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IN THE MATTER OF THE *HUMAN RIGHTS CODE*,  
RSBC 1996, c. 210 (as amended)

AND IN THE MATTER of a complaint before  
the British Columbia Human Rights Tribunal

BETWEEN:

Martin Bauer

**COMPLAINANT**

AND:

Uber Canada Inc. and Uber Technologies Inc. and His Majesty the King in Right of the Province  
of British Columbia as represented by Ministry of Attorney General of British Columbia

**RESPONDENTS**

## **REASONS FOR DECISION**

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Tribunal Member: Amber Prince

On their own behalf: Martin Bauer

Counsel for Uber Canada Inc. and Uber Technologies Inc.: Jeremy Millard

Counsel for BC Ministry of Attorney General: Jonathan Penner & Joana Thackeray  
(until September 15, 2022)  
Jonathan Penner & Zachary Ansley  
(after September 15, 2022)

Hearing Date: September 15, 2022

Written Closing Submissions: March 6, 2023

Location of Hearing: Video conference

## I INTRODUCTION

[1] Uber is a ride-hailing company – connecting customers with transportation needs to drivers with vehicles, through its app.<sup>1</sup> In January 2020, Uber obtained a license, under the BC *Passenger Transportation Act*, to operate in BC. The headline was “at long last.”<sup>2</sup> For many in BC, Uber’s ride-hailing service is a welcome transportation option.

[2] Martin Bauer is a wheelchair user in the Lower Mainland. He does not have the option to hail an Uber because Uber does not offer wheelchair accessible services in the Lower Mainland.<sup>3</sup> Mr. Bauer also says that Uber’s existence is jeopardizing his access to taxis. He filed a complaint alleging that Uber is violating s. 8 of the BC *Human Rights Code* [**Code**]. Section 8 of the *Code* prohibits a service provider from discriminating in its provision of a service or in denying a service.

[3] Uber says that it does not provide a service covered by the *Code* and is not responsible for the state of taxis. Uber also says that it is not required to provide wheelchair accessible services because the *Passenger Transportation Act* permits it to pay a “per-trip” fee instead.

[4] The issue before me is whether Uber has violated s. 8 of the *Code*. For reasons that follow, I find that it has in part.

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<sup>1</sup> Uber Canada Inc. is licensed to provide ride-hailing services in BC [**Uber Canada**]. Uber Technologies Inc. is the parent company for Uber Canada [**Uber Technologies**]. My reference to “Uber” means both Uber Canada and Uber Technologies, unless otherwise specified. My reference to Uber’s services means ride-hailing services unless otherwise specified. The word “app” is a widely used abbreviation for application, and in this context means computer software, or a program commonly used for mobile devices: Dictionary.com; Cambridge Dictionary; Oxford Learner’s Dictionaries.

<sup>2</sup> DH Vancouver Staff, “‘I might cry’: Vancouverites react to FINALLY receiving rideshare” Daily Hive (Jan 23, 2020); Stephanie Ip, “Vancouver Guide to Ride Hailing in BC”, *Vancouver Sun* (Mar 3, 2020).

<sup>3</sup> Uber is licensed through the BC Passenger Transportation Board to operate in the Lower Mainland, including Whistler. This area is defined as “Region 1” by the BC Passenger Transportation Board. Owing in part to federal legislation applicable at airports, riders at Vancouver International Airport can access wheelchair-accessible taxis through Uber’s app: Response to Complaint, footnote 2.

## II DECISION

[5] Uber is a service provider bound by the *Code*. I do not accept that the *Passenger Transportation Act* permits Uber to pay a fee to avoid its obligations under the *Code*. In any event, the *Code* prevails where it conflicts with any other provincial law: *Code*, s. 4. I find that Uber's lack of wheelchair accessible services is discriminatory. Uber has not justified this discrimination and it violates the *Code*. Mr. Bauer is entitled to a remedy as a result. However, Uber is not responsible for the state of taxi services in the Lower Mainland.

[6] I apologize to the parties for the delay in issuing this decision.

## III EVIDENCE AND ISSUES

[7] At the hearing, I heard oral evidence from two witnesses: Mr. Bauer, and Yanique Williams – the Public Policy Manager for Uber Canada. During cross-examination Ms. Williams was not able to answer all of Mr. Bauer's questions. By consent, Ms. Williams provided written answers to any outstanding cross-examination questions on September 22, 2022. These written answers form part of her evidence.

[8] The parties introduced other documents which were admitted as evidence. I have considered all of the admissible documentary evidence and submissions of the parties. I only refer to the information necessary to come to my decision.

[9] This case does not turn on the credibility and reliability of the witnesses' evidence. The parties agree on the central fact that Uber does not provide wheelchair accessible services in the Lower Mainland. As a result, Mr. Bauer is unable to use Uber's ride-hailing services. I need to decide whether Uber's lack of wheelchair accessible services in the Lower Mainland is discrimination within the meaning of s. 8 of the *Code*. The question of Uber's impact on taxi services in the Lower Mainland does not turn on a factual dispute. Instead, that question is resolved by examining the scope of Uber's human rights obligations under the law.

[10] It is Mr. Bauer’s burden to prove that Uber discriminated against him. I set out what Mr. Bauer needs to prove next.

### **A. Proving Discrimination**

[11] To prove discrimination, Mr. Bauer must show that:

- a. He has a disability protected by the *Code*. Uber does not dispute this.
- b. Uber provides a “service” within the meaning of the *Code*. Uber says that it merely provides a ride-hailing app, and that its app is not itself a “service” within the meaning of the *Code*.<sup>4</sup>
- c. He has been adversely impacted in connection with Uber’s services from March 7, 2020, to the start of hearing on September 15, 2022. He alleges two sorts of adverse impacts:
  - i. First he has been unable to order a wheelchair accessible trip through Uber since March 7, 2020. There is no dispute that Mr. Bauer cannot hail a wheelchair accessible trip through Uber’s app.
  - ii. Second, Uber’s existence jeopardizes wheelchair accessible taxis. Uber disputes its existence has adversely impacted wheelchair accessible taxis. In any event, Uber says it is not responsible for taxi services.
- d. His disability was a factor in the adverse impacts. If Mr. Bauer proves that Uber provides a service under the *Code*, and that he was adversely impacted because he couldn’t hail a wheelchair accessible trip through Uber, then it follows that his disability was factor in the adverse impact. If Mr. Bauer proves that Uber jeopardized his access to wheelchair accessible taxis, and that Uber is responsible for that impact, then it follows that Mr. Bauer’s disability was a factor.

*Moore v. BC (Education)*, 2012 SCC 61, para. 33.

[12] If Mr. Bauer proves discrimination, then the burden shifts to Uber to justify its adverse impact on Mr. Bauer. If Uber can show that its adverse impact on Mr. Bauer was justified, then

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<sup>4</sup> Uber describes its app as “a technology system and associated software applications ... that riders use to connect to independent, third-party transportation providers”: Response to Complaint, p. 4.

there is no discrimination in violation of the *Code: Klewchuk v. City of Burnaby (No. 6)*, 2022 BCHRT 29 at para. 401.

## **B. Justifying Discrimination**

[13] Uber argues that any adverse impacts on Mr. Bauer are justified because it has acted in compliance with BC’s licensing requirements intended to address wheelchair accessibility. Specifically, Uber says that:

- It does not provide wheelchair accessible trips because of choices that the BC Legislature made about regulating ride-hailing companies. Under the BC *Passenger Transportation Act* and *Passenger Transportation Regulation [Regulation]*, ride-hailing companies, like Uber, are required to pay a “per-trip fee” for passenger trips taken in non-accessible vehicles [the **per-trip fee**].<sup>5</sup>
- The BC Legislature decided that ride-hailing companies would pay the per-trip fee instead of providing wheelchair accessible services. As a result, Uber pays the per-trip fee instead of providing wheelchair accessible services.
- It would be a conflict of laws if the *Passenger Transportation Act* and *Regulation* set up a per-trip fee in lieu of providing accessible services, but the Tribunal determined that this setup violated the *Code*.

[14] The Attorney General of BC [**Attorney General**] is a party in this matter for the purpose of addressing Uber’s argument that the *Passenger Transport Act* and *Regulation* conflict with the *Code: BC Administrative Tribunals Act*, s. 46.1(3) to (8). The Attorney General says that the per-trip fee is not in lieu of wheelchair accessible services, but to encourage ride-hailing companies to provide a wheelchair accessible option. The Attorney General also says that there is no conflict between the *Passenger Transportation Act*, *Regulation*, and the *Code*. In the event of a conflict, the parties agree that the *Code* prevails.

[15] Uber can prove that its adverse impacts on Mr. Bauer are justified by showing that:

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<sup>5</sup> Section 24.1(2) of the *Passenger Transportation Regulation*, as it read at the material time, required Uber to pay \$0.30 cents for each non-accessible trip.

- a. it adopted a non-wheelchair accessible service standard for a purpose or goal rationally connected to its function;
- b. it adopted its non-wheelchair accessible service standard in an honest and good faith belief that it was necessary to fulfill the purpose or goal; and
- c. its non-wheelchair accessible service standard is reasonably necessary to accomplish its purpose or goal in the sense that Uber cannot accommodate wheelchair users without incurring undue hardship.

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

[16] In summary, I need to determine whether Mr. Bauer has met the criteria to prove discrimination. If he does, I then need to determine if Uber has met the criteria to prove that the discrimination was justified.

