. And those are the members of the
4 Board?

5 A. Let me double check. I may not
6 know the exact composition at the moment, it
7 obviously changes but I can take a look.

8 [Witness reading the document.]

9 To the best of my knowledge those are
10 the members of the Board of Telus Corporation.
11 I mean, I haven't -- I don't normally get an
12 immediate update if there's been a change but
13 that looks correct to me.

14 Q. Okay. Let's mark that as the
15 first Exhibit, if we could, Exhibit 1.

16 All right, Mr. Hirsh?

17 MR. HIRSH: That's fine.

18 EXHIBIT NO. 1: Printout from the
19 Telus website of the names of Telus'
20 Board members.

21 BY MR. SMITH:

22 Q. And obviously Telus has an
23 Executive Leadership Team, Mr. Stern, you're
24 aware of that?

25 A. Yes, I am.

1 Q. If you turn to tab 2 of the brief
2 you'll see we've set out from Telus' website its
3 Executive Leadership Team. Take a moment to
4 review that.

5 A. Okay.

6 [Witness reading the document.]

7 I've reviewed it.

8 Q. Okay. And those are the members
9 of Telus' Executive Leadership Team, to the best
10 of your knowledge?

11 A. I'm not sure. There's been some
12 change on our Telus Health team. I don't know
13 that I see anyone there that is our executive
14 member from Telus Health. With that exception,
15 it looks correct to me. It may be that we have
16 not replaced our EVP of health, I'm not a
17 hundred percent sure, but with that exception it
18 looks correct.

19 Q. Okay. Let's mark that as the
20 next exhibit.

21 MR. HIRSH: That's fine.

22 EXHIBIT NO. 2: Printout from the
23 Telus website of the names of Telus'
24 Executive Leadership Team.

25

1 BY MR. SMITH:

2 Q. I take it, sir, you're not a
3 member of either the Board or the Executive
4 Leadership Team?

5 A. That's correct.

6 Q. And you don't attend Board
7 meetings?

8 A. Correct.

9 Q. And you don't attend meetings of
10 the Executive Leadership Team?

11 A. I have attended many meetings
12 with members of the Executive Leadership Team
13 over my career. I don't think I have ever
14 attended a meeting of the entire Executive
15 Leadership Team as a whole.

16 Q. And I take it you've never
17 attended a meeting of the Executive Leadership
18 Team, subsequent to June 17th, where the
19 proposed acquisition of Freedom Mobile by
20 Vid?otron has been discussed?

21 A. Again, not of the entire
22 leadership team as a whole but I certainly have
23 had many discussions with various members of the
24 leadership team.

25 Q. We'll come to those in a minute.

1 I take it, sir, that you would agree with me
2 that the proposed acquisition of Freedom Mobile
3 by Vid?otron is a significant event in the
4 telecommunications industry?

5 A. Yes.

6 Q. And it's a significant event for
7 Telus that will have implications for its
8 business?

9 A. Yes, that's fair.

10 Q. And you're aware, sir, that Telus
11 in this proceeding has put in two witness
12 statements? You're aware of that?

13 A. I'm aware.

14 Q. And those are witness statements
15 from Mr. Casey and Mr. Benhadid?

16 A. That's correct, yes.

17 Q. And Telus put those statements in
18 voluntarily?

19 A. We were asked by the
20 Commissioner's counsel to put in witness
21 statements. There was no Court order requiring
22 us to be witnesses but -- there was no -- short
23 of the subpoena we received from your and your
24 colleagues, there was nothing requiring us by
25 law to submit witness statements.

1 Q. Right. So no order, correct?

2 A. Correct, no order.

3 Q. No summons?

4 A. No summons.

5 Q. And when did the Commissioner ask
6 you to put in a witness statement?

7 A. I can't recall.

8 Q. Approximately?

9 A. Sorry, I'm just thinking. It
10 would have been sometime over the summer, I
11 can't remember exactly.

12 Q. Was it after the acquisition, or
13 the proposed acquisition by Vid?otron of the
14 Freedom Mobile business?

15 A. Likely. I can't remember the
16 exact day but we've had discussions with
17 Commissioner's counsel about the witness
18 statements. I think that's likely.

19 Q. I take it you've been involved in
20 these discussions with Commissioner's counsel?

21 A. Yes, I have.

22 Q. How many discussions have there
23 been?

24 A. That I have been involved in?
25 Not a ton. A handful. I'd say fewer than five.

1 Q. Okay. So between three and five?

2 A. Might even be -- I'm trying to
3 think. Are you talking about since the
4 announcement of the Vid?otron transaction or
5 since the announcement of the Rogers-Shaw
6 transaction in 2021?

7 Q. Let's start with since the
8 announcement of the Vid?otron transaction. And
9 to orient you, that was on or about the middle
10 of June.

11 MR. HIRSH: And you're asking about
12 how many discussions have there been with
13 Commissioner's counsel about putting in a
14 witness statement?

15 BY MR. SMITH:

16 Q. Let's start, how many discussions
17 were there subsequent to the announcement of the
18 Vid?otron transaction with the Commissioner, at
19 all, in relation to that transaction?

20 A. With the Commissioner? Zero.

21 Q. With Commissioner counsel or
22 members of the Competition Bureau?

23 A. Commissioner counsel or members
24 of the Competition Bureau since the announcement
25 of the Vid?otron transaction --

1 MR. HIRSH: That Mr. Stern has been
2 involved in.

3 THE WITNESS: That I have been
4 involved in? I think one.

5 BY MR. SMITH:

6 Q. When was that?

7 A. When was that? It would have
8 been in mid-September.

9 Q. And what was the topic of that
10 discussion?

11 R/F MR. HIRSH: Don't answer that
12 question. I think discussions between
13 Commissioner's counsel and Telus are subject to
14 litigation privilege. We're not going to get
15 into the detail of that.

16 BY MR. SMITH:

17 Q. Okay. I take it -- I understand
18 that position. I don't agree with it.

19 Other than with you, Mr. Stern, how
20 many discussions did the Commissioner's counsel
21 or members of the Bureau have with other Telus
22 representatives?

23 A. I believe zero. You mean people
24 who work for Telus? Telus employees? Zero.
25 They've talked to our counsel.

1 Q. And how many discussions have
2 they had with your external counsel?

3 R/F MR. HIRSH: Don't answer that. I
4 don't see the relevance of that.

5 BY MR. SMITH:

6 Q. Were there any communications in
7 writing between Telus and the Commissioner's
8 counsel or members of the Bureau, subsequent to
9 the announcement of the Vid?otron transaction?

