

FEDERAL COURT OF APPEAL

BETWEEN:

AIR PASSENGER RIGHTS

Applicant

– and –

ATTORNEY GENERAL OF CANADA

Respondent

– and –

CANADIAN TRANSPORTATION AGENCY

Intervener

**MOTION RECORD OF THE APPLICANT,
AIR PASSENGER RIGHTS**

**Motion to Compel Answers and Documents and Document Preservation Order
(pursuant to Rules 97 and 369.2 of the *Federal Courts Rules*)**

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NOTICE OF MOTION

(Motion to Compel Answers and Documents and Document Preservation Order)

TAKE NOTICE THAT THE MOVING PARTY will make a motion in writing to the Court under Rule 369.2 of the *Federal Courts Rules*, S.O.R./98-106.

THE MOTION IS FOR:

1. An Order that the Canadian Transportation Agency [CTA] conduct a search and/or recovery for all documents, including but not limited to **encrypted emails**, exchanged between the CTA and Transport Canada from March 9, 2020 to March 25, 2020 inclusive (i.e., the same period for the October 15, 2021 Order) concerning the following subject matters [**TC-CTA Backchannel Documents**]:
 - (a) recognition of vouchers as a form of refund for air passengers, as set out in the CTA’s Statement on Vouchers, including the inception, drafting, motivation(s), purpose(s), and/or preparation surrounding or leading up to the Statement on Vouchers; and

- (b) Air Transat's request from around March 18, 2020 that was received by Transport Canada regarding recognition of vouchers as a refund and/or amending of Air Transat's tariffs to allow for vouchers as a refund.
2. An Order that, within ten (10) days of the Order in paragraph 1:
 - (a) the CTA produce the non-privileged TC-CTA Backchannel Documents;
 - (b) the Respondent bring a motion, if any, for a ruling on any TC-CTA Backchannel Documents where privilege is asserted, in accordance with paragraph 38 of the July 19, 2022 Reasons for Order; and
 - (c) the CTA report back to the Court, with a copy to the parties, detailing all of its search and/or recovery efforts for the TC-CTA Backchannel Documents, including efforts to search the closed Outlook accounts of Mr. Streiner, Ms. Jones, and Ms. Hurcomb, and if the TC-CTA Backchannel Documents are not found, a thorough explanation of why.
3. A further Order that the CTA forthwith produce:
 - (a) all documents in respect of the CTA Key Personnel Meeting on March 22, 2020, identified as Category C5 in this Court's April 11, 2022 Reasons for Order [**Withheld C5 Urgent Debrief Call Documents**]; and
 - (b) Ms. Barbara Cuber's email exchange(s) with Ms. Marcia Jones in or around January 5, 2021, for the Court's review of any applicable privilege, and to produce the email exchange(s) to the Applicant if the CTA's privilege assertion is not upheld [**Jones-Cuber Email**].
4. An Order that Transport Canada shall forthwith take all necessary steps to preserve documents relevant to this Application, including but not limited to the TC-CTA Backchannel Documents, whether encrypted or not [**Transport Canada Document Preservation Order**].

5. Parties bear their own costs on this motion.
6. Such further and other relief that this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

TC-CTA Backchannel Documents

1. The Court's Order of October 15, 2021 [**October 2021 Order**] required, *inter alia*, the CTA to disclose non-privileged documents that the CTA sent to or received from a third-party concerning the Statement on Vouchers between March 9-25, 2020. This would include correspondences and/or documents exchanged with Transport Canada, irrespective of whether they are encrypted or not.
2. Since as early as December 2021, the CTA's affiant Ms. Cuber was aware of encrypted emails that are within the scope of the October 2021 Order. However, Ms. Cuber admitted that no efforts were made to search for encrypted emails and no inquiries were made with the CTA's IT department on encrypted emails. Ms. Cuber simply relied on a keyword search of inboxes and previous *Access to Information Act* searches that did not seem to capture encrypted emails.
3. The Information Commissioner's "[9 Tips for ATIP-Friendly Email Management from the Office of the Information Commissioner](#)" states the following as Tip #1, citing the Government of Canada Treasury Board policy on searching encrypted emails for both ATI requests and litigation purposes.

1. The complete story

It is critical to retain emails that are records of business value to ensure that the institution's response to an access request provides the complete story. Keep in mind that keyword searches of email inboxes may not return some information in encrypted emails. The [guideline on searching encrypted emails in response to information requests](#) should be consulted to ensure that all responsive records are captured in the response to a request.

4. After cross-examination of the CTA's affiant, Transport Canada responded to an

Access to Information Act [ATIA] request. Transport Canada’s *ATIA* response referenced “side exchanges” between Transport Canada and the CTA regarding vouchers or refunds, which arose from Air Transat’s request to permit issuance of vouchers in lieu of cash refunds.

5. On November 10, 2022, after the Applicant made a request, the CTA disclosed *some* of the aforementioned “side exchanges” which further revealed that:
 - (a) The CTA and Transport Canada exchanged encrypted emails in respect of, or arising from, Air Transat’s request to recognize vouchers.
 - (b) Other exchanges and/or correspondences between the CTA and Transport Canada in respect of, or arising from, Air Transat’s request to recognize vouchers, whether encrypted or not, continue to be withheld.

[collectively, **TC-CTA Backchannel Documents**]

6. The CTA and Transport Canada knew that Air Transat’s tariffs require cash refunds and do not allow vouchers, and were exploring if and how the tariffs could be retroactively amended to permit vouchers. Their efforts ultimately culminated in the issuance of the Statement on Vouchers, sidestepping the tariff.
7. The TC-CTA Backchannel Documents, including the encrypted emails, are within the scope of the October 2021 Order. The CTA must not be permitted to withhold the complete story from the Court by selectively searching. The production should be based on the procedures that this Court had already adopted.

Withheld C5 Urgent Debrief Call Documents

8. The October 2021 Order required the CTA to disclose documents for meetings attended by a CTA Member where the Statement on Vouchers was discussed. Subsequently, the April 11, 2022 Order specifically required the CTA to ascertain if the Statement on Vouchers was discussed at the CTA Key Personnel Meeting on March 22, 2020 and to disclose all the non-privileged documents.

9. After the April 2022 Order, the CTA admitted that the Statement on Vouchers was discussed at the CTA Key Personnel Meeting on March 22, 2020, but failed to disclose the existence of the Withheld C5 Urgent Debrief Call Documents. The Withheld C5 Urgent Debrief Call Documents are debriefs for the CTA Key Personnel Meeting on March 22, 2020 and their relevance was already decided.
10. On November 3, 2022, the CTA provided a further response to an *ATIA* request that was made more than two years ago, which contained redacted copies of the Withheld C5 Urgent Debrief Call Documents. Upon learning of the documents' existence, the Applicant requested the CTA to disclose the unredacted copies.
11. On November 10, 2022, the CTA refused to disclose the Withheld C5 Urgent Debrief Call Documents, asserting that the redactions were unrelated to the March 22, 2020 urgent debrief, and also asserted "deliberation privilege and/or solicitor-client privilege," contradicting the basis for redaction applied by the CTA's own ATI department.

Jones-Cuber Email

12. At the cross-examination, the CTA's affiant (Ms. Cuber) referred to and relied upon the Jones-Cuber Email thread from January 5, 2021 to substantiate the CTA's efforts to preserve, gather, and disclose documents. Most of the relevant documents that could not be found relate to Ms. Jones's and/or her team's involvement with the Statement on Vouchers.
13. The Jones-Cuber Email is relevant to: (a) the (in)adequacy of the CTA's document search; and (b) the merits of the Application on the issue of spoliation of evidence, including whether the panel hearing the Application should draw an adverse inference from deletion of key evidence.
14. If any privilege applied to the Jones-Cuber Email, it was waived when Ms. Cuber relied on it to substantiate her document search efforts. The Court is in a position to direct the CTA to submit the Jones-Cuber Email for the Court's re-

view of any privilege claims, without waiting for the AGC to bring a motion.

Transport Canada Document Preservation Order

15. To ensure that the panel has all of the evidence and the complete story, Transport Canada should be ordered to preserve all relevant documents for this Application, including, in particular, the TC-CTA Backchannel Documents.
16. During the cross-examination, Ms. Cuber suggested that the CTA had no obligation to preserve relevant documents until the Court's October 2021 Order was actually issued, and before then the relevant individuals were free to decide which documents with "business value" they had to preserve, and which documents they were free to delete.
17. Transport Canada is already fully aware of this Court's October 2021 Order since Mr. Vincent Millette swore an affidavit on December 14, 2021 for a motion to extend time, and attached *some* of the TC-CTA Backchannel Documents.
18. Issuing the preservation order would ensure that the CTA's confusion on the obligation to preserve documents would not propagate further to Transport Canada.
19. Recent *ATIA* responses from Transport Canada suggest that they may already be starting to dispossess themselves of some relevant documents, which warrants swift action from this Court to ensure that relevant evidence is preserved.

Statutes and Regulations Relied Upon

20. *Federal Courts Rules*, S.O.R./98-106, including Rules 97, 369.2, and 400-401;
21. *Federal Courts Act*, R.S.C. 1985, c. F-7, including ss. 3, 18.1, 28, and 44; and
22. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used for the motion:

1. Affidavit of Mr. Vincent Millette, affirmed on December 14, 2021.
2. Transcript of Cross-Examination of Ms. Barbara Cuber on September 16, 2022.
3. Affidavit of Dr. Gábor Lukács, affirmed on November 14, 2022.

November 14, 2022

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AFFIDAVIT OF DR. GÁBOR LUKÁCS
(Affirmed: November 14, 2022)

I, **DR. GÁBOR LUKÁCS**, of the City of Halifax in the Province of Nova Scotia,
AFFIRM THAT:

1. I am the President and a Director of the Applicant, Air Passenger Rights. As such, I have personal knowledge of the matters to which I depose, except as to those matters stated to be on information and belief, which I believe to be true.
 - A. **The Applicant: Air Passenger Rights**
2. Air Passenger Rights [**APR**] is a non-profit organization, formed in May 2019 under the *Canada Not-for-profit Corporations Act*, SC 2009, c. 23, to expand and continue the air passenger advocacy work that I have initiated in my personal capacity for over a decade.
3. I am the president and a director of APR. I actively lead all the work of APR. Mr. Simon Lin, counsel representing APR on this judicial review, is also one of the directors of APR. APR operates on a non-profit basis and its board of directors, including myself, are not paid any remuneration.

4. APR's mandate is to engage in public interest advocacy for air passengers, continuing the same work that I have been engaging in personally for the past decade, including advocating on behalf of the travelling public before Parliament, administrative agencies and tribunals, and the courts, when necessary.
5. APR is funded solely by small donations from passengers that only cover some out-of-pocket expenses APR incurs for the public interest advocacy work. APR promotes passenger rights by referring passengers to information and resources through the press, social media, and the AirPassengerRights.ca website.

B. Background Leading Up to this Judicial Review Application

6. On March 25, 2020, the CTA posted a "Statement on Vouchers" [**Statement on Vouchers**] on its website, a copy of which is attached and marked as **Exhibit "A"**. The CTA widely disseminated the Statement on Vouchers to passengers and the travel industry through various channels, including its website, Twitter, an email announcement to carriers, in template responses to passengers' inquiries, and a *pro forma* auto-response email for formal complaints received.
7. Since publishing the Statement on Vouchers, the CTA has been unresponsive as to what occurred behind the scenes in the drafting and issuing of the Statement on Vouchers, until the CTA was compelled by this Court to produce documents.
8. The *Code of Conduct of Members of the Agency* [**Code of Conduct**] provides under the heading "Interactions with non-Agency individuals and organizations," in part, that:

(39) Members shall not communicate with political actors or officials of other federal departments and agencies, provincial or foreign governments, or international organizations regarding a matter that is, was, or could be before the Agency.

(40) Members shall not publicly express an opinion about any past, current, or potential cases or any other issue related to the

work of the Agency, and shall refrain from comments or discussions in public or otherwise that may create a reasonable apprehension of bias.

A copy of the CTA's *Code of Conduct* is attached and marked as **Exhibit "B"**.

9. I am attaching Exhibit "B" only to place before the Court the *Code of Conduct*. I do not accept that paragraphs 1 and 2 of the *Code of Conduct* correctly reflect the CTA's mandate under the *Canada Transportation Act*.

C. Information Commissioner's Guidance on Searches for Encrypted Emails

10. I reviewed the "Investigation guidance" section of the Information Commissioner's website and identified a guidance entitled "*9 Tips for ATIP-Friendly Email Management from the Office of the Information Commissioner*" at: <https://www.oic-ci.gc.ca/sites/default/files/2019-12/Infographic-email-eng.pdf>
A copy of said guidance is attached and marked as **Exhibit "C"**.

11. Paragraph 1 of the aforementioned Information Commissioner guidance states:

1. The complete story

It is critical to retain emails that are records of business value to ensure that the institution's response to an access request provides the complete story. Keep in mind that keyword searches of email inboxes may not return some information in encrypted emails. The *guideline on searching encrypted emails in response to information requests* should be consulted to ensure that all responsive records are captured in the response to a request.

12. The Information Commissioner's guidance above references the Treasury Board's *Guideline on searching encrypted emails in response to information requests* found at <https://www.tbs-sct.canada.ca/pol/doc-eng.aspx?id=32617>, containing an appendix with detailed step-by-step instructions on how encrypted emails are to be searched, which is attached and marked as **Exhibit "D"**.

- D. Documents Produced Pursuant to the October 2021 Order (Excerpts)**
13. In response to the October 15, 2021 Order of Gleason J.A. [**October 2021 Order**], APR received documents from the CTA. Only the documents that are relevant to this motion are attached in the paragraphs below.
14. On December 14, 2021, the CTA disclosed a 165-page PDF file, which contained at least four correspondences relating to Air Transat:
- (a) A letter dated March 22, 2020 from Air Transat’s Chairman, President, and CEO to Mr. Streiner, which is attached and marked as **Exhibit “E”**.
 - (b) An email thread between Ms. Marcia Jones and Mr. Scott Streiner on March 18, 2020, containing a lengthy email from George Petsikas of Air Transat regarding the need for a statement to deter credit card chargebacks and Mr. Streiner’s initial comment on Air Transat’s chargeback concern, which is attached and marked as **Exhibit “F”**.
 - (c) Ms. Jones’s reply to Mr. Petsikas’s follow-up email on March 19, 2020 regarding the request above, which is attached and marked as **Exhibit “G”**.
 - (d) Mr. Petsikas’s reply to Ms. Jones’s email on March 25, 2020 announcing the Statement on Vouchers, amongst other things, which is attached and marked as **Exhibit “H”**.
15. On January 31, 2022, the CTA disclosed a 5-page PDF file containing a cover letter and two separate email chains between the CTA and Transport Canada:
- (a) A March 18, 2020 email chain between Ms. Marcia Jones of the CTA and Mr. Colin Stacey from Transport Canada with the subject line “FW: From MinO: Air Transat” making a reference to encrypted correspondence(s), which is attached and marked as **Exhibit “I”**.

- (b) A March 22-24, 2020 email chain between Ms. Caitlin Hurcomb of the CTA and Mr. Vincent Millette of the CTA with the subject line “CTA announcement tomorrow,” where Ms. Hurcomb made specific references to two meetings between the CTA and Transport Canada personnel that occurred around the weekend of March 21-22, 2020, which is attached and marked as **Exhibit “J”**.

E. CTA / Transport Canada Meetings Around Weekend of March 21-22, 2020

- 16. In the March 22-24, 2020 email chain (Exhibit “J”), Ms. Hurcomb stated in an email on March 23, 2020 at 10:15AM that two discussions occurred between the CTA and Transport Canada around the weekend of March 21-22, 2020:
 - (a) One discussion between the CTA’s then Chairperson Mr. Scott Streiner, the Deputy Minister of Transport (DM), whom I believe was Mr. Michael Keenan, and the Transport Minister’s Chief of Staff, whom I believe was Mr. Marc Roy.
 - (b) Another discussion between the CTA’s then Chief Strategy Officer, Ms. Marcia Jones, and the Assistant Deputy Minister of Transport (ADM), whom I believe was Lawrence Hanson.
- 17. Although Ms. Hurcomb’s email states the title of the three Transport Canada officials, but not their names, I verily believe that the names I have included with the Transport Canada titles above are correct, as detailed below.
- 18. Based on Mr. Marc Roy’s LinkedIn Profile, which is attached and marked as **Exhibit “K”**, Mr. Roy was the Minister of Transport’s Chief of Staff in March 2020 and he departed from Transport Canada around February 2021.
- 19. I believe that Mr. Michael Keenan was the “DM” and Mr. Lawrence Hanson was the “ADM” referred to in Ms. Hurcomb’s email because Mr. Keenan and

Mr. Hanson appeared in the “From MinO: Air Transat” email threads circulated within Transport Canada around March 18-19, 2020, in the *Access to Information Act* response attached as Exhibit “Y” below.

20. Mr. Keenan has also been the Deputy Minister of Transport since March 2016, and his [profile on Transport Canada’s website](#) is attached and marked as **Exhibit “L”**.
21. Mr. Hanson was the Assistant Deputy Minister of Transport between 2017 and 2021, and his current [profile on the Prime Ministers Office’s website](#) is attached and marked as **Exhibit “M”**.

F. Documents Produced Pursuant to the April 2022 Order (Excerpts)

22. In response to, or shortly after, the April 11, 2022 Order of Gleason J.A. [**April 2022 Order**], APR received documents from the CTA. Only the documents that are relevant to this motion are attached in the paragraphs below.
23. A letter from counsel for the CTA, stating that the Statement on Vouchers appears to have been discussed in the calls on March 19, 22, and 23, 2020, corresponding to Categories C1, C5, and C6 in the April 2022 Order, is attached and marked as **Exhibit “N”**.
24. A letter from Air Canada dated March 23, 2020 and addressed to Mr. Streiner, with a copy to the Minister of Transport, is attached and marked as **Exhibit “O”**.
25. An Outlook Calendar invite organized by Mr. Streiner for a “Special EC - COVID19 - Daily updates” at 2:00PM to 2:30PM daily starting from March 16, 2020, is attached and marked as **Exhibit “P”**.
26. Meeting notes for the CTA’s Executive Committee (EC) meeting on March 23,

2020, which is attached and marked as **Exhibit “Q”**, states, among other things:

Debriefs

SS [Scott Streiner]: TC [Transport Canada] indicated Agency moved faster than they expected. Other travel restrictions expected. Agreement between SS [Scott Streiner] and MK [Michael Keenan, Deputy Minister of Transport] that agencies/departments should not issue piecemeal decisions. Call this evening between TC and Agency officials.

27. For greater certainty, the full name or title to the abbreviations above were based on the answers to Questions 530-535 of the cross-examination of Ms. Barbara Cuber on September 16, 2022.
28. On March 23, 2020, Mr. Streiner emailed a document entitled “Asks.docx” to the Executive Committee (EC) outlining the requests in the letters from Air Canada (Exhibit “O”) and Air Transat (Exhibit “E”). Mr. Streiner’s email and attachment is attached and marked as **Exhibit “R”**. In the “Asks.docx” document, it is stated that:
 - (a) both Air Canada and Air Transat requested that the CTA “[s]tate that no refunds are owed [to passengers]”; and
 - (b) Air Transat requested that the CTA “[s]ignal that vouchers are acceptable in lieu of cash refunds.”
29. The CTA also disclosed a Microsoft OneNote file containing notes and annotations from Ms. Heather Smith, a CTA member, which included four separate documents as follows:
 - (a) A document entitled “**March 26**” contains a formal meeting agenda for the CTA Members’ Meeting on March 26, 2020 with annotations made by Ms. Smith, which is not relevant for this motion.

- (b) A document entitled “**Carrier Asks 24 March 2020**” contains the “Asks.docx” file sent by Mr. Streiner on March 23, 2020 above (Exhibit “**R**”) with annotations made by Ms. Smith.
- (c) A document entitled “**Air Transat**” contains the March 22, 2020 letter from Air Transat to Mr. Streiner above (Exhibit “**E**”).
- (d) A document entitled “**Air Canada Letter**” contains the March 23, 2020 letter from Air Canada sent to Mr. Streiner above (Exhibit “**O**”).

G. Written Responses After the Cross-Examination on September 16, 2022

30. The cross-examination of the CTA’s affiant, Ms. Barbara Cuber, occurred on September 16, 2022 [**Cuber Cross-Examination**]. Subsequent to the Cuber Cross-Examination, the CTA provided some written responses on October 14, 2022, and the documents that are relevant to this motion are attached below.

- (a) A 2-page document on the CTA’s letterhead covering questions and requests for documents taken under advisement at the Cuber Cross-Examination, which is attached and marked as **Exhibit “S”** [**Cuber Cross-Examination Response Letter**].
- (b) A 2-page Outlook search results for “A-2020-00029” performed in November 2020, which is attached and marked as **Exhibit “T”**, corresponding to item 10 in the Cuber Cross-Examination Response Letter.
- (c) A 6-page notice and “tasking email” relating to a May 2020 ATIP request, A-2020-00002, which is attached and marked as **Exhibit “U”**, corresponding to item 11 in the Cuber Cross-Examination Response Letter.

H. ATIA Responses Received On or After September 16, 2022

31. In the subsections that follow, I describe three *Access to Information Act* [ATIA] requests that I previously made to Transport Canada or the CTA, and responses thereto that I received on or after September 16, 2022, the same day as the Cuber Cross-Examination.

(i) Transport Canada ATIA Request A-2022-00047 Made on April 25, 2022

32. On April 25, 2022, I made an ATIA request to Transport Canada for printouts of the calendars for three Transport Canada officials identified below, and was issued file number A-2022-00047:

A printout of the calendar, showing all the scheduled events between March 18, 2020 and March 23, 2020 (inclusive) for the following individuals:

Marc Roy [Transport Minister's Chief of Staff who attended weekend meeting(s) with Mr. Streiner from the CTA],

Colin Stacey [author of the March 18, 2020 encrypted Transport Canada email to Ms. Jones], and

Michael Keenan [Deputy Minister who attended weekend meeting(s) with Mr. Streiner from the CTA].

33. On September 16, 2022, approximately halfway through the Cuber Cross-Examination, I received a response to ATIA request A-2022-00047 from Transport Canada, and the documents I received are described and attached below.

34. Transport Canada's ATI office provided a cover letter signed on September 14, 2022 indicating that:

We have now completed the processing of your request. Please find enclosed a copy of the records. You will note that certain information has been withheld from disclosure pursuant to paragraph 16(2)(c), and subsections 19(1) & 69(1) of the ATIA. A copy of these sections has been enclosed for your information.

A copy of the covering letter is attached and marked as **Exhibit “V”**.

35. Transport Canada’s *ATIA* response produced an 18-page PDF file that only contained the calendar printouts for Mr. Colin Stacey and Mr. Michael Keenan as follows:
- (a) The 6-page calendar printouts between March 18-23, 2020 for Mr. Michael Keenan, with various redactions, are attached and marked as **Exhibit “W”**.
 - (b) The 12-page calendar printouts between March 18-23, 2020 for Mr. Colin Stacey are attached and marked as **Exhibit “X”**.
36. Mr. Marc Roy’s calendar printout was not provided in the A-2022-00047 *ATIA* response and no explanation was provided. I believe this may be related to the fact that Mr. Roy had already left Transport Canada at the time the *ATIA* request was made in April 2022.
- (ii) Transport Canada *ATIA* Request A-2022-00046 Made on April 25, 2022**
37. On April 25, 2022, I made an *ATIA* request to Transport Canada for the documents identified below, and was issued file number A-2022-00046:
- All e-mails (including any attachments) sent and received between March 17, 2020 and March 25, 2020 (inclusive) whose subject line contains the words “MinO: Air Transat”, including but not limited to the email(s) and attachment(s) sent by Mr. Colin Stacey on March 18, 2020 at around 2:57PM containing the above-quoted text within the subject line. For greater certainty, this request includes emails that were sent encrypted.
38. On September 22, 2022, I received a response to *ATIA* request A-2022-00046 from Transport Canada including a cover letter and an 18-page PDF file with various email chains containing the the phrase “From MinO: Air Transat” in the subject line. The emails relevant to this motion are detailed below, with

duplicates excluded:

- (a) An email thread on March 18, 2020 at 2:57PM sent by Mr. Stacey from Transport Canada, followed by a reply from Ms. Jones at the CTA stating “I am sending this unencrypted as our remote network access is patchy...,” which is the same email as in Exhibit “I” above.
- (b) A partially redacted email on March 18, 2020 at 1:49PM sent by Ms. Jennifer Little of Transport Canada (her position and profile are detailed further below) to Mr. Colin Stacey, Mr. Lawrence Hanson, and Mr. Michael Keenan stating:

MinO has let us know that Transat is telling them:

Air Transat will be sending a formal letter to the Minister for financial assistance. They provided no other details to us at this time.

[REDACTED]

Jennifer

This 3-page email chain is attached and marked as **Exhibit “Y”**.

- (c) Ms. Jennifer Little has been the Executive Director to the Deputy Minister (Mr. Keenan) since June 2016, according to Transport Canada’s website
(<https://tc.canada.ca/en/corporate-services/transparency/briefing-documents-transport-canada/20191120/organization>).
- (d) An email chain between Mr. Millette and Mr. Stacey on March 18, 2020 at 5:37PM where Mr. Millette indicated that:

Colin - I am having a side exchange with Cait on this. We should not lose sights of situations where the passenger elect to cancel the trip. Those situations are not covered

by the APPRs but rather by the carriers' tariffs. If the carrier's tariff do not contemplate the reimbursement with a voucher, then the carrier cannot do it. The carrier would need to amend its tariff.

Cait is looking with her colleagues dealing with the carriers tariffs to see what it would entail changing / amending a tariff on short notice.

A copy of this email chain is attached and marked as **Exhibit "Z"**.

- (e) An email on March 19, 2020 at 9:23AM sent by Mr. Millette with a proposed response to Finance Canada, and an attachment entitled "Air Passenger Protection Rights - Compensation Obligations.docx," and also enclosing various redacted exchanges with Finance Canada on the passenger rights issues arising from issuing vouchers. This 5-page email chain, including attachment, is attached and marked as **Exhibit "AA"**.
- (f) An email chain on March 18-19, 2020 containing exchanges between Mr. Stacey, Mr. Millette, and Finance Canada regarding the passenger rights issues arising from issuing vouchers. This 3-page email chain, including attachment, is attached and marked as **Exhibit "AB"**.

(iii) CTA ATIA Request A-2020-00029 Made on or Around August 25, 2020

39. On November 3, 2022, I received a further response to ATIA request A-2020-00029 from the CTA enclosing a 157-page PDF file of documents and emails, most of which were duplicative or previously disclosed. In the following paragraphs, I attach the documents from this PDF that are relevant to this motion:

- (a) An email chain between Ms. Jones and Ms. Hurcomb on March 25, 2020 about sending an announcement email about the Statement on Vouchers to air carriers with the BCC (Blind Carbon Copy) email feature, which is attached and marked as **Exhibit "AC"**.

- (b) An email chain, with redaction, between Ms. Jones and Ms. Hurcomb on March 24, 2020 regarding the drafting of an FAQ for the Statement on Vouchers and Ms. Jones seeking to characterize vouchers as a form of refund to give the impression that carriers are not being held strictly to their tariff, which is attached and marked as **Exhibit “AD”**.
 - (c) Two email chains, with redactions, that started from a March 22, 2020 email from Mr. Tom Oommen with the subject line “Debrief from Sunday EC” after attending an urgent debriefing organized by Mr. Streiner, which is attached and marked as **Exhibit “AE”**.
40. On November 4, 2022, I received an email from an Investigator from the Office of the Information Commissioner of Canada regarding my earlier complaint about the CTA’s handling of A-2020-00029. In that email, amongst other things, the Investigator indicated that “The CTA is no longer relying on section 23 [ATIA section for solicitor-client privilege and litigation privilege] to withhold any information within the scope of this complaint.” A copy of the Investigator’s November 4, 2022 email is attached and marked as **Exhibit “AF”**.

I. Applicant’s Correspondence with CTA about Missing Documents

41. On November 1, 2022, APR’s counsel wrote to the CTA requesting the CTA to disclose two sets of documents:
- (a) A January 5, 2021 Email Exchange between Ms. Jones and Ms. Cuber that was referred to at the Cuber Cross-Examination.
 - (b) The “side exchange(s)” between Ms. Hurcomb of the CTA and Mr. Millette from Transport Canada on or after March 18, 2020.

A copy of Mr. Lin’s letter, without the enclosures, is attached and marked as **Exhibit “AG”**.

42. On November 7, 2022, after I received the *ATIA* package from the CTA on November 3, 2022, APR's counsel wrote to the CTA requesting the CTA to disclose unredacted documents relating to the March 22, 2020 CTA Key Personnel Call (i.e., the "Debrief from Sunday EC" email chains started by Mr. Oommen in Exhibit "AE", without redactions). A copy of Mr. Lin's letter, without the enclosures, is attached and marked as **Exhibit "AH"**.
43. On November 10, 2022, the CTA responded to Mr. Lin's letters of November 1 and 7, 2022. A copy of the CTA's letter is attached and marked as **Exhibit "AI"**.
44. The CTA's letter of November 10, 2022 enclosed a 3-page PDF file containing an email from Ms. Hurcomb to Ms. Lagacé, which is attached and marked as **Exhibit "AJ"**, stating:

Hi Val,

Just looping you in on this exchange with TC, in case there was anything you felt needed discussing with TC Legal. I believe this information was requested by Finance to inform decisions about potential support for airlines. Happy to give more context.

Thanks! Cait

45. Ms. Hurcomb's email to Ms. Lagacé (above) is a forward of portions of the "side exchanges" between Mr. Millette and Ms. Hurcomb between March 18-20, 2020 and is still missing Mr. Millette's initial encrypted email(s) that commenced the "side exchange;" Ms. Hurcomb stated the following in that regard:

Yeah, that [referring to blank emails] happens for some reason on encrypted replies between TC and CTA. Not sure why ...

J. AGC's Refusal to Assist in Obtaining Documents from Transport Canada

46. On April 26, 2022, APR's counsel wrote to the Respondent, the Attorney General of Canada, seeking the Respondent's assistance in obtaining various miss-

ing documents from Transport Canada, including:

- (a) The encrypted email from Mr. Stacey to Ms. Jones on March 18, 2020 bearing the subject line “FW: From MinO: Air Transat”.
- (b) Documents from Marc Roy (former Chief of Staff for the Minister of Transport), Colin Stacey, and Michael Keenan (Deputy Minister of Transport) regarding any meeting(s) they had with personnel from the Canadian Transportation Agency (including Scott Streiner and Marcia Jones) between March 18 to 23, 2020.

A copy of the Mr. Lin’s letter is attached and marked as **Exhibit “AK”**.

47. On May 5, 2022, the Respondent responded to the aforementioned letter, indicating:

Dear Mr. Lin,

In response to your April 26, 2022 letter, no, the Attorney General will not assist you in obtaining those documents.

Yours truly,

Lorne Ptack

A copy of the Respondent’s email is attached and marked as **Exhibit “AL”**.

K. Government of Canada Migration to “.canada.ca” Email Domain

48. Based on searching the Government of Canada’s website, I understand there is a government-wide initiative to switch from department specific email domains into a “.canada.ca” domain, documented in a webpage entitled “*Book Two - Shared Services Canada Ministerial Transition 2021*” found at <https://www.canada.ca/en/shared-services/corporate/transparency/briefing-documents/minister-2021/book-two.html>. The relevant excerpt from this webpage is attached and

marked as **Exhibit “AM”**.

49. I believe Transport Canada is continuing to use a department specific email domain, based on the emails I received from Transport Canada’s ATI office on September 16 and 22, 2022. I do not have knowledge regarding if and when Transport Canada may be migrating their emails to the “.canada.ca” domain.

L. CTA’s Access to Information 2020-2021 Report

50. An excerpt of the “Annual Report on the Administration of the Access to Information Act for 2020-2021” of the Canadian Transportation Agency is attached to this affidavit and marked as **Exhibit “AN”**.
51. The aforementioned report describes the steps that the CTA’s ATI team takes to gather documents after receiving an *ATIA* request:

Transition to a digital ATIP request process

[...]

The OPIs’ [Office of Primary Interest] search for records is done electronically and the records found are provided in electronic format only to the ATIP Division. The OPIs search the shared drives, their own emails and their personal drives, while IM searches for the pertinent records in the Records, Document and Information Management System (RDIMS) and paper files.

[...]

52. Based on the above quotation, I believe that the CTA’s ATI team did not conduct a search for encrypted emails, and it was left to the Office of Primary Interest to provide them voluntarily.

AFFIRMED remotely by Dr. Gábor Lukács
at the City of Halifax, Nova Scotia before me
at the City of Coquitlam, British Columbia
on November 14, 2022, in accordance with
O. Reg. 431/20, *Administering Oath or
Declaration Remotely*.

Commissioner for Taking Affidavits

Simon (Pak Hei) Lin, *Barrister & Solicitor*
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Burnaby, BC V5C 6C6

Dr. Gábor Lukács

Halifax, NS

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CERTIFICATE OF COMMISSIONER FOR TAKING AFFIDAVITS

I, Simon Lin, a Commissioner for taking Affidavits in Ontario, certify that:

1. This certificate is provided in accordance with the *COVID-19 Notice No. 2* of the Supreme Court of British Columbia.
2. On November 14, 2022, I commissioned the Affidavit of Dr. Gábor Lukács [**Deponent**] in this matter [**Affidavit**]. The Affidavit was commissioned remotely using video technology and a secure electronic signature platform, as permitted by the Law Society of Ontario and O. Reg. 431/20, *Administering Oath or Declaration Remotely*.
3. I was satisfied that the process was necessary because it was medically unsafe, for reasons associated with COVID-19, for the Deponent and a commissioner to be physically present together.
4. The Affidavit was loaded in PDF format by the commissioner onto a secure electronic signature platform, which:
 - a. does not permit the Deponent to add or remove any of the pages;
 - b. required both the commissioner and Deponent to apply their initials on each page of the Affidavit; and
 - c. required both the commissioner and Deponent to apply their electronic signatures where a signature is required.
5. The Deponent was emailed a link to the platform to securely sign the Affidavit. Thereafter, the following process was followed while the commissioner and Deponent was connected via video technology:
 - a. The Deponent showed me the front and back of the Deponent's current government-issued photo identification [**ID**], which I have retained screenshots of.
 - b. I compared the video image of the Deponent and the information on the ID and was satisfied that it was the same person.
 - c. The copy of the Affidavit before the commissioner and Deponent were on the same electronic platform and are identical.
 - d. I administered the oath to the Deponent who affirmed/swore to the truth of the facts in the Affidavit and the Deponent applied their electronic signature.

November 14, 2022

Signature of Simon Lin
Commissioner for Taking Affidavits

This is **Exhibit “A”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on November 14, 2022

Signature



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Statement on Vouchers

The COVID-19 pandemic has caused major disruptions in domestic and international air travel.

For flight disruptions that are outside an airline's control, the *Canada Transportation Act* and *Air Passenger Protection Regulations* only require that the airline ensure passengers can complete their itineraries. Some airlines' tariffs provide for refunds in certain cases, but may have clauses that airlines believe relieve them of such obligations in force majeure situations.

The legislation, regulations, and tariffs were developed in anticipation of relatively localized and short-term disruptions. None contemplated the sorts of worldwide mass flight cancellations that have taken place over recent weeks as a result of the pandemic. It's important to consider how to strike a fair and sensible balance between passenger protection and airlines' operational realities in these extraordinary and unprecedented circumstances.

On the one hand, passengers who have no prospect of completing their planned itineraries with an airline's assistance should not simply be out-of-pocket for the cost of cancelled flights. On the other hand, airlines facing huge drops in passenger volumes and revenues should not be expected to take steps that could threaten their economic viability.

While any specific situation brought before the CTA will be examined on its merits, the CTA believes that, generally speaking, an appropriate approach in the current context could be for airlines to provide affected passengers with vouchers or credits for future travel, as long as these vouchers or credits do not expire in an unreasonably short period of time (24 months would be considered reasonable in most cases).

The CTA will continue to provide information, guidance, and services to passengers and airlines as we make our way through this challenging period.

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Date modified:

2020-03-25

This is **Exhibit “B”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on November 14, 2022

Signature



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Code of Conduct for Members of the Agency

A. CONTEXT

Mandate of the Agency

(1) The Canadian Transportation Agency (Agency) is an independent, quasi-judicial, expert tribunal and regulator which has, with respect to all matters necessary for the exercise of its jurisdiction, all the powers of a superior court.

(2) The Agency and has three core mandates:

- a. Helping ensure that the national transportation system runs efficiently and smoothly in the interests of all Canadians: those who work and invest in it; the producers, shippers, travellers and businesses who rely on it; and the communities where it operates.
- b. Protecting the fundamental human right of persons with disabilities to an accessible transportation network.
- c. Providing consumer protection for air passengers.

Roles of the Agency's Chair, Vice-Chair, Members, and staff

(3) The Agency is comprised of up to five regular Members appointed by the Governor in Council (GIC), including the Agency's Chair and Vice-Chair, and up to three temporary Members appointed by the Minister of Transport from a roster approved by the GIC.

(4) Members make adjudicative decisions and regulatory determinations¹. Their responsibilities in these regards cannot be delegated.

(5) The Chair, who is the also Chief Executive Officer (CEO) and a Member, is responsible for overall leadership of the Agency. He or she sets the Agency's strategic priorities, serves as its public voice, reports on its plans and results to Parliament through the Minister of Transport, and handles relations with Ministers, Parliamentarians, Deputy Ministers, and analogous bodies in other jurisdictions. He or she assigns cases to Members, supervises and directs their work, and chairs regular Members meetings. And as CEO, he or she is the most senior manager of the public servants working in the organization, serves as Deputy Head and Accounting Officer with a broad range of related responsibilities under the Financial Administration Act and other statutes, and chairs the Executive Committee.

(6) The Vice-Chair, who is also a Member, sits on the Executive Committee and assumes the responsibilities of the Chair if the Chair is absent or incapacitated.

(7) Members other than the Chair and Vice-Chair do not have any managerial functions within the Agency.

(8) All Members are supported in the discharge of their decision-making duties by the Agency's public servants, who are responsible for giving Members frank, impartial, evidence-based advice; fully implementing Members' direction; and other tasks assigned to them by the Chair, their managers, or legislation.

B. GENERAL PROVISIONS

Purpose, guiding principles, and application of the Code

(9) This Code establishes the standards for the conduct of Members and applies to all regular and temporary Members. It supplements, and should be read in conjunction with, any applicable requirements and standards set out in the Canada Transportation Act; other legislation administered by the Agency; other legislation establishing ethical and conduct obligations, such as the Conflict of Interest Act; relevant regulations, policies, and guidelines; other relevant codes; and letters of appointment.

(10) The Code reflects:

- a. the Agency's commitment to independent, impartial, fair, transparent, credible, and efficient decision making; and
- b. the Agency's organizational values of respect for democracy, respect for people, integrity, stewardship, and excellence.

(11) Members shall:

- a. adhere to all elements of the Code and other applicable instruments;
- b. uphold the highest ethical standards at all times;
- c. arrange their private affairs in a manner that ensures they have no conflicts of interest;
- d. conduct themselves with integrity, avoid impropriety or the appearance of impropriety, and eschew any action that could cast doubt on their ability to perform their duties with impartiality;
- e. not accept gifts, hospitality, or other advantages or benefits from any party that has an interest in matters handled by the Agency;
- f. recuse themselves from any proceeding where they know or reasonably should know that, in the making of the decision, they would be in a conflict of interest, or where their participation might create a reasonable apprehension of bias. In such case, they shall immediately inform the Chair and provide reason for their recusal. Members are encouraged to seek the advice of the Chair and the General Counsel when dealing with any situation where recusal is contemplated; and
- g. immediately inform to the Chair if they become aware of a situation that may adversely affect the integrity or the credibility of the Agency, including possible non-compliance with the Code.

(12) The Chair is responsible for the administration of the Code, including any matters regarding its interpretation. Members are accountable to the Chair for their compliance with the Code.

Members' expertise and work arrangements

(13) Members have a responsibility to maintain the highest levels of professional competence and expertise required to fulfil their duties. Members are expected to pursue the development of knowledge and skills related to their work, including participation in training provided by the Agency.

(14) Regular, full-time Members must devote at least 37.5 hours per week to the performance of their duties during their term of appointment. If a regular Member is authorized by the Chair to continue to hear

one or more matters before them upon expiry of their term, they shall only request remuneration for actual time worked during the period of continuation.

(15) When temporary Members are appointed on a full-time basis, they must devote at least 37.5 hours per week to the performance of their duties. When temporary Members are appointed on a part-time basis, they shall only request remuneration for actual time worked.

(16) Members' designated workplace is at the Agency's head office. They shall only work from home or other off-site locations with the prior written approval of the Chair.

C. DECISION MAKING

Impartiality

(17) Members must approach each case with an open mind and must be, and be seen to be, impartial and objective at all times.

Natural justice and fairness

(18) Members must respect the rules of natural justice and procedural fairness.

(19) Members must ensure that proceedings are conducted in a manner that is transparent, fair, and seen to be fair.

(20) Members shall render each decision on the merits of the case, based on the application of the relevant legislation and jurisprudence to the evidence presented during the proceeding.

(21) Members shall not be influenced by extraneous or improper considerations in their decision making. Members shall make their decisions free from the improper influence of any other person, institution, stakeholder or interest group, or political actor.

Preparation

(22) Members shall carefully review and consider relevant material – including applications, pleadings, briefing notes, and draft decisions – before attending case-related briefing sessions, meetings, or oral hearings.

Timeliness

(23) Members shall take all reasonable steps to ensure that proceedings progress in a timely fashion, avoiding unnecessary delays but always complying with the rules of natural justice and procedural fairness. Members shall render decisions as soon as possible after pleadings have closed and ensure, to the greatest extent possible, that statutory timelines and internal service standards for the issuance of decisions are met.

Quality

(24) Members shall ensure that their decisions are written in a manner that is clear, logical, complete without being unnecessarily repetitive or lengthy, and consistent with any guidelines or standards established by the Agency regarding the quality and format of decisions.

Consistency

(25) Members shall be cognizant of the importance of consistency in Agency decisions, notwithstanding the fact that prior decisions on similar matters do not constitute binding precedents. Members should not depart from the principles established in previous decisions unless they have a reasonable basis, and provide well-articulated reasons, for doing so.

Respect for parties and participants

(26) Members shall conduct proceedings, including oral hearings, in a courteous and respectful manner, while ensuring that proceedings are orderly and efficient.

(27) Members shall conduct proceedings such that those who have cases before the Agency understand its procedures and practices and can participate meaningfully, whether or not they are represented by counsel.

(28) Members must be responsive to accessibility-related needs and implement reasonable accommodation measures to facilitate meaningful participation of parties and other participants with disabilities in Agency hearings.

(29) Members shall be responsive to diversity, gender, and other human rights considerations when conducting proceedings; for example, in the affirmation/swearing in of witnesses and the scheduling of oral hearings. Members shall avoid words, phrases, and actions that could be understood to manifest bias or prejudice based on factors such as disability, race, age, national origin, gender, religion, sexual orientation, or socio-economic status, and shall never draw inferences on a person's credibility on the basis of such factors.

Case-related communications

(30) Members shall not communicate directly or indirectly with any party, counsel, witness, or other non-Agency participants appearing before them in a proceeding with respect to that proceeding, except in the presence of all parties or their counsel.

(31) Members shall not disclose information about a case or discuss any matter that has been or is in the process of being decided by them or the Agency, except as required in the performance of, and in the circumstances appropriate to, the formal conduct of their duties. Members shall refrain from discussing any case or Agency-related matter in public places.

D. WORKING RELATIONS AND INTERACTIONS

Relations with other Members

(32) Members shall foster civil, collegial relations with other Members.

(33) Members should have frank discussions and openly debate issues, while showing respect for one another's expertise, opinions, and roles. Members shall not comment on another Member's views, decisions, or conduct, except directly and privately to that Member himself or herself, or to the Chair pursuant to subsection 11.g of this Code.

(34) Members assigned together to a Panel should strive to reach consensus decisions whenever

possible, but respectfully agree to disagree and prepare a majority opinion and a dissenting opinion where consensus cannot be achieved within a reasonable time period.

(35) Members should share their knowledge and expertise with other Members as requested and appropriate, without attempting to influence decisions in cases to which they are not assigned.

Relation with Agency staff

(36) Members shall at all times treat Agency staff with courtesy and be respectful of their views and recommendations, recognizing that staff are professional public servants who are required to offer their best advice to Members, who make the final decisions.

(37) Any concerns about staff performance should not be communicated directly to working-level employees but rather should be shared with the relevant Branch Head if the concerns are relatively minor and with the Chair if they are significant or systemic.

Interactions with non-Agency individuals and organizations

(38) Members shall not communicate with the news media. Enquiries from the media or members of the public shall be referred to the Chair's Office.

(39) Members shall not communicate with political actors or officials of other federal departments and agencies, provincial or foreign governments, or international organizations regarding a matter that is, was, or could be before the Agency.

(40) Members shall not publicly express an opinion about any past, current, or potential cases or any other issue related to the work of the Agency, and shall refrain from comments or discussions in public or otherwise that may create a reasonable apprehension of bias.

(41) Members shall not disclose or make known, either publicly or privately, any information of a confidential nature that was obtained in their capacity as a Member.

(42) Members shall not use their position or the Agency's resources (e.g., an Agency email account or letterhead) for personal gain.

(43) Members should exercise caution when using social media for personal purposes, and should not identify themselves as Members of the Agency on social media sites, except professional sites such as LinkedIn.

E. OUTSIDE ACTIVITIES

(44) Members shall not accept invitations to attend social events such as receptions or dinners with stakeholder representatives or with persons who are, or may become, a party, counsel, witness, or other non-Agency participants in an Agency proceeding, except in rare instances where there is a compelling justification and the Chair provides prior written approval.

(45) Members may take part in other outside activities that are not incompatible with their official duties and responsibilities and do not call into question their ability to perform their duties objectively, with the prior written approval of the Chair. Such activities may include participation in conferences and training seminars, speeches, teaching assignments, and volunteering.

(46) Requests for the Chair's approval of participation in social events or other outside activities must be

made in writing at least two weeks before those events or activities begin, and must fully disclose all relevant details. Members are also responsible for obtaining any other approval required by applicable legislation, guidelines, codes, or other instruments.


(47) Notwithstanding the foregoing, the Chair may, from time to time, confer with stakeholder representatives, counsel, or other parties in his role as the Agency's public voice, to discuss matters unrelated to any specific proceeding.

F. AFFIRMATION

(48) Members shall review and affirm their commitment to and compliance with the Code upon initial appointment and every year thereafter on or near the anniversary of their appointment.

1
.... In this Code, "decisions" shall be understood to refer to both adjudicative decisions, which deal with disputes between parties, and regulatory determinations, which deal typically involve a single party.

- Code of Conduct for Members of the Agency last update: March 26, 2018

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Date modified:
2014-01-22

This is **Exhibit “C”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on November 14, 2022

Signature

9 Tips for ATIP-Friendly Email Management from the Office of the Information Commissioner



Information
Commissioner
of Canada

Commissaire
à l'information
du Canada

Over the years, through the investigation of ATIP related complaints, the OIC has noted that most requests for information made under the *Access to Information Act* (the Act), include information that was only ever recorded by a federal public service employee in an email. Increasingly, email is used by employees to document business decisions. In addition, email is used to share copies of reports and other records created for business purposes.

The following best practices for email management will ensure that you, as a federal public service employee, are able to respond to access requests made under the Act within legislated time frames while limiting efforts involved to produce records and ultimately respond to our investigations, if applicable. These tips should also help reduce the number of pages that will need to be processed in response to an access request by limiting duplications and/or removing personal or unrelated information.

1 The complete story

It is critical to retain emails that are records of business value to ensure that the institution's response to an access request provides the complete story. Keep in mind that keyword searches of email inboxes may not return some information in encrypted emails. The *guideline on searching encrypted emails in response to information requests* should be consulted to ensure that all responsive records are captured in the response to a request.

2 Store email in the correct repository

Emails of business value must be stored in your institution's designated corporate repository for storing information of business value, which may be an Electronic Document and Records Management System (EDRMS), such as GCdocs. File your email regularly (at least once a month). Emails of business value should be deleted once saved in the corporate repository.

3 Delete transitory emails regularly

Transitory email messages should be deleted regularly. Transitory emails cannot be deleted after an access request has been made under the Act. When deleting emails, remember to empty the Deleted Items Folder.

4 Keep personal messages separate

Avoid having personal email messages captured as part of an access to information request by ensuring they are kept separate from email messages of business value.

5 One email string = one subject

Resist the urge to request an update from your colleague on an unrelated project or file within an email string that is already started.

6 Use descriptive subject lines

Include a subject line that appropriately describes the contents of the email or the file number. This narrows the search for emails to associated records, whether electronic or paper.

7 Limit duplication

There is no need for every employee who receives an important email to save it in the records management system. The sender of the email is usually responsible for saving the message in the designated corporate repository.

8 Training and education are essential

Attend training on your institution's records management policies and procedures and ensure you understand where emails of business value are to be saved.

9 Send links instead of attachments

Whenever possible, provide links to where documents reside in the designated corporate repository instead of attaching copies of the documents to emails. Not only does this take up less space on your corporate network, enabling it to run more smoothly, it also helps ensure complete responses to access to information requests through efficient version control.

This is **Exhibit “D”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on November 14, 2022

Signature



Guideline on searching encrypted e-mails in response to information requests

1. Issue

When searching for records in response to an information request, a simple keyword search in an e-mail inbox **will not** do any of the following:

- scan information contained in the body of encrypted e-mails
- search the attachments of encrypted e-mails

In a simple keyword search, encrypted e-mails will only show up in the search results if the keywords used in the search are found in the subject line. Therefore, employees must search both the subject line of the encrypted e-mails and the content of the e-mails. Note that the search function in most e-mail software does not search text in scanned documents or images.

2. Context

There are various instances where government institutions are obligated to search for and produce information. Two notable examples are:

- the litigation discovery process
- requests under the *Access to Information Act* and the *Privacy Act*

In these and other cases, institutions must identify, preserve and collect all information resources that are relevant to the request.

Treasury Board policy ¹ and information management (IM) practice dictate that:

- e-mails of business value should be transferred to a designated corporate repository as soon as possible
- transitory e-mails should be regularly deleted ²

All encrypted e-mails of business value should be decrypted and stored in the designated corporate repository in a manner appropriate to the security classification and sensitivity of the information within the e-mail. This guideline was developed to address situations where encrypted e-mails that respond to information requests remain in an e-mail inbox.

The obligation to disclose and produce records extends to all information resources regardless of:

- their format (for example, electronic or paper)
- whether they are considered information resources of business value or transitory records
- where they are stored

For information resources that exist as encrypted e-mails in employee inboxes, the content of these encrypted e-mails must be searchable in order to ensure that any records relevant to an information request are identified, preserved and collected.

Having standardized and rigorous IM practices will ensure that when requests for information arise, institutions are able to identify, preserve and collect relevant information resources in a way that:

- is thorough and cost-effective
- minimizes disruptions to departmental operations

3. Guidance

To ensure that all information relevant to a discovery process or a request for information can be identified, it is recommended that government institutions:

1. Develop and implement processes and guidance to help users transfer e-mails of business value, including specific processes for transferring encrypted e-mails of business value, to the designated corporate repository in a timely manner.
2. Develop and implement processes and guidance for searching the content of encrypted e-mails. A sample process for searching the content of encrypted e-mails in Outlook is provided in the Appendix. This process:
 - is presented as an example of the kind of process that departments should have in place for searching e-mails
 - does not represent the process that they must use
3. Provide training and support to users on the proper processes for:
 - searching the content of encrypted e-mails in response to information requests
 - transferring e-mails of business value to the designated corporate repository in a timely manner
4. Follow proper IM exit protocols for e-mail management when employees depart, including decrypting e-mails of business value and transferring them to the designated corporate repository in a manner appropriate to the security classification and sensitivity of the information within the e-mails.

4. Additional guidance

- [Guidelines for Employees of the Government of Canada: Information Management \(IM\) Basics](#)

- [Employee Departure or Transfer](#)

5. Further information

Contact DPPN@tbs-sct.gc.ca for any questions about this guideline.

6. Appendix: how to search for encrypted e-mails in Microsoft Outlook

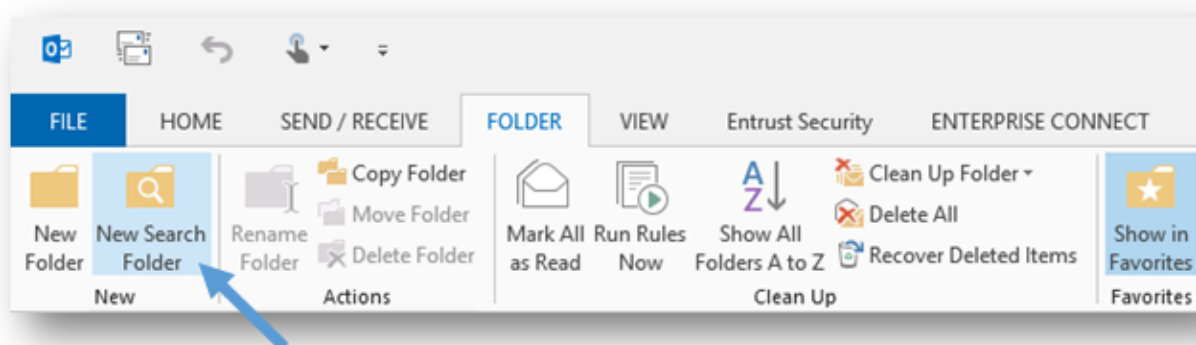
Step 1: Before you start decrypting e-mails, verify who has proxy access to your e-mail folders in order to minimize the risk of unauthorized access to the custom search folder that you will create for your decrypted e-mails.

Step 2: To make encrypted sources of information searchable, set up a custom search folder.

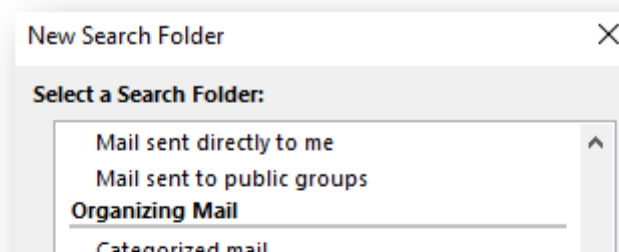
Create a custom search folder in Microsoft Outlook

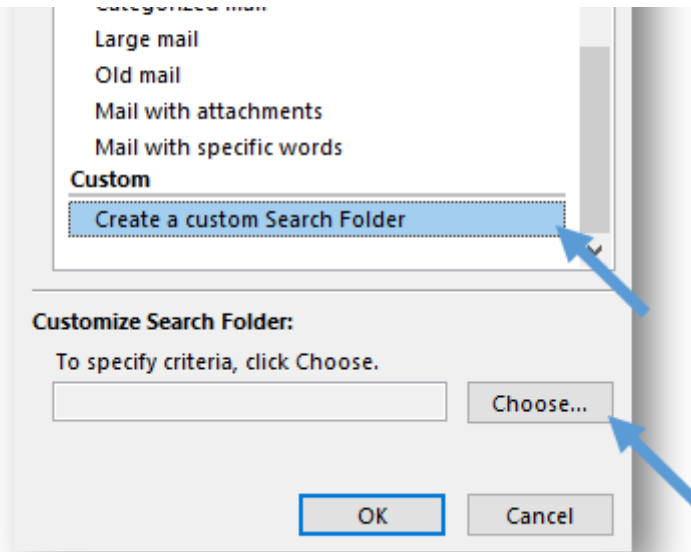
Creating a custom search folder can help you find e-mails. The search folder can be set to search any field in an Outlook e-mail. In this case, since we want to look for encrypted e-mails, you will need to create a custom search folder for encrypted e-mails.

1. To create a custom search folder, open Microsoft Outlook, select the **Folder** tab on the ribbon, and then click on the **New Search Folder** button.

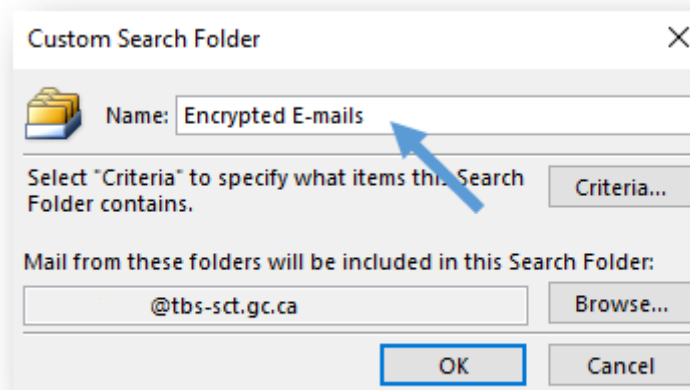


2. In the **New Search Folder** window, scroll down to the bottom of the list. Select the **Create a custom Search Folder** option, and then click on the **Choose** button.

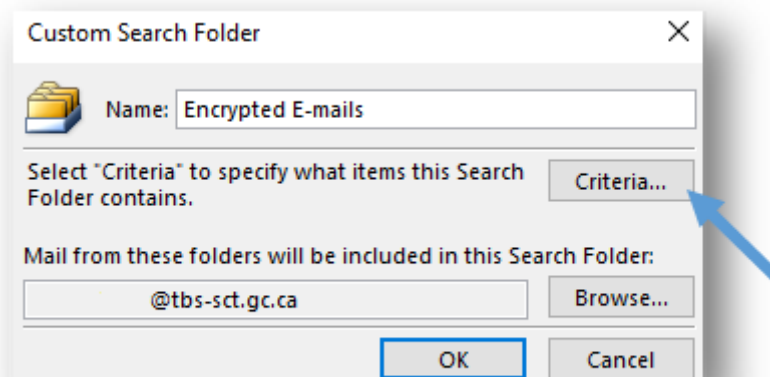




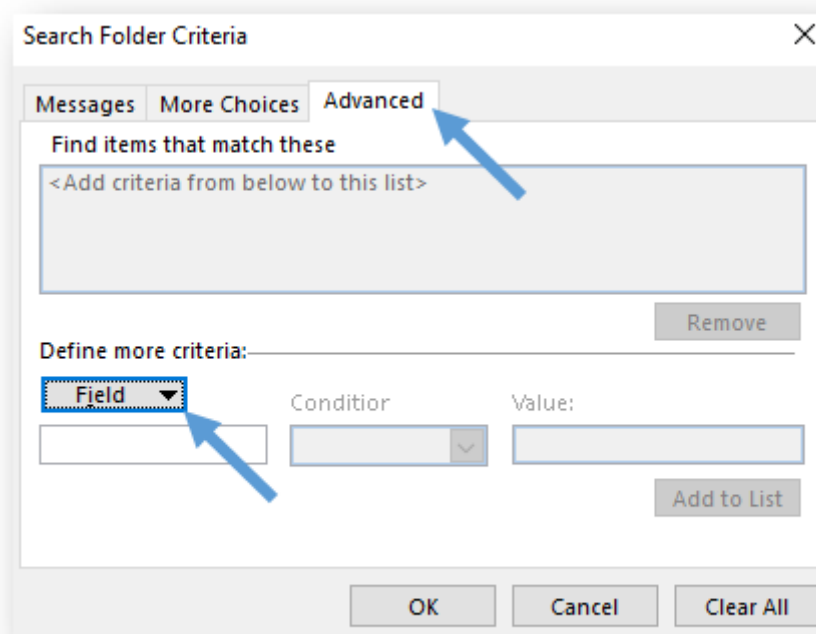
3. In the **Custom Search Folder** window, type in a name for your folder. We suggest “Encrypted E-mails.”



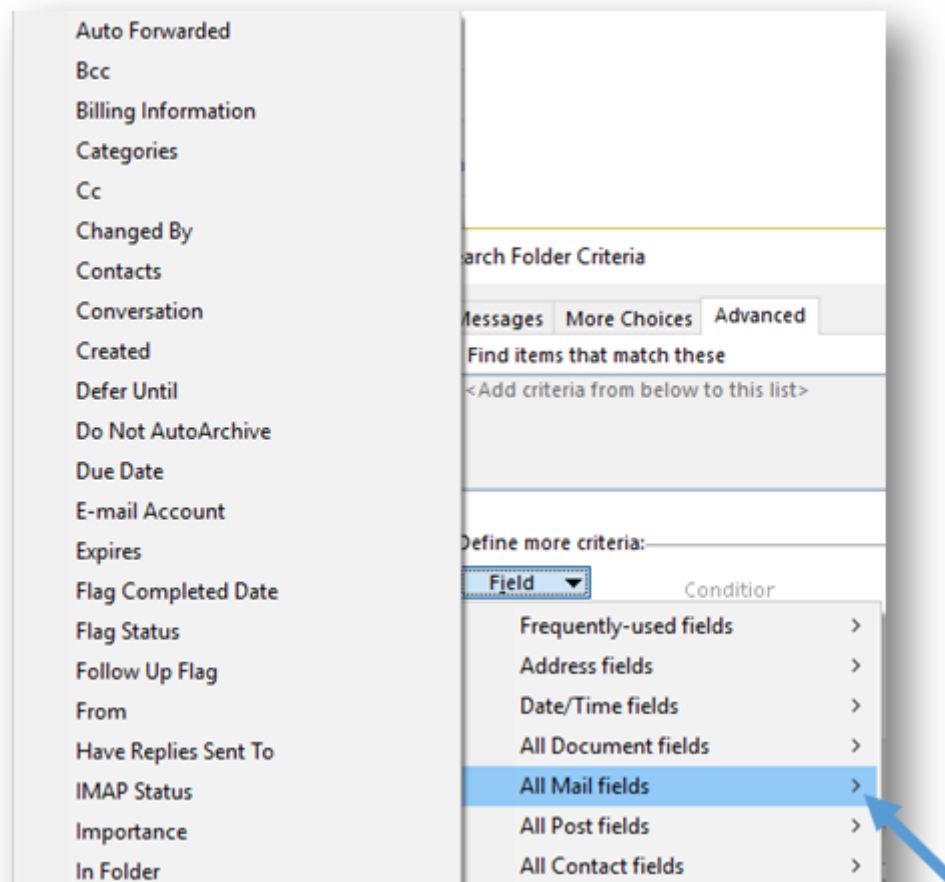
4. Configure the criteria for the search. Click on the **Criteria** button and the **Search Folder Criteria** window will pop up.

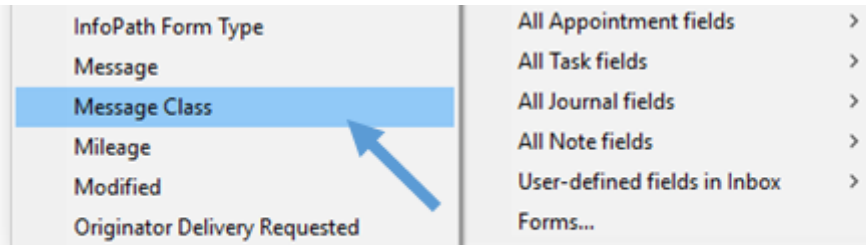


5. In the **Search Folder Criteria** window, select the **Advanced** tab. This tab lets you add criteria based on all the fields that an Outlook e-mail can store.

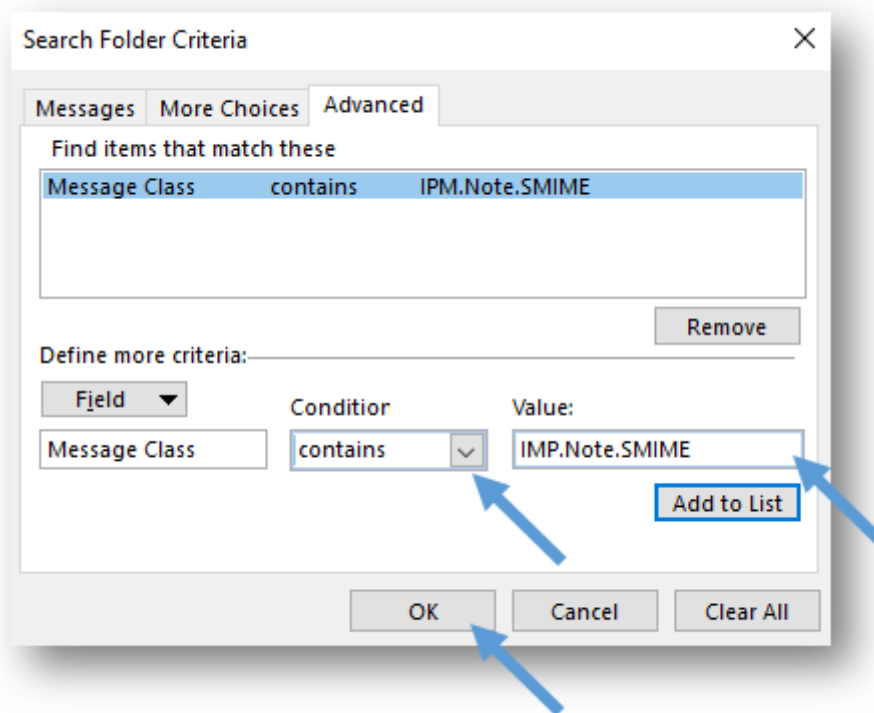


6. Click on the **Field** button below **Define more criteria** and a drop-down menu will appear. From the drop-down menu, select **All Mail fields** and then **Message Class**.

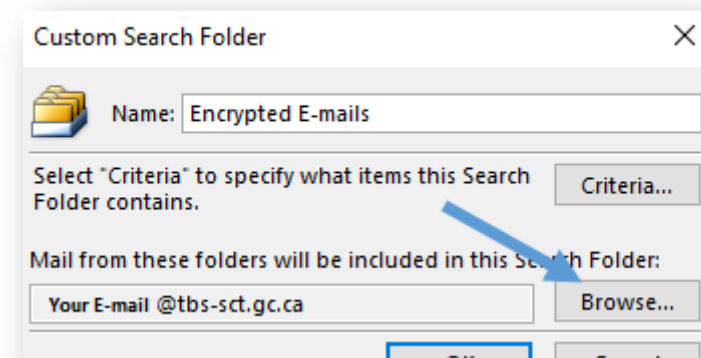




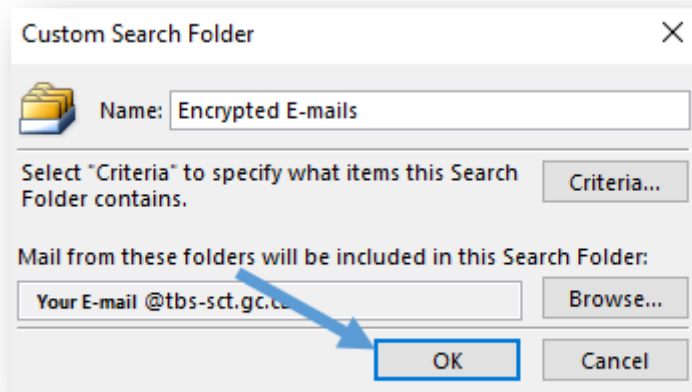
- 7. Under **Condition**, make sure that the drop-down menu says **contains**. Under **Value**, enter **IPM.Note.SMIME** in the empty field and click on the **Add to List** button.



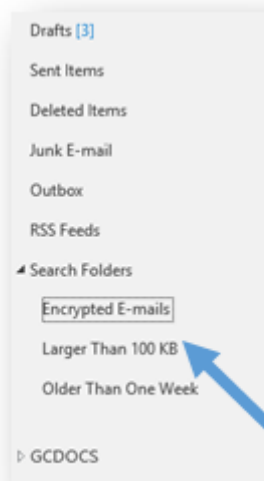
- 8. When you are finished setting the criteria, click on the **OK** button to return to the **Custom Search Folder** window.
- 9. By default, the custom search that you create will search your entire Outlook mailbox. If you want to conduct a search in specific mailbox, click on the **Browse** button.



10. In the **Select Folder(s)** window, select the mailbox that you want to include in the search. Click on the **OK** button once you are finished making your selection.
11. You will return to the **Custom Search Folder** window. Click on **OK**.

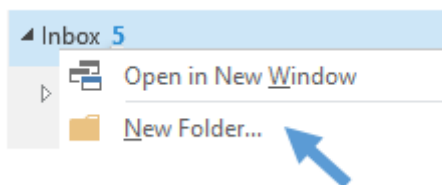


12. In the **New Search Folder** window, click on the **OK** button. Outlook will then create the custom search folder and add it to your Outlook folder list on the left-hand side of the screen. You should be able to see your new **Encrypted E-mails** search folder under the **Search Folders** heading. The search that you have set up, by following the preceding steps, will be conducted automatically when you select the **Encrypted E-mails** search folder.

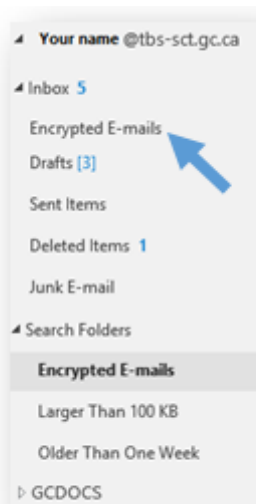


Create an Encrypted E-mails subfolder in your Inbox

13. From your **Inbox**, create an **Encrypted E-mails** subfolder. You can do this by going to the **Folder Pane**, right-clicking on **Inbox** and selecting **New Folder** in the drop-down menu. 46



The **Encrypted E-mail** subfolder in your **Inbox** is where you will copy your encrypted e-mails so that you can decrypt them and search the content.

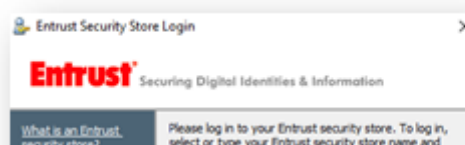


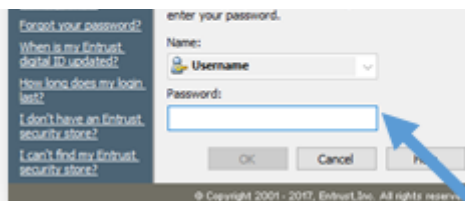
Step 3: Now that you have set up your Encrypted E-mails custom search folder and your Encrypted E-mails subfolder, you will need to log into Entrust before you can search through your encrypted e-mails.

1. Log into Entrust by doing **one** of the following:
 - clicking on the Entrust Security icon
 - clicking on your **Encrypted E-mail** custom search folder or on an encrypted e-mail

The **Entrust Security Store Login** window will appear.

2. In the login window, enter your password and click on **OK**. You will now be able to read your encrypted messages. ***Note: Your Entrust session may timeout and you may be prompted to log back into Entrust.**





Step 4: Now that you are logged into Entrust, you will need to copy all of the encrypted e-mails in the **Encrypted E-mails** custom search folder into the **Encrypted E-mails** subfolder of your **Inbox**.

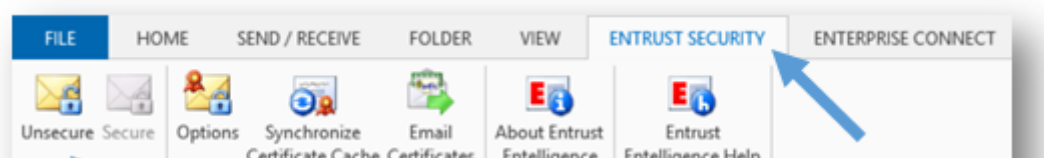
1. Select all the e-mails in the **Encrypted E-mails** custom search folder by entering **Ctrl + A**. Then copy all the e-mails by entering **Ctrl + C**.
2. Select the **Encrypted E-mails** subfolder in your **Inbox** and enter **Ctrl + V** to paste the copied e-mails into the subfolder.
3. There are now copies of all the encrypted e-mails in your inbox in one folder (the **Encrypted E-mail** subfolder in your **Inbox**).

Step 5: Now that all of your encrypted e-mails have been copied to the **Encrypted E-mails** subfolder in your **Inbox**, you will need to decrypt them before you can search their contents.

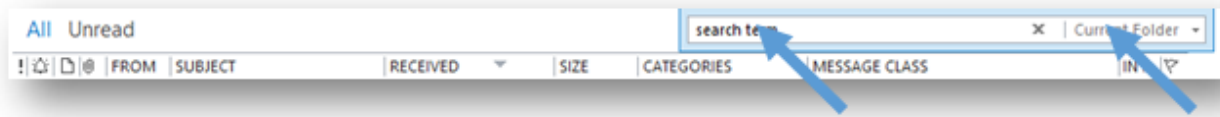
1. In your Inbox, go to your **Encrypted E-mails** subfolder and select up to 10 e-mails to decrypt at a time. To select e-mails, hold the **Ctrl** key while you click on the e-mails. Note that you cannot decrypt more than 10 e-mails at a time.

All Unread		Search Current Mailbox (Ctrl+E)				
FROM	SUBJECT	RECEIVED	SIZE	CATEGORIES	IN FOLDER	
▲ Date: Today						
🔒	testing encryption	Tue 2019-04-02 9:13 AM	22 KB		Inbox	
▲ Date: Older						
🔒	... testing encryption	Thu 2019-02-21 4:43 PM	68 KB		Inbox	
🔒	... testing encryption	Thu 2019-02-21 12:19 P...	59 KB		Inbox	
🔒	... testing encryption	Tue 2019-01-29 2:16 PM	27 KB		Inbox	
🔒	... testing encryption	Wed 2018-11-07 8:54 A...	20 KB		Sent Items	
🔒	... testing encryption	Wed 2018-11-07 8:53 A...	96 KB		Sent Items	
🔒	... testing encryption	Tue 2018-10-09 1:47 PM	354 KB		Sent Items	

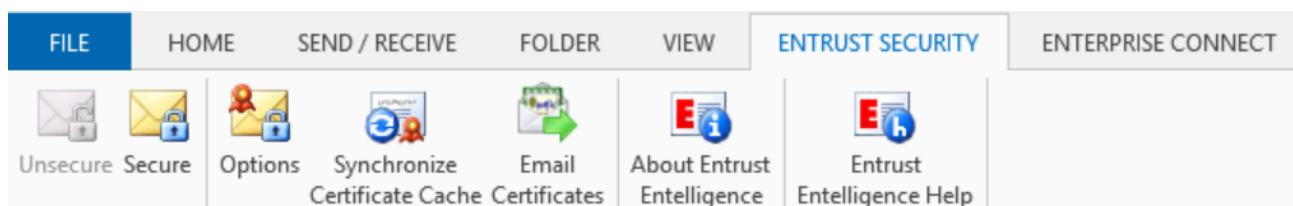
2. To decrypt the e-mails that you have selected, select the **Entrust Security** tab in the Microsoft Outlook ribbon and click on the **Unsecure** icon. The selected e-mails are now decrypted. Keep repeating steps 1 and 2 until all the e-mails in your **Encrypted E-mails** subfolder are decrypted.



3. In order to make searching and sorting e-mails in the **Encrypted E-mails** subfolder easier, make your **Message List Pane** in Outlook bigger until the search field and drop-down menu in your Outlook appear as they do in the figure below.