[17] Because I find that Uber discriminated against Mr. Bauer without justification, I then go on to consider Uber’s alternate argument that the *Passenger Transportation Act* and *Regulation* conflict with the *Code*. I do not find that there is conflict between these laws, and I conclude this decision by considering the remedies requested by Mr. Bauer.

[18] Before I address the substance of this complaint, I first address Uber’s post-hearing application to introduce new evidence.

#### **IV APPLICATION TO ADMIT NEW EVIDENCE**

[19] The new evidence proposed by Uber is an affidavit of Yanique Williams, sworn on February 6, 2023 [**the new evidence**]. Ms. Williams’ affidavit contains two exhibits:

- Exhibit “A” is a press release dated February 1, 2023 issued by the BC Ministry of Transportation and Infrastructure [**Ministry**], titled “New funding supports more accessible taxis” [**press release**]. The press release includes a link to a Ministry of Transportation webpage titled “Passenger Transportation Accessibility Program” [**webpage**].
- Exhibit “B” is the web page from the link in the press release.

[20] Uber says that the press release was unavailable at the hearing in September, 2022, because the Ministry did not issue it until February 1, 2023. Uber argues that this new evidence is necessary and relevant to a determination of Mr. Bauer’s complaint because it speaks to the per-trip fees and how it relates to Mr. Bauer’s concerns about the state of taxi services: Uber’s application at p. 7, Step 5.

[21] Mr. Bauer opposes Uber’s application for two reasons. First, the parties have already made closing submissions and the Tribunal needs to “draw a line” in order to move forward with a final decision. Second, Uber seeks to introduce evidence of facts occurring after the date range of alleged discrimination: Mr. Bauer’s application response, para. 2.

[22] The Attorney General takes no position on Uber’s application to introduce this new evidence.

### **A. Legal principles**

[23] The Tribunal has the jurisdiction to consider new evidence if it is necessary and appropriate in the circumstances: *Code*, s. 27.2(1); *Belusic obo Canadian Federation of the Blind v. City of Victoria (No. 4)*, 2022 BCHRT 2, paras. 35-46; *CUPE, Local 873 v. B.C. (Minister of Labour and Citizens’ Services) and WCB*, 2007 BCHRT 73, para. 29. Evidence is necessary and appropriate when it will help the Tribunal to resolve an issue it must decide: *Belusic*, para. 20; *Tran and Aggoune v. Mansoor and another*, 2022 BCHRT 8, paras. 13-14; *CUPE*, paras. 30-32.

[24] The Tribunal has also considered whether:

- the party could have, with reasonable diligence, obtained the new evidence within the usual timeframe to do so: *Belusic*, para. 44; *Jhaj v. Weyerhaeuser Co.*, 2006 BCHRT 364, para. 14; and
- there is prejudice to another party, because that party cannot test that new evidence through cross-examination or make further submission on the new evidence: *Hale v. University of British Columbia Okanagan (No. 5)*, 2023 BCHRT 121, paras. 380-381; *Rodriguez and others v. Coast Mountain Bus Company and another (No. 3)*, 2008 BCHRT 427, para. 31; *Jhaj*, para 15.

## **B. Application of the legal principles**

[25] I agree with Uber that the new evidence is necessary and appropriate. I appreciate that this new evidence is not within the date range of discrimination alleged by Mr. Bauer. Even so, the new evidence sheds light on: the intention, purpose, and use of the per-trip fees; and the relationship between the per-trip fee, wheelchair accessible services, and taxis. These are issues in dispute that I need to address.

[26] The new evidence emerged in February 2023, well after the hearing in September 2022. There is nothing Uber could have done to obtain the evidence for the hearing. Uber was reasonably diligent in obtaining the new evidence as soon as it became available – in the midst of the parties filing their written closing submissions. Mr. Bauer and the Attorney General had the opportunity to make full submissions on Uber’s application to introduce the new evidence. In my view, neither of them are prejudiced by the new evidence. For these reasons, I allow Uber’s application to introduce the new evidence, and I will consider it in this decision.

## **V BACKGROUND**

[27] Uber says that it doesn’t provide wheelchair accessible services because of the way it is regulated in BC. Therefore, I begin by setting out how Uber is regulated in BC.

### **A. The Regulatory Framework**

[28] Uber is regulated by the *Passenger Transportation Act* and *Passenger Transportation Regulation*. The *Passenger Transportation Act* and *Regulation* regulate individuals and companies that operate commercial passenger vehicles in BC. Under the *Passenger Transportation Act*, commercial transportation vehicle operators must have a licence.

[29] There are two types of licences under the *Passenger Transportation Act*. One license requires general authorization, which is assessed by the Registrar of Passenger Transportation: *Passenger Transportation Act*, ss. 24 and 25. The other type of licence requires special authorization. Where a special authorization licence is required, the Passenger Transportation



Board is the body which makes the assessment: *Passenger Transportation Act*, s. 26(1). Ride-hailing services require a special authorization license: *Passenger Transportation Act*, ss. 1 and 26.

[30] Under the *Passenger Transportation Act*, ride-hailing services are called “transportation network services,” or “TNS” for short. Transportation network services are defined as services “respecting the connection of drivers of passenger directed vehicles with passengers who hail and pay for the services through the use of an online platform”: *Passenger Transportation Act*, s. 1. There is no question that Uber provides “transportation network services” as defined in the *Passenger Transportation Act*, and more commonly referred to as “ride-hailing services.”

[31] To provide ride-hailing services in the Lower Mainland (Region 1) in BC, Uber was required to apply to the Passenger Transportation Board for a special authorization license: *Passenger Transportation Act*: ss. 23.1, 24, and 26. Uber applied for a license on September 3, 2019. At that time, ride-hailing was new.

[32] In September 2019, specific amendments to the *Passenger Transportation Act* and *Regulation* came into force to enable the licensing and regulation of ride-hailing services in BC. The regulation of ride-hailing services in BC came after provincial consultation with experts and stakeholders, such as disability advocacy organizations, taxi associations, and ride-hailing companies operating elsewhere in Canada. The consultation process resulted in several reports summarizing the consultation results and recommendations for ride-hailing regulation.<sup>6</sup>

## **B. Uber’s license**

[33] On January 23, 2020, the Passenger Transportation Board approved Uber’s application for a license to operate in the Lower Mainland. That approval was set out in a published,

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<sup>6</sup> The reports include, a February 2018 Select Standing Committee report entitled “Transportation Network Companies in British Columbia” [the 2018 TNC Report], a June 2018 report entitled “Modernizing Taxi Regulation” by Hara Associates [the 2018 Hara Report], and a March 2019 Select Standing Committee report entitled “Transportation Network Services: Boundaries, Supply, Fares and Drivers’ Licences” [the 2019 TNS Report]: Exhibit 1 at C5, C6, and C9.

written decision and was subject to certain terms and conditions [**Passenger Transportation Board Decision**]: [www.ptboard.bc.ca/decisions/2023/tns6988-19](http://www.ptboard.bc.ca/decisions/2023/tns6988-19).

[34] In its decision, the Passenger Transportation Board explained that it would apply s. 28 of the *Passenger Transportation Act* to determine Uber’s application for a license. Section 28 sets out three criteria for the Passenger Transportation Board to consider:

- a. Is there a public need for the service proposed?
- b. Is the applicant “fit and proper” and capable of providing the service?
- c. Does the application promote sound economic conditions in the passenger transportation business in BC?: Passenger Transportation Board Decision at para. 5.<sup>7</sup>

[35] The Passenger Transportation Board determined that Uber met the criteria set out in s. 28 of the *Passenger Transportation Act*. As a result, it approved Uber’s application for a license, subject to terms and conditions. Those terms and conditions are set out in appendices to the Passenger Transportation Board Decision. Under the terms and conditions of its license, Uber is not required to provide wheelchair accessible vehicles, but must meet specific conditions if it does: Passenger Transportation Decision, Appendix 4.

[36] In its decision, the Passenger Transportation Board explained that it was not going to require Uber to have the same accessibility requirements as taxis:

[122] Uber maintains that it has facilitated barrier-free transportation for passengers with disabilities in other jurisdictions and referred to the voluntary per-trip accessibility surcharges which it has agreed to pay in other cities to ensure wheelchair accessible services. Uber states that it has experience facilitating wheelchair accessible vehicle trips in Toronto where such vehicles can be requested through the Uber app [...].

[123] The Regulation requires Uber to pay a \$0.30 per trip fee to the government to be used for accessibility programs, which was a

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<sup>7</sup> Section 28 of the *Passenger Transportation Act* has since been amended.

recommendation made in the 2019 TNS Report to offset the fact that TNCs do not provide wheelchair accessible services. The Board considers this to be sufficient. This approach was also taken in Ottawa, Winnipeg and Waterloo and was also an option recommended in the 2018 TNC Report.

[37] In my view it is important to consider the Passenger Transportation Board decision in context.

### **C. Uber's license in context**

[38] The Passenger Transportation Board accepted that there are significant differences between the taxi industry structure, and Uber's model as a ride-hailing company: Passenger Transportation Board Decision, paras. 30-31. The Passenger Transportation Board rejected the contention that ride-hailing companies should be treated exactly like taxis. It pointed out that the *Passenger Transportation Act and Regulation* does not regulate taxis and ride-hailing companies in the exact same way: para. 32.