10 R/F MR. HIRSH: Again, don't answer that,
11 I don't see the relevance.

12 BY MR. SMITH:

13 Q. Mr. Stern, were you involved in
14 the preparation of Mr. Casey or Mr. Benhadid.

15 MR. HIRSH: Sorry, Mr. Smith, I don't
16 mean to interrupt you but, just to be clear, in
17 addition to not seeing the relevance I think the
18 details of discussions between Telus, Osler as
19 its counsel, and the Commissioner are also
20 subject to litigation privilege. So just to be
21 clear about the basis for my objection. There's
22 also on an objection on the basis of litigation
23 privilege.

24 BY MR. SMITH:

25 Q. I understand that, Mr. Hirsh.

1 And so that we're clear, I don't accept the
2 privilege attaches having regard to the fact
3 that Telus has put in witness statements in this
4 proceeding.

5 So you have our position that whatever
6 privilege may have once attached no longer
7 attaches now that Telus is an active participant
8 through putting in witness statements.

9 MR. HIRSH: I disagree.

10 BY MR. SMITH:

11 Q. Mr. Stern, did you prepare or
12 were you involved in the preparation of
13 Mr. Casey or Mr. Benhadid's witness statements?

14 A. I was involved in the preparation
15 of their witness statements.

16 Q. Did you write them?

17 A. No.

18 Q. There was a long pause there,
19 sir, I take it you were involved in the
20 drafting?

21 A. I was involved in the drafting of
22 them, I did not write them.

23 Q. What's the distinction you're
24 drawing there, sir, between you didn't -- in
25 being involved in the drafting and not writing

1 **them?**

2 A. I did not draft them, I reviewed
3 them. I met with Mr. Casey and Mr. Benhadid to
4 discuss them and provide comment.

5 Q. So you met with the witnesses,
6 you reviewed their statements, you provided
7 written comments on those statements?

8 A. I'm trying to remember if they
9 were in writing or if I only spoke to them.
10 They were probably some margin notes or
11 something I might have put in.

12 Q. I take it drafts of the witness
13 statements were provided to Commissioner counsel
14 as well?

15 A. You'd have to ask our external
16 counsel. I didn't meet with Commissioner
17 counsel to provide them a draft.

18 Q. Are you aware, sir -- we know,
19 from your earlier answer, that you are aware
20 that there were communications between your
21 external counsel and counsel for the
22 Commissioner? Do you know whether or not the
23 Commissioner commented -- Commissioners -- if I
24 use the term "Commissioner" I mean not the
25 Commissioner himself I mean his staff or

1 counsel.

2 Do you know whether the Commissioner
3 or his staff commented on the draft witness
4 statement?

5 R/F MR. HIRSH: I'm going to object to
6 that. Again, that's litigation privilege. The
7 process by which the Commissioner and a witness
8 may have -- to the extent there was any comment
9 I would say it's privileged.

10 BY MR. SMITH:

11 Q. Okay, I don't agree.

12 Sir, you're aware obviously that in
13 his witness statement Mr. Benhadid states that a
14 wireline network or wireline network ownership
15 is critical to wireless competition? You're
16 aware of that?

17 A. Let me just turn that up, if you
18 don't mind.

19 Q. Sure. You can get that at tab 5
20 of our --

21 A. If it's okay with you, Mr. Smith,
22 I'm just going to look at it on paper in our
23 brief here.

24 MR. HIRSH: Is there a particular
25 paragraph you want to direct us to, Mr. Smith?

1 BY MR. SMITH:

2 Q. Sure. Mr. Stern, take a look at
3 the heading to paragraph 4?

4 A. Yes, I see that.

5 Q. So you're obviously aware, and
6 you knew because you reviewed the statement,
7 that one of the things that Mr. Benhadid states
8 is that wireline network ownership is critical
9 to wireless network performance and reliability.
10 Do you see that?

11 A. Yes, I see that.

12 Q. And then if you look over at
13 paragraph 6, Mr. Benhadid talks about how Telus
14 prioritizes investments in order to be able to
15 compete. Do you see that?

16 A. I see paragraph 6, yes.

17 Q. And I take it, sir, that you were
18 aware that it is the position of the
19 Commissioner in this proceeding that ownership
20 of wireline -- a wireline network is essential
21 to be able to compete in the wireless business?

22 A. I believe the Commissioner has
23 taken that position, I don't know if I've seen
24 it written. Maybe it's in the pleadings. That
25 certainly comports with my understanding.

1 Q. Right. And you have that
2 understanding either from reviewing the
3 pleadings or speaking with the Commissioner and
4 his staff, correct?

5 A. I don't think it would have
6 been -- maybe it would have been from speaking
7 with the Commissioner and his staff. From one
8 or the other, yes, I do have that understanding.

9 Q. And you were also involved, sir,
10 I take it, in preparing Telus' submission to --
11 written submission to the Competition Bureau in
12 this matter?

13 A. Can you let me know which
14 document you're referring to?

15 Q. Well, I'm referring, at the
16 moment, on a submission dated [REDACTED]
[REDACTED], that was put forward?

18 A. Yes, I was involved in that
19 submission.

20 Q. And you were, I take it, involved
21 in the drafting of that document?

22 A. I was involved in it, to a
23 similar extent that I would have been on the
24 witness statements.

25 Q. So that is, somebody else may

1 have written it but you reviewed it and provided
2 comments in relation to it?

3 A. Correct.

4 Q. And do you know whether a draft
5 of the submission was shared with the
6 Commissioner before it was provided?

7 A. I do not know.

8 Q. Has there been any submission by
9 Telus to the Commissioner in writing subsequent
10 to [REDACTED]

11 A. Yes, I believe so.

12 Q. Okay, when was that?

13 A. I honestly can't remember the
14 exact dates.

15 Q. Well, approximately?

16 A. Trying to think. I believe we
17 provided something in writing [REDACTED]
18 I'm thinking probably [REDACTED].

19 Q. Okay. Anything else?

20 A. I'm honestly just thinking, I'm
21 not trying to be difficult.

22 We -- well, we obviously provided a
23 witness statement, which you're aware of.

24 MR. HIRSH: You don't recall --

25 THE WITNESS: I don't recall. I'm not

1 saying there wasn't, I'm just trying to think.
2 I don't think there was anything else in
3 writing.

4 BY MR. SMITH:

5 Q. Okay. Let's start with the
6 [REDACTED] submission to the Commissioner, how long
7 is that submission?

8 A. I think it's two or three pages,
9 the one I'm thinking about.

10 Q. And what are the topics that are
11 covered in that submission?

12 R/F MR. HIRSH: I don't think Mr. Stern
13 should answer that. It's our position that the
14 topics covered in that submission are
15 irrelevant. So to the extent that you can
16 describe it at a high level?

17 THE WITNESS: Sure.

18 MR. HIRSH: At a very high level. It
19 doesn't have to -- well, maybe you could
20 describe the business that it relates to, or
21 what does it relate to?