4. From your **Encrypted E-mails** subfolder, click on the field above the e-mails that says **search Encrypted E-mail (Ctrl + E)**, and enter your search term. Ensure that the **Current Folder** option is selected in the drop-down menu to the right of the field. Relevant results will then be displayed.
5. Below the search field and the drop-down menu are column headings. Use the existing columns to help you sort your search results. Some useful headings that you should be able to see include:
- From
 - Subject
 - Received
 - Importance (!)
6. Once you have finished preparing your search, you **must re-encrypt** the emails in the **Encrypted E-mails** subfolder in your **Inbox in order to protect this information from potential unauthorized access** according to the *Directive on Security Management*.
7. From the **Encrypted E-mails** subfolder, select all e-mails that you decrypted by entering **Ctrl + A**. Once you have selected all the e-mails that must be re-encrypted, select the **Entrust Security** tab again and click on the **Secure** button. Doing so will re-encrypt the e-mails.
8. Once you have re-encrypted the emails in the **Encrypted E-mails** subfolder in your **Inbox**, you should delete this subfolder permanently by selecting the **Encrypted E-mails** folder then pressing the SHIFT + DELETE keys at the same time.



Footnotes

- 1 Subsection 6.1.3 of the *Directive on Recordkeeping* and subsection 6.1.5 of the *Standard on Email Management*

 - 2 Any transitory e-mails that remain in an inbox when an information request is received **must not be deleted or altered** and must be reviewed for possible relevance to the information request.
-

Date modified: 2019-08-20

This is **Exhibit “E”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on November 14, 2022

Signature



March 22, 2020

Transmission by e-mail
scott.streiner@otc-cta.gc.ca

Mr. Scott Streiner
Chairman and Chief Executive Officer
Canadian Transportation Agency
15 Eddy Street, 17th Floor
Gatineau, Quebec J8X 4B3

RE: Request for further public clarification of air carrier obligations per the *Air Passenger Protection Regulations* ("APPR") in the context of the current extraordinary circumstances

Dear Mr. Streiner:

As you are aware, the global air transport and tourism industries are dealing with a wholly-unprecedented collapse in world travel demand, as well as with the resulting operational and financial calamity in terms of drastically cutting capacity and preserving liquidity in an attempt to prevent our businesses from failing and putting tens of thousands of Canadians out of work. Obviously, Transat A.T. and our subsidiary travel units, including Air Transat and Transat Holidays, have not been spared the brunt of this disaster.

Indeed, we have recently announced, as a result of borders closing, the suspension of all outbound travel sales on our flights and the imminent grounding of almost all of our fleet until April 30, 2020, except for the small remainder of our flights that are conducting emergency repatriation operations of Canadians abroad in coordination with the federal government. Furthermore, we are confronted to making extremely difficult decisions where an important number of employees will be put on leave until the situation stabilizes and until we can hopefully and eventually contemplate a return to some sense of normalcy in the future.

In the meantime, while our industry fights to survive, we urgently need the federal government and our oversight authorities such as the CTA to provide assistance, both in the form of financial support and relief in terms of the substantial easing of existing regulatory costs and burdens. I have already written to Ministers Garneau and Morneau with regards to the first objective, and I am now hereby addressing myself to you with respect to the second.

Please be assured that I appreciated the Agency's efforts on March 13, 2020 to provide much-needed clarification to both industry and consumers concerning the application and enforcement of certain provisions of the APPR in the context of the current extraordinary circumstances.



...page 2

However, we need more to be done on an urgent basis in order to establish proper certainty and support the industry's impact mitigation efforts to date.

Specifically, I hereby request that the Agency publicly and unequivocally recognize the uncontrollable nature of the crisis and that all changes to schedules and capacity reductions are measures needed to manage the devastating losses this crisis is causing. Quite simply, these changes are not within the control of air carriers and our regulator should be clear to this end, as well as for the purposes of the application of the APPR.

Furthermore, the limited scope of the exemption on March 13, 2020 is problematic as our personnel have almost no ability to provide alternative travel arrangements at this time given the above-mentioned folding of flight schedules. Consequently, and as additional support and relief, I hereby request the following:

- Clearly recognize that all delays, cancellations, and denied boarding occurring at this time of crisis are outside of Air Transat's control;
- Clarify that the uncontrollable nature of the crisis means that no refunds to passengers are required under the APPR. This is essential to avoid unnecessary confusion among consumers and to pre-empt a spike in the increase of complaints and lawsuits;
- Recognize the offering of travel voucher options in lieu of cash refunds as an acceptable means to address consumer requests for refunds which, in turn, would allow credit card companies and their processors to deny customer chargeback claims and thereafter cease otherwise resulting and destructive financial guarantee demands on air carrier merchants;
- Exempt airlines from the obligation to respond to compensation claims within 30 days;
- Exempt airlines from all obligations to provide alternate travel arrangements; and
- Ensure that all exemptions ordered by the Agency, including those found in Determination No. A-2020-42, are in effect until such time as the industry has fully recovered, which is expected to take longer than April 30, 2020, and at the very least, 90 days.

I would also like to take this opportunity to request a minimum one-year suspension of enforcement action and the levying of fines for non-compliance per the APPR and ATPDR. Again, we are not trying to conveniently avoid our obligations *in normal circumstances*, but rather to ensure that our reduced levels of human resources going forward are able to focus on actively



...page 3

managing the crisis and minimizing as much as possible disruptions to the system and our eventual efforts at recovery.

I wish to thank you in advance for your understanding and expeditious consideration of the present request. Also, please accept my best wishes for the continued health and well-being of yourself, your loved ones and your staff in these unimaginably difficult times.

Sincerely,

Jean-Marc Eustache
Chairman, President and
Chief Executive Officer

c.c. Hon. Marc Garneau, PC, MP – Minister of Transport
Marcia Jones, Chief Strategy Officer - CTA
Miled Hill, Office of the Hon. Marc Garneau, PC, MP
Lawrence Hanson, Assistant Deputy Minister of Transport (Policy)
Colin Stacey, Director General of Air Policy – Transport Canada
George Petsikas, Senior Director, Government and Industry Affairs – Transat A.T. Inc.

This is **Exhibit “F”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on November 14, 2022

Signature

From: Scott Streiner
Sent: March 18, 2020 10:14 PM
To: Marcia Jones
Cc: Sébastien Bergeron
Subject: RE: Request for recognition and acceptance of travel voucher solutions

Thanks, Marcia. I'm not sure we have a clear role here, as this seems to boil down to a commercial dispute between the carrier and the credit card companies. That said, these are extraordinary times, and if there's something we can do to ease threats to industry viability while protecting passengers, we should at least consider it. Let's discuss during EC tomorrow.

S

From: Marcia Jones
Sent: Wednesday, March 18, 2020 10:05 PM
To: Scott Streiner
Cc: Sébastien Bergeron
Subject: Fwd: Request for recognition and acceptance of travel voucher solutions

Scott, I had a long call this evening and have a better understanding of the concern, now outlined in this email.

Perhaps we can discuss tomorrow or at the special EC.

Marcia

Sent from my Bell Samsung device over Canada's largest network.

----- Original message -----

From: George Petsikas <George.Petsikas@transat.com>
Date: 2020-03-18 8:16 PM (GMT-05:00)
To: Marcia Jones <Marcia.Jones@otc-cta.gc.ca>
Subject: Request for recognition and acceptance of travel voucher solutions

Marcia

Many thanks for taking time to speak with me this evening.

As discussed, we are currently under enormous pressure from Canada's bank-owned credit card processors as a result of their charge back guarantees to their customers where the merchant is unable to provide the service nor refund the money paid to this end with the card. This is a pretty standard commitment per the credit card agreements offered by the big players such as Mastercard and Visa.

Consequently, one of the conditions imposed by these companies when doing business with large merchants such as Transat is to demand financial guarantees to cover their exposure per their voluntary commitments to their customers in the event we can't deliver or refund regardless of circumstances, including beyond our control and/or force majeure.

The net result is with the avalanche of recent COVID cancellations, consumers are invoking their charge back guarantees directly with the cards / banks, who in turn are demanding that the merchant makes them whole through the guarantees in question. This is putting enormous strain on our desperate attempts to manage the collapse in our revenues and stabilize our business and avoid ultimate failure and job losses.

As explained, this matter was actively addressed in France and Italy recently, two countries enormously dependant on the stability of their important travel and tourism and tourism sectors that have been severely impacted by the crisis. In brief, the relevant travel industry oversight authorities in these countries publicly recognized and accepted the offering of travel vouchers valid for up to 24 months as a satisfactory resolution of the consumer's claim for a cash refund in the current extraordinary circumstances.

This recognition of this option by state authorities in turn allowed the banks / card processors in those countries to invoke this voucher in lieu of a cash refund approach as evidence the merchant had fulfilled its obligations per the sale and thus allowed them to deny the charge back claim. The result was subsequently the suspension or significant alleviation of cash guarantee demands on the travel industry merchant by the banks.

Consequently, Transat respectfully requests that the Agency give active and urgent consideration to publishing a similar statement with respect to the existing travel voucher programs now being offered by Canadian air carriers including ourselves and Air Canada, among others. Again, the purpose is not to create any form of obligation in this sense but simply to recognize them as a satisfactory resolution of any cash refund claims against airlines. This of course would be temporary while we ride out the worst of the storm over the next few months.

Thank you in advance for your assistance and expeditious consideration of the present and please don't hesitate if you have any questions or require further information.

Kind regards - GP

Get [Outlook for Android](#)

Avertissement de confidentialité:

Ce message, ainsi que son contenu et ses pièces jointes, sont exclusivement destinés au(x) destinataire(s) indiqué(s), sont confidentiels et peuvent contenir des renseignements privilégiés. Si vous n'êtes pas un destinataire indiqué, soyez avisé que tout examen, divulgation, copie, impression, reproduction, distribution, ou autre utilisation de ce message et de ses pièces jointes est strictement interdit. Si vous avez reçu ce message alors que vous n'êtes pas un destinataire désigné, veuillez en aviser immédiatement l'émetteur et détruire ce message et les pièces jointes.

Confidentiality Warning:

This message, its content and any attachments are intended only for the use of the intended recipient(s), are confidential, and may be privileged. If you are not the intended recipient, you are hereby notified that any review, retransmission, conversion to hard copy, copying, circulation or other use of this message and any attachments is strictly prohibited. If you are not the intended recipient, please notify the sender immediately by return e-mail, and delete this message and any attachments from your system.

This is **Exhibit “G”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on November 14, 2022

Signature

From: Marcia Jones
Sent: March 19, 2020 4:19 PM
To: George Petsikas
Cc: Bernard Bussières; Agnieszka Charysz; Howard Liebman; Allan Burnside; Caitlin Hurcomb
Subject: RE: Request for recognition and acceptance of travel voucher solutions

Follow Up Flag: Assurer un suivi
Flag Status: Flagged

Hi George,

Thanks for your message. Please rest assured we are looking into this – there is a lot going on in government/the Agency at this time, as you can imagine. We do appreciate how much pressure you are facing.

I will definitely keep you posted of any updates.
Marcia

From: George Petsikas
Sent: Thursday, March 19, 2020 12:55 PM
To: Marcia Jones
Cc: Bernard Bussières ; Agnieszka Charysz ; Howard Liebman
Subject: RE: Request for recognition and acceptance of travel voucher solutions
Importance: High

Hi Marcia,

Would you be able to provide a status update regarding our urgent request hereunder?

Copying my colleagues who are on need-to-know basis.

Thanks again for your vital cooperation.

George Petsikas

Directeur principal Affaires gouvernementales et de l'industrie
Senior Director, Government and Industry Affairs

T 514-842-9612
C 514-781-1525



Transat A.T. inc.
300, rue Léo-Pariseau, bureau 600
Montréal (Québec) H2X 4C2

De : Marcia Jones <Marcia.Jones@otc-cta.gc.ca>

Envoyé : 18 mars 2020 22:19

À : George Petsikas <George.Petsikas@transat.com>

Objet : Re: Request for recognition and acceptance of travel voucher solutions

CYBERSÉCURITÉ *Courriel d'une source externe:* Ne cliquer sur aucun lien et aucune pièce jointe sauf si vous faites confiance à l'expéditeur et que le contenu est légitime.

CYBERSECURITY *Email from an external source:* Don't open links and attachments unless you trust the sender and know the content is safe.

Hi George,

Thank you for your message and explaining the situation in more detail. I will be checking into this and I appreciate it is highly urgent.

Regards,
Marcia

Sent from my Bell Samsung device over Canada's largest network.

----- Original message -----

From: George Petsikas <George.Petsikas@transat.com>

Date: 2020-03-18 8:16 PM (GMT-05:00)

To: Marcia Jones <Marcia.Jones@otc-cta.gc.ca>

Subject: Request for recognition and acceptance of travel voucher solutions

Marcia

Many thanks for taking time to speak with me this evening.

As discussed, we are currently under enormous pressure from Canada's bank-owned credit card processors as a result of their charge back guarantees to their customers where the merchant is unable to provide the service nor refund the money paid to this end with the card. This is a pretty standard commitment per the credit card agreements offered by the big players such as Mastercard and Visa.

Consequently, one of the conditions imposed by these companies when doing business with large merchants such as Transat is to demand financial guarantees to cover their exposure per their voluntary commitments to their customers in the event we can't deliver or refund regardless of circumstances, including beyond our control and/or force majeure.

The net result is with the avalanche of recent COVID cancellations, consumers are invoking their charge back guarantees directly with the cards / banks, who in turn are demanding that the merchant makes them whole through the guarantees in question. This is putting enormous strain on our desperate attempts to manage the collapse in our revenues and stabilize our business and avoid ultimate failure and job losses.

As explained, this matter was actively addressed in France and Italy recently, two countries enormously dependant on the stability of their important travel and tourism and tourism sectors that have been severely impacted by the crisis. In brief, the relevant travel industry oversight authorities in these countries publicly recognized and accepted the offering of travel vouchers valid for up to 24 months as a satisfactory resolution of the consumer's claim for a cash refund in the current extraordinary circumstances.

This recognition of this option by state authorities in turn allowed the banks / card processors in those countries to invoke this voucher in lieu of a cash refund approach as evidence the merchant had fulfilled its obligations per the sale and thus allowed them to deny the charge back claim. The result was subsequently the suspension or significant alleviation of cash guarantee demands on the travel industry merchant by the banks.

Consequently, Transat respectfully requests that the Agency give active and urgent consideration to publishing a similar statement with respect to the existing travel voucher programs now being offered by Canadian air carriers including ourselves and Air Canada, among others. Again, the purpose is not to create any form of obligation in this sense but simply to recognize them as a satisfactory resolution of any cash refund claims against airlines. This of course would be temporary while we ride out the worst of the storm over the next few months.

Thank you in advance for your assistance and expeditious consideration of the present and please don't hesitate if you have any questions or require further information.

Kind regards - GP

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This is **Exhibit “H”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on November 14, 2022

Signature

From: George Petsikas <George.Petsikas@transat.com>
Sent: March 25, 2020 3:18 PM
To: Marcia Jones
Cc: Caitlin Hurcomb; Allan Burnside; Bernard Bussières; Howard Liebman
Subject: Re: Update: CTA measures/Mise à jour: mesures prises par l'OTC

Marcia

I confirm reception of your note hereunder on behalf of Transat.

Please accept our sincere thanks for turning this around and getting it out the door. We are mindful that Agency staff have been working very hard and diligently to assist both industry and consumers in this time of crisis so our appreciation is genuine.

Best regards and personal wishes to you, your family and colleagues for continued good health.

George

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From: Marcia Jones
Sent: Wednesday, March 25, 2020, 2:34 PM
To: Marcia Jones
Cc: Caitlin Hurcomb; Allan Burnside
Subject: Update: CTA measures/Mise à jour: mesures prises par l'OTC

CYBERSÉCURITÉ **Courriel d'une source externe:** Ne cliquer sur aucun lien et aucune pièce jointe sauf si vous faites confiance à l'expéditeur et que le contenu est légitime.

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Le français suit l'anglais.

Good afternoon,

I am writing to provide an update on the latest steps the Canadian Transportation Agency (CTA) has taken related to the COVID-19 pandemic. Today, the CTA issued decisions:

- Temporarily exempting all air carriers holding a domestic licence from the requirement in section 64 of the *Canada Transportation Act* to provide 120 days' notice and engage in consultations before temporarily suspending the operation of air services between points in Canada, while retaining that requirement for any permanent discontinuation of service. For more information, see [Order 2020-A-36](#).
- Temporarily exempting all air carriers from the *Air Passenger Protection Regulations* deadline for responding to passenger claims for compensation, while requiring that responses be provided within 120 days of the end of the exemption to certain APPR provisions. For more information, see [Determination A-2020-47](#).
- Extending the previously announced exemptions from certain APPR requirements related to compensation and alternate travel arrangements from April 30, 2020 to June 30, 2020. For more information, see [Determination A-2020-47](#).

- Extending the stay of all dispute resolution activities involving air carriers from April 30, 2020 to June 30, 2020. For more information, see [Order 2020-A-37](#).

In addition, the CTA has released a statement providing guidance for addressing the mass flight cancellations taking place worldwide. In order to balance passenger protection and airline operating realities in these extraordinary and unprecedented circumstances, the CTA has indicated that, generally speaking, an appropriate approach in the current context could be for airlines to provide affected passengers with vouchers or credits for future travel, as long as these vouchers or credits do not expire in an unreasonably short period of time. A period of 24 months would be considered reasonable in most cases. Of course, any situation brought forward to the CTA will be evaluated on its own merits. The full statement is available on the [CTA's website](#).

We will be sure to keep you informed of any further developments. Please don't hesitate to contact me with any questions.

Bonjour,

Je vous écris pour faire le point sur les dernières mesures prises par l'Office des transports du Canada (OTC) dans le contexte de la pandémie de COVID-19. Aujourd'hui, l'OTC a rendu des décisions visant :

- à exempter temporairement tous les transporteurs aériens détenant une licence intérieure de l'obligation de donner un préavis de 120 jours, obligation prévue à l'article 64 de la *Loi sur les transports au Canada*, et de tenir des consultations avant de suspendre temporairement l'exploitation des services aériens entre des points situés au Canada; cette obligation est toutefois maintenue pour toute interruption de service permanente. Pour en savoir plus, consultez [l'arrêté n° 2020-A-36](#);
- à exempter temporairement tous les transporteurs aériens de l'obligation de respecter le délai prévu dans le *Règlement sur la protection des passagers aériens* pour répondre aux demandes d'indemnité présentées par les passagers, en exigeant toutefois que les réponses soient fournies dans un délai de 120 jours à compter de la fin de la période d'exemption de l'application de certaines dispositions du RPPA. Pour en savoir plus, consultez [la détermination n° A-2020-47](#);
- à prolonger du 30 avril au 30 juin 2020 les exemptions de l'application de certaines exigences du RPPA liées aux indemnités et aux arrangements de voyage alternatifs. Pour en savoir plus, consultez [la détermination n° A-2020-47](#);
- à prolonger du 30 avril au 30 juin 2020 la suspension de toutes les activités liées au règlement des différends concernant les transporteurs aériens. Pour en savoir plus, consultez [l'arrêté n° 2020-A-37](#).

De plus, l'OTC a publié une déclaration dans laquelle il donne des orientations pour faire face aux annulations massives de vols effectuées à l'échelle de la planète. Afin d'établir un équilibre entre la protection des passagers et les réalités opérationnelles des compagnies aériennes dans ces circonstances extraordinaires et sans précédent, l'OTC a indiqué que, de façon générale, une solution qui serait convenable dans le contexte actuel serait que les compagnies aériennes fournissent aux passagers touchés des bons ou des crédits pour des voyages futurs, à condition que ces bons ou ces crédits n'expirent pas dans un délai déraisonnablement court. Une période de 24 mois serait considérée comme raisonnable dans la plupart des cas. Bien entendu, toutes les situations présentées à l'OTC seront évaluées au cas par cas. La déclaration complète se trouve sur [le site Web de l'OTC](#).

Nous ne manquerons pas de vous tenir informés de l'évolution de la situation. N'hésitez pas à communiquer avec moi si vous avez des questions.

Meilleures salutations,

Marcia Jones

Dirigeante principale, Stratégies/Chief Strategy Officer

Office des transports du Canada/Canadian Transportation Agency

15, rue Eddy/15 Eddy Street

Gatineau, QC, K1A 0N9

(613) 864-9918

marcia.jones@otc-cta.gc.ca

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This is **Exhibit ‘I’** to the Affidavit of Dr. Gábor Lukács
affirmed before me on November 14, 2022

Signature

Salmasi, Aysa

From: Marcia Jones <Marcia.Jones@otc-cta.gc.ca>
Sent: Wednesday, March 18, 2020 5:28 PM
To: Stacey, Colin
Cc: Caitlin Hurcomb; Allan Burnside; Davis, Mark; Millette, Vincent
Subject: RE: From MinO: Air Transat

Categories: ATIP Retrieval Notice A-2020-00167BB, ATIP Retrieval Notice / A-2020-00091

Hi Colin,

I am sending this unencrypted as our remote network access is patchy and we are not able to open encrypted emails on our Samsungs at the Agency.

I would note that for situations outside of the carrier's control, no refunds are required under the APPR. As you know, the Agency issued a determination on Friday to clarify some situations flowing from COVID-19 that are considered to be in that category.

I would assume that writ large this situation is outside of the carrier's control.

If a flight cancellation is within the carrier's control, or within the carrier's control but required for safety, a refund is required and a voucher would not be compliant. Again, this does not seem to be relevant here.

Looping in Cait in case she has anything to add.

I hope this is helpful.

Thanks,
Marcia

From: Stacey, Colin <colin.stacey@tc.gc.ca>
Sent: Wednesday, March 18, 2020 2:57 PM
To: Marcia Jones <Marcia.Jones@otc-cta.gc.ca>
Cc: Davis, Mark <mark.davis@tc.gc.ca>; Millette, Vincent <vincent.millette@tc.gc.ca>
Subject: FW: From MinO: Air Transat

Hi Marcia,

Air Transat are telling us that they are getting pressure from creditors who are pushing on the airlines for cash. They will request that we officially let them to provide vouchers to passengers instead of providing them cash because they literally do not have enough cash to give refunds.

Have you heard anything about this? Are you available to discuss?

Thanks,

cs

This is **Exhibit “J”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on November 14, 2022

Signature

Nadine Landry

From: Millette, Vincent <vincent.millette@tc.gc.ca>
Sent: Tuesday, March 24, 2020 12:40 PM
To: Caitlin Hurcomb
Subject: RE: CTA announcement tomorrow

thanks

From: Caitlin Hurcomb [mailto:Caitlin.Hurcomb@otc-cta.gc.ca]
Sent: Tuesday, March 24, 2020 12:31 PM
To: Millette, Vincent <vincent.millette@tc.gc.ca>
Subject: RE: CTA announcement tomorrow

At this point, I've not received confirmation of what the timing will be.

From: Millette, Vincent [mailto:vincent.millette@tc.gc.ca]
Sent: Tuesday, March 24, 2020 12:28 PM
To: Caitlin Hurcomb <Caitlin.Hurcomb@otc-cta.gc.ca>
Subject: RE: CTA announcement tomorrow

Just out of my personal curiosity, do you know why it is delayed?

From: Caitlin Hurcomb [mailto:Caitlin.Hurcomb@otc-cta.gc.ca]
Sent: Tuesday, March 24, 2020 12:25 PM
To: Millette, Vincent <vincent.millette@tc.gc.ca>
Subject: RE: CTA announcement tomorrow

Hi Vincent,
 I anticipate it will be in the next day or two, but I've not received confirmation.

From: Millette, Vincent [mailto:vincent.millette@tc.gc.ca]
Sent: Tuesday, March 24, 2020 12:07 PM
To: Caitlin Hurcomb <Caitlin.Hurcomb@otc-cta.gc.ca>
Subject: RE: CTA announcement tomorrow

Hi Cait – do you know when the Agency will be issuing this statement?

Thanks

From: Caitlin Hurcomb [mailto:Caitlin.Hurcomb@otc-cta.gc.ca]
Sent: Monday, March 23, 2020 11:04 AM
To: Millette, Vincent <vincent.millette@tc.gc.ca>
Subject: RE: CTA announcement tomorrow

Hi Vincent,
 This statement indicates what the CTA views as appropriate given this situation – an approach that would ensure passengers aren't totally out of pocket while taking into account concerns from airlines.

The statement indicates that the CTA would consider vouchers acceptable "refunds" for those airlines that do require reimbursement in their tariff.

The statement does not force other airlines – whose tariffs do not require reimbursement in force majeure situations – to provide passengers with vouchers or credits. It indicates what we view as a good practice that would help make passengers whole. It's not our intention to take enforcement actions against one of these airlines if this practice is not followed, in alignment with their tariff.

If a complaint were brought forward to the CTA, it would be assessed on its own merits, of course.

Happy to discuss further,
Cait

From: Millette, Vincent [<mailto:vincent.millette@tc.gc.ca>]
Sent: Monday, March 23, 2020 10:20 AM
To: Caitlin Hurcomb <Caitlin.Hurcomb@otc-cta.gc.ca>
Subject: RE: CTA announcement tomorrow

Would your approach force in any way carriers that do not have refunds specified in their tariff to start refunding or their current tariff still apply?

From: Caitlin Hurcomb [<mailto:Caitlin.Hurcomb@otc-cta.gc.ca>]
Sent: Monday, March 23, 2020 10:15 AM
To: Millette, Vincent <vincent.millette@tc.gc.ca>
Subject: RE: CTA announcement tomorrow

Hi Vincent,

I understand there is a plan to release a statement indicating that, generally speaking, for cancelled flights, an appropriate approach in the current context could be for airlines to provide affected passengers with vouchers or credits for future travel. This was discussed between the Chair, the DM and the Minister's Chief of Staff and Marcia spoke with your ADM over the weekend as well.

It has been noted, though, that some airlines may not wish to provide vouchers, if their tariffs do not have any reimbursement requirement for force majeure situations.

Let me know if you'd like to discuss further.

Cait

From: Millette, Vincent [<mailto:vincent.millette@tc.gc.ca>]
Sent: Monday, March 23, 2020 10:02 AM
To: Caitlin Hurcomb <Caitlin.Hurcomb@otc-cta.gc.ca>
Subject: RE: CTA announcement tomorrow

Hi Cait – I am on a Min/DM call and I'm sure the question will come up. Any insight you can provide quickly?

Thanks

From: Millette, Vincent
Sent: Sunday, March 22, 2020 2:22 PM
To: 'Caitlin Hurcomb' <Caitlin.Hurcomb@otc-cta.gc.ca>
Subject: CTA announcement tomorrow

Hi Cait - I was just on a conference call with Lawrence, our ADM, where he briefed us on an announcement the Agency would do tomorrow regarding the refund and voucher issue.

He understood, based on a conversation with Marcia, that the measure you would announce may have an adverse impact on the larger carriers like AC or WestJet.

We are not entirely sure we understand this. Can you explain?

Feel free to call me if easier 343-996-9858

Thanks!

Sent from my BlackBerry 10 smartphone on the Rogers network.

This is **Exhibit “K”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on November 14, 2022

Signature



Marc Roy

Vice President, Public Affairs and Business Development- Sandstone Group

Ottawa, Ontario, Canada

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About

Sandstone Group, based in Ottawa, specializes in providing strategic advice to corporate executives in matters of public affairs, government relations, crisis communications and issues management, procurement, public policy, and on legislation before Parliament.

We specialize in helping our clients succeed on what might be viewed as difficult files by providing effective, efficient and winning strategies.

Experience



Vice President, Public Affairs and Business Development

Sandstone Group

Mar 2022 - Present · 9 months

Ottawa, Ontario, Canada



Transport Canada - Transports Canada

5 years 4 months

Chief Of Staff

Jun 2018 - Feb 2021 · 2 years 9 months

Ottawa, Ontario, Canada

Chief of Staff to the Minister of Transport Marc Garneau

Director Of Communications

Nov 2015 - Jun 2018 · 2 years 8 months

Ottawa, Ontario, Canada

Director of Communications to Minister of Transport Marc Garneau



Director Of Communications

Senate of Canada | Sénat du Canada

Aug 2006 - Oct 2015 · 9 years 3 months

Ottawa, Ontario, Canada

Director of Communications to the Leader of the Opposition in the Senate



Associate Director Of Communications

Office of the Prime Minister of Canada | Cabinet du premier ministre du Canada

Jul 2004 - Feb 2006 · 1 year 8 months

Ottawa, Ontario, Canada



Director Of Communications

Patrimoine canadien -- Canadian Heritage

Dec 2003 - Jun 2004 · 7 months

Ottawa, Ontario, Canada

Director of Communications to the Minister of Canadian Heritage



Director Of Communications

House of Commons of Canada Chambre des communes du Canada

Aug 1998 - Dec 2003 · 5 years 5 months

Ottawa, Ontario, Canada

Director Of Communications to the House of Commons Government House Leader

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This is **Exhibit “L”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on November 14, 2022

Signature

Our Deputy Minister

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From: Transport Canada



Michael Keenan
Deputy Minister
Transport Canada

Michael Keenan was appointed Deputy Minister of Transport on March 14, 2016.

Michael has extensive experience in management, engagement, economic analysis and policy development in the Government of Canada. Before joining Transport Canada, he served as Associate Deputy Minister at Natural Resources Canada.

Before that, at Environment Canada he was responsible for strategic policy development, economic analysis of environmental policy and regulatory initiatives, coordination of federal/provincial relations, and the Federal Sustainable Development Strategy. He also served as the Vice-President of Organizational Leadership at the Canada School of Public Service and as the Director General of Economic Analysis at Agriculture and Agri-Food Canada, where he also chaired of the OECD Committee of Agriculture.

Earlier in his public service career, Michael worked in central agencies, in the Priorities and Planning Secretariat at the Privy Council Office, in various positions at Finance Canada and at the British Columbia Ministry of Finance.

Michael holds a B.A. (Honours) from Saint Francis Xavier University and an M.A. in economics from Queen's University.

Transport Canada is closely monitoring the COVID-19 situation. In response, we have issued some **transportation-related measures and guidance**. Please check if any of these measures apply to you.

You may experience longer than usual wait times or partial service interruptions. If you cannot get through, please **contact us by email**.

For information on COVID-19 updates, please visit Canada.ca/coronavirus.

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Date modified:

2019-01-11

This is **Exhibit “M”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on November 14, 2022

Signature

October 21, 2022
Ottawa, Ontario

80

Education

Master of Arts, Political Science, University of British Columbia
Bachelor of Arts, Political Studies, University of Saskatchewan

Professional Experience

Since March 2021

Associate Deputy Minister of Fisheries and Oceans

2017 - 2021

Assistant Deputy Minister, Policy, Transport Canada

2014 - 2017

Assistant Deputy Minister, Science and Innovation Sector, Innovation, Science and Economic Development Canada

2013 - 2014

Assistant Deputy Minister, Spectrum, Information Technologies and Telecommunications, Innovation, Science and Economic Development Canada

2006 - 2013

Director General, Strategic Policy Directorate, Environment Canada

2004 - 2006

Director, Policy Planning and Integration, Environment Canada

2002 - 2004

Director, Employment Policy, Human Resources and Skills Development Canada

Related Product

- The Prime Minister announces changes in the senior ranks of the Public Service (</en/news/news-releases/2022/10/21/prime-minister-announces-changes-senior-ranks-public-service>)

This is **Exhibit “N”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on November 14, 2022

Signature



By Email

April 20, 2022

Evolink Law
4388 Still Creek Drive, Suite 237
Burnaby, BC
V5C 6C6

Attention: Simon Lin

Department of Justice Canada
Civil Litigation Section
50 O'Connor Street, Suite 500
Ottawa, ON
K1A 0H8

Attention Lorne Ptack
J. Sanderson (Sandy) Graham

Dear Sirs:

Re: *Air Passenger Rights v AGC*
Court File No.: A-102-20

We are writing further to the Court's Order dated April 11, 2022 ("Additional Production Order").

Additional Production Order – Paragraph 4

Pursuant to paragraph four (4) of the Additional Production Order, the Agency has been ordered to produce the documents identified as items A1, A5, C2 and B4 in the Appendix to the Reasons for the Order.

Item A1 - Included in the email accompanying this letter are links to the original Microsoft Word files for the Statement on Vouchers, and drafts of the Statement on Vouchers, attached to emails that were sent to/from a CTA Member (including the Chairperson and Vice-Chairperson) between March 9, 2020 and March 25, 2020.

Item A5 - Included in the email accompanying this letter is a link to the original Microsoft Word file(s) for the template media response in the March 24, 2020 at 7:34PM email sent by the Chairperson with subject line "Answer," which were sent to/from a CTA Member (including the Chairperson and Vice-Chairperson) between March 24, 2020 and March 25, 2020.

Item B4 – Included in the email attached to this letter is a link to copies of all non-privileged documents sent to or from the CTA in respect of the Statement on Vouchers between March 9, 2020 and March 25, 2020 using:

- (a) the CTA's Info email account (info@otc-cta.gc.ca); and
- (b) the CTA's Twitter accounts in English (CTA_gc) and French (OTC_gc), including but not limited to Private Messages.

Item C2 – attached in Appendix C2 are all non-privileged documents in respect of the CTA’s EC call on March 20, 2020.


Additional Production Order – Paragraph 5

Pursuant to paragraph five (5) of the Additional Production Order, the Agency is required to determine if the Statement on Vouchers was discussed during the March 19, 22 and 23 calls. If it was then documents relating to these calls as listed as items C1, C5 and C6 in the Appendix to the Reasons for the Additional Production Order are required to be produced.

Based on the materials that we have gathered, it appears that the Statement of Vouchers was discussed during the March 19, 22 and 23 calls.

Included with the email attached to this letter are links to the documents listed in Appendices C1, C5 and C6 of the Additional Production Order for the March 19, 22 and 23 calls respectively.

Yours truly,



Allan Matte
Senior Counsel
Legal Services Directorate
Canadian Transportation Agency
60 Rue Laval
Gatineau, Quebec
J8X 3G9

Tel: (819) 953-0611

Fax: (819) 953-9269

Email: Allan.Matte@otc-cta.gc.ca

Email: Servicesjuridiques/LegalServicesOTC/CTA@otc-cta.gc.ca

This is **Exhibit “O”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on November 14, 2022

Signature



David J. Shapiro

Executive Vice President, International & Regulatory Affairs & Chief Legal Officer

Vice-président général, Affaires internationales et réglementaires et chef des affaires juridiques

Centre Air Canada 1270
P.O. Box 7000, YUL 1276
Dorval, Québec, Canada H4Y 1J2

Direct Line: 514 422 5834
Facsimile: 514 422 0285
Email: david.shapiro@aircanada.ca

March 23, 2020

**Private and Confidential
By E-mail**

Mr. Scott Streiner

Office of the CEO

Canadian Transportation Agency

15 Eddy Street, 17th Floor

Gatineau, Quebec J8X 4B3

RE: Request for Exemption from the *Air Passenger Protection Regulations* ("APPR"), and from the Entry into Force of Certain Provisions of the *Accessible Transportation for Persons with Disabilities Regulations* ("ATPDR")

Dear Mr. Streiner,

I regret that I have to be writing with the degree of urgency that I am to request immediate relief from the ongoing application of APPR, and the imminent entry into force of ATPDR on June 25, 2020, as a result of the devastating impact that the COVID-19 crisis is having on airlines. These concerns were raised during the Agency's technical briefing on March 19th, 2020, and we were invited to put them in writing.

1- UNPRECEDENTED IMPACT ON AIRLINES

As you are well aware, with the world's borders being progressively shut down and a growing proportion of the world's population self-isolating, working from home and practising social distancing, the global airline industry is on the front line and has by and large come to a standstill. The COVID-19 crisis has already had a devastating impact on airline revenues, yet it seems that we may be only in the early stages of the deterioration. Like all airlines, Air Canada has had to implement drastic and unprecedented cost cutting measures, rapidly suspending the majority of its flights, internationally and transborder, and significantly reducing its domestic network as a direct result of the crisis.

2- APPR

Inadequacy of Determination No. A-2020-42

While the Agency's initiative¹ to exempt carriers from certain, specified provisions of APPR is appreciated, it stops well short of what is required to address the magnitude of the crisis we are confronting or to contribute to providing the real and tangible relief that airlines desperately need.

¹ Determination No. A-2020-42 of March 13, 2020.

First, by not clearly and unequivocally recognising that the scope and magnitude of the crisis is deeply affecting virtually *everything*² and that *no* airline operational decision is being made in isolation of it, without regard and responding to it, or without a heavy impact from it, the Agency fails to adequately account for the reality that *all* changes to schedules are measures needed to manage the devastating and overriding impact of the crisis and are a *direct result* of the crisis, as are *all* operational decisions impacting customers. In this environment, which has never been witnessed before and could not have been anticipated, and still cannot be planned for, virtually every operational occurrence addressed by APPR is driven by the crisis and therefore not within carriers' control.

It follows, therefore, that the narrow scope of the exemption (limited as it is to providing relief for situations *within* carriers' control) is equally problematic. Our staff has almost *no* ability to provide alternative travel arrangements, and our Customer Relations team *do not* have the capacity to respond to compensation requests within 30 days³.

In these circumstances, compliance with APPR is not only impractical and unrealistic, but is, for the most part, impossible.

Request

Therefore, pursuant to s. 80 of the Canada Transportation Act ("Act"), we request that the Agency declare a complete suspension of the application of all obligations under APPR until further notice.

If this most sensible measure in these unprecedented circumstances is, for whatever reason, deemed not feasible, we request that the Agency at a minimum:

- Clearly recognize that all delays, cancellations, and denied boarding occurring at this time of crisis are **outside of airlines' control**, with no exceptions;
- Clarify that the uncontrollable nature of the crisis means that no refunds to passengers are required under APPR⁴. While this may be clear to the Agency and in Air Canada's tariffs, it is increasingly evident that it is not clear to the general public. Failure to clarify this will inevitably lead to a sharp and unnecessary increase in complaints and meritless lawsuits;
- Exempt airlines from the obligation to respond to compensation claims within 30 days⁵;
- Exempt airlines from *all* obligations to provide alternate travel arrangements; and
- Ensure that all exemptions ordered by the Agency, including those found in Determination No. A-2020-42, are in effect until such time as the industry has fully recovered, which is, by all accounts, expected to take significantly longer than April 30, 2020, and at the very least, 90 days.

² Surprisingly, the Agency stated that whether "decisions that are influenced by the pandemic, including decisions to cancel and consolidate flights due to dropping passenger volumes (...) are within or outside carrier control would have to be assessed on a case-by-case basis". Given the extent of the pandemic and its impact on the industry, this could potentially result in literally millions of cases for the CTA and small claims courts to assess.

³ As required under section 19(4) APPR.

⁴ While para. 7 of Determination No. A-2020-42 does read that only rebooking obligations apply to situations outside carrier's control, a clear statement that no refunds apply would be extremely helpful in light of the current state of confusion in the public sphere.

⁵ Section 19(4) APPR.

3- ATPDR

Air Canada has deployed its best efforts and made very significant progress over the intervening months to ensure compliance with ATPDR by June 25, 2020 while also managing many other competing regulatory initiatives⁶ and operational urgencies such as the unforeseen and abrupt grounding of the Boeing 737 MAX (which as real and intense as it was, now pales as a crisis in comparison). Air Canada's resources, which have been stretched by these challenges for some time, are now stretched beyond any imaginable limits in managing the present crisis⁷, so that work on necessary ATPDR changes is now, inevitably and definitively severely delayed through no fault of ours. Therefore, we request that the compliance deadlines be suspended (or, otherwise, at least, extended significantly).

Air Canada estimates that it is 95% compliant with the June 25, 2020 requirements. However, the cost and effort needed to comply with the remaining 5% is significant: it includes in-flight entertainment upgrades for systems that are already being phased out in the next few years, as well as training requirements that have such broad impact on front-line staff that costly external consultant support is required.

An essential precursor to adjusting and delivering our training material is the review of a number of policies, procedures and processes throughout many departments. To say that devoting time and resources now to this endeavor is wholly unrealistic is an understatement: in no realm of reality are any of our key resources responsible for these changes available to do so at this time of crisis. That would entail taking them away from managing the current crisis, which simply is not an option. So, irrespective of the cost of training, the initial design of training material is now inevitably significantly delayed.

Even if training were designed and ready to be delivered, the current environment is not one conducive to learning and absorbing new regulations and complex requirements. The purpose of ATPDR is to accomplish a culture change and commitment to accessibility. True change management requires a mindset shift and takes time, energy, focus and investment to achieve. All of these are, understandably, now in short supply.

Request

We therefore request, pursuant to s. 170(3) or 170(4) of the Act, that the Agency extend the deadline for compliance with ATPDR until further notice, or at the very least by 90 days.

Air Canada remains committed to fully meeting the obligations of ATPDR once the industry has firmly recovered from the COVID-19 crisis. Even during the crisis, Air Canada will attempt to continue its implementation efforts to the extent practicable in the circumstances. In compliance with the test set out in s. 170(4), we *will* take the necessary measures to comply as soon as we are able.

If for any reason a full suspension is deemed not feasible, even appreciating that we may not fully be in a position to comply, we request that the Agency indefinitely suspend all initiatives that require IT development, sizable investment, new and complex procedures, and significant change management. These are: allowing reservations to be made by email,⁸ training,⁹ accommodating manual folding

⁶ Such initiatives include the *Regulations Amending the Transportation Information Regulations (Air Travel Performance Data Collection)*, the *Regulations Amending the Canadian Aviation Regulations (Parts I, VI and VII — Flight Crew Member Hours of Work and Rest Periods)*, and *Air Passenger Protection Regulations*.

⁷ Including personnel from the MEDA Desk, AC Medical, Airports, Call Centres, eCommerce, In-Flight Services, System Operations Control, Customer Relations, Operations Excellence, Passenger Movement, Customer Journey Management and Legal

⁸ S. 7-8 ATPDR.

⁹ S. 15-23 ATPDR.

wheelchairs on board,¹⁰ accessible IFE,¹¹ written confirmation of services¹², and retention of medical information or documents.¹³

For the many of the same reasons cited above, **we also request an equivalent extension of the deadline to provide comments on the draft guidance materials on ATPDR, and that all work on Phase II of ATPDR be halted** until the industry has fully recovered from the devastating effects of COVID-19. Any cost-benefit analysis for Phase II will have to recognise airlines' newly constrained capacity to take on additional costs in the current landscape.

4- Enforcement Leniency

Finally, in addition to the above, **Air Canada requests the implementation of an explicit one-year period of leniency from enforcement action and fines for non-compliance on APPR and ATPDR**, so that our workforce is free to focus on managing the overwhelming crisis at hand without being burdened or slowed by having to balance complex regulatory requirements. The Government of Canada has already established a solid precedent for the type of regulatory relief we are seeking.¹⁴

We have contacted Transport Canada and the Government of Canada with these requests and hope that all branches of government will work together to protect the sustainability of our industry.

We trust that you are sensitive to the importance and urgency of these matters and look forward to the Agency's full support during these exceedingly difficult times. Please do not hesitate to call to discuss if that might be useful.

Sincerely,



David J. Shapiro

cc: The Honorable Minister Marc Garneau, P.C., M.P.
Ferio Pugliese, Senior Vice President, Air Canada Express and Government Relations

¹⁰ S. 43 ATPDR.

¹¹ S. 39 and 81 ATPDR.

¹² S. 58 ATPDR.

¹³ S. 59 ATPDR.

¹⁴ On March 13, 2020 the Department of Finance issued a statement of measures to support the economy and the financial sector. In that document, it said "In the face of current global developments, financial institutions should focus on managing this uncertainty rather than devoting resources to previously announced regulatory changes." It also granted other relief from current regulatory requirements, including lowering the Domestic Stability Buffer requirement for domestic systemically important banks OSFI also announced it will suspend all consultations on regulatory matters. <https://www.canada.ca/en/department-finance/news/2020/03/canada-outlines-measures-to-support-the-economy-and-the-financial-sector.html>

This is **Exhibit “P”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on November 14, 2022

Signature

Amanda Hamelin

Subject: Special EC - COVID19 - Daily updates
Location: (514) 938-6569,,935311571# (then press #)

Start: Mon 3/16/2020 2:00 PM
End: Mon 3/16/2020 2:30 PM
Show Time As: Tentative

Recurrence: Daily
Recurrence Pattern: every day from 2:00 PM to 2:30 PM

Meeting Status: Not yet responded

Organizer: Scott Streiner
Required Attendees: Alysia Lau; Douglas Smith; Lesley Robertson; Liz Barker; Marcia Jones; Mireille Drouin; Sébastien Bergeron; Tom Oommen; Valérie Lagacé
Optional Attendees: Allan Burnside; Simon-Pierre Lessard

Importance: High

Chair's Boardroom & by CBCI teleconference: dial 1 514 938 6569 call ID: 935311571# then # again

Alysia will HOST.

This is **Exhibit “Q”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on November 14, 2022

Signature

Attendance

- Scott Streiner
- Liz Barker
- Mireille Drouin
- Doug Smith
- Marcia Jones
- Tom Oommen
- Valérie Lagacé & Simon-Pierre Lessard

- Sébastien Bergeron
- Alysia Lau

Guests

- Tim Hillier

Debriefs

- SS: TC indicated Agency moved faster than they expected. Other travel restrictions expected. Agreement between SS and MK that agencies/departments should not issue piecemeal decisions. Call this evening between TC and Agency officials.

Messaging on CTA services

- SS: Where message says CTA pausing air disputes, should specify that Agency still receiving complaints.
- LB: Maintaining Agency services "to the extent possible" too vague and signaling slowdown of services when not true. Need to be more specific.
- ***TH to revise messaging - continuing normal activity, with exception of... passengers can file complaints, but response times may be different. Do not want to solicit air travel complaints.**

Air carrier requests for additional measures

- SS prepared table comparing AC and AT asks.
- ***Statement that all situations in COVID context = Category 3 should be discussed at Members meeting.**

Official languages considerations

- Official Language Commissioner wrote to all departments/agencies noting some information coming from departments only in one language. Reminder for Agency to be aware.

ATPDR Guidance Consultations

- MJ: Signal check on continuing consultations on ATPDR guidance.
- LB: ***Should not address this until AC request on all APPR/ATPDR is resolved.**

Additional projects for staff

- MD: **Training opportunities**
- TO: DCB staff will focus on catching up on tasks.
- DS: **Gathering information from staff nearing retirement or other long-time Agency employees.**
- LB: **Annotations of other pieces of legislation or regulations.** SS: Challenge is having Legal participate/supervise.
- ***Chair's Office to develop list of projects. Tomorrow: start develop list of staff that would be suitable for each project. Branch Heads should inform managers this is coming.**

Members Committee

- APPR supplementary guidance - MJ: yes, proposed approach to reflect comments SS and LB.
- Low impact amendments package - MJ: Yes, prepared to make presentation.
- **SS to reflect on item 4. Leave on agenda.**
- **LB would like to postpone item 5. Would like more time to re-examine legal opinion.**
- **Stylist options - SPL asking to postpone this item**
- SS: May not need a lot of in camera time - 15 min. + MJ's two items.

Haiku Contest

- SS: How to proceed? ***Should solicit, put it in staff update, Chair's Office to coordinate with Cynthia's team.**
- DS: Suggest managers should share haiku contest, not Chair's Office. SS: Or Social Committee involvement? ***DS to ask Tammy Chrusch if she would like to partner with AL and Comms to develop this.**

Other internal matters

- MD: School closures in Quebec until May 1. Should include this in daily staff update.
- Construction sites will be closed for 3 weeks.
- Year-end contracts: Current situation should not have impact on year-end. Should be normal year-end. Will issue communique to Branch Heads.
- 15 Eddy - will perform preventative bed bug inspections tomorrow.
- DS: Annual report. Directors still working on it but delayed. MJ: Intention is to keep regular sections of AR with additional section on response to COVID-19. Team is on track, looking to move draft along, but checking with TC to discuss delaying of timelines. SS: Should keep AR moving.

Varia

- TO: We received two requests for tariffs information. SS: Summary of what tariffs say about refunds/vouchers. MJ: Asked that tariffs team prioritize WJ, AC and AT tariffs.
- DS: VPN seemed spotty today. We have discussed rotating access to VPN. ***SB to reach out to MD to discuss VPN options.**

This is **Exhibit “R”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on November 14, 2022

Signature

Amanda Hamelin

From: Scott Streiner
Sent: Monday, March 23, 2020 2:19 PM
To: +_EC
Subject: Summary of asks
Attachments: Asks.docx

Hi, all. Please have a look at the attached table and let me know during our 2:30 call if you think any key points from either letter have been missed. Thanks.

S

Scott Streiner

Président et premier dirigeant, Office des transports du Canada
Chair and Chief Executive Officer, Canadian Transportation Agency
scott.streiner@otc-cta.gc.ca - Tél. : 819-997-9233 - ATS/TTY: 1-800-669-5575

Item	AT	AC
APPR		Issue a blanket exemption from all APPR, or take the steps below
Classification of flight disruptions	State that all current disruptions are category 3	Same
Refunds	State that no refunds are owed	Same
Vouchers	Signal that vouchers are acceptable in lieu of cash refunds	
Response time	Exempt airlines from the 30 day timeline	Same
Alternative travel arrangements	Exempt airlines from any obligation to provide alternative travel arrangements	Same
April 30	Extend the current exemptions for at least 90 days	Same
Enforcement	Suspend for 1 year	Same
ATPDR		A 90-day or longer delay to the "deadline for compliance" or, at least, to certain provisions

This is **Exhibit “S”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on November 14, 2022

Signature



Responses to questions/requests for documents taken under advisement:

Pages 16, 17, 21, 24, 34, 87, 91, 92, 98, 107, 113, 136 of the transcript of the CROSS-EXAMINATION OF BARBARA CUBER on Affidavit sworn April 21, 2022, as reported by E.M. Gillespie Court Reporting, on September 16, 2022.


- 1) Who signed the departure form for Scott Streiner? (p. 16 of transcript)
 - Not relevant
- 2) Who signed departure form for Marcia Jones? (p. 17 of transcript)
 - Not relevant
- 3) Produce email exchange with Marcia Jones on January 5, 2021, pursuant to Applicant's motion under Rule 318. (p.21 of transcript)
 - Not relevant, solicitor-client privilege and/or litigation privilege
- 4) Whether Scott Streiner and Marcia Jones returned their phones and what had been done with the phones thereafter? (p.24 of transcript)
 - Not relevant
- 5) Whether Scott Streiner and Marcia Jones returned their computers and what had been done with the computers thereafter? (p.24 of transcript)
 - Not relevant
- 6) Produce the two responses to the notification that was sent by Allan Matte on April 14, 2020. (p.34 of transcript)
 - Not relevant, solicitor-client privilege and/or litigation privilege
- 7) Perform a new Outlook search similar to Exhibit 8 but without the three issues identified and produce documents from the search that have not already been produced:
 - a) Without typo/space
 - b) Without COVID or corona or pandemic
 - c) Correct time period. (p. 87 of transcript)
 - An Outlook search using the search terms "refund* OR voucher* OR remburse* OR crédit*" for the period starting at midnight on March 9, 2020 and going to midnight on March 26, 2020, produced 3467 Outlook items. A review of those 3467 items found only one responsive document that has not already been produced. It is the same email that is the subject of requests #8 and #9. The email is attached.
- 8) Search "Air Consultations" mailbox for original email sent March 25, 2020, at 4:01 pm, that would contain BCC list of recipients. (p. 91 of transcripts)
 - Search performed. Screen shot showing BCC list attached with original email.

- 9) Confirm how many emails were sent out with the same subject line and produce original copy of emails. (p. 92 of transcripts)
- Two emails were sent out with the same subject line
 - Email from "Air Consultations" account is attached in response to request #7.
 - Email from Marcia Jones was deleted sometime prior to the May 2020 ATIP search
- 10) Produce similar Outlook search result documents as Exhibit 8 for the May 2020 and the November 2020 ATIP requests. (p.98 of transcript)
- We have no such document for the May 2020 ATIP request.
 - Document for the November 2020 ATIP request is attached
- 11) Produce tasking email sent to the Analysis and Outreach Branch in relation to the May 2020 ATIP request. (p.107 of transcript)
- Notice and tasking emails attached
- 12) Perform RDIMS search using search terms in the form completed in Exhibit 9 with 3 concerns previously raised:
- a) Without typo/space
 - b) Without COVID/pandemic
 - c) Correct time period
 - d) If search returns too many results, can refine by excluding passenger complaints. (p. 113 of transcript)
- Inputting the search terms "refund OR voucher" in RDIMS for the period starting at midnight on March 9, 2020 and going to midnight on March 26, 2020, returns a time out message. The time out message is generated when the number of search results exceeds 15,000. As was explained by the Agency's affiant and by counsel during the cross-examination, the search terms are too generic and therefore capture too many search results.
- There is no specific way to exclude search results pertaining to complaint files as was requested. The best that can be done is to include, in the search terms, the search term "AND NOT complaint". This search produced 496 documents. A review of those documents found no responsive documents other than what has already been disclosed.
- Similarly, inputting the French search terms "crédit* OR rembourse*" in RDIMS for the period starting at midnight on March 9, 2020 and going to midnight on March 26, 2020, also returns a time out message for the same reason. Including the search term "AND NOT plainte" produced 963 documents. Many of those documents were false hits because the system does not distinguish between "credit" in English and "crédit" in French. A review of those documents found no responsive documents other than what has already been disclosed.
- 13) Review notes that Amanda Hamelin looked at for the March 24 EC meeting. (p.136 of transcript)
- Reviewed. No notes for the March 24 EC meeting were found.

This is **Exhibit “T”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on November 14, 2022

Signature

The search 'A-2020-00029' has 'Search Succeeded'.

Percent Complete: 100%
Started by: Sylvain Dickey
Stopped by: N/A
Start Time: 2020-11-10 8:53:52 PM
End Time: 2020-11-10 8:57:51 PM
Size: 195.7 MB (205,196,885 bytes), Estimated size was: 205196885
Items: 1417, Estimated number of items was: 1417
Results: 
Errors: None
Keyword Hits: No keyword statistics for copy search.

Identity: AAMkADM5ODZhYWE3LWM4NmMtNDEyNy04NTkwLWU1YTFjOTM0ODNiYwBGAAAAAAB19CZuhQsUR6DxPAbROqydBwCQHaxjbmFHQrq7DB71em7MAABbATFLAAC53PDQG8/JQIVHJnLTf5klAAMMjy0bAAA=
Created by: CTA-OTC\SDickey
Query: (Statement on vouchers) OR (Statement AND Vouchers)
Senders: All
Recipients: All
Start Date: 2020-03-11 4:00:00 AM, -4
End Date: 2020-04-09 4:00:59 AM, -4
Message Types: All
Logging: Basic
Exclude Duplicate Messages: False
Email Notification: None
Sources: (81) William.McMurray@otc-cta.gc.ca, Wilfred.Wong@otc-cta.gc.ca, Maxime.VezinaLaprise@otc-cta.gc.ca, Chloe.Neault@otc-cta.gc.ca, Simon.FecteauLabbe@otc-cta.gc.ca, Genevieve.Dupere@otc-cta.gc.ca, Emilie.Gravelle@otc-cta.gc.ca, Sebastien.Bergeron@otc-cta.gc.ca, Valerie.Lagace@otc-cta.gc.ca, Tim.Hillier@otc-cta.gc.ca, Terry.Kuny@otc-cta.gc.ca, Susan.Clarke@otc-cta.gc.ca, Simon-Pierre.Lessard@otc-cta.gc.ca, Scott.Streiner@otc-cta.gc.ca, Sabitha.Rajan@otc-cta.gc.ca, Ryan.Dallaway@otc-cta.gc.ca, Reuban.Samuel@otc-cta.gc.ca, Omar.Houssein-Adar@otc-cta.gc.ca, Meredith.Desnoyers@otc-cta.gc.ca, Matthieu.Labelle@otc-cta.gc.ca, Matilde.Perrusclet@otc-cta.gc.ca, Martine.Maltais@otc-cta.gc.ca, Mamta.Manhas@otc-cta.gc.ca, Liz.Barker@otc-cta.gc.ca, Lesley.Robertson@otc-cta.gc.ca, Kizzy.Barrett@otc-cta.gc.ca, Kevin.Shaar@otc-cta.gc.ca, John.Dodsworth@otc-cta.gc.ca, Janet.Glendenning@otc-cta.gc.ca, Greg.Henry@otc-cta.gc.ca, Glenda.Nicol@otc-cta.gc.ca, Eileen.Vincent@otc-cta.gc.ca, Anna.Hutchinson-Cox@otc-cta.gc.ca, Catherine.Pirie@otc-cta.gc.ca, Sonia.Gangopadhyay@otc-cta.gc.ca, Mandy.Chan@otc-cta.gc.ca, Sarah.Antonious@otc-cta.gc.ca, Douglas.Smith@otc-cta.gc.ca, Tom.Oommen@otc-cta.gc.ca, Claire.Lauzon@otc-cta.gc.ca, Elysia.VanZeyl@otc-cta.gc.ca, Robert.Kozak@otc-cta.gc.ca, Ryan.Mulcock@otc-cta.gc.ca, Andray.Renaud@otc-cta.gc.ca, Allan.Matte@otc-cta.gc.ca,

Mark.MacKeigan@otc-cta.gc.ca, Barbara.Cuber@otc-cta.gc.ca, Vincent.Turgeon@otc-cta.gc.ca, Michael.Parsons@otc-cta.gc.ca, Sara.Quaile@otc-cta.gc.ca, Krystal.Desrochers@otc-cta.gc.ca, Hakan.Andic@otc-cta.gc.ca, David.Davis@otc-cta.gc.ca, Cynthia.Jolly@otc-cta.gc.ca, Anthony.Sealey@otc-cta.gc.ca, Katrine.Dugas@otc-cta.gc.ca, Alysia.Lau@otc-cta.gc.ca, Karen.Jacob@otc-cta.gc.ca, Marcia.Jones@otc-cta.gc.ca, Karine.Matte@otc-cta.gc.ca, Martin.Hatcher@otc-cta.gc.ca, Rakesh.Manhas@otc-cta.gc.ca, Timothy.Zarins@otc-cta.gc.ca, Gabrielle.Fortier-Cofsky@otc-cta.gc.ca, Allan.Burnside@otc-cta.gc.ca, Shafi.Askari@otc-cta.gc.ca, Hortensia.Dammous@otc-cta.gc.ca, George.Ross@otc-cta.gc.ca, Heather.Smith@otc-cta.gc.ca, Calina.Ritchie@otc-cta.gc.ca, Tracy.Wilcox@otc-cta.gc.ca, Paige.Ariano@otc-cta.gc.ca, David.Dawson@otc-cta.gc.ca, Zubair.Parkar@otc-cta.gc.ca, Prit.Gill@otc-cta.gc.ca, Megan.GrandmaisonCarroll@otc-cta.gc.ca, Caitlin.Hurcomb@otc-cta.gc.ca, Nicholas.Lochhead@otc-cta.gc.ca, Mary.TobinOates@otc-cta.gc.ca, Yama.Naziri@otc-cta.gc.ca, Victorhea.Rivilla-Biaoco@otc-cta.gc.ca

Sources searched successfully:

(81) William.McMurray@otc-cta.gc.ca, Wilfred.Wong@otc-cta.gc.ca, Maxime.VezinaLaprise@otc-cta.gc.ca, Chloe.Neault@otc-cta.gc.ca, Simon.FecteauLabbe@otc-cta.gc.ca, Genevieve.Dupere@otc-cta.gc.ca, Emilie.Gravelle@otc-cta.gc.ca, Sebastien.Bergeron@otc-cta.gc.ca, Valerie.Lagace@otc-cta.gc.ca, Tim.Hillier@otc-cta.gc.ca, Terry.Kuny@otc-cta.gc.ca, Susan.Clarke@otc-cta.gc.ca, Simon-Pierre.Lessard@otc-cta.gc.ca, Scott.Streiner@otc-cta.gc.ca, Sabitha.Rajan@otc-cta.gc.ca, Ryan.Dallaway@otc-cta.gc.ca, Reuban.Samuel@otc-cta.gc.ca, Omar.Houssein-Adar@otc-cta.gc.ca, Meredith.Desnoyers@otc-cta.gc.ca, Matthieu.Labelle@otc-cta.gc.ca, Matilde.Perrusclat@otc-cta.gc.ca, Martine.Maltais@otc-cta.gc.ca, Mamta.Manhas@otc-cta.gc.ca, Liz.Barker@otc-cta.gc.ca, Lesley.Robertson@otc-cta.gc.ca, Kizzy.Barrett@otc-cta.gc.ca, Kevin.Shaar@otc-cta.gc.ca, John.Dodsworth@otc-cta.gc.ca, Janet.Glendenning@otc-cta.gc.ca, Greg.Henry@otc-cta.gc.ca, Glenda.Nicol@otc-cta.gc.ca, Eileen.Vincent@otc-cta.gc.ca, Anna.Hutchinson-Cox@otc-cta.gc.ca, Catherine.Pirie@otc-cta.gc.ca, Sonia.Gangopadhyay@otc-cta.gc.ca, Mandy.Chan@otc-cta.gc.ca, Sarah.Antonious@otc-cta.gc.ca, Douglas.Smith@otc-cta.gc.ca, Tom.Oommen@otc-cta.gc.ca, Claire.Lauzon@otc-cta.gc.ca, Elysia.VanZeyl@otc-cta.gc.ca, Robert.Kozak@otc-cta.gc.ca, Ryan.Mulcock@otc-cta.gc.ca, Andray.Renaud@otc-cta.gc.ca, Allan.Matte@otc-cta.gc.ca, Mark.MacKeigan@otc-cta.gc.ca, Barbara.Cuber@otc-cta.gc.ca, Vincent.Turgeon@otc-cta.gc.ca, Michael.Parsons@otc-cta.gc.ca, Sara.Quaile@otc-cta.gc.ca, Krystal.Desrochers@otc-cta.gc.ca, Hakan.Andic@otc-cta.gc.ca, David.Davis@otc-cta.gc.ca, Cynthia.Jolly@otc-cta.gc.ca, Anthony.Sealey@otc-cta.gc.ca, Katrine.Dugas@otc-cta.gc.ca, Alysia.Lau@otc-cta.gc.ca, Karen.Jacob@otc-cta.gc.ca, Marcia.Jones@otc-cta.gc.ca, Karine.Matte@otc-cta.gc.ca, Martin.Hatcher@otc-cta.gc.ca, Rakesh.Manhas@otc-cta.gc.ca, Timothy.Zarins@otc-cta.gc.ca, Gabrielle.Fortier-Cofsky@otc-cta.gc.ca, Allan.Burnside@otc-cta.gc.ca, Shafi.Askari@otc-cta.gc.ca, Hortensia.Dammous@otc-cta.gc.ca, George.Ross@otc-cta.gc.ca, Heather.Smith@otc-cta.gc.ca, Calina.Ritchie@otc-cta.gc.ca, Tracy.Wilcox@otc-cta.gc.ca, Paige.Ariano@otc-cta.gc.ca, David.Dawson@otc-cta.gc.ca, Zubair.Parkar@otc-cta.gc.ca, Prit.Gill@otc-cta.gc.ca, Megan.GrandmaisonCarroll@otc-cta.gc.ca, Caitlin.Hurcomb@otc-cta.gc.ca, Nicholas.Lochhead@otc-cta.gc.ca, Mary.TobinOates@otc-cta.gc.ca, Yama.Naziri@otc-cta.gc.ca, Victorhea.Rivilla-Biaoco@otc-cta.gc.ca

Sources not searched successfully:

(0) None

Resume: False

Include Keyword Statistics: False

See attachments for additional logging information when full logging is enabled.

This is **Exhibit “U”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on November 14, 2022

Signature

Meredith Desnoyers

From: Nadine Landry
Sent: Friday, May 29, 2020 2:24 PM
To: Sébastien Bergeron; Karina Bouthillette; Meredith Desnoyers
Cc: Lesley Robertson; Marcia Jones; Gabrielle Fortier-Cofsky; Myriame Côté
Subject: A-2020-00002 - TASKING FOR AN ACCESS TO INFORMATION ACT (ATIA) REQUEST / AVIS DE RECHERCHE DOCUMENTS EN VERTU DE LA LOI SUR L'ACCÈS À L'INFORMATION (LAI)
Attachments: RDIM-2170440-A-2020-00002_-_Completeness_form_-1.DOCX.DRF

Veillez noter qu'en situation de COVID-19, l'identification des dossiers papiers qui concerne les demandes de l'AIPRP sera effectuée par la Gestion de l'information (GI) et procédera à la numérisation des dossiers papiers concernés; le bureau de l'AIPRP vous fera parvenir la version numérisée des dossiers afin que vous puissiez tirer les documents relatifs à la demande et présenter vos recommandations. Aussi, le bureau de l'AIPRP vous avisera si il n'y a aucun dossier papier.

Prochainement il y aura de nouvelles procédures qui vous seront partagées.

Please see below the new request for information made under the *Access to Information Act*. Please provide the requested documents along with the Statement of Completeness filled out and signed.

For any questions on the request, please call me at 819-953-9836.

Please note that with the Covid-19 situation, Information Management (IM) will identify any related paper files and digitize the files; the ATIP office will then provide you with the digitized copy of the paper files from which you will retrieve the relevant information and provide your recommendations. The ATIP Office will also notify you if there are no relevant files found.

Soon there will be new procedures that will be shared with you.

Veillez voir ci-dessous la nouvelle demande d'information présentée en vertu de la *Loi sur l'accès à l'information* reçue. Veuillez fournir les documents demandés avec la déclaration d'intégralité rempli et signé.

Pour toute question sur la demande, s'il vous plaît appelez-moi au 819-953-9836.

Nadine Landry

(English will Follow)

Date d'échéance: **June 10th, 2020**

Bonjour,

Nous avons reçu la demande suivante présentée en vertu de la *Loi sur l'accès à l'information*:

"Provide the unpublished background meetings, notes and exchanges that lead to CTA March 13/2020 ruling to temporarily suspend certain provisions in the air passenger bill of rights such as on cancellations/disruptions and to its subsequent March 25/20 statement on vouchers and the its subsequent FAQ answers on vouchers and refunds. Only include unpublished notes and exchanges at CTA."

Pour pouvoir traiter cette demande dans le délai de 30 jours civils prévu par la Loi, je vous prie de rechercher tous les documents pertinents à la demande. Si vous ne pouvez rencontrer la date d'échéance, veuillez communiquer avec moi immédiatement. Veuillez noter que les demandes de prolongation doivent être accompagnées d'une raison.

Veuillez m'aviser si une autre direction devrait recevoir cette demande.

Instructions

Voici les étapes à suivre pour récupérer des documents pertinents lors d'une demande d'accès:

- Préparez une copie de l'original des documents pertinents, ne pas fournir les originaux;
- Garder chaque document intact avec ses attachements respectifs ;
- Fournir les documents dans leur intégralité (ex : si un seulement chapitre 5 d'un document est pertinent vous devez tout de même fournir le document au complet);
- Retirez les doublons ;
- Retirez les agrafes et les trombones ;
- Les documents à fournir comprennent mais ne sont pas limités à ce qui suit : document signé et daté, brouillons, notes manuscrites (dans un cahier ou seul), note d'appel téléphonique, documents éphémères et les « sticky notes », etc.
- Inclure tous les documents peu importe de leur classification de sécurité;
- Lors de la recherche par mot-clé, vous devez lire les documents pour assurer la pertinence du document;
- Fournir uniquement les documents pertinents (en cas de doute demandez à votre Liaison de l'AIPRP);
- Si une partie du document n'est pas pertinent, vous devez toujours fournir le document entier;
- Vos recommandations doivent expliquer clairement le préjudice qui peut se produire si l'information est divulgué.

Voici comment communiquer vos recommandations:

- Indiquez les informations sensibles en mettant en surbrillance en jaune directement sur les documents fournis;
- Fournir une explication approfondie ou une justification de la sensibilité dans l'énoncé de conformité (RDIMS 1656530)
- « Non pertinent » n'est pas une exception, l'information doit toujours être analysé en entier afin de déterminer le préjudice de la divulgation ;
- N'écrivez pas directement sur les documents avec un stylo, crayon ou autre marqueur;
- Triez les documents dans l'ordre chronologique (du plus ancien sur le dessus à la plus récente);
- Toutes les consultations externes avec des tierces parties ou d'autres institutions de gouvernement seront menées par le Bureau d'AIPRP.

Due date: **10 juin 2020**

Good day,

We have received the following request under the *Access to Information Act*:

"Provide the unpublished background meetings, notes and exchanges that lead to CTA March 13/2020 ruling to temporarily suspend certain provisions in the air passenger bill of rights such as on cancellations/disruptions and to its subsequent March 25/20 statement on vouchers and the its subsequent FAQ answers on vouchers and refunds. Only include unpublished notes and exchanges at CTA."

To process this request within the 30-calendar day legislated time frame, please locate and provide a copy of all relevant records. If you cannot meet the deadline, please contact me immediately. Please note that requests for extensions must be accompanied by a reason.

Please advise if another Branch should be tasked with this request.

Instructions

Here are the instructions for the gathering of relevant records during a request for information:

- Prepare a copy of the original of the relevant records, do not provide the originals;
- Keep each document intact with its respective attachments;
- Provide records in its entirety (ex: if only chapter 5 of a document is relevant you still need to provide the entire document);
- Remove duplicates;
- Remove any staples and paper clips;
- Records include but not limited to the following: signed and dated documents, drafts, handwritten notes (in a notebook or loose), written telephone call log, transitory records and sticky notes, etc.
- Include all documents regardless of security classification;
- When completing your key word search, you need to read the documents to ensure the relevancy of the document;
- Only provide relevant documents to the request (if unsure please ask your ATIP Liaison)
- If part of the record is not relevant, you still need to provide the entire document;
- Provide your recommendations and explain clearly the injury that may occur if the information is disclosed.

Steps to communicate your recommendations:

- Indicate sensitive information by highlighting in yellow directly on the records;
- Provide a thorough explanation or rationale of the sensitivities in the Statement of Completeness (RDIMS 1656530)
- “Not Relevant” within a document is not an exemption, the information still needs to be analyzed to determine the injury of disclosure;
- Do not write directly of the records with either a pen, pencil or other marker;
- Sort documents in chronological order (from the oldest on top to the most recent);
- All external consultations with third parties or other government institutions will be conducted by the ATIP Office.

Regards,

Nadine Landry

Analyste de l'AIPRP, Direction du Secrétariat, Service du Registraire et de la Gestion d'information
Office des transports du Canada / Gouvernement du Canada
OTC.AIPRP-ATIP.CTA@otc-cta.gc.ca / T: 819-953-9836 / Nadine.Landry@otc-cta.gc.ca

ATIP Analyst, Secretariat, Registrar Services and Information Management Directorate
Canadian Transportation Agency / Government of Canada
OTC.AIPRP-ATIP.CTA@otc-cta.gc.ca / T: 819-953-9836 / Nadine.Landry@otc-cta.gc.ca



**Demandes d'accès à l'information : énoncé de conformité /
Access to Information requests: Statement of Completeness**

Destinataire / To : Bureau de l'AIPRP / ATIP Office **Non classifié / Unclassified**
Expéditeur / From : Office of the Chair and CEO **Dossier / File # : A-2019-00002**

Demande/Request : "Provide the unpublished background meetings, notes and exchanges that lead to CTA March 13/2020 ruling to temporarily suspend certain provisions in the air passenger bill of rights such as on cancellations/disruptions and to its subsequent March 25/20 statement on vouchers and the its subsequent FAQ answers on vouchers and refunds. Only include unpublished notes and exchanges at CTA."

Recherche de documents / Search for records

Une recherche de documents approfondie a été effectuée / A thorough search for records was completed :

Documents sur papier, p. ex. des documents de la salle des dossiers, de classeurs, des blocs-notes, des notes autocollantes, etc. / Paper records, e.g. the Records Office, office cabinets, notebooks, post-its, etc.

Documents électroniques, p. ex. des documents du SGDDI, de lecteurs partagés, de lecteurs personnels, des courriels, de l'information stockée dans des bases de données ou dans des systèmes de gestion des cas, sur des clés USB, dans des disques durs externes, des NIP, etc. / Electronic records, e.g. RDIMS, shared drives, personal drives, emails, information stored in databases or case management systems, USBs, external hard drives, PIN, etc.

Recommandations / Recommendations

Aucun document n'a été trouvé / No records were found

Des documents ont été trouvés; ils contiennent (cochez toutes les cases pertinentes et surlignez en jaune les sections visées dans les documents) / Records were found and contain (check all that apply and highlight in yellow the related sections in the documents) :

Renseignements de tiers / Third party information(s.70) Renseignements personnels / Personal information (s.19)

Secret professionnel / Solicitor-client privilege(s.23) Activités du Gouvernement / Operations of Government (s.21)

Interdictions prévues par la loi (paragraphe 51(1) et article 167 de la Loi sur les transports au Canada : caractère confidentiel des renseignements) / Statutory prohibitions (subsection 51(1) and section 167 of the CTA: Confidentiality of Information) Autre, veuillez préciser / Other, please specify : _____

Facteurs importants à prendre en considération / Important factors to consider

Autorité approbatrice / Approval authority
 J'atteste que la demande de repérage de documents a été envoyée aux employés concernés (y compris à des collègues des régions). J'estime qu'une recherche approfondie et exhaustive a été effectuée, et que tous les documents pertinents qui relèvent de mon secteur de programme ont été retrouvés pour être traités, sauf indication contraire.

I certify that the request to locate and retrieve records was sent to applicable employees (including colleagues in the regions). I am satisfied that a thorough and complete search was conducted and that all responsive records under the control of my program area have been retrieved for processing unless otherwise noted.

Directeur(trice) (nom en lettres moulées) / Director (print name) Alysia Lau for S Bergeron	Signature: Alysia Lau	Date: 26/06/2020
Dirigeant(e) principal(e) (nom en lettres moulées) / Branch Chief (print name)	Signature: ✕	Date: Click here to enter a date.

Meredith Desnoyers

From: Nadine Landry
Sent: Tuesday, May 5, 2020 10:30 AM
To: Patrice Bellerose; Valérie Lagacé; Tom Oommen; Lesley Robertson; Tim Hillier; Sébastien Bergeron; Mireille Drouin; Douglas Smith; Marcia Jones; Allan Burnside
Cc: Myriame Côté
Subject: A-2020-00002 - Notification of new request

This notice is for information purposes only, a tasking email will follow shortly but should you have any concerns regarding the subject matter of the request you can then contact the ATIP office and make necessary arrangements as soon as you receive this e-mail.