[39] Alive to the differences between taxis and Uber, the Passenger Transportation Board did not impose on Uber the exact same licensing requirements that may apply to taxis. For example, taxis may be subject to a fleet size cap, but the Passenger Transportation Board did not impose this cap on Uber. Instead, it:

- accepted Uber's submission that a ride-hailing business model only works when there are sufficient drivers to satisfy demand;
- found that there was no evidence to support the need for a fleet cap on Uber;
- decided that Uber's distinct business model required flexibility;
- pointed out that Uber would be required to provide data on the impact of its fleet size, which would be closely monitored;
- confirmed that it had the authority to adjust Uber's fleet cap if the circumstances warranted; and

- indicated that the requirement for Uber to provide data would facilitate evidence-based decision-making.

Passenger Transportation Board Decision, paras. 65-78.

[40] Ultimately, the Passenger Transportation Board approved Uber’s license solely on the criteria set out in s. 28 of the *Passenger Transportation Act*. In crafting the specific terms and conditions of Uber’s licence, it was grappling with a distinct, and untested transportation model in BC. It wanted to give Uber a fair opportunity to succeed in BC and decided that a traditional, one-size-fits-all approach would not accomplish that. It gave Uber more flexibility as a starting point, to support its market entry in BC. However, Uber’s license requires it to meet “rigorous” data requirements, enabling the Passenger Transportation Board to “monitor and assess Uber’s operations as they unfold and to respond where data establishes the necessity of a regulatory response”: Passenger Transportation Board Decision, paras. 78 and 125.

[41] The terms and conditions of Uber’s license are not set in stone but are adjustable depending on what the data reveals: Passenger Transportation Board Decision, para. 124. As part of its data requirements, Uber is required to provide accessible/non-accessible trip statistics: Passenger Transportation Board Decision, Appendix 3.<sup>8</sup> This requirement on Uber is mandatory under s. 28(5) of the *Passenger Transportation Act*. If Uber provides wheelchair accessible services, it must meet specific conditions under its license: Passenger Transportation Decision, Appendix 4.

[42] Uber is required to comply not only with the terms and conditions of its license but “other applicable laws”: *Passenger Transportation Act*, s. 23.1.

[43] By January 2021, Uber was aware of Mr. Bauer’s complaint. On February 12, 2021, Uber wrote to the Minister of Transportation and Infrastructure [**Transportation Minister**] to share

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<sup>8</sup> A vehicle is “accessible” under the *Passenger Transportation Act* if it can transport “persons who use mobility aids”: s. 1. A mobility aid under the *Passenger Transportation Act* means a wheelchair, scooter or other device used to facilitate the transport of a person with a disability: s. 1.

its ideas to increase access for wheelchair accessible vehicles on ridesharing platforms. Uber stated:

This may include partnerships with owners of [wheelchair accessible vehicles], including taxis, and could extend to revisiting the links between [wheelchair accessible vehicle] owner/drivers and entities with [Passenger Transportation Board] Special Authorizations. Significantly, support could involve financial arrangements to ensure drivers can accept and complete trips for riders who require a [wheelchair accessible vehicle] - that is, to assist both their purchase and ongoing maintenance of [wheelchair accessible vehicles], as well as making it financially attractive to provide trips.

[...] we think that the best use of the \$0.30/trip accessibility fee the provincial government is collecting from Transportation Network Services (TNS) would be for it to go to enabling access to [wheelchair accessible vehicles] via our platform to enable riders requiring [wheelchair accessible vehicle] trips to do so via the Uber app in Vancouver [Lower Mainland]. Access to [wheelchair accessible vehicles] via the Uber app in Toronto and many other cities has meaningfully improved access for people with ambulatory disabilities: Exhibit 2, R15.<sup>9</sup>

[44] The Transportation Minister replied to Uber on March 25, 2021, stating:

The Passenger Transportation Board will be assessing data on how many trips are taken in accessible vehicles to help its evidence-based decision making, and we will continue to work with the accessibility community to improve and expand transportation options. In your e-mail you suggest that the money collected from transportation network services to promote accessibility could be used to help Uber connect Vancouver travelers with wheelchair accessible vehicles. I have shared your idea with the teams involved in our work to expand accessible transportation: Exhibit 2, R17.

[45] On July 21, 2022, Mr. Bauer wrote to the Registrar of Passenger Transportation [Registrar]. Mr. Bauer asked why ride-hailing companies were allowed to operate without providing wheelchair accessible services and pay the per trip fee in lieu: Exhibit 1, C2.

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<sup>9</sup> Uber had shared similar information with the Minister's predecessor in a letter on September 30, 2019: Exhibit 2, R14.

[46] The Registrar replied to Mr. Bauer on September 7, 2022, with the following information:

- ride-hailing companies are required to pay the per-trip fee for each non-accessible trip.
- The per trip fee is part of the ride-hailing licencing fee as set out under s. 29(1)(e) of the *Passenger Transportation Act*, and s. 24.1(2) of the *Passenger Transportation Regulation* [**Regulation**].
- Fees collected under the *Passenger Transportation Act*, including the per-trip fee, are public money that go into “the consolidated revenue fund.”
- Ride-hailing companies must also comply with all applicable laws, not just those in the *Passenger Transportation Act* and *Regulation*.

Exhibit 1, C2.

[47] In a press release on February 1, 2023, the Transportation Minister announced the launch of the Passenger Transportation Accessibility Program, funded by the revenues collected from the per-trip fee. The press release explains that the Passenger Transportation Accessibility Program will be used to “help offset the extra costs that taxi owner-operators face in providing wheelchair-accessible vehicles, which will help to increase the number of accessible taxis available”: Affidavit of Yanique Williams, Exhibit A, p. 4-5.

[48] The Transportation Minister also sheds a retrospective light on the purpose of the per-trip fee:

The per-trip fee was created to offset the regulatory costs and impacts of enabling ride-hailing operations, and to help alleviate the impact that ride hailing has on the availability of wheelchair-accessible vehicles. Unlike ride-hailing companies, taxi companies may be required as part of their operating licence to reserve a portion of their fleet for accessible vehicles: Affidavit of Yanique Williams, Exhibit A, p. 6.

[49] Against this regulatory backdrop, I return to the question of whether Uber has discriminated against Mr. Bauer. If so, I then need to determine whether Uber has a justification for this discrimination. I address these issues next.

## **VI ANALYSIS**

[50] As I have said, the burden is on Mr. Bauer to prove that: he has a disability protected by the *Code*; Uber provides services within the meaning of the *Code*; he was adversely impacted in connection with Uber’s services; and his disability was a factor in the adverse impact(s): *Moore*, para. 33.

[51] I begin with the protected characteristic of physical disability.

### **A. Mr. Bauer has a disability protected by the *Code***

[52] Uber does not dispute that Mr. Bauer has a physical disability protected by the *Code*. Mr. Bauer is a wheelchair user, and it is uncontroversial that he is protected from discrimination under the *Code* based on physical disability.

### **B. Was Uber providing a “service” to Mr. Bauer within the meaning of the *Code*?**

[53] A service within the meaning of s. 8 of the *Code* means: a service, customarily available, and customarily available to the public: *Code*, s. 8; *British Columbia v. Crockford*, 2006 BCCA 360, para. 78. The Tribunal must first identify the service in question, and then determine whether that service gives rise to a public relationship between the service provider and the service user: *Phillips v. BC Ministry of the Attorney General*, 2019 BCHRT 76, para. 12, citing *Gould v. Yukon Order of Pioneers*, [1996] 1 SCR 571, para. 58.

[54] Uber says that s. 8 of the *Code* is not engaged in this case because it does not perform transportation services itself. Instead, Uber says that it provides an app through which riders can request rides from independent drivers. Uber does not directly own or operate vehicles to transport riders or employ people to drive vehicles using its “technology system”: Uber

Response, p. 5. Uber argues that it merely provides the technology for passengers to request service from an independent transportation provider: Uber Response at pp. 5-6 and 9; closing submission, paras. 47-49.

[55] Mr. Bauer argues that Uber provides publicly available transportation services. He points out that Uber obtained its license through the Passenger Transportation Board. In his words:

The Passenger Transportation Board licenses transportation companies, it does not license software companies. They do not license Google maps and they do not license the word processor and the accounting software used in [taxi company] office[s]: closing submission, para. 33.

[56] Mr. Bauer relies on a US decision, *Equality Rights Center v. Uber Technologies, Inc., et al., Equal Rights Ctr. v. Uber Techs.*, 525 F. Supp. 3d 62 (D.D.C. 2021), to support his argument that Uber provides transportation services falling within the scope of s. 8 of the *Code*.

[57] For reasons that follow, I agree with Mr. Bauer that Uber provides transportation services within the meaning of s. 8 of the *Code*. First, I address Uber's use of independent contract drivers. Then, I address Uber's argument that it only provides the technology for passengers to request a service with a transportation provider.

*1. Uber's use of independent contractors*

[58] Uber submits that all it provides is an app through which passengers can request service from independent drivers. Uber points out that it does not directly own or operate the vehicles used for ride-hailing. Drivers are independent contractors who decide whether or not to sign up and drive with Uber: Uber Response at pp. 5-6 and 9; closing submission, paras. 47-49.

[59] In its response to Mr. Bauer's complaint, Uber says that the ability of passengers to request a service through Uber is not a "service" within the meaning of the *Code*: Response at pp. 5-6 and 9. In its closing submission Uber emphasizes that Uber drivers may use their vehicles for other purposes than giving Uber rides: paras. 47-49.



[60] In my view, nothing turns on the fact that Uber drivers are independent contractors, using their own vehicles. I explain why next.