22 THE WITNESS: Yeah. It relates to, I
23 would say, to [REDACTED]

24 BY MR. SMITH:

25 Q. And when you say [REDACTED]

[REDACTED]

4 A. No.

5 Q. Okay. You're talking about what?

6 A. I'm talking about the way that

7 [REDACTED]

8 Q. And let's be a bit more specific

9 then. Are you talking about -- when we're

10 talking about [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 A. No. I don't -- well, I don't
14 have the submission in front of me. I do not
15 believe it mentioned [REDACTED] but
16 I cannot tell you for certain right now without
17 rereading it.

18 Q. I'd like you the review it and
19 I'd like you to provide me with a copy of it?

20 R/F MR. HIRSH: The answer is no, it's not
21 relevant. It's confidential and it's
22 privileged.

23 BY MR. SMITH:

24 Q. Okay. Let's make sure I
25 understand each of those. So, Mr. Hirsh, when

1 you say it's "privileged" you're saying it's
2 subject to litigation privilege?

3 MR. HIRSH: And public interest
4 privilege.

5 BY MR. SMITH:

6 Q. And is it Telus' position that it
7 is entitled to assert litigation privilege and
8 public interest privilege, or is this a
9 privilege that you're asserting on behalf of the
10 Commissioner?

11 MR. HIRSH: It's our understanding
12 that the Commissioner is asserting that
13 privilege, and when we provide that submission,
14 as set out in our affidavit, we do so on the
15 expectation that that privilege will be asserted
16 and we do so on the expectation that it will be
17 treated confidentially.

18 And, as set out in the witness
19 statement, it's not relevant and doesn't have to
20 do with the issues in this proceeding.

21 BY MR. SMITH:

22 Q. Okay. Mr. Stern, does the
23 submission relate to [REDACTED]

24 R/F MR. HIRSH: Sorry, again it's not
25 relevant, it doesn't relate to the issues in the

1 proceeding. I'm not going to have Mr. Stern
2 talk to you about what the submission relates
3 to.

4 BY MR. SMITH:

5 Q. Well, Mr. Hirsh, when you say
6 that it doesn't relate to the issues in the
7 proceeding, it's very difficult to determine
8 whether or not that is true or not, because
9 you're not allowing the witness to tell me,
10 other than at the highest level of generality,
11 what it's about.

12 So I understand your objection but I
13 don't know on what basis you can take the
14 position that it's not relevant.

15 Let's go at it this way, will you tell
16 me -- you're not going to tell me whether it's
17 related to the [REDACTED]. Is it related

18 [REDACTED]

19 A. I don't think it mentioned it.

20 Q. That's not quite what my question
21 was. My question wasn't whether it mentioned
22 it, it was whether or not it related to

23 [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

A. It's hard for me to be sure without seeing it in front of me. My recollection is that [REDACTED]

[REDACTED]

[REDACTED] but I can't tell you for sure what is in that without reviewing it in front of me.

Q. I would like you to please review it and I would like you to provide me with a copy of it. One more try, I take it Mr. Hirsh, that's a refusal?

U/T MR. HIRSH: I'm happy to have Mr. Stern review it.

R/F We're not going to provide you with a copy.

BY MR. SMITH:

Q. Mr. Hirsh, I take it -- was there any communication between the members of the Competition Bureau, the Commissioner's staff in relation to this submission, either before or after the submission was put in?

A. Sorry, was that directed at me or Mr. Hirsh?

Q. No, it was directed to you.

1 A. Can you repeat the question
2 please?

3 Q. Prior to the submission going in,
4 was there any communication by Telus, or did
5 Telus have any communication with the
6 Commissioner, or his staff, about the
7 submission? Did you have a discussion where
8 they asked you for a submission or asked you for
9 your comments? Did that happen?

10 A. I did not. I believe there may
11 have been some discussion between our external
12 counsel and the Bureau.

13 Q. Okay. When were those
14 discussions?

15 A. You'll have to ask my external
16 counsel.

17 Q. Okay. Mr. Hirsh, when were those
18 discussions?

19 R/F MR. HIRSH: I refuse that, I think
20 it's privileged. And, frankly, it's not at
21 issue on this motion, which is not seeking -- as
22 I understood it you were seeking the
23 submissions?

24 BY MR. SMITH:

25 Q. Mr. Hirsh, you're taking the

1 position that the submission is either not
2 relevant, or privileged, or both, and yet you're
3 not allowing me to ask questions, other than at
4 the highest level of generality about the nature
5 of the submission.

6 I'm entitled to explore the
7 communications with the Competition Bureau that
8 led to this submission. Let's try it again.

9 Mr. Stern, I take it the Competition
10 Bureau asked for a submission from Telus?

11 MR. HIRSH: I think Mr. Stern has
12 answered that question already.

13 BY MR. SMITH:

14 Q. And the answer is yes?

15 A. The answer is I don't know, they
16 did not ask me. No one from the Competition
17 Bureau wrote to me to ask me for a submission,
18 or to anyone I know at Telus.

19 Q. So they wrote to your counsel and
20 asked for a submission?

21 A. I do not know, you will have to
22 ask my counsel.

23 Q. Mr. Stern, let's just be serious
24 about this for a minute. Is Telus in the habit
25 of authorizing its counsel to agree to put in

1 submissions on its behalf without communicating
2 to members of Telus?

3 A. Of course not.

4 Q. Okay. So external counsel had a
5 communication with you, or somebody at Telus,
6 about a communication from the Competition
7 Bureau, fair?

8 A. You asked me if the Competition
9 Bureau asked anyone at our external counsel or
10 Telus to provide a submission. And my answer
11 is, I don't know. We provided a submission. I
12 don't know how the topic came up. I do not know
13 who asked whom first.

14 Q. I would like you to ask your
15 external counsel whether they had a
16 conversation? With whom they had a
17 conversation? When that conversation was? And
18 if the conversation is in writing I would like
19 production of it. Will you do that?

20 U/A MR. HIRSH: I'll take it under
21 advisement.

22 BY MR. SMITH:

23 Q. Did you -- so the submission then
24 goes in. Did you, external counsel, or anybody
25 at or on behalf of Telus then meet with the

1 Commissioner or his staff?

2 A. I do not believe I or anyone at
3 Telus, or the Commissioner, or anyone at
4 external counsel met with the Commissioner to
5 discuss that submission. We met with the
6 Commissioner's staff to discuss the witness
7 statement.