The CTA received a new ATIA request today for: ***"Provide the unpublished background meetings, notes and exchanges that lead to CTA March 13/2020 ruling to temporarily suspend certain provisions in the air passenger bill of rights such as on cancellations/disruptions and to its subsequent March 25/20 statement on vouchers and the its subsequent FAQ answers on vouchers and refunds. Only include unpublished notes and exchanges at CTA."***

Regards,

[Nadine Landry](#)

Analyste de l'AIPRP, Direction du Secrétariat, Service du Registraire et de la Gestion d'information
Office des transports du Canada / Gouvernement du Canada
OTC.AIPRP-ATIP.CTA@otc-cta.gc.ca / T: 819-953-9836 / Nadine.Landry@otc-cta.gc.ca

ATIP Analyst, Secretariat, Registrar Services and Information Management Directorate
Canadian Transportation Agency / Government of Canada
OTC.AIPRP-ATIP.CTA@otc-cta.gc.ca / T: 819-953-9836 / Nadine.Landry@otc-cta.gc.ca

This is **Exhibit “V”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on November 14, 2022

Signature



Access to Information and Privacy (ATIP) Office
Transport Canada
Place de Ville, Tower C, XMSP
330 Sparks Street
Ottawa ON K1A 0N5

Our File
A-2022-00047 / DA

Sent by email to: lukacs@airpassengerrights.ca

Gabor Lukacs

Halifax, NS

Gabor Lukacs:

This is in response to your request under the *Access to Information Act* (ATIA), received by Transport Canada on April 25, 2022, for the following information:

“A printout of the calendar, showing all the scheduled events between March 18, 2020 and March 23, 2020 (inclusive), for the following individuals: Marc Roy, Colin Stacey, and Michael Keenan.”

We have now completed the processing of your request. Please find enclosed a copy of the records. You will note that certain information has been withheld from disclosure pursuant to paragraph 16(2)(c), and subsections 19(1) & 69(1) of the ATIA. A copy of these sections has been enclosed for your information.

Please be advised that you are entitled to submit a complaint regarding the processing of this request to the Office of the Information Commissioner of Canada, 30 Victoria Street, Gatineau, Quebec K1A 1H3. The ATIA allows a complaint to be made within 60 days of the receipt of this notice.

Should you have any questions, you may contact Dana Alexeenko via e-mail at dana.alexeenko@tc.gc.ca.

Yours sincerely,

Sadaka, Pamela Digitally signed by Sadaka, Pamela
Date: 2022.09.14 11:15:10 -04'00'

Pamela Sadaka
Manager, Access to Information and Privacy

Enclosure: PDF (Pages 1-18)
Access to Information Act Sections

Access to Information Act

16(2)(c) METHODS EMPLOYED TO PROTECT BUILDINGS, STRUCTURES OR SYSTEMS

(c) on the vulnerability of particular buildings or other structures or systems, including computer or communication systems, or methods employed to protect such buildings or other structures or systems.

19(1) PERSONAL INFORMATION

19. (1) Subject to subsection (2), the head of a government institution shall refuse to disclose any record requested under this Act that contains personal information as defined in section 3 of the Privacy Act.

69(1)(g) re (a) ANY RECORDS MAKING A REFERENCE TO (A)

Records that contain information about the contents of any record within a class of records referred to in paragraphs (a).

69(1)(g) re (c) ANY RECORDS MAKING A REFERENCE TO (C)

Records that contain information about the contents of any record within a class of records referred to in paragraphs (c).

This is **Exhibit “W”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on November 14, 2022

Signature

- s.16(2)(c)
- s.19(1)
- s.69(1)(g) re (a)
- s.69(1)(g) re (c)

March 18, 2020

Wednesday

March 2020							April 2020						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7	1	2	3	4	5	6	7
8	9	10	11	12	13	14	8	9	10	11	12	13	14
15	16	17	18	19	20	21	15	16	17	18	19	20	21
22	23	24	25	26	27	28	22	23	24	25	26	27	28
29	30	31					29	30	31				

WEDNESDAY	
18	Acting - Keenan, Michael
7 AM	
8	
9	URGENT Call / DM Morgan, DM Keenan DM's office Keenan, Michael
10	URGENT Call / DM Morgan, DM Keenan AB-211 / Dial-in 1-877-413-4788 Conf ID [redacted] code [redacted] Marta.Morgan@international.gc.ca
10	BILAT - Kevin/ Aaron, SBS ADM and Associate ADM MS Teams Keenan, Michael
11	
12 PM	
1	BILAT - Tamara Rudge, RDG Ontario Region MS Teams Chat Keenan, Michael
2	
3	
4	Call: TFW and Border Teleconference number below Pham, Thao
5	Documentation attached - Call: TFW and Border (Organized by Thao Pham) Teleconference number below Keenan, Michael
5	Follow-up Call via teleconference 1-877-413-4790 or 613-960-7514. Conference ID [redacted] Keenan, Michael
6	
7:00pm - 7:15pm	Call with Kevin Brosseau (Kevin to call DM at [redacted])
7:15pm - 7:30pm	Call with Sean Finn (Sean to call Michael at [redacted])
8:00pm - 9:00pm	Follow-up Call / Debrief on Air Canada (via teleconference 1-877-413-4790 or 613-960-7514, Conference ID [redacted])

s.16(2)(c)

s.19(1)

s.69(1)(g) re (c)

March 19, 2020

Thursday

March 2020							April 2020						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7	5	6	7	8	9	10	11
8	9	10	11	12	13	14	12	13	14	15	16	17	18
15	16	17	18	19	20	21	19	20	21	22	23	24	25
22	23	24	25	26	27	28	26	27	28	29	30		
29	30	31											

THURSDAY	
19	Acting - Keenan, Michael
7 AM	
8	Call on Canadians Abroad Via teleconference: 1-877-613-4790 or 613-950-7514; Conference ID: [REDACTED] Keenan, Michael
9	Call with Craig Richmond (Michael to call Craig at [REDACTED]) Keenan, Michael
10	10:15 Call w/ P. Itak, D. Watson, J. Thomas, S. Lucas, M. Keenan, J-F. Tremblay, C. Fox, T. Namiesniowski teleconference: please provide the number at which we can reach you Blevett, Catherine
11	
12 PM	Minister Brief Teleconference Information Below Little, Jennifer
1	[REDACTED]
2	[REDACTED]
3	[REDACTED]
4	[REDACTED]
5	Material attached - Teleconference- DM Committee on COVID-19 West Block, room 435 - Teleconference: 1-877-413-4791/613-960-7515 Conference Code [REDACTED] Keenan, Michael
6	Discussion: Border Teleconference below Pham, Thao
	Discussion: Border (Organized by Thao Pham) teleconference below Keenan, Michael
	7:15pm - 7:45pm Teams Call: Air and Av Sec (Join through your Teams Calendar at 18:30)
	[REDACTED]
	[REDACTED]

s.16(2)(c)
s.19(1)
s.69(1)(g) re (c)

March 20, 2020

Friday

March 2020							April 2020						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7	5	6	7	8	9	10	11
8	9	10	11	12	13	14	12	13	14	15	16	17	18
15	16	17	18	19	20	21	19	20	21	22	23	24	25
22	23	24	25	26	27	28	26	27	28	29	30		
29	30	31											

FRIDAY	
20	
Acting - Keenan, Michael	
7 AM	
8	
9	DM call: Border Conference call Pham, Thao
10	DM call: Border (Organized by Thao Pham) Conference call Keenan, Michael
11	Teams Call: Canada's North Join through your Teams Calendar at 19:15 Little, Jennifer
12 PM	DM call: Supply Chains Managed call on secure mobile Shugart, Ian
1	MinDM Brief UPDATED: Teleconference information below Little, Jennifer
2	Teams Call: Prep for Supply Chain Call with Clerk Jennifer will launch call at 10:45 Little, Jennifer
3	11:30 DMOC (Secure Call) Dial-in Details Below Rigby, Vincent
4	(No one attending) Public Service Management Advisory Committee (PSMAC) / Comité consultatif sur la gestion de la fonction publique (CCGFP) via Teleconference/ Par teleconference 613-960-7519 1-877-413-4814 conf ID: TBS Committees Secretariat / Secretariat des comités du SCT
5	BILAT - Ann Mowatt, RDG Atlantic Region MS Teams Keenan, Michael
6	Teams Call: Cruise Ships and Ferries Join through your Teams Calendar at 17:00 Little, Jennifer
8:30pm - 9:00pm DM call Border(Teleconference Below)	

s.16(2)(c)

March 21, 2020

Saturday

March 2020							April 2020						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7				1	2	3	4
8	9	10	11	12	13	14	5	6	7	8	9	10	11
15	16	17	18	19	20	21	12	13	14	15	16	17	18
22	23	24	25	26	27	28	19	20	21	22	23	24	25
29	30	31					26	27	28	29	30		

SATURDAY	
21	
7 AM	
8	
9	<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>NWT -- travel restrictions 613-960-7514 passcode [redacted] Fox, Christiane</p> </div> <div style="width: 45%;"> <p>NWT -- travel restrictions (meeting scheduled by PCO - Christiane Fox) 613-960-7514 / passcode [redacted] Keenan, Michael</p> </div> </div>
10	
11	<p>COVID North TEAMS Call Join by going into your teams calendar at 11:30 and click "join" Little, Jennifer</p>
12 PM	
1	
2	
3	
4	
5	
6	

s.16(2)(c)

March 22, 2020

Sunday

March 2020							April 2020						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7				1	2	3	4
8	9	10	11	12	13	14	5	6	7	8	9	10	11
15	16	17	18	19	20	21	12	13	14	15	16	17	18
22	23	24	25	26	27	28	19	20	21	22	23	24	25
29	30	31					26	27	28	29	30		

SUNDAY	
22	
7 AM	
8	
9	
10	
11	
12 PM	
1	
2	
3	<div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <p>URGENT - Council of DM's Teleconference Sunday March 22 at 3:00 PM EDT - COVID-19 Update Teleconference John Pearson</p> </div> <div style="width: 48%;"> <p>URGENT - Council of DM's Teleconference Sunday March 22 at 3:00 PM EDT - COVID-19 Update (email found attached from John Pearson re: Reference ma Teleconference Keenan, Michael</p> </div> </div>
4	<div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <p>DM Teleconference - North Dial-in: 1-877-413-4782 / conference id: [REDACTED] Blowett, Catherine</p> </div> <div style="width: 48%;"> <p>Two new documents added - DM Teleconference - North (agenda found attached) Dial-in: 1-877-413-4782 / conference id: [REDACTED] Keenan, Michael</p> </div> </div>
5	<div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <p>Call with Ajay Virmani CEO Cargojet and Pauline Dhillon Executive VP via teleconference (1-877-413-4790 or 613-960-7514; Conference ID: [REDACTED]) Keenan, Michael</p> </div> <div style="width: 48%;"> <p>Please note New Conference Dial In Information: Call with Cynthia Gameau via teleconference (1-877-413-4785 or 613-960-7512; Conference ID: [REDACTED]) Keenan, Michael</p> </div> </div>
6	

s.16(2)(c)
s.19(1)
s.69(1)(g) re (c)

March 23, 2020

Monday

March 2020							April 2020						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7							
8	9	10	11	12	13	14	5	6	7	8	9	10	11
15	16	17	18	19	20	21	12	13	14	15	16	17	18
22	23	24	25	26	27	28	19	20	21	22	23	24	25
29	30	31					26	27	28	29	30		

MONDAY	
23	Acting - Keenan, Michael
7 AM	
8	
9	Min/DM Brief Virtual meeting Coordination - Executive Office / Coordination - Bureau de la haute direction (TC)
10	Minister Garneau Briefing (MIN/DM) Virtual meeting Coordination - Executive Office / Coordination - Bureau de la haute direction (TC)
11	(No one will be attending due to the conflict with MIN/DM) ***New time and Agenda added*** Deputy Ministers' call, Monday, March 23, 2020 // Appel des sous-ministres le lundi 23 mars 2020 Conference call / conférence téléphonique PCO Meeting Management gestion des rencontres du SCP
12 PM	Call on COVID - Cargo Lift with Bill Matthews via teleconference (1-877-413-4793 or 613-960-7514, Conference ID: [redacted]) Keenan, Michael
1	TMX - TRANSPORT CANADA EXECUTIVE MANAGEMENT COMMITTEE / CGX - COMITÉ EXÉCUTIF DE GESTION DE TRANSPORTS CANADA Teams Coordination - Executive Office / Coordination - Bureau de la haute direction (TC)
2	
3	
4	
5	
6	Additional documentation and agenda attached - The North (Organized by Rob Stewart) Teleconference Keenan, Michael
	The North Teleconference - Agenda added - Doc's added Stewart, Rob (PS/SP)
	7:30pm - 8:00pm Call re: Air Travellers / Airlines (teleconference dial in information below)
	9:00pm - 8:15pm Call with Sean Finn (Sean to call Michael at [redacted])

This is **Exhibit “X”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on November 14, 2022

Signature

s.16(2)(c)

March 18, 2020 Wednesday	March 2020							April 2020						
	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6	7				1	2	3	4
	8	9	10	11	12	13	14	5	6	7	8	9	10	11
	15	16	17	18	19	20	21	12	13	14	15	16	17	18
	22	23	24	25	26	27	28	19	20	21	22	23	24	25
	29	30	31					26	27	28	29	30		

WEDNESDAY							
18							
	Greg away- Vincent acting						
	Lawrence is away. David McNabb is acting						
	Sophie- away						
7 AM							
8							
9	<table border="1"> <tr> <td>Lawrence re. Repatriation</td> <td>URGENT Call / DM Morgan, DM Keenan</td> </tr> <tr> <td></td> <td>DM's office</td> </tr> <tr> <td></td> <td>Keenan, Michael</td> </tr> </table>	Lawrence re. Repatriation	URGENT Call / DM Morgan, DM Keenan		DM's office		Keenan, Michael
Lawrence re. Repatriation	URGENT Call / DM Morgan, DM Keenan						
	DM's office						
	Keenan, Michael						
10	FW: Repatriation Discussion Teams call/ 2736 https://teams.microsoft.com/l/meetup-join/19%3ameeting_NmfHymVmNmJmZjVIOC00YThLTIINDQYjMzjMjg3NTYw%40thread.v2/0?context=%7b%22id%22%3a%222008fa9-c9b2-4d97-9ad9-4ace25386be7%22%2c%22oid%22%3a%2288a7fc44-9fad-47bc-ad8b-de7ed1c9e975 Hanson, Lawrence						
11	Christian						
12 PM	Do not book						
1							
2	COVID Update from TC Teleconference Nixon, Wendy						
3							
4							
5	<table border="1"> <tr> <td>COVID-19 and air carriers, Credit Card issue</td> <td>Follow-up Call</td> </tr> <tr> <td>Teleconference</td> <td>via teleconference (1-877-413-4790 or 613-960-7514; Conference ID: [redacted])</td> </tr> <tr> <td>Stacey, Colin</td> <td>Keenan, Michael</td> </tr> </table>	COVID-19 and air carriers, Credit Card issue	Follow-up Call	Teleconference	via teleconference (1-877-413-4790 or 613-960-7514; Conference ID: [redacted])	Stacey, Colin	Keenan, Michael
COVID-19 and air carriers, Credit Card issue	Follow-up Call						
Teleconference	via teleconference (1-877-413-4790 or 613-960-7514; Conference ID: [redacted])						
Stacey, Colin	Keenan, Michael						
6							
8:00pm - 9:00pm Follow-up Call / Debrief on Air Canada (via teleconference (1-877-413-4790 or 613-960-7514; Conference ID: [redacted])							

March 18, 2020
Wednesday

March 2020							April 2020						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7				1	2	3	4
8	9	10	11	12	13	14	5	6	7	8	9	10	11
15	16	17	18	19	20	21	12	13	14	15	16	17	18
22	23	24	25	26	27	28	19	20	21	22	23	24	25
29	30	31					26	27	28	29	30		

Notes

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s.16(2)(c)

Record released pursuant to the Access to Information Act / Document divulgué en vertu de la loi sur l'accès à l'information

March 19, 2020

Thursday

March 2020							April 2020						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7							
8	9	10	11	12	13	14	5	6	7	8	9	10	11
15	16	17	18	19	20	21	12	13	14	15	16	17	18
22	23	24	25	26	27	28	19	20	21	22	23	24	25
29	30	31					26	27	28	29	30		

THURSDAY	
19	<p>Greg away- Vincent acting</p> <p>Lawrence is away. David McNabb is acting</p> <p>Sophie- away</p>
7 AM	
8	<p>Call on Canadians Abroad via teleconference (1-877-413-4790 or 613-960-7514; Conference ID: [REDACTED]) Keenan, Michael</p>
9	
10	<p>COVID-19 Teleconference Stacey, Colin</p>
11	
12 PM	<p>COVID-19 Teleconference Stacey, Colin</p>
1	
2	<p>Input from Transat on repatriating Canadians Teleconference Stacey, Colin</p>
3	
4	
5	
6	
	7:15pm - 7:45pm Teams Call: Air and Av Sec(Join through your Teams Calendar at 18:30)
	7:30pm - 8:00pm Follow-up Cabinet meeting (Call organized by Marta Morgan)(Dial in information below)

March 19, 2020


Thursday

March 2020							April 2020						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7				1	2	3	4
8	9	10	11	12	13	14	5	6	7	8	9	10	11
15	16	17	18	19	20	21	12	13	14	15	16	17	18
22	23	24	25	26	27	28	19	20	21	22	23	24	25
29	30	31					26	27	28	29	30		

Notes

Notes

March 20, 2020 Friday	March 2020							April 2020						
	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6	7	5	6	7	8	9	10	11
	8	9	10	11	12	13	14	12	13	14	15	16	17	18
	15	16	17	18	19	20	21	19	20	21	22	23	24	25
	22	23	24	25	26	27	28	26	27	28	29	30		
	29	30	31											

	FRIDAY
	20
	Greg away- Vincent acting 
	Lawrence is away. David McNabb is acting 
	Sophie- away 
7 AM	
8	
9	ACE Management Quick Chat Teleconference Stacey, Colin
10	FW: Pre call on draft contract Teleconference Robitaille, Vincent
11	Call on draft contract call Hanson, Lawrence
12 PM	Do not book 
1	
2	ACE management meeting via MS Teams Stacey, Colin 
3	
4	
5	NRCWG meeting *document attached* MS Teams Meeting Melnyk, Linda 
6	

March 20, 2020

Friday

March 2020							April 2020						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7				1	2	3	4
8	9	10	11	12	13	14	5	6	7	8	9	10	11
15	16	17	18	19	20	21	12	13	14	15	16	17	18
22	23	24	25	26	27	28	19	20	21	22	23	24	25
29	30	31					26	27	28	29	30		

Notes

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s.16(2)(c)

March 21, 2020 Saturday	March 2020							April 2020						
	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6	7	5	6	7	8	9	10	11
	8	9	10	11	12	13	14	12	13	14	15	16	17	18
	15	16	17	18	19	20	21	19	20	21	22	23	24	25
	22	23	24	25	26	27	28	26	27	28	29	30		
	29	30	31											

	SATURDAY	
	21	
7 AM		
8		
9		
10		
11	LIM Air space Dial in #: 1-877-385-4099 / pass code: [REDACTED] Carole Henry	COVID North TEAMS Call Join by going into your teams calendar at 11:30 and click 'join' Little, Jennifer
12 PM		
1		
2	FW: Call with US carriers only to discuss Interim Order affecting transborder flights to Canada Telecom Deschamps, Jean-Robert	
3	Follow-up Call at 3:45 - Repatriation Flights Dial in #: 1-877-385-4099 / pass code: [REDACTED] Carole Henry	
4		Airport Info MS Teams call Stacey, Colin
5		
6		

March 21, 2020

Saturday

March 2020							April 2020						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7				1	2	3	4
8	9	10	11	12	13	14	5	6	7	8	9	10	11
15	16	17	18	19	20	21	12	13	14	15	16	17	18
22	23	24	25	26	27	28	19	20	21	22	23	24	25
29	30	31					26	27	28	29	30		

Notes

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s.16(2)(c)

March 22, 2020 Sunday	March 2020							April 2020						
	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6	7	5	6	7	8	9	10	11
	8	9	10	11	12	13	14	12	13	14	15	16	17	18
	15	16	17	18	19	20	21	19	20	21	22	23	24	25
	22	23	24	25	26	27	28	26	27	28	29	30		
	29	30	31											

	SUNDAY
	22
7 AM	
8	
9	
10	
11	
12 PM	
1	
2	Teams call on data request for airport stabilization Teams Stacey, Colin
3	
4	
5	Call with Ajay Virmani CEO Cargojet and Pauline Dhillon Executive VP via teleconference (1-877-413-4790 or 613-960-7514; Conference ID: [REDACTED]) Keenan, Michael
6	

March 22, 2020

Sunday

March 2020							April 2020						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7				1	2	3	4
8	9	10	11	12	13	14	5	6	7	8	9	10	11
15	16	17	18	19	20	21	12	13	14	15	16	17	18
22	23	24	25	26	27	28	19	20	21	22	23	24	25
29	30	31					26	27	28	29	30		

Notes

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s.16(2)(c)

March 23, 2020 Monday	March 2020							April 2020						
	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6	7	5	6	7	8	9	10	11
	8	9	10	11	12	13	14	12	13	14	15	16	17	18
	15	16	17	18	19	20	21	19	20	21	22	23	24	25
	22	23	24	25	26	27	28	26	27	28	29	30		
	29	30	31											

MONDAY			
23			
Greg away- Vincent acting			
Marc- away, Stephanie acting			
7 AM			
8			
9			
10	<table border="1"> <tr> <td> Minister Garneau Briefing (MIN/DM) Virtual meeting Coordination - Executive Office / Coordination - Bureau de la haute direction (TC) </td> <td> Claude to use teleconference na </td> </tr> </table>	Minister Garneau Briefing (MIN/DM) Virtual meeting Coordination - Executive Office / Coordination - Bureau de la haute direction (TC)	Claude to use teleconference na
Minister Garneau Briefing (MIN/DM) Virtual meeting Coordination - Executive Office / Coordination - Bureau de la haute direction (TC)	Claude to use teleconference na		
11			
12 PM	Do not book		
1	<table border="1"> <tr> <td> Teleconference - Northern and Remote Communities and COVID-19 (aviation) Teleconference - Dial-in: 613-960-7511 or 1-877-413-4782 // Conference ID: [redacted] Juneau, Patrick </td> <td> Supply Chain: Touch Point Teams: see link below to join call Hanson, Lawrence </td> </tr> </table>	Teleconference - Northern and Remote Communities and COVID-19 (aviation) Teleconference - Dial-in: 613-960-7511 or 1-877-413-4782 // Conference ID: [redacted] Juneau, Patrick	Supply Chain: Touch Point Teams: see link below to join call Hanson, Lawrence
Teleconference - Northern and Remote Communities and COVID-19 (aviation) Teleconference - Dial-in: 613-960-7511 or 1-877-413-4782 // Conference ID: [redacted] Juneau, Patrick	Supply Chain: Touch Point Teams: see link below to join call Hanson, Lawrence		
2			
3	<table border="1"> <tr> <td> Conf call: Update: Air Canada/Government of Canada Dial in #: 1-877-385-4099 or 514-395-9913 / pass code: [redacted] Moderator: AC Hanson, Lawrence </td> <td> Revised Agenda - PSMB - DG's (and those replacing DGs) Teams (see link below) Hanson, Lawrence </td> </tr> </table>	Conf call: Update: Air Canada/Government of Canada Dial in #: 1-877-385-4099 or 514-395-9913 / pass code: [redacted] Moderator: AC Hanson, Lawrence	Revised Agenda - PSMB - DG's (and those replacing DGs) Teams (see link below) Hanson, Lawrence
Conf call: Update: Air Canada/Government of Canada Dial in #: 1-877-385-4099 or 514-395-9913 / pass code: [redacted] Moderator: AC Hanson, Lawrence	Revised Agenda - PSMB - DG's (and those replacing DGs) Teams (see link below) Hanson, Lawrence		
4	<table border="1"> <tr> <td> Follow up: NAV Canada & TC Teleconference Number: 1-877-413-4785 or 613-960-7512 Code: [redacted] Hanson, Lawrence </td> <td></td> </tr> </table>	Follow up: NAV Canada & TC Teleconference Number: 1-877-413-4785 or 613-960-7512 Code: [redacted] Hanson, Lawrence	
Follow up: NAV Canada & TC Teleconference Number: 1-877-413-4785 or 613-960-7512 Code: [redacted] Hanson, Lawrence			
5			
6	<table border="1"> <tr> <td> PWC TA 6 David - do you have a dial in? McNairmy, Patrick </td> <td> Invitation: PwC call to discuss TA#6 @ Mon Mar 23, 2020 3:30pm - 4:30pm (PDT) (colin.stacey@tc.gc.ca); David Egan (CA) </td> </tr> </table>	PWC TA 6 David - do you have a dial in? McNairmy, Patrick	Invitation: PwC call to discuss TA#6 @ Mon Mar 23, 2020 3:30pm - 4:30pm (PDT) (colin.stacey@tc.gc.ca); David Egan (CA)
PWC TA 6 David - do you have a dial in? McNairmy, Patrick	Invitation: PwC call to discuss TA#6 @ Mon Mar 23, 2020 3:30pm - 4:30pm (PDT) (colin.stacey@tc.gc.ca); David Egan (CA)		

March 23, 2020

Monday

March 2020							April 2020						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7				1	2	3	4
8	9	10	11	12	13	14	5	6	7	8	9	10	11
15	16	17	18	19	20	21	12	13	14	15	16	17	18
22	23	24	25	26	27	28	19	20	21	22	23	24	25
29	30	31					26	27	28	29	30		

Notes

Notes

This is **Exhibit “Y”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on November 14, 2022

Signature

Chaar, Pascale

From: Millette, Vincent
Sent: Wednesday, March 18, 2020 4:54 PM
To: Stacey, Colin
Subject: RE: From MinO: Air Transat

Oh – I did not since you emailed Marcia at the same time.

I'll do it now

From: Stacey, Colin
Sent: Wednesday, March 18, 2020 4:51 PM
To: Millette, Vincent <vincent.millette@tc.gc.ca>
Subject: RE: From MinO: Air Transat

Thanks. Please let me know what you hear.

CS

Colin Stacey
Director General, Air Policy
Directeur général, Politique aérienne
Transport Canada / Transports Canada
T: 613-993-0054 / C 613-355-0749 / 1-888-675-6863

From: Millette, Vincent
Sent: Wednesday, March 18, 2020 2:57 PM
To: Stacey, Colin <colin.stacey@tc.gc.ca>
Subject: RE: From MinO: Air Transat

I'll get in touch with Cait

From: Stacey, Colin
Sent: Wednesday, March 18, 2020 2:49 PM
To: Hanson, Lawrence <lawrence.hanson@tc.gc.ca>
Cc: Millette, Vincent <vincent.millette@tc.gc.ca>
Subject: FW: From MinO: Air Transat

Lawrence:

Should we be reaching out to the Agency about this?

CS

Colin Stacey
Director General, Air Policy
Directeur général, Politique aérienne
Transport Canada / Transports Canada
T: 613-993-0054 / C 613-355-0749 / 1-888-675-6863

s.20(1)(b)

s.20(1)(c)

135

From: Millette, Vincent
Sent: Wednesday, March 18, 2020 2:48 PM
To: Stacey, Colin <colin.stacey@tc.gc.ca>
Cc: Davis, Mark <mark.davis@tc.gc.ca>; Dawson, Dave <dave.dawson@tc.gc.ca>; Rioux, Marc <marc.rioux@tc.gc.ca>; Herdsman, Sophie <Sophie.Herdsman@tc.gc.ca>
Subject: RE: From MinO: Air Transat

The APPRs requires cash refund unless the passenger agrees to an alternative method of payment (points, vouchers, etc...) and that its nominal value is at least equal to the cash refund

From: Stacey, Colin
Sent: Wednesday, March 18, 2020 2:02 PM
To: Millette, Vincent <vincent.millette@tc.gc.ca>
Cc: Davis, Mark <mark.davis@tc.gc.ca>; Dawson, Dave <dave.dawson@tc.gc.ca>; Rioux, Marc <marc.rioux@tc.gc.ca>
Subject: FW: From MinO: Air Transat

Vince:

Any thoughts on this? Do the APPRs require cash refunds?

Thanks,

cs

Colin Stacey
Director General, Air Policy
Directeur général, Politique aérienne
Transport Canada / Transports Canada
T: 613-993-0054 / C 613-355-0749 / 1-888-675-6863

From: Little, Jennifer
Sent: Wednesday, March 18, 2020 1:49 PM
To: Keenan, Michael <michael.keenan@tc.gc.ca>; Hanson, Lawrence <lawrence.hanson@tc.gc.ca>; Stacey, Colin <colin.stacey@tc.gc.ca>
Cc: Maheu, Caroline <Caroline.Maheu@tc.gc.ca>; Langlois, Alain <alain.langlois@tc.gc.ca>; Brosseau, Kevin <Kevin.Brosseau@tc.gc.ca>; McCrorie, Aaron <aaron.mccrorie@tc.gc.ca>; Phillips, Alyssa <alyssa.phillips@tc.gc.ca>; Arcand, Annie <annie.arcand@tc.gc.ca>
Subject: From MinO: Air Transat

MinO has let us know that Transat is telling them:

Air Transat will be sending a formal letter to the Minister for financial assistance. They provided no other details to us at this time.



Jennifer

This is **Exhibit “Z”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on November 14, 2022

Signature

Chaar, Pascale

From: Millette, Vincent
Sent: Wednesday, March 18, 2020 5:37 PM
To: Stacey, Colin
Cc: Davis, Mark
Subject: FW: From MinO: Air Transat

Colin – I am having a side exchange with Cait on this. We should not lose sight of situations where the passenger elect to cancel the trip. Those situations are not covered by the APPRs but rather by the carriers' tariffs. If the carrier's tariff do not contemplate the reimbursement with a voucher, then the carrier cannot do it. The carrier would need to amend its tariff.

Cait is looking with her colleagues dealing with the carriers tariffs to see what it would entail changing / amending a tariff on short notice

From: Marcia Jones [mailto:Marcia.Jones@otc-cta.gc.ca]
Sent: Wednesday, March 18, 2020 5:28 PM
To: Stacey, Colin <colin.stacey@tc.gc.ca>
Cc: Caitlin Hurcomb <Caitlin.Hurcomb@otc-cta.gc.ca>; Allan Burnside <Allan.Burnside@otc-cta.gc.ca>; Davis, Mark <mark.davis@tc.gc.ca>; Millette, Vincent <vincent.millette@tc.gc.ca>
Subject: RE: From MinO: Air Transat

Hi Colin,

I am sending this unencrypted as our remote network access is patchy and we are not able to open encrypted emails on our Samsungs at the Agency.

I would note that for situations outside of the carrier's control, no refunds are required under the APPR. As you know, the Agency issued a determination on Friday to clarify some situations flowing from COVID-19 that are considered to be in that category.

I would assume that writ large this situation is outside of the carrier's control.

If a flight cancellation is within the carrier's control, or within the carrier's control but required for safety, a refund is required and a voucher would not be compliant. Again, this does not seem to be relevant here.

Looping in Cait in case she has anything to add.

I hope this is helpful.

Thanks,
 Marcia

From: Stacey, Colin <colin.stacey@tc.gc.ca>
Sent: Wednesday, March 18, 2020 2:57 PM
To: Marcia Jones <Marcia.Jones@otc-cta.gc.ca>
Cc: Davis, Mark <mark.davis@tc.gc.ca>; Millette, Vincent <vincent.millette@tc.gc.ca>
Subject: FW: From MinO: Air Transat

Hi Marcia,

Air Transat are telling us that they are getting pressure from creditors who are pushing on the airlines for cash. They will request that we officially let them to provide vouchers to passengers instead of providing them cash because they literally do not have enough cash to give refunds. **139**

Have you heard anything about this? Are you available to discuss?

Thanks,

cs

This is **Exhibit “AA”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on November 14, 2022

Signature

Chaar, Pascale

From: Millette, Vincent
Sent: Thursday, March 19, 2020 9:23 AM
To: Stacey, Colin
Cc: Herdsman, Sophie
Subject: RE: From MinO: Air Transat
Attachments: Air Passenger Protection Rights -Compensation Obligations.docx

Proposed response:

Hi Tasha,

Further to my previous email, under the APPRs, if the carrier cancels a flight for reasons outside of its control (e.g. like COVID-19), there are no refund requirements. If the carrier cancels a flight for reasons within its control (e.g. cancelling a flight due to low demand), there is a refund requirement and it could be made with alternative method of payment (e.g. vouchers) if the passenger agrees and its nominal value is at least equal to the cash value.

However, in situations where the traveller elects to cancel the trip, the APPRs do not apply. In those circumstances, reimbursement is made based on the carrier's refund policy that can be found in its tariff filed with the Canadian Transportation Agency. For example, under its usual policy Transat does not refund travellers that cancel their trip and applied a fee to move a flight at a later date. However, in light of the COVID-19 situation, Transat implemented a flexible rebooking, without fee, policy for travellers who elected to not travel.

I am also attaching for you reference a chart outlining the APPRs usual refund and compensation requirements and the temporary ones for the COVID-19 situation.

From: Millette, Vincent
Sent: Wednesday, March 18, 2020 7:48 PM
To: Stacey, Colin <colin.stacey@tc.gc.ca>
Subject: Fw: From MinO: Air Transat

Colin - I will get you something early in the morning

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Hanes, Tasha (FIN) <tasha.hanes@canada.ca>
Sent: Wednesday, March 18, 2020 7:23 PM
To: Stacey, Colin
Cc: Davis, Mark; Dawson, Dave; Millette, Vincent; Rioux, Marc; Joseph, Shawn (FIN)
Subject: RE: From MinO: Air Transat

It would also be very helpful to have clarity obligations for refunding the ticket price versus compensation for inconvenience.

Based on a very quick review of the regulations, it seems the points below relate to compensation for inconvenience, whereas requirements for refunding the ticket price notes that the refund must be paid by the method used for the original payment.

Presumably it is the latter that it the issue/concern being surfaced by Air Transat?

Tasha Hanes
Finance Canada | Finances Canada

From: Hanes, Tasha (FIN)
Sent: Wednesday, March 18, 2020 7:01 PM
To: 'Stacey, Colin' <colin.stacey@tc.gc.ca>
Cc: Davis, Mark <mark.davis@tc.gc.ca>; Dawson, Dave <dave.dawson@tc.gc.ca>; Millette, Vincent <vincent.millette@tc.gc.ca>; Rioux, Marc <marc.rioux@tc.gc.ca>; Joseph, Shawn (FIN) <shawn.joseph@canada.ca>
Subject: RE: From MinO: Air Transat

Hi Colin, do you guys have any quick analysis that could be shared early tomorrow? I understand our Minister will be speaking with Air Transat's CEO around noon tomorrow, and our MINO is asking for as much intelligence we can offer...

Thanks!

Tasha Hanes
Finance Canada | Finances Canada

From: Stacey, Colin <colin.stacey@tc.gc.ca>
Sent: Wednesday, March 18, 2020 2:49 PM
To: Hanes, Tasha (FIN) <tasha.hanes@canada.ca>
Cc: Davis, Mark <mark.davis@tc.gc.ca>; Dawson, Dave <dave.dawson@tc.gc.ca>; Millette, Vincent <vincent.millette@tc.gc.ca>; Rioux, Marc <marc.rioux@tc.gc.ca>
Subject: RE: From MinO: Air Transat

Yes, I believe it is a passenger rights issue.

The APPRs requires cash refund unless the passenger agrees to an alternative method of payment (points, vouchers, etc...) and that its nominal value is at least equal to the cash refund

CS

Colin Stacey
Director General, Air Policy
Directeur général, Politique aérienne
Transport Canada / Transports Canada
T: 613-993-0054 / C 613-355-0749 / 1-888-675-6863

From: Hanes, Tasha (FIN) [mailto:tasha.hanes@canada.ca]
Sent: Wednesday, March 18, 2020 2:44 PM
To: Stacey, Colin <colin.stacey@tc.gc.ca>
Cc: Davis, Mark <mark.davis@tc.gc.ca>; Dawson, Dave <dave.dawson@tc.gc.ca>; Millette, Vincent <vincent.millette@tc.gc.ca>; Rioux, Marc <marc.rioux@tc.gc.ca>
Subject: RE: From MinO: Air Transat

Hi Colin, thanks for the heads up. On the issue of vouchers, what are the constraints preventing use of vouchers instead of cash refund - is this related to air passenger protection rights, or something broader?

s.16(2)(c) s.20(1)(b)
s.20(1)(c)

143

Tasha Hanes
Finance Canada | Finances Canada

From: Stacey, Colin <colin.stacey@tc.gc.ca>
Sent: Wednesday, March 18, 2020 2:39 PM
To: Hanes, Tasha (FIN) <tasha.hanes@canada.ca>
Cc: Davis, Mark <mark.davis@tc.gc.ca>; Dawson, Dave <dave.dawson@tc.gc.ca>; Millette, Vincent <vincent.millette@tc.gc.ca>; Rioux, Marc <marc.rioux@tc.gc.ca>
Subject: FW: From MinO: Air Transat

Tasha, we have heard the following:

Air Transat will be sending a formal letter to the Minister for financial assistance. They provided no other details to us at this time.

cs

Air Passenger Protection Rights - Compensation Requirements

Compensation for flight delays and cancellations	Compensation for flight delays and cancellations – Temporary Exemptions COVID-19
<p>The Air Passenger Protection Regulations (APPR) imposes certain minimum requirements for flights to, from and within Canada, including standards of treatment and, in some situations, compensation for passengers.</p> <p>If a flight is delayed or cancelled and the reason is <i>within the carrier's control</i> and not safety-related, passengers are entitled to a standard of treatment, rebooking or a refund, and up to \$1,000 in compensation for inconvenience.</p> <p>The regulations also requires that an air carrier must provide compensation if a passenger is informed 14 days or less before the departure time on their original ticket that the arrival of their flight at the destination that is indicated on that original ticket will be delayed.</p> <p>If a flight is delayed or cancelled and the reason is <i>within the carrier's control and required for safety purposes</i>, passengers are entitled to standard of treatment and rebooking or a refund.</p> <p>If a flight is delayed or cancelled and the reason is <i>outside of the carrier's control</i>, passengers are entitled to rebooking, but there are no refund requirements.</p> <p><u>Compensation</u></p> <p>Air carriers must offer compensation in monetary form - for example cash, cheque, or a deposit into a bank account.</p> <p>Air carriers can also offer other forms of compensation such as vouchers or rebates. There are additional requirements for vouchers or rebates:</p> <ul style="list-style-type: none"> • The air carrier must tells the passenger the monetary amount they are entitled to; • The air carrier must inform the passenger in writing the value of the other form of compensation it is offering; 	<p>The Canadian Transportation Agency (Agency) has issued temporary exemptions to certain APPR provisions to address the COVID-19 pandemic.</p> <p>The Agency has identified a number of situations related to the COVID-19 pandemic that are considered <i>outside of the air carrier's control</i>.</p> <p>Until April 30, 2020 air carriers will not be required to provide standards of treatment or compensation for inconvenience. However, they would have to ensure the passenger completes their itinerary.</p> <p>Air carriers will be allowed to make schedule changes without owing compensation to passengers until 72 hours before a scheduled departure time (instead of 14 days), and air carriers will be obligated to compensate passengers for delays on arrival that are fully within the air carrier's control once those delays are 6 hours or more in length (instead of 3 hours).</p> <p><u>More specifically:</u></p> <p>The Agency orders that all air carriers be exempted from:</p> <ul style="list-style-type: none"> • the obligation, under paragraphs 19(1)(a) and 19(1)(b) of the APPR, to pay compensation for inconvenience <ul style="list-style-type: none"> ○ if the flight delay or the flight cancellation is communicated to passengers more than 72 hours before the departure time indicated on the passengers' original ticket; or, ○ if the flight delay or the flight cancellation is communicated to the passengers within 72 hours of the departure time indicated on the original ticket, on condition that the carrier pays the passengers the following compensation for inconvenience; in the case of a large carrier, <ul style="list-style-type: none"> ▪ in the case of a large carrier,- \$400, if the arrival of the

- The voucher or rebate must be greater in value than the monetary amount the passenger is entitled to;
- The other form of compensation has no expiry date; and
- The passenger must confirm in writing they know that monetary compensation is available, but they choose the other form of compensation.

The compensation airlines provide must be equal to these amounts in Canadian dollars,

Passengers have one year to make a compensation claim with the air carrier in writing. The airline has 30 days to respond by issuing a payment or telling the passenger why it believes compensation is not owed.

Compensation levels are based on how late the passenger arrives at their final destination and vary depending on whether the carrier is considered large or small

For large airlines:

-from 3 to 6 hours, compensation is **\$400**;
-from 6 to 9 hours, compensation is **\$700**;
-9 hours or more, compensation is **\$1000**.

For a small airline:

-3 to 6 hours, compensation is **\$125**;
-6 to 9 hours, compensation is **\$250**
-9 hours or more, compensation is **\$500**.

Passengers who choose to take a ticket refund instead of alternate travel arrangements must still be compensated for inconvenience. Large airlines must pay them \$400 and small airlines, \$125.

passenger's flight at the destination that is indicated on the original ticket is delayed by six hours or more, but less than nine hours, or

- \$700, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by nine hours or more; and

- in the case of a small carrier,

- \$125, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by six hours or more, but less than nine hours, or

- \$250, if the arrival of the passenger's flight at the destination that is indicated on the original ticket is delayed by nine hours or more.

- the obligation, under subsection 19(2) of the APPR to pay compensation for inconvenience to passengers who opted to obtain a refund instead of alternative travel arrangement, if the flight delay or the flight cancellation is communicated to passengers more than 72 hours before the departure time indicated on the passengers' original ticket;
- the obligation, under paragraphs 17(1)(a)(ii), 17(1)(a)(iii), and 18(1)(a)(ii) of the APPR to provide a confirmed reservation on a flight operated by a carrier with which the carrier does not have any commercial agreement.

The exemption is effective immediately, will remain valid until April 30, 2020, and may be extended by a further determination of the Agency, if required.

This is **Exhibit “AB”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on November 14, 2022

Signature

Chaar, Pascale

From: Millette, Vincent
Sent: Thursday, March 19, 2020 11:08 AM
To: 'Hanes, Tasha (FIN)'; Stacey, Colin
Cc: Davis, Mark; Dawson, Dave; Rioux, Marc; 'Joseph, Shawn (FIN)'
Subject: RE: From MinO: Air Transat

We are not exactly sure. I would think both.

In both cases, however, it would involve a decision from the Agency. We are in communication with the Agency to find out what would be the process for Transat to amend its tariff, but we haven't heard back yet.

Vincent

From: Hanes, Tasha (FIN) [mailto:tasha.hanes@canada.ca]
Sent: Thursday, March 19, 2020 10:38 AM
To: Millette, Vincent <vincent.millette@tc.gc.ca>; Stacey, Colin <colin.stacey@tc.gc.ca>
Cc: Davis, Mark <mark.davis@tc.gc.ca>; Dawson, Dave <dave.dawson@tc.gc.ca>; Rioux, Marc <marc.rioux@tc.gc.ca>; Joseph, Shawn (FIN) <shawn.joseph@canada.ca>
Subject: RE: From MinO: Air Transat

Thanks Vincent, this is quite helpful.

Tasha Hanes
Finance Canada | Finances Canada

From: Millette, Vincent <vincent.millette@tc.gc.ca>
Sent: Thursday, March 19, 2020 10:08 AM
To: Hanes, Tasha (FIN) <tasha.hanes@canada.ca>; Stacey, Colin <colin.stacey@tc.gc.ca>
Cc: Davis, Mark <mark.davis@tc.gc.ca>; Dawson, Dave <dave.dawson@tc.gc.ca>; Rioux, Marc <marc.rioux@tc.gc.ca>; Joseph, Shawn (FIN) <shawn.joseph@canada.ca>
Subject: RE: From MinO: Air Transat

Hi Tasha,

Further to Colin's email of yesterday, under the APPRs, if the carrier cancels a flight for reasons outside of its control (e.g. like COVID-19), there are no refund requirements. If the carrier cancels a flight for reasons within its control (e.g. cancelling a flight due to low demand), there is a refund requirement and it could be made with alternative method of payment (e.g. vouchers) if the passenger agrees and its nominal value is at least equal to the cash value.

s.16(2)(c)

However, in situations where the traveller elects to cancel the trip, the APPRs do not apply. In those circumstances, reimbursement is made based on the carrier's refund policy that can be found in its tariff filed with the Canadian Transportation Agency. For example, under its usual policy Transat does not refund travellers that cancel their trip and applied a fee to move a flight at a later date. However, in light of the COVID-19 situation, Transat implemented a flexible rebooking, without fee, policy for travellers who elected to not travel.

I am also attaching for you reference a chart outlining the APPRs usual refund and compensation requirements and the temporary ones for the COVID-19 situation.

Vincent

From: Hanes, Tasha (FIN) [<mailto:tasha.hanes@canada.ca>]
Sent: Wednesday, March 18, 2020 7:23 PM
To: Stacey, Colin <colin.stacey@tc.gc.ca>
Cc: Davis, Mark <mark.davis@tc.gc.ca>; Dawson, Dave <dave.dawson@tc.gc.ca>; Millette, Vincent <vincent.millette@tc.gc.ca>; Rioux, Marc <marc.rioux@tc.gc.ca>; Joseph, Shawn (FIN) <shawn.joseph@canada.ca>
Subject: RE: From MinO: Air Transat

It would also be very helpful to have clarity obligations for refunding the ticket price versus compensation for inconvenience.

Based on a very quick review of the regulations, it seems the points below relate to compensation for inconvenience, whereas requirements for refunding the ticket price notes that the refund must be paid by the method used for the original payment.

Presumably it is the latter that it the issue/concern being surfaced by Air Transat?

Tasha Hanes
 Finance Canada | Finances Canada

From: Hanes, Tasha (FIN)
Sent: Wednesday, March 18, 2020 7:01 PM
To: 'Stacey, Colin' <colin.stacey@tc.gc.ca>
Cc: Davis, Mark <mark.davis@tc.gc.ca>; Dawson, Dave <dave.dawson@tc.gc.ca>; Millette, Vincent <vincent.millette@tc.gc.ca>; Rioux, Marc <marc.rioux@tc.gc.ca>; Joseph, Shawn (FIN) <shawn.joseph@canada.ca>
Subject: RE: From MinO: Air Transat

Hi Colin, do you guys have any quick analysis that could be shared early tomorrow? I understand our Minister will be speaking with Air Transat's CEO around noon tomorrow, and our MINO is asking for as much intelligence we can offer...

Thanks!

Tasha Hanes
 Finance Canada | Finances Canada

From: Stacey, Colin <colin.stacey@tc.gc.ca>
Sent: Wednesday, March 18, 2020 2:49 PM
To: Hanes, Tasha (FIN) <tasha.hanes@canada.ca>
Cc: Davis, Mark <mark.davis@tc.gc.ca>; Dawson, Dave <dave.dawson@tc.gc.ca>; Millette, Vincent

s.16(2)(c) s.20(1)(b)

s.20(1)(c)

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<vincent.millette@tc.gc.ca>; Rioux, Marc <marc.rioux@tc.gc.ca>

Subject: RE: From MinO: Air Transat

Yes, I believe it is a passenger rights issue.

The APPRs requires cash refund unless the passenger agrees to an alternative method of payment (points, vouchers, etc...) and that its nominal value is at least equal to the cash refund

cs

Colin Stacey
Director General, Air Policy
Directeur général, Politique aérienne
Transport Canada / Transports Canada
T: 613-993-0054 / C 613-355-0749 / 1-888-675-6863

From: Hanes, Tasha (FIN) [mailto:tasha.hanes@canada.ca]
Sent: Wednesday, March 18, 2020 2:44 PM
To: Stacey, Colin <colin.stacey@tc.gc.ca>
Cc: Davis, Mark <mark.davis@tc.gc.ca>; Dawson, Dave <dave.dawson@tc.gc.ca>; Millette, Vincent <vincent.millette@tc.gc.ca>; Rioux, Marc <marc.rioux@tc.gc.ca>
Subject: RE: From MinO: Air Transat

Hi Colin, thanks for the heads up. On the issue of vouchers, what are the constraints preventing use of vouchers instead of cash refund - is this related to air passenger protection rights, or something broader?

Tasha Hanes
Finance Canada | Finances Canada

From: Stacey, Colin <colin.stacey@tc.gc.ca>
Sent: Wednesday, March 18, 2020 2:39 PM
To: Hanes, Tasha (FIN) <tasha.hanes@canada.ca>
Cc: Davis, Mark <mark.davis@tc.gc.ca>; Dawson, Dave <dave.dawson@tc.gc.ca>; Millette, Vincent <vincent.millette@tc.gc.ca>; Rioux, Marc <marc.rioux@tc.gc.ca>
Subject: FW: From MinO: Air Transat

Tasha, we have heard the following:

Air Transat will be sending a formal letter to the Minister for financial assistance. They provided no other details to us at this time.

cs

This is **Exhibit “AC”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on November 14, 2022

Signature

Nadine Landry

From: Caitlin Hurcomb
Sent: Wednesday, March 25, 2020 2:30 PM
To: Marcia Jones
Subject: RE: push button ready
Attachments: Email to carriers Mar 24.docx

Here's the message you can copy-paste into your email.
You're BCCing everyone, eh?

From: Marcia Jones
Sent: Wednesday, March 25, 2020 2:29 PM
To: Caitlin Hurcomb <Caitlin.Hurcomb@otc-cta.gc.ca>
Subject: RE: push button ready

Sounds good, will use it

From: Caitlin Hurcomb <Caitlin.Hurcomb@otc-cta.gc.ca>
Sent: Wednesday, March 25, 2020 2:27 PM
To: Marcia Jones <Marcia.Jones@otc-cta.gc.ca>
Subject: RE: push button ready

Why don't we use

Update: CTA measures / Mise à jour: mesures prises par l'OTC

From: Marcia Jones
Sent: Wednesday, March 25, 2020 2:17 PM
To: Caitlin Hurcomb <Caitlin.Hurcomb@otc-cta.gc.ca>
Subject: RE: push button ready

Thanks, I will cc you on my outgoing. I've got the email ready to send once the text/links are ready. Is there a subject line? I can fill that in

From: Caitlin Hurcomb <Caitlin.Hurcomb@otc-cta.gc.ca>
Sent: Wednesday, March 25, 2020 2:13 PM
To: Marcia Jones <Marcia.Jones@otc-cta.gc.ca>
Subject: RE: push button ready

attached

From: Marcia Jones
Sent: Wednesday, March 25, 2020 2:12 PM
To: Caitlin Hurcomb <Caitlin.Hurcomb@otc-cta.gc.ca>
Subject: RE: push button ready

Thanks – cld you also resend me your email w the email addresses of the carriers 152

From: Caitlin Hurcomb <Caitlin.Hurcomb@otc-cta.gc.ca>
Sent: Wednesday, March 25, 2020 2:08 PM
To: Marcia Jones <Marcia.Jones@otc-cta.gc.ca>
Subject: RE: push button ready

I'll double check before I send it to you. Should be fine, though – it was pretty high level.

From: Marcia Jones
Sent: Wednesday, March 25, 2020 2:07 PM
To: Caitlin Hurcomb <Caitlin.Hurcomb@otc-cta.gc.ca>
Subject: RE: push button ready

Thanks for calming that, Cait. On another note – is any adjustment needed to the email to the carriers or is everything ok on that front? Can you take a quick look?

From: Caitlin Hurcomb <Caitlin.Hurcomb@otc-cta.gc.ca>
Sent: Wednesday, March 25, 2020 2:03 PM
To: Sébastien Bergeron <Sebastien.Bergeron@otc-cta.gc.ca>; Marcia Jones <Marcia.Jones@otc-cta.gc.ca>; Patrice Bellerose <Patrice.Bellerose@otc-cta.gc.ca>; Tim Hillier <Tim.Hillier@otc-cta.gc.ca>; Vincent Turgeon <Vincent.Turgeon@otc-cta.gc.ca>; Allan Burnside <Allan.Burnside@otc-cta.gc.ca>; Renée Langlois <Renee.Langlois@otc-cta.gc.ca>
Cc: Valérie Lagacé <Valerie.Lagace@otc-cta.gc.ca>
Subject: RE: push button ready

All good – the dates have been updated. They'll go live with the other adjustments to that page.

From: Sébastien Bergeron
Sent: Wednesday, March 25, 2020 1:59 PM
To: Marcia Jones <Marcia.Jones@otc-cta.gc.ca>; Patrice Bellerose <Patrice.Bellerose@otc-cta.gc.ca>; Tim Hillier <Tim.Hillier@otc-cta.gc.ca>; Vincent Turgeon <Vincent.Turgeon@otc-cta.gc.ca>; Caitlin Hurcomb <Caitlin.Hurcomb@otc-cta.gc.ca>; Allan Burnside <Allan.Burnside@otc-cta.gc.ca>; Renée Langlois <Renee.Langlois@otc-cta.gc.ca>
Cc: Valérie Lagacé <Valerie.Lagace@otc-cta.gc.ca>
Subject: RE: push button ready

The Covid-19 webpages will need to be updated to reflect the new June 30th, 2020 date. [Important Information for Travellers During COVID-19.](#)

Sébastien Bergeron

Chef de cabinet | Bureau du président et premier dirigeant
Office des transports du Canada | Gouvernement du Canada
sebastien.bergeron@otc-cta.gc.ca | Tél. 819-712-0827

Chief of Staff | Office of the Chair and Chief Executive Officer
Canadian Transportation Agency | Government of Canada
Sebastien.bergeron@otc-cta.gc.ca | Tél. 819-712-0827

De : Marcia Jones <Marcia.Jones@otc-cta.gc.ca>

Envoyé : 25 mars 2020 13:55

À : Patrice Bellerose <Patrice.Bellerose@otc-cta.gc.ca>; Sébastien Bergeron <Sebastien.Bergeron@otc-cta.gc.ca>; Tim Hillier <Tim.Hillier@otc-cta.gc.ca>; Vincent Turgeon <Vincent.Turgeon@otc-cta.gc.ca>; Caitlin Hurcomb <Caitlin.Hurcomb@otc-cta.gc.ca>; Allan Burnside <Allan.Burnside@otc-cta.gc.ca>; Renée Langlois <Renee.Langlois@otc-cta.gc.ca>

Cc : Valérie Lagacé <Valerie.Lagace@otc-cta.gc.ca>

Objet : RE: push button ready

Thanks and will do.

From: Patrice Bellerose <Patrice.Bellerose@otc-cta.gc.ca>

Sent: Wednesday, March 25, 2020 1:53 PM

To: Marcia Jones <Marcia.Jones@otc-cta.gc.ca>; Sébastien Bergeron <Sebastien.Bergeron@otc-cta.gc.ca>; Tim Hillier <Tim.Hillier@otc-cta.gc.ca>; Vincent Turgeon <Vincent.Turgeon@otc-cta.gc.ca>; Caitlin Hurcomb <Caitlin.Hurcomb@otc-cta.gc.ca>; Allan Burnside <Allan.Burnside@otc-cta.gc.ca>; Renée Langlois <Renee.Langlois@otc-cta.gc.ca>

Cc: Valérie Lagacé <Valerie.Lagace@otc-cta.gc.ca>

Subject: RE: push button ready

We are publishing as we speak. I have not received the change. Please send it directly to Renée Langlois who will deal with the changes please. I have to help the issuance team.

thanks

PB

From: Marcia Jones <Marcia.Jones@otc-cta.gc.ca>

Sent: Wednesday, March 25, 2020 1:49 PM

To: Sébastien Bergeron <Sebastien.Bergeron@otc-cta.gc.ca>; Patrice Bellerose <Patrice.Bellerose@otc-cta.gc.ca>; Tim Hillier <Tim.Hillier@otc-cta.gc.ca>; Vincent Turgeon <Vincent.Turgeon@otc-cta.gc.ca>; Caitlin Hurcomb <Caitlin.Hurcomb@otc-cta.gc.ca>; Allan Burnside <Allan.Burnside@otc-cta.gc.ca>

Cc: Valérie Lagacé <Valerie.Lagace@otc-cta.gc.ca>

Subject: RE: push button ready

My apologies, I have mixed up the sequencing, so basically, Patrice would go ahead and get the decisions live (so there can be links), then Comms goes and I go with the email. 154

So basically I would suggest Patrice get started with getting the decisions live/sent, while Secretariat is translating that last change from Scott. Meanwhile Comms will code the English change and wait for the French change. And then Comms will go live when they can.

Does that work for everyone?

Marcia

From: Sébastien Bergeron <Sebastien.Bergeron@otc-cta.gc.ca>
Sent: Wednesday, March 25, 2020 1:37 PM
To: Marcia Jones <Marcia.Jones@otc-cta.gc.ca>; Patrice Bellerose <Patrice.Bellerose@otc-cta.gc.ca>; Tim Hillier <Tim.Hillier@otc-cta.gc.ca>; Vincent Turgeon <Vincent.Turgeon@otc-cta.gc.ca>; Caitlin Hurcomb <Caitlin.Hurcomb@otc-cta.gc.ca>; Allan Burnside <Allan.Burnside@otc-cta.gc.ca>
Cc: Valérie Lagacé <Valerie.Lagace@otc-cta.gc.ca>
Subject: RE: push button ready

Yes.

Sent from my Bell Samsung device over Canada's largest network.

----- Original message -----

From: Marcia Jones <Marcia.Jones@otc-cta.gc.ca>
Date: 2020-03-25 1:35 PM (GMT-05:00)
To: Patrice Bellerose <Patrice.Bellerose@otc-cta.gc.ca>, Tim Hillier <Tim.Hillier@otc-cta.gc.ca>, Vincent Turgeon <Vincent.Turgeon@otc-cta.gc.ca>, Caitlin Hurcomb <Caitlin.Hurcomb@otc-cta.gc.ca>, Allan Burnside <Allan.Burnside@otc-cta.gc.ca>
Cc: Valérie Lagacé <Valerie.Lagace@otc-cta.gc.ca>, Sébastien Bergeron <Sebastien.Bergeron@otc-cta.gc.ca>
Subject: RE: push button ready

OK, so the statement is being tweaked to reference a 24 months expiry date for vouchers.

It will arrive from the Chair shortly and will need to be translated.

Not a major change.

Seb, can you confirm the approach is to go live once Comms is ready to go live with the statement. So Tim would confirm they are ready, Patrice would then do the decisions and Comms then goes live with the statement and I send out the emails to carriers. Sounds right?

From: Patrice Bellerose <Patrice.Bellerose@otc-cta.gc.ca>
Sent: Wednesday, March 25, 2020 1:27 PM
To: Marcia Jones <Marcia.Jones@otc-cta.gc.ca>; Tim Hillier <Tim.Hillier@otc-cta.gc.ca>; Vincent Turgeon <Vincent.Turgeon@otc-cta.gc.ca>; Caitlin Hurcomb <Caitlin.Hurcomb@otc-cta.gc.ca>; Allan Burnside <Allan.Burnside@otc-cta.gc.ca>
Cc: Valérie Lagacé <Valerie.Lagace@otc-cta.gc.ca>
Subject: RE: push button ready

Are you talking about your statement only or are we stopping on our Decisions too??

From: Marcia Jones <Marcia.Jones@otc-cta.gc.ca>
Sent: Wednesday, March 25, 2020 1:23 PM
To: Tim Hillier <Tim.Hillier@otc-cta.gc.ca>; Vincent Turgeon <Vincent.Turgeon@otc-cta.gc.ca>; Caitlin Hurcomb <Caitlin.Hurcomb@otc-cta.gc.ca>; Allan Burnside <Allan.Burnside@otc-cta.gc.ca>
Cc: Patrice Bellerose <Patrice.Bellerose@otc-cta.gc.ca>; Valérie Lagacé <Valerie.Lagace@otc-cta.gc.ca>
Subject: RE: push button ready
Importance: High

Stop, do not post – stay tuned.

Sorry about this

From: Marcia Jones
Sent: Wednesday, March 25, 2020 1:11 PM
To: Tim Hillier <Tim.Hillier@otc-cta.gc.ca>; Vincent Turgeon <Vincent.Turgeon@otc-cta.gc.ca>; Caitlin Hurcomb <Caitlin.Hurcomb@otc-cta.gc.ca>; Allan Burnside <Allan.Burnside@otc-cta.gc.ca>
Subject: FW: push button ready
Importance: High

Hello, please note

From: Scott Streiner <Scott.Streiner@otc-cta.gc.ca>
Sent: Wednesday, March 25, 2020 12:47 PM
To: Valérie Lagacé <Valerie.Lagace@otc-cta.gc.ca>
Cc: Liz Barker <Liz.Barker@otc-cta.gc.ca>; Sébastien Bergeron <Sebastien.Bergeron@otc-cta.gc.ca>; Marcia Jones <Marcia.Jones@otc-cta.gc.ca>
Subject: RE: push button ready

Let's push the button(s) at 1:30.

Marcia, please send the emails informing industry and other stakeholders almost immediately after issuance. **156**

Thanks.

From: Scott Streiner <Scott.Streiner@otc-cta.gc.ca>
Sent: Wednesday, March 25, 2020 10:40 AM
To: Valérie Lagacé <Valerie.Lagace@otc-cta.gc.ca>
Cc: Liz Barker <Liz.Barker@otc-cta.gc.ca>; Sébastien Bergeron <Sebastien.Bergeron@otc-cta.gc.ca>; Marcia Jones <Marcia.Jones@otc-cta.gc.ca>
Subject: RE: push button ready

Perfect. Thanks.

----- Original message -----

From: Valérie Lagacé <Valerie.Lagace@otc-cta.gc.ca>
Date: 2020-03-25 10:36 a.m. (GMT-05:00)
To: Scott Streiner <Scott.Streiner@otc-cta.gc.ca>
Cc: Liz Barker <Liz.Barker@otc-cta.gc.ca>, Sébastien Bergeron <Sebastien.Bergeron@otc-cta.gc.ca>, Marcia Jones <Marcia.Jones@otc-cta.gc.ca>
Subject: push button ready

Mr. Streiner,

I just got an update on Patrice's work. She will be ready to issue the three orders by 12:00. We will of course wait for your signal.

Valérie

This is **Exhibit “AD”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on November 14, 2022

Signature

Nadine Landry

From: Caitlin Hurcomb
Sent: Tuesday, March 24, 2020 3:52 PM
To: Marcia Jones
Subject: RE: FAQs for review

I think the paragraph that follows (our statement about vouchers) makes that clear.

From: Marcia Jones
Sent: Tuesday, March 24, 2020 3:51 PM
To: Caitlin Hurcomb <Caitlin.Hurcomb@otc-cta.gc.ca>
Subject: Re: FAQs for review

Hi Cait - understood - but is it possible to adjust to say that refunds can include vouchers - to make the link more explicit - as we are not holding them strictly to the tariff in a sense.

Marcia

Sent from my Bell Samsung device over Canada's largest network.

----- Original message -----

From: Caitlin Hurcomb <Caitlin.Hurcomb@otc-cta.gc.ca>
Date: 2020-03-24 3:47 PM (GMT-05:00)
To: Marcia Jones <Marcia.Jones@otc-cta.gc.ca>
Subject: RE: FAQs for review

Hi Marcia,

For Q2, I added back in the language about following the tariff refund requirement, because we're not exempting them from that. We just think refunds can include vouchers.
Happy to adjust, though.

From: Martine Maltais
Sent: Tuesday, March 24, 2020 3:44 PM
To: Marcia Jones <Marcia.Jones@otc-cta.gc.ca>
Cc: Vincent Turgeon <Vincent.Turgeon@otc-cta.gc.ca>; Tim Hillier <Tim.Hillier@otc-cta.gc.ca>; Caitlin Hurcomb <Caitlin.Hurcomb@otc-cta.gc.ca>
Subject: RE: FAQs for review

Marcia,

Here is a revised version for your review.

From: Marcia Jones <Marcia.Jones@otc-cta.gc.ca>
Sent: Tuesday, March 24, 2020 1:42 PM
To: Martine Maltais <Martine.Maltais@otc-cta.gc.ca>

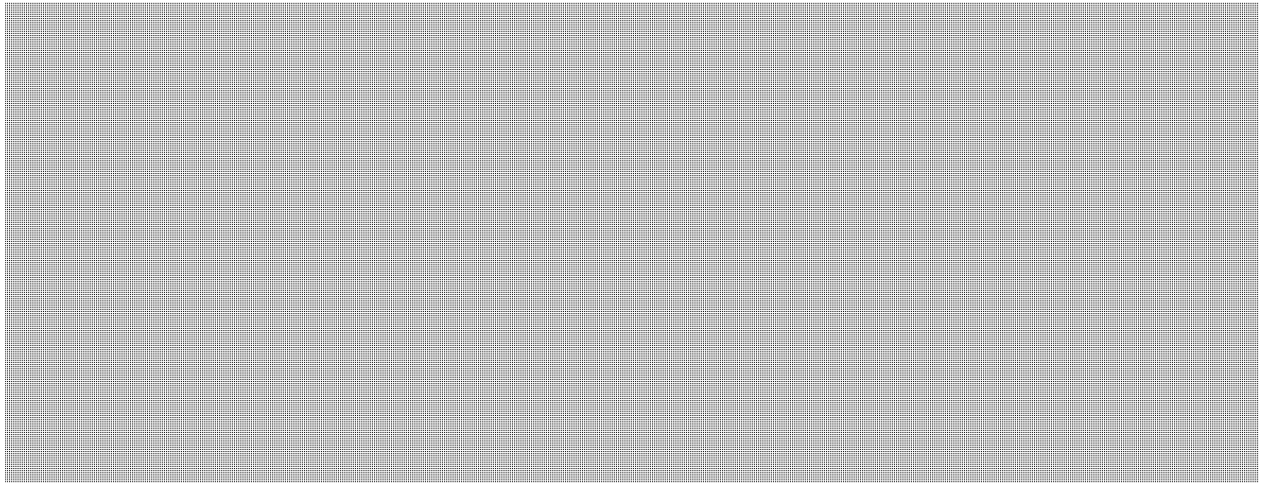
s.21(1)(b)

Cc: Vincent Turgeon <Vincent.Turgeon@otc-cta.gc.ca>; Tim Hillier <Tim.Hillier@otc-cta.gc.ca>

159

Subject: RE: FAQs for review

Thanks, Martine, these look good. I think Q2 needs some adjustment – we are not saying that they have to follow their tariff refund policy, but basically that they don't have to, and that vouchers are appropriate. Can you adjust this one to better align with the statement? We also need to include some language that if the passenger completes their trip, the airline is not expected to rebook the passenger, for example, if the passenger returned on a repatriation flight.



Thanks,
Marcia

From: Martine Maltais <Martine.Maltais@otc-cta.gc.ca>

Sent: Tuesday, March 24, 2020 1:17 PM

To: Marcia Jones <Marcia.Jones@otc-cta.gc.ca>

Cc: Vincent Turgeon <Vincent.Turgeon@otc-cta.gc.ca>; Tim Hillier <Tim.Hillier@otc-cta.gc.ca>

Subject: FAQs for review

Marcia, I know we are on standby, but in the meantime, here are the FAQs for your review. Please note that Cait has reviewed as well. Does someone from Legal need to see this as well, it is basically messaging adapted from existing content.

Martine

From: Vincent Turgeon <Vincent.Turgeon@otc-cta.gc.ca>

Sent: Tuesday, March 24, 2020 10:50 AM

To: Tim Hillier <Tim.Hillier@otc-cta.gc.ca>; Marcia Jones <Marcia.Jones@otc-cta.gc.ca>

Cc: Martine Maltais <Martine.Maltais@otc-cta.gc.ca>

Subject: RE: heads up

Hi Marcia, we're on it.

We should be sending your way in one hour.

Tim: you'll be asked to review around 11:30 or so.

Vincent

From: Tim Hillier <Tim.Hillier@otc-cta.gc.ca>
Sent: Tuesday, March 24, 2020 10:28 AM
To: Marcia Jones <Marcia.Jones@otc-cta.gc.ca>; Vincent Turgeon <Vincent.Turgeon@otc-cta.gc.ca>
Subject: RE: heads up

Thanks Marcia,

Vincent, could you and Martine work on some QAs?

Thanks,

Tim

From: Marcia Jones <Marcia.Jones@otc-cta.gc.ca>
Sent: Tuesday, March 24, 2020 10:26 AM
To: Vincent Turgeon <Vincent.Turgeon@otc-cta.gc.ca>; Tim Hillier <Tim.Hillier@otc-cta.gc.ca>
Subject: RE: heads up

Confirmed: no twitter, no news release. However, the team should get going on responsive Qs and As asap.

Marcia

From: Vincent Turgeon <Vincent.Turgeon@otc-cta.gc.ca>
Sent: Tuesday, March 24, 2020 9:50 AM
To: Marcia Jones <Marcia.Jones@otc-cta.gc.ca>; Tim Hillier <Tim.Hillier@otc-cta.gc.ca>
Subject: RE: heads up

Do you wish those messages to be posted on Twitter, or simply post that our page on COVID-19 has been updated with a link to the page?

Please advise.

Vincent

From: Marcia Jones <Marcia.Jones@otc-cta.gc.ca>
Sent: Tuesday, March 24, 2020 9:37 AM
To: Tim Hillier <Tim.Hillier@otc-cta.gc.ca>
Cc: Vincent Turgeon <Vincent.Turgeon@otc-cta.gc.ca>; Cynthia Jolly <Cynthia.Jolly@otc-cta.gc.ca>; Caitlin Hurcomb <Caitlin.Hurcomb@otc-cta.gc.ca>; Allan Burnside <Allan.Burnside@otc-cta.gc.ca>
Subject: RE: heads up

No news release.

However, we are doing a separate send out email to the carriers/CAA/PIAC.

Marcia

From: Tim Hillier <Tim.Hillier@otc-cta.gc.ca>
Sent: Tuesday, March 24, 2020 9:30 AM
To: Marcia Jones <Marcia.Jones@otc-cta.gc.ca>
Cc: Vincent Turgeon <Vincent.Turgeon@otc-cta.gc.ca>; Cynthia Jolly <Cynthia.Jolly@otc-cta.gc.ca>; Caitlin Hurcomb <Caitlin.Hurcomb@otc-cta.gc.ca>; Allan Burnside <Allan.Burnside@otc-cta.gc.ca>
Subject: RE: heads up

This should be pretty straightforward. Do we want any kind of news release for the decision? I assume we still don't but though I should check. We will add the links.

Tim

From: Marcia Jones <Marcia.Jones@otc-cta.gc.ca>
Sent: Tuesday, March 24, 2020 8:44 AM
To: Tim Hillier <Tim.Hillier@otc-cta.gc.ca>
Cc: Vincent Turgeon <Vincent.Turgeon@otc-cta.gc.ca>; Cynthia Jolly <Cynthia.Jolly@otc-cta.gc.ca>; Caitlin Hurcomb <Caitlin.Hurcomb@otc-cta.gc.ca>; Allan Burnside <Allan.Burnside@otc-cta.gc.ca>
Subject: heads up
Importance: High

Hi Tim, just a heads up that we are preparing to post/issue the following **today**:

- The statement on vouchers – being slightly edited as we speak;
- The determination exempting carriers from the obligation to provide 120 days' advance notice before discontinuing or reducing a domestic route;
- An order exempting carriers from the obligation to respond to customers' claims for compensation within 30 days under the APPR and (TBC) extending the duration of the order we issued Friday the 13th, modifying the application of the APPR, from April 30, until the end of June.

Patrice will be posting the determination/orders and the statement should go on our COVID-19 site. I would also suggest that the determination/orders be linked somehow on the COVID-19 site.

Please work with Cait as needed to get this "push button ready."

Marcia Jones
Dirigeante principale, Stratégies/Chief Strategy Officer
Office des transports du Canada/Canadian Transportation Agency
15, rue Eddy/15 Eddy Street
Gatineau, QC, K1A 0N9
(819) 953-0327
marcia.jones@otc-cta.gc.ca

This is **Exhibit “AE”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on November 14, 2022

Signature

Nadine Landry

From: Tom Oommen
Sent: Sunday, March 22, 2020 6:53 PM
To: John Dodsworth; Martin Dalpé; John Touliopoulos
Cc: Valérie Lagacé
Subject: RE: Debrief from Sunday EC

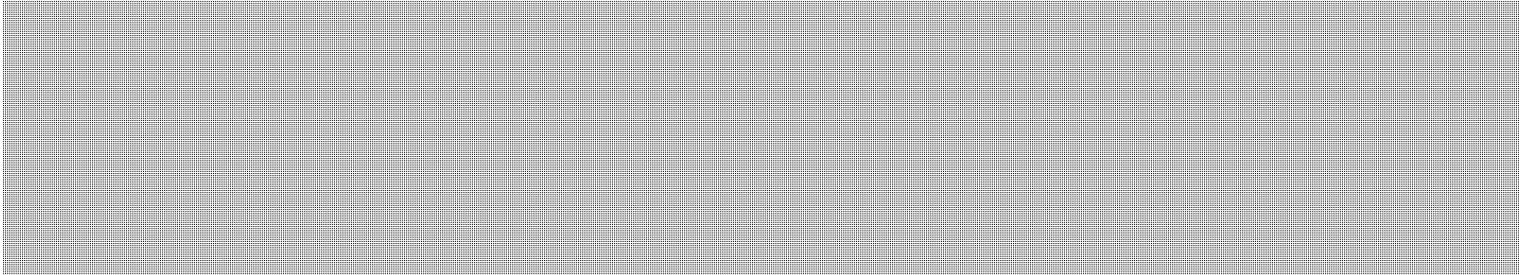
What was discussed this morning was that we would go with the single condition about it being temporary, plus Valérie was going to add language about possibly rescinding the exemption in specific cases.

So that's the way forward.

Sent from my Bell Samsung device over Canada's largest network.

----- Original message -----

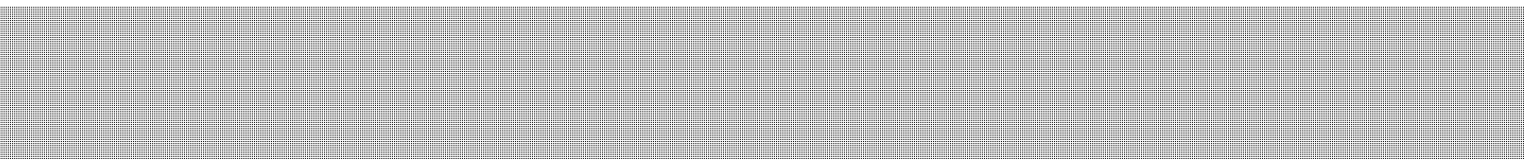
From: John Dodsworth <John.Dodsworth@otc-cta.gc.ca>
Date: 2020-03-22 6:48 PM (GMT-05:00)
To: Martin Dalpé <Martin.Dalpe@otc-cta.gc.ca>, John Touliopoulos <John.Touliopoulos@otc-cta.gc.ca>, Tom Oommen <Tom.Oommen@otc-cta.gc.ca>
Cc: Valérie Lagacé <Valerie.Lagace@otc-cta.gc.ca>
Subject: RE: Debrief from Sunday EC



Sent from my Bell Samsung device over Canada's largest network.

----- Original message -----

From: Martin Dalpé <Martin.Dalpe@otc-cta.gc.ca>
Date: 2020-03-22 18:37 (GMT-05:00)
To: John Dodsworth <John.Dodsworth@otc-cta.gc.ca>, John Touliopoulos <John.Touliopoulos@otc-cta.gc.ca>, Tom Oommen <Tom.Oommen@otc-cta.gc.ca>
Cc: Valérie Lagacé <Valerie.Lagace@otc-cta.gc.ca>
Subject: RE: Debrief from Sunday EC



Martin

From: John Dodsworth <John.Dodsworth@otc-cta.gc.ca>
Sent: Sunday, March 22, 2020 6:21 PM
To: Martin Dalpé <Martin.Dalpe@otc-cta.gc.ca>; John Touliopoulos <John.Touliopoulos@otc-cta.gc.ca>; Tom Oommen <Tom.Oommen@otc-cta.gc.ca>
Cc: Valérie Lagacé <Valerie.Lagace@otc-cta.gc.ca>
Subject: RE: Debrief from Sunday EC

Sent from my Bell Samsung device over Canada's largest network.