[61] The issue of contract drivers has been considered by the Tribunal in the context of taxi companies. In *Johnson v. AC Taxi and Williams (No. 2)*, 2008 BCHRT 242, Mr. Johnson filed a complaint against AC Taxi and a taxi driver with respect to how he was treated by the taxi driver. The Tribunal determined that AC Taxi was liable for the conduct of the taxi driver even though the driver was a contractor and AC Taxi did not own the taxi vehicle. In arriving at this determination, the Tribunal in *Johnson* took into account that:

- The term “employment” with respect to the relationship between a company and an independent contractor, should be interpreted broadly, consistent with the purposes of the *Code*;
- AC Taxi had an intimate and day-to-day relationship with the owner/operators of the vehicles and drivers through AC Taxi’s dispatch service;
- taxi drivers were required to take training through AC Taxi;
- AC Taxi kept track of all the trips for each driver;
- AC Taxi was the point of contact for taxi complaints; and
- all of the taxi drivers operate under AC Taxi’s name and colours: at paras. 90-94.

[62] I find the considerations in *Johnson* helpful and applicable here. On a broad interpretation, consistent with the purposes of the *Code*, Uber is responsible for the services provided by the vehicle owner/operators it contracts because:

- Uber drivers must agree to contract terms and conditions set out by Uber, including Uber’s Community Guidelines.
- Uber has an intimate and day-to-day relationship with its drivers through its app. This includes the app tracking and recording every Uber trip.
- Uber provides driver support, through its driver support centre.
- Uber drivers are subject to screening, monitoring, investigations, and vehicle inspections by Uber.

- Uber can discipline drivers by suspending or deactivating driver access to the app.
- Uber keeps track of all driver trips.
- Uber is the point of contact for complaints about Uber drivers and Uber trips.
- Uber drivers operate under Uber’s name and license. Each vehicle must display this information. Each driver’s photo along with the make, model, colour, and plate of the driver’s car are provided in Uber’s app.

Passenger Transportation Board Decision, paras. 43-44 and Appendix 1.

[63] Like taxi companies, Uber is not shielded from liability under the *Code* because it relies on vehicles owned and operated by contractors.

2. *Is the ability to “request service” a service within the meaning of the Code?*

[64] I have also considered Uber’s argument that all it provides is the technology to enable passengers to request service by a “transportation provider”: closing submission, paras. 48-49. It says that the ability to request a service is not a service within the meaning of the *Code*: Response, pp. 5-6 and 9. I do not accept this argument and will explain why next.

[65] I am not aware of any Canadian human rights cases squarely addressing Uber’s services. In this context, it’s unsurprising that the only human rights-oriented case that the parties put before me about this issue is a United States District Court decision, *Equality Rights Center v. Uber Technologies, Inc., et al., Equal Rights Ctr. v. Uber Techs.*, 525 F. Supp. 3d 62 (D.D.C. 2021), decided by Justice Brown Jackson (as she was then) [**US Decision**].<sup>10</sup> I have reviewed the US Decision and agree with Mr. Bauer that Justice Brown Jackson’s assessment of Uber’s services is helpful.

[66] In that case, the Equality Rights Center brought a claim under American human rights legislation on behalf of wheelchair users. The Equality Rights Center alleged that Uber “systematically discriminates” against wheelchair users because wheelchair users pay more and

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<sup>10</sup> Justice Brown Jackson is now a justice on the Supreme Court of the United States.

wait longer for Uber’s services than other passengers: p. 1. The US Decision does not address the merits of the Equality Rights Center’s allegations. Instead, the Court addressed Uber’s motion to dismiss the Equality Rights Center’s claim. Uber argued, in part, that the claim should be dismissed because Uber is not an entity actually conveying passengers from place to place: p. 31. This is similar to the argument that Uber makes in this case: that it merely offers technology to connect passengers to a “transportation provider.”

[67] In the US Decision, Justice Brown Jackson rejected Uber’s argument finding that Uber advertises its service as having “[t]ap a button, get a ride” convenience, and that description indisputably involves providing transportation to the general public “on a regular and continuing basis”: p. 36.

[68] Justice Brown Jackson also rejected Uber’s argument, in that case, that its services were akin to “Expedia.com” – a website that helps users find hotel rooms:

Companies like Expedia.com merely *facilitate* hotel reservations; they do not supply hotel rooms, much less set the underlying prices, and ‘hotels can cease offering rooms through [Expedia.com] at any time’ [...]. By contrast, Uber’s drivers are part of the Uber workforce, and they operate within a market that Uber itself created; Uber drivers do not exist independent of Uber’s app, and this Court is hard-pressed to imagine how Uber drivers could continue to operate without the Uber app (or a competitor’s service). Uber also controls the pricing of its drivers’ services, and it allegedly asserts far more control over its drivers than any traditional brokering service has over the relevant service providers. Thus, based on the allegations in [Equality Rights Center’s] complaint, Uber is much more than a mere “conduit” between riders and drivers [emphasis is original]: *Equality Rights Center v. Uber* at pp. 37-38.

[69] I find Justice Brown Jackson’s analysis persuasive here. In this case, Uber advertises itself as “always the ride you want” allowing “riders to hail a vehicle-for-hire in minutes using their smartphones”: Exhibit 1, C1 at p. 4; Passenger Transportation Board Decision, para. 12. These descriptions show Uber advertising for and providing passenger transportation services.

[70] I also agree with Justice Brown Jackson’s reasoning that Uber is not simply a referral source for transportation services. It appears that the nature of Uber’s services in BC are no different than what Justice Brown Jackson describes in the American context. Uber drivers in BC are part of Uber’s workforce, and they operate within a market that Uber itself created. Uber drivers do not exist independent of Uber’s app. Uber controls the pricing of its drivers’ services, and I find that Uber exerts significant control over its drivers, including: inspecting driver vehicles; tracking and recording every Uber trip; disciplining drivers; and fielding customer complaints about drivers.

[71] Further, it is Uber who obtained the licence to operate passenger transportation services in BC, not the individual drivers. Uber obtained the license through the Passenger Transportation Board by demonstrating that it is the “fit and proper person” to provide the passenger transportation services it advertises: Passenger Transportation Board Decision, paras. 36-55. Uber satisfied the Passenger Transportation Board that it is the “fit and proper person” to provide the services in part because Uber demonstrated that it could “... provide care and control of its drivers and vehicles and the management resources to provide ride hailing services”: Passenger Transportation Board Decision, para. 55.

[72] Uber’s ride-hailing services are less akin to a technology service, like Expedia.com, and more akin to taxi services. In this regard, I do have BC human rights cases to draw from. Uber’s argument shares similarities with the argument that AC Taxi made in *Johnson*. In that case, AC Taxi argued that it was just a “dispatch service” and therefore not responsible for the service provided by the contracted taxi driver. The Tribunal in *Johnson* rejected AC Taxi’s argument reasoning that Mr. Johnson contacted AC Taxi for a ride, not the taxi driver: “He was seeking a service from AC Taxi, and it is AC Taxi that chose the person to deliver that service”: para. 94.

[73] I find that reasoning applicable here. Uber chooses which drivers and vehicles meet Uber’s standard to deliver passenger transportation services in Uber’s name and under Uber’s license. Then, passengers contact Uber - not the driver - for a ride. Turning to the specific facts in this case, Mr. Bauer contacted Uber, through its app, for a wheelchair accessible ride. He did not contact any specific driver in an attempt to secure a wheelchair accessible ride.

[74] In my view, nothing turns on the fact that Mr. Johnson contacted AC Taxi by phone, and Mr. Bauer contacted Uber by its app. In both cases passengers were seeking a ride from companies offering passenger transportation services for a fee. While Uber and taxi companies have different business models, both are in the passenger transportation business and regulated as such. For these reasons, I find that Uber, like taxi companies, provides a transportation service and not merely technology to connect to a transportation service.

3. *Does Uber provide a service that is customarily available to the public?*

[75] While Uber disputes that it provides transportation services, it does not dispute that it offered its services to “the general public”: closing submission, para. 49. I find that Uber provides a service that is customarily available to the public, within the meaning of s. 8 of the *Code*. I make this finding for two reasons.

[76] First, Uber’s services are akin to taxi services in the sense that both provide passenger transportation services to the public via hailing. The Tribunal has determined that taxi services provide a service that is customarily available to the public: *Dewdney v. Bluebird Cabs Ltd.*, 2003 BCHRT 7, para. 10; *Holland and Jack v. Prince George Taxi and Kuuluvainen*, 2005 BCHRT 317, paras. 22-28; *Johnson v. AC Taxi and Williams (No. 2)*, 2008 BCHRT 242, paras. 85-94; *McCreath v. Victoria Taxi*, 2015 BCHRT 153, para. 29 (affirmed in *McCreath v. Victoria Taxi (1987) Ltd.*, 2017 BCCA 342).

[77] Second, Uber could not obtain a licence to operate in BC without demonstrating a public need for Uber’s services: Passenger Transportation Board Decision, paras. 23- 35. Uber could not have met the “public need” criteria unless it was providing a service customarily available to the public in BC.

4. *Conclusion on Uber’s services*

[78] To summarize, the Tribunal determines whether a service falls within s. 8 of the *Code* by identifying the service in question, and then determining whether that service gives rise to a public relationship between the service provider and the service user: *Phillips*, para. 12. In this case I have found that Uber provides a transportation service. Uber’s use of specific technology

and contract drivers to deliver its services does not change the nature of Uber's services. Uber provides transportation services to the public, within the meaning of s. 8 the *Code*.