8 Q. Okay. To the best of your
9 recollection does the submission relate to the

10 [REDACTED]
[REDACTED]
[REDACTED]

13 A. No.

14 Q. No it does not. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

18 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

24 Q. Can you be a bit more expansive
25 in that discussion?

1 R/F MR. HIRSH: Our position is that the
2 submission is privileged. You're asking
3 repeatedly for the details of it.

4 BY MR. SMITH:

5 Q. Well, you've also said,
6 Mr. Hirsh, in fairness, that it's not relevant.

7 MR. HIRSH: Yes.

8 BY MR. SMITH:

9 Q. So I think I'm entitled to
10 understand what it relates to. And if you want
11 to argue later, once you've told me what's
12 actually in the submission, that it's not
13 relevant, then obviously we'll have that
14 discussion and fight next Friday.

15 But Mr. -- so Mr. Stern, let me put
16 the question to you again. Other than by
17 reference to the broad term [REDACTED]

18 [REDACTED] can you be a bit more descriptive
19 about what the submission is in relation to?

20 R/F MR. HIRSH: I'm going refuse the
21 question, we can take it up another day.

22 BY MR. SMITH:

23 Q. Okay. Let's come at it this way,
24 you still have Mr. Benhadid's statement in front
25 of you?

1 A. I think Mr. Hirsh has it on his
2 computer. I can take a look at it.

3 **Q. That's fine.**

4 A. I see it, Mr. Smith.

5 **Q. Okay. Take a look again at**
6 **paragraphs 4, 5, 6, 7 --**

7 **MR. HIRSH: You asked him to read from**
8 **paragraph 4 down to 7?**

9 **BY MR. SMITH:**

10 **Q. And 8.**

11 A. [Witness reading the document.]

12 Okay I've read the paragraphs
13 Mr. Smith.

14 **Q. Are any of the matters that are**
15 **referred to in the paragraphs you've just**
16 **reviewed discussed in the submission?**

17 A. Sorry, let me take a look again.

18 [Witness reading the document.]

19 I believe so, yes.

20 **Q. All right. Which?**

21 A. Let me look. You know what? I
22 apologize. I want to change that answer. I
23 re-read the paragraph, I thought it had to do
24 with it and it doesn't actually. I'm sorry, I
25 made a mistake.

1

[REDACTED]

2

[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED]

16

U/A MR. HIRSH: I'll take that under

17

advisement.

18

BY MR. SMITH:

19

Q. I take it, sir, the

20

Commissioner's staff told you the topics they

21

wanted to cover in Mr. Casey and Mr. Benhadid's

22

witness statements?

23

A. My external counsel told me the

24

statements that they believed the Commissioner

25

wanted us to cover.

1 Q. Right. And you then did that?

2 A. We did not cover everything that
3 the Commissioner proposed that we cover.

4 Q. Okay. What else did the
5 Commissioner propose that you cover?

6 R/F MR. HIRSH: Don't answer that, it's
7 litigation privilege.

8 BY MR. SMITH:

9 Q. I take it the topics that the
10 Commissioner wanted you to cover in the witness
11 statement were provided to you or your external
12 counsel in writing?

13 A. I honestly don't know. They were
14 provided to me by my external counsel in writing
15 and over the phone, but I don't know how they
16 were communicated to my external counsel.

17 Q. Okay. What I'd like you to do is
18 I'd like you to ask your external counsel
19 whether they were communicated in writing. And
20 I would like production of that communication,
21 not from your counsel to you but from the
22 Competition Bureau or the Commissioner and his
23 staff to your external counsel.

24 R/F MR. HIRSH: No, litigation privileged.

25

1 BY MR. SMITH:

2 Q. And I would also -- I take it
3 that there was also a communication back that
4 Telus was either unwilling or unable to cover
5 all of the topics the Commissioner wanted
6 covered?

7 R/F MR. HIRSH: Same answer.

8 BY MR. SMITH:

9 Q. Sir, some time ago we agreed that
10 the -- we agreed as to the significance of the
11 proposed acquisition of Freedom Mobile by
12 Vid?otron. I take it, sir, we can agree that,
13 given its significance, that proposed
14 acquisition was discussed at the Telus Board?

15 A. I don't attend Board meetings. I
16 can only imagine it was. I can't imagine it was
17 not, but I don't work for the corporate
18 secretary. I don't sit in the Board meetings,
19 but it would make sense that it was discussed.

20 MR. HIRSH: Don't speculate.

21 BY MR. SMITH:

22 Q. Well, sir, it's not speculation.
23 You're familiar -- you're involved in the
24 industry. You hold a position in the legal
25 department. You understand the significance of

1 it. I think we can agree, as a matter of common
2 sense, sir, that this topic was discussed at the
3 Board, fair?

4 A. It would make sense to me that it
5 would be discussed. I do know for a fact that
6 the broader Rogers-Shaw transaction was
7 discussed. I do not know for certain whether
8 the divestiture and Freedom assets to Vid?otron
9 was discussed, but I would agree with you that
10 it would make sense that it would.

11 Q. Sir, what steps have you taken
12 prior to today to determine whether or not the
13 proposed acquisition of Freedom Mobile by
14 Vid?otron was discussed at the Board?

15 A. I spoke to our --

16 MR. HIRSH: I'm sorry, just a caveat
17 because Mr. Stern is counsel. In describing the
18 steps you're taking obviously don't describe
19 anything that would get into disclosure of legal
20 advice.

21 THE WITNESS: I met with -- I spoke to
22 our general counsel, who is also our Chief
23 Governance Officer and the Corporate Secretary,
24 so I spoke to her.

25

1 BY MR. SMITH:

2 Q. So let's just pause there.

3 That's Ms. Wood, correct?

4 A. Correct.

5 Q. And Ms. Wood, as the Corporate
6 Secretary, attends all of Telus' Board meetings,
7 correct?

8 A. Yes.

9 Q. And it is her job to take the
10 meetings -- the minutes of the meetings of the
11 Board of Directors, correct?

12 A. I believe so.

13 Q. And these Board meetings, there's
14 a process in relation to them, sir. There are
15 agendas and there are materials, correct?

16 A. Correct.

17 Q. And in relation to each Board
18 meeting there would be an agenda circulated and
19 a Board package of materials that would be
20 circulated, correct?

21 A. Correct.

22 Q. And Ms. Wood is responsible both
23 for circulating those and maintaining them,
24 correct?

25 A. To the best of my understanding.

1 Q. Right. Okay. So how many Board
2 meetings have there been between May 7th and
3 today?

4 A. May 7th, 2022?

5 Q. Yes.

6 A. I honestly don't know. I don't
7 attend them. I don't really work on Board
8 materials. There would have been at least one I
9 think. I think. But I truly don't know the
10 answer.

11 We obviously have at least four Board
12 meetings every year, every quarter, but I don't
13 know the dates of them. I'm not involved in
14 them.

15 Q. So sitting here today you don't
16 know how many Board meetings there have been,
17 whether regularly scheduled -- sorry. Back up.