----- Original message -----

From: Martin Dalpé <Martin.Dalpe@otc-cta.gc.ca>
Date: 2020-03-22 18:19 (GMT-05:00)
To: John Dodsworth <John.Dodsworth@otc-cta.gc.ca>, John Touliopoulos <John.Touliopoulos@otc-cta.gc.ca>, Tom Oommen <Tom.Oommen@otc-cta.gc.ca>
Cc: Valérie Lagacé <Valerie.Lagace@otc-cta.gc.ca>
Subject: RE: Debrief from Sunday EC

Martin Dalpé
Gestionnaire, Licences et affrètements
Manager, Licences and Charters
Office des transports du Canada (OTC)
Canadian Transportation Agency (CTA)
Tel. 819 953-9788 Cel. 819 635-6311

----- Original message -----

From: John Dodsworth <John.Dodsworth@otc-cta.gc.ca>
Date: 2020-03-22 6:06 p.m. (GMT-05:00)
To: Martin Dalpé <Martin.Dalpe@otc-cta.gc.ca>, John Touliopoulos <John.Touliopoulos@otc-cta.gc.ca>, Tom Oommen <Tom.Oommen@otc-cta.gc.ca>
Cc: Valérie Lagacé <Valerie.Lagace@otc-cta.gc.ca>
Subject: RE: Debrief from Sunday EC

s.21(1)(a)

s.21(1)(b)

Sent from my Bell Samsung device over Canada's largest network.

----- Original message -----

From: Martin Dalpé <Martin.Dalpe@otc-cta.gc.ca>

Date: 2020-03-22 18:00 (GMT-05:00)

To: John Dodsworth <John.Dodsworth@otc-cta.gc.ca>, John Touliopoulos <John.Touliopoulos@otc-cta.gc.ca>, Tom Oommen <Tom.Oommen@otc-cta.gc.ca>

Cc: Valérie Lagacé <Valerie.Lagace@otc-cta.gc.ca>

Subject: RE: Debrief from Sunday EC

Martin

Martin Dalpé

Gestionnaire, Licences et affrètements

Manager, Licences and Charters

Office des transports du Canada (OTC)

Canadian Transportation Agency (CTA)

Tel. [819 953-9788](tel:819-953-9788) Cel. [819 635-6311](tel:819-635-6311)

----- Original message -----

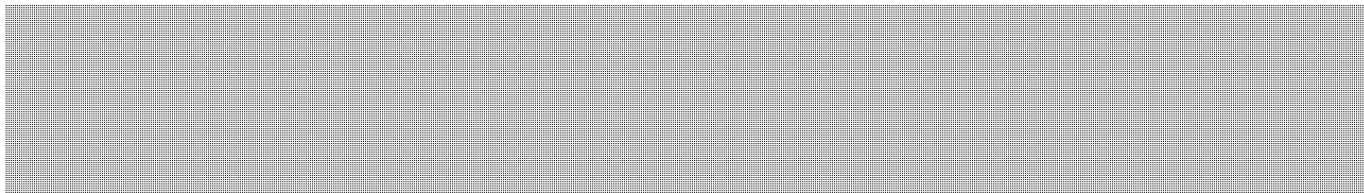
From: John Dodsworth <John.Dodsworth@otc-cta.gc.ca>

Date: 2020-03-22 5:49 p.m. (GMT-05:00)

To: John Touliopoulos <John.Touliopoulos@otc-cta.gc.ca>, Tom Oommen <Tom.Oommen@otc-cta.gc.ca>

Cc: Martin Dalpé <Martin.Dalpe@otc-cta.gc.ca>, Valérie Lagacé <Valerie.Lagace@otc-cta.gc.ca>

Subject: RE: Debrief from Sunday EC



Sent from my Bell Samsung device over Canada's largest network.

----- Original message -----

From: John Touliopoulos <John.Touliopoulos@otc-cta.gc.ca>

Date: 2020-03-22 16:16 (GMT-05:00)

To: Tom Oommen <Tom.Oommen@otc-cta.gc.ca>, John Dodsworth <John.Dodsworth@otc-cta.gc.ca>

Cc: Martin Dalpé <Martin.Dalpe@otc-cta.gc.ca>

Subject: RE: Debrief from Sunday EC

Tom



John

Sent from my Bell Samsung device over Canada's largest network.

----- Original message -----

From: Tom Oommen <Tom.Oommen@otc-cta.gc.ca>

Date: 2020-03-22 11:10 AM (GMT-05:00)

To: John Touliopoulos <John.Touliopoulos@otc-cta.gc.ca>, Martin Dalpé <Martin.Dalpe@otc-cta.gc.ca>, Jason Tsang <Jason.Tsang@otc-cta.gc.ca>, Marc Thomson <Marc.Thomson@otc-cta.gc.ca>, Carole Girard <Carole.Girard@otc-cta.gc.ca>

Subject: Debrief from Sunday EC

1. Valerie will tweak the s. 80 order regarding an exemption from the 120-day notification period of s. 64 so that the only condition will be that it is temporary and that service has to be restored after the crisis. It would also have a line about the possibility of the Agency rescinding the exemption should evidence emerge that a particular community is badly impacted. (In that scenario, it is possible that government would purchase the capacity on the flight from the airline for a certain period of time.)
2. It is likely that Agency will issue a statement saying that vouchers are acceptable instead of refunds.

Intention is for the two documents to be issued tomorrow.

Nadine Landry

From: Valérie Lagacé
Sent: Sunday, March 22, 2020 6:52 PM
To: Martin Dalpé; John Dodsworth; John Touliopoulos; Tom Oommen
Subject: Re: Debrief from Sunday EC

They can ask whatever notice period is appropriate at that time Nd the Gency will decide.

Sent from my Bell Samsung device over Canada's largest network.

----- Original message -----

From: Martin Dalpé <Martin.Dalpe@otc-cta.gc.ca>
Date: 2020-03-22 6:50 PM (GMT-05:00)
To: Valérie Lagacé <Valerie.Lagace@otc-cta.gc.ca>, John Dodsworth <John.Dodsworth@otc-cta.gc.ca>, John Touliopoulos <John.Touliopoulos@otc-cta.gc.ca>, Tom Oommen <Tom.Oommen@otc-cta.gc.ca>
Subject: RE: Debrief from Sunday EC

So after doing a notice on March 20 carrier will have to do another notice for services already stop months ago? Just want to make sure that the date of the first notice will be taken into account in the 120 days. If no, better to do nothing and tell carrier that the Agency wont AMPs them if did follow 64.

Martin

From: Valérie Lagacé <Valerie.Lagace@otc-cta.gc.ca>
Sent: Sunday, March 22, 2020 6:46 PM
To: Martin Dalpé <Martin.Dalpe@otc-cta.gc.ca>; John Dodsworth <John.Dodsworth@otc-cta.gc.ca>; John Touliopoulos <John.Touliopoulos@otc-cta.gc.ca>; Tom Oommen <Tom.Oommen@otc-cta.gc.ca>
Subject: Re: Debrief from Sunday EC

If a carrier does not want to resume operations once the section 80 expires, all they have to do is ask for a section 64 using g the normal process

Sent from my Bell Samsung device over Canada's largest network.

----- Original message -----

From: Martin Dalpé <Martin.Dalpe@otc-cta.gc.ca>
Date: 2020-03-22 6:37 PM (GMT-05:00)
To: John Dodsworth <John.Dodsworth@otc-cta.gc.ca>, John Touliopoulos <John.Touliopoulos@otc-cta.gc.ca>, Tom Oommen <Tom.Oommen@otc-cta.gc.ca>
Cc: Valérie Lagacé <Valerie.Lagace@otc-cta.gc.ca>
Subject: RE: Debrief from Sunday EC

s.21(1)(a)
s.21(1)(b)

Martin

From: John Dodsworth <John.Dodsworth@otc-cta.gc.ca>
Sent: Sunday, March 22, 2020 6:21 PM
To: Martin Dalpé <Martin.Dalpe@otc-cta.gc.ca>; John Touliopoulos <John.Touliopoulos@otc-cta.gc.ca>;
Tom Oommen <Tom.Oommen@otc-cta.gc.ca>
Cc: Valérie Lagacé <Valerie.Lagace@otc-cta.gc.ca>
Subject: RE: Debrief from Sunday EC

Sent from my Bell Samsung device over Canada's largest network.

----- Original message -----

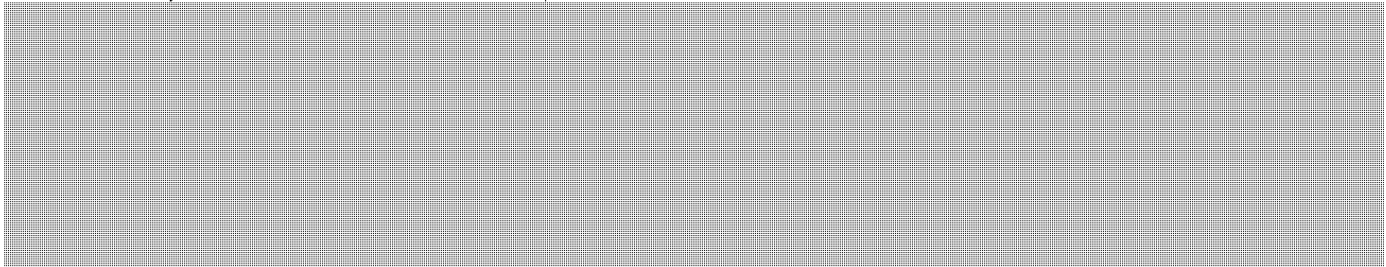
From: Martin Dalpé <Martin.Dalpe@otc-cta.gc.ca>
Date: 2020-03-22 18:19 (GMT-05:00)
To: John Dodsworth <John.Dodsworth@otc-cta.gc.ca>, John Touliopoulos
<John.Touliopoulos@otc-cta.gc.ca>, Tom Oommen <Tom.Oommen@otc-cta.gc.ca>
Cc: Valérie Lagacé <Valerie.Lagace@otc-cta.gc.ca>
Subject: RE: Debrief from Sunday EC

Martin Dalpé
Gestionnaire, Licences et affrètements
Manager, Licences and Charters
Office des transports du Canada (OTC)
Canadian Transportation Agency (CTA)
Tel. [819 953-9788](tel:819-953-9788) Cel. [819 635-6311](tel:819-635-6311)

----- Original message -----

From: John Dodsworth <John.Dodsworth@otc-cta.gc.ca>
Date: 2020-03-22 6:06 p.m. (GMT-05:00)

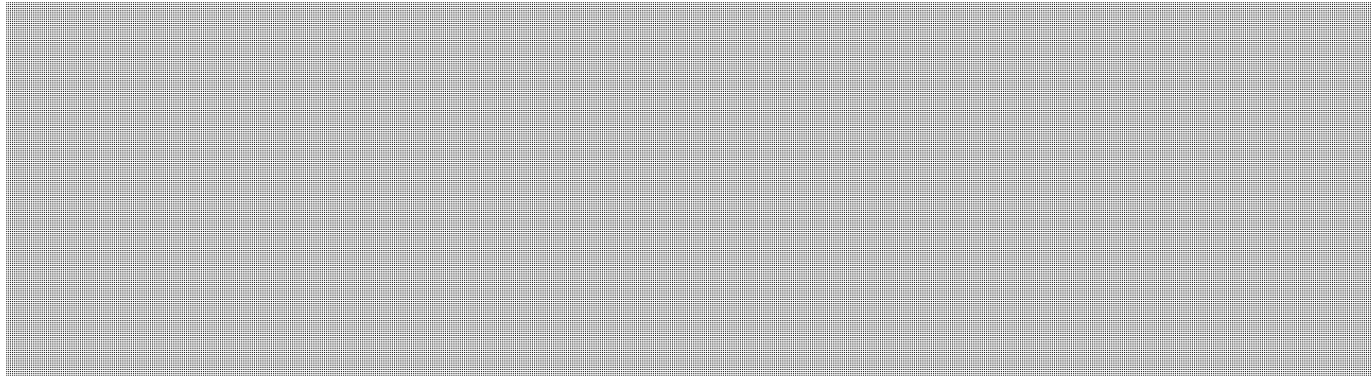
To: Martin Dalpé <Martin.Dalpe@otc-cta.gc.ca>, John Touliopoulos <John.Touliopoulos@otc-cta.gc.ca>, Tom Oommen <Tom.Oommen@otc-cta.gc.ca>
Cc: Valérie Lagacé <Valerie.Lagace@otc-cta.gc.ca>
Subject: RE: Debrief from Sunday EC



Sent from my Bell Samsung device over Canada's largest network.

----- Original message -----

From: Martin Dalpé <Martin.Dalpe@otc-cta.gc.ca>
Date: 2020-03-22 18:00 (GMT-05:00)
To: John Dodsworth <John.Dodsworth@otc-cta.gc.ca>, John Touliopoulos <John.Touliopoulos@otc-cta.gc.ca>, Tom Oommen <Tom.Oommen@otc-cta.gc.ca>
Cc: Valérie Lagacé <Valerie.Lagace@otc-cta.gc.ca>
Subject: RE: Debrief from Sunday EC

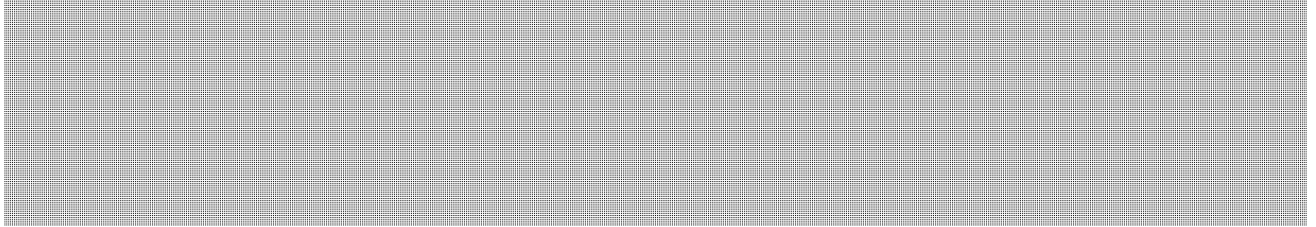


Martin

Martin Dalpé
Gestionnaire, Licences et affrètements
Manager, Licences and Charters
Office des transports du Canada (OTC)
Canadian Transportation Agency (CTA)
Tel. 819 953-9788 Cel. 819 635-6311

----- Original message -----

From: John Dodsworth <John.Dodsworth@otc-cta.gc.ca>
Date: 2020-03-22 5:49 p.m. (GMT-05:00)
To: John Touliopoulos <John.Touliopoulos@otc-cta.gc.ca>, Tom Oommen
<Tom.Oommen@otc-cta.gc.ca>
Cc: Martin Dalpé <Martin.Dalpe@otc-cta.gc.ca>, Valérie Lagacé <Valerie.Lagace@otc-cta.gc.ca>
Subject: RE: Debrief from Sunday EC

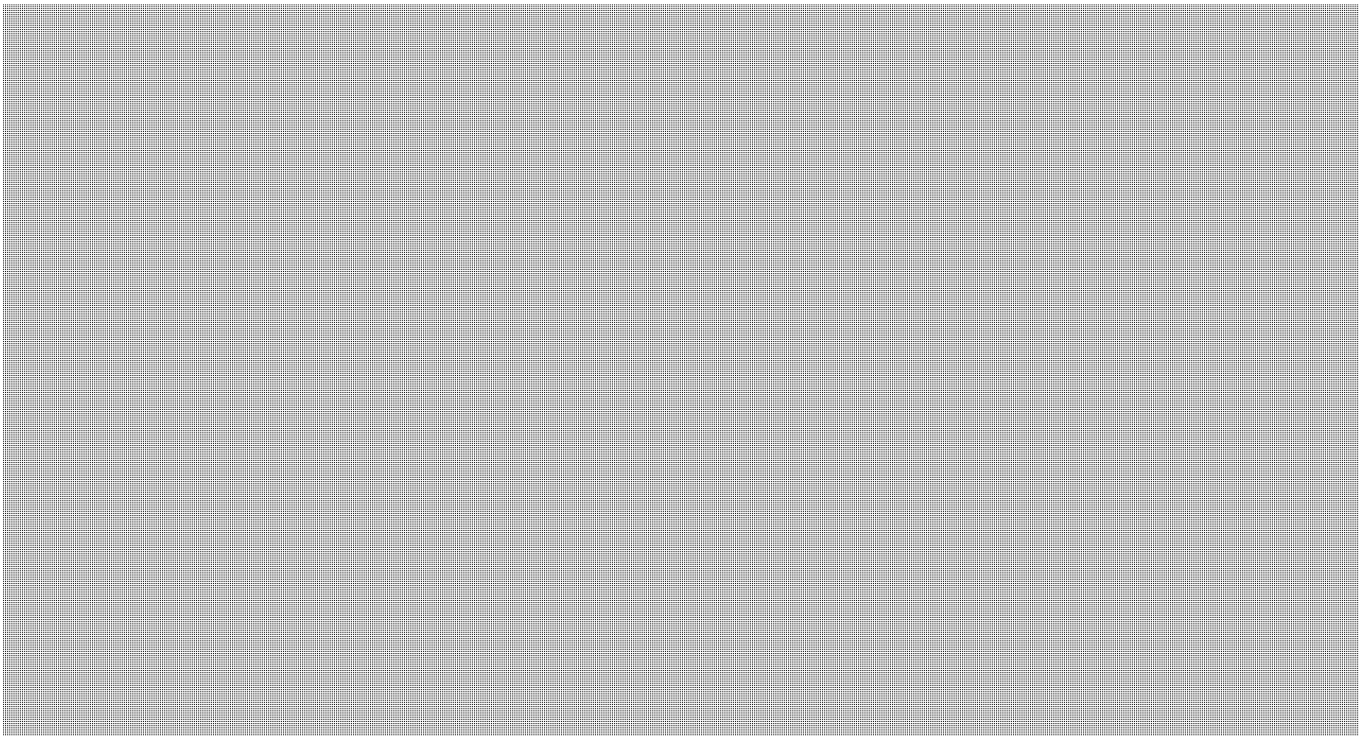


Sent from my Bell Samsung device over Canada's largest network.

----- Original message -----

From: John Touliopoulos <John.Touliopoulos@otc-cta.gc.ca>
Date: 2020-03-22 16:16 (GMT-05:00)
To: Tom Oommen <Tom.Oommen@otc-cta.gc.ca>, John Dodsworth <John.Dodsworth@otc-cta.gc.ca>
Cc: Martin Dalpé <Martin.Dalpe@otc-cta.gc.ca>
Subject: RE: Debrief from Sunday EC

Tom



John

Sent from my Bell Samsung device over Canada's largest network.

----- Original message -----

From: Tom Oommen <Tom.Oommen@otc-cta.gc.ca>

Date: 2020-03-22 11:10 AM (GMT-05:00)

To: John Touliopoulos <John.Touliopoulos@otc-cta.gc.ca>, Martin Dalpé <Martin.Dalpe@otc-cta.gc.ca>, Jason Tsang <Jason.Tsang@otc-cta.gc.ca>, Marc Thomson <Marc.Thomson@otc-cta.gc.ca>, Carole Girard <Carole.Girard@otc-cta.gc.ca>

Subject: Debrief from Sunday EC

1. Valerie will tweak the s. 80 order regarding an exemption from the 120-day notification period of s. 64 so that the only condition will be that it is temporary and that service has to be restored after the crisis. It would also have a line about the possibility of the Agency rescinding the exemption should evidence emerge that a particular community is badly impacted. (In that scenario, it is possible that government would purchase the capacity on the flight from the airline for a certain period of time.)
2. It is likely that Agency will issue a statement saying that vouchers are acceptable instead of refunds.

Intention is for the two documents to be issued tomorrow.

This is **Exhibit “AF”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on November 14, 2022

Signature

OIC File 5820-03658 (Exemptions): Request for representations under paragraph 35(2)(a)

Jennifer Bouchard <Jennifer.Bouchard@oic-ci.gc.ca>
To: Gabor Lukacs <lukacs@airpassengerrights.ca>

Fri, Nov 4, 2022 at 11:32 AM

Good Morning Dr. Lukacs,

Yesterday the Canadian Transportation Agency (CTA) sent you a supplementary release in response to the Office of the Information Commissioner's (OIC) above-noted exemption investigation.

Some information remains withheld because you agreed that information already provided to you in response to a court order could be removed from the scope of this investigation.

I am writing to seek representations from you on the information that remains withheld and is within the reduced scope of the above-noted complaint against the CTA.

You allege that the CTA improperly withheld information under paragraph 21(1)(a) (advice or recommendations), paragraph 21(1)(b) (accounts of consultations or deliberations) and section 23 (solicitor-client privilege) of the *Access to Information Act* in response to an access request for records related to the drafting, review, approval, and/or publication of the Statement on Vouchers. The CTA is no longer relying on section 23 to withhold any information within the scope of this complaint. The information that remains withheld and within the scope of complaint can be found on pages 121-124, 127-130, 132, 155-157 and 159-161 of the records.

For the CTA to withhold information under exemptions, it bears the burden of showing that refusing to disclose this information is justified—that is, that the information meets the requirements of the exemptions, as follows.

Paragraph 21(1)(a) allows institutions to refuse to disclose advice or recommendations developed by or for a government institution or a minister.

To qualify for exemption under paragraph 21(1)(a), the records that contain the information must have been created less than 20 years before the access request was made.

To claim this exemption, institutions must then show the following:

- The information is advice or recommendations.
- The information was created by or for a government institution or minister.

Paragraph 21(1)(b) allows institutions to refuse to disclose accounts of consultations or deliberations in which government employees, ministers or members of a minister's staff took part.

To qualify for exemption under paragraph 21(1)(b), the records that contain the information must have been created less than 20 years before the access request was made.

To claim this exemption, institutions must then show the following:

- The information is an account—that is, a report or a description.
- The account is of consultations or deliberations.

- At least one of an institution's directors, officers or employees, a minister or a member of a minister's staff was involved in the consultations or deliberations.

When the requirements of these exemptions are met, institutions must then reasonably exercise their discretion to decide whether to disclose the information.

However, subsection 21(2) specifically prohibits institutions from using paragraphs 21(1)(a) or (b) to refuse to disclose the following:

- records that contain reasons for or accounts of decisions that affect the rights of a person made by institutions when exercising discretionary powers or carrying out adjudicative functions; and
- reports prepared by consultants or advisers who were not officers or employees of an institution or members of a minister's staff at the time.

As of today, I am of the preliminary view that the information withheld on pages 121-124, 127-130 and 132 does meet all of the requirements of paragraphs 21(1)(a) and/or (b). With respect to the information withheld on pages 155-157 and 159-161, I am of the preliminary view that the majority of the information on these pages meets all of the requirements of paragraphs 21(1)(a) and/or (b), and that disclosure of the non-exempt information would likely not result in any meaningful disclosure. I also come to the preliminary conclusion that the CTA considered appropriate factors in its exercise of discretion.

Please note that the investigation into the reasonable search for records in response to this request is still ongoing (investigation 5821-06448).

If you have any representations you wish to share on why the exemptions do not apply and on my preliminary conclusions, please respond to me by return email **by November 16, 2022**.

This is the last opportunity for you to provide the OIC with the requested representations. Once the above deadline has passed, the OIC will conclude its investigation, regardless of whether it has received representations. The Commissioner will then make a finding on the complaint and may issue an order if she finds the complaint to be well founded.

Thank you,

Jennifer Bouchard

Enquêteuse

Commissariat à l'information du Canada

jennifer.bouchard@oic-ci.gc.ca / Tél. : 873-455-0381

Investigator

Office of the Information Commissioner of Canada

jennifer.bouchard@oic-ci.gc.ca / Tel: 873-455-0381

This is **Exhibit “AG”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on November 14, 2022

Signature

November 1, 2022

VIA EMAIL

Canadian Transportation Agency
ATTN : Mr. Kevin Shaar
15 Eddy Street
Gatineau, Québec K1A 0N9

Dear Mr. Shaar,

RE: Air Passenger Rights v. AGC and CTA (A-102-20)

Thank you for your letter of October 14, 2022 (the “**Letter**”). We are writing regarding two points: (a) Request #3 – January 5, 2021 email exchange between Ms. Jones and Ms. Cuber; and (b) Request #10 – Outlook Search Results from the November 2020 ATIP request.

Request #3 – January 5, 2021 Email Exchange Between Ms. Jones and Ms. Cuber

In Letter, the CTA asserted that this email exchange is “*Not relevant, solicitor-client privilege and/or litigation privilege.*” Respectfully, the email exchange is relevant to Ms. Cuber’s efforts to search, preserve, and gather documents, which was the subject of the cross-examination. Ms. Cuber even referred to, or otherwise relied on, this email exchange to explain her efforts.

With respect to privilege, the Orders from the Court confirms that privilege claims must be asserted by way of a motion, once the need for such a ruling becomes apparent. Hence, unless there is a Court Order allowing the privilege claims, these emails should be disclosed.

Request #10 – Outlook Search Results from the November 2020 ATIP request

We understand from the Outlook results for the November 2020 ATIP request that there were emails in Ms. Caitlin Hurcomb’s Outlook mailbox regarding the statement on vouchers.

The Applicant has previously made an Access to Information request to Transport Canada and received a response recently (“**TC ATI Package**”). According to the enclosed excerpts from the TC ATI Package, it appears that Ms. Hurcomb (from the CTA) was having a “side exchange” with Mr. Vincent Millette (from Transport Canada) on the topic of Air Transat’s request that vouchers be accepted in lieu of cash refunds.

We draw your attention to an email from Mr. Millette on March 18, 2020 at 2:57PM indicating he will get in touch with Ms. Hurcomb on the topic of Air Transat’s request for vouchers. Then, on March 18, 2020 at 5:37PM, where Mr. Millette indicated “I am having a side exchange with Cait on this....” [emphasis added]

The exchanges between Mr. Millette and Ms. Hurcomb are within the scope of the Court Order on October 15, 2021 ([Air Passenger Rights v. Canada \(Attorney General\)](#), 2021 FCA 201). In particular, the exchanges are “documents sent to a third party by the CTA or received from a third party by the CTA between March 9 and March 25, 2020, concerning the statement on vouchers posted on the CTA’s website on March 25, 2020.”

We have reviewed the materials that the CTA has disclosed to date, and were unable to find these exchanges between Mr. Millette and Ms. Hurcomb on or after March 18, 2020.

We are aware that Ms. Hurcomb has already left the CTA for quite some time. Hence, based on Ms. Cuber’s evidence at the cross-examination, Ms. Hurcomb’s Outlook mailbox can no longer be searched after Ms. Hurcomb had departed. As such, we kindly request that the CTA review the materials that had already been gathered to date and verify that these exchanges between Mr. Millette and Ms. Hurcomb were not overlooked or omitted.

Conclusion

Considering the imminent deadline of November 14, 2022 for the next step in this Application, and the requests above can likely be streamlined through the use of computer searches (e.g., searching the CTA’s existing materials with Ms. Hurcomb’s name or email), we trust that the CTA can provide us a response by **November 7, 2022**. We look forward to hearing from you.

Yours truly,

EVOLINK LAW GROUP



SIMON LIN

Barrister & Solicitor

Cc: Mr. Sandy Graham and Mr. Lorne Ptack, counsel for the Respondent

Encls: Email chain from Mr. Vincent Millette of Transport Canada on March 18, 2020 at 5:37PM;
and Email chain from Mr. Vincent Millette of Transport Canada on March 18, 2020 at 4:54PM.

This is **Exhibit “AH”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on November 14, 2022

Signature

November 7, 2022

VIA EMAIL

Canadian Transportation Agency
ATTN : Mr. Kevin Shaar
15 Eddy Street
Gatineau, Québec K1A 0N9

Dear Mr. Shaar,

RE: Air Passenger Rights v. AGC and CTA (A-102-20)

We hope this letter finds you well. Although we did not receive an out-of-office response from you when we sent our November 1, 2022 letter, Ms. Barrett informed us that you are on leave until November 9, 2022. This letter is in addition to the two requests from our November 1, 2022 letter. This letter primarily consists of one additional request for unredacted copies of documents that the CTA's Access to Information office has already identified. We trust that there will be no difficulty providing us those unredacted documents forthwith upon your return.

On Thursday November 3, 2022, the Applicant received an additional package from the CTA's Access to Information office consisting of one-hundred and fifty-seven (157) pages ("**New CTA ATI Package**"). That package is for "A-2020-00029" and, according to Ms. Cuber's affidavit at para. 21, is the ATI request from Dr. Lukacs from around August 25, 2020.

Upon reviewing the New ATI Package, it appears that the CTA may have omitted or overlooked documents that the Court had ordered to be disclosed, namely documents pertaining to the March 22, 2020 CTA Key Personnel Call.

Omission of the March 22, 2020 CTA Key Personnel Call Documents

In the October Order,¹ the Court ordered, *inter alia*, disclosure of the following:

all non-privileged documents related to any meeting attended by a CTA member (including its Chairperson or Vice-Chairperson) between March 9 and March 25, 2020 where the statement on vouchers posted on the CTA's website on March 25, 2020 was discussed;

On January 17, 2022, the Applicant brought a motion for non-compliance with the October Order and a show cause order for contempt. Then, in the April Order,² the Court specifically

¹ Order of Gleason J.A. on October 15, 2021.

² Order of Gleason J.A. on April 11, 2022.

ordered the following relating to the March 22, 2020 CTA Key Personnel Call (i.e. Category C5 from the Schedule A to the Applicant's motion):³

[32] Although the CTA acknowledges that there are documents that pertain to the calls between CTA's Executive Committee and Key Personnel on the above dates (items C1, C5 and C6 in the Appendix), it says that none of them relates to the statement on vouchers and therefore need not be disclosed. It is unclear from the CTA's representations whether the statement on vouchers was discussed during the calls on March 19, 22 and 23, 2020, although the CTA states that the applicant has not been able to establish that it was discussed. (I note that the documents disclosed to date appear to show that it was the intent to discuss the statement on vouchers during these calls.)

[33] In order to comply with the Order, the CTA was required to inquire whether the subject was discussed during these calls. If the subject matter was not discussed, then none of these documents needed to be disclosed. Conversely, if the statement on vouchers was discussed during the calls, the terms of the October 15, 2021 Order requires disclosure of these documents.

[34] The Order requires disclosure of two different sorts of documents in paragraphs 3(a) and 3(c). By virtue of paragraph 3(a) of the Order, the CTA was required to disclose all non-privileged documents sent to or by a CTA Member (including its Chairperson and Vice-Chairperson) between March 9 and 25, 2020 concerning the statement on vouchers. Paragraph 3(c) of the Order, on the other hand, requires disclosure of all non-privileged documents related to any meeting attended by a CTA member (including its Chairperson and Vice-Chairperson) between March 9 and March 25, 2020 where the statement on vouchers was discussed. In paragraph 23 of the Reasons, the Court specified that a meeting includes telephone conversations, video conferences and internet meetings as well as in person meetings.

[35] Thus, the CTA shall determine if the statement on vouchers was discussed during these calls. If so, then it must disclose all the documents relating to these calls.

Then, on April 20, 2022, Mr. Matte wrote to the Applicant indicating that:

Additional Production Order – Paragraph 5

Pursuant to paragraph five (5) of the Additional Production Order, the Agency is required to determine if the Statement on Vouchers was discussed during the March 19, 22 and 23 calls. If it was then documents relating to these calls as listed as items C1, C5 and C6 in the Appendix to the Reasons for the Additional Production Order are required to be produced.

Based on the materials that we have gathered, it appears that the Statement of Vouchers was discussed during the March 19, 22 and 23 calls.

Included with the email attached to this letter are links to the documents listed in Appendices C1, C5 and C6 of the Additional Production Order for the March 19, 22 and 23 calls respectively.

³ [Air Passenger Rights v. Canada \(Attorney General\)](#), 2022 FCA 64 [emphasis added]

Mr. Matte provided a “Appendix C5” containing fourteen (14) pages. Only the first three pages pertained to the “March 22, 2020 CTA Key Personnel Call”, comprising of a two-page email from Mr. Scott Streiner to key CTA personnel (i.e. Liz Barker; Marcia Jones; Valérie Lagacé; Tom Oommen; and Sébastien Bergeron) and an Outlook Calendar invite for an urgent debrief. The remainder of the fourteen pages relates to back and forth between Mr. Streiner and other CTA Members and did not directly relate to the urgent debrief on March 22, 2020.

We draw your attention to pages 121-130 from the New CTA ATI Package containing heavily redacted email threads with the subject “Debrief from Sunday EC”, which is enclosed for your reference (the “**Sunday EC Debrief Thread**”). The Sunday EC Debrief Thread was commenced by Mr. Oommen within ten minutes after the “urgent debrief” with Mr. Streiner, where Mr. Oommen also confirmed that the Statement on Vouchers was discussed. In his April 20, 2022 letter, Mr. Matte omitted the Sunday EC Debrief Thread.

The Sunday EC Debrief Thread clearly relate to “correspondences of the meeting’s decisions and deliverables [from the meeting]” and within the scope of Category C5.⁴ In the April Order, the Court also stated that the CTA “must disclose all the documents relating to these calls.”⁵

Furthermore, the CTA’s ATI office appears to acknowledge that the redactions in the Sunday EC Debrief Thread relates to the Statement on Vouchers. The ATI Office did not claim any redactions on the basis of relevance. Instead, the CTA’s ATI office claimed that the redactions were pursuant to s. 21(1)(a)-(b) of the *Access to Information Act* pertaining to advice by or for government, and consultations or deliberations between government representatives.

Accordingly, to comply with the various court orders, we request that the CTA *forthwith* disclose the Sunday EC Debrief Thread unredacted. Furthermore, we trust that the CTA will ensure that there are no other documents that were inadvertently omitted.

Yours truly,

EVOLINK LAW GROUP


SIMON LIN, Barrister & Solicitor

Cc: Mr. Sandy Graham and Mr. Lorne Ptack, counsel for the Respondent

⁴ [Air Passenger Rights v. Canada \(Attorney General\)](#), 2022 FCA 64, see Schedule “A”.

⁵ [emphasis added] *Ibid* at [para. 35](#).

This is **Exhibit “AI”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on November 14, 2022

Signature



VIA EMAIL: simonlin@evolinklaw.com

November 10, 2022

Evolink Law
4388 Still Creek Drive
Suite 237
Burnaby, BC
V5C 6C6

Dear Mr. Lin,

Re: *Air Passenger Rights v Attorney General of Canada*
Court File No.:A-102-20

We are in receipt letters dated November 1 and November 7, 2022, in which you make an additional three requests for documents: 1) January 5, 2021 email exchange between Ms. Jones and Ms. Cuber; 2) March 18, 2020 email exchanges between Mr. Millette and Ms. Hurcomb; and 3) March 22, 2020 Call Documents.

January 5, 2021 email exchange between Ms. Jones and Ms. Cuber

The Agency's position, as communicated in its letter of October 14, 2022, has not changed.

March 18, 2020 email exchange between Mr. Millette and Ms. Hurcomb

We disagree with your assertion that the email exchange between Mr. Millette and Ms. Hurcomb is within the scope of the October 15, 2021 Court Order. The exchange responds to general questions regarding carriers' obligations under their tariffs and does not concern the Statement on Vouchers. That being said, we do not object to its production. Please find attached a copy of the exchange with this letter.

March 22, 2020 Call Documents

Unfortunately, we must respond to your request for an unredacted copy of the March 22, 2020 Call Documents in the negative, and this, for several reasons. First, the documents, which consist of an email exchange between staff, were purely internal to the Agency and were not shared with its members. They are therefore not relevant and need not be disclosed.¹ Second, the redacted portions of the email exchange are in no way related to the Statement on Vouchers. Third, the exchange is protected by deliberation privilege and/or solicitor-client privilege.

¹ Air Passenger Rights v. Canada (Attorney General), 2021 FCA 201 at para. 27.

We trust that the foregoing is satisfactory.

Yours truly,

A handwritten signature in blue ink, appearing to read "Kevin Shaar".

Kevin Shaar
Counsel
Legal Services Directorate
Canadian Transportation Agency
15 Eddy Street, 19th Floor
Gatineau, Quebec K1A 0N9
Tel: 613-894-4260
Fax: 819-953-9269
Email: Kevin.Shaar@otc-cta.gc.ca
Email: Servicesjuridiques.LegalServices@otc-cta.gc.ca

c.c.: Sandy Graham and Lorne Ptack, Counsel for the Attorney General of Canada,
via email: sandy.graham@justice.gc.ca, Lorne.Ptack@justice.gc.ca

This is **Exhibit “AJ”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on November 14, 2022

Signature

Meredith Desnoyers

From: Caitlin Hurcomb
Sent: Friday, March 20, 2020 9:39 AM
To: Valérie Lagacé
Subject: FW: From MinO: Air Transat

Hi Val,

Just looping you in on this exchange with TC, in case there was anything you felt needed discussing with TC Legal. I believe this information was requested by Finance to inform decisions about potential support for airlines. Happy to give more context.

Thanks!
Cait

From: Caitlin Hurcomb
Sent: Friday, March 20, 2020 8:21 AM
To: 'Millette, Vincent'
Subject: RE: From MinO: Air Transat

Hi Vincent,

All carriers with an international license with the Agency must file a tariff with us. To make changes to conditions in its tariff:

- Generally speaking, the carrier would need to file a new tariff, which would only take effect after the statutory notice period, which is 45 days.
- If necessary, a carrier may make a request to the Agency for the tariff to be in effect earlier than 45 days, especially if beneficial to the travelling public.
- The carrier could also ask to be exempt from the statutory period under section 80 of the Act, if the carrier can justify that "compliance with the provision by the person is unnecessary, undesirable or impractical."

The CTA's Tariff and Research Division can provide further guidance to carriers on this, as required.

Obviously I can't speak for senior management or decision-makers at the Agency, but I think there would be some concern here if carriers were looking to change their tariffs in a way that would leave passengers without recourse. I am not sure there would be appetite to waive the statutory requirements in those circumstances. I'll also note that the reasonableness of a carrier's tariff can be reviewed by Agency members.

Feel free to contact me if you have any questions.

Thanks!

Cait Hurcomb

Chef d'équipe et Conseillère principale en politiques, Affaires réglementaires
Office des transports du Canada | Gouvernement du Canada
Caitlin.Hurcomb@otc-cta.gc.ca | 613-853-3381

Team Lead and Senior Policy Advisor, Regulatory Affairs
Canadian Transportation Agency | Government of Canada
Caitlin.Hurcomb@otc-cta.gc.ca | 613-853-3381

From: Millette, Vincent [<mailto:vincent.millette@tc.gc.ca>]
Sent: Thursday, March 19, 2020 4:53 PM
To: Caitlin Hurcomb <Caitlin.Hurcomb@otc-cta.gc.ca>
Subject: RE: From MinO: Air Transat

Would you know what would be involved in terms of process and timelines if a carrier wanted to quickly change certain conditions of its tariff.

Thanks

From: Caitlin Hurcomb [<mailto:Caitlin.Hurcomb@otc-cta.gc.ca>]
Sent: Thursday, March 19, 2020 1:24 PM
To: Millette, Vincent <vincent.millette@tc.gc.ca>
Subject: RE: From MinO: Air Transat

Hi Vincent,
Spoke with Tariffs Division and they confirm that airlines must follow the policies in their tariffs and if they wanted to follow different policies, they would have to amend their tariff.

I hope this helps – let me know if you have any other questions.

Thanks!
Cait

From: Millette, Vincent [<mailto:vincent.millette@tc.gc.ca>]
Sent: Wednesday, March 18, 2020 5:32 PM
To: Caitlin Hurcomb <Caitlin.Hurcomb@otc-cta.gc.ca>
Subject: RE: From MinO: Air Transat

That would be great – thanks!

From: Caitlin Hurcomb [<mailto:Caitlin.Hurcomb@otc-cta.gc.ca>]
Sent: Wednesday, March 18, 2020 5:31 PM
To: Millette, Vincent <vincent.millette@tc.gc.ca>
Subject: RE: From MinO: Air Transat

Marcia just responded to the original question.

Yes, policies on cancellations by the passenger would be an airline tariff/fare rules issue. I can ask my colleagues in the Tariffs about your last question.

From: Millette, Vincent [<mailto:vincent.millette@tc.gc.ca>]
Sent: Wednesday, March 18, 2020 5:28 PM

To: Caitlin Hurcomb <Caitlin.Hurcomb@otc-cta.gc.ca>

Subject: RE: From MinO: Air Transat

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Refunds under the APPR.

Refunds for trips cancelled by the passenger would be dealt with accordingly with the carriers' tariff? If the tariff allows it, then they can do it. What if the tariff says they reimburse cash but now they want to do vouchers, do they need to amend their tariff?

Thanks

From: Caitlin Hurcomb [<mailto:Caitlin.Hurcomb@otc-cta.gc.ca>]

Sent: Wednesday, March 18, 2020 5:24 PM

To: Millette, Vincent <vincent.millette@tc.gc.ca>

Subject: RE: From MinO: Air Transat

Yeah, that happens for some reason on encrypted replies between TC and CTA. Not sure why.

Wanted to ask – are we talking about refunds under the APPR or refunds for trips cancelled by the passenger?

Also – I think Marcia is on her way back from T.O.

From: Millette, Vincent [<mailto:vincent.millette@tc.gc.ca>]

Sent: Wednesday, March 18, 2020 5:21 PM

To: Caitlin Hurcomb <Caitlin.Hurcomb@otc-cta.gc.ca>

Subject: RE: From MinO: Air Transat

Hi Cait – I don't know if you meant to reply something but your message below was empty

From: Caitlin Hurcomb [<mailto:Caitlin.Hurcomb@otc-cta.gc.ca>]

Sent: Wednesday, March 18, 2020 5:16 PM

To: Millette, Vincent <vincent.millette@tc.gc.ca>

Subject: RE: From MinO: Air Transat

This is **Exhibit “AK”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on November 14, 2022

Signature

April 26, 2022

VIA EMAIL

Attorney General of Canada
ATTN : Mr. Lorne Ptack and Sandy Graham
Civil Litigation Section, Department of Justice Canada
50 O'Connor Street, Suite 500, Room 526
Ottawa, ON K1A 0H8

Dear Madam or Sir,

RE: Air Passenger Rights v. AGC and the CTA (A-102-20)

We trust that the Respondent had an opportunity to review our letter on April 22, 2022 regarding the deficiencies in the document production that were identified, and also the Direction to Attend outlining the documents we are requesting to be produced for the cross-examination.

In order to complete the file for judicial review, and to ensure that the Court has the entire file necessary for a meaningful review,¹ we have identified some necessary evidence from Transport Canada, or former Transport Canada personnel, as follows:

1. The email(s) (including any attachments) sent by Mr. Colin Stacey (Director General of Air Policy at Transport Canada) to Ms. Marcia Jones on March 18, 2020 at around 2:57PM bearing the subject line "FW: From MinO: Air Transat."
2. Documents from Marc Roy (former Chief of Staff for the Minister of Transport), Colin Stacey, and Michael Keenan (Deputy Minister of Transport) regarding any meeting(s) they had with personnel from the Canadian Transportation Agency (including Scott Streiner and Marcia Jones) between March 18 to 23, 2020.

We are writing to request the Attorney General of Canada to assist in obtaining the aforementioned documents to promptly complete the file. Please advise by **May 5, 2022** if the Attorney General of Canada is able to assist in that regard. We look forward to hearing from you.

Yours truly,

EVOLINK LAW GROUP
SIMON LIN

Barrister & Solicitor

Cc: Mr. Allan Matte, counsel for intervener the Canadian Transportation Agency

¹ [Remillard c. Canada \(National Revenue\)](#), 2022 FCA 63 at para. 58.

This is **Exhibit “AL”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on November 14, 2022

Signature

From: **Ptack, Lorne** <Lorne.Ptack@justice.gc.ca>
Date: Thu, May 5, 2022 at 12:30 PM
Subject: A-102-20 - APR v AGC - response to Applicant's 20220426 letter
To: Simon Lin <simonlin@evolinklaw.com>
Cc: Graham, Sandy <Sandy.Graham@justice.gc.ca>, Kevin.Shaar@otc-cta.gc.ca <Kevin.Shaar@otc-cta.gc.ca>, Schmidt, Elizabeth <Elizabeth.Schmidt@justice.gc.ca>

Dear Mr. Lin,

In response to your April 26, 2022 letter, no, the Attorney General will not assist you in obtaining those documents.

Yours truly,

Lorne Ptack

Lorne Ptack, Counsel / Avocat

Civil Litigation Section / Section du contentieux des affaires civiles

Department of Justice / Ministère de la Justice Gouvernement du Canada / Government of Canada

50 O'Connor Street, Suite 500, Room 526 Ottawa, ON K1A 0H8

Tel: 613-670-6281 / Cel: 613-601-4805 / Fax: 613-954-1920

E: Lorne.Ptack@Justice.gc.ca

This is **Exhibit “AM”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on November 14, 2022

Signature



[Canada.ca](#) > [Shared Services Canada](#) > [Transparency](#)

> [Briefing documents: Shared Services Canada](#) > [Ministerial Transition 2021](#)

Book Two – Shared Services Canada Ministerial Transition 2021

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Office of primary interest

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Patrice Nadeau

Assistant Deputy Minister

Networks and Security Services Branch

Shared Services Canada

613-868-9656

G. Email Migration and the @Canada.ca Email Address

Issue

As part of its ongoing mandate to consolidate and standardize the Government of Canada email, Shared Services Canada is migrating departmental email systems to a consolidated cloud-based email solution using the Microsoft 365 platform. This platform provides public servants with the modern collaboration tools to work efficiently in a remote work environment.

Migration of 23 departments off an expiring contract for Bell email services will be completed by the end of October 2021. However, the Microsoft 365 platform does not currently support the ability for these government organizations to use the email domain “@Canada.ca” to send email. As a result, some organizations are temporarily reverting to “@Department.gc.ca” email addresses.

Background and key developments

Following the 2019 Microsoft Enterprise Agreement, Shared Services Canada began providing all federal departments with Microsoft 365. Microsoft 365 provides modern, cloud-based collaboration tools which enable employees to work efficiently in a remote work environment. This initiative supports the Government of Canada Digital Operations Strategic

Plan and broader Government of Canada digital priorities, and aligns with 197 Shared Services Canada 's enterprise approach to information technology management. Accelerated deployment of Microsoft 365 during the COVID-19 pandemic equipped public servants with the digital tools to continue serving Canadians.

In 2012, a contract awarded to Bell Canada was to modernize Government of Canada email services, present Canadians with a "single face" for government services (the @Canada.ca domain), and assign Government of Canada workers an @Canada.ca email address for use throughout their careers. Challenges came with this effort, and the Government of Canada 's contract with Bell will expire in December 2021. The 23 partner organizations currently under this contract will be migrated from Bell's email service to the Microsoft 365-enabled enterprise email solution by the end of October 2021.

During the accelerated deployment of Microsoft 365 early in the COVID-19 pandemic, the Government of Canada was aware that using the @Canada.ca domain may not be possible with Microsoft 365 because Microsoft does not support a single email domain like @Canada.ca for use across multiple departments. While it was determined that the benefits of migrating to the new platform outweighed the benefits of maintaining the previous @Canada.ca domain, the result is that @Canada.ca for outgoing email is not currently possible for those Government of Canada departments using Bell's email service. Organizations can still receive incoming @Canada.ca emails, but outgoing emails will appear from @Department.gc.ca until the new solution is established.

Shared Services Canada will implement a technical solution, based on Microsoft 365 functionality, to route outgoing email from @Canada.ca. This solution is targeted for release in calendar year 2022. Until this solution is in

place, all outgoing email will use their @Department.gc.ca email address. **198**

Considerations

The implementation of Microsoft 365 represents a significant step towards modernizing Government of Canada digital communications, moving from siloed and fragmented legacy systems towards consolidated enterprise platforms. The @Canada.ca email domain represented a significant step in delivering coherent services and communications with Canadians interacting with government workers and services. The interim return to @Department.gc.ca is a temporary setback.

Government of Canada organizations invest significantly in communication material that contains email contact information, and must ensure that delivery to those addresses is maintained. Shared Services Canada will continue to support the successful delivery to existing email addresses in order to ensure critical Government of Canada business lines are not negatively impacted. Shared Services Canada is working towards to the permanent use of @Canada.ca for all Government of Canada email users while allowing departments to leverage the full functionality of Microsoft 365.

Next steps

To ensure continuity, Shared Services Canada has developed a technical solution to ensure the continued delivery to those email addresses in alignment with the decommissioning of the Bell- managed email service. Shared Services Canada 's solution is expected to launch in 2022. Until then, continued engagements with partner organizations to communicate progress updates will be required and undertaken.

Office of primary interest

Mélanie Scott
Assistant Deputy Minister
Digital Services Branch
Shared Services Canada
613-240-9036

H. Workload Modernization and Migration

Issue

The Workload Modernization and Migration program supports the Government of Canada's efforts to reduce the risk of system outages and information technology infrastructure failures. It provides the services for departments to assess and move their software applications and data from legacy data centres to modern hosting solutions (e.g. Cloud).

Although the program is successfully moving software applications to modern infrastructure solutions where appropriate, the Government of Canada as a whole continues to struggle to apply a consistent and prioritized approach to the modernization of applications. This has slowed overall modernization efforts and delayed necessary improvements. Ultimately, this hinders digital transformation efforts and limits modern digital service delivery to Canadians. Currently, the program faces significant funding challenges which will impact planned migration activities.

Background and key developments

Decades of under-investment in Government of Canada information technology has resulted in the accrual of significant "technical debt" as information technology infrastructure ages faster than the pace of repairs or replacements. Approximately two-thirds of the Government of Canada

This is **Exhibit “AN”** to the Affidavit of Dr. Gábor Lukács
affirmed before me on November 14, 2022

Signature



2020-2021 Annual Report on the administration of the *Access to Information Act*

Canadian Transportation Agency

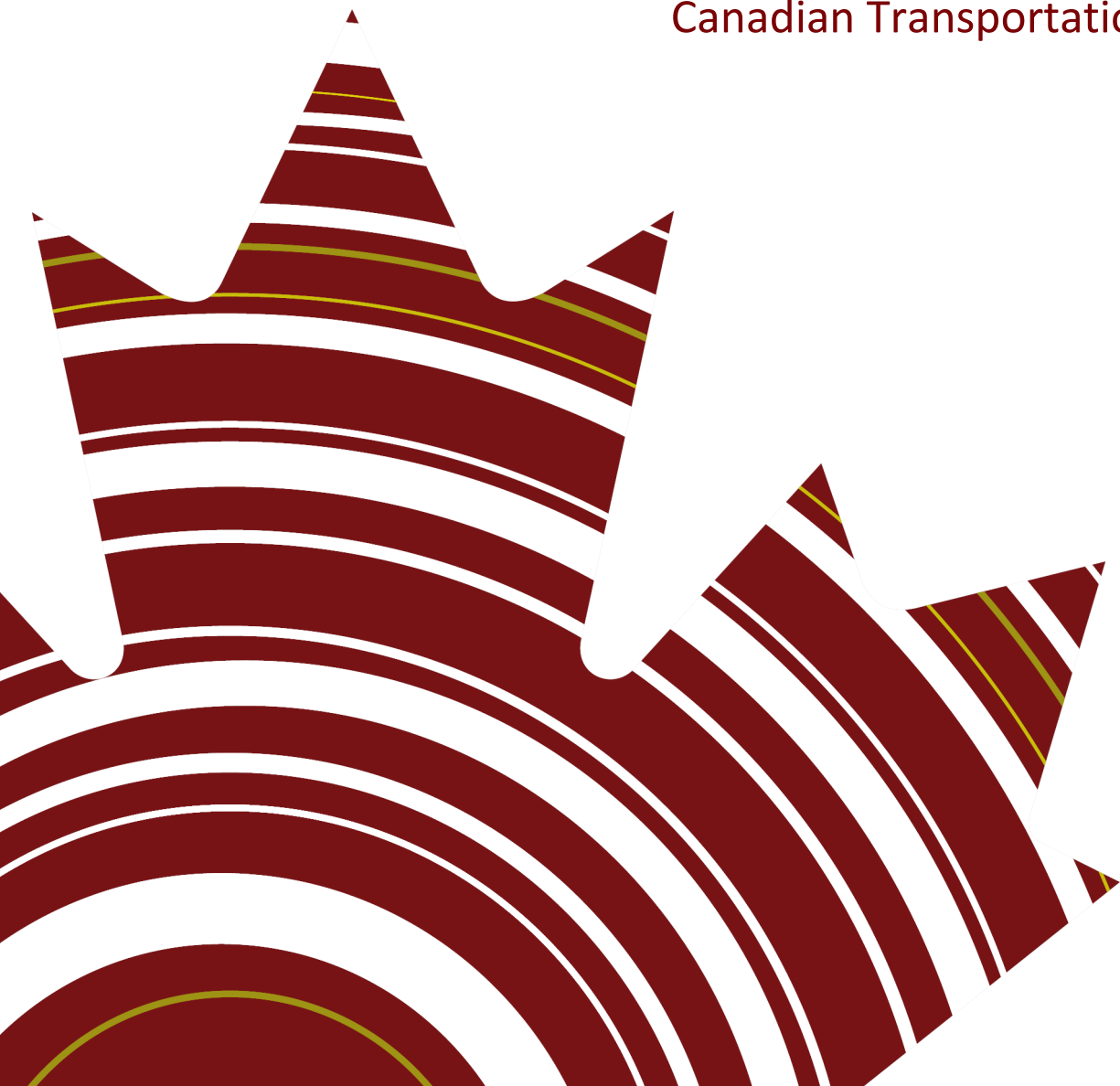


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The Agency reports a total of 4 employees that were dedicated to the ATIA activities, whether as full-time, part-time or casual employees, or as consultants.

Training and awareness

During this reporting period, the ATIP Division has delivered no formal training. However, the ATIP Division continued its outreach to Agency managers and employees. The ATIP Division provided ongoing guidance and recommendations on the application and interpretation of the ATIA, and communicated TBS policies and guidelines through ongoing dialogue, informal discussions and group training to enable Agency employees to better meet the requirements of the ATIA.

Policies, guidelines, procedures and initiatives

The ATIP Division continued its efforts to improve and update its processes and guidelines for processing ATIP requests to enable Agency employees, particularly the ATIP liaison officers (LOs) and OPIs, to better understand their responsibilities and the importance of their role in the processing (searching and retrieving) of records under the ATIA in order to maximize the efficiency in processing requests and ensure that requesters receive the requested information in a timely manner.

Transition to a digital ATIP request process

During this period, the ATIP Division continued the improvement and updating project that reviewed the request processing, the retrieval of the records and APCM functionality. Despite the ongoing review, the material for the retrieval of the ATIA and PA requests is fully digitized. The project has brought the ATIP Division from a paper-based operation to an effective paperless operation with the following actions:

- The OPIs work with electronic forms to submit their records, recommendations and their collection of confirmation signatures. These electronic forms have ensured continuity in the processing of requests and compliance with statutory deadlines.

- The OPIs' search for records is done electronically and the records found are provided in electronic format only to the ATIP Division. The OPIs search the shared drives, their own emails and their personal drives, while IM searches for the pertinent records in the Records, Document and Information Management System (RDIMS) and paper files.
- The eDOCS RM Admin Tool is used by the ATIP Division to create ATIP files in the Agency's File Plan in RDIMS, the Agency's corporate repository for record-keeping. The ATIP Division does not keep any paper records of ATIP requests.
- A new shared folder named "SearchResults" has been put in place to enable the OPIs to download their records resulting from their searches. The ATIP Division can easily upload the records from the mailbox into the APR for review.
- The approvals for the disclosure of the ATIA and PA requests records are completed by the ATIP director through APCM.
- The records are electronically disclosed to the requester with the Agency secure file transfer system "GoAnywhere." The ATIP Division is now able to securely disclose records larger than 30MB to the requester.

In order for the ATIP Division to process all the ATIA requests within the legislative timeline at a percentage of 100%, the ATIP Division, in collaboration with the LOs and OPIs, is continuing to improve its processing efficiency for greater productivity.

Proactive disclosure

The Government of Canada is working hard to enhance the role of Parliament and the proactive disclosure of information so that Canadians are better able to hold Parliament, their government, and public sector officials to account.

The Agency is committed to transparency and the highest ethical standards. As a result, in compliance with [Bill C-58](#), and with the coordinating of the proactive disclosing process by the ATIP Division, the Agency has continued to proactively disclose the required publications within requested deadlines during COVID-19.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20211015

Docket: A-102-20

Ottawa, Ontario, October 15, 2021

Present: GLEASON J.A.

BETWEEN:

AIR PASSENGER RIGHTS

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

and

THE CANADIAN TRANSPORTATION AGENCY

Intervener

ORDER

UPON informal motion of the applicant to file an additional affidavit in respect of its disclosure motion;

AND UPON motion of the applicant for an order under Rules 317 and 318 of the *Federal Courts Rules*, SOR 98/106, requiring the Canadian Transportation Agency (the CTA) to disclose the documents described in the applicant's Notice of Motion;

AND UPON motion of the CTA for leave to intervene in this application and other consequential orders;

AND UPON reading the materials filed;

THIS COURT ORDERS that:

1. The motions are granted on the terms set out below;
2. The additional affidavit from Dr. Gábor Lukács, sworn May 12, 2021, may be filed, effective the date it was received by the Court;
3. Within 60 days of the date of this Order, the CTA shall disclose to the applicant:
 - a. all non-privileged documents sent to or by a member of the CTA (including its Chairperson or Vice-Chairperson) between March 9 and March 25, 2020 concerning the statement on vouchers posted on the CTA's website on March 25, 2020;
 - b. all non-privileged documents sent to a third party by the CTA or received from a third party by the CTA between March 9 and March 25, 2020 concerning the statement on vouchers posted on the CTA's website on March 25, 2020; and

- c. all non-privileged documents related to any meeting attended by a CTA member (including its Chairperson or Vice-Chairperson) between March 9 and March 25, 2020 where the statement on vouchers posted on the CTA's website on March 25, 2020 was discussed;
4. The foregoing disclosure shall be made electronically;
5. Within 60 days of the date of this Order, the AGC shall submit to the Court for a ruling on privilege all documents over which privilege is asserted that would otherwise fall within paragraph 3 of this Order, the whole in accordance with the Reasons for this Order;
6. Within the same timeframe, the AGC shall serve and file a redacted version of its submissions, from which details of the contents of the documents are deleted;
7. The applicant shall have 30 days from receipt of the forgoing submissions to make responding submissions, if it wishes;
8. The materials related to claims for privilege shall then be submitted to the undersigned for a ruling on privilege;
9. Within 30 days of receipt of a ruling on the privilege claims, the applicant shall file any additional affidavit(s) it intends to rely on in support of its application;
10. The time for completion of all subsequent steps for perfection of this application shall be governed by the *Federal Courts Rules*;

11. The CTA is granted leave to intervene and to file an affidavit and a memorandum of fact and law of no more than 10 pages, the whole in accordance with the Reasons for this Order;
12. The style of cause is amended to add the CTA as an intervener and it shall be served with all materials the parties intend to file;
13. The issues of whether the CTA will be permitted to make oral submissions and of costs in respect of its intervention are remitted to the panel of this Court seized with hearing this application on its merits; and
14. No costs are awarded in respect of these motions.

"Mary J.L. Gleason"

J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20211015

Docket: A-102-20

Citation: 2021 FCA 201

Present: GLEASON J.A.

BETWEEN:

AIR PASSENGER RIGHTS

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

and

THE CANADIAN TRANSPORTATION AGENCY

Intervener

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on October 15, 2021.

REASONS FOR ORDER BY:

GLEASON J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20211015

Docket: A-102-20

Citation: 2021 FCA 201

Present: GLEASON J.A.

BETWEEN:

AIR PASSENGER RIGHTS

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

and

THE CANADIAN TRANSPORTATION AGENCY

Intervener

REASONS FOR ORDER

GLEASON J.A.

[1] I have before me three motions: a motion from the applicant seeking disclosure of documents from the Canadian Transportation Agency (the CTA) under Rules 317 and 318 of the

Federal Courts Rules, SOR/98-106, or alternatively, that a subpoena be issued for their disclosure; an informal motion from the applicant made by way of letter seeking to put additional materials before the Court on the disclosure motion; and a motion from the CTA seeking leave to intervene in this application.

[2] Before turning to each of the motions, a little background is useful.

[3] The underlying judicial review application in this file challenges a statement on vouchers posted on the CTA's website on March 25, 2020, shortly after the onset of the COVID-19 pandemic. The CTA opined in the statement that airlines could issue vouchers to passengers for cancellations caused by the pandemic as opposed to reimbursements for cancelled flights. The statement provided:

The COVID-19 pandemic has caused major disruptions in domestic and international air travel.

For flight disruptions that are outside an airline's control, the Canada Transportation Act and Air Passenger Protection Regulations only require that the airline ensure passengers can complete their itineraries. Some airlines' tariffs provide for refunds in certain cases, but may have clauses that airlines believe relieve them of such obligations in force majeure situations.

The legislation, regulations, and tariffs were developed in anticipation of relatively localized and short-term disruptions. None contemplated the sorts of worldwide mass flight cancellations that have taken place over recent weeks as a result of the pandemic. It's important to consider how to strike a fair and sensible balance between passenger protection and airlines' operational realities in these extraordinary and unprecedented circumstances.

On the one hand, passengers who have no prospect of completing their planned itineraries with an airline's assistance should not simply be out-of-pocket for the cost of cancelled flights. On the other hand, airlines facing huge drops in passenger volumes and revenues should not be expected to take steps that could threaten their economic viability.

While any specific situation brought before the CTA will be examined on its merits, the CTA believes that, generally speaking, an appropriate approach in the current context could be for airlines to provide affected passengers with vouchers or credits for future travel, as long as these vouchers or credits do not expire in an unreasonably short period of time (24 months would be considered reasonable in most cases).

The CTA will continue to provide information, guidance, and services to passengers and airlines as we make our way through this challenging period.

[4] In its judicial review application, the applicant seeks the following declarations: (1) that the foregoing statement does not constitute a decision of the CTA and has no force or effect at law; (2) that the issuance of the statement violates the CTA's Code of Conduct and gives rise to a reasonable apprehension of bias, either for the CTA, as a whole, or for any member who supported the statement; and (3) that the CTA as a whole or any member who supported the statement exceeded or lost its or their jurisdiction to rule on passenger complaints seeking reimbursements for cancelled flights. The applicant also seeks injunctive relief requiring, among other things, removal of the statement from the CTA's website and an order enjoining the CTA as a whole or, alternatively, any member who supported the statement, from hearing passenger complaints requesting reimbursement for flights cancelled because of the pandemic.

[5] The applicant sought an interlocutory injunction for much the same relief on an interim basis. Justice Mactavish dismissed the request for interim relief, but in so doing accepted, without specifically ruling on the point, that the applicant's judicial review application raised a serious issue (*Air Passenger Rights v. Canada (Transportation Agency)*, 2020 FCA 92, [2020] F.C.J. No. 630 at para. 17).

[6] The CTA then brought a motion to strike the application, which was dismissed by Justice Webb (*Air Passenger Rights v. Canada (Transportation Agency)*, 2020 FCA 155). In so ruling, Justice Webb held that the bias issues raised by the applicant were ones that merit a hearing before a full panel of this Court (at para. 33).

[7] After being seized with the applicant's disclosure motion, I issued a direction requesting submissions on the proper respondent in this matter because the applicant had named the CTA and not the Attorney General of Canada (the AGC). After receipt of submissions from the parties and the AGC, I ruled that the AGC was the proper respondent in light of the nature of the application, the requirements of the *Federal Courts Rules* and the nature of the allegations made in the application. However, I left open the possibility of the CTA's bringing a motion to intervene (*Air Passenger Rights v. The Attorney General of Canada*, 2021 FCA 112).

[8] The AGC subsequently advised that he relied on the CTA's submissions in response to the applicant's motion for disclosure and made brief submissions opposing the applicant's informal motion to file additional materials on the disclosure motion.

[9] Thereafter, the CTA made a motion to intervene in the application, seeking the ability to make submissions related to its jurisdiction and mandate. The applicant opposes the intervention motion, and the AGC takes no position in respect of it.

I. The Motion for Disclosure and the Informal Motion to add an Affidavit on the Disclosure Motion

[10] In its motion for disclosure, the applicant seeks an order requiring disclosure of unredacted copies of all CTA records from March 9 to April 8, 2020 in respect of the impugned statement, including, without restriction, emails, meeting agendas, meeting minutes, notes, draft documents, and memos.

[11] In support of its disclosure motion, the applicant filed an affidavit from its President, Dr. Gábor Lukács, in which he attached excerpts from the transcript of the evidence given by the CTA's Chairperson before the House of Commons Standing Committee on Transport, Infrastructure and Communities on December 1, 2020. Dr. Lukács also appended an email exchange between an official at the Transport Canada and a Member of Parliament and documents obtained from the CTA through an access to information request that sought documents similar to those sought by the applicant in the present motion for disclosure. Several of the documents disclosed by the CTA in response to the access request were heavily redacted. In addition, the documents disclosed are but a few of the several thousand pages that the CTA indicated were responsive to the access request.

[12] The materials appended to Dr. Lukács' affidavit indicate that there were email communications between representatives from two airlines and the CTA regarding the subject matter of the impugned statement before it was issued and that there were likewise similar communications between representatives of the CTA and Transport Canada about the statement

before the statement was issued. Given the redactions to these documents, it is difficult to discern the nature of what was said about the statement in them. Other documents attached as exhibits to Dr. Lukács' affidavit indicate that the Chairperson and Vice-Chairperson of the CTA received drafts of the impugned statement before it was posted on the CTA's website. The fact that the Chairperson of the CTA was involved in approving the statement was confirmed in his testimony to the House of Commons Standing Committee on Transport, Infrastructure and Communities on December 1, 2020 and the email exchange between officials at the Transport Canada and a Member of Parliament. The latter email exchange also suggests that other CTA members endorsed the impugned statement.

[13] In the informal motion, the applicant seeks to add an additional affidavit from Dr. Lukács that appends three additional documents he obtained after he swore his first affidavit in support of the disclosure motion. These documents indicate that there are additional documents concerning the impugned statement that were exchanged between the CTA and Transport Canada prior to the issuance of the statement. One of the appended documents is a less redacted version of one of the emails appended to Dr. Lukács' original affidavit.

[14] I will deal with the informal motion first.

[15] The AGC objects to the filing of Dr. Lukács' additional affidavit because he says that the applicant did not follow the *Federal Courts Rules* in proceeding by way of informal motion and because the additional documents the applicant seeks to add to the record in respect of the disclosure motion are not relevant.

[16] With respect, I disagree. Given the current circumstances associated with the COVID-19 pandemic, as well as the fact that the informal motion contained an affidavit that appended the additional documents that the applicant seeks to put before the Court, there was no need for the applicant to have proceeded via way of formal motion. The AGC has suffered no prejudice due to the way the motion was brought and the Court has before it all that is necessary for disposition of the motion, including the arguments of the parties.

[17] As for relevance, the additional documents are of the same nature as those appended to Dr. Lukács' original affidavit and are relevant to the applicant's bias arguments, which are two-fold in nature. On one hand, the applicant asserts that the posting of the statement, itself, gives rise to a reasonable apprehension of bias because it indicates that the CTA pre-judged the merits of any complaint that might be filed in which a passenger seeks compensation for a cancelled flight. On the other hand, the applicant asserts that there was inappropriate third party interference in the CTA's adoption of the policy reflected in the impugned statement, which the applicant says provides an additional basis for a reasonable apprehension of bias. The documents the applicant wishes to add are relevant to the second prong of its bias argument.

[18] The second affidavit of Dr. Lukács is therefore relevant and I will consider it in support of the applicant's disclosure request.

[19] Turning to that request, adopting the submissions that were previously filed by the CTA, the AGC opposes the requested disclosure for several reasons. First, he says that Rule 317 of the *Federal Courts Rules* does not permit or require the requested disclosure because the Rule only

applies to material in the possession of a tribunal whose order is the subject of an application for judicial review. According to the AGC, there is no basis for disclosure under Rule 317 or 318 because the applicant contends that the impugned statements do not have the force of an order and no order has been made. In the alternative, the AGC submits that the request for disclosure should be denied because it is overly-broad, constitutes a fishing expedition and the materials sought are irrelevant to the issues raised in the application, which the AGC says have been impermissibly expanded by the applicant to include alleged third-party interference in the adoption of the impugned statement.

[20] I disagree in large part with each of these assertions.

[21] Turning to the first of the foregoing assertions, as the applicant rightly notes, the breadth of materials that are subject to disclosure under Rules 317 and 318 of the *Federal Courts Rules* is broader where bias or breach of procedural fairness is alleged, particularly where, as here, relief in the nature of prohibition is sought. In such circumstances, disclosure is not limited to the materials that were before the tribunal when an order was made. Rather, where such arguments are raised, documents in the possession, control or power of a tribunal that are relevant to the allegations of bias or breach of procedural fairness are subject to disclosure. Indeed, were it otherwise, this Court would be deprived of evidence necessary for the disposition of an applicant's claims of bias or breach of procedural fairness and the availability of relief in the nature of prohibition would be largely illusory: see, e.g., *Humane Society of Canada Foundation v. Canada (National Revenue)*, 2018 FCA 66, 289 A.C.W.S. (3d) 875 at paras. 5-6; *Gagliano v. Canada (Commission of Inquiry into the Sponsorship Program & Advertising Activities)*, 2006

FC 720, 293 F.T.R. 108 at para. 50, aff'd 2007 FCA 131; *Majeed v. Canada (Minister of Employment & Immigration)*, 1997 CarswellNat 1693, [1993] F.C.J. No. 908 (F.C.T.D.) at para. 3, aff'd [1994] F.C.J. No. 1401 (F.C.A.). Thus, the first assertion advanced by the AGC as to the scope of permitted disclosure under Rules 317 and 318 is without merit.

[22] As concerns the subsidiary arguments advanced by the AGC to resist disclosure, I do not agree that all the documents sought by the applicant are irrelevant or fall outside the scope of the claims made in the applicant's Notice of Application. However, the requested disclosure is broader than necessary and goes beyond that which is relevant to the bias issues raised by the applicant. Disclosure should instead be limited to documents sent to or from a member of the CTA (including its Chairperson and Vice-Chairperson), related to a meeting attended by CTA members or sent to or from a third party concerning the impugned statement between March 9 and March 25, 2020, the date the statement was posted on the CTA website. In addition, privileged documents should be exempt from disclosure.

[23] For clarity, meetings include telephone conversations, video conferences and internet meetings as well as in-person meetings and third parties include anyone other than a member or employee of the CTA.

[24] As noted, the applicant's allegations related to bias are two-fold and concern, first, the alleged pre-judgement by the CTA as an institution or, in the alternative, by its constituent members of passengers' entitlement to reimbursement for flights cancelled due to the COVID-19 pandemic and, second, alleged third-party influence in the development of the impugned

statement on vouchers. The Notice of Application and affidavits of Dr. Lukács are broad enough to encompass both aspects of the bias argument. I therefore do not accept that the bias argument has been impermissibly widened by the applicant.

[25] Documents received by and sent from CTA members or sent to or by anyone at the CTA from third parties about the subject matter of the statement that were sent or received prior to the date the statement was posted are relevant to the applicant's bias allegations because they are relevant to the involvement of decision-makers and third parties in the adoption of the impugned statement. Such involvement is central to the applicant's bias allegations. Likewise, documents related to meetings attended by CTA members during which the impugned statement was discussed before its adoption are similarly relevant.

[26] The evidence filed to date by Dr. Lukács shows that there were communications between third parties and the CTA about the subject matter of the impugned statement, prior to its adoption. Such evidence also suggests that the CTA's Chair, and possibly other CTA members, were involved in the decision to adopt and post the impugned statement. There is therefore a factual grounding for the requested disclosure, which cannot be said to constitute an impermissible fishing expedition.

[27] However, the applicant has provided no evidence to substantiate disclosure of documents post-dating the date the impugned statement was posted. Similarly, the applicant has failed to establish that documents that were purely internal to the CTA and which were not shared with its members are relevant. In short, there is no basis to suggest that such documents would contain

information about whether CTA members or third parties were involved in making the decision to post the impugned statement, which is the essence of the applicant's bias allegations. Thus, these additional documents need not be disclosed.

[28] The AGC, in adopting the submissions of the CTA, has requested that if disclosure is ordered, privileged documents be exempt from disclosure and that a process be established for ruling on privilege claims. I agree that this is necessary, and believe that the most expeditious process for advancing any claims of privilege would be for the CTA to submit any documents over which it claims privilege to the Court on a confidential basis for a ruling.

[29] I would accordingly order that, within 60 days from the date of the Order in these matters, all non-privileged documents sent to or by a member of the CTA (including its Chairperson or Vice-Chairperson) between March 9 and March 25, 2020 or sent to a third party by the CTA or received from a third party by the CTA between the same dates concerning the impugned statement or related to a meeting attended by a CTA member (including its Chairperson or Vice-Chairperson) between March 9 and March 25, 2020 where the impugned statement was discussed shall be provided electronically to the applicant. I would also order that, within the same period, the AGC shall provide the Court, on a confidential basis, copies of any document over which the CTA claims privilege, that would otherwise be subject to disclosure, along with submissions outlining the basis for the privilege claim. Such filing may be made via way of informal motion and should be supported by an affidavit attaching copies of the documents over which privilege is claimed. A redacted version of the AGC's submissions, from which all details regarding the contents of the documents are deleted, shall be served and filed.

The applicant shall have 30 days from receipt to make responding submissions, if it wishes.

These materials shall then be forwarded to the undersigned for a ruling on privilege.

[30] Should a 60-day period be too short to accomplish the foregoing, the AGC may apply for an extension, via way of informal motion supported by affidavit evidence, if the time provided is inadequate by reason of complexities flowing from the COVID-19 pandemic or the number of documents involved.

[31] The applicant will have 30 days from receipt of this Court's ruling on the privilege claims to serve any additional affidavits it intends to rely on in support of its application. Subsequent time limits for completion of the remaining steps to perfect the application will thereafter be governed by the *Federal Courts Rules*.

II. The Motion for Intervention

[32] I turn now to the CTA's motion for intervention. It seeks leave to intervene to provide a brief affidavit, a memorandum of fact and law and oral submissions on its jurisdiction and, more specifically, on the scope of its regulatory and adjudicative functions. The CTA proposes that such affidavit would be limited to attaching a sample of six resource, informational and guidance tools it says it has issued and posted on its website and the submissions limited to explaining the scope of the CTA's jurisdiction and practice of publishing guidance materials on its website.