### **C. Was Mr. Bauer adversely impacted in connection with Uber's services?**

[79] Mr. Bauer says that Uber has adversely impacted him in two ways. First, he has been adversely impacted in being unable to access Uber's ride-hailing services. Second, he says that Uber's existence in BC has jeopardized his access to wheelchair accessible taxis. Uber does not dispute that Mr. Bauer, as a wheelchair user, is unable to access Uber's services. Uber does dispute that its services have adversely impacted Mr. Bauer's access to wheelchair accessible taxis.

[80] For the reasons that follow, I find that Mr. Bauer's inability to access Uber's services is an adverse impact. However, I do not find that Uber is responsible for any adverse impact it may have on Mr. Bauer's access to taxis. Therefore, it is unnecessary for me to make any factual findings about whether Uber operating in BC has adversely impacted Mr. Bauer's taxi access. I will explain my reasons next.

#### *1. Lack of wheelchair accessible vehicles through Uber and adverse impact*

[81] Determining whether a complainant has experienced an adverse impact in services is assessed contextually, consistent with the purposes of the *Code*, including substantive equality aims: *Code*, s. 3; *Miele v. Patt Quinn's Restaurant and Bar*, 2019 BCHRT 13, para. 38, *Kovacs v. City of Maple Ridge (No. 2)*, 2023 BCHRT 158, paras. 173-176. The Tribunal has specifically considered the context of a person unable to access a service because that service, by its very design, excludes them. In these circumstances, the Tribunal has determined that it is the design of the services itself that causes the adverse impact: *Miele*, para. 39; *Kovacs*, paras. 175-176.

[82] Uber's services, by design, exclude Mr. Bauer. While others in BC have celebrated their long-awaited access to Uber's ride-hailing service, Mr. Bauer does not have access to that service. The absence of a wheelchair accessible option through Uber limits Mr. Bauer's ability to

take part in aspects of life in BC on an equal footing with others. This is an adverse impact: *Kovacs* at para. 176.

## 2. *Wheelchair accessible taxis and adverse impact*

[83] Mr. Bauer also argues that Uber is adversely impacting access to wheelchair accessible taxis. The core of Mr. Bauer's argument is that Uber's entry into the BC market means there are proportionately less wheelchair accessible vehicles on the road: closing submission, paras. 80-81.

[84] Uber disputes that it has adversely impacted wheelchair accessible taxis. Uber also says that even if it did have an adverse impact on wheelchair accessible vehicles for hire, that adverse impact is not connected to a service that Uber provides. On this allegation, I agree with Uber.

[85] Even if Mr. Bauer proved that Uber's entry in the market adversely impacted his access to wheelchair accessible taxis, Uber could not be held liable under the *Code* for that impact. Section 8 of the *Code* prohibits discrimination in the area of services. This obligates a service provider to provide its services in a non-discriminatory manner. This means that Uber is required to provide **its** passenger transportation services in a non-discriminatory manner. The *Code* does not require Uber to address other possible social inequities outside of the services it provides: *Vik v. Finamore (No. 2)*, 2018 BCHRT 9, paras. 57-59; *Rutherford v. Strata Plan VS 170*, 2019 BCHRT 227, para. 22.

[86] Mr. Bauer's concern about wheelchair accessible taxis is valid and important. His concern is supported by passenger transportation stakeholders and experts.<sup>11</sup> However, I cannot hold Uber responsible for the state of wheelchair accessible taxis in BC. Uber's human rights obligations under s. 8 of the *Code* start and end with the services it provides.

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<sup>11</sup> See, for example: the 2018 TNC Report, pp. 12-13; the 2019 TNC Report, pp. 34-35; the 2018 Hara Report, p. 9; Passenger Transport Board, "Wheelchair Accessible Transportation by Taxi and Inter-city Bus in British Columbia: Update 2017" (September, 2017): Exhibit 1, C14.

#### **D. Was Mr. Bauer’s disability a factor in the adverse impacts he experienced?**

[87] There is no question that Mr. Bauer faces a disability related-adverse impact with respect to Uber’s services. He is unable to access Uber’s services because he is a wheelchair user and Uber does not offer wheelchair accessible services.

[88] In sum, Mr. Bauer has met all of the criteria to prove discrimination. The burden shifts now to Uber to justify its lack of wheelchair accessible services.

#### **E. Can Uber justify its lack of wheelchair accessible services?**

[89] To justify its lack of wheelchair accessible vehicles, Uber must prove:

- a. it adopted a non-wheelchair accessible service standard for a purpose or goal rationally connected to its function;
- b. it adopted its non-wheelchair accessible service standard in an honest and good faith belief that it was necessary to fulfill that purpose or goal; and
- c. its non-wheelchair accessible service standard is reasonably necessary to accomplish its purpose or goal in the sense that Uber cannot accommodate wheelchair users without incurring undue hardship: *Grismer*, para. 20.

[90] Next, I address whether Uber has met the three-step *Grismer* criteria.

1. *Did Uber adopt a non-wheelchair accessible service standard for a purpose or goal rationally connected to its function?*

[91] The “standard” adopted by Uber is to not offer wheelchair accessible services in the Lower Mainland. Uber argues that this standard is rationally connected to its function as a ride-hailing company: closing submission, para. 62. Uber’s function as a ride-hailing company is not controversial. However, Uber has not set out what purpose or goal is served by its non-wheelchair accessible service standard.

[92] Whether a goal is “rationally connected” to a service provider’s function can only be assessed in relation to a defined purpose or goal: *Grismer*, para. 24. A service provider may



choose its purpose or goal, so long as that choice is legitimate or valid: *Grismer*, para. 21; *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 SCR 3 [*Meiorin*], para. 59. Assessing the legitimacy of a standard's purpose ensures that a standard does not have a discriminatory foundation: *McGill University Health Centre (Montreal General Hospital) v. Syndicat des employés de l'Hôpital général de Montréal*, [2007] 1 SCR 161, para. 14. A legitimate purpose or goal is a reasonable one: *Grismer*, para. 26. In *Grismer*, the Court found that the Superintendent of Motor Vehicles had a legitimate goal of "reasonable safety": para. 27. The assertion of a "risk" to safety alone, or a goal of "absolute" safety would not have been legitimate or reasonable goals: *Grismer*, para. 25-27.

[93] Where a service provider has chosen and defined a legitimate purpose or goal, there must be a "rational connection" between the purpose of the standard and the function of the service provider: *Grismer*, para. 28; *Meiorin*, paras. 57-59. In *Grismer*, the Court determined that the Superintendent of Motor Vehicles' goal of reasonable safety was "rationally connected" to its function of issuing licenses. The Court found that "common sense and experience" tells us that reasonable safety is rationally connected to the function of licensing drivers: paras. 26-28.

[94] A service provider is entitled to set its own service standards in furtherance of a legitimate purpose or goal: *Grismer*, para. 21. The standard should not be higher than necessary, irrelevant to the purpose served, or arbitrarily exclude a class of people: *Grismer*, para. 21. Service providers have a duty to design standards inclusively: *Klewchuk*, para. 402; *Meiorin*, paras. 41-42 and 50; *Grismer*, paras. 19 and 22.

[95] Given these principles, I begin by assessing the purpose or goal of Uber's non-wheelchair accessible design. Then I assess whether Uber's goal is rationally connected to its ride-hailing function.

#### **i. What was Uber's goal?**

[96] Based on the evidence, I find that Uber's goal in adopting a non-wheelchair accessible service standard was to avoid any additional costs in offering this option. Uber seeks instead to

have the BC Government subsidize a wheelchair accessible option through Uber's app, by way of the per-trip fees that the government has collected from Uber.

[97] To make a finding about Uber's goal, I have relied on Uber's communications to the Transportation Ministry.

[98] In its September 30, 2019 letter to the Transportation Minister, Uber stated that:

Typical ridesharing vehicles can enhance accessibility by transporting people with service animals, collapsible wheelchairs, and other folding devices; however, most drivers don't own or have access to wheelchair-accessible vehicles with a lift or a ramp to accommodate people who use non-folding wheelchairs, scooters, or other large assistive devices. Given that, Uber has in other cities around the world has been involved with other methods to increase access to [wheelchair accessible vehicles] on the platform. This has included a range of partnerships with owners of [wheelchair accessible vehicles], as well as financial arrangements to ensure drivers can accept and complete trips for riders who require a [wheelchair accessible vehicle]. Access to [wheelchair accessible vehicles] via the Uber app in Toronto and many other cities has meaningfully improved access for people with ambulatory disabilities: Exhibit 2, R14 at p. 1.

[99] In this letter, Uber indicates that "in other jurisdictions" it is typically able to access the funds collected by the per-trip fee to address the additional costs of increased access to wheelchair accessible vehicles: Exhibit 2, R14.

[100] In its February 12, 2021 letter to the Transportation Minister, Uber reiterated its concerns about the costs of offering wheelchair accessible services: Exhibit 2, R15 at p. 1. Uber proposed that the per-trip fees collected by the BC Government were best used to fund wheelchair accessible vehicles through Uber app: Exhibit 2, R15 at p. 2. Uber again pointed to its ability to offer a wheelchair accessible option through its app in Toronto and "many other cities": Exhibit 2, R15 at p. 2.