18 The Telus Board has both regularly
19 scheduled meetings and meetings on an ad hoc
20 basis, correct?

21 A. To the best of my understanding,
22 yes.

23 Q. So you don't know how many
24 regularly scheduled meetings there have been
25 between May 7th and today, correct?

1 A. My understanding is the Board
2 meets quarterly. So doing that math there must
3 have been at least one because more than three
4 months have gone by since May 7th, but I don't
5 know the dates, et cetera.

6 **Q. You don't know whether -- and you**
7 **don't know if there have been any ad hoc**
8 **meetings?**

9 A. I do not know.

10 **Q. Did you ask Ms. Wood how many**
11 **Board meetings there have been?**

12 A. No.

13 **Q. Did you review the materials**
14 **prepared for the Board meetings?**

15 A. I've reviewed material prepared
16 for the Board that Ms. Wood provided me.

17 **Q. Let's just make sure I understand**
18 **now --**

19 A. Sorry, if you can let me finish.

20 I can't remember the date of that
21 Board meeting. I can't remember if it was a Q1
22 meeting, which would have been before May, or if
23 it would have been later this year.

24 **Q. Which -- what Board material have**
25 **you reviewed, sir?**

1 A. I reviewed a brief that was
2 prepared for the Board on the topic of the
3 Rogers-Shaw transaction.

4 **Q. And when was that brief prepared?**

5 A. That's what I'm trying to tell
6 you, I can't remember the exact date. I've
7 reviewed a bunch of documents on all sorts of
8 things likely and I can't remember the exact
9 date of that. I'm not trying to be difficult, I
10 want to make sure that I'm accurate.

11 **Q. Sir, I don't need -- just so**
12 **we're clear, I don't need the precise date. Was**
13 **the Board meeting after May 7th --**

14 **MR. HIRSH: I think he's told you --**
15 **sorry, Crawford, I don't mean to interrupt but I**
16 **think he told you that he doesn't remember.**

17 **THE WITNESS: I'm not sure whether the**
18 **meeting was a Q1 meeting, which would have been**
19 **before May, or a Q2 meeting which would have**
20 **been after May.**

21 **BY MR. SMITH:**

22 **Q. Let's just back up a bit.**
23 **Ms. Wood would know how many meetings there**
24 **were, correct?**

25 A. Yes.

1 Q. And Ms. Wood would know how --
2 whether or not the issue of Freedom Mobile's
3 acquisition by Vid?otron was discussed at the
4 Board level, correct?

5 A. She would know, for sure.

6 Q. Right. And that would be whether
7 that issue was discussed on its own or as part
8 of the larger context of the Rogers-Shaw
9 transaction, correct?

10 A. She attends the meetings so she
11 should know what goes on in them.

12 Q. When did you speak to Ms. Wood?

13 A. Last week.

14 Q. Did you ask her whether or not
15 the issue of the Freedom Mobile acquisition by
16 Vid?otron, whether on its own or as part of the
17 Rogers-Shaw transaction, was discussed at the
18 Board level?

19 A. I asked her if there were any
20 documents responsive to that specific item in
21 the subpoena, which I believe asked for
22 memoranda or presentations. And she provided me
23 with a package of memoranda or presentations
24 that were put before the Board.

25 Q. And those memoranda or

1 **presentations are responsive to the summons,**
2 **correct?**

3 A. I'm just trying to tell you I
4 can't 100 percent remember whether they
5 discussed the divestiture specifically or
6 whether they discussed the transaction more
7 broadly. They definitely discussed the
8 Rogers-Shaw transaction, I don't have them in
9 front of me right now.

10 I would like to read them before I
11 give you a definitive answer, is all I can tell
12 you. I've looked at lots of documents.

13 **Q. How many -- how long is the Board**
14 **package that you're referring to?**

15 A. I'm trying to think. It's -- I
16 would say in the nature of 30 pages.

17 **Q. And is the Rogers-Shaw**
18 **transaction the only subject discussed in that**
19 **Board package that was given to you by Ms. Wood?**

20 A. Yes. I didn't see the entire
21 package of things that went to the Board for the
22 meeting. I saw the package that related to the
23 Rogers-Shaw transaction.

24 **Q. Did Ms. Wood give you the agenda**
25 **for that Board meeting?**

1 A. She did not.

2 Q. So you don't know whether there
3 was -- whether that topic, the Rogers-Shaw
4 transaction, was one of a number or the only
5 topic discussed by the Board?

6 A. I don't know, that's correct.

7 Q. You don't know how long the
8 meeting was?

9 A. I don't know. I'm just trying to
10 think.

11 I want to clarify an earlier answer.
12 It would make sense that the divestiture was
13 discussed, I just -- I can't confirm it unless I
14 have it in front of me.

15 Q. Well, Mr. Stern, I take it, sir,
16 when you went to speak to Ms. Wood you gave her
17 a copy of the summons, correct?

18 A. Yes. That's exactly what's
19 making me think of this. I gave her the summons
20 and she gave me documents in response. I can't
21 remember exactly what they say, but -- right,
22 that's a good point. The summons asked for
23 divestiture. I just can't remember exactly what
24 they say. I'm not trying to be difficult.

25 Q. Let's just establish the

1 proposition. Ms. Wood is a lawyer and the Board
2 Secretary, correct?

3 A. Correct.

4 Q. You gave her the summons,
5 correct?

6 A. Correct.

7 Q. You asked her, Are there
8 documents responsive to this summons, correct?

9 A. Correct.

10 Q. She gave you a package of
11 documents as responsive to the summons, correct?

12 A. Correct.

13 Q. That is a 30-page document?

14 A. Approximately, I don't know
15 exactly.

16 Q. Is that the only document that
17 she gave you as responsive to the summons, as it
18 relates to the Board of Directors?

19 A. I want to clarify the word
20 "responsive". I asked her for anything that
21 could potentially be responsive, that we ran by
22 our external counsel. So I guess my answer is I
23 need to speak to external counsel as to their
24 views of whether or not it was responsive. But
25 it was not the only document she provided me in

1 response to that request.

2 MR. HIRSH: And I should also clarify
3 that that says nothing about whether the
4 document is subject to the claim of privilege.

5 THE WITNESS: I agree, and I'm not
6 talking about privilege.

7 When I asked her that, to your
8 question, Mr. Smith, that Board brief we
9 discussed was not the only document she provided
10 me.

11 BY MR. SMITH:

12 Q. Okay. Other than the 30-page
13 document, what else -- other than the 30-page
14 document, which does discuss the proposed
15 transaction, what else did she give you?