[33] The applicant objects to the intervention, arguing that it is an impermissible attempt by the CTA to indirectly argue the merits of the bias issue. The applicant further submits that the AGC is the only party who should be heard and says that the AGC is able to adequately defend against the bias claims. The applicant in the alternative submits that, if it is allowed to intervene, the CTA should not be allowed to file additional evidence as an intervener is bound by the record the parties put before the Court and may not file new evidence or raise new arguments. The applicant also says that two of the six examples the CTA wishes to submit are bootstrapping as they were issued by the CTA after this application was commenced.

[34] The test for intervention applied by this Court involves the consideration of several factors such as whether: (1) the intervener is directly affected by the outcome; (2) there is a justiciable issue and a public interest raised by the intervention; (3) there is another efficient means to put the issue before the Court; (4) the position of the proposed intervener is adequately defended by one of the parties; (5) the interests of justice are better served by the intervention; and (6) the Court can effectively decide the case without the participation of the intervener: *Rothmans Benson & Hedges Inc. v. Canada (Attorney General)*, [1989] F.C.J. No. 446, 1989 CarswellNat 594, at para. 12; *Sport Maska v. Bauer Hockey Corp.*, 2016 FCA 44, [2016] 4 F.C.R. 3 at para. 37-39[*Sport Maska*]. However, as noted at paragraph 42 of *Sport Maska*, the test is a flexible one as each case is different and, ultimately, the most important question for the Court is whether the interests of justice are best served by granting the intervention.

[35] Here, I believe the interests of justice would be best served by granting the CTA the right to intervene as the Court may well benefit from some of the background information the CTA

seeks to put before the Court, which will set out the relevant context. The CTA is uniquely placed to provide such information to the Court, and such information might be important for the Court to understand in order to appreciate the relevant backdrop and scope of the CTA's jurisdiction in regulatory and adjudicative matters. Administrative tribunals have often been granted leave to intervene to explain their jurisdiction as was noted by the Supreme Court of Canada in *Ontario (Energy Board) v. Ontario Power Generation*, 2015 SCC 44, [2015] 3 S.C.R. 147 at paras. 42 and 48.

[36] That said, it is vital that the CTA's intervention not impair its ability to function as an independent administrative tribunal. Its submissions must therefore be factual and go no further than explaining its role and setting out the examples the CTA wishes to put before the Court that pre-date March 25, 2020. I do not believe it appropriate that the CTA refer to more recent examples because they are not directly relevant to what transpired in this application and may be perceived as an attempt to bootstrap the approach taken by the CTA in issuing the impugned statement. It is not the role of the CTA in intervening to act as an advocate or in any way defend the propriety of issuing the impugned statement. The CTA should rather behave as an *amicus*, who is allowed to intervene solely to ensure the Court possesses relevant background information.

[37] The examples the CTA will be allowed to put before the Court are not the sort of evidence that it is impermissible for an intervener to add to the record, if they indeed even constitute evidence as opposed to something more akin to a decision that may simply be filed or referred to in submissions. They do not expand the factual record or points in issue.

[38] I would accordingly allow the CTA to submit an affidavit that attaches the four examples appended as exhibits to the affidavit of Meredith Desnoyers, sworn July 14, 2021, which pre-date March 25, 2020. The applicant may submit such affidavit at the same time as the AGC submits its affidavits in response to those of the applicant. I would also allow the CTA to file a memorandum of fact and law of no more than 10 pages, explaining its jurisdiction and practice of publishing guidance materials on its website, as exemplified by the examples attached to the affidavit it will file. I would further grant the CTA's request that the style of cause be amended to add it as an intervener and that the other parties be ordered to serve the CTA with all further materials filed in this application.

[39] I would leave the issue of whether the CTA will be allowed to make oral submissions during the hearing to the panel seized with the application on the merits and would remit to such panel the issue of whether costs should be awarded in respect of the intervention.

[40] These three motions will therefore be granted on the foregoing terms. I make no order as to costs as none were sought in respect of the motion for intervention and success was divided on the motion for disclosure.

"Mary J.L. Gleason"

J.A.

FEDERAL COURT OF APPEAL**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

DOCKET: A-102-20

STYLE OF CAUSE: AIR PASSENGER RIGHTS v. THE
ATTORNEY GENERAL OF
CANADA and THE CANADIAN
TRANSPORTATION AGENCY

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: GLEASON J.A.

DATED: OCTOBER 15, 2021

WRITTEN REPRESENTATIONS BY:

Simon Lin FOR THE APPLICANT

J. Sanderson Graham FOR THE RESPONDENT

Barbara Cuber COUNSEL FOR THE CANADIAN
TRANSPORTATION AGENCY

SOLICITORS OF RECORD:

Evolink Law Group FOR THE APPLICANT
Burnaby, British Columbia

A. François Daigle FOR THE RESPONDENT
Deputy Attorney General of Canada

Legal Services Directorate FOR THE CANADIAN
Canadian Transportation Agency
Gatineau, Quebec TRANSPORTATION AGENCY

Federal Court of Appeal



Cour d'appel fédérale

Date: 20220411

Docket: A-102-20

Ottawa, Ontario, April 11, 2022

Present: GLEASON J.A.

BETWEEN:

AIR PASSENGER RIGHTS

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

and

THE CANADIAN TRANSPORTATION AGENCY

Intervener

ORDER

UPON motions of the applicant and respondent related to documentary disclosure and privilege, the whole as more particularly described in the Reasons for this Order;

AND UPON reading the materials filed;

THIS COURT ORDERS that:

1. The motion of the applicant is granted in part;
2. The motion of the respondent is granted;
3. The portions of the two documents in respect of which the respondent asserts claims of privilege are privileged and shall not be produced. Redacted copies of them shall be produced in accordance with the Reasons for this Order;
4. Within five (5) days of the date of this Order, the Canadian Transportation Agency (the CTA) shall disclose to the parties the materials listed in the Appendix to the Reasons for this Order as items A1, A5 and C2 and B4 (except those that are publicly available on the CTA's Twitter feeds);
5. Within five (5) days of the date of this Order, the CTA shall determine if the statement on vouchers was discussed during the March 19, 22 and 23, 2020 calls. If so, it shall disclose to the parties the documents relating to these calls as listed as items C1, C5 and C6 in the Appendix to the Reasons for this Order. Such disclosure shall be made within five (5) days of the date of this Order;
6. Within 10 days of the date of this Order, the respondent shall serve and file submissions regarding any notes taken by CTA Members, its Chairperson and Vice-Chairperson during the March 24, 2020 call, the whole in accordance with paragraph 43 of the Reasons for this Order;
7. Within 10 days of the date of this Order, the individual at the CTA responsible for compliance with this Court's October 15, 2021 Order shall serve and file an affidavit

- detailing the CTA's efforts to comply with the October 15, 2021 Order, the whole in accordance with the directions provided in the Reasons for this Order at paragraph 47;
8. Within 10 days of the date of this Order, the CTA shall file an updated certificate, attesting to the authenticity of the additional documents it is required to disclose as well as copies of the said documents;
 9. Within 40 days of the date of Order, the applicant shall file any additional affidavit(s) it intends to rely on in support of its application;
 10. All subsequent steps required to perfect this application shall be governed by the *Federal Courts Rules*, S.O.R./98-106.

"Mary J.L. Gleason"

J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20220411

Docket: A-102-20

Citation: 2022 FCA 64

Present: GLEASON J.A.

BETWEEN:

AIR PASSENGER RIGHTS

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

and

THE CANADIAN TRANSPORTATION
AGENCY

Intervener

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on April 11, 2022.

REASONS FOR ORDER BY:

GLEASON J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20220411

Docket: A-102-20

Citation: 2022 FCA 64

Present: GLEASON J.A.

BETWEEN:

AIR PASSENGER RIGHTS

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

and

THE CANADIAN TRANSPORTATION AGENCY

Intervener

REASONS FOR ORDER

GLEASON J.A.

[1] I have before me two motions regarding disclosure of documents by the Canadian Transportation Agency (CTA). The first relates to a claim of privilege over portions of two

documents and the second relates to a disagreement over whether the CTA has complied with the disclosure order issued by this Court on October 15, 2021.

I. Background

[2] A little background is necessary to place the two motions into context.

[3] The underlying application for judicial review in these matters challenges a statement on vouchers published on the CTA's website on March 25, 2020, shortly after the onset of the COVID-19 pandemic. The CTA opined in the statement that airlines could issue vouchers to passengers for cancellations caused by the pandemic as opposed to providing reimbursements for cancelled flights.

[4] In its application for judicial review, the applicant alleges, among other things, that the issuance of the statement gives rise to a reasonable apprehension of bias for two reasons: first, because it demonstrated pre-judgment of complaints in which passengers might seek reimbursement for cancelled flights; and second, because there was third party influence in the development of the statement.

[5] The applicant brought a motion seeking disclosure from the CTA, and on October 15, 2021, this Court granted the motion in part and ordered the CTA to disclose:

- a. all non-privileged documents sent to or by a member of the CTA
(including its Chairperson or Vice-Chairperson) between March 9 and

March 25, 2020 concerning the statement on vouchers posted on the CTA's website on March 25, 2020;

- b. all non-privileged documents sent to a third party by the CTA or received from a third party by the CTA between March 9 and March 25, 2020 concerning the statement on vouchers posted on the CTA's website on March 25, 2020; and
- c. all non-privileged documents related to any meeting attended by a CTA member (including its Chairperson or Vice-Chairperson) between March 9 and March 25, 2020 where the statement on vouchers posted on the CTA's website on March 25, 2020 was discussed.

[6] Further to the October 15, 2021 Order, the CTA disclosed a number of documents to the applicant, but the applicant believes the disclosure is incomplete based on the contents of the documents that have been disclosed to date. On January 17, 2022, the applicant brought a motion in which it sought an order for disclosure of the additional documents listed in the schedule to its Notice of Motion plus the issuance of a show cause order for contempt and related ancillary relief.

[7] On December 15, 2021, the respondent brought a motion seeking to have portions of two documents found to be privileged and protected from disclosure. On the same date, it also brought another motion, seeking an extension of time to obtain instructions on whether it would seek to claim privilege over two additional documents.

[8] A case conference was convened on January 25, 2022 during which the parties made submissions on the procedure for dealing with the various motions before the Court. Following that case conference, the Court issued two Orders on January 26, 2022.

[9] The first of the January 26, 2022 Orders granted the respondent additional time to bring a motion if it wished to request a ruling on privilege in respect of the two additional documents. The respondent subsequently advised that it was not seeking such a ruling and has disclosed the two additional documents to the applicant.

[10] The second of the January 26, 2022 Orders provided that the applicant's January 17, 2022 motion would be bifurcated such that the request for an order for disclosure of additional documents would be decided first because it could well render the request for a show cause order for contempt unnecessary. The CTA and the applicant subsequently filed written submissions in respect of the outstanding disclosure issues.

II. The Motion for a Ruling on Privilege

[11] I turn now to the respondent's motion seeking a determination that portions of two documents are privileged. I have carefully reviewed the two documents, along with the parties' submissions in respect of them, and am satisfied that the requested order should be granted as portions of the two documents that the respondent wishes to protect from disclosure are privileged.

[12] The first of these documents is an email chain, in which a to-do list appears for various members of the CTA. The list was issued by the former Chairperson of the CTA. Three of the tasks that appear on the second page of the list are directed to Valérie Lagacé, the Senior General Counsel of the CTA. They request legal advice and a legal opinion and therefore are subject to solicitor-client privilege and are protected from disclosure. The CTA shall accordingly redact the portions of this document directed to Ms. Lagacé and disclose only the redacted version of it.

[13] The second document is an email chain between various individuals at the CTA, emanating from the former Chairperson of the CTA, which attaches a draft of the statement on vouchers as well as a draft of a decision in an unrelated matter. The respondent asserts that the draft decision is subject to deliberative privilege and, moreover, is irrelevant to the applicant's application for judicial review. Having carefully reviewed the document, I agree that the draft decision is subject to deliberative privilege and therefore determine that the CTA shall disclose this second document with the draft decision redacted from it.

III. The Motion of Further Disclosure

[14] Turning to the applicant's motion for further disclosure, the additional documents that the applicant seeks an order to disclose are listed in the Appendix to these Reasons.

[15] The applicant filed an affidavit from Dr. Gábor Lukács in support of its motion for a more detailed order for disclosure in which Dr. Lukács sets out in some detail the reasons why he believes that the documents listed in the schedule likely exist. In response, the CTA declined to

file an affidavit and, with a few exceptions, instead simply asserts that most of the requested documents in the Appendix do not exist or, in two cases, says it no longer possesses them.

[16] I will deal first with the documents the CTA admits exist but has declined to produce.

A. *Microsoft Word files for the statement on vouchers and for the template media response attached to the Chairperson's March 24, 2020 email*

[17] The first set of documents that the CTA admits exists but declined to disclose are the original Microsoft Word files for the statement on vouchers and for the CTA's media response (items A1 and A5 in the Appendix). The CTA chose to send the applicant PDF versions of these documents from which the metadata had been removed.

[18] The CTA submits that it is not required to produce the original Microsoft Word files because: (1) the applicant did not specify in its notice of motion, seeking disclosure, that they were sought, (2) this Court's October 15, 2021 Order did not specifically require their production, and (3) Rules 317 and 318 of the *Federal Courts Rules*, S.O.R./98-106 (the Rules) do not contemplate or require production of original electronic version of documents. On the final point, the CTA submits that these Rules contemplate as the default position only the disclosure of certified copies of documents and that original materials need only be disclosed where such copies cannot be produced. Because it reproduced these two documents in PDF form, the CTA says that it need not produce the original Microsoft Word files. In essence, it claims that original electronic versions of documents are not subject to disclosure under Rules 317 and 318.

[19] I disagree with the CTA.

[20] As concerns the requirements of the Rules, there is nothing in Rule 317 or 318 that shields the electronic version of documents from disclosure. Indeed, contrary to what the CTA alleges, rule 318(1)(b) contemplates such disclosure where the original electronic version is relevant. Rule 318 provides:

318 (1) Within 20 days after service of a request under rule 317, the tribunal shall transmit

(a) a certified copy of the requested material to the Registry and to the party making the request; or

(b) where the material cannot be reproduced, the original material to the Registry.

Objection by tribunal

(2) Where a tribunal or party objects to a request under rule 317, the tribunal or the party shall inform all parties and the Administrator, in writing, of the reasons for the objection.

Directions as to procedure

(3) The Court may give directions to the parties and to a tribunal as to the procedure for making submissions with respect to an objection under subsection (2).

Order

(4) The Court may, after hearing submissions with respect to an

318 (1) Dans les 20 jours suivant la signification de la demande de transmission visée à la règle 317, l'office fédéral transmet :

a) au greffe et à la partie qui en a fait la demande une copie certifiée conforme des documents en cause;

b) au greffe les documents qui ne se prêtent pas à la reproduction et les éléments matériels en cause.

Opposition de l'office fédéral

(2) Si l'office fédéral ou une partie s'opposent à la demande de transmission, ils informent par écrit toutes les parties et l'administrateur des motifs de leur opposition.

Directives de la Cour

(3) La Cour peut donner aux parties et à l'office fédéral des directives sur la façon de procéder pour présenter des observations au sujet d'une opposition à la demande de transmission.

Ordonnance

(4) La Cour peut, après avoir entendu les observations sur l'opposition,

objection under subsection (2), order that a certified copy, or the original, of all or part of the material requested be forwarded to the Registry.

ordonner qu'une copie certifiée conforme ou l'original des documents ou que les éléments matériels soient transmis, en totalité ou en partie, au greffe.

[21] Where the authorship of documents or their revision history is relevant (as it is here and will often be where allegations of bias are raised), the metadata contained in the documents are relevant. Metadata were not disclosed in the type of PDF the CTA produced but will be disclosed if the original Microsoft Word file version of the documents is disclosed.

[22] Disclosure of the metadata is contemplated in rule 318(1)(b) precisely because it cannot be reproduced in a photocopy of the document or in a PDF copy of the sort produced by the CTA. The Federal Court reached the same conclusion in *GCT Canada Limited Partnership v. Vancouver Fraser Port Authority*, 2021 FC 624 [*Vancouver Fraser Port Authority*], where it required production of original Microsoft Excel files that contained embedded data of relevance to bias allegations raised by the applicant (see paras. 41-48 and 132). Thus, contrary to what the CTA says, the Microsoft Word files in question are not immune from disclosure under Rules 317 and 318.

[23] As for the fact that this Court did not specifically state that Microsoft Word file versions of documents were to be disclosed (as opposed to PDF versions) or that the applicant did not specifically request them, such assertions are without merit. Given the prevalence of computer use and electronic documents, it cannot seriously be contested in 2022 that documents include electronic documents. This Court's October 15, 2021 Order required the production of "all non-privileged documents" coming within the scope of the Order. The Order was not limited to

production of the paper version of documents. Nor was the applicant's disclosure request so limited.

[24] The CTA shall therefore disclose the documents listed as items A1 and A5 in the Appendix.

B. *Twitter messages and messages sent via the CTA's Info email*

[25] The next group of documents that the CTA acknowledges exist but declined to disclose are messages from and to third parties received via its Twitter accounts or through its Info email account concerning the statements on vouchers over the period in respect of which disclosure was ordered (item B4 in the Appendix).

[26] The CTA offers three reasons for its position. First it says that, at least as concerns its Twitter accounts, materials from them should be available to the applicant because the applicant has filed these sorts of materials in this case. Second, the CTA says that the applicant abandoned this request in its original motion seeking disclosure. Third, the CTA says that these documents do not fall within the scope of this Court's October 15, 2021 Order because they are unlikely to support the applicant's bias allegations as most would be from individuals. It therefore asserts that the documents fall outside the scope of this Court's October 15, 2021 Order.

[27] Turning first to the CTA's Twitter accounts, to the extent that Tweets on the accounts are publicly available (and thus accessible to the applicant), they need not be produced. A party may

only obtain disclosure through Rules 317 and 318 of materials that are not already in its possession. Rule 317(1) provides in relevant part that a party may request disclosure of material “that is in the possession of the tribunal ... and not in the possession of the party”.

[28] As concerns the CTA’s second and third points in respect of these materials, I disagree that the applicant has abandoned a request for their disclosure or that they are not covered by the October 15, 2021 Order.

[29] In its original motion materials, the applicant principally modified its disclosure request to shorten the period in respect of which it sought disclosure. Over the shortened period, it still maintained its request for “complete and unredacted copies of all records from March 9 – April 8, 2020 in respect of [the statement on vouchers and a related posting on the CTA website] but not limited to emails, meeting agendas, meeting minutes, notes, draft documents, and memos”. This request is clearly broad enough to cover the category of documents that the CTA has declined to disclose.

[30] Likewise, they fall within the scope of this Court’s October 15, 2021 Order. In paragraph 3(b) of that Order, this Court ordered disclosure of “all non-privileged documents sent to a third party by the CTA or received from a third party by the CTA between March 9 and March 25, 2020 concerning the statement on vouchers posted on the CTA’s website on March 25, 2020”. In the Reasons for that Order, the Court specified that third parties “include anyone other than a member or employee of the CTA.” (at para. 23).

[31] With respect, it is not for the CTA to opine whether these documents are likely to further the applicant's case. They are third party communication over the relevant period concerning the impugned statement on vouchers and thus fall within the scope of documents that the Court determined were relevant and subject to disclosure in its October 15, 2021 Order. The CTA shall therefore disclose to the applicant all materials listed in item B4 in the Appendix except those that are publicly available on its Twitter feeds. For clarity, private Twitter messages sent or received on the CTA's accounts must be disclosed.

C. *Documents for the March 19, 22 and 23, 2020 Executive Committee and Key Personnel Calls*

[32] Although the CTA acknowledges that there are documents that pertain to the calls between CTA's Executive Committee and Key Personnel on the above dates (items C1, C5 and C6 in the Appendix), it says that none of them relates to the statement on vouchers and therefore need not be disclosed. It is unclear from the CTA's representations whether the statement on vouchers was discussed during the calls on March 19, 22 and 23, 2020, although the CTA states that the applicant has not been able to establish that it was discussed. (I note that the documents disclosed to date appear to show that it was the intent to discuss the statement on vouchers during these calls.)

[33] In order to comply with the Order, the CTA was required to inquire whether the subject was discussed during these calls. If the subject matter was not discussed, then none of these documents needed to be disclosed. Conversely, if the statement on vouchers was discussed during the calls, the terms of the October 15, 2021 Order requires disclosure of these documents.

[34] The Order requires disclosure of two different sorts of documents in paragraphs 3(a) and 3(c). By virtue of paragraph 3(a) of the Order, the CTA was required to disclose all non-privileged documents sent to or by a CTA Member (including its Chairperson and Vice-Chairperson) between March 9 and 25, 2020 concerning the statement on vouchers. Paragraph 3(c) of the Order, on the other hand, requires disclosure of all non-privileged documents related to any meeting attended by a CTA member (including its Chairperson and Vice-Chairperson) between March 9 and March 25, 2020 where the statement on vouchers was discussed. In paragraph 23 of the Reasons, the Court specified that a meeting includes telephone conversations, video conferences and internet meetings as well as in person meetings.

[35] Thus, the CTA shall determine if the statement on vouchers was discussed during these calls. If so, then it must disclose all the documents relating to these calls.

D. *Documents for the March 20, 2020 Executive Committee call*

[36] The CTA admits that the statement on vouchers was discussed during this call and that it has in its possession additional documents that pertain to the call (item C2 in the Appendix). It takes the position that it need not disclose these documents because the documents contain no mention of the statement on vouchers. This is incorrect. As noted, pursuant to the clear wording of paragraph 3(c) of the October 15, 2021 Order, the CTA has been ordered to produce these documents. It accordingly must do so.

[37] All the disclosures required by these Reasons shall be made within 5 days of the date of the Order that accompanies these Reasons.

E. *Documents for the March 24, 2020 CTA Members' call*

[38] The applicant has requested production of the notes taken by CTA Members during this call. The CTA states that it has no knowledge of whether its Members, Chairperson and Vice-Chairperson kept notes of the March 24, 2020 call during which the statement on vouchers was discussed (item C7 in the Appendix). It further submits that, to the extent there might be any such notes, they are not in the possession of the CTA but are rather the personal property of the Members and are immune from disclosure.

[39] In support of its position, the CTA relies on the decision of this Court in *Canada (Privacy Commissioner) v. Canada (Labour Relations Board)* (2000), 180 F.T.R. 313, 257 N.R. 66 (A.D.) [*Canada (Privacy Commissioner)*] in which this Court declined to order production under the *Privacy Act*, R.S.C. 1985, c. P-21 of notes taken by members of the Canada Labour Relations Board during a hearing. At paragraphs 5-6, Justice Desjardins, who wrote for the Court, stated:

[5] While the notes taken by the Board members may or may not amount to "personal information", a matter we need not decide, it is obvious to us that these notes are not "under the control" of the Board as provided in paragraph 12(1)(b) of the *Privacy Act*. These notes are being taken during the course of quasi-judicial proceedings, not by employees of the Board, but by Governor in Council's appointees endowed with adjudicative functions which they must perform, not as agent of the Board, but independently of other members of the Board including the chairperson of the Board or a government institution. Board members are under no obligation to take notes although they may. Their notes are not part of the official records of the Board and are not contained in any other record keeping system over which the Board has control.

[6] The trial judge made the following statement with which we agree:

... It is clear that there is no requirement either in the *Canada Labour Code*, or in the CLRB policy or procedure touching upon the notes. The notes are viewed by their authors as their own. The CLRB members are free to take notes as and when they see fit, and indeed may simply choose not to do so. The notes are intended for the eyes of the author only. No other person is allowed to see read or use the notes, and there is a clear expectation on the part of the author that no other person will see the notes. The members maintain responsibility for the care and safe keeping of the notes and can destroy them at any time. Finally, the notes are not part of the official records of the CLRB and are not contained in any other record keeping system over which the CLRB has administrative control.

In my view, it is apparent from the foregoing that however broadly one construes the word control, the notes in issue were not "under the control" of the CLRB within any of the meanings that can be attributed to that term. Not only are the notes outside the control or custody of the CLRB but they are also considered by the CLRB to fall outside the ambit of its functions.

[40] The underpinning for the foregoing determination that the notes were not producible was the fact that they were subject to adjudicative privilege. Indeed, in the subsequent case of *Wyndowe v. Rousseau*, 2008 FCA 39, 373 N.R. 301 [*Wyndowe*], Justice Decary, who wrote for the Court stated that the thrust of the decision in *Canada (Privacy Commissioner)*:

... is that the disclosure of the notes would offend the adjudicative privilege, also termed judicial immunity, that could be claimed by administrative tribunals and would compromise the operation of the Board and be injurious to the conduct of lawful investigations within the meaning of the exemption found in paragraph 22(1)(b) of the *Privacy Act*.

[41] In *Wyndowe*, disclosure was ordered because the note-taker in that case was not engaged in an adjudicative function.

[42] In the present case, it appears that there may well be a debate between the parties as to the nature of the function that was being carried out by the CTA Members, Chairperson and Vice-chairperson in the adoption of the statement on vouchers. If the function is an adjudicative one, then the notes taken by the Members are protected from disclosure under the principles set out above.

[43] In light of this uncertainty, the respondent is directed to confirm within ten days of the date of the Order that accompanies these Reasons whether it takes the position that these notes are immune from disclosure by reason of adjudicative privilege and, if not, on what other basis they cannot be ordered to be disclosed.

F. *The Remaining Documents*

[44] With three exceptions, the CTA states that none of the remaining documents that the applicant seeks exists.

[45] Two of these exceptions relate to the documents listed as items B1 and B2 in the Appendix, the original emails between a CTA staff member and an official at Transport Canada. The CTA concedes that it must have been in possession of these emails at some point because they are found within other email chains, but states that they cannot be located.

[46] The other exception is one of the documents listed as item A4 in the Appendix, the draft email to carriers that Ms. Jones of the CTA sent to the CTA Chairperson the day before the

statement on vouchers was posted. As originally produced, this email had the sender and recipient information removed from it. The CTA subsequently provided a revised version of the email, showing this information. It disclosed the revised version of this email with its written submissions.

[47] Given the number of issues that have arisen with disclosure and compliance with this Court's October 15, 2021 Order as well as the number of outstanding documents that the applicant is seeking, I agree with the applicant that the individual at the CTA who was responsible for complying with this Court's October 15, 2021 Order should be required to serve and file an affidavit detailing what has been done to ensure the required disclosure was made. I would expect that the affidavit would address the following issues set out in paragraph 43 of the applicant's reply submissions, namely:

- (a) how the CTA narrowed down the several thousands of pages of documents to less than two hundred pages it has disclosed;
- (b) what steps were taken, if any, to gather and/or preserve documents upon being served with the Notice of Application on April 9, 2020;
- (c) who at the CTA conducted the searches for documents;
- (d) whether the CTA reviewed its encrypted emails or documents;
- (e) what record-keeping systems the CTA has, and whether all of them were searched for responsive documents;
- (f) whether the CTA has any backups or archives of their emails and other electronic documents, and whether those backups or archives were searched;
- (g) whether the CTA conducted any investigation after learning that some documents no longer exist, and any steps taken to recover those documents; and

- (h) whether the CTA's audio or video conferencing system has a recording feature and whether the conferences between March 9 and 25, 2020 were recorded.

[48] Somewhat similar orders requiring an affidavit were made by the Federal Court in *Vancouver Fraser Port Authority* and in *Constantinescu c. Canada (Correctional Service)*, 2021 FC 229 where problems with disclosure by a tribunal arose.

[49] Such affidavit shall be served and filed within 10 days of the date of the Order that accompanies these Reasons. The CTA shall also serve and file an updated certificate, attesting to the authenticity of the additional documents it is required to disclose in accordance with these Reasons as well as copies of the aforementioned documents within 10 days of the date of the Order that accompanies these Reasons.

[50] To allow for any necessary cross-examinations of the CTA's affiant, within 40 days of the date of the Order that accompanies these Reasons, the applicant shall file any additional affidavit(s) it intends to rely on in support of this application. All further steps for the perfection of this application shall be governed by the Rules.

[51] Costs of these motions are in the cause.

“Mary J.L. Gleason”

J.A.

Appendix A

SCHEDULE "A" (the "Withheld Materials")

A. CTA Member Correspondences

- A1. **The Microsoft Word Files for the Statement on Vouchers.** The original Microsoft Word files for the Statement on Vouchers, and drafts of the Statement on Vouchers, attached to emails that were sent to/from a CTA Member (including the Chairperson and Vice-Chairperson) between March 9, 2020 and March 25, 2020.
- A2. **Documents Regarding the Statement on Vouchers on March 23, 2020.** All documents regarding the Statement on Vouchers that were sent to/from a CTA Member (including the Chairperson and Vice-Chairperson) on or about March 23, 2020.
- A3. **Documents Regarding the Statement on Vouchers on March 24, 2020.** All documents regarding the Statement on Vouchers that were sent to/from a CTA Member (including the Chairperson and Vice-Chairperson) on or about March 24, 2020 between 8:30AM and 7:00PM.
- A4. **Documents Regarding the Announcement of the Statement on Vouchers to Third-Parties.** All documents regarding Ms. Jones's email on March 24, 2020 with the subject line "message to carriers – signals check" that was sent to/from a CTA Member (including the Chairperson and Vice-Chairperson) between March 24, 2020 and March 25, 2020.
- A5. **Chairperson's Template Response to Media in MS Word Format.** The original Microsoft Word file(s) for the template media response in the March 24, 2020 at 7:34PM email sent by the Chairperson with subject line "Answer," which were sent to/from a CTA Member (including the Chairperson and Vice-Chairperson) between March 24, 2020 and March 25, 2020.
- A6. **Ms. Jones's Draft FAQs about the Statement on Vouchers.** All documents in respect of Ms. Jones's draft FAQs first circulated on

March 24, 2020 in response in the email with subject line “RE: Answer,” which was sent to/from a CTA Member (including the Chairperson and Vice-Chairperson) between March 24, 2020 and March 25, 2020.

B. Third-Party Correspondences

- B1. Original Email Announcing the Statement on Vouchers.** Original version of the e-mail sent by Ms. Marcia Jones on March 25, 2020 with the subject line “Update: CTA measures/Mise à jour: mesures prises par l’OTC.”
- B2. Original Email from Transport Canada on March 18, 2020.** Original version of the e-mail sent by Mr. Colin Stacey at Transport Canada to Ms. Marcia Jones on March 25, 2020 with the subject line “FW: From MinO:[Redacted],” including all attachments to that email.
- B3. Correspondences in respect of Ms. Jones’s and the Assistant Deputy Minister’s Meeting(s).** All non-privileged correspondences in respect of the meeting(s) between Ms. Marcia Jones and the Assistant Deputy Minister of Transport on or about March 21-22, 2020.
- B4. CTA’s Info Email and Twitter Messages.** All non-privileged documents sent to or from the CTA in respect of the Statement on Vouchers between March 9, 2020 and March 25, 2020 using:
- (a) the CTA’s Info email account (info@otc-cta.gc.ca); and
 - (b) the CTA’s Twitter accounts in English (CTA_gc) and French (OTC_gc), including but not limited to Private Messages.
- B5. Correspondences to/from PIAC.** All non-privileged correspondences to/from PIAC between March 9, 2020 and March 25, 2020 regarding the Statement on Vouchers.

C. Meeting Documents

- C1. Documents for the March 19 EC Call.** All non-privileged documents in respect of the CTA's EC call on March 19, 2020, including but not limited to:
- (a) the meeting agenda;
 - (b) correspondences to schedule and/or set up the meeting;
 - (c) video or audio recordings of the meeting;
 - (d) meeting minutes;
 - (e) notes taken by or on behalf of any of the participants; and
 - (f) correspondences of the meeting's decisions and deliverables.
- C2. Documents for the March 20 EC Call.** All non-privileged documents in respect of the CTA's EC call on March 20, 2020, including but not limited to:
- (a) the meeting agenda;
 - (b) correspondences to schedule and/or set up the meeting;
 - (c) video or audio recordings of the meeting;
 - (d) meeting minutes;
 - (e) notes taken by or on behalf of any of the participants; and
 - (f) correspondences of the meeting's decisions and deliverables.
- C3. CTA Chairperson's March 21-22, 2020 Weekend Meeting(s).** All non-privileged documents in respect of the meeting(s) between the CTA's Chairperson, the Deputy Minister of Transport, an unidentified individual, and/or some of them over the course of the weekend of March 21-22, 2020 about the Statement on Vouchers, including but not limited to:
- (a) documents sent to/from those third-parties before or after the meeting(s), including draft(s) of the Statement on Vouchers;

- (b) the meeting agenda;
- (c) correspondences to schedule and/or set up the meeting;
- (d) video or audio recordings of the meeting;
- (e) meeting minutes;
- (f) notes taken by or on behalf of any of the participants; and
- (g) correspondences of the meeting's decisions and deliverables.

C4. **CTA Chairperson's March 21 and/or 22, 2020 Discussions with Vice- Chairperson.** All non-privileged documents in respect of the meeting(s) between the CTA's Chairperson and Vice-Chairperson over the course of the weekend of March 21-22, 2020 about the Statement on Vouchers, including but not limited to:

- (a) documents circulated between them before or after their meeting(s), including draft(s) of the Statement on Vouchers;
- (b) the meeting agenda;
- (c) correspondences to schedule and/or set up the meeting;
- (d) meeting minutes;
- (e) notes taken by or on behalf of any of the participants; and
- (f) correspondences regarding the meeting(s).

C5. **Documents for the March 22 CTA Key Personnel Call.** All non-privileged documents in respect of the call on March 22, 2020 at or about 10:30AM, including but not limited to:

- (a) the meeting agenda;
- (b) correspondences to schedule and/or set up the meeting;
- (c) video or audio recordings of the meeting;
- (d) meeting minutes;
- (e) notes taken by or on behalf of any of the participants; and

- (f) correspondences of the meeting's decisions and deliverables.
- C6. **Documents for the March 23 EC Call.** All non-privileged documents in respect of the CTA's EC call on March 23, 2020, including but not limited to:
- (a) the meeting agenda;
 - (b) correspondences to schedule and/or set up the meeting;
 - (c) video or audio recordings of the meeting;
 - (d) meeting minutes;
 - (e) notes taken by or on behalf of any of the participants; and
 - (f) correspondences of the meeting's decisions and deliverables.
- C7. **Documents for the March 24 CTA Members' Call.** All non-privileged documents in respect of the CTA Members' Call on March 24, 2020, including but not limited to:
- (a) the meeting agenda;
 - (b) correspondences to schedule and/or set up the meeting;
 - (c) video or audio recordings of the meeting;
 - (d) meeting minutes;
 - (e) notes taken by or on behalf of any of the participants; and
 - (f) correspondences of the meeting's decisions and deliverables.
- C8. **Documents for the March 25 Discussions Involving Chair and/or Vice-Chair.** All non-privileged documents in respect of the discussions involving the Chairperson or Vice-Chairperson, and/or other persons on March 25, 2020 regarding the Statement on Vouchers, including but not limited to:
- (a) the meeting agenda;
 - (b) correspondences to schedule and/or set up the meeting;

- (c) video or audio recordings of the meeting;
- (d) meeting minutes;
- (e) notes taken by or on behalf of any of the participants; and
- (f) correspondences of the meetings' decisions and deliverables.

C9. **Documents for the Cancelled March 25 Call.** All non-privileged documents for the March 25, 2020 meeting originally scheduled for 10:00AM, including but not limited to:

- (a) the meeting agenda;
- (b) correspondences to schedule and/or set up the meeting; and
- (c) draft documents circulated prior to the scheduled meeting.

C10. **The CTA Chairperson's Discussion(s) with "Other Federal Players"**. All non-privileged documents in respect of the discussion(s) between the Chairperson and "other federal players" on or before March 23, 2020 regarding the Statement on Vouchers, including but not limited to:

- (a) the meeting agenda;
- (b) correspondences to schedule and/or set up the meeting;
- (c) video or audio recordings of the meeting;
- (d) meeting minutes;
- (e) notes taken by or on behalf of any of the participants; and
- (f) correspondences of the meeting's decisions and deliverables.

FEDERAL COURT OF APPEAL**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

DOCKET: A-102-20

STYLE OF CAUSE: AIR PASSENGER RIGHTS v. THE ATTORNEY GENERAL OF CANADA AND THE CANADIAN TRANSPORTATION AGENCY

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: GLEASON J.A.

DATED: APRIL 11, 2022

WRITTEN REPRESENTATIONS BY:

Simon Lin COUNSEL FOR THE APPLICANT

J. Sanderson Graham COUNSEL FOR THE RESPONDENT

Barbara Cuber COUNSEL FOR THE INTERVENER

SOLICITORS OF RECORD:

Evolink Law Group FOR THE APPLICANT
Burnaby, British Columbia

A. François Daigle FOR THE RESPONDENT
Deputy Attorney General of Canada

Legal Services Directorate FOR THE INTERVENER
Canadian Transportation Agency
Gatineau, Quebec

Federal Court of Appeal



Cour d'appel fédérale

Date: 20220719

Docket: A-102-20

Ottawa, Ontario, July 19, 2022

Present: GLEASON J.A.

BETWEEN:

AIR PASSENGER RIGHTS

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

and

THE CANADIAN TRANSPORTATION AGENCY

Intervener

ORDER

UPON motion of the intervener, the Canadian Transportation Agency (the CTA), seeking relief from being required to produce for inspection the materials requested in a Direction to Attend that the applicant served on senior counsel for the CTA, who is the deponent of an affidavit filed pursuant to an earlier Order of this Court;

AND UPON motion of the applicant for an order requiring the affiant to attend for cross-examination, at the CTA's expense, and to produce the materials requested in a Direction to Attend as well as other ancillary relief;

AND UPON receipt of correspondence from counsel for the parties and the CTA, the whole as more particularly described in the reasons that accompany this Order:

THIS COURT ORDERS that:

1. The undersigned will remain seized of all issues that require adjudication in this application that arise prior to the filing of a requisition for hearing;
2. Any future pre-hearing motions may be made informally, via way of letter, which will be referred to the undersigned for disposition, which disposition, if deemed necessary, may direct that a formal motion be filed;
3. Within 30 days of this Order, the parties and the CTA shall file an agreed-upon timetable for completion of the remaining steps to perfect this application, or failing agreement, file their respective proposals for the timetable;
4. The parties and the CTA shall comply with the process for obtaining rulings on privilege as outlined in the Reasons for this Order;
5. The CTA shall disclose the documents mentioned in paragraph 40 of the Reasons for this Order as soon as possible and in any event by no later than 10 days from the date of this Order;

6. Within the timeframe set out in paragraphs 42 and 43 of the Reasons for this Order, the parties shall take the steps outlined in those paragraphs regarding documents associated with the March 24, 2020 call;
7. The documents listed as items 9, 12 and 13 on the applicant's Direction to Attend shall be produced in accordance with the Reasons for this Order; and
8. Costs of these motions are in the cause.

"Mary J.L. Gleason"

J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20220719

Docket: A-102-20

Citation: 2022 FCA 132

Present: GLEASON J.A.

BETWEEN:

AIR PASSENGER RIGHTS

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

and

THE CANADIAN TRANSPORTATION AGENCY

Intervener

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on July 19, 2022.

REASONS FOR ORDER BY:

GLEASON J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20220719

Docket: A-102-20

Citation: 2022 FCA 132

Present: GLEASON J.A.

BETWEEN:

AIR PASSENGER RIGHTS

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

and

THE CANADIAN TRANSPORTATION AGENCY

Intervener

REASONS FOR ORDER

GLEASON J.A.

[1] I have before me two motions concerning pre-hearing disclosure in this application. The first is brought by the intervener, the Canadian Transportation Agency (the CTA). In its motion,

the CTA seeks relief from being required to produce for inspection the materials requested in a Direction to Attend that the applicant served on senior counsel for the CTA, who is the deponent of an affidavit filed pursuant to an earlier Order of this Court. The second motion is brought by the applicant and seeks an order for the affiant to attend for cross-examination, at the CTA's expense, and to produce the materials requested in a Direction to Attend as well as other ancillary relief the applicant asserts is required to give effect to this Court's previous disclosure Orders.

[2] I also have before me correspondence from counsel for the applicant, requesting that a timetable be set for the hearing of the portion of its motion, dated January 16, 2022 and filed the next day (the January 17, 2022 Motion), seeking a show cause order for contempt. Counsel for the respondent and the CTA have also written to the Court, asking that this application be specially managed in light of the delays incurred to date in perfecting the application and future issues that might arise.

[3] For the reasons that follow, the two motions are granted in part on the terms outlined below.

[4] As for the various requests made via way of correspondence, as was the case in January 2022, it is premature to schedule a hearing in respect of the applicant's request for a show cause order. As for the request for case management, I will remain seized of all issues that require adjudication in this application that arise prior to the filing of a requisition for hearing. I have

also issued some additional orders and provided some general guidance in the hope of ensuring a more expeditious and cooperative completion of the steps required to perfect this application.

I. Background

[5] Some background is necessary to explain the two motions and the requests made in the recent correspondence received from the parties and the CTA.

[6] The underlying application for judicial review in this file challenges a statement on vouchers published on the CTA's website on March 25, 2020, shortly after the onset of the COVID-19 pandemic. The CTA opined in the statement that airlines could issue vouchers to passengers for cancellations caused by the pandemic as opposed to providing reimbursements for cancelled flights.

[7] In its application for judicial review, the applicant alleges, among other things, that the issuance of the statement gives rise to a reasonable apprehension of bias for two reasons: first, because it demonstrates pre-judgment of complaints in which passengers might seek reimbursement for cancelled flights; and second, because there was third party influence in the development of the statement.

[8] Following various interlocutory motions on other issues, the applicant brought a motion seeking disclosure from the CTA. On October 15, 2021, I issued an Order and Reasons for Order (2021 FCA 201) granting the applicant's motion in part and ordered the CTA to disclose:

- all non-privileged documents sent to or by a member of the CTA (including its Chairperson or Vice-Chairperson) between March 9 and March 25, 2020, concerning the statement on vouchers posted on the CTA's website on March 25, 2020;
- all non-privileged documents sent to a third party by the CTA or received from a third party by the CTA between March 9 and March 25, 2020, concerning the statement on vouchers posted on the CTA's website on March 25, 2020; and
- all non-privileged documents related to any meeting attended by a CTA member (including its Chairperson or Vice-Chairperson) between March 9 and March 25, 2020, where the statement on vouchers posted on the CTA's website on March 25, 2020, was discussed.

[9] The Reasons for Order clarified that meetings included telephone conversations, video conferences, internet meetings and in-person meetings and that third parties included anyone other than a Member or employee of the CTA (*Air Passenger Rights v. Canada (Attorney General)*, 2021 FCA 201 at para. 23).

[10] The October 15, 2021 Order also established an informal process for obtaining a ruling on assertions of privilege. Paragraphs 5 to 8 of that Order provided:

5. Within 60 days of the date of this Order, the AGC shall submit to the Court for a ruling on privilege all documents over which privilege is asserted that would otherwise fall within paragraph 3 of this Order, the whole in accordance with the Reasons for this Order;

6. Within the same timeframe, the AGC shall serve and file a redacted version of its submissions, from which details of the contents of the documents are deleted;
7. The applicant shall have 30 days from receipt of the forgoing submissions to make responding submissions, if it wishes;
8. The materials related to claims for privilege shall then be submitted to the undersigned for a ruling on privilege;

[11] Further to the October 15, 2021 Order, the CTA disclosed a number of documents to the applicant. Included among them was a March 22, 2020 letter from the President of Air Transat to the former Chairperson of the CTA in which Air Transat requested that the CTA recognize that it was acceptable for it to provide passengers with vouchers in lieu of refunds to reimburse them for flights cancelled due to the COVID-19 pandemic.

[12] The applicant believed the disclosure made by the CTA further to the Court's October 15, 2021 Order was incomplete. On January 17, 2022, the applicant brought another motion in which it sought orders requiring disclosure of the documents it believed were encompassed within the scope of the October 15, 2021 Order, but had not been disclosed. In its January 17, 2022 Motion, the applicant also sought the issuance of a show cause order for contempt and related ancillary relief.

[13] On December 15, 2021, the respondent brought an informal motion seeking to have portions of two documents found to be privileged and protected from disclosure. On the same date, it also brought another motion, seeking an extension of time to obtain instructions on whether it would seek to claim privilege over two additional documents.

[14] A case conference was convened on January 25, 2022, during which the parties made submissions on the procedure for dealing with the various motions before the Court. Following that case conference, I issued two further Orders on January 26, 2022.

[15] The first of the January 26, 2022 Orders granted the respondent additional time to bring a motion if it wished to request a ruling on privilege in respect of the two additional documents. The respondent subsequently advised that it was not seeking such a ruling and disclosed the two additional documents to the applicant. The documents subsequently disclosed included a March 22-24, 2020 encrypted email chain between the CTA and Transport Canada that indicates that there were discussions between the Chairperson of the CTA and officials at Transport Canada and between Marcia Jones, the CTA's former Senior Strategy Officer, and officials at Transport Canada about the statement on vouchers before it was issued.

[16] A copy of another encrypted email chain dated March 18, 2020, between Ms. Jones and an official at Transport Canada was previously disclosed.

[17] The CTA has indicated that it has not been able to locate the original electronic version of at least some of these email chains, which it says no longer exist.

[18] The second of the January 26, 2022 Orders provided that the applicant's January 17, 2022 Motion would be bifurcated such that the request for an order for disclosure of additional documents would be decided first because it could well render the request for a show cause order for contempt unnecessary.

[19] Following receipt of submissions in respect of the first portion of the applicant's January 17, 2022 Motion seeking additional orders in respect of disclosure, on April 11, 2022, I issued a further Order and Reasons for Order (2022 FCA 64) in respect of the applicant's disclosure requests. Among other things, the April 11, 2022 Order required that:

- the CTA disclose four sets of documents whose existence was not in dispute (listed as categories A1, A5, B4 and C2 in the applicant's Notice of Motion). These comprised the original electronic versions of certain documents previously disclosed in PDF format, non-publicly available documents sent to or from the CTA's Info email and Twitter accounts over the relevant period in respect of the statement on vouchers and non-privileged documents in respect of the CTA's March 20, 2020 Executive Committee call;
- the CTA determine if the statement on vouchers was discussed during the calls held on March 19, 22 and 23, 2020, and, if so, that the CTA disclose the documents related to those calls. These documents were described as categories C1, C5 and C6 in the applicant's January 17, 2022 Notice of Motion;
- the respondent advise if it was claiming deliberative privilege in respect of any notes taken by CTA Members, its Chairperson or Vice Chairperson during their March 24, 2020 call as the CTA had cited case law in support of its submission that the notes need not be disclosed in which the exemption from disclosure was premised on deliberative privilege; and

- the individual at the CTA responsible for compliance with the Court’s October 15, 2021 Order serve and file an affidavit detailing the efforts of the CTA to comply with the Court’s October 15, 2021 Order.

[20] On the issue of a possible claim for privilege over the notes taken during the March 24, 2020 call, paragraphs 42-43 of the Reasons for the April 11, 2022 Order provided:

[42] In the present case, it appears that there may well be a debate between the parties as to the nature of the function that was being carried out by the CTA Members, Chairperson and Vice-Chairperson in the adoption of the statement on vouchers. If the function is an adjudicative one, then the notes taken by the Members are protected from disclosure under the principles set out above.

[43] In light of this uncertainty, the respondent is directed to confirm within ten days of the date of the Order that accompanies these Reasons whether it takes the position that these notes are immune from disclosure by reason of adjudicative privilege and, if not, on what other basis they cannot be ordered to be disclosed.

[21] With respect to the requirement that an affidavit be filed to detail the CTA’s efforts to comply with the Court’s October 15, 2021 Order, paragraph 47 of the Reasons for the April 11, 2022 Order noted that the affidavit was required by reason of the “number of issues that have arisen with disclosure and compliance with this Court’s October 15, 2021 Order as well as the number of outstanding documents that the applicant is seeking”. The paragraph continued, by stating:

... I would expect that the affidavit would address the following issues set out in paragraph 43 of the applicant’s reply submissions, namely:

- (a) how the CTA narrowed down the several thousands of pages of documents to less than two hundred pages it has disclosed;
- (b) what steps were taken, if any, to gather and/or preserve documents upon being served with the Notice of Application on April 9, 2020;
- (c) who at the CTA conducted the searches for documents;
- (d) whether the CTA reviewed its encrypted emails or documents;
- (e) what record-keeping systems the CTA has, and whether all of them were searched for responsive documents;
- (f) whether the CTA has any backups or archives of their emails and other electronic documents, and whether those backups or archives were searched;
- (g) whether the CTA conducted any investigation after learning that some documents no longer exist, and any steps taken to recover those documents; and
- (h) whether the CTA's audio or video conferencing system has a recording feature and whether the conferences between March 9 and 25, 2020 were recorded.

[22] The April 11, 2022 Order and Reasons for Order contemplated that it might be necessary for the applicant to cross-examine the deponent of the affidavit the CTA was ordered to produce as the time table that was set allowed time for any necessary cross-examination.

[23] Further to the April 11, 2022 Order, the CTA disclosed a number of additional documents. Among them was a previously undisclosed letter from the President of Air Canada to the former Chairperson of the CTA, dated March 23, 2020, in which Air Canada requested that the CTA recognize that Air Canada had no obligation to issue refunds to passengers whose flights were cancelled as a result of the pandemic.

[24] The CTA also disclosed a number of documents related to the March 19, 20, 22 and 23, 2020 calls, described above. Some of these documents were heavily redacted. Counsel for the applicant wrote to counsel for the CTA to request an explanation for the redactions, but none was provided by counsel for the CTA in his correspondence in reply. Counsel for the CTA instead stated that the CTA had complied with the Court's April 11, 2022 Order by producing all the non-privileged documents it was required to produce.

[25] As for the affidavit the CTA was ordered to produce, on April 21, 2022, senior counsel at the CTA responsible for compliance with the production orders provided an affidavit that describes the steps she undertook to locate and produce the documents the CTA was ordered to disclose.

[26] On the privilege issue, the CTA disclosed notes taken by only one of the CTA Members in respect of the March 24, 2020 call between the Members, Chairperson and Vice-Chairperson of the CTA. On April 21, 2022, counsel for the Attorney General wrote to the Court and advised that the CTA had provided a single document containing notes taken by a CTA member during that call and that no claim of privilege was being asserted with respect to that document. The CTA has not clarified whether there remain any notes taken during that call that have not been disclosed.

[27] Following receipt of the documents produced by the CTA subsequent to the April 11, 2022 Order, in addition to seeking clarifications, counsel for the applicant also sought dates for the cross-examination of the affiant. Counsel for the applicant relatedly wrote to counsel for the

respondent and CTA, commencing on April 13, 2022, to request dates. While counsel for the respondent provided his unavailable dates on April 22, 2022, counsel for the CTA did not respond to the request for dates.

[28] The applicant served a Direction to Attend on the deponent of the affidavit on April 22, 2022, in which the applicant sought:

A. Notification of Agency Personnel on April 14, 2020 Regarding Application

1. With reference to the Affidavit at paragraph 8, the original notification that was sent on April 14, 2020, including the names of the recipients.
2. With reference to the Affidavit at paragraph 8, all the responses from the recipients in respect of the notification mentioned therein.

B. Inquiries for Documents with Former Agency Personnel

3. All written correspondences, between October 15, 2021 to April 22, 2022, between Ms. Cuber, and Ms. Marcia Jones (former Chief Strategy Officer) or Mr. Scott Streiner (former Chairperson), in respect of compliance with the October Order (as defined in the Affidavit) and/or April Order (as defined in the Affidavit), including any requests to Ms. Jones and/or Mr. Streiner to assist in providing and/or locating documents.
4. All written correspondences, between October 15, 2021 to April 22, 2022, between a member or staff of the Canadian Transportation Agency (other than Ms. Cuber), and Ms. Jones or Mr. Streiner, in respect of compliance with the October Order and/or April Order, including any requests to for assistance in providing and/or locating documents.
5. The Canadian Transportation Agency's policy on retaining of data on computer hard drives and mobile devices of departing personnel.

C. Inquiry with Ms. Lesley Robertson, Office of the Chairperson

6. With reference to the Affidavit at paragraph 33, all written correspondences with Ms. Lesley Robertson in respect of the inquiry and/or search for documents responsive to the October Order and/or the April Order.
7. With reference to the Affidavit at paragraph 34, copies of the five documents.

D. Inquiry with Mr. Guindon and Other Information Technology Personnel

8. With reference to the Affidavit at paragraphs 37-38, all written correspondences with Mr. Jonathan Guindon or personnel in the Information Technology Services Division [collectively, Information Technology Personnel] regarding the search for documents responsive to the October Order and/or the April Order.
9. With reference to the Affidavit at paragraph 38, all documents showing the search terms employed for the electronic search referred to therein.
10. With reference to the Affidavit at paragraphs 38-39, the list of Agency staff whose Outlook accounts returned documents in the 799 item search results.
11. With reference to the Affidavit at paragraph 38, documents showing if searches were made on the Outlook accounts of the former Chief Strategy Officer (Marcia Jones) and the former Chairperson (Scott Streiner).
12. The Outlook system logs showing when the following emails were deleted from Ms. Marcia Jones' Outlook account:
 - (a) Email received by Ms. Marcia Jones on March 18, 2020 from Mr. Colin Stacey with the subject line "FW: From MinO: Air Transat."
 - (b) Email sent by Ms. Marcia Jones on March 25, 2020 with the subject line "Update: CTA measures/Mise à jour: mesures prises par l'OTC."

E. Searching the Canadian Transportation Agency's Corporate Repository

13. With reference to paragraph 13 of the Affidavit, all documents showing the search terms that were employed for the search(es) made on RDIMS (the Canadian Transportation Agency's corporate repository) for documents responsive to the October Order and/or the April Order.

F. Records of or Recordings of the March 9-25, 2020 Meetings

14. With reference to paragraph 38 of the Affidavit, printouts from the Outlook calendars for Mr. Scott Streiner and Ms. Marcia Jones of the scheduled events between March 18-25, 2020, including the weekend of March 21-22, 2020.
15. With reference to the April 20, 2022 Documents, the first page of Appendix C1.pdf shows the meeting invite from Mr. Streiner with his dial-in code of 935311571, a printout from the teleconferencing platform showing all conferences that were hosted using this dial-in code between March 9 and 25, 2020, including the weekend of March 21-22, 2020.
16. With reference to paragraph 58 of the Affidavit, a printout from the teleconferencing platform listing all the meetings between March 9 and 25, 2020 that were recorded.

G. Inquiries after Producing the Initial Documents on December 14, 2021

17. With reference to paragraph 42 of the Affidavit, the written documents showing what "the existing search results" were.
18. With reference to the documents disclosed by the Canadian Transportation Agency on April 20, 2022 [April 20, 2022 Documents], a printout of the Outlook search results relied upon by Ms. Amanda Hamelin or other Information Technology Personnel to identify the April 20, 2022 Documents.

H. Document Referred to in the April 20, 2022 Documents Package

19. With reference to the April 20, 2022 Documents, page 47 of Appendix C1.pdf refers to a "Circulate updated Members Committee Agenda" for March 24, 2020. Please provide the Members Committee Agenda referred to therein.

I. Microsoft Outlook Backups

20. With reference to paragraph 53 of the Affidavit, the Canadian Transportation Agency's policy document on Outlook retention standards referred to in paragraph 53 of the Affidavit (i.e., periods of 10 days and 12 weeks).
21. With reference to paragraph 54 of the Affidavit, all written correspondences between Ms. Cuber and a member or staff of the Canadian Transportation Agency, regarding retrieving the Outlook backup tapes for searching.
22. With reference to paragraphs 53-54 of the Affidavit, a list of all the backup tapes for Outlook that are still being kept, including the dates covered by those backup tapes.
23. The Canadian Transportation Agency's policy on retaining backup of Outlook documents other than on backup tapes, such as backups on Amazon Cloud, Microsoft 365, or other cloud platforms.

J. Inquiry Relating to ATI Requests A-2020-00002 and A-2020-00029

24. With reference to the Affidavit at paragraphs 17-20 and 21-25, any index, table of contents, summary, and/or listings for:
 - (a) the 683 items for A-2020-00002; and/or
 - (b) the 1417 Outlook items, the 25 electronic documents, and/or the 5099 page working copy of the search results for A-2020-00029.

K. Inquiry Relating to TRAN Committee Motion Documents

25. With reference to the Affidavit at paragraph 29, any index, table of contents, summary, and/or listings of the collection of documents stemming from the motion from the Standing Committee on Transportation, Infrastructure and Communities on March 25, 2021 [TRAN Committee Motion].

(Motion Record of the Applicant Air Passenger Rights Regarding the CTA's Affiant's Failure to Attend Cross-Examination Motion to Enforce, Vary, and

Correct the Court Orders Issued by Gleason, J.A., Vol I, Exhibit AI to the Affidavit of Dr. Gábor Lukács, p. 352 to 356)

[29] The CTA replied by letter stating that it would seek the direction of the Court to be relieved from the requirement to produce the requested documents. The CTA wrote to the Court requesting such relief, and on May 2, 2022, my colleague, Justice Mactavish, issued a Direction requiring the CTA to bring a motion to be relieved from production. That motion (along with the motion of the applicant) are the ones now before me.

[30] Despite being aware of the CTA's intent to bring a motion regarding production and the Direction of this Court that such a motion be brought, the applicant did not cancel the cross-examination scheduled for May 3, 2022, and, when the affiant did not attend, obtained a certificate of non-attendance.

II. The Issues

[31] The parties have filed substantial materials – totaling over 2000 pages – in respect of the two pending motions. The issues raised in the two motions now before me and in the correspondence from counsel can be distilled as follows:

1. Should the deponent of the document search affidavit be ordered to attend for cross-examination and, if so, should she be ordered to bring any of the documents listed in the Direction to Attend or be required to produce them in advance of the cross-examination?

2. Should the CTA be required to bear the costs of the aborted cross-examination and any future attendance?
3. Should this case be informally case managed to help alleviate any further pre-hearing issues?

III. Attendance at Cross-Examination and Production

[32] In terms of the first of the foregoing issues, the CTA's submissions on its motion contain the suggestion that the deponent of the affidavit should not be subject to cross-examination at all and that it was thus incorrect for a cross-examination to have been contemplated. The CTA cites in support of this assertion the decision in *Constantinescu v. Canada (Correctional Services)*, 2021 FC 229 [*Constantinescu*], where the Federal Court refused to order cross-examination of the affiant of an affidavit of documents that it had ordered a tribunal to produce. There, the Court found that the applicant had failed to establish that the affidavit of documents was insufficient or inaccurate (*Constantinescu*, at para. 125).

[33] However, as the applicant notes, the Federal Court ordered cross-examination of an affiant in *GCT Canada Limited Partnership v. Vancouver Fraser Port Authority*, 2021 FC 624 [*GCT Canada*], (see unreported order made in *GCT Canada Limited Partnership v. Vancouver Fraser Port Authority*, August 25, 2021, in file T-538-19). There, like here, the Court had previously required the individual responsible for responding to a production request under Rule 317 of the *Federal Courts Rules*, S.O.R./98-106 to file an affidavit detailing what the individual had done to disclose the requested documents. In that case, questions remained as to the

sufficiency of the search, and the Federal Court allowed for the cross-examination of the affiant on issues related to the nature and scope of the document search but not on issues directed to the merits of the application.

[34] In the present case, as in *GCT Canada*, legitimate questions also remain about the scope and nature of the document search undertaken by the CTA and about the adequacy of its disclosure. These questions include:

- the need to explain on what basis the CTA unilaterally redacted large portions of documents it was ordered to produce, although an explanation was eventually given by the CTA in its materials filed in response to the applicant's motion;
- why the letter from Air Canada to the CTA was not disclosed earlier;
- why so few documents were disclosed when the CTA indicated in earlier Court filings that there might well be a much greater number of documents responsive to the disclosure requests, including numerous private Twitter messages and documents received over the CTA's Info email account;
- whether there were additional notes taken during the March 24, 2020 call by CTA Members, Vice-Chairperson or Chairperson; and

- when and how the original electronic versions of the encrypted emails between the CTA and Transport Canada, referred to above, were deleted.

[35] For clarity, these are only some of the more obvious unanswered questions. Therefore, the foregoing list is not intended to be a comprehensive listing of the subjects that may be explored during the cross-examination of the affiant.

[36] As for the documents that must be produced at the cross-examination, the CTA has indicated in its submissions in response to the applicant's motion that it does not object to producing certain additional documents to the applicant or to the Court (for documents over which privilege is claimed). There are also a few points that need to be clarified arising from the previous disclosure Orders.

[37] As concerns privilege claims, it is not entirely clear which documents are currently subject to such a claim. That said, the CTA indicates in its response to the applicant's motion that it "would not be adverse to a simplified procedure where it may assert its own claims for privilege".

[38] Such a procedure was established in the October 15, 2021 Order. It continues to apply to this application on a go-forward basis. Under the October 15, 2021 Order, the Attorney General was required to advance the privilege claims. This requirement was imposed for two reasons: first, to bring a degree of objectivity that is required by the nature of this application; and, second, because certain types of privilege claims may well intersect with the eventual defences

on the merits of the application that the respondent may wish to advance. This would be the case, notably, with an assertion of deliberative privilege.

[39] Accordingly, if there are additional documents or portions of documents that the CTA has been ordered to disclose, that are subject to disclosure under the Order that accompanies these Reasons or that are sought during the cross-examination in respect of which a claim for privilege is advanced, the respondent shall make an informal motion for a ruling on privilege, by way of letter to the Court. The respondent shall serve and file a public version of any such motion, from which information alleged to be privileged is redacted. The respondent shall also make a confidential filing, enclosing the documents in respect of which a privilege ruling is sought. Any such motion should be made expeditiously once the need for a ruling become apparent.

[40] The next category of documents are private Twitter messages and messages received over the CTA's Info email account from passengers about cancelled flights over the period in respect of which disclosure was ordered. The CTA indicates it is prepared to disclose these documents, even though it believes they do not come within the scope of the previous Orders. Given this willingness, the CTA should disclose these messages to the applicant as soon as possible and in any event by no later than 10 days from the date of the Order that accompanies these Reasons.

[41] With respect to documents related to the March 24, 2020 call, the April 11, 2022 Order and Reasons did not deal comprehensively with the applicant's request for production in respect of that call. They rather asked initially for clarification regarding whether the respondent was

claiming deliberative privilege over notes that might have been taken by CTA Members, its former Chairperson or Vice-Chairperson during that call.

[42] From the response received from the CTA, it is unclear whether there were additional notes taken by CTA Members, its Chairperson or Vice-Chairperson during that call beyond those that have been disclosed. Within 5 days of the date of the Order that accompanies these Reasons, the CTA shall advise the parties and the Court whether it has been able to determine if any such additional notes were taken. If the respondent asserts a claim of privilege over any such documents, within 10 days of the date of the Order that accompanies these Reasons, it shall make a motion for a ruling on its privilege claim, following the procedure detailed above.

[43] Following resolution of the issues with respect to the notes taken during this call, I will rule on the balance of the applicant's disclosure request made in respect of the March 24, 2020 call if the CTA does not voluntarily disclose the additional documents sought by the applicant in respect of that call. The applicant shall forthwith advise the Court if a ruling on the remainder of its disclosure request in respect of the March 24, 2020 call is required following resolution of the issues with respect to the notes taken during this call.

[44] I turn next to the issue of whether an order should be issued under Rule 97 to require that the affiant attend for cross-examination. I do not believe it appropriate to issue such an order, at least not at this stage, as it was ill-advised for the applicant to have attempted to proceed with the cross-examination on May 3, 2022.

[45] The previous attempts to schedule the cross-examination show an unfortunate lack of cooperation between counsel. In particular, counsel for the CTA did not provide dates for the examination in a timely fashion in circumstances where there were Court-imposed deadlines that the applicant was required to meet. On the other hand, the applicant proceeded with the unilaterally scheduled cross-examination after it knew that the Court was to be seized with a motion on production issues.

[46] I would hope that, with a modicum of courtesy and common sense, the parties should now be able to arrange for the cross-examination of the affiant. If I am incorrect in this hope, the applicant can renew its request for such an order via way of informal motion made by way of letter.

[47] I turn next to the scope of that cross-examination. As in *GCT Canada*, the scope of the cross-examination of the affiant should be limited to exploring what the affiant did to comply with the Court's disclosure Orders. The initial Order issued on October 15, 2021 outlined the categories of documents required to be disclosed. Subsequent Orders (including this one) have served to bring precision to issues that have arisen regarding the scope of the October 15, 2021 Order. Thus, in examining what was done to comply with the October 15, 2021 Order, it is open to the applicant to ask relevant questions regarding steps taken to comply with all the disclosure Orders.

[48] I turn next to consider the applicant's production request made in the Direction to Attend. I agree with the CTA that the cross-examination of the affiant cannot be used as a fishing

expedition and that such cross-examination is not akin to a discovery. Rather, the cross-examination has been allowed to ensure that all documents relevant to the applicant's bias allegations have been disclosed.

[49] At this point, the applicant has not laid the necessary evidentiary foundation for the broad disclosure of many of the requested documents, which include a multitude of documents determined by the CTA to fall outside the scope of the disclosure Orders. That said, in my view, a sufficient foundation has been laid for disclosure of a few of the categories of documents sought in the Direction to Attend. These are the documents showing the electronic search terms used (items 9 and 13 in the Direction to Attend) and documents that may shed light on when and how the original encrypted emails between the CTA and Transport Canada came to be deleted (item 12 in the Direction to Attend). Both items are directly relevant to the affiant's search and to what happened to the original version of certain documents that are germane to the applicant's bias allegations.

[50] At this point, I am not convinced that any further items sought by the applicant in the Direction to Attend are necessary to ensure that all documents relevant to the application have been disclosed. However, this determination is without prejudice to the right of the applicant to request further disclosure if answers given during the cross-examination establish that further disclosure must be ordered to ensure that all relevant documents are produced.

[51] The applicant has requested that production be made in advance of the cross-examination, even though Rule 94 does not specifically contemplate an order being made for

such advance disclosure. Given the reduction in the number of documents that the affiant must now produce, I would hope that the CTA would agree to disclose them prior to the cross-examination to facilitate the examination and the work of the reporter in the event the examination is conducted virtually. If the parties are not able to agree on such pre-hearing disclosure and if the applicant believes it essential, it may seek the Court's intervention via way of informal motion made by letter.

IV. Costs for the Cross-Examination and these Motions

[52] In light of the shared responsibility for the aborted cross-examination, no costs will be awarded in respect of it. Costs on these motions shall be in the cause.

V. Case Management

[53] I agree that a process for ongoing management of the pre-hearing issues in this application is warranted. I will remain seized of all such issues that arise before the filing of a requisition for hearing. The parties or the CTA may request the Court's further intervention in respect of pre-hearing issues, should it be required, via way of informal motion made by letter, addressed to the Judicial Administrator, with a request that the motion be placed before me.

[54] Given the delays and difficulties that have arisen in perfecting this application, the parties and the CTA are requested to confer and agree upon a timetable for the completion of the required steps to perfect this application. Within 30 days of the Order that accompanies these

Reasons, they shall file a timetable for completion of the remaining steps, or failing agreement, file their respective proposals for the timetable.

[55] As noted earlier, a hearing for the portion of the applicant's motion seeking a show cause order for contempt will not be scheduled at this point as this request is premature and the order may well prove unnecessary if all disclosure issues are resolved. If, following the cross-examination of the affiant, the applicant believes that it is necessary for a hearing to be scheduled in respect of the pending portion of its January 17, 2022 Motion, it may renew the request for a hearing date, by letter addressed to the Court, setting out its reasons in support of the request.

[56] Finally, the typographical error in the Appendix to the April 11, 2022 Reasons for Order will be corrected, as requested by the applicant.

"Mary J.L. Gleason"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-102-20
STYLE OF CAUSE:	AIR PASSENGER RIGHTS v. THE ATTORNEY GENERAL OF CANADA AND THE CANADIAN TRANSPORTATION AGENCY

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY:	GLEASON J.A.
DATED:	JULY 19, 2022

WRITTEN REPRESENTATIONS BY:

Simon Lin	COUNSEL FOR THE APPLICANT
Lorne Ptack	COUNSEL FOR THE RESPONDENT
Kevin Shaar	COUNSEL FOR THE INTERVENER

SOLICITORS OF RECORD:

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A. François Daigle Deputy Attorney General of Canada	FOR THE RESPONDENT
Legal Services Directorate Canadian Transportation Agency Gatineau, Quebec	FOR THE INTERVENER

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Examination No. 22-0914

Court File No. A-102-20

FEDERAL COURT OF APPEAL

B E T W E E N:

AIR PASSENGER RIGHTS

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

- and -

CANADIAN TRANSPORTATION AGENCY

ORIGINAL

Intervener

CROSS-EXAMINATION OF BARBARA CUBER on Affidavit sworn April 21, 2022, pursuant to an appointment made on consent of the parties, to be reported by E.M. Gillespie Court Reporting, on September 16, 2022, commencing at the hour of 10:00 in the forenoon.

APPEARANCES:

Simon Lin, for the Applicant
Lorne Ptack, for the Respondent
Kevin Shaar, for the Intervener

The Examination was reported by E.M. Gillespie Court Reporting via video conference, having been duly appointed for the purpose.

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NUMBER OF PAGES: 180

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DATE TRANSCRIPT COMPLETED: OCTOBER 4, 2022

1 MR. PTACK: I am Lorne Ptack, counsel for the
2 Respondent, Attorney General of Canada, in this matter.
3 In the present instance, there is no one else available
4 to swear in the witness so I will be doing so. Would the
5 witness please identify herself for the record?

6 THE WITNESS: My name is Barbara Cuber.

7 MR. PTACK: Would you prefer to be sworn on a
8 Bible or take an oath?

9 THE WITNESS: An oath, please.

10 MR. PTACK: Do you solemnly declare that your
11 responses you give today are the truth, to the best of
12 your knowledge and ability?

13 THE WITNESS: Yes, I do.

14 MR. PTACK: Thank you, very much.

15 **BARBARA CUBER, AFFIRMED:**

16 **EXAMINATION BY MR. LIN:** Thank you for coming
17 today, Ms. Cuber. As you know, my name is Simon Lin. I
18 am counsel for the Applicant on this matter and I will be
19 asking you some questions today, primarily about your
20 affidavit that you swore on this proceeding.

21 Counsel, just for clarity, today is a cross-
22 examination set by the Applicants. As such, I kindly ask
23 that counsel for the Intervener refrain from answering
24 questions on behalf of the affiant, and furthermore, since
25 the Attorney General of Canada did not serve a Direction

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1 to Attend and also not adverse in interest to the CTA, we
2 understand that the AGC is only attending today as an
3 observer.

4 Just for shorthand I will refer to the Canadian
5 Transportation Agency as the CTA and the Respondent, the
6 Attorney General of Canada, as AGC for shorthand.

7 MR. PTACK: Mr. Lin, if I may chime in here
8 briefly? The AGC is here as the Respondent. I am here as
9 the Respondent's counsel, not as an observer, and as such
10 I do reserve the right to participate or interject as may
11 be necessary. I acknowledge I have not served a Direction
12 to Attend on this witness. Of course there was no
13 requirement for us to do so, and while I don't expect to
14 be interjecting or participating in any particularly
15 active point, I do have to disagree with your suggestion
16 that I am only here as an observer.

17 MR. LIN: We can agree to disagree about that.
18 We're moving on. Thank you.

19 MR. PTACK: Certainly and I'm happy to do so but
20 on the record, should it be an issue later, let it be
21 stated for the record that that is not the status the AGC
22 accepts in this matter. Please proceed.

23 MR. LIN:

24 1. Q. Before we launch onto questions, Ms. Cuber,
25 can you confirm what documents you have before you for

1 this cross-examination?

2 A. Sorry? What exhibits I have? I just wanted
3 to answer - you had asked me previously if I understood
4 the instructions that you said about, for instance, the
5 CTA being the shorthand for Canadian Transportation Agency
6 and AGC, and you asked if I understood and I didn't get an
7 opportunity to respond. I just wanted to say that I did
8 understand. I have the exhibits that you sent at 9:53
9 this morning. They're not in - would you like me to --

10 2. Q. No. We know there are 17 documents in there.
11 Other than that, do you have any other items before you?

12 A. I only have my affidavit with the three
13 exhibits of my affidavit before me.

14 3. Q. What else do you have open on your screen
15 besides this Zoom meeting?

16 A. I'm happy you asked that because you since you
17 sent the exhibits by email, I have my email account open.
18 I don't know if you prefer that I close that and that you
19 will show me the exhibits as they arise. I closed any
20 messaging services and I had intended to close my email
21 account on my desktop so I'm not --

22 4. Q. We would suggest that you can download the 17
23 exhibits and then have the email account closed so there
24 won't be any interruptions, if that's okay.

25 A. Yes. It's just going to take me a minute to

1 do that.

2 5. Q. While you do that, can I ask you is there
3 anyone else in the same room as you at the moment?

4 A. No, there is no one else. My phone is off and
5 I don't have any messaging services and momentarily I will
6 not have any email open. I believe I have them now so I
7 am closing Outlook. If I happen to see an email pop up,
8 is it alright with you if I just stop so that I can figure
9 out how to make sure that I am not receiving any messages?
10 Is that all right? If I see something pop up, I'll just
11 let you know. I've closed my Outlook.

12 6. Q. Yes. I understand what you are referring to.
13 Are we ready to begin?

14 A. Yes.

15 7. Q. I understand you are familiar with the Order
16 issued my Madam Justice Gleason on October 15th, 2021, in
17 this file?

18 A. Yes.

19 MR. LIN: I will refer to this October 15th Order
20 as the October Order. For clarity, that's the first
21 document, number one, that was sent out this morning. I
22 would like to ask Madam Court Reporter to mark Exhibit 1
23 the Order of Madam Justice Gleason, dated October 15th,
24 2021.

25 **EXHIBIT NO. 1:** Order of Justice Gleason, October

1 15, 2021.

2 8. Q. I understand that you are familiar with the
3 Order issued by Madam Justice Gleason on April 11th, 2022,
4 in this file?

5 A. Yes.

6 MR. LIN: I will refer to this as the April Order
7 and I will also ask that this be marked as an exhibit,
8 Exhibit 2.

9 **EXHIBIT NO. 2:** Order of Justice Gleason, April 11,
10 2022.

11 9. Q. I understand, Ms. Cuber, you are familiar with
12 another order that was recently issued by Madam Justice
13 Gleason on July 19th, 2022, for this file?

14 A. Yes.

15 MR. LIN: I will refer to this as the July Order
16 for shorthand and I will also ask that this be marked as
17 Exhibit 3.

18 **EXHIBIT NO. 3:** Order of Justice Gleason, July 19,
19 2022.

20 10. Q. Next I understand that on April 11th, 2022, Ms.
21 Cuber, you swore an affidavit for this application as
22 ordered by the court?

23 A. I don't think it was April 11th. I think it
24 was April 21st. I'll just look.

25 11. Q. I misspoke. It is April 21st.

1 A. Yes.

2 MR. LIN: That affidavit is the fourth document
3 that was sent out and I will ask that to be marked as
4 Exhibit 4, please.

5 **EXHIBIT NO. 4:** Affidavit of Barbara Cuber, sworn
6 April 21, 2022.