[101] In sum, I have found that Uber adopted a non-wheelchair accessible standard to avoid any costs associated with offering a wheelchair accessible option. Instead, Uber advocated to

the BC Government for access to the per-trip fee revenue to fund its wheelchair accessible services in the Lower Mainland.

[102] As a business matter, Uber's desire to save money is understandable. However, I am not convinced that the avoidance of any cost risk is a legitimate or valid goal as contemplated in *Grismer* and *Meiorin*. The Tribunal has accepted that economic viability may be a legitimate goal: *Miele v. Famous Players Inc.*, 2000 BCHRT 5 [**Famous Players**], para. 55; *Hutchinson v. B.C. (Min. of Health)*, 2004 BCHRT 58, para. 168. However, in those cases, the Tribunal was satisfied on the evidence that there were concrete cost concerns, impacting on the viability of the service providers: *Famous Players*, para. 55; *Hutchinson*, paras. 165-168. In *MacRae v. Interfor (No. 2)*, 2005 BCHRT 462, the Tribunal questioned whether the goal of cost avoidance was sufficient to satisfy the first step of the justification criteria: para. 138.

[103] In any event, I do not have concrete evidence of Uber's cost concerns. The only evidence I have is Uber's submission to the Transportation Minister that it anticipated additional costs to offer a wheelchair accessible option. There is no evidence that Uber actually investigated what those costs might be. I do not have sufficient evidence of Uber's cost concerns, let alone evidence to show costs impacting Uber's viability in the Lower Mainland.

[104] Uber set a goal of avoiding any potential costs involved in designing a wheelchair accessible option. In my view, Uber's goal was not reasonable or legitimate because it is about the risk of costs (rather than actual costs) and seeks absolute cost avoidance. A goal that asserts risk alone or is too absolute, is not a reasonable or legitimate goal: *Grismer*, paras. 25-27; *Mortland and VanRootselaar v. Peace Wapiti School Division No. 76*, 2015 AHRC 9, para. 142.

[105] Even if I found that Uber's cost-avoidance goal was reasonable, I am not satisfied that this goal is rationally connected to Uber's ride hailing function.

**ii. Was Uber's goal rationally connected to its function?**

[106] Uber has not shown that its cost-avoidance goal is integral to its ride-hailing function. Instead, Uber's evidence is that it can and does function as a ride-hailing business while offering

wheelchair accessible vehicles via its app in Toronto and “many other cities” across North America: Exhibit 2, R15 at p. 2. Uber has not shown that its non-wheelchair accessible standard was necessary or tailored to an appropriate goal: *Grismer*, para. 21; *Haseeb v. Imperial Oil Limited*, 2018 HRTO 957, para. 133. Its service standard arbitrary excludes wheelchair users: *Grismer*, para. 21; *Haseeb*, para. 133.

[107] In these circumstances, I am not persuaded that the broad exclusion of wheelchair users for a cost-avoidance goal is “rationally” connected to Uber’s ride-hailing function.

[108] I am strengthened in this view in light of Uber’s obligation to design its services inclusively: *Klewchuk*, para. 402; *Meiorin*, paras. 41-42 and 50; *Grismer*, paras. 19 and 22.

[109] Viewed in context, Uber had an obligation to consider wheelchair accessibility in its service design. The context includes that:

- Uber was designing its services to launch in 2020;
- Uber was launching its services in one of Canada’s largest regions;<sup>12</sup> and
- Uber is a large, and well-established ride-hailing company with experience delivering wheelchair accessible services in other cities across North America.

[110] In 2007, the Supreme Court of Canada confirmed in *Via Rail* that wheelchair accessible services is the internationally accepted norm, not the exception: paras. 163 and 165. Thirteen years later, Uber designed and launched a service delivery model in the Lower Mainland that results in a broad exclusion of wheelchair users. Uber’s service standard is discriminatory on its face to a class of people who are protected from discrimination under the *Code* – including Mr. Bauer. The twin goals of preventing and remedying discrimination cannot be accomplished by the creation of new exclusionary service standards: *Via Rail*, para. 186.

[111] Uber is a large, established company with a demonstrated capacity to meet its inclusive service design obligation. I appreciate that the Lower Mainland was a new market for Uber, but

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<sup>12</sup> The Lower Mainland encompasses Vancouver which is the third largest city in Canada, and other major cities, including Surrey, Burnaby, and Richmond.

it is a large region with a large population. There are other cities in North America where Uber ensures a wheelchair accessible vehicle option through its app: Yanique Williams' September 22, 2022 written responses to cross-examination questions, p. 2.

[112] Uber has not shown that it cannot design a wheelchair accessible service option in the Lower Mainland. It has demonstrated the opposite in "many other cities" including Toronto.

[113] For these reasons, Uber has not met its burden to satisfy step one of the *Grismer* criteria. However, if I am wrong in this conclusion, I will go on to consider whether Uber has met the other two steps of the *Grismer* criteria.

2. *Did Uber adopt the standard in good faith, in the belief that it is necessary to fulfill its purpose?*

[114] I am not satisfied that Uber has met the second step of the *Grismer* criteria. Uber says it has acted in good faith by unfailingly paying the per-trip fee for each inaccessible Uber trip. However, this is not an answer to the question I need to decide. The question is not whether Uber paid the per-trip fee in good faith. Rather, the question before me is whether Uber adopted its non-wheelchair accessible service standard in good faith, **and** in the belief that this standard was necessary for Uber to meet its ride-hailing purposes. To address this question, I am guided by the following principles set out in *X v Alberta Human Rights Commission*, 2022 ABKB 659 at para. 42:

- A statement that a standard or measure was adopted in good faith may be self-serving and should be subject to some scrutiny.
- If this step in the analysis is to have any meaning, there must be some evidence to support a bare claim that a standard or measure was necessary to achieve a legitimate purpose.
- Often, the place to look for this type of evidence is in the process that led to the adoption of the standard or measure in dispute.

[115] I do not have evidence about the process that led Uber to adopt its non-wheelchair accessible standard. I do not have evidence that Uber adopted this standard in a good faith belief that it was necessary to fulfill its ride-hailing purposes.

[116] The evidence I have is Uber's submissions to the Transportation Ministry that a wheelchair accessible option will create additional costs. There is no evidence that Uber assessed the costs, or other impacts that wheelchair accessible services would have on its ride-hailing services in the Lower Mainland. In my view, this evidence is insufficient: *Haseeb*, paras. 132-133 and 135; *MacRae*, paras. 139-150; *Fenton v. Rona Revy Inc.*, 2004 BCHRT 143, para. 56. Uber has not put forward sufficient evidence to show a good faith belief that its service standard – which broadly excludes wheelchair users - was necessary to its ride-hailing purposes in the Lower Mainland.

[117] In these circumstances, I do not find that Uber has met the second step of the *Grismer* criteria.

3. *Could Uber accommodate wheelchair users without experiencing undue hardship?*

[118] Even if Uber met the first and second step of the *Grismer* criteria, I am not satisfied on the evidence that Uber has met the third step of the *Grismer* criteria. I explain why next.

[119] In this case, Mr. Bauer has been denied access to transportation services because of a physical barrier. That physical barrier is due to Uber's lack of wheelchair accessible services. Uber can only justify this barrier if it is "impossible to accommodate" Mr. Bauer without experiencing undue hardship: *VIA Rail*, para. 121.

[120] The duty to accommodate is a positive duty because it serves a core purpose of human rights law, substantive equality: *Via Rail*, paras. 122 and 183. Independent access to the same comfort, dignity, safety, and security as non-wheelchair users, is a fundamental human right for people who use wheelchairs: *Via Rail*, para. 162. In this context, the duty to accommodate means services that are equally accessible to wheelchair users, short of undue hardship to Uber: *Via Rail*, paras. 122 and 161-163.

[121] Uber argues that:

- it has reasonably accommodated Mr. Bauer and other wheelchair users by Uber's ongoing payment of the per-trip fee.
- It's the BC Legislature that decided Uber could pay the per-trip fee instead of providing wheelchair accessible services.
- Paying more than the per-trip fee would cause Uber undue hardship: closing submissions.
- Mr. Bauer did not give Uber an opportunity to accommodate him. Instead, he filed a human rights complaint within 48 hours of being unable to access wheelchair accessible services through Uber:

Uber's closing submissions, paras. 5-6, 35-41, 55-61, 64-68.

[122] I will address these arguments in turn.

**i. Has Uber reasonably accommodated Mr. Bauer and other wheelchair users by paying the per-trip fee?**

[123] The answer to this question is no for several reasons.

[124] First, I do not accept that Uber's payment of the per-trip fee is a reasonable accommodation of Mr. Bauer's needs as a wheelchair user. The per-trip fee does not address Mr. Bauer's access to Uber's services – access that non-wheelchair users have benefited from since 2020. I agree with Mr. Bauer's submission that:

Whatever the government's intentions [regarding the per-trip fee] for the future, this human rights complaint is about something that has already happened. It is about Uber's lack of wheelchair accessible vehicles from March 7, 2020 to September 15, 2022: closing submission, para. 42.

[125] It is uncontroversial that Mr. Bauer was unable to access Uber's services in the Lower Mainland, from March 7, 2020 to September 15, 2022, because he is a wheelchair user and Uber does not provide wheelchair accessible services. Uber's payment of its licensing fee, including its per-trip fee for each inaccessible trip, is no answer to Mr. Bauer's inability to access

Uber's services. The fee does not in anyway address Mr. Bauer's access to Uber's ride hailing services.