16 A. An email.

17 Q. And it is an email from whom to
18 whom?

19 A. From our CEO to the Board.

20 Q. And what does that email say?

21 R/F MR. HIRSH: Hold on. I don't know if
22 that email is subject to a claim of privilege.
23 So other than dealing with the fact that it may
24 be responsive to the subpoena, which we may be
25 able to stipulate to, I'm going to direct the

1 witness not to describe what the subject of the
2 email is.

3 BY MR. SMITH:

4 Q. Mr. Hirsh, it would be helpful if
5 you're going to interject -- this is a
6 cross-examination, you should not be
7 interjecting, if you are please keep it to a
8 minimum. I don't need a speaking objection.

9 MR. HIRSH: I think it's important,
10 Mr. Smith, to explain to you the basis on which
11 I'm objecting to the question. So I'm directing
12 the witness not to answer the question because
13 of my concern that there may be privilege.

14 BY MR. SMITH:

15 Q. What privilege are you asserting,
16 Mr. Hirsh, in relation to a communication from
17 the Chief Executive Officer, who is not a
18 lawyer, to the Board of Directors?

19 MR. HIRSH: To the extent that his
20 email contains legal advice then there would be
21 a point of privilege.

22 THE WITNESS: But again I don't have
23 it front of me, that's all I'm saying.

24 BY MR. SMITH:

25 Q. You don't know.

1 **Mr. Stern, have you read the email?**

2 A. I have.

3 **Q. Okay. Does the email -- you're a**
4 **lawyer, does the email contain legal advice?**

5 A. I'd have to look at it carefully.
6 It's an update -- I will tell you about it in
7 broad strokes, and I don't think I'm disobeying
8 my counsel's advice here. It's an update on the
9 status of the litigation.

10 **Q. And does it attach any documents?**

11 A. No.

12 **Q. What is the date of that email?**

13 A. I don't know.

14 **Q. Why don't you get back to me with**
15 **the date of that email?**

16 U/A **MR. HIRSH: I'll take that under**
17 **advisement.**

18 **BY MR. SMITH:**

19 **Q. Other than an email and a 30-page**
20 **presentation, did Ms. Wood give you any other**
21 **documents responsive to the summons?**

22 A. No.

23 **Q. Let's just be perfectly clear**
24 **about that. Is that response in relation to the**
25 **materials provided to the Board of Directors**

1 alone or to the Board of Directors and the ELT?

2 A. To the Board of Directors alone.

3 Q. Did you ask Ms. Wood for any
4 material responsive to the summons that was --
5 relates to -- or presentations or memoranda by
6 the Executive Leadership Team?

7 A. Yes.

8 Q. And what did she give you?

9 A. She asked her assistant to run
10 down -- look in her Inbox and go through any
11 materials.

12 I don't know that -- I should say we
13 haven't finished, like, identifying the universe
14 of documents that might be it. To date I have
15 not seen anything from Ms. Wood specifically
16 that is responsive to the subpoena, beyond the
17 Board documents I noted to you.

18 Q. Is Ms. Wood the only member of
19 the Executive Leadership Team that you have
20 spoken to?

21 A. In terms of searching for
22 documents?

23 Q. Yes.

24 A. Directly, yes.

25 Q. Okay.

1 A. Yes, directly she's the only
2 member that I've spoken to.

3 Q. Mr. Senko, if I've got that
4 correct, is your Vice-President, as I understand
5 it, in charge of your consumer wireless
6 business, correct?

7 A. Executive vice-president, yes.

8 Q. In charge of your consumer
9 wireless business, correct?

10 A. Correct.

11 Q. And so the proposed acquisition
12 of Freedom Mobile by Vid?otron falls most
13 squarely under his area of responsibility,
14 correct?

15 A. Yes. Certainly significantly
16 under his area of responsibility, there are
17 others but it is significant -- highly
18 significant impact to his area of
19 responsibility.

20 Q. And you have not spoken to him
21 about whether he prepared any memoranda or
22 presentations in relation to that topic, have
23 you?

24 A. I have not spoken to Mr. Senko
25 personally, no.

1 Q. Okay. And that's true. Is there
2 any other -- is there any member of the
3 Executive Leadership Team other than Ms. Wood
4 that you have spoken to?

5 A. No. And to be perfectly honest,
6 speaking to a member of the Executive Leadership
7 Team would not be the way to go about this.

8 What I have done is I've spoken to the
9 vice-presidents that report to them. Each
10 executive vice-president generally has someone
11 underneath him or her that is responsible for
12 major communications, project management, and
13 I've spoken to those people.

14 Q. Okay. Sir, you are aware that
15 the summons is directed at memorandas (sic) or
16 presentations do the Board of Directors or the
17 Executive Leadership Team, correct?

18 A. Correct. Sorry, that is correct,
19 yes.

20 Q. And so that the record is clear,
21 you have not asked any member of the Executive
22 Leadership Team whether or not they prepared or
23 received such a presentation?

24 A. I'm going to tell you what I have
25 done --

1 Q. Sorry, sorry --

2 MR. HIRSH: Answer the question he
3 asked.

4 BY MR. SMITH:

5 Q. Please answer my question.

6 A. Well, your question is making it
7 seem like I have no work to do this. The answer
8 is no --

9 Q. Sir, sir --

10 A. Let me finish my answer.

11 Q. Mr. Stern, the way this works is
12 I ask the questions and you can answer the
13 questions. You had an opportunity to put in an
14 affidavit.

15 My question was simple. You have not
16 asked any member of the Executive Leadership
17 Team whether or not they prepared or received a
18 memorandum or presentation in relation to the
19 proposed sale of Freedom Mobile to Vid?otron?

20 A. No, and there would be no reason
21 to do at this moment.

22 Q. All right. Now, Mr. Stern,
23 presentations that go to the Board of Directors
24 are prepared by management, correct?

25 A. Yes.

1 Q. So if a presentation went to the
2 Board of Directors, which we know it did in this
3 case, it originated with management, correct?

4 A. Yes.

5 Q. And management would have, before
6 submitting that presentation, also have
7 prepared, in all probability, a presentation or
8 memorandum that is the work product that leads
9 in to the Board presentation, correct?

10 A. Sorry, do you mean like a draft
11 they would have worked on before bringing it to
12 the Board?

13 Q. The way this works, Mr. Stern, is
14 matters are discussed through memos or
15 presentations at management level, and then some
16 of those end up being reflected in memos or
17 presentations at the Board level, correct?

18 A. Yes, that's correct.

19 Q. So there would be memos and
20 presentations at the Executive Leadership Team
21 in relation to the proposed acquisition of
22 Freedom Mobile by Vid?otron, correct?