7 12. Q. Ms. Cuber, I understand you also received our
8 Direction to Attend on or around August 29th, 2022, which
9 includes a cover letter and that is the fifth document?

10 A. Yes.

11 MR. LIN: We would like to mark that as Exhibit 5,
12 please, the Direction to Attend and cover letter.

13 **EXHIBIT NO. 5:** Direction to Attend and cover
14 letter, August 29, 2022.

15 13. Q. If we could have Exhibit 5, the Direction to
16 Attend, open, please? That would be great. Ms. Cuber, do
17 you have that open?

18 A. Yes, I do.

19 14. Q. Perfect. Did you bring any of the documents
20 listed in the Direction to Attend, other than items 9, 12,
21 and 13 which were the subject of an undertaking on August
22 5th, 2022?

23 A. No.

24 15. Q. You received our Direction to Attend, correct?

25 A. Yes.

1 16. Q. While we realise items 1 to 25 were subject to
2 debate in the July Order, items 26 to 30 were added to
3 this Direction to Attend. Did you bring items 26 to 30?

4 A. No.

5 17. Q. You are aware that the Federal Court Rules
6 require you to produce documents today at cross-
7 examination, and in particular, items 26 to 30?

8 A. Yes.

9 18. Q. Why did you not bring items 26 to 30?

10 A. I have to go back. It's certainly the case
11 that some of them do not exist.

12 MR. SHAAR: Perhaps we should go through each one?

13 THE WITNESS: Yes. I didn't memorise them.

14 MR. LIN:

15 19. Q. Let's start with 26. Can you tell us why you
16 did not bring item 26 on the Direction to Attend?

17 A. Item 26, it's not possible for me to give you
18 a list of the attendees at the March 24th Executive
19 Committee Meeting because we don't know who attended.
20 There were just the participants which is the ordinary
21 list of participants at Executive Committee Meetings and
22 so we don't have anything further to produce on that
23 front, as far as I understand it.

24 20. Q. Are you saying there is a list of participants
25 but there is not a list of attendees?

1 A. I believe the Agency produced the schedule for
2 that item and there is no list of attendees so there is
3 nothing further that can be produced, as far as I
4 understand it.

5 21. Q. How about item 27?

6 A. This doesn't exist because OneNote documents
7 can't be saved in RDIMS. If I understand this item
8 correctly, in order to be in existence, it would require
9 that OneNotes could be saved in RDIMS and they can't.

10 22. Q. How about item 29?

11 A. For 29(a), I believe that we produced the
12 March 24th, 2020, schedule for the Members' Meeting that
13 the Agency has in its possession and we have no further
14 items for 29(a).

15 29(b) is a request for printouts from the Outlook
16 calendar for Ms. Lesley Robertson showing whether her
17 calendar had any scheduled events on March 24th, 2020, at
18 10:30 am EST. The difficulty with that is that we
19 verified in Outlook and Ms. Robertson doesn't appear as an
20 attendee on Members' Meeting of In-Camera Members'
21 Committee Meeting like the one that happened on March 24th,
22 2020. That doesn't exist in the sense that she has a
23 calendar but she wouldn't have been involved in the
24 Members' Committee Meeting.

25 MR. SHAAR: We're going to object to this document

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1 on the basis of relevance. Lesley Robertson isn't a
2 member of the Executive Committee so it won't appear on
3 her calendar because she wasn't invited.

4 THE WITNESS: I just want to make sure that I
5 describe as best as I can. It is my understanding when
6 Ms. Robertson makes these meetings, she doesn't make them
7 by her own calendar. She would make them through
8 calendars that she controls like the Chair's calendar, for
9 instance. She wouldn't appear as an attendee or a
10 participant.

11 MR. LIN:

12 23. Q. She would be an organiser of whatever event?
13 Is that correct?

14 A. I don't know that.

15 MR. SHAAR: It's not in her calendar which is why
16 I'm objecting.

17 THE WITNESS: She wouldn't appear on any scheduled
18 events in the sense that her calendar wouldn't show that
19 she had an event.

20 MR. LIN:

21 24. Q. Thank you, Ms. Cuber, for clarifying. How
22 about item 30?

23 A. We have provided the scheduler for the
24 Members' Meeting that occurred on March 24th, 2020, at
25 11:00 am. That is all we have.

1 25. Q. How about at 10:30 am?

2 A. We have made verifications and there was no
3 meeting at 10:30 am on March 24th, 2020.

4 26. Q. Do you know why there was no meeting at 10:30
5 when the Chair had made reference to talking at 10:30?

6 A. I spoke with Lesley Robertson about this and
7 the explanation I received was that there was often
8 trouble connecting to meetings at that time because there
9 was high traffic, technical difficulties, and so it was
10 not uncommon that when this was occurring, Ms. Robertson
11 would re-schedule the meeting for 30 minutes later in
12 order to try perhaps a different line or the same line at
13 a different time so that participants might be able to
14 join at that time.

15 Her explanation was that she likely would have
16 just moved the meeting forward half an hour which was her
17 practice at the time and that seemed like a reasonable
18 explanation because you can see that one of the members, I
19 believe it was Heather Smith, actually wrote that she was
20 having trouble connecting at that time.

21 In addition to speaking to Ms. Robertson, I
22 checked the scheduler of members for March 24th, 2020, at
23 10:30 am for the members that are at the Agency and I
24 noted that they did not have a meeting at 10:30 scheduled
25 in their schedulers but they did have a meeting scheduled

1 at 11:00 am.

2 27. Q. Just following on one point you mentioned, you
3 said members that are at the Agency. What do you mean by
4 members that are at the Agency?

5 A. We can't check the schedulers of members who
6 are no longer at the Agency because Outlook accounts are
7 closed after personnel leave the Agency.

8 28. Q. Can you elaborate on what you mean by Outlook
9 accounts are closed?

10 A. Sure. The Agency's policy about information
11 management requires staff to save their records of
12 business value, including records that are subject to
13 litigation holds or records that are subject of ATIP
14 requests into the corporate repository, and when they
15 leave, their documents must all be saved in the corporate
16 repository in the RDIMS because Outlook accounts are not
17 kept after Agency personnel leave because Outlook accounts
18 are not a corporate repository,

19 29. Q. I assume that applies to members and
20 employees? Is that correct?

21 A. Yes.

22 30. Q. Are you saying that Mr. Scott Streiner and Ms.
23 Marcia Jones's email accounts were wiped?

24 A. I'm not saying that they were wiped. I'm
25 saying that they were closed after they saved records of

1 business value, records that were subject to litigation
2 holds, and records that were subject to ATIP requests into
3 RDIMS.

4 31. Q. Closed means they still exist? Is that
5 correct?

6 A. They are no longer available. They are no
7 longer available after they leave. I don't know exactly
8 what they do with them but they're not available.

9 32. Q. What do you mean by they? You said you don't
10 know what they do with them. Who is they?

11 A. Information Technology staff have explained to
12 me that the email accounts are not kept.

13 33. Q. So they have been wiped? Is that correct?

14 A. They're not kept. I hesitate to - I don't
15 agree with the word wiped because I don't agree in the
16 sense that wiped makes it sound like important things were
17 deleted whereas in fact, the recordkeeping practices that
18 Agency personnel are required to adhere to on a regular
19 basis, and certainly before departure, require them to
20 move all of their records of business value, all records
21 that are subject litigation hold, and all records that are
22 subject to ATIP requests into the corporate repository so
23 that they are preserved there and then any records that
24 are transitory are supposed to be deleted before, over the
25 course of their day-to-day work, and then those will be

1 removed from the account before they leave. IT doesn't
2 wipe the account.

3 34. Q. Let's take a step back here while we're on
4 this topic. In terms of Mr. Scott Shreiner and Ms. Marcia
5 Jones, they are no longer at the Agency? Is that correct?

6 A. That's correct.

7 35. Q. Do you recall the approximate date that they
8 left?

9 A. They both left in May 2021.

10 36. Q. So it was about a year ago. At the time, who
11 decided which emails from their Outlook account had to be
12 saved in the corporate repository?

13 A. They would have to decide which emails are
14 saved in the corporate repository. Ms. Jones would have
15 to decide which of her emails are saved in the corporate
16 repository and Mr. Streiner would also have to decide
17 which emails are saved in the corporate repository but it
18 is my understanding that Ms. Robertson would probably be
19 the one saving Mr. Streiner's items into the corporate
20 repository but I can't confirm that Mr. Streiner did not
21 also personally save his documents into RDIMS which is the
22 corporate repository. If it's okay, I'll just call it
23 RDIMS.

24 37. Q. Go ahead, please. Is it correct to say that
25 there was no oversight in this scenario? It was the

1 person themselves deciding for themselves what to save?

2 A. Well, I believe that everybody who - it's my
3 understanding that everybody who saves their items into
4 RDIMS has to have a list of people who will approve or
5 sign a departure form that will confirm that they have
6 saved all of their items into RDIMS and I've spoken with
7 our IT staff who have said that that they do sort of
8 checks on departing personnel, not to check every single
9 item but just to verify that the number of items that are
10 saved under that person's name seems to be an appropriate
11 number of items given that people will produce documents
12 of business value so if there are only two then it seems
13 like they probably didn't save their documents of business
14 value into the corporate repository.

15 38. Q. In the case of Mr. Streiner, who signed that
16 departure form?

17 A. I don't know who signed his departure form.

18 39. Q. How about Ms. Jones? Who signed her departure
19 form?

20 A. I don't know. I don't know who actually
21 signed her departure form but I believe that Mr. Shreiner
22 would be the person who would have signed it.

23 40. Q. In the case of Mr. Streiner, would you
24 undertake to find out who signed the departure form and
25 let us know?

1 MR. SHAAR: We will take it under advisement.

2 MR. LIN: Is that a yes or a no, Mr. Shaar?

3 MR. SHAAR: That's neither. We'll take it under
4 advisement. We're under no obligation to make any
5 undertakings so we will consider your question and get
6 back to you.

7 MR. LIN: In that case if we don't have your
8 answer, we, of course, reserve the right to recall the
9 cross-examination in that you refused to provide
10 information.

11 MR. SHAAR: The witness hasn't provided any
12 information. You've asked if there was an undertaking to
13 produce the document. The Agency is under no obligation
14 to provide undertakings. My answer is I will look at your
15 request and we'll get back to you at a later date.

16 MR. LIN:

17 41. Q. Ms. Cuber, at the time Mr. Streiner and Ms.
18 Jones left the CTA, you were the main counsel on this
19 application, correct?

20 A. Yes.

21 42. Q. At the time, you were aware that they were
22 departing from the CTA?

23 A. Yes - well, not Ms. Jones. I mean I knew that
24 Mr. Streiner's term was up.

25 43. Q. Did you participate at all in reviewing the

1 documents that you save on RDIMS before his departure?

2 A. Before whose departure?

3 44. Q. Before his departure, Mr. Streiner's
4 departure?

5 A. No, I didn't participate in the review of
6 documents before he left. It was my understanding that
7 documents related to this matter would have already been
8 preserved as part of the pre-existing Access to
9 Information request.

10 MR. LIN: Just to take a step back, the
11 undertaking that we asked for for Mr. Streiner, we'll ask
12 the same for Ms. Jones's departure form. Mr. Shaar, I
13 assume you have that noted?

14 MR. SHAAR: Yes.

15 MR. LIN:

16 45. Q. When Mr. Streiner left the CTA, is it fair to
17 say that the departure form was the only step that the CTA
18 took to ensure the data on his computer or mobile devices
19 were preserved?

20 MR. SHAAR: Mr. Lin, what does this have to do
21 with the affiant's search for documents in order to find
22 documents that were responsive to the court orders? It
23 seems to me that we're getting a little far away from the
24 scope of the cross-examination and we're getting into what
25 was done in the context of a departure and what that

A

1 process is. We're not actually dealing with the orders
2 that were given or what the affiant did to respond to
3 those orders but in things that happened before the orders
4 were given.

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5 MR. LIN: Mr. Shaar, I understand that you are
6 objecting. We know that there are various emails that are
7 no longer in existence or were deleted and the court has
8 specifically provided that in the number of topics that we
9 intend to explore and that is, why the emails were
10 deleted, and this goes to that line of enquiry. Why were
11 they not preserved? We know the emails exist.

12 MR. SHAAR: Then put that question to her because
13 if we're dealing with things that happened before the
14 October Order then it's hard for Ms. Cuber to say what she
15 did to respond to that order.

16 MR. LIN: We are asking the witness questions in
17 terms of what she did in terms of preservation and unless
18 you have a specific objection, Mr. Shaar, we ask that you
19 not interject.

20 46. Q. Ms. Cuber, back to the question. Is it fair
21 to say that when Mr. Streiner left the CTA, the only step
22 that the CTA took to preserve data on his computer or
23 mobile devices was the departure form?

24 A. That is the only step that I am aware of but
25 Mr. Streiner was aware of this litigation and he was

1 provided with a notice to preserve documents on April 14th,
2 2020, when the litigation began. He was aware of the
3 motion under Rule 318 that was filed and served on the
4 Agency on or around January 4th, 2021, and he was very
5 aware of this litigation. He didn't have a lack of
6 awareness and the departure form specifically refers to
7 the need to preserve documents that are subject to a
8 litigation hold.

9 47. Q. Ms. Cuber, thank for the explanation but my
10 question is that was the only step the CTA took, the
11 departure form? There was no oversight in terms of what
12 Mr. Streiner had saved and you were not involved in
13 overseeing it?

14 A. I can only say that I was not involved in
15 overseeing it. I don't know if there were other steps
16 taken. I'm not aware of any other steps taken.

17 48. Q. Thank you. We asked the same question for Ms.
18 Jones's departure. The departure form was the only step
19 that was taken to ensure that the data on her computer or
20 mobile devices were preserved in RDIMS? Is that correct?

21 A. I'm not aware of any other steps that were
22 taken. I am aware that Ms. Jones was informed of the
23 litigation. I was not able to find a written record of
24 her being informed or the need to preserve documents but I
25 was able to find a written record of her being informed of

1 the ATIP request that came in in May 2020 and I had a
2 discussion with her on January 5th, 2021, about the motion
3 under Rule 318 and she told me during our exchange where
4 to find her responsive documents and what she had no
5 knowledge of.

6 49. Q. Taking a step back to the departure forms, is
7 that part of the CTA's policy for departing employees?

8 A. I don't have any other information. I
9 requested information retention or record retention
10 policies from Information Technology. I think that was
11 one of the items in the Direction to Attend. There was
12 nothing that was given to me. The only thing I'm aware of
13 is the departure form.

14 50. Q. You've just talked about your discussion with
15 Ms. Marcia Jones. How can you be so sure of the date that
16 you spoke with her?

17 A. It was a written exchange. I should have said
18 exchange. I apologise for that. It was a written
19 exchange between us.

20 51. Q. Written exchange in the form of email?

21 A. Yes.

22 52. Q. Will you undertake to produce that email to
23 us?

24 MR. SHAAR: The Agency is under no obligation to
25 make undertakings but we will take your request under

1 advisement and get back to you.

2 MR. LIN:

3 53. Q. On the topic of the departure form, can you
4 describe it? Have you seen it personally?

5 A. Yes, I have seen the departure form. I have
6 used departure forms myself and I believe I asked whether
7 Mr. Streiner had signed a departure form and I was told
8 that he had but I can't remember if I saw it.

9 54. Q. How about Ms. Jones's departure form? Have
10 you seen that yourself?

11 A. No, I have not.

12 55. Q. Do you know if she actually signed a departure
13 form?

14 A. I don't. It's required of every departing
15 employee so I have to assume that she did but I don't
16 know.

17 56. Q. I assume you have seen a blank departure form
18 before?

19 A. Yes.

20 57. Q. Can you describe to us what it looks like,
21 what the contents are?

22 A. I'm going to say this based on my vague
23 recollection. I don't want to misrepresent the state of
24 my recollection of what the departure form contains. I
25 might be wrong. I'm going on the basis of what I recall.

1 If it's understood that that's what I'm doing then I will
2 respond.

3 58. Q. Please.

4 A. I believe that the departure form contains
5 different boxes and in the boxes personnel have to
6 acknowledge that they have returned all equipment, that
7 they have returned anything that they have taken from
8 Information Management or the library. They have to sign
9 that they have saved in RDIMS, like I said, all records of
10 business value, all records that are subject to any Access
11 to Information or Privacy requests, all records that are
12 subject to a litigation hold. They have to sign that they
13 have given back any credit cards, that they have given
14 back any keys.

15 The people that are in charge of each of these
16 elements, so IM, IT, Security, et cetera, have to sign off
17 that each of these steps have been taken before an
18 employee is allowed to depart. I think that is what it
19 looks like.

20 59. Q. Is this a form that is from the CTA or from
21 the Treasury Board?

22 A. I don't know. It is a CTA form and it's my
23 understanding that this form is in line with government
24 policy. I have personally had to sign this form at any
25 government that I have had. It is the same sort of form.

1 I've worked at three different places at the government
2 and I've had to sign that very type of form three times.

3 60. Q. Have you enquired with the IT what happens
4 with employees' electronic devices, including computer and
5 mobile devices, after they are returned?

6 A. I only asked if there was a policy and I
7 didn't receive a policy so I don't know what - I mean I
8 personally have received other people's phones so I assume
9 that - I'm talking about when I have returned a phone.

10 61. Q. I am asking specifically about Mr. Streiner
11 and Ms. Jones's situation.

12 A. I don't know. It's my understanding that
13 phones are re-issued to employees. As for Mr. Streiner's
14 and Ms. Jones's phones, I don't know.

15 62. Q. Do you know if they actually returned it?

16 A. They have to return it in order to be able to
17 leave the Agency. You're not allowed to take phones or
18 computers with you when you leave.

19 63. Q. I understand what the policy is but what I'm
20 asking is if in fact are you aware if they actually
21 returned their mobile devices.

22 A. No.

23 64. Q. Thank you. On this point of whether Ms. Jones
24 and Mr. Streiner actually returned their phones, we'll
25 actually request an undertaking that you verify they in

1 fact had returned their phones and what has been done with
2 the phones thereafter.

3 MR. SHAAR: We won't be making any undertakings
4 today, Mr. Lin. We will take your request under
5 advisement and get back to you.

A

6 MR. LIN: Thank you. I would ask the same for
7 their computers as well, not just their phones. Mr.
8 Shaar, you have that noted?

9 MR. SHAAR: Yes.

A

10 MR. LIN: Thank you.

11 65. Q. Ms. Cuber, you did mention a notification that
12 was sent out April 2020? Is that correct?

13 A. Yes. About the litigation, yes.

14 66. Q. You sent out that notification?

15 A. There are two notifications. One notification
16 is sent out whenever litigation is begun and then in this
17 instance, there was a separate notification to preserve
18 documents that were sent. Both of those notifications
19 were sent by Allan Matte.

20 67. Q. Do you know what date?

21 A. Yes. For both of them?

22 68. Q. For both of them. They were sent separately?

23 A. Yes. The first notification that went out was
24 sent on April 10th and legal counsel at the Agency has a
25 reporting policy so all of the heads of the branches and

1 all members and the Chair and the Director of
2 Communications are notified of new litigation and so that
3 notification was sent out. I think it was on April 10th,
4 2020. Separate notifications were sent out on April 14th,
5 2020, to notify staff that was identified at that time or
6 personnel that was notified or was thought to be relevant
7 at that time of the need to preserve documents. That was
8 April 14th.

9 69. Q. The April 14th notification that you just
10 mentioned, that's at paragraph 8 of your affidavit?

11 A. Yes.

12 70. Q. There you mentioned "to relevant Agency
13 personnel." Can you describe in this instance who the
14 relevant Agency personnel are?

15 A. Yes. The persons who were notified in fact
16 were the Chair, the Chief of Staff, and all members of the
17 Agency. That was one notification. A notification was
18 sent to the senior general counsel and secretary. That
19 was another notification. A notification was sent to the
20 Director of Secretariat and Registry Services, Patrice
21 Bellerose, and then the Director of Communications, which
22 I believe was Tim Hillier, was notified. I regret it was
23 unclear when I was first reviewing the documents for this
24 affidavit whether the Analysis and Outreach Branch had
25 been contacted but I wasn't able to find a written

1 notification that the Analysis and Outreach Branch was
2 notified and that would be Marcia Jones's branch and so I
3 regret that it seems misleading in my affidavit but that's
4 not intended. It was not clear at the time but I was not
5 able to find a written notification to Ms. Jones or the
6 Analysis and Outreach Branch.

7 71. Q. You listed six different branches or
8 departments for the notification. Was Mr. Matte's
9 notification in one email or was it six separate emails?

10 A. I don't know if it was six. Hold on. I think
11 it might have been four and they were separate.

12 72. Q. Ms. Cuber, I know you said you needed to
13 check. Are you reviewing the email on your screen?

14 A. No. I was counting on my fingers. I was
15 naming the people like a kindergartener.

16 73. Q. You were not able to find any written
17 notification to the Analysis and Outreach Branch?

18 A. No, I was not.

19 74. Q. Taking a step back, on the April 10th
20 notification that Mr. Matte sent out for litigation, who
21 were the recipients of that?

22 A. The recipients of that would have been the
23 Chair, all members, and then the heads of each branch so
24 there would have been - I don't have it in front of me but
25 I mean it would be Marcia Jones, Douglas Smith. Ms.

1 Lagacé would have received it. Like I said, the Director
2 of Communications would have received it. I'm not sure
3 who else. Everyone in Legal Services would have received
4 it and Secretariat, I believe, would have received that
5 notification as well.

6 75. Q. When you say everyone in Legal Services would
7 have received it, I assume you received it as well?

8 A. I wasn't working at the Agency at the time so
9 I did not receive it.

10 76. Q. Have you seen, yourself, the notification that
11 Mr. Matte sent on April 10th?

12 A. Yes. I didn't see the original. What was
13 saved in RDIMS was the original and then another email.
14 It was sort of together so I saw what he sent but then
15 another email as well that were in a string.

16 77. Q. In the email that Mr. Matte sent out, did he
17 attach a Notice of Application?

18 A. I don't know. That's why I want to be
19 careful. It is the practice of Legal Services to attach a
20 notification, to attach the document, but I don't know
21 that he did. What I can say is when I received the motion
22 under Rule 318 on January 4th, 2021, I sent a copy of that
23 to Ms. Jones and she reviewed that. She reviewed the
24 motion on January 5th, 2021.

25 78. Q. Thank you. In the notification Mr. Matte sent

1 on April 10th, does it make reference to preserving
2 documents?

3 A. No, I don't recall that it did.

4 79. Q. Did it mention what the substance of the case
5 was?

6 A. Yes.

7 80. Q. Can you tell us briefly what was said in terms
8 of the substance of the case?

9 A. It was a description of what was contained in
10 the Notice of Application, a summary.

11 81. Q. It would have been clear to a recipient what
12 the Notice of Application was about?

13 A. Yes.

14 82. Q. We started at the Direction to Attend and then
15 went forward a little bit. I want to take a few steps
16 back. What is your current title at the CTA?

17 A. I am a senior counsel.

18 83. Q. How long have you been in this role at the
19 CTA?

20 A. Since August 2020.

21 84. Q. To whom do you directly report to at the CTA?

22 A. Valérie Lagacé.

23 85. Q. Who does Ms. Lagacé report to?

24 A. The Chairperson.

25 86. Q. Have you have reported to Mr. Allan Matte?

1 A. No. Well, no. Sorry. I'm trying to remember
2 when he - no, I have never reported to Allan Matte.

3 87. Q. Were you the one tasked with ensuring that all
4 the documents in the October Order, the April Order, and
5 July Order are produced?

6 A. No.

7 88. Q. Who was tasked with ensuring that all
8 documents of the October Order, the April Order, and July
9 Order were produced?

10 A. I was tasked with ensuring that all documents
11 under the October Order were produced and then I stopped
12 being assigned to the case because I became an affiant and
13 so the responsibility for the April Order shifted between
14 - I don't actually know the chain of command for who was
15 responsible for the April Order. I informed myself about
16 what was done. I know that Amanda Hamelin was responsible
17 for collecting the responsive documents and so I suppose
18 it would be Amanda Hamelin, but it was not me.

19 Compliance with the July Order, I don't know that
20 anybody was specifically tasked with that. Legal counsel
21 undertook to provide the documents. I don't know that the
22 tasking was very clear.

23 89. Q. So is it correct to say you were not directly
24 involved in the gathering of documents and reviewing
25 documents for the April Order and the July Order?

1 A. That is correct. I was involved in a part of
2 the compliance with the July Order. Namely I was asked,
3 simply because others were on holiday, to verify whether
4 there were any additional members' notes for the Members'
5 Meeting that was in issue. It was March 24th of 2020. To
6 the extent that I participated, it was just to verify that
7 there were no other members' notes.

8 90. Q. Thank you. Who at the CTA provided you with
9 the authority to gather documents for the October Order?

10 A. I don't know that I had authority. It was
11 simply because I had carriage of the file, it fell upon me
12 to gather the documents, but I wasn't given a special
13 authority of any kind.

14 91. Q. Is it fair to say that whoever has carriage of
15 the file will be the one tasked with complying with the
16 order?

17 A. That's the de facto, I guess, responsibility
18 but yes. This situation was a little bit unique. I was
19 responsible for complying with the October Order. That's
20 what I can say. I was given no special authority or
21 permissions or powers in order to do that.

22 92. Q. After the April Order was issued, you became
23 an affiant and for a period of time Mr. Matte took over
24 the file? Do you recall?

25 A. Yes.

1 93. Q. And then Mr. Sharpe? Sorry. Please continue.

2 A. Mr. Matte took over carriage of the file for a
3 short while and then Mr. Sharpe.

4 94. Q. I am going to move back to the notification
5 that Mr. Matte sent on April 14th, 2020. Were you involved
6 at all in preserving documents in relation to that
7 notification?

8 A. No. There were no documents preserved at that
9 time in relation to that order. I'm sorry. There were no
10 documents collected at that time in relation to that
11 order. The instruction was simply to preserve the
12 documents.

13 95. Q. You said order. I assume you are referring to
14 the notification?

15 A. Right. I thought you said the order. I
16 misspoke. There was a notification that went out that
17 advised of the need to preserve documents in connection
18 with the Notice of Application.

19 96. Q. It's fair to say that there were no active
20 steps taken to actually preserve the documents? It was
21 only the notification that was sent out?

22 A. I don't know what individuals - individuals
23 were told to preserve documents. There were no active
24 steps taken to collect documents but the notification was
25 to preserve documents. Custodians of documents are to

1 preserve them.

2 97. Q. It was up to the individual recipient
3 themselves to take steps to preserve the documents? Is
4 that correct?

5 A. In the sense of not deleting them.

6 98. Q. Is that a yes? It is up to the individual
7 recipients themselves?

8 A. As far as I understand it but I don't know
9 that I - I didn't see any other instructions actually so I
10 might be making an assumption. I didn't see any further
11 instructions other than to notify personnel of the
12 existence of the Notice of Application and of the need to
13 preserve documents but I don't have any further
14 information about that. That's what I know of.

15 99. Q. Do you know if Mr. Matte took any other steps
16 in terms of preserving the documents besides sending out
17 the notification?

18 A. No.

19 100. Q. Did you speak with Mr. Matte specifically
20 about this topic?

21 A. I spoke with him and I understand that he
22 notified personnel to preserve documents but took no steps
23 to collect them.

24 101. Q. Did he take any steps to confirm that
25 documents are being preserved?

1 A. I didn't ask that but - I didn't ask him that.

2 102. Q. So it's fair to say that the only step he took
3 was to send out the April 10th notification and the April
4 14th notification about preserving documents?

5 A. Those are the two notifications of which I am
6 aware and that I was given when I requested documents on
7 that topic.

8 103. Q. Do you know if any of Agency personnel
9 responded to Mr. Matte's April 14th notification?

10 A. I am aware that there were - I think I saw
11 two. I am aware that there were responses. I can think
12 of two.

13 104. Q. Do you recall who those two were?

14 A. Ms. Bellerose responded and Mr. Hillier, who
15 was the Director of Communication.

16 105. Q. Did you see any other responses besides those
17 two?

18 A. I can't remember any other responses. It's
19 possible that there were but those are the two that I
20 recall.

21 106. Q. And you personally have seen their responses?

22 A. Yes, I have.

23 107. Q. We'll ask for an undertaking that you produce
24 those two responses.

25 MR. SHAAR: We'll take it under advisement and get

1 back to you.

2 MR. LIN:

3 108. Q. I'll take a step back. We just asked you
4 about the April 14th notification. About the April 10th
5 notification Mr. Matte sent out, was there any response to
6 that notification?

7 A. I didn't see any response to that
8 notification. That notification was saved on RDIMS
9 because it's a record of business value. I didn't receive
10 that information directly from Mr. Matte so I didn't see
11 anything else saved in the corporate repository but I also
12 did not ask Mr. Matte if anybody responded.

13 109. Q. Can I refer you to the Direction to Attend,
14 please? Number 1, we ask for the original notification
15 that was sent on April 14th, 2020, including the names of
16 the recipients. Number 2 is all the responses from the
17 recipients in respect of the notification mentioned
18 therein. Will you undertake to do search and produce
19 number 1 and number 2 to us?

20 MR. SHAAR: No, we won't make such an undertaking.
21 The Agency has already objected to the production of these
22 documents and the court has ruled on it.

23 MR. LIN: Your objection is solely that the court
24 has ruled on it?

25 MR. SHAAR: I'm not objecting. I've already

1 objected and the court has already ruled on it.

2 MR. LIN: I guess we will have to debate that in
3 court. Just to be clear, our position, the Applicant's
4 position is the court did not rule on it. The court
5 permitted the Applicant to question about these documents
6 and seek an order accordingly.

7 110. Q. Can I refer you to paragraph 12 of the
8 Direction to Attend, please? That is the Outlook system
9 logs showing when the following emails were deleted from
10 Ms. Marcia Jones's Outlook account; the first email being
11 a March 18th email from Mr. Colin Stacey and the second
12 email being email sent by Ms. Jones on March 25th, 2020.
13 Ms. Cuber, did you bring those two emails with you today?

14 A. The emails?

15 111. Q. Yes, the March 18th, 2020, and the March 25th,
16 2020.

17 A. I didn't bring the emails. The Direction to
18 Attend asks for the Outlook system logs.

19 112. Q. Did you bring the Outlook system logs with you
20 today?

21 A. No.

22 113. Q. Why not?

23 A. Because we don't have them. I can explain. I
24 contacted our Information Technology division twice. The
25 first time I contacted IT was on or around May 4th and I

1 was told at that time that we don't keep, that the Agency
2 doesn't keep, Outlook system logs to that level of
3 specificity and then I verified that answer again with IT
4 on September 13th and they again confirmed that the Agency
5 doesn't keep Outlook system logs to that level of
6 specificity, that when emails are deleted, if I
7 understand, when emails are deleted, they are kept for a
8 couple - a log is kept for a couple of minutes in the form
9 alphanumeric text which would be unreadable to use for an
10 outside observer and then they are deleted. We can't keep
11 the logs of that sort to that level of specificity.

12 114. Q. You said that level of specificity. Did IT
13 tell you what level of specificity logs are kept to?

14 A. No because the Direction to Attend said
15 Outlook system logs showing when the following emails were
16 deleted from Ms. Marcia Jones's Outlook account and so I
17 asked them whether Outlook system logs can show when
18 emails were deleted from an individual's Outlook account.

19 115. Q. Did you ask IT if there are any other ways to
20 determine when an email has been deleted from an Outlook
21 account?

22 A. I didn't ask that question. I am aware that
23 the Agency keeps backup tapes but for a very limited
24 period of time, as outlined in my affidavit. I can
25 explain that, if you would like, or I can leave it for a

1 question.

2 116. Q. Please explain it?

3 A. As it was explained to me, the backup tapes
4 that we usually have are kept on site for a period of 10
5 days and they are only meant for disaster recovery
6 purposes. Within that period, it might be possible to
7 locate an email that's been deleted if you know exactly
8 what it is you're looking for but it would be very
9 difficult to find, but as far as I understand it, it is
10 possible. After that 10-day period, the backup tapes are
11 moved off site and stored for a period of 12 weeks and
12 then they are returned to the Agency and the Agency
13 records over them again.

14 117. Q. In this instance, have you verified whether
15 the emails from March 9th to 28th, 2020, are still on the
16 Outlook tapes, the backup tapes?

17 A. No. No, I didn't because I believe that they
18 wouldn't be there because the October Order came out more
19 than 12 weeks after Ms. Jones left the Agency and there
20 were no signs of the email in the corporate repository
21 RDIMS and there were no signs of the email in the 3,000
22 emails that I reviewed or 5,099 pages of working copies
23 that I reviewed. Those were the steps I took to check for
24 the email but I didn't check on the backup tapes because I
25 didn't think that they would exist there because they

1 would have been recorded over.

2 118. Q. But there would have been a notification sent
3 out by Mr. Matte on April 14th, 2020, to preserve
4 documents, correct?

5 A. Yes, there would have been an email sent out
6 by Mr. Matte to preserve documents. That email was not
7 sent to Ms. Jones but the other difficulty in this is that
8 the majority of emails that are part of this litigation
9 could very well be considered to be transitory records and
10 so in the normal information practices, it could have been
11 perfectly normal for a person to delete the emails at the
12 end of the their day, at the end of the week, at the end
13 of the month.

14 119. Q. Just to take a step back on the April 14th,
15 2020 notification, you mentioned that a senior general
16 counsel of the Agency, Ms. Lagacé, would have received
17 that notification?

18 A. Yes.

19 120. Q. And she also was Secretary of the Agency? Is
20 that correct?

21 A. Yes.

22 121. Q. And she would have oversight over the IT
23 department, correct?

24 A. I don't think - I don't know that that is
25 true. I don't know.

1 122. Q. Who has oversight over the IT department?

2 A. I don't know what the chain of command is off
3 the top of my head. I don't know.

4 123. Q. Are you suggesting that the IT would have
5 overwritten on the tapes even though there is a
6 notification to preserve documents?

7 A. Sorry. I don't understand the question. Can
8 you repeat the question?

9 124. Q. Are you suggesting that IT has already written
10 over the tapes despite there being a notification on April
11 14th, 2020?

12 A. Well, I have no knowledge that those tapes
13 were preserved because of the litigation hold. I spoke
14 with IT and Ms. Bellerose about whether, for instance,
15 Access to Information requests will check back on tapes
16 and it's my understanding that it is not the practice that
17 backup tapes are searched in that context but I don't
18 know. I don't believe that we have backup tapes.

19 125. Q. Is it fair to say you haven't actually
20 searched the backup tapes for the March 18th, 2020, email
21 sent from Mr. Colin Stacey and the March 25th, 2020, email
22 sent by Ms. Marcia Jones that are mentioned in paragraph
23 12 of our Direction to Attend?

24 A. No, I have not searched the backup tapes
25 because for the March 18th email, there was no sign that

1 the email - I didn't check it for the March 18th email.
2 What I can say is that for the March 25th email, it was
3 clearly - they were both clearly deleted. I did not check
4 backup tapes, no.

5 126. Q. You say clearly deleted. How can you be so
6 sure they were clearly deleted?

7 A. For the March 25th, 2020, email, that email
8 contained search terms that would have been captured by
9 electronic searches of Outlook boxes, most specifically
10 Ms. Jones's Sent box, and so the items that were captured
11 in her Sent box did not reveal that email and that email
12 was not found in any other search results that were
13 obtained by Access to Information and so I think it's
14 pretty clear that it was deleted because otherwise it
15 would have been found.

16 For the March 18th email, it was not found through
17 any searches, nor was it located in RDIMS.

18 I would just add that both of those emails could
19 easily have been considered transitory records that did
20 not need to be kept because they were not records of
21 business value.

22 127. Q. Thank you. On the topic of the March 25th,
23 2020, email, how can you conclude that it's not of
24 business value when it's so detailed and lengthy and it
25 appears to be an announcement to third parties? How can

1 you conclude it's only transitory?

2 A. My understanding of transitory records is that
3 - sorry, records of business value - is that they have to
4 advance sort of the policy or a policy objective or
5 advance the work of a government organisation, and each
6 branch or department within the organisation will
7 determine what transitory records means to them. A
8 notification that something that has gone up on the
9 website and two decisions have been issued might not be
10 considered to be of business value. What would be
11 considered to be of business value are the decisions that
12 are cited in that notice and the item that was posted on
13 the website.

14 128. Q. Are you saying there is no consistent
15 interpretation or view of what transitory stands for and
16 it lies in the hands of the individual department heads to
17 decide?

18 A. No, I'm not saying that. There are obviously
19 definitions of what transitory records are but they can't
20 get into a level of detail. There is clear definitions
21 for what transitory records are and that is set out in our
22 Information Management policies and it's also, I believe,
23 based on Treasury Board policies but of course, whether an
24 individual record in an individual case will be transitory
25 or of business value will of course need to be determined

1 in context and the context that makes sense for that is
2 for the organisation to have an understanding and then
3 each branch that performs functions within the
4 organisation will have to have a common understanding of
5 what constitutes transitory records and records of
6 business value. The Agency certainly has sort of rules
7 about what records of business value are that are common
8 across the entire organisation and then there are specific
9 instances where of course, based on the type of work you
10 do, something will or will not be of business value.

11 129. Q. Since you mentioned that, in your view, the
12 two emails in paragraph 12 of the Direction to Attend were
13 clearly deleted, did you enquire with IT on whether those
14 emails could be searched or found in another fashion,
15 whether they could be restored?

16 A. I did not ask IT about that. I confirmed with
17 Patrice Bellerose that they were deleted and that they
18 couldn't be found. I had a conversation with IT about
19 backup tapes in the winter of 2021, I'm not sure exactly
20 when, about backup tapes. I imagine it would have been
21 after you sent a deficiency letter, I had a discussion
22 with them about backup tapes. It was my understanding at
23 that time that backup tapes could not be searched for
24 these documents.

25 130. Q. Why did they say backup tapes could not be

1 searched for these documents?

2 A. Because they are only kept for a matter of 12
3 weeks and then they are returned to the Agency and
4 recorded over.

5 131. Q. But there was no actual review of the tapes to
6 confirm whether that was indeed the case, correct?

7 A. No because it wouldn't have revealed the
8 emails which were sent in 2020 when Ms. Jones left the
9 Agency in May 2021. By the time I enquired about this in
10 December 2021, 12 weeks had elapsed.

11 132. Q. Did IT advise on any other way that emails
12 could be restored?

13 A. No. It's my understanding that there is no
14 other way. Unless it's saved in the corporate repository,
15 it can't be restored.

16 133. Q. Please continue.

17 A. We have emails that were saved as a result of
18 Access to Information searches that were done and so those
19 are emails that could also - I said unless it's saved in
20 the corporate repository but I should have added that
21 because there is sort of a snapshot taken of documents at
22 a point in time when they are searched, those can also be
23 reviewed and those were reviewed.

24 134. Q. Just at the start of today's cross-examination
25 you mentioned that former employees' Outlook accounts are

1 closed after they depart. Do you recall that?

2 A. Yes.

3 135. Q. Did you ask IT to specifically search Ms.
4 Jones's closed Outlook account after learning that these
5 two emails were deleted?

6 A. No. I asked IT what could be searched and her
7 accounts cannot be searched. It is closed. It cannot be
8 the subject of a search.

9 136. Q. What do you mean it cannot be subject of a
10 search?

11 A. It's closed. They can't - I guess like the
12 account is closed. She would have been required under
13 existing Information Management policies and IT policies
14 to save her records of business value in RDIMS to have
15 preserved - her records were collected in the context of
16 two Access to Information requests and preserved and she
17 would have been required to delete all of her transitory
18 records before leaving the agency such that the closure of
19 the account would, if it contained anything, contain only
20 transitory records or records that have otherwise been
21 saved in the corporate repository,

22 137. Q. The closed accounts, the contents are deleted?
23 Is that correct?

24 A. Well, the account is no longer accessible. I
25 guess you could say deleted. What I'm saying is the

1 contents of the account are supposed to be managed such
2 that records of business value are saved in the corporate
3 repository. Transitory records are deleted in the course
4 of ordinary information management per our policies and
5 then the account is closed so that there is nothing in it.
6 When an employee leaves, the account should contain
7 nothing in it.

8 138. Q. Have you checked with IT whether a closed
9 account can be restored?

10 A. I have asked whether Marcia Jones and Scott
11 Streiner's accounts can be searched and they cannot.

12 139. Q. I am not asking whether they can be searched.
13 I'm asking whether they can be restored.

14 A. I didn't use the word restored but it is my
15 understanding that they cannot.

16 140. Q. So they are permanently deleted? Is that what
17 you are saying?

18 A. I can't answer that. It's my understanding
19 that they can't be searched so as far as I understand, the
20 accounts are permanently closed.

21 141. Q. Ms. Cuber, my question is not closed or not.
22 It's whether they --

23 MR. SHAAR: We've done the tour of the question.
24 She has answered. She's not an IT specialist. She has
25 answered in the vocabulary that she understands on the

1 subject. I mean you've asked the same questions three or
2 four times now. Can we please move on?

O

3 MR. LIN:

4 142. Q. Ms. Cuber, the understanding is that closed
5 would mean that the account is permanently deleted?

6 MR. SHAAR: Again you are just repeating your
7 questions, Mr. Lin. She has answered you in the way that
8 she understands it. She is not an IT specialist so I
9 don't see how it is useful to just keep repeating the same
10 question and expecting a different answer.

O

11 MR. LIN:

12 143. Q. Ms. Cuber, were you about to answer a
13 question?

14 MR. SHAAR: She has answered your question.

15 MR. LIN: I believe she was about to say
16 something.

17 144. Q. Can you please finish your sentence?

18 A. It's just that my knowledge of information
19 technology is based on the questions that I asked of
20 Information Technology. It was my understanding that as
21 per our Information Management policies, Outlook accounts
22 are not corporate repositories and therefore when
23 departing employees are leaving, they have to save all of
24 their records of business value in the corporate
25 repository, delete any transitory records. After that,

1 their accounts are closed and they are no longer
2 available. I can't use synonyms for words because I'm not
3 sure what the implication - I'm telling you what I have
4 been told and that it was not possible to search in their
5 accounts and that is what I know. It was not possible to
6 search backup tapes because they would have been deleted
7 over and they would not have yielded any results and that
8 as per Information Management policies, both Ms. Jones and
9 Mr. Streiner were required to save their records of
10 business value in RDIMS.

11 145. Q. Between October 15, 2021, and the present,
12 have you attempted to contact Mr. Scott Streiner to
13 request documents or request his assistance in providing
14 or locating documents for the October Order or the April
15 Order or the July Order?

16 A. No.

17 146. Q. Between October 15, 2021, and the present, did
18 you attempt to contact Ms. Marcia Jones to request
19 documents or request her assistance in providing or
20 locating documents for the October Order, April Order, or
21 July Order?

22 A. No because we had already had an exchange in
23 January 2021 and I knew where to find responsive documents
24 and I knew the documents that she didn't have knowledge
25 of.

1 147. Q. What do you mean documents she didn't have
2 knowledge of?

3 A. She indicated that she had no knowledge of
4 anything like meeting minutes or memos on the subject of
5 the Statement on Vouchers and that responsive documents
6 had been collected in the context of Access to Information
7 searches.

8 148. Q. Did you confirm with Ms. Jones specifically
9 about the March 18th and 25th emails?

10 A. No because I had no knowledge of those in
11 January 2021.

12 149. Q. To take a step back, why did you not reach out
13 to Mr. Scott Streiner to seek his assistance in gathering
14 documents or finding documents?

15 A. He was not with the Agency anymore and I had
16 no reason to believe that he would have access to any
17 documents after his departure. I was tasked with finding
18 documents in the Agency's possession.

19 150. Q. In terms of Ms. Jones, after you learned that
20 those two emails were clearly deleted, have you made any
21 attempts to contact her to ask her if she could provide
22 assistance in locating the document or maybe she kept a
23 backup?

24 A. No because I had no reason to believe that she
25 would have kept a backup of those documents. I did not.

1 I didn't contact her.

2 151. Q. So you would not know when she deleted them or
3 why she deleted them, correct?

4 A. No but there are many reasons why somebody
5 might delete an email such as if they consider the email
6 to be --

7 152. Q. Ms. Cuber, we are not asking you to --

8 MR. SHAAR: I'm going to object because you're
9 asking the witness whether she knew what was in the state
10 of someone else's mind who deleted email. I think that is
11 a little beyond what we're here for today, Mr. Lin.

O

12 MR. LIN: Mr. Shaar, Ms. Cuber provided an answer
13 and I only objected because Ms. Cuber appears to be
14 speculating.

15 MR. SHAAR: Your question was speculative so let's
16 just leave it at that and move on, please.

17 MR. LIN: We disagree that the question was
18 speculative. Anyway, we'll ask our next question.

19 153. Q. Do you know if anyone else at the CTA
20 contacted Mr. Shreiner or Ms. Jones in regards to
21 gathering documents for the October Order, April Order, or
22 July Order?

23 A. I do not believe that anybody contacted Ms.
24 Jones or Mr. Streiner with respect to any of the orders.

25 154. Q. Let me move to your affidavit, paragraph 33.

1 Do you have that in front of you, Ms. Cuber?

2 A. Yes, I do.

3 155. Q. Here you say, "In addition to reviewing
4 documents from these three searches, on October 26th, 2021,
5 I contacted Lesley Robertson, Executive Coordinator of the
6 Office of the Chair and CEO of the Agency. Ms. Robertson
7 worked directly with the Chair, Scott Streiner, in March
8 2020."

9 You made that statement in your affidavit?

10 A. Yes.

11 156. Q. Can you tell us what Ms. Lesley Robertson's
12 work duties entailed back in March 2020?

13 A. I don't know exactly what her duties entailed
14 but I know that she had access to Mr. Streiner's scheduler
15 and that she also had access to documents and that in
16 practice she would have saved records into RDIMS and that
17 she would have access to correspondence involving Mr.
18 Streiner.

19 157. Q. You say access to Mr. Streiner's scheduler.
20 What is a scheduler?

21 A. I'm sorry. His Outlook calendar. I
22 apologise. She also had access to other members'
23 calendars so that's why I contacted her.

24 158. Q. At the time that you contacted her on October
25 26th, 2021, she still had access to Mr. Streiner's Outlook

1 calendar? Is that correct?

2 A. No.

3 159. Q. You just stated that she had access to Mr.
4 Streiner's Outlook calendar.

5 A. You asked me what her responsibilities were in
6 March 2020 and I am responding to your question which is
7 about what happened in October 2021. That's my
8 understanding of the flow of what was asked.

9 160. Q. Are you suggesting in October 26, 2021, when
10 you enquired with Ms. Robertson, did she have access to
11 Mr. Scott Streiner's calendar?

12 A. No.

13 161. Q. Why not?

14 A. Because his Outlook account was closed. It
15 was not there anymore.

16 162. Q. When you reached out to Ms. Lesley Robertson
17 around October 26, 2021, were you asking her to search for
18 anything in particular?

19 A. Yes, I was.

20 163. Q. What were they?

21 A. I asked Ms. Robertson - I explained to her
22 what the October Order was about and I also specifically
23 pointed to interest in meetings that would have occurred
24 the weekend of October 21-22 - sorry. I apologise. It
25 would have been March - I might need a break to get some

1 water - March 21-22, 2020, which was the weekend meetings
2 that had been referred to and so I was trying to obtain
3 information about those, the general scope of the order,
4 and also in particular meetings that might have occurred
5 on that weekend.

6 164. Q. What was Ms. Robertson's response in terms
7 your enquiry about the March 21 to 22 weekend meetings?

8 A. What was her response?

9 165. Q. Yes. What did she say?

10 A. She provided documents to me and I reviewed
11 the documents to determine if any of them were responsive
12 to the October Order.

13 MR. LIN: I know you mentioned that you needed a
14 break so maybe now is a good time to take a short break.
15 Just before we get off record, I just want to remind the
16 witness that you are still under cross-examination and we
17 ask that you not speak to anyone else about your evidence.
18 Would 10 minutes be sufficient?

19 THE WITNESS: That would be great.

20 MR. LIN: Let's return at 11:37. Thank you.

21 (SHORT RECESS)

22 MR. LIN:

23 166. Q. Ms. Cuber, document number 6 that I sent out
24 this morning, the CTA's Written Representations on
25 February 1st, 2022, you were counsel on this file at the

1 time?

2 A. Yes.

3 MR. LIN: Can we mark the Written Representations
4 as Exhibit 6, please?

5 **EXHIBIT NO. 6:** Written Representations of the
6 Intervener, Canadian Transportation Agency
7 (Pursuant to January 26, 2022, Direction of Justice
8 Gleason), February 1, 2022.

9 167. Q. Going back to your enquiry with Ms. Robertson
10 on October 26th, 2021, paragraph 33 of your affidavit, you
11 mention there at paragraph 34 that from your exchange with
12 Ms. Robertson she provided five documents, one of them
13 being from Air Transat on March 22nd, 2020. Can you
14 describe to us what other four documents were?

15 MR. SHAAR: Objection. Relevance.

16 MR. LIN:

17 168. Q. Ms. Cuber, is it correct to say you presented
18 Ms. Robertson with the October Order?

19 A. Yes. I explained to her what the October
20 Order contained so she had an idea. She knew what the
21 October Order was searching for and I also described in
22 addition to that the specific elements that your client
23 was interested in finding.

24 169. Q. Based on the search parameters that you
25 provided to Ms. Robertson, she returned with five

1 documents? Is that correct?

2 A. Yes.

3 170. Q. Referring to paragraph 35, you say you
4 reviewed each of these documents and determined that one
5 of the documents was responsive to the October Order?

6 A. Yes.

7 171. Q. On what basis did you conclude that they were
8 not responsive to the October Order?

9 A. On the basis of out of the temporal scope of
10 the Order or not being related to the Statement on
11 Vouchers. I will say though just out of transparency that
12 one of the documents was the scheduler for the Members'
13 Meeting on March 24th which I told in submissions to the
14 court I disclosed the existence of but at the time, based
15 on the review and searches that I had done at the time, it
16 appeared to be non-responsive but I disclosed its
17 existence.

18 172. Q. After the April Order was issued, did you go
19 back and revisit whether any of those four documents would
20 be responsive to the April Order?

21 A. Yes.

22 173. Q. And were they responsive to the April Order?

23 A. No.

24 174. Q. After the July Order was issued, did you go
25 back to confirm whether those four documents would be

1 responsive to the July Order?

2 A. No. There was no need to.

3 175. Q. Why do you say there was no need to?

4 A. The scheduler for the March 24th Members'
5 Meeting I believe was disclosed in response to the April
6 Order but no, there was nothing in the July Order that
7 changed or required a revisiting of those documents.

8 176. Q. Did those four documents mention any meetings
9 with Transport Canada between March 21st --

10 MR. SHAAR: Objection. Relevance.

11 MR. LIN: I haven't finished my question, Mr.
12 Shaar.

13 MR. SHAAR: I know but you're getting into the
14 contents of the four documents that weren't ordered
15 produced by this court.

16 MR. LIN: Mr. Shaar, the witness --

17 MR. SHAAR: I'm finishing my objection, Mr. Lin.
18 We've already objected to the production of the contents
19 of your original request for them in the Notice to Attend.
20 The court has ruled on that. These are documents that
21 were deemed not responsive. The scope of this cross-
22 examination is supposed to be the steps that were taken so
23 if you want to ask about the steps, go right ahead, but if
24 you want to get into the content of non-responsive
25 documents then we are embarking on a fishing expedition

1 and that's not what this cross-examination is for.

2 MR. LIN: Mr. Shaar, I had not finished my
3 question and the question is clearly within the scope of
4 cross-examination.

5 177. Q. Ms. Cuber, did any of those four documents
6 mention any meetings with Transport Canada between March
7 21st and 22nd, 2020? Yes or no?

8 A. No.

9 178. Q. And you have reviewed those documents and you
10 are certain of that?

11 A. Sorry?

12 179. Q. You have reviewed those four documents and you
13 are certain that there was no reference to meetings
14 between March 21st and 22nd with Transport Canada?

15 A. I conducted a search for those documents and
16 my search revealed no such documents. I searched for
17 documents that were responsive to the order and I was
18 aware of the interest in the meetings that you are
19 describing and my search revealed no such documents on
20 that weekend.

21 180. Q. You say no documents on that weekend?

22 A. Well, you're asking about that weekend so I am
23 responding about that weekend.

24 181. Q. Let's go back to Ms. Robertson. Is it fair to
25 say she's responsible for coordinating Mr. Streiner's

1 calendar?

2 A. It is my understanding but I don't know that
3 she is exclusively in control or in charge of the
4 calendar.

5 182. Q. But she would have access to it and she would
6 have assisted Mr. Streiner accordingly, correct?

7 A. That would have been one of her roles, yes.
8 This is why I approached her.

9 183. Q. Can we go to the Direction to Attend, please,
10 Exhibit 5, paragraph 14? The request that we made was
11 with reference to paragraph 38 of the affidavit, printouts
12 from the Outlook calendars for Mr. Scott Streiner and Ms.
13 Marcia Jones of the scheduled events between March 18th to
14 25th, 2020, including the weekend of the 21st and 22nd. Did
15 you bring those printouts with you today?

16 MR. SHAAR: We weren't required to bring them,
17 pursuant to the court's order.

18 MR. LIN:

19 184. Q. Ms. Cuber, have you made any enquiry with Ms.
20 Robertson on what events occurred on March 21st and 22nd,
21 2020, on Mr. Streiner's calendar?

22 A. When I approached Ms. Robertson, I was looking
23 for responsive documents and specifically those types of
24 responsive documents.

25 185. Q. Did you ask Ms. Robertson if she has any

1 specific recollection on meetings that occurred that March
2 21st to March 22nd weekend?

3 A. Did I ask her if she had any recollection?

4 186. Q. If she had any recollection whether Mr.
5 Streiner had meetings that weekend?

6 A. I asked her for documents and she returned
7 documents. That's what I asked her. I presented her with
8 the Order. She was aware that I was looking for documents
9 and she provided the documents that she had.

10 187. Q. My question is did you ask her if she has any
11 recollection of whether Mr. Streiner had meetings during
12 that March 21st to 22nd, 2020, weekend. That's my question.

13 A. I didn't ask if she had any recollection.

14 188. Q. Did you ask her if she has any other records
15 or maybe a physical printout of meetings that occurred
16 that weekend?

17 A. In none of my searches was I specific as to
18 the format that I was looking for. I was searching for
19 documents and I wasn't restrictive in any way about the
20 format of documents. I was never restrictive about other
21 formats or other - I was looking for responsive documents
22 and I obtained the documents from Ms. Robertson that she
23 gave me that I then reviewed.

24 In addition to that, I made requests for IT to
25 search across all Agency accounts in order to find

1 responsive documents. I'm sure we'll get to that but I
2 was searching for responsive documents from the people who
3 might have them and also in the broadest possible number
4 of places.

5 189. Q. Is it fair to say you didn't specifically ask
6 Ms. Robertson whether she has any records on March 21st or
7 March 22nd, 2020?

8 A. I absolutely asked that.

9 190. Q. Let's go back to your affidavit, paragraphs 32
10 to 36. At paragraph 36 you say there is a letter from Air
11 Transat dated March 22nd, 2020. Do you see that?

12 A. Yes, I do.

13 191. Q. I will also refer you to the seventh document
14 that I sent out this morning. Is this a letter that was
15 referred to in paragraph 36 of your affidavit?

16 A. This looks like the letter.

17 MR. LIN: Can we have this marked as Exhibit 7,
18 please?

19 **EXHIBIT NO. 7:** Letter from Jean-Marc Eustache of
20 Air Transat to Scott Streiner, March 22, 2020.

21 192. Q. Going back to your affidavit at paragraph 33,
22 you say, "In addition to reviewing documents from these
23 three searches." What are "these three searches" you are
24 referring to?

25 A. I am referring to the - sorry. I'm just going

1 back into my affidavit. I was referring to the two Access
2 to Information requests that were made in 2020 that
3 concerned the Statement on Vouchers as well as the
4 Standing Committee on Transport documents that were in our
5 corporate repository.

6 193. Q. The two Access to Information searches are
7 paragraphs 17 and 21 of your affidavit and the Standing
8 Committee on Transportation search was at 29 of your
9 affidavit?

10 A. Yes but the text is at paragraph 18 for the
11 first Access to Information request. The paragraph 23 is
12 the second one but yes, I am referring to it at 21 and
13 then 29 and 30 is the text of the Standing Committee
14 motion.

15 194. Q. Thank you. I will refer to paragraph 37 and
16 38 of your affidavit, please. Is Mr. Guindon the manager
17 of IT Services?

18 A. Yes. This is my understanding of his title.

19 195. Q. What is the difference between IT and
20 Information Management? Can you describe, please?

21 A. For the purposes of searching, Information
22 Technology searches in Outlook accounts and I believe that
23 Information Management searches in RDIMS for the purposes
24 of conducting searches but I'm not sure if your question
25 is broader than that.

1 196. Q. No. Thank you. Was Mr. Guindon the person
2 responsible for conducting the search of Outlook accounts
3 of Agency staff members?

4 A. Yes. I was put in touch with him in order to
5 conduct a search of that nature so yes.

6 197. Q. Can we look at document number 8, please?
7 Please let me know when you have it in front of you.

8 A. I have it.

9 198. Q. At the top we see your name there and then
10 there is a date, November 26th, 2021?

11 A. Yes.

12 199. Q. Our understanding is this corresponds to item
13 number 9 of the Direction to Attend that was provided to
14 us. Do you recognise this document?

15 A. I recognise the document. I believe it does
16 relate to item 9.

17 MR. LIN: Can we have this marked as Exhibit 8,
18 please?

19 **EXHIBIT NO. 8:** Outlook Search Report for November
20 26, 2021 search.

21 200. Q. While we're on this document, you see near the
22 middle of the page there's Items and then there's "799,
23 Estimated number of items was 799"?

24 A. Yes.

25 201. Q. Is that the same 799 that's mentioned at

1 paragraph 39 of your affidavit?

2 A. Yes.

3 202. Q. I understand this Exhibit 8 is an Outlook
4 search report. Is that correct?

5 A. Yes.

6 203. Q. Was this the only Outlook search report that
7 you had been working with for your document search?

8 A. This was the only search that I conducted and
9 this is the only search document that I am aware of for -
10 I don't know what "working with" means.

11 204. Q. Was this the only Outlook search report that
12 you relied on for your document gathering?

13 A. Yes.

14 205. Q. Thank you. Looking at this report, there's a
15 start time and there's an end time, November 26, 2021,
16 4:11 pm, and then end time is the same date at 4:14 pm.
17 Do you see that?

18 A. Yes.

19 206. Q. Based this start and end time, would you
20 believe that an Outlook search is rather simple to do?

21 A. I guess.

22 207. Q. Can I refer you to document number 9 that we
23 sent out this morning? The title in English is IM-IT ATIP
24 Records Retrieval Form?

25 A. Yes.

1 208. Q. Do you recognise this document?

2 A. Yes.

3 209. Q. Did you complete this document?

4 A. Yes, I did.

5 MR. LIN: Can we have this marked as Exhibit 9,
6 please?

7 **EXHIBIT NO. 9:** IM-IT ATIP Records Retrieval Form
8 for March 25, 2020 search.

9 210. Q. Now I will be asking you questions about
10 Exhibits 8 and 9 so if you have those handy, that would be
11 great. Just about this Exhibit 9, on what date did you
12 complete this form? Do you recall?

13 A. Hold on now. I sent it. It was a Friday at
14 the end of the day so I think it was November 19th. I sent
15 sort of a draft to IT for them to review because I had
16 never filled out a form like that before. I followed up
17 with them on November 22nd and then made some changes to
18 the form as a result of their comments. I would say I
19 completed it on November 22nd, 2021.

20 211. Q. The version that we have before us, is it the
21 version with IT's comments or the first version that you
22 completed?

23 A. No. This was the version with IT's comments
24 or as a result of IT's feedback.

25 212. Q. What was changed after IT provided their

1 feedback? Do you recall?

2 A. I added search terms in French.

3 213. Q. And that was the only change that was made
4 from before?

5 A. As far as I can recall.

6 214. Q. Just to go back to the form itself, there is
7 French terms highlighted in yellow. Those are additions
8 from IT? Is that correct?

9 A. I put the proposed additions in and
10 highlighted them in yellow so that they could be easy to
11 see.

12 215. Q. Thank you. On this form at the very bottom,
13 there is two what I understand are signature lines. Is
14 that correct?

15 A. Yes.

16 216. Q. Why is there no signature at the bottom from
17 IT or IM?

18 A. I don't know why there is no signature at the
19 bottom. What I can say is that in a search of this sort
20 for a litigation file is not the usual - like we don't
21 have a form for searching for things in litigation so I
22 used the ATIP form that they ordinarily use so it wasn't
23 signed. It just was IT needed a form.

24 217. Q. On the form on the second row is "MS Outlook
25 distribution list that represent the OPI group, Members of

1 this group will be included in the MS Outlook (MS
2 Exchange) search.” What does OPI stand for? Do you know?

3 A. In Access to Information terms, I believe OPI
4 stands for Office of Primary Interest which means the
5 branch or division or section of the Agency that would be
6 most likely to have response documents.

7 218. Q. In this row, you specify Agency-wide? Is that
8 correct?

9 A. Yes.

10 219. Q. Who would this include?

11 A. All staff and members.

12 220. Q. Does that include former staff or members?

13 A. No.

14 221. Q. Going to the search terms in green on the
15 form, other than the one highlighted in yellow, who
16 drafted those search parameters?

17 A. I wrote them down so I guess I drafted the
18 search parameters but I had an exchange with Information
19 Technology and I believe I had - no, I might not have had
20 verbal discussions. I had exchanges with them in order to
21 try to target what I was looking for.

22 222. Q. Is it fair to say they assisted you in coming
23 up with these search terms?

24 A. I asked for their assistance because I didn't
25 know how the searches worked and I wanted to have - I had

1 no idea how the search would work and so I needed
2 assistance just in understanding technically how it worked
3 and also I was expressing to them the sort of results that
4 I was looking for and I didn't know how to formulate how
5 to achieve those or how to express the results and they
6 basically needed a form to work with that would kind of
7 capture what was being sought and so to that extent, they
8 assisted.

9 223. Q. I'm looking back at search results, Exhibit 8.
10 The Query line is Refund or Voucher and in French the same
11 terms and COVID or Corona or Pandemic. That is reflected
12 in the first and second line of the parameters that you
13 provided. Do you see that?

14 A. Yes.

15 224. Q. How about the third, fourth, and fifth line?
16 Were separate searches run for those?

17 A. No, they were not run for those because as I
18 understood it, IT couldn't - well, no, they were not run
19 for those. They looked for the search terms and then if
20 anything came up, it would come up using the search term.

21 225. Q. So there was no specific search run for let's
22 say correspondence with Transport Canada during the
23 weekend of March 21st or 22nd, 2020?

24 A. Not in this search. It would have captured
25 anything that contained the search terms.

1 226. Q. But if it didn't contain the search terms as
2 drafted then it wouldn't be captured from this Outlook
3 search?

4 A. Exactly.

5 227. Q. Is it correct to say that this search form
6 only searched Outlook as it existed and it won't search
7 the Outlook backup tapes?

8 A. Exactly. That is correct.

9 228. Q. Let's go back to Exhibit 8 and in particular
10 the results row. I see in my version it's redacted. Can
11 you describe to us what has been redacted?

12 A. Yes, I can describe to you what's been
13 redacted. What's been redacted is an alphanumeric line,
14 the entirety of which taken together contains sensitive IT
15 information that could be used for hacking.

16 229. Q. Would it be fair to say that this deals with
17 search results?

18 A. I spoke with Information Technology about this
19 on two occasions and I raised that very concern with them.
20 I spoke to them on September 9th about what it was that was
21 sensitive in those lines, so I obtained an explanation of
22 that but when I returned to them to confirm that on
23 September 13th, I raised the question of the unfortunate
24 term results and they agreed that a better term for that
25 would be path but this is a search term or that the

1 parameters on the left-hand side of that report are
2 determined by Microsoft and not by them.

3 230. Q. You say you received an explanation from IT
4 about it being sensitive. What was their explanation?
5 Can you tell us?

6 A. Yes. I can tell you that the first part of
7 the line contains a path that would give information about
8 the Agency's infrastructure and the second part of the
9 line contains a link to the mailboxes or mailbox in which
10 search results like this are kept and those mailboxes have
11 restricted access so that not everybody can look at them.
12 The first part of the line is a pathway towards
13 infrastructure that is apparently custom made by the
14 Agency and the second part of the line contains a pathway
15 towards a mailbox.

16 231. Q. Whose mailbox or mailboxes would that be in
17 this case?

18 A. As I understand it, it's the search mailbox so
19 when IT does searches like this in Outlook accounts, the
20 search results go into this mailbox and then only certain
21 people are permitted to look at the results. I was given
22 access to the search results in this mailbox and so the
23 line contains information about that, about where in the
24 infrastructure and where the mailbox is.

25 232. Q. The path would only be accessible from within

1 the CTA? Is that correct?

2 A. I have no idea. I can't answer that. They
3 told me that it would present a hacking risk so I assumed
4 that it should not be made public. I don't presume that
5 it should not be made public. I discussed with them
6 whether there was something sensitive from a public
7 perspective and that's what they told me so I have to
8 assume it has sensitive information that presented a
9 hacking risk to the public.

10 233. Q. Let's move further down the first page of the
11 form. There's a start date and there's an end date there.
12 Do you see that?

13 A. Yes.

14 234. Q. The start date is March 9th, 2020, and the end
15 date is March 25th, 2020?

16 A. Yes.

17 235. Q. Those correspond to the date range that you
18 provided on the form? Do you see that on the form on the
19 left side?

20 A. Yes.

21 236. Q. Going back to the search results, the start
22 date March 9th, 2020, at 4:00, -4, end date March 25th,
23 4:00:59 am, -4, -4 time zone, that would be the Eastern
24 Time Zone? Do you agree?

25 A. I guess so. I defer to you.

1 237. Q. We understand from the records that have been
2 disclosed that the Statement on Vouchers was published or
3 released sometime in the afternoon on March 25th, 2020.
4 Would you agree?

5 A. Yes. I don't know the exact time but it was
6 in the afternoon.

7 238. Q. Perhaps to put this in context, document
8 number 10, we have an email from Mr. Streiner on March
9 25th, 2020, at 1:35 pm, with final edits on the Statement
10 on Vouchers. Do you see that?

11 A. Where are you looking?

12 239. Q. Document number 10.

13 A. Yes.

14 240. Q. On the second page there is a line that
15 appears to be a tracked change that was added "24 months
16 would be considered reasonable in most cases." This was
17 sent out at 1:35 pm on March 25th, 2020?

18 A. Yes.

19 MR. LIN: Could we have this marked as Exhibit 10,
20 please?

21 **EXHIBIT NO. 10:** Email from Scott Streiner to
22 Marcia Jones, March 25, 2020, 1:35 pm, Statement on
23 Vouchers.

24 241. Q. Let's go back to the search results. Ms.
25 Cuber, just on the topic of Exhibit 10, you recall seeing

1 this document previously, this email?

2 A. I believe this document was released as part
3 of the December 14th disclosure so I must have seen it.
4 It's out of context but I believe I would have.

5 242. Q. Fair enough. Let's go back to Exhibit 8, the
6 search results. Based on the end date here, March 25th,
7 2020, 4:00 am Eastern Time Zone, this Outlook search would
8 not have captured any activity after 4:01 am on March 25th?
9 Would you agree?

10 A. That's probably true.

11 243. Q. Why was the end time set at 4:00 am on March
12 25, 2020?

13 A. I don't know. I didn't ask for that but I
14 didn't - I don't know.

15 244. Q. When did you first learn that it was set at
16 4:00 am?

17 A. Moments ago.

18 245. Q. I assume there was no request to IT to ensure
19 that the search captured the full day of March 25th, 2020?
20 Is that correct?

21 A. No. I assumed that - I didn't know that they
22 would pick time so I just put the date range. If I can -
23 anyway, you might get to it in your questions.

24 I would note that that document was found as a
25 result of previous electronic searches that span all the

1 way into April at the very least, so April 8th or 9th, so as
2 a result of other searches that were done, that document
3 was found.

4 246. Q. To be clear, those other searches you are
5 referring to, you are referring to the ATIP searches?

6 A. Yes.

7 247. Q. And those had different search terms? Do you
8 agree?

9 A. Yes.

10 248. Q. In terms of search terms that you drafted,
11 Refund or Voucher, same terms in French, and COVID or
12 Corona or Pandemic, that search did not capture the whole
13 time period that the court had required?

14 A. I guess that's true.

15 249. Q. Let's go back to the search query. I'm
16 looking at the search query on Exhibit 8. The query says
17 Refund of Voucher, the same in French, and COVID or Corona
18 or Pandemic. Do you know if this search was limited only
19 to the subject field of Outlook items or the body of
20 emails or did it also include the content of attachments?

21 A. It included the subject, the body, and the
22 content of attachments.

23 250. Q. Thank you. You might need to zoom in a little
24 bit to see this but let's look at the query. There is no
25 space between the Refund and the Or. Have you enquired

1 with IT whether this would affect search results in any
2 way? It's presumably a different word.

3 A. Yes, I have enquired with IT about whether
4 that would have affected the search results and indeed it
5 would have. It would have looked for the word Refund*Or.

6 251. Q. When did you make that enquiry?

7 A. I was enquiring about this last week when I
8 noticed it.

9 252. Q. After you learned about it and enquired, did
10 you run a further search with the proper spacing?

11 A. No. I didn't think it was necessary because
12 there were over 3,000 emails that had been collected and
13 reviewed in the context of complying with the court's
14 order. There was a 5,099-page working copy of documents
15 concerning or containing the word Voucher or Statement
16 that had been collected in different ways in the context
17 of ATIP searches. There were additional searches done in
18 April in response to the April Order and I had made
19 enquiries with various people in the Agency and so no
20 additional search was done.

21 253. Q. You said there was an additional search in
22 April. Who conducted that search?

23 A. Amanda Hamelin conducted the search.

24 254. Q. Do you know if she ran a similar Outlook
25 search like the one we see here?

1 A. No. She ran a different type of search.

2 255. Q. What was the different type of search? Can
3 you describe it?

4 A. Yes, I can. She contacted the invitees to
5 Executive Committee Meetings and Members' Committee
6 Meetings and she asked a series of questions aimed at
7 obtaining responses and documents.

8 256. Q. Did she get responses from every one of those
9 invitees?

10 A. Everyone who works at the Agency, yes. She
11 ensured that each person who was contacted provided their
12 response, yes.

13 257. Q. Did those people provide documents in
14 response?

15 A. Yes, if they had documents but if they didn't
16 have documents, they said, "I have no documents."

17 258. Q. And those documents were reviewed?

18 A. Yes.

19 259. Q. Who reviewed them?

20 A. Counsel reviewed them.

21 260. Q. Would that be you?

22 A. No.

23 261. Q. I assume that would be Mr. Sharpe?

24 A. I think it would have been Mr. Matte.

25 Actually, I don't know. I wasn't - I think it would have

1 been Mr. Matte.

2 262. Q. Taking a step back on this Outlook search that
3 you've conducted, do you know if this Outlook search would
4 have captured calendar items or is it just emails?

5 A. Yes. I specifically ensured that it would
6 have captured calendar items.

7 263. Q. Thank you. Let's go to document number 11,
8 please. We had some brief discussions about it earlier
9 today. It's an email to Colin Stacey, March 18th, 2020, at
10 5:28 pm. Do you see that?

11 A. Yes.

12 264. Q. Do you recall this email being disclosed as
13 part of the disclosure from the Agency?

14 A. Yes. I believe it was disclosed - it was part
15 of the December 14th disclosure but I can't remember if
16 this was disclosed a little bit later than that because of
17 possible privilege claims but yes, I recognise this. It
18 was in response to the October Order.

19 MR. LIN: Can we have this marked as Exhibit 11,
20 please?

21 **EXHIBIT NO. 11:** Email from Marcia Jones to Colin
22 Stacey, March 18, 2020, 5:28 pm.

23 265. Q. Just scrolling down, we see an email from Mr.
24 Stacey March 18th, 2020, at 2:57 pm. Do you see that?

25 A. Yes, I do.

1 266. Q. This is the email that's described at
2 paragraph 12(a) of the Direction to Attend? The Direction
3 to Attend is Exhibit 5.

4 A. Yes.

5 267. Q. You agree that's the email that is described
6 at 12(a)?

7 A. The 2:57 pm email, it is my understanding that
8 that is what you are referring to at 12(a).

9 268. Q. The email that Mr. Stacey sent out at 2:57 pm?

10 A. Yes.

11 269. Q. We had this discussion earlier that this
12 original email from Mr. Stacey was clearly deleted. Do
13 you recall that?

14 A. Yes.

15 270. Q. Let's go back to the search terms in Exhibit
16 8, the search query. Would you agree with me that this
17 query would not have captured, would not have found the
18 original email because Mr. Stacey's email does not contain
19 the word COVID or Corona or Pandemic?

20 A. I think you're right. It would not have
21 captured that email with those search terms. What I did
22 to make sure that I wasn't wrong in saying that the email
23 was deleted was that I looked through the documents that
24 we had collected and I looked myself and spoke with staff
25 to ensure that looking for the actual names Colin Stacey

1 and Marcia Jones in RDIMS would reveal whether there was
2 the original email in RDIMS and I also searched by using
3 "From MinO" because you see the title is kind of an usual
4 title that wouldn't be expected to get very many hits if
5 searched in RDIMS and the only search I had was the
6 document that was disclosed.

7 271. Q. You mentioned that you search "From MinO."
8 Why did you conduct that search?

9 A. If you look at the title, it says "Forward:
10 From MinO," the subject line. I searched for any document
11 that would contain that and I got search results but it
12 was just this.

13 272. Q. You're saying you did a search but are you
14 saying you searched within the body of documents you
15 already had or are you conducting a new search in RDIMS or
16 --

17 A. In the corporate repository of RDIMS.

18 273. Q. But you did not conduct a new Outlook search
19 based on "From MinO," correct?

20 A. No, I did not.

21 274. Q. And you also did not conduct a search for
22 Colin Stacey or just Stacey during that time period, March
23 9th to 25th, 2020, correct?

24 A. No because Marcia Jones's account would not
25 have been searchable so the places to look would have been

1 in the existing documents that she referred me to when she
2 was still employed at the Agency which were the ATIP
3 documents and then the RDIMS repository in case there was
4 anything that was placed in there.

5 275. Q. If we look back at Exhibit 11, yes, the
6 original email Ms. Jones was the only recipient but
7 thereafter Ms. Jones seems to have copied a number of
8 individuals. Some of them appear to be employees of the
9 Agency, correct?

10 A. Yes.

11 276. Q. Can you tell us for certain that Mr. Stacey
12 did not respond to this March 18th, 2020, email?

13 A. What would have come up in a search -
14 actually, it's very unfortunate that the "Refund or"
15 wasn't captured because of the typo but what ended up
16 being captured was the word Credit in English because you
17 will see in French the word Crédit means voucher and the
18 system can't actually account for any accents so it looks
19 for the word Credit and so I assume it would have captured
20 the word Creditors which is in Mr. Stacey's email and it
21 didn't capture that because there is the word COVID in the
22 top here, COVID-19, and there's the word Creditors down
23 here. Presumably it would have captured anything else
24 that was in anybody's Outlook account at that time.