[126] Uber's compliance with its licencing requirements, as set out by the Passenger Transportation Board does not absolve Uber of its human rights obligations under the *Code: Han v. New Chelsea Society and another (No. 2)*, 2022 BCHRT 95, para. 125; *Miele*, paras. 43-44. Uber has an obligation to remove barriers which make its services inaccessible to Mr. Bauer and other wheelchair users, to the point of undue hardship: *Han*, para. 125. Uber does not and cannot contract out of the *Code* by simply meeting its licensing requirements to operate in the Lower Mainland.

**ii. Did the BC Legislature decide that Uber could pay the per-trip fee instead of providing wheelchair accessible services?**

[127] The answer to this question is no.

[128] I agree with the Attorney General's submission that nothing in the relevant sections of the *Passenger Transportation Act* or *Regulation* states that the per-trip fee is paid in lieu of providing wheelchair accessible trips. Section 29(1)(e) of the *Passenger Transportation Act* requires that a ride-hailing company pay the prescribed fee as part of its license. Section 24.1 of the *Passenger Transportation Regulation* sets out that the licensing fee is a flat fee plus an additional per-trip fee for each trip in a non-accessible vehicle.

[129] I accept the Attorney General's submission that the purpose of the per-trip fee is to incentivize ride-hailing companies to provide a wheelchair accessible option. The fee is only imposed on non-wheelchair accessible trips: Attorney General's closing submission at paras. 49-50. There is nothing in the *Passenger Transportation Act* or *Regulation* preventing Uber from providing a wheelchair accessible option. It has always been open to Uber to avoid the per-trip fee by investing in wheelchair accessible services.



**iii. Would Uber face undue hardship if it is required to do more than pay its per-trip fee?**

[130] Uber has not provided sufficient evidence that accommodating Mr. Bauer would cause it undue hardship. Instead, Uber has indicated that the only reason it has not spent funds on “standing up” a wheelchair accessible option is because it believes it can pay its per-trip fee in lieu: closing submission, para. 77. I have already found that the per-trip fee is not in lieu of its obligations under the *Code*. The per-trip fee is part of Uber’s licensing fee. The fee only applies to non-accessible trips to incentivize ride-hailing companies to provide a wheelchair accessible option. Uber avoids its per-trip licensing fee to the extent it provides wheelchair accessible trips. The mere fact of the per-trip fee or the Legislature’s intention in establishing it are not evidence that providing a wheelchair accessible option would cause Uber undue hardship.

[131] Uber has advocated to the BC Government for funding from the per-trip fees collected to enable wheelchair accessible services: Exhibit 2, R-14; R-15 and R-21. However, not receiving funding from the BC Government and undue hardship are not the same thing. Uber has not explained why it would face undue hardship without the government funding it has advocated for.

[132] It is Uber’s burden to show undue hardship. Without sufficient evidence to support Uber’s undue hardship argument, I cannot conclude that it would be impossible for Uber to accommodate Mr. Bauer without experiencing undue hardship.

**iv. Did Mr. Bauer give Uber a chance to accommodate him?**

[133] Uber made a decision to not offer wheelchair accessible services in the Lower Mainland. The obvious consequence of this decision is that Mr. Bauer has been unable to access Uber’s services. In Mr. Bauer’s words, Uber has “exactly zero available wheelchair accessible vehicles”: closing submission, para. 50. I agree with Mr. Bauer that the problem is not a lack of knowledge on Uber’s part but its decision to not provide services to wheelchair users: closing reply, paras. 9 and 11.

[134] Uber decided to exclude wheelchair users from its service. Uber cannot claim it did not know how this decision would impact wheelchair users like Mr. Bauer. Uber has not offered Mr. Bauer any accommodation for him to consider. Instead, Uber maintains that it is not required to accommodate Mr. Bauer because it pays the per-trip fee.

[135] I cannot find that Mr. Bauer did not give Uber the chance to accommodate him. Uber has had the opportunity to accommodate Mr. Bauer, and other wheelchair users since it decided on its service model in the Lower Mainland. It chose not to.

[136] For these reasons, Uber has not established that it was impossible to accommodate Mr. Bauer because it would have faced undue hardship to do so.

#### **v. Conclusion on Uber’s justification defence**

[137] In all of the circumstances Uber has not justified its lack of wheelchair accessible services. As such, I find that Uber’s lack of wheelchair accessible services for Mr. Bauer violates s. 8 of the *Code*.

#### **F. Does the *Passenger Transport Act and Regulation* conflict with the *Code*?**

[138] Uber says that a finding that it violated the *Code*, cannot stand because it conflicts with the *Passenger Transportation Act and Regulation*. Uber argues that:

- it would be “inconsistent” for the BC Legislature to approve the per-trip fee to address wheelchair accessible transportation, and then for this Tribunal to “punish” Uber for acting in accordance with the per-trip fee: closing submissions, para. 72.
- The per-trip fee is incompatible with the *Code* because the BC Government collects those fees and has not actually distributed those funds to increase wheelchair accessible transportation, paras. 76-78.
- If Uber didn’t have to pay the per-trip fee it would otherwise spend that fee fulfilling the *Code*’s purpose by “standing up” an Uber wheelchair accessible vehicle option: paras. 76-78.

[139] In my view there is no conflict between the *Code* and the *Passenger Transportation Act* and *Regulation*. I explain why next.

[140] As a starting point, the Tribunal does not search for a conflict between laws. Where possible, the Tribunal interprets the laws in questions so that they stand together: *Brar and others v. B.C. Veterinary Medical Association and Osborne*, 2015 BCHRT 151, paras. 455-456. Where the law in question is open to more than one interpretation, it must be interpreted consistently with human rights principles: *Via Rail*, para. 115. In this case I find that the *Passenger Transportation Act* and *Regulation* can and should be read harmoniously with the *Code*. I come to this conclusion for three reasons.

[141] First, there is nothing inconsistent about Uber paying a per-trip fee for each inaccessible trip it provides and complying with *Code*. As I said earlier, I accept the Attorney General's submission that the per-trip fee is not "in lieu" of wheelchair accessible services. This submission is consistent with the plain wording of the *Passenger Transportation Act* and *Regulation* sections at issue. All that s. 29(1)(e) of the *Passenger Transportation Act*, and s. 24.1(2) of the *Regulation* require is that Uber, as a licensee, pay a licensing fee. This includes a per-trip fee for non-wheelchair accessible trips. The licensing fee, including the per trip fee, applies to all licensees. Nothing in these sections of the *Act* or *Regulation* indicate that the licensing fee is paid in lieu of a licensee providing wheelchair accessible services. Uber has not pointed me to, and I do not see, any part of the *Act* or *Regulation* to suggest that the plain wording of these sections should be interpreted differently.

[142] Second, I do not agree with Uber that the per-trip fee is "incompatible with the *Code*." I have accepted the Attorney General's submission that the purpose of the per-trip fee is to incentivize licensees to provide wheelchair accessible services, since the per trip fee only applies to non-accessible trips. Uber is relieved of the per-trip fee to the extent it provides wheelchair accessible trips. In my view, incentivizing ride-hailing companies to provide a wheelchair accessible option is compatible with the *Code*. Whether and how the BC Government distributes the per-trip fees it has collected, does not change that the per-trip fee is compatible with the *Code*.

[143] I cannot accept Uber’s contention that its licensing fee, established by the *Passenger Transportation Act* and *Regulation*, permits it to deny services to wheelchair users. In essence, Uber asks me to recognize that it has a license to discriminate. That interpretation of the *Passenger Transportation Act* and *Regulation* would be contrary to human rights principles, including the purposes of the *Code*. Neither the *Passenger Transportation Act*, the *Regulation*, the *Code* nor any human rights principle recognizes a license to discriminate. Statutory exemptions to human rights legislation must be clear and express: *Canada (House of Commons) v. Vaid*, 2005 SCC 30, para. 81; *First Nations Child and Family Caring Society of Canada and Assembly of First Nations v. Attorney General of Canada*, 2011 CHRT 4, para. 100; *Disability Rights Coalition v. Nova Scotia (Attorney General)*, 2021 NSCA 70, para. 121. There is no clear and express exemption from the *Code*’s protections in this case.

[144] Third, there is no reason that Uber cannot comply with its licensing requirements, including the per-trip fee **and** the *Code*. Complying with *Code* is not a “punishment.” It is one of the laws that Uber is bound by as a service provider in BC. Uber is not entitled to ignore its obligations under the *Code* by virtue of complying with its licensing requirements.

[145] For these reasons s. 29(1)(e) of the *Passenger Transportation Act*, s. 24.1(2) of the *Regulation* and the *Code* stand together. There is no conflict. If there were a conflict between these laws, the *Code* would govern as a “collective statement of public policy” and an expression of fundamental, quasi-constitutional law: *Code*, s. 4; *Via Rail*, para. 115; *Vaid*, para. 81.

## **VII REMEDIES**

[146] I have found that Uber discriminated against Mr. Bauer contrary to s. 8 of the *Code*. I declare that Uber’s lack of wheelchair accessible services for Mr. Bauer was discrimination contrary to the *Code*. I order Uber to cease this contravention and refrain from committing the same or similar contravention: *Code*, s. 37(2)(a) and (b).