23 A. Yes, certainly for members of the
24 Executive Leadership Team. I don't know if
25 there's anything about the Executive Leadership

1 Team as a whole, beyond the Board documents I
2 discussed, which they would have seen.

3 Q. Well, let's just take this in
4 pieces. You're drawing a distinction in your
5 affidavit, or trying to draw a distinction in
6 your affidavit, between presentations or
7 memoranda that are prepared by or received by
8 members of the Executive Leadership Team, on the
9 one hand, and memoranda or presentations that go
10 to the entire Executive Leadership Team?

11 A. That's correct.

12 Q. That's the distinction you are
13 drawing, correct?

14 A. Correct.

15 Q. Okay. Let's take each of those.
16 There are memoranda or presentations that went
17 to at least some members of the Executive
18 Leadership Team, correct?

19 A. Correct.

20 Q. Okay. What have you done to
21 determine how many such memorandas or
22 presentations there are?

23 A. As I was saying, each executive
24 vice-president, or member of the Executive
25 Leadership Team, has a person that reports to

1 him or her, generally at the vice-president
2 level, who is, for lack of a better word, a
3 program manager, runs the executive
4 vice-president's office, let's say.

5 And, with a couple of exceptions, I
6 spoke to those people because they would be best
7 positioned to know to determine what responsive
8 documents their executive vice-president or ELT
9 member would have.

10 Q. And have they provided you with
11 such presentations or memoranda provided to
12 members of the Executive Leadership Team?

13 A. Some have, some have not.

14 Q. How many --

15 MR. HIRSH: Can I just interject here?
16 Our reading and understanding of this request is
17 that it is a request for documents sent to the
18 Executive Leadership Team as a unit, as set out
19 in Mr. Stern's affidavit. Are we operating on
20 the same page? That's what we're looking for?

21 BY MR. SMITH:

22 Q. No. I saw that in Mr. Stern's
23 affidavit. I don't accept that as a
24 qualification on the summons.

25 I don't accept that if Mr. Senko, who

1 has primary responsibility and has prepared for
2 him a memo detailing the implications of the
3 proposed acquisition of Freedom Mobile by
4 Vid?otron, and he shares it, at his choosing,
5 with seven of ten members of the Executive
6 Leadership Team that that is a basis upon which
7 to not produce that document, Mr. Hirsh.

8 MR. HIRSH: Are you asking for every
9 document going to every member of the Executive
10 Leadership Team?

11 BY MR. SMITH:

12 Q. No. I am asking for memos or
13 presentations that are in the possession of the
14 Executive Leadership Team or its members. I
15 don't need emails. I don't need text messages.
16 I don't need a comprehensive search of people's
17 server.

18 What I want is for Mr. Stern to speak
19 to the members of the Executive Leadership Team
20 and gather up memos or presentations given to
21 them that relate to the proposed acquisition of
22 Freedom Mobile by Vid?otron.

23 MR. HIRSH: So your subpoena, you are
24 saying, is asking for a memo or submission that
25 went to any given member of the Executive

1 Leadership Team?

2 BY MR. SMITH:

3 Q. Yes, and I want to understand
4 what the line is. So let's just take them in
5 pieces.

6 Who on the -- whose Senior
7 Vice-Presidents have you spoken to, Mr. Stern?

8 A. Mr. Senko, Ms. Mawji, Ms. Wood,
9 Mr. Arora, Mr. Geheran. I'm trying to think if
10 there is anyone else. Mr. French. I think
11 that's it for now.

12 Q. Okay. And the first --

13 A. I can add Ms. Schnarr, I spoke to
14 someone on her team as well.

15 Q. And the person with primary
16 responsibility for the wireless business is
17 Mr. Senko, correct?

18 A. Correct.

19 Q. Did Mr. Senko prepare or receive
20 any memo or presentation in relation to the
21 proposed acquisition?

22 A. Yes.

23 Q. Okay. How many?

24 A. I haven't finished looking
25 through everything, I am aware of at least two

1 but there may be more.

2 Q. Okay. What volume of material
3 are we talking about?

4 A. I haven't had anyone search his
5 Inbox, for example --

6 Q. Sorry, the material that you've
7 been given, how big is it?

8 A. Oh, I have only been given a few
9 documents, but with the caveat that there may be
10 more. So people are looking, that work for him.
11 I have been given maybe three, four, five
12 documents, something in that range.

13 Q. And how long are these documents?

14 A. They vary, some are about a page,
15 some are -- some are like a slide deck of maybe
16 twenty pages.

17 Q. So taking it all together you've
18 got about forty to fifty pages worth of
19 material?

20 A. So far from Mr. Senko.

21 Q. Other than Mr. Senko who else has
22 responsibility for Telus' wireless business in
23 British Columbia and Alberta?

24 A. It's not quite that simple.
25 Mr. Senko is the head of our wireless business

1 everywhere, so that's him.

2 But, as you know, we have a Chief
3 Financial Officer that deals with the wireless
4 business. We have a Chief Operating Officer
5 that deal with -- so it's integrated, but at the
6 end of the day the buck stops with Mr. Senko
7 when it comes to our consumer wireless business.

8 **Q. The presentations and memoranda**
9 **that you have been provided, other than**
10 **Mr. Senko who else has given you any**
11 **presentations or memoranda?**

12 A. I received some documents, I
13 don't know that they're responsive but I
14 received documents from Ms. Mawji's team.

15 **Q. How many documents did you**
16 **receive?**

17 A. Maybe six or seven.

18 **Q. How long are the documents?**

19 A. They vary with slide decks. I
20 would say each is maybe in the nature of ten
21 pages or so.

22 **Q. So another sixty pages of**
23 **documents?**

24 A. That's fair, it's a rough
25 estimate.

1 **Q. Okay. Anybody else?**

2 A. I'm just trying to remember
3 because I spoke to someone on Mr. French's team.
4 I don't think I've gotten anything back from
5 that person, yet.

6 And I also spoke to someone on
7 Mr. Arora's team, who I don't think has gotten
8 back to me with any documents yet. I'm just
9 thinking out loud. I believe that's the
10 universe of documents I've received to date.

11 **Q. Were any of the documents that**
12 **you've described shared with other members of**
13 **the Executive Leadership Team?**

14 A. I believe they were all shared
15 with other members of the Executive Leadership
16 Team, but I don't believe that any was shared
17 with the entire Executive Leadership Team.

18 **Q. So they were shared with some**
19 **subset of the Executive Leadership Team?**

20 A. Correct.

21 **Q. Including, I take it,**
22 **Mr. Entwistle?**

23 A. I'm trying to think. There may
24 be only one that would have been shared with
25 Mr. Entwistle, I'm not 100 percent sure. I

1 didn't see the emails that were attaching them.
2 There's only one that I can think of that would
3 have gone to him but I would have to check.

4 Q. I take it, sir, just returning to
5 the Board of Directors for a minute, and I
6 apologize for switching gears, you did not speak
7 to any member of the Board of Directors?