25 277. Q. But the word Refund was not searched, correct?

1 A. No. That's true at that time but there were
2 other searches done and in different ways, both by asking
3 individuals for responsive document and by searching for
4 other search terms.

5 278. Q. But this specific query that you asked to be
6 searched would only have the word Voucher and Rembourse or
7 Crédit in French and COVID, Corona, or Pandemic, correct?

8 A. This search contained those search terms.

9 279. Q. And there were no specific searches for emails
10 to and from Mr. Stacey during the March 9th to 25th, 2020,
11 time period?

12 A. There was a specific search done in the
13 corporate repository.

14 280. Q. But there was no specific search done for
15 Outlook?

16 A. No.

17 281. Q. Have you taken steps to enquire of Mr. Stacey
18 about retrieving that original email that Mr. Stacey sent
19 at 2:57 pm on March 18th, 2020?

20 A. No, I have not.

21 282. Q. Why not?

22 A. Because that email was found in the collection
23 of documents that Transport Canada had provided as part of
24 the Standing Committee disclosure and so presumably if he
25 had the original, he would have produced it as part of

1 that disclosure package since they produced this document.

2 283. Q. But you have not made a specific enquiry with
3 Mr. Stacey or with Transport Canada about the original of
4 this email, correct?

5 A. No because my interpretation of my role was
6 that under Rules 317 and 318 of the Federal Court Rules
7 was that I was to produce documents in the Agency's
8 possession and so I wouldn't possess Mr. Stacey's
9 documents.

10 284. Q. I understand the answer is that you did not
11 make a specific enquiry.

12 A. No.

13 285. Q. Thank you.

14 A. Of Mr. Stacey, I did not.

15 286. Q. How about anyone else at Transport Canada?
16 Did you make a specific enquiry?

17 A. I made no enquiries with anyone at Transport
18 Canada.

19 287. Q. You assumed that Transport Canada didn't have
20 the original email just because they did not produce it in
21 their disclosure bundle? Is that correct?

22 A. I can say that they didn't produce it. I
23 didn't contact them because that wasn't my job but I noted
24 that that email wasn't part of their bundle and it also
25 wasn't part of any of the search results that I had or any

1 of the searches that were conducted.

2 288. Q. So based on that, you presumed that the
3 original did no longer exist?

4 A. I guess I shouldn't have presumed that. That
5 might have been wrong of me to have. I think I might have
6 said that. I think I said I knew that it would have been
7 disclosed if they had it but I have no knowledge of what
8 Transport Canada does so maybe I was talking out of
9 school.

10 289. Q. Let's go back to Exhibit 11. At the top it
11 says, "Hi Colin. I am sending this unencrypted as our
12 remote network access is patchy and we are not able to
13 open encrypted emails on our Samsungs at the Agency."

14 Do you see that?

15 A. Yes.

16 290. Q. Did you look into why Ms. Jones was referring
17 to encryption there?

18 A. No.

19 291. Q. Did you enquire with IT why there is reference
20 to encryption?

21 A. No.

22 292. Q. Is it the CTA's policy to send emails
23 encrypted?

24 A. I am aware of no policy by which the Agency
25 sends encrypted email.

1 293. Q. Right here we see Ms. Jones saying, "I am
2 sending this unencrypted as our remote network access is
3 patchy." It seems to suggest that Ms. Jones would have
4 sent encrypted emails on her own previously. Do you
5 agree?

6 A. I can't make that assumption. I don't know
7 why she said that. I can't speak to why she said that.

8 294. Q. Did you enquire with IT what the policy is in
9 terms of encrypting emails?

10 A. No.

11 295. Q. Did any of the search results that were
12 returned, the 799 search results, did they reveal any
13 encrypted emails?

14 A. I'm not aware of the distinction between
15 encrypted and unencrypted emails. I read the document and
16 I don't know if I would be able to tell the difference
17 between an encrypted and unencrypted email based on the
18 search results that I received. I didn't have to
19 unencrypt any emails in the search results that I
20 obtained.

21 296. Q. Just to be clear, you did not enquire with IT
22 about encrypted emails? Is that correct?

23 A. I didn't enquire with IT about this email and
24 its encryption. I just got email results and I looked at
25 the email results and I am not aware of whether there are

1 encrypted or unencrypted emails from among the search
2 results. Like I don't know how I would tell the - I don't
3 know how to tell the difference from within the search
4 results that I obtained.

5 297. Q. You said from the search results you obtained
6 you didn't have to unencrypt anything. Is it fair to say
7 that the search results you received were all unencrypted
8 emails?

9 A. I don't know because I received things that
10 were in PDF format and I received - I didn't receive just
11 emails. I received packages of documents and there were
12 collections in RDIMS and so I don't know if I would tell
13 if one of those were encrypted or not. I reviewed all
14 emails and I have no knowledge that any document was an
15 encrypted document or not.

16 298. Q. Just to be clear, I'm referring to the Outlook
17 search that you requested that is at Exhibit 8. In your
18 review of that search, there was no requirement for you to
19 unlock or unencrypt any of the Outlook items, correct?

20 A. Correct. I don't recall having to unlock any
21 encrypted items.

22 299. Q. No enquiries were ever made with IT about
23 searching encrypted emails? Is that correct?

24 A. I didn't have to make an enquiry with IT about
25 searching encrypted emails because I didn't come across

1 any encrypted email.

2 300. Q. From what we see here in Ms. Jones's response,
3 it is suggesting that Mr. Stacey's original email was
4 encrypted. Do you agree?

5 A. That could be the case.

6 MR. SHAAR: You seem to be getting into the
7 content of documents and not the search that was performed
8 by the affiant. If you want to phrase your question as a
9 search that was being performed then I think she has
10 answered you anyway but now we're getting into the
11 contents of documents which I think exceeds the scope of
12 this cross-examination.

13 MR. LIN: Mr. Shaar, respectfully, we're asking
14 about encrypted versus non-encrypted emails and that is
15 well within the scope of --

16 MR. SHAAR: Then you can ask her about those but
17 if you want to talk about what the content of this email
18 says - again, feel free to ask about encrypted emails. I
19 think she has answered you the best she can but you're
20 going into a specific email and you're asking her to
21 confirm or not confirm what's written in this email. I
22 think getting into the content of the documents here is
23 outside the scope of what she did to answer the court's
24 orders.

25 MR. LIN:

1 301. Q. Ms. Cuber, is it correct to say that you did
2 not ask IT to do a specific search for encrypted emails?

3 A. I did not ask them to do a specific search for
4 encrypted emails.

5 302. Q. Do you know if IT has any policy in terms of
6 encrypted emails?

7 A. No.

8 303. Q. Were you informed of any policies in regards
9 to encrypted emails?

10 A. No.

11 MR. LIN: I see that we're heading into lunchtime
12 so maybe this is a good time to break for lunch. Would 45
13 minutes be sufficient?

14 MR. SHAAR: That's fine with me.

15 MR. LIN: Is everyone else okay with 45 minutes?

16 THE WITNESS: Yes.

17 MR. LIN: How about we return 45 minutes from now,
18 1:15 Toronto time? Just before we break for lunch, Ms.
19 Cuber, same thing as before. We ask that you not speak
20 with anyone about the evidence. Thank you.

21 (LUNCH RECESS)

22 MR. LIN:

23 304. Q. Ms. Cuber, can we go back to Exhibit 8,
24 please, the search results? From our discussion before
25 lunch, we know that there were some concerns with these

1 search results, namely the query Refund*Or, an issue with
2 the spacing, and also the end date not capturing the full
3 extent of the time, namely March 25th, the day when the
4 Statement on Vouchers was issued. Also in looking at Mr.
5 Colin Stacey's March 18th email, we noticed that his
6 original email did not have the key words COVID, Corona,
7 or Pandemic. Do you recall that?

8 A. Yes. I'm looking for that email.

9 305. Q. His email is Exhibit 11 at the bottom. We see
10 those three concerns, one being the spacing between
11 Refund*Or and the additional parameters COVID, Corona and
12 Pandemic, and the end date not capturing the full time
13 period, those three concerns. We are requesting an
14 undertaking to do an Outlook search with these three issue
15 rectified, namely the spacing between Refund*Or with
16 proper spacing, without the additional parameters COVID,
17 Corona, Pandemic, and also the end date being March 25th,
18 11:59 pm in that triple time zone. Mr. Shaar, I assume
19 you have that noted?

20 MR. SHAAR: Can you repeat it? I'm taking it
21 down.

22 MR. LIN: A new Outlook search similar to Exhibit
23 8 but without the three issues that I identified, one
24 being the spacing between Refund*Or, and without the
25 parameters COVID or Corona or Pandemic, and also with the

1 correct time period up until the end of day March 25th,
2 2020. We request that you do a search with the revised
3 parameters and produce to us any documents from the search
4 that have not already been produced.

5 MR. SHAAR: We'll take it under advisement. I
6 have concerns that if the search terms are limited to
7 Voucher or Refund, that that is going to include an
8 incredible amount of documents at the Agency given the
9 nature of our business. I would also point out looking at
10 the email that the word Voucher is included so the email
11 from Mr. Stacey would have been captured by the search in
12 its current terms. We will take it under advisement but I
13 raise those concerns with you now.

A

14 MR. LIN: Mr. Shaar, just to be clear, Mr.
15 Stacey's email did not have the terms COVID, Corona, or
16 Pandemic so Mr. Stacey's original email or emails similar
17 to Mr. Stacey's would not have been captured in this
18 search.

19 MR. SHAAR: It was nonetheless produced.

20 MR. LIN: Well, we can't say what other emails
21 would there be without actually doing the search and that
22 is our request. If there is any concern about there being
23 an excessive amount, we see that the time required to do
24 the initial search does not seem to be significant. It
25 takes three minutes, according to the search. That is our

1 request on the record. We request an undertaking for
2 that.

3 MR. SHAAR: I'll take it under advisement and
4 we'll look into your request.

5 MR. LIN: We are certainly open to revising the
6 undertaking if it produces too many results.

7 306. Q. Ms. Cuber, can we go to document number 12,
8 please? This is an email from Mr. George Petsikas, March
9 25th, 2020, at 3:18 pm, to Ms. Jones. Do you recall this
10 email?

11 A. I believe that it was produced in December
12 2021.

13 MR. LIN: Can we have this marked as Exhibit 12,
14 please?

15 **EXHIBIT NO. 12:** Email from George Petsikas to
16 Marcia Jones, March 25, 2020, 3:18 pm.

17 307. Q. When we scroll to the bottom below Mr. George
18 Petsikas's response, we see an email from Ms. Jones at
19 2:34 pm that is sent from Ms. Jones to herself, copied to
20 Ms. Caitlin Hurcomb and Mr. Allan Burnside. Do you see
21 that?

22 A. Yes.

23 308. Q. This is the email that is referred to in
24 paragraph 12(b) of the Direction to Attend? Is that
25 correct?

1 A. Yes.

2 309. Q. We see here that Mr. George Petsikas was not
3 in the To recipients list or the CC recipients list. Do
4 you agree?

5 A. Yes.

6 310. Q. Also look at document 13, please. This is an
7 email from Jason Kerr at CAA on March 25th at 4:11 pm. Do
8 you recall seeing this email previously?

9 A. I believe this was also produced in December
10 2021.

11 311. Q. When we scroll down, we also see an email,
12 this time from Air Consultations?

13 A. Yes.

14 312. Q. It is sent March 25th, 2020, at 4:01 pm?

15 A. Yes.

16 313. Q. We also see that Mr. Kerr was not on the To
17 list or the CC list. Do you agree?

18 A. Yes, I agree.

19 314. Q. Do you agree that this email would be captured
20 by paragraph 12(b) of the Direction to Attend?

21 A. The email --

22 315. Q. Exhibit 13.

23 A. Yes. Well, hold on. It is certainly an
24 update. I had never noticed that it was sent by Air
25 Consultations.

1 MR. LIN: That's my next question. Before we do
2 that, can we mark Exhibit 13, please?

3 **EXHIBIT NO. 13:** Email from Jason Kerr to Marcia
4 Jones, March 25, 2020, 4:11 pm.

5 316. Q. We see between Exhibit 12 and 13 that the time
6 was a little different. The first one, Exhibit 12, was
7 sent at 2:34 pm from Ms. Jones's account directly and then
8 Exhibit 13 was sent from Air Consultations about an hour
9 and a half later. Do you see that?

10 A. That would appear to be so, yes.

11 317. Q. Was it your understanding previously that it
12 was only an email sent from Ms. Jones? I see that you
13 were a bit surprised when we looked at the Air
14 Consultations reference.

15 A. Yes. I had never noticed that. In any event,
16 the reason I produced these documents was because they
17 were responsive to the court's order but I didn't - they
18 would have been responsive to the court's order no matter
19 what so they were produced.

20 318. Q. Just taking a step back, Exhibit 13, Air
21 Consultations, what is that precisely? Do you know?

22 A. No, I don't know.

23 319. Q. Who controls that mailbox? Do you know?

24 A. No, I don't know.

25 320. Q. Do you know which department would have

1 controlled that mailbox?

2 A. No, I don't know.

3 321. Q. We know that Ms. Marcia Jones left the CTA but
4 do you know if this Air Consultations mailbox is still
5 active?

6 A. No.

7 322. Q. You don't know --

8 A. I don't know but this email should have come
9 in an electronic search that was done in November 2020
10 because it contains search terms that were used for an
11 electronic search of mailboxes at that time. I mean I
12 presume that it would have been captured but I don't know
13 that mailbox. I just looked for documents and produced
14 the ones that were responsive.

15 323. Q. We will request an undertaking that you search
16 this mailbox for the original email that we sent March
17 25th, 2020, at 4:01 pm, that would contain the BCC list of
18 recipients. Mr. Shaar, I assume you noted that request?

19 MR. SHAAR: Yes. We'll take it under advisement.

20 MR. LIN: A further request is we see that there
21 is two emails, one documented in Exhibit 12 and one
22 documented in Exhibit 13. I would ask that you also
23 confirm how many such emails with this subject line,
24 "Update: CTA measures" --

25 MR. SHAAR: Can you slow down a bit, please, Mr.

A

1 Lin?

2 MR. LIN: Sure. We see from Exhibit 12 and 13
3 that there is at least two emails sent out under this
4 subject line.

5 MR. SHAAR: Let's start with Exhibit 12. What is
6 it you want from Exhibit 12?

7 MR. LIN: It's not specific to Exhibit 12. Can
8 you let me finish, please?

9 MR. SHAAR: Yes.

10 MR. LIN: From the two exhibits we see, there's
11 two emails sent out during the course of March 25th, 2020,
12 with this subject line. Our request is for you to confirm
13 how many such emails were sent out and whether these two
14 were the only two emails that were sent out. In other
15 words, did Ms. Jones send out another email on that day at
16 a different time with this subject line or did Air
17 Consultations send out the same email with the same
18 subject line on that day, and to produce to us the
19 original copy of those emails.

20 324. Q. Ms. Cuber, based on your reaction earlier, is
21 it correct to say that you haven't specifically searched
22 in the Air Consultations mailbox?

23 A. I haven't specifically searched in the Air
24 Consultations mailbox. What was searched was the words
25 Statement On Vouchers and Statement and Vouchers

A

1 throughout the corporate repository and in Agency
2 mailboxes, and individuals at the Agency were asked to
3 provide their responsive documents. That's what was done.
4 I have not specifically looked in that mailbox and I don't
5 know what it - I don't have details about it.

6 325. Q. Do you know if it's still active and
7 operational?

8 A. I don't know anything about that mailbox.

9 326. Q. But you knew that mailbox existed? Is that
10 correct?

11 A. No, I didn't know that mailbox - like I don't
12 know anything about that mailbox. I didn't notice the
13 fact that it was from that mailbox until now, and in fact,
14 your Direction to Attend refers to the original and your
15 deficiencies have consistently referred to Marcia Jones's
16 original email out and so that's what I was looking for in
17 order to address your concerns about deficiencies.

18 327. Q. Respectfully, at the bottom of Exhibit 13 we
19 see Ms. Jones's signature at the bottom so it is obviously
20 an email that she sent. Would you agree? At the very
21 bottom it has her contact details and her signature.

22 A. Yes but your deficiency says email, single,
23 sent by Marcia Jones on March 25th, 2020, with the subject
24 line, "Update: CTA measures/Mise à jour: mesures prises
25 par l'OTC," so that's what the focus of attention was.

1 328. Q. You're stating that there was no specific
2 search conducted in relation to this Exhibit 13 email that
3 was from Air Consultations, correct?

4 A. I know that there were searches done for words
5 that would have captured those terms and that people were
6 asked to provide responsive emails in the context of ATIP
7 searches. I can't say that there was no search done and
8 whatever searches were done did reveal this, the response
9 back, so I can't say one way or another. I mean nothing
10 was specifically targeted to that but I think that the
11 searches were sufficiently broad that if there were
12 something, they would have included that email.

13 329. Q. We've made our request and we will wait to
14 hear back from Mr. Shaar.

15 A. Can I just check one thing? My apologies. I
16 just want to check one thing just so that I get a clear -
17 may I just have a moment with this exhibit?

18 330. Q. Sure. Which exhibit are you talking about, 12
19 or 13?

20 A. I'm looking at Exhibit 13 but even in the Air
21 Consultations - no. I see what you're saying because it
22 was on March 25th. Okay.

23 331. Q. Let's go to document number 14. Sorry. Let's
24 take a step back to Exhibits 12 and 13. Can you tell us,
25 Exhibit 12, which search this email came from?

1 A. I don't remember and there were a lot of
2 redundancies in the searches so I can't specifically
3 recall. There were a lot of repeat hits throughout the
4 searches. It may have been more than one.

5 332. Q. How about Exhibit 13? Do you recall which
6 search results this came from?

7 A. Exhibit 13? I mean it must have been - if I
8 go by your logic, it probably wasn't the search that I
9 asked IT to conduct because that email would have come in
10 after, as you pointed out, after the timeframe of the
11 search since it ended at midnight so it probably wasn't
12 that search. I would imagine that it was the search that
13 was done previously in November 2020 using the words
14 Statement On Vouchers and Statement and Vouchers since
15 those terms are - it contained the word Statement and it
16 contained the word Vouchers so it must have been in a
17 previous search. It probably wasn't in the search that I
18 asked to be conducted in November 2021. It would have
19 been in ATIP searches.

20 333. Q. Did the search results indicate who saved
21 these emails?

22 A. No. I don't even know how to --

23 334. Q. Actually, let me reframe. For Exhibit 12 and
24 13, we would ask that you confirm for us whether these
25 were saved on RDIMS and also who saved them on RDIMS.

1 A. I'm sorry, no. They wouldn't have been saved
2 in RDIMS. Well, they could have been saved in RDIMS.
3 Sorry. What I can say is that I searched Marcia's
4 personal Sent box hits in Outlook searches so they were
5 not in RDIMS. They were contained in Outlook searches and
6 I was careful to ensure that by looking at the Sent hits
7 from the search that I was looking through, that if there
8 was no hit, it is because that document had been deleted
9 from the Sent box for Marcia so I was quite confident that
10 - because it would have been captured if it were in her
11 Sent box. It would have been captured because it would
12 have taken a snapshot.

13 In November 2020, her email out was certainly
14 deleted and then it was not found in RDIMS either but I
15 don't know about the other In box but I didn't see a
16 message out at any other time. That's all I can say for
17 now.

18 335. Q. Just following up on what you said, you said
19 you searched Ms. Jones's Out box. When did that occur?

20 A. In November 2020, there was a search done in
21 Outlook accounts and it takes a snapshot and it will save
22 responsive documents according to where they are in a
23 person's Outlook account. It would say "Marcia Jones" and
24 then it would say "Calendar" and then you could open the
25 calendar and you could see the hits for that day or it

1 would say "In box" and then you would get all the hits
2 containing just those search terms.

3 It's not a snapshot of her entire In box but it is
4 a snapshot of what was sent out that contains those search
5 terms, what was in the In box that contains those search
6 terms, what was in the calendar that contains those search
7 terms in November 2020. A similar exercise had been
8 performed in May 2020.

9 336. Q. Are you saying that were similar search
10 results pages like the one in Exhibit 8 in May 2020 and
11 also November 2020?

12 A. There were similar - yes. There were similar
13 results of the type I've just described for - I want to be
14 careful because it related to a May 2020 Access to
15 Information request but I don't know that the search was
16 actually conducted in May 2020. When I say May 2020, I'm
17 just saying in relation to the May 2020 Access to
18 Information request. A snapshot of responsive hits was
19 taken in May and a snapshot of responsive hits was taken
20 in November for search terms that had been used for those
21 ATIP requests.

22 337. Q. A search result like the one in Exhibit 8
23 would have been produced for each of those two searches?
24 Is that correct?

25 A. No, I didn't see - I don't think the first

1 search would have - I don't remember seeing it in the
2 first collection of searches. I can't remember actually.
3 I don't know.

4 338. Q. We'll make a request that you verify whether
5 there were similar search results documents like the one
6 in Exhibit 8 for the two searches that you just mentioned,
7 May 2020 and November 2020. If those exist, we ask that
8 you produce them to us. Mr. Shaar, I assume you have it
9 noted?

10 MR. SHAAR: We'll take it under advisement and get
11 back to you.

12 MR. LIN:

13 339. Q. Let's go to document 14, please. Ms. Cuber,
14 do you recognise this document?

15 A. Yes.

16 340. Q. Do you agree that this corresponds to item 13
17 in the Direction to Attend?

18 A. Yes.

19 MR. LIN: Can we mark this as Exhibit 14, please?

20 **EXHIBIT NO. 14:** IM-IT ATIP Records Retrieval Form
21 for November 13, 2020 search.

22 341. Q. With reference to your affidavit, is this the
23 search that is referred to in paragraph 13 of your
24 affidavit?

25 A. It's only one search. There were many

A

1 searches done in RDIMS but this is the only document that
2 would show what was actually searched. When an individual
3 looks in RDIMS for responsive documents such as in this
4 case if counsel asked someone to look for responsive
5 documents and they perform a search in RDIMS to retrieve
6 responsive documents, that's not documented on any piece
7 of paper so there is largely no way to produce
8 documentation about RDIMS searches but this was an
9 exception and so I considered it to be responsive to the
10 item in the Direction to Attend. To answer your question,
11 it doesn't represent all the searches that were done in
12 RDIMS by any means.

13 342. Q. Going by this document - my question was very
14 simple - this search form is the search that you refer to
15 in paragraph 13 of your affidavit? Is that correct?

16 A. No because it's only one search. I said RDIMS
17 was searched for responsive documents and this relates to
18 that but it doesn't complete that sentence. Like this
19 doesn't represent the entirety of RDIMS searches so I have
20 to say no.

21 343. Q. Do you have a record of all the RDIMS searches
22 that were made in relation to this Access to Information
23 request?

24 A. In relation to this Access to Information
25 request, no.

1 344. Q. Just going back to this form, I'm at the very
2 top, third row, "MS Outlook distribution list that
3 represent the OPI group." There's five listed there. Can
4 you explain to us what AOB is?

5 A. The Analysis and Outreach Branch. That would
6 be what would have been Marcia Jones's branch.

7 345. Q. How about the next one, ESB_LS?

8 A. That's Legal Services.

9 346. Q. What does ESB stand for?

10 A. Enabling Services Branch. It's sort of an
11 internal services branch at the Agency that provides
12 internal support services. Legal Services falls into
13 that.

14 347. Q. How about the next one, OCC?

15 A. The Office of the Chair and CEO. That would
16 involve the Chair and members.

17 348. Q. How about the fourth one, Doug Smith?

18 A. He was a branch head. I think he was the
19 Dispute Resolution Branch head. He would have been a
20 member of the Executive Committee.

21 349. Q. How about Tom Oommen?

22 A. Tom Oommen I believe at that time I believe he
23 was the head of the Compliance and Enforcement Branch. He
24 is also a member of the Executive Committee.

25 350. Q. We see there are only five branches or

1 individuals listed here. Is it fair to say that this
2 search was not Agency-wide?

3 A. This search does not appear to be Agency-wide.
4 It would have captured, I guess, what was regarded as the
5 most implicated accounts related to the Statement on
6 Vouchers.

7 351. Q. Does this include the members?

8 A. Yes.

9 352. Q. Under which of the five?

10 A. Office of the Chair and CEO.

11 353. Q. Scroll to the bottom of the form, please. On
12 page 1, three lines above the signature lines, we see that
13 there is a box marked "Emails were found."

14 A. Yes.

15 354. Q. Can you tell us about that? How many emails
16 were found?

17 A. 1,417 I think is the number I put in my
18 affidavit. I believe that's the number of emails that
19 were found.

20 355. Q. How did you come up with the 1,417 number?

21 A. Because I looked at the search results and it
22 says how many items there are in total in relation to that
23 search.

24 356. Q. This would have generated similar search
25 results as the one in Exhibit 8, correct?

1 A. It would have a search results page.

2 357. Q. Like Exhibit 8?

3 A. You're talking about the report or are you
4 talking about the results?

5 358. Q. I'm asking you because you say very
6 confidently there was 1,417 Outlook items and I'm asking
7 you how you got the 1,417. I'm asking you is it because
8 there is a similar --

9 A. No. I know that because there was a - every
10 ATIP request search in Outlook will generate like a folder
11 of results and when you look at the bottom of the folder,
12 it will say how many results there are. That's how I know
13 how many results there are.

14 359. Q. Let's do a quick comparison between this
15 Exhibit 14, the search terms in Exhibit 14, and the search
16 terms in Exhibit 9. Would you agree that the search query
17 is different between Exhibit 9 and Exhibit 14?

18 A. Yes.

19 360. Q. Specifically on the one in Exhibit 14, if the
20 word Statement does not show up, if the word Statement is
21 not in the document then it will not be returned in these
22 search results, correct?

23 A. Right.

24 361. Q. Is it fair to say this search in Exhibit 14 is
25 narrower than the one in Exhibit 9?

1 A. Narrower?

2 362. Q. Narrower in the sense that it requires the
3 word Statement to be present?

4 A. I don't know if it would be. I guess yes, I
5 suppose in the sense that Statement has to be present.

6 363. Q. This one also does not contain the word
7 Credit, correct?

8 A. No, it doesn't contain the word Credit.

9 364. Q. If there were documents that only mentioned
10 Vouchers, Credits, or Refund but does not have the word
11 Statement then it will not be captured by this Exhibit 14
12 search, correct?

13 A. No but there were other searches done. This
14 was not the only search done in relation to that request.
15 This does not represent the - I just want it to be clear
16 that these searches are cumulative. There are different
17 searches done using different terms over time. This
18 search required the word Statement. Other searches did
19 not. There were other ways of searching as well. This
20 does not represent the entirety of search results in
21 relation to ATIP requests. I just want that to be clear.

22 365. Q. Can you tell us exhaustively what search terms
23 were used?

24 A. What I can tell you is that in relation to the
25 first ATIP request that was received in May 2020, the

1 Office of the Chair and CEO and the Analysis and Outreach
2 Branch were asked to produce their own responsive
3 documents and so they would have determined which
4 documents were responsive to the Statement on Vouchers'
5 development. Those search results from that sort of
6 search among custodians were imported into the working
7 document for this second Access to Information request
8 that came from Gábor Lukács.

9 There were different ways of searching and there
10 was also a search done in RDIMS and so there were
11 different ways of searching and there was also an RDIMS
12 search done in relation to the first ATIP request that was
13 also imported, to the extent that it was relevant, into
14 the second Access to Information request.

15 366. Q. You mentioned the custodians of each branch.
16 It would be up to the heads or custodians of each of those
17 branches to provide the responsive documents? Is that
18 what you're suggesting?

19 A. I am not suggesting that. I am saying that
20 the office of primary interest will be - in that case, it
21 will be the Analysis and Outreach Branch, and it would be
22 the Office of the Chair and CEO would be notified of the
23 Access to Information request and then they have a process
24 in order to have individuals produce their responsive
25 documents at that time and those are collected. I don't

1 know who approves or is responsible for, in the chain of
2 command, what the organisational structure of that process
3 is.

4 367. Q. Let's take a step back. This form, Exhibit
5 14, from my understanding, it looks like it was from the
6 November ATIP search. For the May ATIP search --

7 A. 2020.

8 368. Q. For the May 2020 ATIP search, did it cover the
9 Analysis and Outreach Branch?

10 A. I don't know. I don't have - well, yes. The
11 May 2020 searches covered the Analysis and Outreach
12 Branch, yes. I don't have details on the electronic
13 searches that were done. I know that the request to
14 provide documents from individuals was addressed to the
15 Analysis and Outreach Branch but I don't have details on
16 the electronic searches that were done.

17 369. Q. Is it correct to say that there would have
18 been a similar form for the May 2020 request?

19 A. I've looked for a form and I asked for a form
20 but it wasn't documented in the same way as the others.
21 They didn't have a form like this. I provided the forms
22 that I had.

23 370. Q. You said they didn't document it this way. In
24 what way did they document the May 2020 request?

25 A. They didn't document - like I don't have

1 documents that would - I mean I don't have documents that
2 would show what was actually inputted or what was - I
3 don't have those details.

4 371. Q. But you know for certain that the Analysis and
5 Outreach Branch was notified in May 2020 of that Access to
6 Information request?

7 A. Yes. I've seen the email to tell them that
8 they had to look for documents and I know that documents
9 were produced and then they were put into the second
10 Access to Information request search results and that's
11 where I saw them.

12 372. Q. The May 2020 Access to Information request,
13 this is the one in paragraph 18 of your affidavit?

14 A. Yes.

15 373. Q. Would it be fair to say that Ms. Jones's
16 department would have known of this request here on or
17 around May 5th, 2020?

18 A. Yes. I think they were told towards the end
19 of May. I don't know if she was told before that but I
20 know that they were asked to provide documents around the
21 end of May 2020.

22 374. Q. You say you know they were asked. Was it in
23 an email? Was it in a memo?

24 A. It was an email.

25 375. Q. And you saw that email?

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1 A. Yes.

2 376. Q. Can you tell us what that email said
 3 specifically in terms of the request?

4 A. It reproduces the text of the request and then
 5 it provided a long list of instruction for how to provide
 6 responsive documents, collect and provide responsive
 7 documents.

8 377. Q. Other than email, was there any other emails
 9 to the Analysis and Outreach Branch in relation to this
 10 May 2020 ATIP?

11 A. I haven't seen any.

12 378. Q. Will you undertake to provide us that email
 13 that we were just talking about that was sent to the
 14 Analysis and Outreach Branch?

15 MR. SHAAR: We'll take it under advisement and get
 16 back to you.

17 MR. LIN:

18 379. Q. On this May 2020 ATIP request, can you tell us
 19 what search terms were used?

20 A. I don't know.

21 380. Q. Do you know who conducted the search or who
 22 was responsible for the search?

23 A. ATIP was responsible for the search and there
 24 was a search in Outlook accounts and there was a search in
 25 RDIMS and there was a request made, as I described, to

A

1 those two groups, AOB and the Office of the Chair and CEO,
2 to provide documents.

3 381. Q. Do you know if there were search results
4 prepared from Outlook?

5 A. Yes, there were search results from Outlook.

6 382. Q. How many were there? Do you know?

7 A. 683.

8 383. Q. Is that in your affidavit?

9 A. Yes. That's the 683 I refer to at paragraph
10 20.

11 384. Q. That refers to Outlook, correct?

12 A. Yes.

13 385. Q. How about RDIMS? How many were there from
14 RDIMS?

15 A. I don't know because I was given the search
16 results that were relevant to the Statement on Vouchers as
17 part of the search results in the second Access to
18 Information request so I'm not able to actually
19 distinguish between the - like I don't know how many
20 because I was given that in a 5,099-page working document
21 and it doesn't distinguish between what came from where.

22 386. Q. Who decided what to transpose from the May
23 2020 ATIP request to the November 2020 ATIP request?

24 A. ATIP staff.

25 387. Q. They were the ones that determined what was

1 relevant and what was not?

2 A. Yes. Actually, I don't know. I'm sorry. I
3 don't know. I can't answer that question because I don't
4 know what the - actually, I don't know.

5 388. Q. Is it fair to say that your review of
6 documents responsive to the October Order and April Order
7 and July Order were limited to what was filtered to you
8 through the ATIP requests?

9 A. No, I don't think it's fair to say that
10 because I relied on the ATIP requests that were done in
11 various ways and then I also asked for my own search to be
12 done which although flawed, still produced 799 documents
13 among which there were responsive documents and I also
14 asked the Chair's Executive Coordinator for responsive
15 documents and I also spoke to members of the Executive
16 Committee and I also spoke to - we also conducted an
17 additional search in April talking to members of the
18 Executive Committee and members in order to produce
19 responsive documents so I would not say that it's accurate
20 to say that the only search results I looked at for
21 October, April, and July were filtered to me through ATIP.
22 In any event, the search results are raw search results,
23 not search results that ATIP determined to be responsive.

24 389. Q. Thank you. Let's go back to Exhibit 9, the
25 search that you prepared. Here we see that there was only

1 a box for "Emails were found" but there was no indication
2 that RDIMS was searched. Why did you not request an RDIMS
3 search?

4 A. Because there had been searches done in RDIMS.
5 I had spoken to Marcia Jones who told me that responsive
6 search results would be found in the ATIP search results,
7 that she had no knowledge of other minutes or memos. I
8 asked individuals like Lesley Robertson to look into
9 responsive search results and she looked into RDIMS in
10 order to find them.

11 390. Q. When did you speak with Ms. Jones? You
12 mentioned a discussion with Ms. Jones.

13 A. January 5th, 2021. I keep saying speak but I
14 exchanged with her. I think we had a discussion but it
15 certainly began as a written exchange and I don't know
16 that we had a discussion. I have evidence of a written
17 exchange.

18 391. Q. I'm not sure if I made this request initially
19 but if not then we request an undertaking that you provide
20 to us the email that you exchanged with Ms. Jones, the
21 quote, unquote, discussion about this.

22 My question was why you did not request an RDIMS
23 search and you provided an answer but let's take a step
24 back. The query terms that you formulated were different
25 from the ones that were in previous searches like the

1 November ATIP search. Would you agree with that with
2 different terms, you would get different search results?

3 A. Yes. With different terms, you get different
4 search results.

5 392. Q. On that basis we also request an undertaking
6 that you do a search of RDIMS using the search terms in
7 the form that you completed in Exhibit 9 and of course,
8 with the three concerns that we had previously, namely the
9 spacing, and with the COVID, Corona, Pandemic reference,
10 and also with the appropriate time range. Our request is
11 that you conduct a search in RDIMS for Refund* or Voucher*
12 within the March 9th, 2020, to March 25th, 2020 timeframe.

13 A. Is it possible for me to make a comment on
14 that just for better understanding?

15 393. Q. Please.

16 A. The difficulty with making a search using the
17 terms Refund and Voucher in RDIMS is that it will return
18 search results across the Agency and so because the terms
19 Refund and Voucher are very common terms in the Agency's
20 day-to-day work, like an air travel complaint, they will
21 return any complaint across the repository that contains
22 those words and so it will produce - that is why when
23 Gábor Lukács had made his Access to Information request,
24 he received an email from Access to Information staff at
25 the Agency saying that the search returned over 10,000

1 pages of documents. This is because generic search terms
2 of that sort will return an enormous number of documents
3 that they have to be manually gone through.

4 If I may editorialise, I don't know that that's
5 required from a reasonable search. It's just an
6 exponential number of documents that get produced.

7 394. Q. Thank you, Ms. Cuber, for providing the
8 clarification. I would assume that RDIMS could be capable
9 of filtering out searches for, let's say, passenger
10 complaints only. Is that correct?

11 A. I mean if you want it to be a thorough search,
12 no. I don't know that it has that functionality. What I
13 know is that the difficulty that ATIP ran into just in
14 terms of ATIP, the difficulty that is faced by looking in
15 RDIMS, is precisely this difficulty, that if you would
16 like to get the largest number of hits possible, you get
17 an outrageous number of hits and you have to look through
18 them yourself in order to determine what is in fact
19 relevant to what you're looking for.

20 395. Q. In RDIMS is there an advance search feature or
21 a filter feature to exclude passenger complaints or
22 complaint files?

23 A. If we do that then we end up back here being
24 told that we shouldn't have done that, right? I mean --

25 396. Q. Yes, the court's order includes all third

1 parties but what we're asking - if you're saying that it
2 will return those kind of search results then perhaps it
3 could be refined to exclude passenger complaints and focus
4 on Agency communications?

5 A. We tried with Twitter messages and info@
6 messages and were told that your position was that those
7 were not responsive so it becomes very difficult for us to
8 filter things down without being told that we're not
9 performing adequate searches.

10 397. Q. We're presenting a suggestion that would
11 address that concern. For this particular search, we're
12 asking that you do an RDIMS search for Refund* or
13 Vouchers* or Credit* within that time period and if there
14 is a method in RDIMS to filter out passenger complaints,
15 we ask that you do so and we trust that should address
16 your concern about voluminous documents being returned.

17 MR. SHAAR: We'll take your request under
18 advisement. I don't know that RDIMS has that capability
19 but again I am going to express my same concern that I did
20 before and that Mrs. Cuber has again here, that it creates
21 an extreme amount of material that is not relevant to this
22 case and requires a lot of time and manpower to go through
23 them when there has already been several searches. I'll
24 take it under advisement. We have serious concerns
25 regarding this request.

1 MR. LIN: Again I propose the suggestion to
2 address concerns which is to filter or use advanced
3 searches to exclude passenger complaints.

4 MR. SHAAR: I don't know if we have that
5 capability but I'll look into it.

6 MR. LIN: Thank you.

7 398. Q. On the topic of RDIMS, is RDIMS the only
8 corporate repository used at the CTA?

9 A. It's the corporate repository, yes.

10 399. Q. Do you know if individual branches would have
11 their own separate repositories?

12 A. No, I don't know whether they have their own
13 separate repositories. I believe to the extent that they
14 might use other apps, they connect with RDIMS.

15 400. Q. What do you mean by separate apps?

16 A. Like I mean there's like a - this is too
17 complicated for me. What I have in my mind right now is
18 not a document repository. It's just sort of like a
19 function on the system where you can look at the status of
20 cases before the Agency but those are given a case number
21 and the case number can be - you would have to go into
22 RDIMS with the case number in order to get documents in
23 relation to that. To my knowledge, no, but I hesitate to
24 say anything more. RDIMS is the corporate repository for
25 the Agency.

1 401. Q. Back to my question. Do you know if the
2 Analysis and Outreach Branch would have their own separate
3 repository?

4 A. I do not believe that they would, no.

5 402. Q. How about the Office of the Chair and the CEO?

6 A. No. Everybody saves their items into RDIMS.
7 That's where you would save your items.

8 403. Q. But for individual branches' documents, do you
9 know if they would be saving them in a separate repository
10 as well?

11 A. No because RDIMS is the corporate repository.

12 404. Q. Please go ahead.

13 A. Everything that is given to IM that is not in
14 digital form or whatever will be digitised and put into
15 RDIMS like our old cases and things like that. RDIMS is
16 the corporate repository and that is where you are
17 supposed to keep your electronic documents. There might
18 be like a library that might be considered a repository
19 for library things but in terms of records of business
20 value for the Agency, to my knowledge, there is just
21 RDIMS. I have never been directed to another repository
22 that constitutes the corporate repository for the Agency.

23 405. Q. When you say library, what do you mean by
24 that?

25 A. Like a library where you keep books.

1 406. Q. Do you know if any of the individual branches
2 would have their own SharePoint, for example?

3 A. I don't know what SharePoint is.

4 407. Q. Microsoft SharePoint for storing documents and
5 sharing notes?

6 A. I do not know.

7 408. Q. Is it fair to say you did not specifically
8 enquire with individual branches on whether they have a
9 separate repository or location to store some electronic
10 documents?

11 A. No, I did not ask because - no, I did not ask.
12 I had understood that the place to go would be the ATIP
13 search results and I didn't ask about SharePoint or
14 anything like that.

15 409. Q. How did you first know that the place to go
16 would be the ATIP search results?

17 A. Well, the motion under Rule 318 provided a
18 redacted copy of the release package from Access to
19 Information Request A-2020-00029, along with all of the
20 correspondence from ATIP staff at the Agency that
21 referenced the fact that 10,000 pages of documents had
22 been returned as a result of a search that had been done
23 and so that was a good starting point because that was
24 also retained by Justice Gleason in her October Order and
25 it appears to have been repeated in subsequent orders,

1 that there were many search results found and Justice
2 Gleason in October even said that if we needed more time
3 to go through all those search results, you could ask for
4 more time. A lot of the request was framed around that
5 Access to Information request so that's where I started.

6 410. Q. How about Standing Committee Motion? Who
7 gathered documents for that?

8 A. Transport Canada.

9 411. Q. And the CTA was simply provided a copy of what
10 Transport Canada had presented to this Standing Committee?
11 Is that correct?

12 A. That's what my understanding is, yes, so that
13 in addition to internal document searches, we also have a
14 collection of documents that Transport Canada has kept on
15 the subject of communications between the Agency and
16 Transport Canada, including the Minister's office. I
17 reviewed those notes as well in the course of my search -
18 not notes but rather documents.

19 412. Q. Are you saying there is a separate folder for
20 storing Transport Canada and Agency communications?

21 A. No, I'm not. I'm saying that there was a
22 separate folder for those specific search results from
23 that Standing Committee Motion. There is not a separate
24 folder for Transport Canada and Agency communications.

25 413. Q. The CTA was not involved in compiling the

1 Standing Committee Motion documents, correct?

2 A. That's correct.

3 414. Q. Did Transport Canada provide a listing or
4 summary of what is in that package?

5 A. I am not aware of any listing or summary.

6 415. Q. How many documents were in that package? Do
7 you know?

8 A. I don't know.

9 416. Q. You reviewed that package?

10 A. I did. I don't remember how many documents
11 are in it. I can't estimate. I don't know.

12 417. Q. Did that document include emails?

13 A. Yes, it did.

14 418. Q. I'm moving to a different topic, Mr.

15 Streiner's Outlook calendar for scheduled events between
16 March 18th, 2020, to 25th, 2020. Did you personally review
17 his Outlook calendar?

18 A. No.

19 419. Q. How about Ms. Jones's Outlook calendar for
20 that time period, March 18th to 25th, 2020?

21 A. No.

22 420. Q. Let's go to your affidavit, paragraph 58,
23 please. You state here that "No. These meetings were not
24 recorded." How do you know these meetings were not
25 recorded? Can you explain?

1 A. Yes, I can. In preparing in relation to the
2 October Order, I spoke with Sébastien Bergeron, who is the
3 Chief of Staff of the Agency, with respect to whether
4 Executive Committee Meetings were recorded and he said no.
5 I spoke Lesley Robertson, who is, again, the executive
6 Coordinator of the Chair's Office, about whether in-camera
7 Members' Meetings like the one that took place on March
8 24th were recorded and she said no. Then in response to
9 the April Order, Amanda Hamelin wrote to each person
10 invited to Executive Committee Meetings between March 19th
11 and 24th and asked whether any of them had records of the
12 meetings and each person said no. She also wrote to each
13 member of the Agency and asked whether they had recordings
14 of the March 24th, 2020, in-camera Members' Meeting and
15 they all said no.

16 421. Q. Is it correct to say that you did not check
17 directly with the teleconferencing provider to see if
18 there is any recording stored?

19 A. I did not. I thought that that was adequate
20 to address that concern. I --

21 422. Q. Please continue.

22 A. I think that there was a technical reason why
23 nothing - in addition to the fact that it's not the
24 practice, there is also a technical reason about storing
25 recordings on teleconferencing services but my knowledge

1 of that is a little bit limited. I think from my
2 perspective, suffice to say, every single person was asked
3 if there was a recording and the answer was no.

4 423. Q. Were you given access to the teleconference
5 system in order to verify there was no recording?

6 A. No.

7 424. Q. Were you able to access the list of
8 conferences that were held by Mr. Streiner between March
9 9th to 25th, 2020, using his dial-in code?

10 A. No.

11 425. Q. You never requested access to his list of
12 conferences?

13 A. No. I don't know how I would have gotten
14 information from that. It would require a level of
15 technical knowledge that I wouldn't have. I would have to
16 figure how to do that. I contented myself with the 3,000
17 emails and 5,099 pages of search results and speaking to
18 people who would have information and then I guess we
19 contented ourselves also with asking every individual for
20 their individual notes from meetings that took place - not
21 notes but documents from meetings that took place in
22 response to the April Order.

23 426. Q. You mentioned we a number of times. Who is
24 we?

25 A. I might be getting tired so I might be saying

1 we. I can't remember exactly what I said. I don't
2 remember what I said.

3 MR. SHAAR: Maybe we should take a break.

4 MR. LIN: If the witness requires a break, please
5 let us know. Ms. Cuber, are you --

6 THE WITNESS: Yes, but is there a way to have what
7 I just said sort of read back so that I can clarify what I
8 meant by we? I think I might have just been getting a
9 little sloppy. I apologise.

10 MR. LIN: Let's finish this question and then we
11 can take a break. Madam Reporter, can we have the
12 witness's answer read back to her so she knows what we was
13 in the context?

14 THE REPORTER: You have to give me a quick moment
15 to get back up there.

16 MR. LIN: Sure, please.

17 THE REPORTER: I have to apologise here. It's not
18 allowing me to scroll back up there to see. It's just
19 keeping me updated with the most recent line of typing.
20 I'm not sure with this program how to get back up there
21 without closing everything and letting it mirror itself
22 over.

23 THE WITNESS: If I can? It's possible that I used
24 we in the way that we always use we when we talk about the
25 Agency where we say we but it means as an Agency this was

1 done. I don't want me using a term of phrase that is
2 commonly used in speaking about things that happen in the
3 workplace as meaning that I was involved in something when
4 I wasn't. It's just that we is a very common way of
5 speaking about things that have happen at the Agency. We
6 collected..., like we did..., we should... It wasn't
7 intentionally - I don't remember what I said and it
8 certainly wasn't intentional.

9 MR. LIN:

10 427. Q. Ms. Cuber, looking back at my notes, you said,
11 "We contented ourselves with," et cetera, et cetera.

12 A. What I meant by that is that I looked in
13 relation to the October Order and Amanda looked in
14 relation to the April Order and collectively, nothing
15 further was done.

16 MR. LIN: On that note, maybe we could take a
17 quick 10-minute break. The same request, Ms. Cuber. You
18 are still under cross-examination. Let's return at 2:33.
19 Thank you.

20 (SHORT RECESS)

21 MR. LIN:

22 428. Q. Ms. Cuber, may I refer you to the Direction to
23 Attend, please? That's Exhibit 5. At paragraph 15, with
24 reference to the April 20, 2022 documents, the first page
25 of Appendix C1 shows the meeting invite from Mr. Streiner

1 with his dial-in code of 935311571. We requested a
2 printout from the teleconferencing platform showing all
3 conferences that were hosted using this dial-in code
4 between March 9th and 25th, 2020, including the weekend of
5 March 21st to 22nd. Do you see that?

6 A. Yes.

7 429. Q. Have you accessed this teleconference system
8 and printed out a list of conference during that time
9 period for us?

10 A. No.

11 430. Q. Why not? We made a request here that you
12 access the teleconference system. You have made no
13 attempts to access it?

14 A. This is the Direction to Attend and this was
15 objected to and the court didn't order us to produce it.
16 Is that what you are referring to?

17 431. Q. I'm referring to paragraph 15 of the Direction
18 to Attend. I'm asking why you did not attempt to access
19 the teleconference system to printout that list.

20 A. I didn't - I was not required to bring that
21 for this cross-examination. I don't know if that exists.
22 I can't remember anymore the list of things that may or
23 may not exist. I don't know if that's one of them. I
24 can't recall.

25 432. Q. You say you don't know if it exists. Have you

1 made any attempts to confirm if it exists on the
2 teleconferencing platform?

3 A. Anything on this list where I didn't know if
4 it existed or not, I mean the list of it would be in the
5 Agency's submissions and I didn't memorise it. If you're
6 asking me if I have consulted in the context with
7 complying with the October Order, I did not. I looked for
8 documents. I didn't think that looking at a printout from
9 the teleconferencing platform showing all conferences that
10 were hosted using that dial-in code between March 9th and
11 25th, 2020, including the weekend of March 21 to 22, 2020,
12 would - I instead looked for documents and I don't know
13 what I would have made of that list. I don't know what it
14 would have shown me. It's not something that I could read
15 on my own. I looked for documents and I don't know that
16 teleconferencing numbers are something that I thought of
17 to look at.

18 433. Q. Ms. Cuber, thank you for the answer. Really
19 my question is really simple. You did not make any
20 enquiry with IT about access the teleconferencing
21 platform, correct?

22 A. No, I did not.

23 434. Q. And you did not do so because you did not
24 believe that it would be relevant, correct?

25 MR. SHAAR: Mr. Lin, can I ask you to make a

1 clarification? What time period are you talking about?
2 Are you talking about before or after the Direction to
3 Attend was sent?

4 MR. LIN:

5 435. Q. Before the Direction to Attend, Ms. Cuber?

6 A. No. That wasn't part of my search. That
7 wasn't part of my search. I searched for documents by
8 asking people and looking at search results and asking for
9 searches to be done.

10 436. Q. How about after the Direction to Attend was
11 issued, not this one, the previous one?

12 A. I can't recall anymore the steps I took. I
13 know I had a discussion about teleconferencing platforms
14 but I didn't gain access. I had a discussion but I don't
15 remember the contents of what was said but I certainly
16 didn't ask for that to be provided to me.

17 437. Q. Who did you have a discussion with?

18 A. I had a discussion with Ms. Lesley Robertson
19 because she was at the outset of the pandemic having a lot
20 of trouble with teleconferencing platforms and so we had a
21 discussion about teleconferencing platforms but I don't
22 remember the entire content of the - like I don't remember
23 the content of the discussion enough. I know that I
24 talked to her about it but I certainly didn't ask for the
25 platform numbers.

1 438. Q. When you say discussion and talked to her, was
2 it via email or was it verbal discussion?

3 A. We had a verbal discussion.

4 439. Q. Did you make any enquiries with Transport
5 Canada on any meetings that may have occurred between
6 March 20th, 2020, and March 22nd, 2020, in respect to the
7 Statement on Vouchers?

8 MR. SHAAR: Objection, Mr. Lin. Our obligation is
9 documents that are in our control and possession.

O

10 MR. LIN:

11 440. Q. Let's go back to the ATIP searches. We know
12 there is a May 2020 ATIP search and a November 2020 ATIP
13 search. Do you know if Mr. Streiner or anyone at the
14 Chair's Office reviewed those searches?

15 A. I don't know.

16 441. Q. Do you know if Ms. Jones reviewed those
17 searches?

18 A. I know that Ms. Jones was familiar with the
19 content of the records. I know that Ms. Jones was
20 familiar with the contents of the ATIP requests or she was
21 familiar with the ATIP requests.

22 442. Q. Was she involved in the document search or
23 gathering?

24 A. She was responsible for - well, not
25 responsible. She was involved in gathering documents for

1 the first Access to Information request and I don't know
2 if she was involved in gathering documents in relation to
3 the second Access to Information request. I don't know if
4 she was involved in that but I know she was familiar with
5 the Access to Information requests.

6 443. Q. You say she was involved in the first request
7 on May 2020?

8 A. Sorry. The Analysis and Outreach Branch was
9 involved and by that I assumed that she was involved. I
10 consider the Analysis and Outreach Branch was involved so
11 she would have been contacted in order to gather and
12 provide those responsive documents in that context and
13 that's what I mean.

14 444. Q. And that would be in May 2020, correct?

15 A. Yes.

16 445. Q. That would still be within the time period
17 that the Outlook tapes would still contain all the emails
18 from March 2020, correct?

19 A. Access to Information doesn't search backup
20 tapes.

21 446. Q. What I'm asking is it's still within the time
22 period? Yes or no?

23 A. Yes, I think it would be within the 12 weeks.

24 447. Q. Ms. Jones was put on notice that she had to
25 provide responsive documents in that ATIP request,

1 correct?

2 A. Yes. When an ATIP request is received, one is
3 not allowed to delete any records once the ATIP request is
4 received but if you have deleted records and you emptied
5 out your trash before an ATIP request comes in then the
6 record is, from ATIP's perspective, as I understand it,
7 gone. Once the notification is received, everything has
8 to be preserved from that point on.

9 448. Q. From our discussion just now, we know that it
10 would still exist on the Outlook tapes, correct?

11 A. It is within the timeframe.

12 449. Q. Do you know if Ms. Jones made any enquiries
13 about retrieving any emails that she may have deleted from
14 those Outlook tapes?

15 A. I have no knowledge that she would have done
16 that.

17 450. Q. Do you know if the ATIP team, in relation to
18 the first ATIP request, did any searches or enquiries in
19 relation to the Outlook tapes?

20 A. I was not employed at the Agency at that time
21 so I don't have any direct knowledge and I don't have any
22 knowledge otherwise.

23 451. Q. Do you know who would have knowledge about
24 this?

25 A. No because I think that the answer to the

1 question is that ATIP doesn't search backup tapes. They
2 are there for disaster recovery purposes only, not for
3 responding to Access to Information requests when items
4 have been deleted from a mailbox. The obligation to
5 preserve documents exists, one, when they are records of
6 business value at all times, and two, they apply to all
7 documents, whether transitory or of business value when
8 notified of an Access to Information request but not
9 before then.

10 452. Q. Have you enquired with Ms. Marcia Jones at all
11 in relation to the March 25th, 2020, email that was deleted
12 or the March 18th, 2020, email that was deleted?

13 A. No, I have not.

14 453. Q. So you have not enquired with her on when she
15 deleted them and why she deleted them?

16 A. No but I thought that was covered when you
17 asked me if I had contact with her, but no. I think you
18 asked that question and I answered it.

19 454. Q. I'm just going back to you mentioned business
20 value a number of times. I'm just going back to, for
21 example, Exhibit 12. If this email was preserved because
22 there was business value, why wasn't the email Ms. Jones
23 sent out preserved? That email is lengthier and appears
24 to have more business value than the response.

25 A. The document wasn't preserved in RDIMS. The

1 document was located in an Outlook account which is not a
2 corporate repository where documents of business value are
3 kept. When an ATIP request comes in and a search is done,
4 that search will cover all documents whether they are
5 transitory in nature or not. If a person has left a
6 document in their email account at the moment that a
7 search is made, it's captured by the ATIP request but this
8 doesn't mean that that document that you are referring to
9 has been preserved because it's of business value. It
10 just means it was in an email account and so it was
11 captured by the ATIP request, it hadn't been placed in
12 RDIMS as far as I know, and it just was there. It doesn't
13 mean anything in terms of whether it was preserved or kept
14 because it has business value. It wasn't in RDIMS.

15 455. Q. Thank you for clarifying. Just going back to
16 Mr. Matte's notification on April 14th, 2020, to preserve
17 documents, why wasn't any steps taken to actually secure
18 the documents and keep a copy at that time?

19 A. I don't know.

20 456. Q. What is the usual policy when any documents
21 are requested in litigation?

22 A. When we get a request under Rule 318, it
23 relates to an order or a decision of the Agency and the
24 documents that form part of the record are very easily
25 locatable because they are part of a record that is kept

1 by the Agency and so they will consist of very clear items
2 that are easily retrievable but in this case, the request
3 was for all documents across the Agency for a matter that
4 has no associated record so there was no obligation to
5 keep this or that document on the record of this matter
6 because there was no record. To answer your question,
7 there is no usual practice for finding documents in
8 relation to this type of matter.

9 457. Q. What is the usual policy - please continue.

10 A. When there are litigation holds that are
11 required by, for example, class actions, there are
12 instructions that are provided by the Department of
13 Justice. In this case, this was a 318 request and our
14 usual practice for a 318 request didn't apply. In this
15 case what was done was that documents were asked to be
16 preserved and then the actions to collect them would
17 happen later.

18 458. Q. So is it correct to say the usual practice
19 with a 318 request is to preserve the documents
20 immediately?

21 A. No because with a 318 request, there is no
22 obligation to preserve any documents because the documents
23 that are ordinarily at issue in a 318 are preserved as
24 records as a matter of course. There is a fixed list of
25 items that will be on the record because a 318 will

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1 usually be the submissions and the decision and that's
2 what a Rule 318 request usually involves because usually
3 you are contesting an order or a decision of the Agency
4 where there are clear filings involved.

5 In this case, there were no clear filings because
6 it wasn't like that sort of - it wasn't a case before the
7 Agency. There was no decision. It was just whatever
8 documents that were not kept in a tidy place as one would
9 for, let's say, a complaint, an air travel complaint or an
10 application or a rail complaint where the process is very
11 straightforward because the record is preserved as a
12 matter of course, regardless of whether there is a 318
13 request.

14 459. Q. Do you know if anyone reached out to Mr. Matte
15 to request clarification of what needs to be preserved?

16 A. No. There were responses but I don't remember
17 there being a request for clarification.

18 460. Q. What were the responses? How many were there?

19 A. I believe you asked me earlier and I could
20 recall that there were two responses and I don't know if I
21 can get into the details of those responses because I
22 think that that might be privileged. I'm having
23 difficulty understanding how I should answer this
24 question. He obtained responses from two people, to my
25 knowledge. He was asking questions so he obtained

1 responses to his questions and that's what I can recall.
2 I have seen them and he did obtain two responses and at
3 least one was a response to a question.

4 At that time, the 318 request was a little bit
5 different and it involved technical matters and so it
6 looked a little bit different than what the October Order
7 actually ended up being.

8 461. Q. Now I will move to a slightly different topic,
9 document number 15, please. It's a letter dated August
10 8th, 2022. Do you see that?

11 A. Yes.

12 462. Q. Do you recognise this letter and the
13 enclosures?

14 A. Yes.

15 MR. LIN: Could we have this marked as Exhibit 15,
16 please?

17 **EXHIBIT NO. 15:** Letter from Kevin Shaar to the
18 Judicial Administrator, Federal Court of Appeal,
19 August 8, 2022, with enclosures.

20 463. Q. On the face of the letter, the second
21 paragraph, it says, "The Agency has discovered that the
22 Statement on Vouchers may have been discussed on March
23 24th, 2020, at an EC meeting." Do you see that?

24 A. Yes, I do.

25 464. Q. There were some requests made in the Direction

1 to Attend, items 26 and 28. We went through that at the
2 very beginning of the session. My question is we see here
3 on page 2 of this PDF file, Exhibit 15, there is a list of
4 required attendees and optional attendees?

5 A. Yes.

6 465. Q. Did you make any enquiries with Ms. Alysia Lau
7 to see if she attended this March 24th, 2020, meeting?

8 A. I did have a discussion with Ms. Lau about
9 this meeting.

10 466. Q. The March 24th, 2020, meeting, correct?

11 A. March 24th, 2020, yes.

12 467. Q. Did you ask Ms. Lau whether she kept notes of
13 that meeting?

14 A. Yes.

15 468. Q. Have those notes been produced to us?

16 A. No because no notes were found. I asked her
17 if she kept notes. You asked me if I asked her if she
18 kept notes and I did ask her.

19 469. Q. Did she take notes that day?

20 A. She doesn't recall if she took notes that day.
21 She gave her notes to Ms. Hamelin and Ms. Lau has left the
22 Agency so she didn't have her notes anymore and couldn't
23 recall and she advised me that she had left her notes with
24 Ms. Hamelin, Amanda Hamelin.

25 470. Q. When did Ms. Lau leave the Agency?

1 A. Sometime in the summer but I don't recall
2 when.

3 471. Q. Did you review the documents that Ms. Lau
4 provided to Ms. Hamelin?

5 A. No, I didn't. Ms. Hamelin was simply asked
6 whether she had notes and she searched and she concluded
7 that she didn't have notes.

8 472. Q. I'm looking at the Direction to Attend,
9 paragraph 27 in particular. The answer that we received
10 this morning was that there were no responsive documents
11 on RDIMS because RDIMS cannot store Microsoft OneNote
12 documents. Do you remember that?

13 A. Yes.

14 473. Q. From what you said about Ms. Hamelin, is it
15 correct to say that Ms. Hamelin would have the Microsoft
16 OneNote document that Ms. Lau would have provided to her?

17 A. Ms. Lau told me, "I gave my notes to Amanda
18 Hamelin," so Ms. Hamelin would have her notes. Ms.
19 Hamelin was approached, not by me, and asked if she had
20 notes for that day and she searched and she did not have
21 notes and so no notes were produced.

22 474. Q. But you did not personally review the files
23 that Ms. Hamelin was provided from Ms. Lau, correct?

24 A. No and nor did anyone else. We just - not we.
25 She was asked for her notes and there were no notes to be

1 produced.

2 475. Q. Our next request would be that we ask that you
3 review the notes and documents that Ms. Lau provided to
4 Ms. Hamelin and verify whether Ms. Lau had taken any notes
5 for the March 24th EC meeting.

6 MR. SHAAR: We've already done that search, Mr.
7 Lin.

8 MR. LIN: Our request is that Ms. Cuber actually
9 obtain the documents and notes from Ms. Hamelin and do the
10 review herself, not ask Ms. Hamelin whether there are
11 notes.

12 MR. SHAAR: And that will change what?

13 MR. LIN: We don't know if Ms. Hamelin may have
14 overlooked or mistaken. Ms. Cuber is the main person
15 tasked with complying with the orders so we ask that she
16 review it personally and satisfy herself that there were
17 no notes on March 24th, 2020.

18 MR. SHAAR: We'll take it under advisement and get
19 back to you.

20 MR. LIN:

21 476. Q. When did you do the enquiry with Ms. Lau?

22 A. I can't recall if it was at the - it would
23 either have been - I think it would have been shortly
24 before July 22nd - it must have been or on July 22nd,
25 somewhere around there.

1 477. Q. Was that before or after she left?

2 A. She had left already.

3 478. Q. Even though she left, you reached out to her
4 for assistance? Is that correct?

5 A. Yes. She was a former colleague in the Legal
6 Services Department and she had just left and we knew that
7 her notes were someplace but we didn't know where so we
8 asked.

9 479. Q. Going back to paragraph 27 of the Direction to
10 Attend, we understand your position that Microsoft OneNote
11 documents cannot be checked in to RDIMS.

12 A. Yes.

13 480. Q. Can PDF documents be checked in?

14 A. I think PDF documents can be checked in.

15 481. Q. Have you attempted to search on RDIMS for
16 documents checked in by Ms. Alysia Lau with those search
17 strings?

18 A. No.

19 482. Q. Could it be possible that Ms. Lau would have
20 converted her Microsoft OneNote files to PDF and checked
21 them in?

22 A. But I think she would have told me that when I
23 spoke with her on the telephone because I asked her where
24 her notes were and she said that she had given them to Ms.
25 Hamelin.

1 483. Q. Did you specifically ask her if she uploaded
2 or checked in her notes to RDIMS?

3 A. No but I asked her where we could find her
4 notes and she said, "I gave them to Ms. Hamelin." If I
5 asked her, "Did you put them in RDIMS," I already got my
6 answer.

7 484. Q. What is Ms. Hamelin's position?

8 A. She works in the Information Technology
9 division and I believe she has a management position
10 there.

11 485. Q. Let's take a look at your written submissions,
12 please, Exhibit 6, paragraph 83 to 84. Do you know how
13 many members were in attendance on that March 24th, 2020,
14 meeting?

15 A. No, I don't. I know that all members are
16 invited and I don't know who attended. I don't know
17 offhand who attended.

18 486. Q. Do you know if the March 24th, 2020, Members'
19 Meeting was in-camera or not in-camera?

20 A. Yes. It was in-camera.

21 487. Q. Will you refer to document 16, please? This
22 is a letter from Mr. Shaar, July 22nd, 2022. Do you
23 recognise this letter and the enclosures?

24 A. I've read them. I probably have seen it
25 before. I don't have a specific recollection of this.

1 MR. LIN: Could we have this marked as Exhibit 16,
2 please?

3 **EXHIBIT NO. 16:** Letter from Kevin Shaar to the
4 Judicial Administrator, Federal Court of Appeal,
5 July 22, 2022, with enclosures.

6 488. Q. Could we go to the very last page of this PDF
7 file? Is this the quote, unquote, scheduler that you
8 refer to in paragraph 83 of your submissions?

9 A. Yes, I believe it is.

10 489. Q. Let's go to page 4 to 7 of this PDF file.
11 It's a letter from Air Canada. Do you see that?

12 A. Yes, I do.

13 490. Q. Do you have an explanation why this Air Canada
14 letter was not produced to us when the court initially
15 issued the Order in October?

16 A. I do. This letter didn't come up in any of
17 the search results that I had reviewed from the Access to
18 Information request. It hadn't been provided to me
19 otherwise in my searches in relation to the October Order
20 and it should have been captured by the electronic search
21 that was done in November because this letter has the word
22 Refund in it but because there was a typo, that letter was
23 not collected and I didn't find it in any other search
24 results. It came up for the first time as a result of the
25 April search and so when it was found, it was produced.

1 491. Q. Can I direct you to page 3 of the PDF, please?
2 This is an email from Mr. Bergeron to all the members of
3 the CTA, attaching both the Air Canada and the Air Transat
4 letters.

5 A. Yes.

6 492. Q. This email attaches side by side as
7 attachments the Air Canada letter and the Air Transat
8 letter. Do you see that?

9 A. Yes, I do.

10 493. Q. The Air Transat letter would have been
11 captured through your searches? Do you agree?

12 A. But it wasn't captured. I didn't receive the
13 letter through that search. I received the Air Transat
14 letter from Ms. Robertson. I don't actually know - I mean
15 this letter was produced because it was given over by an
16 individual. It wasn't eventually produced because it - I
17 don't know. I don't have an explanation actually for
18 that. I hadn't noticed that.

19 494. Q. So you don't have an explanation of why Mr.
20 Bergeron's email on page 3 was not produced to us
21 initially?

22 A. I can say to you the reason it wasn't produced
23 is because I hadn't seen it. Like I didn't see this
24 letter. Had I see the Air Canada letter, I certainly
25 would have produced it in the same way that I produced the

1 Air Transat letter but I didn't see this letter in any of
2 the search results and that is why it was not produced but
3 as soon as the Air Canada letter was found and as soon as
4 this letter from Sébastien Bergeron was found, they were
5 produced to the parties. I didn't see it. It's not that
6 I saw it and didn't produce it. I produced the Air
7 Transat letter and would have produced the Air Canada
8 letter as well had I seen it.

9 495. Q. Can you explain to us how this email from Mr.
10 Bergeron was ultimately found?

11 A. Yes. In response to the April Order, Amanda
12 Hamelin asked all members who were on the list of
13 attendees for the March 24th, 2020, in-camera Members'
14 Meeting to produce documents in relation to that meeting
15 and to answer questions about that meeting, and so
16 individuals provided their documents to Ms. Hamelin and I
17 don't know where they got the documents from. I don't
18 know if they had saved them somewhere on their desktop or
19 if they were sitting in their In boxes or they were saved
20 in RDIMS. I don't know. They were just produced by the
21 individuals when they were requested.

22 496. Q. From what appears on page 3, it looks like a
23 printout from Microsoft Outlook. Do you agree?

24 A. Yes but I mean that can be - I don't know.
25 I'm speculating now. Yes. What I can say is I did not

1 find this letter. It was not in the search results and
2 that's why I didn't produce it. I didn't see it and not
3 produce it. I didn't have the letter but when it was
4 found in April, it was produced to the parties. It's
5 certainly an email.

6 497. Q. Let me take a step back here. When we looked
7 at the search results in Exhibit 8, we understand that
8 search would search both the subject line, the body, and
9 even attachments. We see here that there are two
10 attachments on this email from Mr. Bergeron, the Air
11 Transat letter and Air Canada letter. They seem to
12 contain the search terms; for example, the word COVID and
13 the word Voucher.

14 A. Yes.

15 498. Q. Would you agree with me that this should have
16 appeared in the search results that you reviewed, Exhibit
17 8?

18 A. It should have appeared in the search results
19 and if it was still in Outlook. If somebody had, for
20 example, put things aside like in a folder or something on
21 their desktop then maybe it wouldn't appear in Outlook but
22 it should have come up in the search results and it did
23 not.

24 499. Q. You're saying someone putting things aside in
25 a separate folder. Is that common practice?

1 A. No. I have no idea. I'm just saying - what
2 I'm telling you is I didn't see the Air Canada letter
3 before and I thought that it was just because the search
4 was faulty that was done in November 2021 but you're quite
5 right that if the Air Transat letter - well, no, you're
6 not because I didn't get the Air Transat letter from an
7 electronic search either. I got it from Ms. Robertson. I
8 didn't find another copy of the Air Transat letter in the
9 electronic search results so perhaps there is some other
10 explanation but the fact remains that the place from which
11 I got the Air Transat letter was directly from Ms.
12 Robertson and I didn't see the Air Transat letter in
13 electronic search results and I didn't see the Air Canada
14 letter in electronic search results but as soon as they
15 were found and identified in April, they were disclosed to
16 the parties.

17 500. Q. You say you got the Air Transat letter
18 initially from Ms. Robertson. Do you know if she had the
19 Air Canada letter as well?

20 A. She didn't give me the Air Canada letter so I
21 don't know if she - I mean she looked and she gave me
22 responsive documents and this was not among them.

23 501. Q. Let's go to page 12 of this PDF file. It's an
24 email from Mr. Streiner at 8:36 am, responding to his own
25 email at 8:31 am. Do you see that?

1 A. Yes.

2 502. Q. Here we see there's two bullet points from Mr.
3 Streiner. One is special measures in respect of the air
4 industry and the second one is the agenda for Thursday's
5 Members' Meeting. Do you see that?

6 A. Yes, I see that.

7 503. Q. In the submissions that you make in the court,
8 at paragraph 83 you said, "The Agency has in its
9 possession a single document in relation to this meeting,
10 namely a scheduler."

11 We see here that there is actually email with
12 agenda of at least two meeting agenda items. Can you
13 explain why this email was not mentioned in your
14 submissions?

15 A. I didn't see this email and it was located in
16 April. That's when it was found. When it was found, it
17 was disclosed to the parties. At the time when I was
18 looking for documents, I had a discussion with Ms.
19 Robertson about whether it was likely or - I was looking
20 for agendas and I was told that it was not the practice to
21 keep agendas for in-camera Members' Meetings at that time
22 and so I didn't look any further.

23 In any event, this document was not among the
24 documents that I saw or that I had in my search results
25 when I was looking for documents in compliance with the

1 October Order. It was only found in April and then it was
2 disclosed.

3 504. Q. Let's go back to page 3 again, Mr. Bergeron's
4 email. We see that the two attachments contain the key
5 words from your search in November 2021, namely the words
6 Voucher and COVID, Corona, or Pandemic. Are you sure this
7 email did not appear in the search results that you
8 reviewed, namely the one in Exhibit 8?

9 A. It did not appear in the search result. I was
10 surprised to see this letter, not this specific email. I
11 saw the Air Canada letter. It was put to me in April when
12 I was no longer doing the searches and I was very
13 surprised and upset that I hadn't seen it before and I
14 went back into the search results in order to make sure
15 that I hadn't overlooked something but I didn't find it in
16 there. I did not find this document, this letter, in the
17 search results and I looked for the letter in relation to
18 individuals who I had seen obtain the letter and I didn't
19 see this email and I didn't find the letter anywhere. I
20 mean you can ask me many, many questions but the fact is I
21 didn't see it. It was found in April. I was mortified
22 and then it was released.

23 505. Q. In relation to the October Order, did you
24 enquire with any of the CTA members about responsive
25 documents?

1 A. No. I had not asked them about notes for the
2 meeting and I didn't approach them about - we looked in
3 sort of the corporate repository or in Outlook accounts
4 but we didn't ask them personally for any of their
5 responsive documents. At the time, I had the explanation
6 that agendas were not kept and ordinarily notes were not
7 kept for these sorts of meetings but I imagine because
8 there was a transition to COVID, things started to - maybe
9 they had an agenda in this case but it wasn't the
10 practice. When I was looking for documents, it didn't
11 seem unusual that not much came up and so I didn't enquire
12 further but further enquiries were made in April and then
13 the responsive documents were produced from individual
14 members.

15 506. Q. In paragraph 84 of your submission you said
16 that "In relation to this item, the Applicant has
17 requested production of notes taken by or on behalf of
18 participants at the meeting. The Agency submits that if
19 personal notes were taken and kept by members, they are
20 not in the Agency's possession."

21 Is it correct to say that you actually enquired
22 with the members in regards to notes?

23 A. We said we didn't enquire with regards to
24 notes with members when I made the submissions in
25 February. The enquiry was made after the April Order.

1 507. Q. Why didn't you make an enquiry with the
2 members?

3 A. Because I looked for notes in the repository
4 and at the time, the Agency's position was that members'
5 notes don't belong to the Agency and that was the position
6 that was taken but after the April Order, the decision was
7 made to enquire from among members whether they had any
8 notes and then they were produced.

9 508. Q. Are you saying that you did not enquire with
10 the members back in relation to the October Order because
11 you didn't believe that it was required? Is that what
12 you're saying?

13 A. The position as stated in the Agency's
14 submissions was that if members took notes during those
15 meetings, they were not in the Agency's possession so that
16 we wouldn't ask them if they had notes in relation to that
17 meeting but after the April Order, the Agency did or
18 Agency staff, specifically Amanda Hamelin, did ask members
19 if they had notes. Then whatever notes there were were
20 produced.

21 509. Q. Just going back to page 3 of this Exhibit 16,
22 Mr. Bergeron's email on March 24th, 2020, how was this
23 found?

24 A. This was found because after the April Order,
25 Amanda Hamelin wrote to each member at the Agency and

1 asked them a series of questions in relation to March 24th,
2 2020, in-camera Members' Meeting and the questions
3 included: Do you remember if the Statement on Vouchers was
4 discussed; Do you have any notes; Do you have an agenda;
5 Do you have a scheduler; Do you have any emails to set up
6 or schedule the meeting; Do you have any correspondence
7 about the decisions or deliverables?

8 Whatever was in your client's deficiency notice in
9 relation to this meeting was put to each member as a
10 question as well as, I think, Mr. Bergeron, and then this
11 email was provided as part of that process.

12 510. Q. Thank you for the clarification. Earlier we
13 did cover that it was not in the search results in Exhibit
14 8, correct, this email?

15 A. It was not in the search results, no. I would
16 have put it in if it had been.

17 511. Q. We understand that. Did you investigate why
18 it did not appear in the search results?

19 A. Yes. I didn't focus on this email. I wasn't
20 focusing on this email. I was focusing on the Air Canada
21 letter and so I enquired with IT and there were a number
22 of possible explanations that they investigated but they
23 eliminated the possibility that attachments wouldn't be
24 included in search results and then landed on the
25 probability that it was due to the typographical error in

1 the search terms used in November 2021; that is to say,
2 the missing space between Refund and Or. I didn't think
3 of this correspondence and so I didn't put that to them.

4 The only thing I would note is that the Air
5 Transat letter didn't come up in any electronic searches
6 either. I didn't have the Air Transat letter in any other
7 search results. I only had it because of Ms. Robertson
8 giving it to me. I don't know if it perhaps is not in
9 Outlook accounts anymore but maybe it was stored
10 somewhere. I don't know.