[147] A remedy under s. 37(2)(a) of the *Code* is available to an individual complainant to remedy systemic discriminatory practices: *Adrian v. Cooper Creek Cedar Ltd.*, 2000 CanLII 49301 (BC HRT). That is the case here. In my view, the effect of my order under s. 37(2)(a) of the *Code* is to require Uber to provide a wheelchair accessible option in the Lower Mainland: *Famous Players*, para. 79. I recognize that this order requires Uber to make substantial changes. These changes may require further consultations with BC Government and other stakeholders. On the other hand, Uber provides a wheelchair accessible service option in other jurisdictions, including within Canada. In light of these factors, I am ordering Uber to provide a wheelchair accessible service option within one year of receiving this decision.

[148] Mr. Bauer seeks three further orders:

- An order compelling Uber to provide wheelchair accessible vehicles, under s. 37(2)(d)(i) of the *Code*. Uber opposes this order as beyond the scope of what the Tribunal can order in an individual complaint.
- An order for Uber to work with him to determine the number and types of wheelchair accessible vehicles and the conditions of service under s. 37(2)(c)(i) of the *Code*. Uber opposes this order on the basis that Mr. Bauer does not have expertise in accessible design, transport system design, or the ride-hailing industry. Uber further says that there was no evidence at the hearing to base any specific requirements as to vehicles or a service standard.
- Compensation of \$100,000 for injury to his dignity, feelings, and self-respect. Uber opposed this order on the basis that it is out of proportion to the discrimination in this case.

[149] I will address the further orders sought by Mr. Bauer in turn.

#### **A. Should Uber be ordered to provide wheelchair accessible vehicles?**

[150] Mr. Bauer makes this request under s. 37(2)(d)(i) of the *Code*. Under s. 37(1)(d)(i) of the *Code*, the Tribunal may order a respondent to make available to the complainant the right, opportunity, or privilege that the complainant was denied contrary to the *Code*. In my view, an order under s. 37(1)(d)(i) is unnecessary, given my order under s. 37(2)(a) of the *Code* that Uber cease and refrain from committing the same or similar discrimination; and provide a wheelchair

accessible option in the Lower Mainland within a year. The Tribunal can and has made such specific orders to give meaningful effect to a “cease and refrain” order under s. 37(2)(a) of the *Code: Famous Players*, para. 79; *Rankin v. B.C. (Ministry of Justice) (No. 2)*, 2017 BCHRT 100, para. 296; *Ford v. Lavender Co-operative (No. 3)*, 2009 BCHRT 38, para. 84; *LeBlanc v. Dan’s Hardware et al.*, 2001 BCHRT 32, para. 167; *McLoughlin v. B. C. Ministry of Environment, Lands and Parks*, 1999 BCHRT 47, para. 100.

[151] In designing and implementing wheelchair accessible services, Uber should take special notice of what the Supreme Court of Canada affirmed in *Via Rail*:

- a service provider has a positive duty to ensure that people with disabilities have equal access to the services offered to those without disabilities: paras. 121-122 and 162;
- independent access to the same comfort dignity, safety, and security as those without physical limitations, is a fundamental human right for people who use wheelchairs: para. 162; and
- service providers must accommodate this right as far as it is practicable: para. 163.

### **B. Should Uber be ordered to work with Mr. Bauer on its wheelchair accessible services?**

[152] The Tribunal has the discretion and authority to order a respondent to take steps to ameliorate the effects of its discriminatory practice: *Code*, s. 37(2)(c)(i). Under s. 37(2)(c)(i), Mr. Bauer seeks an order that Uber be required to work with him to determine the number and types of wheelchair accessible vehicles and the conditions of service. I decline to make this order for two reasons.

[153] First, I have ordered Uber to cease and refrain from the same or similar discrimination under s. 37(2)(a). Again, the effect of this order is that Uber must provide a wheelchair accessible option in the Lower Mainland. Uber simply needs to comply with that order.

[154] Second, Uber needs to have some flexibility and freedom in how it designs its wheelchair accessible option: *The Minister of Health Planning v. The British Columbia Human Rights Tribunal*, 2003 BCSC 1112, para. 27. If Uber determines further consultations with the BC Government, experts, and other stakeholders is necessary to comply with my order, the results of such consultations may impact the design. Uber’s particular service model may impact the manner in which Uber offers a wheelchair accessible option. Uber may find it helpful to consult with Mr. Bauer. He is a wheelchair user with experience using transportation options in the Lower Mainland. He clearly has valuable information to share. However, I decline to grant that order and Uber may determine how precisely it will design and implement its wheelchair accessible option in the Lower Mainland.

### **C. Injury to dignity**

[155] Mr. Bauer seeks \$100,000 to compensate him for injury to his dignity, feelings, and self-respect [**injury to dignity**]. The Tribunal has the discretion to award damages as a way to compensate a complainant for injury to their dignity: *Code*, s. 37(2)(d)(iii).

[156] In making an injury to dignity award the Tribunal often considers several factors: the nature of the discrimination; the complainant’s social context or vulnerability; and the specific effect the discrimination had on the complainant: *Nelson v. Goodberry Restaurant Group Ltd. dba Buono Osteria and others*, 2021 BCHRT 137, para. 33.

[157] Determining the amount of an injury to dignity award depends on the specific facts and circumstances in any given case: *Gichuru v. Law Society of British Columbia (No. 2)*, 2011 BCHRT 185, aff’d in 2014 BCCA 396, para. 260. At the same time, for the purposes of consistency and fairness, it is also helpful to consider the range of awards made in similar cases: *Mr. D v. Path General Contractors and another*, 2023 BCHRT 46, para. 55. I begin with the nature of the discrimination in this case.

### 1. *Nature of the Discrimination*

[158] In my view, the discrimination is serious. Uber’s lack of wheelchair accessible services means that Mr. Bauer and other wheelchair users are denied a transportation option available to others. This blanket exclusion from services denies Mr. Bauer equality in his dignity and rights. Without access to Uber’s ride-hailing service, Mr. Bauer has fewer options than non-wheelchair users to fully and freely participate in the economic, social, political, and cultural life of BC. Independent access to the same comfort, dignity, safety, and security as those without the need of a wheelchair, is a fundamental human right for persons who use wheelchairs: *Via Rail*, para. 162. Mr. Bauer has been denied that right.

### 2. *Social context and vulnerability*

[159] With respect to social context, there is no question that wheelchair users face persistent patterns of inequality associated with discrimination under the *Code*. A purpose of the *Code* is to identify and eliminate those persistent patterns of inequality: *Code*, s. 3(d). This purpose cannot be fulfilled in the face of an unjustified broad exclusion of wheelchair users from accessing ride-hailing services. This exclusion perpetuates rather than eliminates the persistent patterns of inequality that wheelchair users experience. Human rights law favours approaches that encourage rather than restrict independence and access: *Via Rail*, para. 110.

[160] Mr. Bauer’s ability to participate in life outside of his home is dependent on wheelchair accessible services. He is vulnerable to decisions that others make without considering his needs as a wheelchair user: *Kovacs*, para. 392.

### 3. *Specific effect of discrimination on Mr. Bauer*

[161] I accept without reservation, Mr. Bauer’s submission about the specific effect that Uber’s lack of wheelchair accessible services has on him:

The issue of wheelchair accessible transportation is of enormous consequence to wheelchair users who, because of the nature of their disabilities, are already very limited in mobility. It is particularly important for myself since I am currently entirely reliant on wheelchair taxis for my transportation: closing submission, para 18b.



#### 4. *Similar cases*

[162] Finally, I have considered injury to dignity awards made in recent, similar cases. In *Biggings obo Walsh v. Pink and others*, 2018 BCHRT 174; *Jacobsen v. Strata Plan SP1773 (No. 2)*, 2020 BCHRT 170; and *Testar v. The Owners, Strata Plan VR 1097*, 2022 BCHRT 70, the complainants had disabilities which limited their mobility. In each case, the complainants were denied accommodations which would have allowed them to leave their homes independently. In each case the Tribunal awarded the complaints \$35,000 in injury to dignity compensation.

[163] In *Kovacs*, Ms. Kovacs could not safely and independently use an intersection in her community because she is blind. The City of Maple Ridge had reconstructed the intersection, and that reconstruction did not account for Ms. Kovacs's disability-related needs. The Tribunal awarded Ms. Kovacs \$35,000 in injury to dignity compensation.

[164] *Walsh, Jacobson, Testar, Kovacs*, and this case share a theme. In each case, the complainant's disability was not accommodated. Each complainant was denied full, free, independent, and equitable access to essential and fulsome aspects of life in BC.

[165] Taking into account all of the circumstances in this case, I find an injury to dignity award of \$35,000 is appropriate. I order Uber to pay Mr. Bauer \$35,000 for injury to his dignity: *Code*, s. 37(2)(d)(2)(iii).

## **VIII ORDERS**

[166] Uber discriminated against Mr. Bauer in the area of services based on physical disability, contrary to s. 8 of the *Code*. I order the following remedies under s. 37 of the *Code*:

- a. I declare that Uber's lack of a wheelchair accessible service option contravenes s. 8 of the *Code*: s. 37(2)(b).
- b. I order Uber to cease and refrain from committing the same or a similar contravention of the *Code*: s. 37(2)(a). Uber must provide a wheelchair accessible option in the Lower Mainland within one year of this decision.

- c. I order Uber to pay Mr. Bauer \$35,000 as compensation for injury to his dignity, feelings, and self-respect: s. 37(2)(d)(iii).
- d. Mr. Bauer is entitled to post judgement interest on the compensation awarded, until paid in full, and based on the rates set out in the *Court Order Interest Act*, RSBC 1996, c. 79.

Amber Prince  
Tribunal Member