8 A. That's correct.

9 Q. And did you ask Ms. Wood whether
10 or not the proposed transaction was discussed?
11 I know she gave you materials, but did you ask
12 her whether the matter was discussed at the
13 Board?

14 A. I did not ask her that, I gave
15 her the spec and the subpoena and asked her, do
16 you have any materials that are responsive to
17 this?

18 Q. So you didn't ask and Ms. Wood
19 did not tell you?

20 A. No. I mean, the material she
21 gave me said what they said. So it's safe to
22 imagine that those topics were discussed but I
23 did not ask specifically what was discussed, no.

24 Q. And I take it you did not review
25 the minutes of the Board of Directors of that

1 **meeting?**

2 A. I did not.

3 **Q. I'm just looking at the time.**

4 **Does your Executive Leadership Team**
5 **have regularly scheduled meetings, sir?**

6 A. They do.

7 **Q. How often?**

8 A. I don't know. Like, as a
9 whole -- I know they -- I don't know. I
10 honestly don't know. They meet, for example, I
11 believe they meet in advance of Board meetings.
12 They meet periodically to discuss the plans for
13 different business units, but I don't know.

14 **Q. And I take it there are materials**
15 **and agendas prepared in relation to those**
16 **meetings?**

17 A. I don't know for sure. What you
18 say makes sense, I can only imagine. I do know
19 for some meetings there are materials that are
20 prepared because -- for other topics unrelated
21 to this, I've certainly worked on them.

22 But I don't know if there are
23 materials prepared for every meeting. I don't
24 know specifically about agendas, but it
25 certainly seems safe to assume.

1 **Q. And that would also fall under**
2 **Ms. Wood's responsibility, correct?**

3 A. I don't think so. I think it
4 probably depends on the meeting. For example,
5 if there were a meeting to discuss the wireless
6 business specifically, I think that would
7 probably fall under Mr. Senko's responsibility.

8 If they're meeting to discuss
9 agriculture, for example, it would fall under
10 Mr. Raines' responsibility.

11 I don't know for sure but -- I don't
12 know for sure if Ms. Wood is responsible for
13 preparing ELT materials.

14 **Q. Are the ELT materials kept in**
15 **some central repository?**

16 A. At least some of them. For some
17 of the periodic -- for some of the periodic
18 meetings I know they're kept in a central
19 repository but I don't know how it works as a
20 whole.

21 **Q. Have you checked that central**
22 **repository for documents responsive to the**
23 **subpoena?**

24 A. Ms. Woods' assistant looked
25 there, and I believe that one of the documents

1 talked about was in that repository, but I don't
2 know if there was anything else.

3 Q. A couple of final questions for
4 you, sir.

5 At paragraph 19 of your motion -- your
6 supplementary affidavit --

7 MR. HIRSH: We have that open.

8 BY MR. SMITH:

9 Q. You say:

10 "The Telus witnesses are not on
11 the Telus Board or Executive
12 Leadership Team and it's highly
13 unlikely that Telus witness would have
14 been involved in the preparation of
15 any such documents, nor will they be
16 in a position to speak to them."

17 Do you see that?

18 A. Correct.

19 Q. Do you know, sir, whether or not
20 the witness statements of Mr. Casey and
21 Mr. Benhadid were reviewed by any member of
22 Telus' Board?

23 A. The Board? I strongly suspect
24 they were not. To the best of my knowledge they
25 were not.

1 **Q. Were they reviewed by any member**
2 **of the Executive Leadership Team?**

3 A. Yes.

4 **Q. Who?**

5 A. Ms. Wood.

6 **Q. Anybody else?**

7 A. I'm trying to think. I don't
8 think so.

9 **Q. Do the statements reflect the**
10 **view of Telus' Executive Leadership Team?**

11 A. They reflect the views of
12 Mr. Benhadid and Mr. Casey. I don't know. The
13 Telus leadership team, to the best of my
14 knowledge, don't vote or anything on these.
15 They are the product of discussions between
16 Mr. Casey and Mr. Benhadid.

17 **Q. Those are my questions,**
18 **Mr. Stern, thank you.**

19 A. Thank you.

20 MR. HIRSH: Can we just go off the
21 record.

22 -- RECESSED AT 4:15 p.m. --

23 -- RESUMED AT 4:20 P.M. --

24 CROSS-EXAMINATION BY MR. FRANKEL:

25 **Q. Good afternoon, Mr. Stern. My**

Leadership Team

[Executives](#)

[Board members](#)

[Board committees](#)

[Mirko Bibic](#) >

[President and Chief Executive Officer](#)

[BCE and Bell Canada](#)



PUBLIC



Claire Gillies >

EVP Marketing and President Consumer



Stephen Howe >

Chief Technology and Information Officer



Blaik Kirby >

Group President, Consumer and Small & Medium Business (SMB)



Glen LeBlanc >

Chief Financial Officer and Vice Chair, Atlantic Canada



Devorah Lithwick >

Senior Vice President and Chief Brand Officer



Tom Little >

President, Bell Business Markets



Robert Malcolmson >

Chief Legal & Regulatory Officer



Nikki Moffat >

Chief Human Resources Officer and Executive Vice President, Corporate Services



Karine Moses >

Senior Vice President, Content Development and News and Vice Chair, Québec



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Blaik Kirby

Group President, Consumer and
Small & Medium Business (SMB)

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Appointed Group President, Consumer and Small & Medium Business (SMB) in February 2022, Blaik leads the combined strengths of our wireless and wireline teams, including the dedicated executives for Consumer Sales & Marketing as well as a focused SMB organization.

Blaik is a 25-year veteran of the North American telecom industry who began his career as a repair technician for Bell in 1987. He re-joined Bell in 2005 as Vice President, Corporate Strategy, moved to Bell Mobility as Senior Vice President of Marketing and Sales, and was promoted to Chief Marketing Officer before becoming President of Mobility in 2015.

Blaik holds a Bachelor of Engineering Science degree from Western University, a Master of Engineering degree from the University of Toronto, and an MBA from the Ivey School at Western University. He also serves on the board of Glow Financial Services.

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Stephen Howe

Chief Technology
and Information Officer

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Appointed Chief Technology and Information Officer in February 2022, Stephen leads the Network and Technology Services team responsible for designing, building and operating Bell's industry-leading broadband fibre, wireless, satellite and media networks as well as application development, infrastructure and cloud management.

Stephen joined Bell in 2006 and has led the rollout of both the Bell Fibe all-fibre network in 7 provinces and a national 4G LTE wireless footprint that now covers more than 99% of the Canadian population, and guided the launch of the Bell 5G network.

A network executive in Canadian telecom for the past 25 years, Stephen holds a Bachelor of Engineering Physics degree from McMaster University and an MBA from Cornell University.