11 512. Q. Was the Air Transat letter or the Air Canada
12 letter in any of the ATIP search results? Do you recall?

13 A. It was not. I didn't see it in the ATIP
14 search results. I have given that letter by Ms.
15 Robertson. No, I don't recall seeing it anywhere else. I
16 remember being given that letter from Ms. Robertson and
17 then when you asked for the cover letter, I had to go back
18 to Ms. Robertson and I believe she obtained those letters,
19 those documents, from RDIMS or from someplace. I don't
20 know where she got them from actually. I think she got
21 them from RDIMS but I can't be certain. She had them
22 somewhere.

23 513. Q. Earlier you said it could have been possible
24 someone saved the Air Canada letter or Mr. Bergeron's
25 email in a separate folder. Do you remember saying that?

1 A. Yes, I do.

2 514. Q. It is possible that an RDIMS and Outlook
3 search would not be comprehensive? There would be
4 alternative locations where people could have stored
5 various documents like the Air Transat letter and the Air
6 Canada letter, correct?

7 A. Well, I did obtain the Air Transat letter from
8 Ms. Robertson and we did obtain the Air Canada letter from
9 a subsequent search from among members and so I think that
10 to the extent that the electronic search didn't bring up
11 those letters, the searches that involved speaking
12 directly to people and obtaining documents from them would
13 have remedied that.

14 515. Q. Earlier you said you were mortified when
15 learning about the Air Canada letter. Why was that?

16 A. Because I of course would have produced it and
17 in the context of having accusations levied against people
18 of contempt, it's mortifying to know that perhaps if the
19 search terms had not contained a typo, this would have
20 been produced earlier instead of later. I try to do a
21 good job and it affects me when things like this happen.
22 You know what? That's just true.

23 516. Q. When you say that's just true, what do you
24 mean?

25 A. It's difficult --

1 MR. SHAAR: We're away from the search of
2 documents.

3 MR. LIN: The witness offered the statement --

4 THE WITNESS: The intent was to do a thorough
5 search and when additional documents are found through
6 additional searches, it's regrettable for me that I didn't
7 find those documents in a timely fashion. It was not for
8 lack of trying. I guess that's all I'm trying to say.

9 MR. LIN:

10 517. Q. You would agree that the initial electronic
11 searches that you made were not comprehensive?

12 A. No. I think that the electronic searches that
13 were made were more than adequate to bring up 3,000 emails
14 and 5,099 pages of working copy results and other
15 documents that were found through other means. I think
16 that responsive documents were found and they were
17 produced and that additional searches done later in a
18 different way produced further documents which were also
19 disclosed.

20 518. Q. The fact that the Air Transat letter and the
21 Air Canada letter did not appear in your electronic
22 searches, would you say that that is demonstration that
23 the electronic search was not comprehensive? Do you
24 agree?

25 A. But the Air Transat letter was found through

1 other means and disclosed. When an electronic search
2 doesn't do what it's supposed to, other means can come and
3 correct for that. In the end, pursuant to the April
4 Order, these documents were found and then they were
5 disclosed.

6 519. Q. I guess we're getting to the heart of the
7 problem. Why were they not found initially and required a
8 second order from the --

9 MR. SHAAR: We've already done the tour of this
10 question. I think the affiant has responded to these
11 questions several times over now. In the interest of
12 getting out of here at a reasonable hour today, maybe we
13 can move on.

14 MR. LIN:

15 520. Q. Let's go back to Exhibit 16, please, page 12.
16 How was this email found? Can you tell us?

17 A. This email was found because Amanda Hamelin
18 wrote to each member of the Agency with respect to the
19 March 24th in-camera Members' Meeting and requested that
20 they respond to a series of questions and produce
21 responsive documents, which they did. This document was
22 found in the context of that search and then disclosed.

23 521. Q. In Ms. Hamelin's enquiry with the members, the
24 members acknowledged that the Statement on Vouchers was
25 discussed on the March 24th, 2020, Members' Meeting? Is

1 that correct?

2 A. I don't know if they confirmed that it was but
3 certainly when the question was asked, documents that were
4 produced were handed over, even if individual members
5 didn't have a specific recollection of whether the matter
6 was discussed but I believe - anyway, it must have been
7 responsive.

8 522. Q. Is it correct to say that all the members
9 responded to Ms. Hamelin's enquiry?

10 A. Yes. All the members that she contacted
11 responded to Ms. Hamelin. Sorry. That was ambiguous.
12 She contacted everybody on this list who is at the Agency
13 and they all provided documents. If somebody wasn't at
14 the Agency anymore then they weren't contacted. I should
15 make that clear.

16 523. Q. Thank you for the clarification. Was the
17 contact in an email?

18 A. Yes. It was in writing.

19 524. Q. Did you review the email that Ms. Hamelin sent
20 out and the responses that she received?

21 A. I reviewed the email that she sent out and I
22 did review the responses she received because I was asked
23 to verify that there were no other notes that needed to be
24 produced pursuant to the July Order. In that context, I
25 did review the responses received.

1 525. Q. Those responses, did the members indicate
2 whether the Statement on Vouchers was discussed?

3 A. They would have responded to that question
4 because that was a question that was put to them but I
5 didn't memorise the responses. Presumably if these
6 documents were disclosed, it's because there was a chance
7 that it was discussed. It was determined that they were
8 responsive.

9 526. Q. Can we go to page 1 of Exhibit 16, please?
10 Here we have Mr. Shaar's letter saying, "This letter is in
11 response to the Order issued by Madam Justice Gleason on
12 July 19th, 2022, more specifically paragraph 6 of that
13 Order." Do you see that?

14 A. Yes.

15 527. Q. Can you confirm what search was done in
16 relation to paragraph 6 of that Order?

17 A. Documents had already been collected in April
18 in respect of this meeting and it had already been clear
19 to the Agency at that time - I don't know what paragraph 6
20 of the Order specifically says so maybe I should --

21 528. Q. The July Order, Exhibit 3, documents
22 associated with the March 24th, 2020, call.

23 A. And then the Reasons for the Order are - so
24 you have the Reasons for the Order in paragraphs 42 and
25 43?

1 529. Q. It's in Madam Justice Gleason's Reasons.
2 Paragraph 42 says, "From the response received from the
3 CTA, it is unclear whether there were additional notes
4 taken by CTA members, its Chairperson, or Vice Chairperson
5 during the call beyond those that have been disclosed.
6 Within five days of this Order that accompanies these
7 Reasons, the CTA shall advise the parties and the court
8 whether it has been able to determine if any such
9 additional notes were taken. If the Respondent asserts a
10 claim of privilege over any such documents within 10 days
11 of the date of the Order that accompanies these Reasons,
12 they shall make a motion for a ruling on its privilege
13 claim following a procedure above."

14 Paragraph 43 is, "Following resolution of the
15 issues with respect to notes taken during this call, I
16 will rule on the balance of the Applicant's disclosure
17 request made in respect of the March 24th, 2020, call if
18 the CTA does not voluntarily disclose the additional
19 documents sought by the Applicant in respect of that call.
20 The Applicant shall forthwith advise the court if a ruling
21 on the remainder of its disclosure request in respect of
22 the March 24th, 2020, call is required following resolution
23 of the issues in respect to the notes taken during this
24 call."

25 A. Those two paragraphs, if I understand them,

1 refer to members' notes and as I understand it, it was
2 clear to the Agency that the only notes collected from
3 members in April were those that were already disclosed
4 and so because each member had already been asked if they
5 had taken notes and each member had responded and all
6 responsive documents had already been disclosed as a
7 result of the April Order. It only rested on - the only
8 remaining thing to do was to double check that there were
9 nothing in the collected documents from the April request
10 to confirm that no notes remained.

11 That verification, that double checking was done
12 but from the get-go, it had been that the notes were
13 responsive had already been disclosed in April. We just
14 double checked to make absolutely sure. By double check,
15 I meant we looked back into the documents that had been
16 received in response to the request that Ms. Hamelin had
17 made.

18 530. Q. Can we go to document number 17, please? This
19 is a document that has Meeting - March 23rd. Do you recall
20 seeing this document previously?

21 A. Yes.

22 MR. LIN: Can we mark this as Exhibit 17, please?

23 **EXHIBIT NO. 17:** OneNote document of Alysia Lau
24 entitled Meeting - Mar. 23.

25 531. Q. Can you tell me in what context you saw this

1 document?

2 A. Yes. I saw it after the additional search was
3 done in response to the April Order.

4 532. Q. In terms of the third heading, Debriefs,
5 there's the initials SS there. Do you have an idea who SS
6 is?

7 A. That was likely Scott Streiner.

8 533. Q. In that same line, there's mention of TC. Any
9 idea what TC stands for?

10 A. Likely Transport Canada.

11 534. Q. The whole line reads as follows, "TC indicated
12 Agency moved faster than they expected. Other travel
13 restrictions expected. Agreement between SS and MK that
14 agencies/departments should not issue piecemeal decisions.
15 Call this evening between TC and Agency officials."

16 Do you know who MK is?

17 A. I think possibly Michael Keenan.

18 535. Q. From Transport Canada?

19 A. I would think.

20 536. Q. These notes were from March 23rd, 2020, and
21 here we see, "Call this evening between Transport Canada
22 and Agency officials." Do you see that?

23 A. Yes.

24 537. Q. Did you enquire into whether there were
25 discussions about the Statement on Vouchers or refunds at

1 that evening meeting on March 23rd?

2 A. Yes.

3 538. Q. When did you make that enquiry?

4 A. I made that enquiry in response to the October
5 Order. There had been a scheduler and so I made an
6 enquiry about what the contents of the discussion that
7 took place between TC and the Agency were. I concluded
8 that it was not, in fact, a responsive document and then I
9 made a subsequent enquiry in April to double check my
10 findings and I concluded that it was not a responsive
11 document.

12 539. Q. On what basis did you conclude that it was not
13 a responsive document?

14 A. That the Statement on Vouchers - it was not
15 possible to confirm that the Statement on Vouchers had
16 been actually discussed at that meeting. It appears that
17 there was a different discussion.

18 540. Q. You say a different discussion. What was the
19 discussion then?

20 A. My understanding at that time is that there
21 was a need to share information on a number of topics
22 because it was the beginning of a crisis and so there were
23 topics that could be discussed such as the repatriation of
24 passengers who were stranded abroad and that there would
25 be a need to potentially share information or receive

1 information and I was not able to conclude that this was a
2 responsive document but I did make the enquiry twice.

3 541. Q. You mentioned that there was a quote, unquote,
4 scheduler. That's an Outlook calendar invite?

5 A. Yes.

6 542. Q. You were the attendees on that meeting? Do
7 you recall?

8 MR. SHAAR: Are we getting into documents that
9 haven't been disclosed because they are not responsive?

10 MR. LIN: I am asking Ms. Cuber because she said
11 she reviewed it and we want to establish --

12 MR. SHAAR: You want to establish that it was
13 responsive so you can ask her about who the attendees
14 were.

15 MR. LIN:

16 543. Q. Ms. Cuber, what were the agenda items on the
17 scheduler?

18 A. There was no agenda items.

19 544. Q. You say there could be a number of topics that
20 could be discussed because it was at the beginning of the
21 crisis, including repatriation. How would the CTA be
22 involved in repatriation of Canadian passengers?

23 A. I don't know but I'm providing you with
24 information that I received that helped me to determine
25 that the document was non-responsive.

1 545. Q. Did you enquire with Transport Canada
2 specifically about the meeting that occurred on March 23rd?

3 MR. SHAAR: Objection. She didn't enquire with
4 anybody from Transport Canada. She enquired with people
5 from the Agency.

6 MR. LIN:

7 546. Q. Who at the Agency did you enquire with?

8 A. There were two people who provided me with
9 information about that meeting. One of them was Ms.
10 Robertson and one of them was Ms. Lagacé.

11 547. Q. Were they attendees of that meeting?

12 A. They were invited to the meeting and that's
13 why I spoke to them to see if they had information that I
14 could acquire about the topics or what the nature of the
15 meeting was but like I said, on two separate occasions I
16 was not able to determine that this was a responsive
17 document but I made the enquiry twice.

18 548. Q. You say Ms. Lagacé and Ms. Robertson were
19 invited to the meeting. Do you know if they attended?

20 A. I know that Ms. Lagacé attended the meeting
21 but I do not know --

22 549. Q. What about Ms. Robertson?

23 A. I don't think she did attend the meeting.

24 550. Q. Do you know who else from the Agency would
25 have attended the meeting?

1 A. I don't know who else from the Agency attended
2 the meeting. I don't recall who was on the invitee list
3 and I don't know who attended.

4 551. Q. Based on your enquiry with Ms. Lagacé, what
5 was discussed at that meeting?

6 MR. SHAAR: Objection. Relevance.

7 MR. LIN:

8 552. Q. Was the topic of refunds - sorry, Ms. Cuber.
9 Go ahead.

10 A. I asked - I had a discussion about the
11 responsiveness of this item because the document was
12 before me but I was not able to conclude based on our
13 discussions that it was a responsive document and so I
14 could not produce it.

15 553. Q. Did you ask Ms. Lagacé if the topic of refunds
16 was discussed at that meeting?

17 A. I had a discussion with her. She understood
18 the scope of the order and I had a discussion with her
19 about whether it was a responsive document and the
20 conclusion was that it was not.

21 554. Q. Did you ask her if the issue of credit card
22 chargebacks was discussed at that meeting?

23 MR. SHAAR: Objection. Relevance.

24 MR. LIN: How is it irrelevant? The Air Canada
25 and Air Transat letters both deal with that subject

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1 matter.

2 MR. SHAAR: We're not getting into the merits
3 here. We're talking about the search for documents.

4 MR. LIN: Yes. That's why I'm asking Ms. Cuber if
5 she asked Ms. Lagacé if the topic of credit card
6 chargebacks was discussed at the meeting with Transport
7 Canada.

8 MR. SHAAR: I'm objecting. My witness is not
9 going to answer the question. The only questions that are
10 relevant here was what Ms. Cuber did to determine if this
11 was responsive to the court's order and she told you
12 that's what she did and that it wasn't. Now you're trying
13 to delve into the contents of discussions surrounding the
14 meeting that is not responsive. This is starting to look
15 like a fishing expedition. We're not going to get into
16 meetings that have nothing to do with the Statement on
17 Vouchers. Credit card chargebacks is not the Statement on
18 Vouchers.

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19 MR. LIN: I don't think we will be debating on
20 that here. Certainly if Ms. Cuber does not wish to answer
21 the question, we can bring an objections motion. Credit
22 card chargebacks and the Statement on Vouchers are clearly
23 well related.

24 MR. SHAAR: We maintain our objection.

25 MR. LIN: I refer you back you Exhibit 11 where

1 there is clear reference to the Air Transat getting
2 pressure from creditors pushing the airlines for cash and
3 requests that they be officially allowed to provide
4 vouchers to passengers.

5 MR. SHAAR: Ms. Cuber told you about the enquiries
6 she made to determine whether or not the Statement on
7 Vouchers was discussed and she came to the conclusion that
8 it wasn't so we're not going to talk about what was
9 discussed if the Statement on Vouchers wasn't discussed.

10 MR. LIN:

11 555. Q. Ms. Cuber, I don't think I had a clear answer
12 in terms of whether the topic of refunds to passengers was
13 discussed at that Transport Canada meeting.

14 A. The discussion that I had was in light of the
15 court's October Order and whether or not this was a
16 responsive document. The discussion was is this
17 responsive to the court's order and I concluded at the
18 close of that discussion that it was not responsive to the
19 court's order. I made a subsequent enquiry and the same
20 conclusion was made. The discussion was in light of the
21 court's order from October 15.

22 556. Q. Ms. Cuber, respectfully, you are not answering
23 the question. You are stating the conclusion you had.
24 The question was was the topic of refunds to passengers
25 discussed at that Transport Canada meeting. Yes or no?

1 A. I guess I don't know. The conclusion that I
2 came to was that the Statement on Vouchers was not the
3 topic of discussion and it was not a meeting concerning -
4 I could not conclude that this was a responsive document
5 to the court's October Order.

6 557. Q. Did you ask Ms. Lagacé whether the topic of
7 refunds to passengers was discussed at that meeting?

8 MR. SHAAR: Objection. We're not going to get
9 into the topic of discussion between two counsel members.

10 MR. LIN: Ms. Cuber has been discussing her
11 discussions with Ms. Lagacé at length over the --

12 MR. SHAAR: Both are familiar with what was
13 required by the April Order, that it was discussed, and
14 they came to the conclusion that it was not a responsive
15 document.

16 MR. LIN: We're not asking about Ms. Cuber's
17 conclusion. We're asking about Ms. Cuber, "Did you ask
18 Ms. Lagacé whether the topic of refunds to passengers was
19 discussed at that Transport Canada meeting?" It's a yes
20 or no answer. We are asking for facts, not legal opinion.

21 MR. SHAAR: If that would make it responsive then
22 she asked that and concluded it was not responsive.

23 MR. LIN: Mr. Shaar, you can't answer for the
24 witness. We're asking --

25 MR. SHAAR: You seem to be asking the same

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1 question over and over again and you're unsatisfied with
2 the answer that the affiant is giving. You might not like
3 the answer but she's giving you her answer on the question
4 so I don't see how circling around it and asking the
5 question over and over again is productive.

6 MR. LIN: We're entitled to ask the question --

7 MR. SHAAR: And you've asked the question.

8 MR. LIN: And we haven't received an answer.

9 558. Q. Ms. Cuber, did you specifically ask Ms. Lagacé
10 whether refunds to passengers was discussed at that
11 Transport Canada meeting on the evening of March 23rd,
12 2020? Yes or no?

13 A. I didn't ask her if the topic of refunds were
14 discussed. I talked to her about the topic of the meeting
15 and about whether this document was a responsive document.
16 As with many of the questions you asked, I didn't ask to a
17 level of minute detail when it wasn't necessary.

18 559. Q. Why did you conclude it was not necessary?

19 A. Because I concluded that this was not a
20 responsive document. I had a discussion with Ms. Lagacé
21 and the conclusion that we came to was that this was not
22 responsive. I was not able to find any other documents
23 that would suggest that it was a responsive document and
24 then I revisited the matter in April and the same
25 conclusion was reached.

1 560. Q. You're saying, "We came to the conclusion."
2 You and Ms. Lagacé collectively decided the conclusion?
3 Is that what you're saying?

4 A. No. I mean I obtained the information and it
5 made the answer apparent.

6 561. Q. What do you mean by "made the answer
7 apparent"?

8 A. It wasn't a responsive document. I can't
9 produce documents when I have no way to say this is
10 responsive. I can't produce a document just because it's
11 interesting. I have to produce responsive documents.

12 562. Q. It seems the conclusion is circular. You're
13 saying it's not responsive and therefore it's not
14 responsive and that's why you don't need to enquire.
15 Isn't the object of an enquiry to determine whether
16 something is responsive so you ask questions? What was
17 discussed? Was this topic discussed? Was that topic
18 discussed? Would you agree that's proper --

19 A. No. We discussed - I brought up the document.
20 We had a discussion about whether it was responsive to the
21 court's order and as a result of that discussion, the
22 document was not produced because it was not responsive.

23 563. Q. Who determined it was not responsive?

24 A. I don't - I guess I determined based on our
25 discussion that it was a not a responsive document and I

1 discussed it again.

2 564. Q. The document we are referring to is the
3 schedule for that meeting, correct?

4 A. Yes.

5 565. Q. Did Ms. Lagacé refer to any other documents
6 that were sent or received in relation to that meeting?

7 A. No.

8 566. Q. Was there an agenda for that meeting?

9 A. No. You've asked and I said that there was no
10 agenda. There was no information. I had a discussion
11 about it because there was no information about the
12 contents - there was no agenda for the meeting that would
13 lead me - I asked about it for that reason.

14 MR. LIN: I see the time right now. I propose we
15 take a short 10-minute break and I'll review my notes in
16 the meantime and hopefully we can wrap up shortly after
17 the break. Does that work for everybody?

18 MR. SHAAR: Yes.

19 MR. LIN: Ten minutes, please. Just before we go
20 off the record, Ms. Cuber, same reminder that you are
21 still under cross-examination. Thank you, everyone.

22 (SHORT RECESS)

23 MR. LIN:

24 567. Q. Ms. Cuber, going back to this document again,
25 Exhibit 17, when did you first come across this document?

1 A. I came across this document in April.

2 568. Q. April of this year?

3 A. Yes.

4 569. Q. We were talking about the bullet point just
5 under Debriefs before our break. My next question also
6 deals with that bullet point. It says there, "TC
7 indicated Agency moved faster than they expected."

8 Did you make any enquiries into what that is
9 referring to? What did Transport Canada mean by --

10 MR. SHAAR: Objection. This is going beyond the
11 search for documents. This is beyond the scope of the
12 cross-examination. You're getting into the content of
13 material what Mrs. Cuber was not the author of.

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14 MR. LIN: Mr. Shaar, respectfully, the documents
15 refer to the events that occurred and those lead to a
16 trail of enquiry and that's why we're asking Ms. Cuber did
17 she turn her mind to what that line says. That is the
18 question.

19 MR. SHAAR: I think this goes beyond the scope of
20 the search for documents. I maintain my objection.

21 MR. LIN:

22 570. Q. Ms. Cuber, did that line cause you to do any
23 further enquiries?

24 MR. SHAAR: I've objected to the question. Mrs.
25 Cuber's role was not to read every document that she

1 spotted and then make interpretations as to what other
2 people had said. There is no indication in that line that
3 there are other documents so there was no reason for Mrs.
4 Cuber to pursue an investigation regarding that line. I
5 suspect you're getting into the merits here so I am going
6 to maintain my objection.

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7 MR. LIN: We'll certainly debate that on an
8 objections motion.

9 571. Q. Let's take a step back. March 23rd, 2020, was
10 a Monday. Do you agree, Ms. Cuber?

11 A. I don't disagree. I imagine that if March 21-
12 22 was the weekend then the 23rd would have been a Monday.

13 572. Q. I guess we can agree on that. In terms of any
14 meetings that occurred between Mr. Streiner or Ms. Jones
15 and Transport Canada over that weekend, what enquiries
16 have you made to find documents in relation to those
17 meetings?

18 A. I've already described the enquiries that I
19 made. I spoke with Ms. Robertson. I think I described
20 that quite a lot. I asked Ms. Robertson if she had any
21 documents that would be responsive to that component of
22 the order in particular but not exclusively because as the
23 Executive Coordinator of the Chair's Office, she might be
24 best placed to answer that question or not answer the
25 question but provide documents that might be responsive.

1 573. Q. Can you tell us how Ms. Streiner or Ms. Jones
2 was able to schedule meetings with Transport Canada? This
3 is about any written record in the Agency's possession.

4 MR. SHAAR: Objection. Relevance. How they were
5 able to schedule meetings has nothing to do with Mrs.
6 Cuber's search for documents.

7 MR. LIN:

8 574. Q. Ms. Cuber, do you agree that your search for
9 documents would encompass any documents in relation to the
10 meetings Mr. Streiner or Ms. Jones would have had with
11 Transport Canada officials during that weekend?

12 A. Yes. The October Order required disclosure of
13 documents or documents sent to or from third parties or
14 relating to any meetings attended by Agency members at
15 which the subject matter of the Statement on Vouchers was
16 discussed so yes.

17 575. Q. What did you do to satisfy yourself in terms
18 of meetings with Transport Canada that weekend that there
19 were no responsive documents?

20 A. I reviewed the 3,000 emails that we had. I
21 reviewed the working copy from ATIP. I spoke with Lesley
22 Robertson. I asked for an additional search to be done
23 and I reviewed the documents that Transport Canada
24 themselves had produced on the topic of meetings between
25 the Agency and Transport Canada in order to see if there

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1 was any evidence of meetings on that weekend and those
2 were the steps that I took in order to try to determine
3 whether there were any meetings that weekend. I also -
4 those were the steps I took.

5 576. Q. But you did not directly ask Mr. Streiner or
6 Ms. Jones whether there were meetings that weekend,
7 correct?

8 A. I did not contact Mr. Streiner or Ms. Jones.

9 577. Q. Based on email chains that we have seen that
10 the CTA has discussed, there were references to
11 discussions over the weekend. Do you recall that?

12 A. I recall that there were references to
13 discussion from the documents that we disclosed to you.

14 578. Q. To be clear, what we mean by discussion is
15 discussions with officials at Transport Canada.

16 MR. SHAAR: Perhaps you can refer us to the
17 document, Mr. Lin?

18 MR. LIN: It's the Agency documents, documents the
19 Agency has disclosed. There was the email, for example,
20 on March 20th, 2020, at 11:00 am, CTA Announcement
21 Tomorrow. This was appended to the Agency's Motion Record
22 for an informal motion to extend time on December 14th,
23 2021. That was when Ms. Cuber still had conduct of the
24 file.

25 579. Q. Ms. Cuber, do you recall that motion, the

1 informal motion made by the AGC for extension of time?

2 A. Yes.

3 580. Q. In there they request an extension of time in
4 relation to this email exchange between CTA and Transport
5 Canada. Do you recall that?

6 MR. SHAAR: It's very difficult when you're not
7 putting the email to the witness or so that I can see it
8 myself.

9 MR. LIN: We can certainly send it out right away.
10 Just one second. We'll send out the whole Motion Record.

11 581. Q. Ms. Cuber, you recall this informal motion
12 that was made by the AGC, correct?

13 A. Yes.

14 MR. LIN: Can we have this marked as Exhibit 18,
15 please?

16 **EXHIBIT NO. 18:** Motion Record of the Attorney
17 General of Canada, Informal motion in writing for
18 an extension of time to claim privilege over
19 portions of two documents, December 14, 2021.

20 582. Q. When we go to page 9 of this PDF file, at the
21 bottom, Caitlin Hurcomb's email on Monday, March 23rd at
22 10:15 am says, "Hi Vincent. I understand there is a plan
23 to release a statement indicating that, generally
24 speaking, for cancelled flights, an appropriate approach
25 in the current context could be for airlines to provide

1 affected passengers with vouchers or credits for future
2 travel. This was discussed between the Chair, the DM, and
3 the" redacted "and Marcia spoke with your ADM over the
4 weekend as well." Do you see that?

5 A. Yes.

6 583. Q. It is obvious from Ms. Hurcomb's email that
7 she is referring to the Statement of Vouchers that would
8 be issued on March 25th. Do you agree?

9 A. Yes, I think so.

10 584. Q. There is explicit reference here to Ms. Jones
11 speaking with transport Canada's ADM over the weekend. Do
12 you agree?

13 A. Yes.

14 585. Q. And then below on page 10, the initial email
15 from Vincent Millette says, "Hi Cait. I was just on a
16 conference call with Lawrence, our ADM, where he briefed
17 us on an announcement the Agency would do tomorrow
18 regarding the refund and voucher issue."

19 That is in relation to the Statement on Vouchers,
20 do you agree?

21 A. Yes. I think so.

22 586. Q. Here we see there is reference in the email
23 above to Ms. Jones having spoken to Transport Canada's ADM
24 over the weekend in relation to the Statement on Vouchers
25 topic. What steps did you take to find all documents

1 relating to that meeting Ms. Jones had with the ADM? Can
2 you please explain?

3 A. I reviewed the documents that had been
4 provided in the context of the Access to Information
5 request and that included documents that would have been
6 provided by the Analysis and Outreach Branch of which
7 Marcia Jones was the branch head. If she had responsive
8 documents then presumably they would have been provided at
9 that time and then I asked for an additional search to be
10 run in November of 2021 to see if there could be any other
11 documents using search terms. Those were the main steps
12 that I took. Those were the steps I took.

13 587. Q. Did you enquire on how Ms. Hurcomb would have
14 known about Ms. Jones's discussion with the Transport
15 Canada ADM?

16 A. No. I believe Caitlin Hurcomb left the Agency
17 in September 2021. I know that she left the Agency and I
18 believe it was in September 2021.

19 588. Q. Going back to the email on Sunday, March 22nd,
20 the one immediately below from Mr. Millette, he is
21 referencing the Statement on Vouchers on Sunday, March
22 22nd. It seems obvious that Transport Canada learned about
23 the Statement on Vouchers that the Agency was developing
24 during that weekend. Do you agree?

25 MR. SHAAR: Objection. When somebody from

1 Transport Canada learned about the Statement of Vouchers
2 is a little bit beyond what the scope of what Mrs. Cuber
3 is here to testify on. She can't testify as to when
4 somebody learned something.

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5 MR. LIN: Mr. Shaar, respectfully, the October
6 Order deals with documents and meetings with third parties
7 and --

8 MR. SHAAR: I'm not disputing that. I'm disputing
9 your last question which asks the affiant to say when
10 Transport Canada learned about something.

11 MR. LIN: We're not asking Ms. Cuber exactly when
12 Transport Canada learned of it. We're asking her did she
13 take any steps to figure out how Transport Canada learned
14 about this. What search have you conducted? Did you
15 conduct specific --

16 MR. SHAAR: Why would she search for something
17 about how Transport Canada learned about this? Her search
18 was for responsive documents pursuant to a court order.
19 None of those required her to learn how Transport Canada
20 learned about this.

21 MR. LIN: When the CTA notified Transport Canada
22 that the Statement on Vouchers was being issued, that
23 would be a responsive document because it's a document to
24 a third party in relation to the Statement on Vouchers.

25 MR. SHAAR: If the document existed, it would be

1 disclosed. Asking her to say when Transport Canada
2 learned is not the same question.

3 MR. LIN:

4 589. Q. Ms. Cuber, did you make any specific searches
5 - I'm not talking about the general searches like the
6 November 2021 search you did or reviewing ATIP. We see
7 here there is clear indication Transport Canada knew about
8 the Statement on Vouchers as early as the weekend of March
9 22nd, 2020. What steps have you taken to search for
10 documents during that weekend in relation to the Statement
11 on Vouchers and notification to Transport Canada?

12 A. The steps that I took were to review the
13 documents that we had from the Access to Information
14 request that had been gathered at different times and in
15 different ways in May and in November 2020, using searches
16 in RDIMS, using requests to the Analysis and Outreach
17 Branch and the Office of the Chair and CEO to provide
18 responsive documents, and searches in Outlook. I relied
19 on those.

20 I looked through the working copy that was 5,099
21 pages long. I asked Lesley Robertson specifically for
22 information that she might have on this topic and I asked
23 for IT to run an additional search with different search
24 terms in order to see if there were any documents or hits
25 in anybody else's email account that might still be

1 remaining and that might be responsive to this particular
2 issue and to the order in general.

3 590. Q. You are stating that amongst the documents
4 that you reviewed, you did not see documents where the CTA
5 notified Transport Canada about the Statement on Vouchers?

6 A. I didn't see any document on this issue that
7 wasn't produced. Every document that I found on this
8 issue, which I searched for, every document that I found
9 was produced to the parties.

10 591. Q. Let me ask you, you as the lawyer that's
11 searching for documents, we see here that there's a
12 reference to Transport Canada learning about the Statement
13 on Vouchers on March 22nd. Would be reasonable for you to
14 do further searches into what communications occurred
15 between Transport Canada and the CTA during that weekend?

16 A. That was the one of the intentions of my
17 search was to look for documents of that sort and I
18 thought that the best way to do that was to carefully look
19 through the already-gathered documents and to see if Ms.
20 Robertson had any specific documents because she, as the
21 Executive Coordinator of the Chair's Office, would be best
22 placed to be able to provide any documents that might
23 exist and she produced no - I produced the responsive
24 documents that she gave me. I didn't have any documents
25 on this topic that I didn't produce to the parties. These

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are the documents that existed that were responsive to the court's order.

MR. LIN: Can we take a short break, maybe two minutes? I just want to review my notes off camera. Is that okay? I see Mr. Shaar nodding. Thank you.

(SHORT RECESS)

MR. LIN: Ms. Cuber, thank you for attending today. Subject to the requests that we made on the record and the objections, we will be adjourning today's cross-examination. Thank you.

-- THE EXAMINATION ADJOURNED AT THE HOUR OF 4:29 IN THE AFTERNOON.

WE HEREBY CERTIFY THAT the foregoing was transcribed to the best of our skill and ability.

.....

E.M. GILLESPIE / S.L. / S.P.

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Resume: False

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**FORMULAIRE DE COLLECTE DE DOCUMENTS PAR LES SERVICES GI-TI AU TITRE DE L'AIPRP
IM-IT ATIP RECORDS RETRIEVAL FORM**

N° de la demande / Request #		Following Federal Court of Appeal Order in Court File No. A-102-20 which can be found here .	
MS Outlook distribution list that represent the OPI group Members of this group will be included in the MS Outlook (MS Exchange) search		Agency-wide	
Doit être terminée au plus tard To be completed by		3/25/2020	
Texte complet de la demande / Full Request Wording			
<p>insérez la référence 3. Within 60 days of the date of this Order, the CTA shall disclose to the applicant: a. all non-privileged documents sent to or by a member of the CTA (including its Chairperson or Vice-Chairperson) between March 9 and March 25, 2020 concerning the statement on vouchers posted on the CTA's website on March 25, 2020; b. all non-privileged documents sent to a third party by the CTA or received from a third party by the CTA between March 9 and March 25, 2020 concerning the statement on vouchers posted on the CTA's website on March 25, 2020; and Page: 3 c. all non-privileged documents related to any meeting attended by a CTA member (including its Chairperson or Vice-Chairperson) between March 9 and March 25, 2020 where the statement on vouchers posted on the CTA's website on March 25, 2020 was discussed;</p>			
RECHERCHE DANS LE SGDDI ET MS OUTLOOK / SEARCH OF RDIMS AND MS OUTLOOK			
<p>Les Services de la GI et les Services de la TI sont responsables de la recherche dans le SGDDI et dans MS Outlook (MS Exchange) des documents demandés en fonction des mots-clés proposés ci-dessous.</p> <p>The IM Services and the IT Services are responsible for searching the requested records in RDIMS and MS Outlook (MS Exchange) based on the keywords proposed below.</p>			
<p>Mots-clés ET opérateurs par le BPR OPI keywords AND operators</p> <p>Exemple / Example</p> <p>John Smith RDIMS AND Training Demande OR Formulaire OR Request</p>		<p>(Refund*OR Voucher*) AND (Covid* OR Corona* OR Pandemic)</p> <p>(Rembourse* OU crédit*) ET (Covid* OU Corona* OU pandémie)</p> <p>I am searching for messages "to" or "from" external parties. If it is possible to isolate external emails in this timeframe it would be helpful.</p> <p>A search including "tc.gc.ca" would be useful.</p> <p>A search ending of "to" and "from" ending in ".com" and "@gmail.com" could be helpful.</p>	
Plage de dates Date Range		# du cas (si applicable) Case # (if applicable)	NA
De / From 3/9/2020 À / To 3/25/2020		# de dossier (si applicable) File # (if applicable)	NA
RÉSULTAT DE LA RECHERCHE DE DOCUMENTS DANS LE SGDDI ET MS OUTLOOK SEARCH RESULT OF THE RECORDS IN RDIMS AND MS OUTLOOK			
Les Services de la GI / The IM Services			
<input type="checkbox"/>	Des documents ont été trouvés / Records were found		<input type="checkbox"/>
	Dossier SGDDI RDIMS Folder		Aucun document n'a été trouvé No records were found
<input type="checkbox"/>	OPI additional documents included		
Les Services de la TI / The IT Services			
<input checked="" type="checkbox"/>	Des courriels ont été trouvés Emails were found		<input type="checkbox"/>
			Aucun document n'a été trouvé No records were found
APPROBATION DE LA RECHERCHE DANS LES DOCUMENTS / APPROVAL OF THE SEARCH OF THE RECORDS			
<p align="center"><u>Signature électronique</u> des représentants et des gestionnaires responsables de la recherche. <u>E-signature</u> of the representatives and managers responsible for the search.</p>			
Représentant de la GI / IM representative		Représentant de la TI / IT representative	



X	X
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Plage de dates Date Range		# du cas (si applicable) Case # (if applicable)	NA
De / From 3/9/2020 À / To 3/25/2020		# de dossier (si applicable) File # (if applicable)	NA
RÉSULTAT DE LA RECHERCHE DE DOCUMENTS DANS LE SGDDI ET MS OUTLOOK SEARCH RESULT OF THE RECORDS IN RDIMS AND MS OUTLOOK			
Les Services de la GI / The IM Services			
<input type="checkbox"/>	Des documents ont été trouvés / Records were found		<input type="checkbox"/>
	Dossier SGDDI RDIMS Folder		Aucun document n'a été trouvé No records were found
<input type="checkbox"/>	OPI additional documents included		
Les Services de la TI / The IT Services			
<input checked="" type="checkbox"/>	Des courriels ont été trouvés Emails were found		<input type="checkbox"/>
			Aucun document n'a été trouvé No records were found
APPROBATION DE LA RECHERCHE DANS LES DOCUMENTS / APPROVAL OF THE SEARCH OF THE RECORDS			
<p align="center">Signature électronique des représentants et des gestionnaires responsables de la recherche. E-signature of the representatives and managers responsible for the search.</p>			
Représentant de la GI / IM representative		Représentant de la TI / IT representative	



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Court File No.: A-102-20

FEDERAL COURT OF APPEAL

BETWEEN:

AIR PASSENGER RIGHTS

Applicant

– and –

ATTORNEY GENERAL OF CANADA

Respondent

– and –

CANADIAN TRANSPORTATION AGENCY

Intervener

WRITTEN REPRESENTATIONS OF THE MOVING PARTY**PART I – OVERVIEW AND STATEMENT OF FACTS****A. Overview of this Motion**

1. The Applicant is seeking the Court’s assistance to secure the CTA’s compliance with the October 15, 2021 and April 11, 2022 Orders. Recently discovered evidence shows that the CTA has failed to conduct any search for encrypted emails and falsely denied the existence of documents that have already been determined to be relevant by this Court. The Applicant is also seeking production of documents that were refused during cross-examination, and for Transport Canada to preserve relevant documents.

2. The CTA has been playing “hide and seek” with the Court and the Applicant by selectively omitting to search for and/or refraining from making any inquiries regarding encrypted emails. The CTA also made false assertions of “non-existence” of relevant documents, only to be later proven incorrect by the CTA’s own documents or Transport Canada’s *Access to Information Act* [ATIA] responses. The CTA has now had more than a year since the Court’s October 15, 2021 Order to comply with this Court’s Orders to produce all of the three categories of relevant documents. The CTA has failed to do so.

3. Ms. Cuber’s cross-examination also revealed that some documents may have been deleted because the CTA failed to ensure preservation of documents when this Application was filed. Ms. Jones and her team, including Ms. Hurcomb, were one of the main conduits with Transport Canada for airline refunds and vouchers. However, inexplicably, they were omitted from the “notification” to preserve documents in April 2020 and were free to destroy documents that they deemed to have no “business value.”

B. Background of the Underlying Judicial Review Application

4. The underlying Application relates to the widely disseminated “Statement on Vouchers” the CTA published on March 25, 2020 [**Statement on Vouchers**], which was endorsed by the CTA’s Members after airlines’ and Transport Canada’s behind-the-scenes political pressure on the CTA to assist in depriving passengers of their refunds.

5. The Applicant is a non-profit group that advocates for the rights of the travelling public, seeking judicial review on behalf and for the benefit of the travelling public in respect of the Statement on Vouchers on two distinct grounds:

- (a) **Reasonable Apprehension of Bias Ground [RAB Ground]** — the issuing of the Statement on Vouchers was contrary to the CTA’s *Code of Conduct*, and gives rise to a reasonable apprehension of bias for the CTA as a whole, or the CTA’s members that endorsed the statement; and
- (b) **Misinformation Ground** — the statement was carefully designed to misinform and confuse passengers’ about their rights vis-à-vis the airlines.

6. The RAB Ground of review is two-fold. Firstly, the pre-judgement by the CTA as an institution, or by its constituent Members, regarding passengers’ entitlement to reimbursement for flights affected by the pandemic. Secondly, external third-party influence for the inception of the impugned Statement on Vouchers.¹

¹ Reasons for Order of Gleason, J.A. (Oct. 15, 2021) at para. 17 [Tab 4, p. 216].

C. Ms. Jones' Involvement Before the Statement on Vouchers was Issued

7. The documents disclosed so far reveal that Ms. Marcia Jones, the CTA's then Chief Strategy Officer, and her team, including Ms. Caitlin Hurcomb, were entangled in the inception phase of the Statement on Vouchers. They received an encrypted "FW: From MinO - Air Transat" Transport Canada email on March 18, 2020, and then had exchanges on the particulars of issuing vouchers in lieu of refunds, including retroactive tariff amendments.² Ms. Jones's team also drafted the Statement on Vouchers FAQs.³

8. When this Application was commenced on April 9, 2020, counsel for the CTA (Mr. Allan Matte) notified *all* key CTA personnel and their teams of this litigation, including Ms. Jones and her team.⁴ However, on April 14, 2020, when Mr. Matte sent a further notification to preserve documents for this Application, Ms. Jones and her team were inexplicably omitted from that notification to preserve documents.⁵

D. The Court's Orders for the CTA to Disclose Documents

9. The Court has issued three orders for the CTA to disclose documents, including:

- (a) an Order on October 15, 2021 to produce three categories of relevant documents [**October 2021 Order**];
- (b) an Order on April 11, 2022 to produce specific documents covered by the three categories in the October 15, 2021 Order, and for the CTA to provide an affidavit regarding its document search [**April 2022 Order**]; and
- (c) an Order on July 19, 2022 for the CTA to produce documents relating to the cross-examination on the CTA's document search affidavit [**July 2022 Order**].

² Lukács Affidavit, Exhibits "T", "Z", and "AJ" [Tabs 2I, 2Z, and 2AJ, pp. 65, 137, and 186].

³ Lukács Affidavit, Exhibits "AC" and "AD" [Tabs 2AC and 2AD, pp. 150 and 157].

⁴ Affidavit of Ms. Barbara Cuber (Apr. 21, 2022) [**Cuber Affidavit**], para. 8; and Transcript of Cross-Examination of Ms. Barbara Cuber (Sep. 16, 2022) [**Cuber Cross-Examination**], Q65-Q81 [Tab 9, pp. 308-312].

⁵ Cuber Cross-Examination, Q68-Q70 and Q118 [Tab 9, pp. 308-309 and 322].

i. October 2021 Order

10. In the October 2021 Order, Gleason, J.A. ordered, *inter alia*, that within 60 days the CTA shall produce to the Court and the Applicant:⁶

- (a) all non-privileged documents sent to or by a member of the CTA (including its Chairperson or Vice-Chairperson) between March 9-25, 2020 concerning the Statement on Vouchers [**CTA Member Correspondences**];
- (b) all non-privileged documents sent to a third party by the CTA or received from a third party by the CTA between March 9-25, 2020 concerning the Statement on Vouchers [**Third-Party Correspondences**]; and
- (c) all non-privileged documents for any meeting attended by a CTA Member, including its Chair or Vice-Chair, between March 9-25, 2020 where the Statement on Vouchers was discussed [**Meeting Documents**].

ii. April 2022 Order for Documents and Document Search Affidavit

11. On April 11, 2022, Gleason, J.A. issued the April 2022 Order and Reasons regarding the Applicant's request to produce specific documents including:

- (a) **Statement on Vouchers Meeting Documents:** The Court ordered the CTA to confirm if the Statement on Vouchers was discussed at meetings on March 19, 22, and 23, 2020, and if so, to produce the documents within five (5) days;⁷ and
- (b) **CTA Document Search Affidavit:** The Court ordered that the CTA serve and file an affidavit detailing its document search efforts in complying with the Court's October 2021 Order and April 2022 Order.⁸

⁶ Order of Gleason, J.A. (Oct. 15, 2021), para. 5 [Tab 3, p. 207]; and Reasons of Gleason, J.A. (Apr. 11, 2022), paras. 30-31 and 34 [Tab 6, pp. 239-241].

⁷ Reasons of Gleason, J.A. (Apr. 11, 2022), paras. 32-35 [Tab 6, pp. 240-241].

⁸ Reasons of Gleason, J.A. (Apr. 11, 2022), paras. 44-50 [Tab 6, pp. 244-246].

iii. July 2022 Order for Documents Relating to the Cross-Examination

12. On July 19, 2022, the Court issued an Order that the CTA disclose some of the documents that the Applicant had requested for purposes of the cross-examination on the CTA Document Search Affidavit.⁹

E. Cross-Examination on the CTA Document Search Affidavit

13. The September 16, 2022 cross-examination on the CTA's Document Search Affidavit and the CTA's subsequent written responses revealed, *inter alia*, that:

- (a) There were various "side exchanges" between the CTA and Transport Canada on Air Transat's request for vouchers in lieu of refunds, including encrypted emails, that have not been fully disclosed.¹⁰
- (b) The CTA's affiant made no efforts to search for encrypted emails and refrained from making inquiries with the CTA's IT department on encrypted emails.¹¹ The basic rule #1 of the Information Commissioner's guidance is that these searches are to include encrypted emails to ensure the "complete story" is captured.¹²
- (c) Some TC-CTA Backchannel Documents, such as the encrypted March 18, 2020 email from Transport Canada, may have been deleted at an unknown time.¹³
- (d) After Ms. Jones and Mr. Streiner had left the CTA in June 2021, their Outlook accounts were "closed" and all of their emails and calendar events are purportedly no longer searchable through the usual means used to perform searches.¹⁴

⁹ Reasons of Gleason, J.A. (Jul. 19, 2022), paras. 48-49 [Tab 8, pp. 278-279].

¹⁰ Lukács Affidavit, Exhibit "AJ" [Tab 2AJ, p. 186].

¹¹ Lukács Affidavit, Exhibit "I" [Tab 2I, p. 65]; and Cuber Cross-Examination, Q289-Q303 [Tab 9, pp. 365-369].

¹² Lukács Affidavit, Exhibits "C" and "D" [Tabs 2C and 2D, pp. 36 and 38].

¹³ Cuber Cross-Examination, Q110-Q117 [Tab 9, pp. 319-322]; and Lukács Affidavit, Exhibit "S" [Tab 2S, p. 97].

¹⁴ Cuber Cross-Examination, Q27-Q36, Q134-Q144, Q160-Q161, and Q418-Q419

- (e) The CTA's November 2021 Outlook search did not search encrypted emails and Outlook accounts of departed personnel (e.g., Mr. Streiner, Ms. Jones, and likely Ms. Hurcomb). The CTA's Outlook search was also flawed in that it had obvious typographical errors in the search query and did not fully capture the time period ordered by the Court.¹⁵
- (f) After the cross-examination, the CTA partially rectified the search query, which returned more than four (4) times the documents than the earlier search (i.e., 3467 items vs. 799), and stated that only one additional item was responsive.¹⁶ However, encrypted emails and "closed" accounts remain to be properly searched.
- (g) There is no evidence of the CTA making any specific efforts to preserve documents that were on Mr. Streiner's or Ms. Jones's electronic or storage devices (e.g., computers, phones, and USB keys) before they departed from the CTA.¹⁷
- (h) The CTA's understanding is that, before the October 2021 Order was actually issued, there was no obligation to collect any relevant documents.¹⁸
- (i) The only step taken to "preserve" documents was counsel for the CTA (Mr. Matte) sending a notification on April 14, 2020 to all key CTA personnel, **excluding** Ms. Jones and her team.¹⁹ There is no explanation why Ms. Jones and her team were excluded from that notification when they were initially included in the April 9, 2020 notification that this Application was commenced.

[Tab 9, pp. 296-298, 327-331, 335, and 402].

¹⁵ Cuber Cross-Examination, Q228-Q240, Q249-Q252, and Q305 [Tab 9, pp. 351-354, 356-357, and 370].

¹⁶ Lukács Affidavit, Exhibit "S", item 7 [Tab 2S, p. 97]; and Cuber Affidavit, para. 39.

¹⁷ Cuber Cross-Examination, Q36-Q40 and Q45-Q49 [Tab 9, pp. 298-300 and 301-302].

¹⁸ Cuber Cross-Examination, Q94-Q99, Q451, and Q456-Q458 [Tab 9, pp. 315-316, 412, and 414-415].

¹⁹ Cuber Affidavit, para. 8; and Cuber Cross-Examination, Q65-Q81 and Q118-Q122 [Tab 9, pp. 308-312 and 322-323].

- (j) Until the October 2021 Order was issued, the relevant CTA personnel (such as Mr. Streiner, Ms. Jones, and Ms. Hurcomb) were free to interpret for themselves, with nearly no oversight, which documents had “business value” to preserve and which documents they could dispossess themselves of.²⁰
- (k) Ms. Cuber inquired with the Chair’s executive coordinator about the March 21-22, 2020 weekend meeting(s) that Mr. Streiner had with Transport Canada.²¹ However, at the time, the executive coordinator already lost access to Mr. Streiner’s Outlook because it was “closed” after he departed from the CTA.²²
- (l) Ms. Cuber repeatedly relied on her emails with Ms. Jones from around January 5, 2021 (i.e., Jones-Cuber Email), immediately after receipt of the Applicant’s Rule 318 motion, to justify her efforts to search for documents ordered by this Court and what “documents that [Ms. Jones] didn’t have knowledge of.”²³
- (m) Although Ms. Cuber relies on the Jones-Cuber Email for her document search efforts, the CTA asserted in a subsequent letter to the Applicant that the email thread is “[n]ot relevant, solicitor-client privilege and/or litigation privilege.”²⁴

F. Three ATI Packages Released After Ms. Cuber’s Cross-Examination

14. On or around April 25, 2022, Dr. Lukács made two separate *ATIA* requests to Transport Canada for documents relating to the Statement on Vouchers:

- (a) **ATI Request A-2022-00046:** “[a]ll e-mails (including any attachments) sent and received between March 17, 2020 and March 25, 2020 (inclusive) whose

²⁰ Cuber Cross-Examination, Q28-Q33, Q36-Q39, Q47, Q126-Q128, Q144, Q454 [Tab 9, pp. 296-299, 303, 324-326, 330-331, and 413-414].

²¹ Cuber Cross-Examination, Q183-Q187 [Tab 9, pp. 341-342].

²² Cuber Cross-Examination, Q160-Q161 [Tab 9, p. 335].

²³ Cuber Cross-Examination, Q48-Q52, Q77, Q146-Q147, and Q390 [Tab 9, pp. 303-305, 311, 331-332, and 394].

²⁴ Lukács Affidavit, Exhibit “S”, item 3 [Tab 2S, p. 97].

subject line contains the words “MinO: Air Transat”, including but not limited to the email(s) and attachment(s) sent by Mr. Colin Stacey on March 18, 2020 at around 2:57PM containing the above-quoted text within the subject line. For greater certainty, this request includes emails that were sent encrypted.”²⁵

- (b) **ATI Request A-2022-00047**: “[a] printout of the calendar, showing all the scheduled events between March 18, 2020 and March 23, 2020 (inclusive) for the following individuals: Marc Roy [Transport Minister’s Chief of Staff that attended weekend meeting(s) with Mr. Streiner from the CTA], Colin Stacey [author of the March 18, 2020 encrypted Transport Canada email to Ms. Jones], and Michael Keenan [Deputy Minister who had attended weekend meeting(s) with Mr. Streiner from the CTA].”²⁶

15. On September 16, 2022, halfway through Ms. Cuber’s cross-examination, Transport Canada delivered a response to ATI Request A-2022-00047 and provided the print-out of the calendars with numerous redactions, excluding Mr. Marc Roy’s calendar.²⁷ The portions of the calendars that were not redacted show that lengthy meetings occurred on the topics of “Air Travellers / Airlines” and “COVID-19 and air carriers, Credit Card issue,”²⁸ but do not reveal the names of the attendees for those meetings.

16. At the March 23, 2020 EC Meeting, Mr. Streiner’s debrief stated that TC (likely Transport Canada) praised that the CTA “moved faster than they expected.”²⁹ He also indicated there would be a “[c]all this evening between TC and Agency officials.”³⁰

17. In the Outlook calendar for the Deputy Minister, Mr. Keenan, there was an

²⁵ Lukács Affidavit, para. 37 [Tab 2, p. 18].

²⁶ Lukács Affidavit, Exhibit “V” [Tab 2V, p. 110].

²⁷ Lukács Affidavit, paras. 34-36 [Tab 2, pp. 17-18].

²⁸ Lukács Affidavit, Exhibits “W” and “X” [Tabs 2W and 2X, pp. 119 and 120].

²⁹ Lukács Affidavit, paras. 26-27 [Tab 2, pp. 14-15].

³⁰ *Ibid* and Cuber Cross-Examination, Q532-Q536 [Tab 9, p. 441].

“Air Travellers / Airlines” meeting at 7:30PM on March 23, 2020.³¹ Ms. Cuber confirmed that an unknown number of CTA personnel attended a meeting with Transport Canada on March 23, 2020 and numerous current topics for airlines and passengers were discussed.³² However, she was evasive when questioned if refunds and credit card chargebacks were discussed at the March 23, 2020 meeting with Transport Canada.³³

18. On September 22, 2022, Transport Canada delivered a response to another ATI Request, A-2022-00046, and provided an eighteen (18) page PDF file with some redactions [A-2022-00046 Package].³⁴ The A-2022-00046 Package revealed that:

- (a) There was a “side-exchange” between Ms. Hurcomb from the CTA and Mr. Millette from Transport Canada regarding refunds, vouchers, and/or Air Transat’s request that vouchers be recognized, which began around March 18, 2020.³⁵
- (b) On the morning of March 19, 2020, after the “side exchange” between Mr. Millette and Ms. Hurcomb, Mr. Millette presented to other Transport Canada officials a comprehensive chart relating to passenger compensation and refunds entitled “Air Passenger Protection Rights - Compensation Obligations.docx”.³⁶
- (c) Air Transat was requesting financial assistance from the Transport Minister, and Finances Canada was involved in strategizing on the “passenger rights issue” arising from the request for vouchers to be accepted in lieu of a refund.³⁷ The disclosed Transport Canada emails do not indicate that the CTA was informed about Finance Canada’s involvement or the request for financial assistance.

³¹ Lukács Affidavit, Exhibit “W” [Tab 2W, p. 119].

³² Cuber Cross-Examination, Q536-Q546 [Tab 9, pp. 441-444].

³³ *Ibid* and Cuber Cross-Examination, Q553-Q566 [Tab 9, pp. 445-451].

³⁴ Lukács Affidavit, para. 38 [Tab 2, p. 18].

³⁵ Lukács Affidavit, Exhibits “Y”, “AB”, and “Z” [Tabs 2Y, 2AB, and 2Z, pp. 133, 146, and 137].

³⁶ Lukács Affidavit, Exhibit “AA” [Tab 2AA, p. 140].

³⁷ Lukács Affidavit, Exhibit “AB” [Tab 2AB, p. 146].

19. On November 3, 2022, the CTA provided a further 157-page response package for an ATI request that Dr. Lukács made more than two years ago, on August 25, 2020.³⁸

20. This new *ATIA* response revealed that the CTA withheld documents for the March 22, 2020 urgent debrief that Mr. Streiner organized after circulating the first draft of the Statement on Vouchers (i.e., the Withheld C5 Urgent Debrief Call Documents).³⁹

G. Applicant’s Correspondence with the CTA About the Missing Documents

21. On November 1, 2022, the Applicant wrote to the CTA requesting that the CTA provide two sets of documents that were relevant to Ms. Cuber’s cross-examination or were otherwise covered by the October 2021 Order or April 2022 Order:

(a) The Jones-Cuber Email from January 5, 2021 relating to what “documents that [Ms. Jones] didn’t have knowledge of.”⁴⁰

(b) The TC-CTA Backchannel Documents whose existence was revealed in Transport Canada’s *ATIA* Response in the A-2022-00046 Package.⁴¹

22. After receipt of the CTA’s November 3, 2022 further 157-page *ATIA* response, on November 7, 2022, the Applicant wrote to the CTA requesting some missing “debrief” documents from the March 22 CTA Key Personnel Call.⁴² The *ATIA* response shows the existence of extensive debriefs on the March 22 CTA Key Personnel Call immediately thereafter, but the contents were redacted.⁴³ The CTA had already abandoned all solicitor-client or litigation privilege claims for the 157-page *ATIA* response.⁴⁴

³⁸ Lukács Affidavit, para. 39 [Tab 2, p. 20].

³⁹ Lukács Affidavit, Exhibit “AE” [Tab 2AE, p. 162].

⁴⁰ Cuber Cross-Examination, Q146-Q147 [Tab 9, pp. 331-332].

⁴¹ See paragraph 18, *supra*.

⁴² Order of Gleason, J.A. (Apr. 11, 2022), para. 3 [Tab 5, p. 227]; and Reasons of Gleason, J.A. (Apr. 11, 2022), Schedule “A”, Category C5 [Tab 6, pp. 250-251].

⁴³ Lukács Affidavit, Exhibit “AE” [Tab 2AE, p. 162].

⁴⁴ Lukács Affidavit, para. 40 [Tab 2, p. 21].

23. On November 10, 2022, the CTA responded to the Applicant’s letters of November 1, 2022 and November 7, 2022:⁴⁵

- (a) For the Jones-Cuber Email, the CTA maintained its earlier position that it is “[n]ot relevant, solicitor-client privilege and/or litigation privilege.”⁴⁶
- (b) For the Withheld C5 Urgent Debrief Call Documents, the CTA claimed they were not captured by the October 2021 Order and not relevant. The CTA backtracked on its abandonment of solicitor-client or litigation privilege and further asserted a new “deliberation privilege.”
- (c) For the TC-CTA Backchannel Documents, the CTA disclosed a **portion** of the “side exchange” between Mr. Millette from Transport Canada and Ms. Hurcomb from the CTA.⁴⁷ Notably, this partial exchange confirms the following:
 - i. There were encrypted emails between Transport Canada and the CTA, and at least Mr. Millette’s initiation of the “side exchange” was encrypted and has not yet been disclosed.
 - ii. Ms. Hurcomb somehow knew that Transport Canada’s contact with the CTA was prompted “by Finance to inform decisions about potential support for airlines”; however, the CTA has yet to disclose any correspondence where Transport Canada advised the CTA of this objective.
 - iii. Ms. Hurcomb had contacted the CTA’s tariffs department on behalf of Transport Canada, but it remains unclear if she enclosed or forwarded Transport Canada’s emails to those CTA personnel.

⁴⁵ Lukács Affidavit, Exhibit “AI” [Tab 2AI, p. 183].

⁴⁶ Lukács Affidavit, Exhibit “S”, item 3 [Tab 2S, p. 97].

⁴⁷ Lukács Affidavit, Exhibit “AJ” [Tab 2AJ, p. 186].

PART II – STATEMENT OF THE POINTS IN ISSUE

24. Whether an Order should be issued for the CTA to conduct a search and/or recovery for the **TC-CTA Backchannel Documents**, including in particular:

- (a) searching for and/or recovering encrypted email exchanges between the CTA and Transport Canada regarding vouchers and refunds;
- (b) making reasonable best efforts to search and/or recover the “closed” Outlook accounts for Mr. Streiner, Ms. Jones, and Ms. Hurcomb; and
- (c) reporting back to the Court regarding these search and/or recovery efforts.

25. Whether an Order should be issued for the CTA to produce the following two sets of documents:

- (a) **Withheld C5 Urgent Debrief Call Documents**, which are covered by the October 2021 Order and April 2022 Order; and
- (b) **Jones-Cuber Email** that was raised for the first time at the cross-examination on September 16, 2022.

26. Whether the Court should issue an Order that Transport Canada take steps to preserve all documents relevant to this Application, including but not limited to the CT-CTA Backchannel Documents [**Transport Canada Document Preservation Order**].

PART III – STATEMENT OF SUBMISSIONS

A. An Order that the CTA Search for the TC-CTA Backchannel Documents

27. The CTA is misdirecting the Court to find that the CTA had been dispossessed of pertinent documents covered by the October 2021 Order (e.g., already deleted, not searchable, cannot be found, or otherwise).⁴⁸

⁴⁸ Reasons of Gleason, J.A. (Apr. 11, 2022), paras. 44-50 [Tab 6, p. 244]; and Reasons of Gleason, J.A. (Jul. 19, 2022), paras. 33 and 48-49 [Tab 8, pp. 273-274 and 278-279].

28. It is premature to accept any of the CTA's assertions that the TC-CTA Backchannel Documents would not be in the CTA's possession because the CTA's previous document searches were, on their face, fundamentally flawed in at least two respects:

- (a) The CTA did not search for encrypted emails and refrained from asking the IT department about this issue, despite the Information Commissioner's guidance.
- (b) The CTA claims that the Outlook accounts for key players, such as Mr. Streiner, Ms. Jones, and Ms. Hurcomb, could not be searched after they had left the CTA.

i. CTA's Failure to Search and/or Inquire Regarding Encrypted Emails

29. Under the Third-Party Correspondences branch of the October 2021 Order, the CTA must disclose non-privileged documents sent to or received from a third-party concerning the Statement on Vouchers. This would include correspondences and/or documents exchanged with Transport Canada, regardless of whether they are encrypted.

30. In response to the October 2021 Order, the CTA only disclosed two unencrypted email threads with Transport Canada, but encrypted emails exchanged with Transport Canada were not produced:

- (a) Ms. Jones's unencrypted reply to the March 18 encrypted email from Mr. Stacey of Transport Canada with the subject line "FW: From MinO: Air Transat."⁴⁹
- (b) An unencrypted thread between Ms. Hurcomb and Mr. Millette from March 22-24, 2020 with the subject "CTA announcement tomorrow" in respect of the timing of publishing the Statement on Vouchers, and explicitly referencing meetings that occurred between the CTA and Transport Canada over the weekend.⁵⁰

⁴⁹ Lukács Affidavit, Exhibit "I" [Tab 2I, p. 65].

⁵⁰ Lukács Affidavit, Exhibit "J" [Tab 2J, p. 67].

31. On cross-examination, Ms. Cuber acknowledged that she made no efforts to search for encrypted emails and failed to make any inquiries with the CTA's IT department on encrypted emails.⁵¹ There is also no evidence that the ATI team searched for, or requested from the key CTA personnel, encrypted emails in any of the two previous *ATIA* files that Ms. Cuber relied upon.⁵²

32. The Information Commissioner's "9 Tips for ATIP-Friendly Email Management from the Office of the Information Commissioner" states the following as Tip #1, citing the Government of Canada Treasury Board policy on searching encrypted emails for both ATI requests and litigation purposes.

1. The complete story

It is critical to retain emails that are records of business value to ensure that the institution's response to an access request provides the complete story. Keep in mind that keyword searches of email inboxes may not return some information in encrypted emails. The *guideline on searching encrypted emails in response to information requests* should be consulted to ensure that all responsive records are captured in the response to a request.⁵³

33. The Information Commissioner's guidance references the Treasury Board's *Guideline on searching encrypted emails in response to information requests*, which contains a detailed step-by-step instruction on how encrypted emails are to be searched.⁵⁴

34. Common sense and both the Information Commissioner's and Treasury Board's guidance suggest that a diligent search must include a search for encrypted emails. The CTA's omission to search for encrypted emails and to make reasonable inquiries with

⁵¹ Lukács Affidavit, Exhibit "I" [Tab 2I, p. 65]; and Cuber Cross-Examination, Q289-Q303 [Tab 9, pp. 365-369].

⁵² Lukács Affidavit, paras. 50-52 and Exhibits "S" (item 10), "T", and "U" [Tabs 2 and 2S-2U, pp. 24 and 97-103]; Cuber Affidavit, paras. 17 and 21; and Cuber Cross-Examination, Exhibits 9 and 14 [Tab 9, pp. 465 and 467].

⁵³ Lukács Affidavit, Exhibit "C" [Tab 2C, p. 36].

⁵⁴ Lukács Affidavit, Exhibit "D" [Tab 2D, p. 38]; and Cuber Cross-Examination, Q128 [Tab 9, pp. 325-326].

the IT department undermines the CTA's position that a diligent search was conducted for the October 2021 Order. The lack of diligence is perplexing when it was known that pertinent emails with Transport Canada exist and were encrypted, as detailed below.

ii. Existence of Encrypted Emails Between CTA and Transport Canada

35. It was plain from two separate email threads that the CTA had exchanged encrypted emails with Transport Canada in respect of the issue of refunds and vouchers:

- (a) On March 18, 2020, Ms. Jones stated in an unencrypted reply to Transport Canada's "FW: From MinO: Air Transat" email that "I am sending this unencrypted as our remote network access is patchy and we are not able to open encrypted emails on our Samsungs at the Agency."⁵⁵
- (b) On March 18, 2020, in an unencrypted reply to the invitation from Mr. Millette at Transport Canada to a "side exchange" with the same subject line "FW: From MinO: Air Transat", Ms. Hurcomb stated that "that [referring to blank emails] happens for some reason on encrypted replies between TC and CTA."⁵⁶

36. Ms. Hurcomb's and Ms. Jones's emails highlighted that encrypted emails between Transport Canada and the CTA appear as blank to the naked human eye, or otherwise cannot be opened without technical expertise, further explaining why Ms. Cuber's searches and reviews were deficient.⁵⁷ Ms. Cuber may also lack the necessary IT expertise and knowledge for conducting a search for encrypted emails.⁵⁸

37. The CTA has made a technical argument that the "side exchanges" between the CTA and Transport Canada about Air Transat's request on vouchers were outside the

⁵⁵ Lukács Affidavit, Exhibit "I" [Tab 2I, p. 65].

⁵⁶ Lukács Affidavit, Exhibit "AJ" [Tab 2AJ, p. 189].

⁵⁷ *Ibid.*

⁵⁸ Cuber Cross-Examination, Q129 and Q222 [Tab 9, pp. 326 and 349-350].

scope of the October 2021 Order.⁵⁹ The CTA’s hair-splitting characterization that the exchanges were “general questions regarding carriers’ obligations under their tariffs” and “does not concern the Statement on Vouchers” is without merit.

38. Respectfully, Transport Canada and the CTA’s “side exchange” about Air Transat’s tariff was prompted by, born out of, and immediately followed the carrier’s March 18, 2020 request that vouchers be forced onto passengers in lieu of a cash refund.⁶⁰ The tariffs appeared to be standing in the way of vouchers, and Mr. Millette and Ms. Hurcomb were discussing about this apparent roadblock. Air Transat’s request culminated in the issuing of the Statement on Vouchers days later.⁶¹

39. The TC-CTA Backchannel Documents, including any encrypted or unencrypted “side exchanges,” that relate to Air Transat’s or Air Canada’s requests to recognize vouchers in lieu of refunds, and the correspondences to air carriers or Transport Canada flowing from these requests, are within the scope the October 2021 Order.⁶² This Court has already twice determined the relevance of documents of this nature.

40. The CTA should be ordered to conduct a specific search and/or recovery for encrypted e-mails, using the steps endorsed by both the Information Commissioner and Treasury Board.⁶³

iii. Not Searching the “Closed” Accounts of Departed CTA Personnel

41. On cross-examination, Ms. Cuber insisted that the accounts of departed CTA employees, which would necessarily include Mr. Streiner, Ms. Jones, and Ms. Hurcomb, were not “permanently deleted.”⁶⁴ Rather, Ms. Cuber was adamant that their

⁵⁹ Lukács Affidavit, Exhibit “AI” [Tab 2AI, p. 183].

⁶⁰ Lukács Affidavit, Exhibits “I” and “AJ” [Tabs 2I and 2AJ, pp. 65 and 186].

⁶¹ Lukács Affidavit, para. 14 and Exhibits “E”-“H” [Tabs 2 and 2E-2H, pp. 12 and 50-61].

⁶² *Ibid* and Lukács Affidavit, paras. 28-29 [Tab 2, p. 15].

⁶³ Lukács Affidavit, Exhibits “C” and “D” [Tabs 2C and 2D, pp. 36 and 38].

⁶⁴ Cuber Cross-Examination, Q140-Q142 [Tab 9, pp. 329-330].

accounts were merely “closed” and no longer searchable.⁶⁵

42. It is not in dispute that the CTA’s *usual* search procedure does not return results from an account of a departed CTA employee. For example, the November 2021 search returned no results for Mr. Streiner, Ms. Jones, and Ms. Hurcomb, since they were no longer with the CTA.⁶⁶ However, Ms. Cuber made minimal efforts to inquire with the IT department if there could be other methods of accessing their “closed” accounts, such as manual searching or review, or data recovery. Ms. Cuber herself does not have the necessary IT expertise and knowledge for conducting such a technical inquiry.⁶⁷

43. The fact that these Outlook accounts could even be “closed” while the litigation is pending is shocking. The CTA’s lack of diligence sets a dangerous precedent for other judicial reviews or civil cases in the federal courts. A party cannot be allowed to freely “dispossess” itself of relevant documents when there is clear notice of pending litigation. Any other approach would risk undermining the integrity of the judicial process and the rule of law.

44. Common sense dictates that computer files that are not “permanently deleted” could be restored with the appropriate tools and expertise. It is incumbent on the CTA to assign the technical resources and make all reasonable efforts to restore the Outlook accounts for Mr. Streiner, Ms. Jones, and Ms. Hurcomb. The CTA created the predicament by failing to preserve their accounts and/or collect documents at the outset.⁶⁸

⁶⁵ Cuber Cross-Examination, Q27-Q32, Q135-Q137, and Q144 [Tab 9, pp. 296-297 and 328-331].

⁶⁶ Cuber Cross-Examination, Q587 and Exhibit 8 [Tab 9, pp. 458 and 463].

⁶⁷ Cuber Cross-Examination, Q129 and Q222 [Tab 9, pp. 326 and 349-350].

⁶⁸ Ms. Cuber’s sworn statement that the relevant documents were not even collected until after this Court’s October 2021 Order raises a troubling concern that the CTA’s submissions or assertions made to the Court before October 2021 may not be based on actual facts. The CTA’s counsel had not even collected documents to properly ascertain, review, and analyze the facts that counsel represented to the Court.

B. Order for the CTA to Disclose Two Sets of Existing Documents

45. The Applicant has also identified two sets of relevant documents that the Applicant has requested the CTA to disclose, but the CTA had refused to do so. The CTA continues to cite technical arguments that this Court had already rejected.

i. Withheld C5 Urgent Debrief Call Documents

46. Under the Meeting Documents branch of the October 2021 Order, the CTA must disclose non-privileged documents for meetings attended by a CTA Member where the Statement on Vouchers was discussed. In the January 2022 motion, which resulted in the April 2022 Order, the Applicant requested disclosure of “Documents for the March 22 CTA Key Personnel Call” that occurred around 10:30AM (i.e., Category C5).⁶⁹ At that time, it was unclear if the Statement on Vouchers was discussed at the March 22 CTA Key Personnel Call.⁷⁰ The Court ordered the CTA to inquire on whether the Statement on Vouchers was discussed and, if so, disclose **all** documents for that call.⁷¹

47. On April 20, 2022, the CTA confirmed that the Statement on Vouchers was discussed at the March 22 CTA Key Personnel Call.⁷²

48. On November 3, 2022, the Applicant received a further response to an *ATIA* request made to the CTA from two years ago containing redacted emails started by Mr. Oommen with the subject “Debrief from Sunday EC.”⁷³ Mr. Oommen attended the March 22 CTA Key Personnel Call and was providing a debrief about that call.

49. On November 7, 2022, the Applicant requested the CTA to disclose these “Debrief from Sunday EC” emails unredacted.⁷⁴

⁶⁹ Reasons of Gleason, J.A. (Apr. 11, 2022), Schedule “A”, Category C5 [Tab 6, pp. 250-251].

⁷⁰ Reasons of Gleason, J.A. (Apr. 11, 2022), para. 32 [Tab 6, p. 240].

⁷¹ Reasons of Gleason, J.A. (Apr. 11, 2022), paras. 33-35 [Tab 6, pp. 240-241].

⁷² Lukács Affidavit, Exhibit “N” [Tab 2N, p. 81].

⁷³ Lukács Affidavit, Exhibit “AE” [Tab 2AE, pp. 167 and 172].

⁷⁴ Lukács Affidavit, Exhibit “AH” [Tab 2AH, p. 179].

50. On November 10, 2022, the CTA refused to disclose the “Debrief from Sunday EC” emails unredacted, claiming they were outside the scope of the October 2021 Order, irrelevant, and subject to “deliberation privilege and solicitor-client privilege.”⁷⁵

51. Notably, the CTA’s ATI team seems to acknowledge the relevance of these emails since they only claimed redactions on the basis of advice by or for government, and consultations or deliberations between government representatives (i.e., s. 21(1)(a)-(b) of the *Access to Information Act*).⁷⁶ The CTA’s ATI team also did not assert deliberation privilege and abandoned any assertion of solicitor-client privilege or litigation privilege.⁷⁷

52. The CTA’s new assertion of “deliberation privilege” contradicts the CTA’s assertion of relevancy to Mr. Streiner’s urgent debrief. Mr. Oommen is not a decision-maker and deliberation privilege could not attach. The “deliberation privilege” assertion necessarily means that the contents relate to the March 22 CTA Key Personnel Call, which decision-makers such as Ms. Barker and Mr. Streiner attended.

53. It is also plain that the Withheld C5 Urgent Debrief Call Documents are captured by the October 2021 Order (i.e., Meeting Documents), including in particular subparagraph f under Category C5 in the April 2022 Order (i.e., “correspondences of the meeting’s decisions and deliverables”). It is for the Court, not the CTA, to determine if documents are relevant to the merits hearing and this was already decided twice.⁷⁸

54. The Withheld C5 Urgent Debrief Call Documents ought to be disclosed, or alternatively, submitted to the Court to assess the CTA’s belated privilege assertions.

⁷⁵ Lukács Affidavit, Exhibit “AI” [Tab 2AI, p. 183].

⁷⁶ Lukács Affidavit, Exhibit “AE” [Tab 2AE, p. 162].

⁷⁷ Lukács Affidavit, para. 40 [Tab 2, p. 21].

⁷⁸ Reasons of Gleason, J.A. (Apr. 11, 2022), para. 31 [Tab 6, p. 240].

ii. Jones-Cuber Email

55. On cross-examination, Ms. Cuber revealed that immediately upon receiving the Applicant’s Rule 317 motion, she started an email thread with Ms. Jones on responsive documents for that motion (i.e., the Jones-Cuber Email).⁷⁹

56. Most of the relevant documents in this Application, which are still missing, relate to Ms. Jones or her team, including Ms. Hurcomb. It is apparent that Ms. Jones’s team acted as the main conduit with Transport Canada for Air Transat’s request to recognize vouchers instead of refunds, and the logistics of Air Transat seeking to retroactively amend their tariff to force passengers to accept vouchers.

57. The Jones-Cuber Email was requested from the CTA at the cross-examination, when the Applicant first learned of its existence. By letter on October 14, 2022, the CTA refused to disclose and claimed it was “[n]ot relevant, solicitor-client privilege and/or litigation privilege.”⁸⁰

58. The relevance of the Jones-Cuber Email is two-fold.

59. Firstly, the Jones-Cuber Email is relevant to the (in)adequacy of the CTA’s document search and within the scope of the cross-examination.⁸¹ There is an evidentiary foundation for the disclosure of the Jones-Cuber Email to test or verify the (in)adequacy of the CTA’s document search.⁸²

60. The Jones-Cuber Email will assist in explaining an apparent “gap” relating to the preservation of documents. The fact that Ms. Cuber immediately contacted Ms. Jones upon receipt of the Rule 317 motion suggests that it was obvious to the CTA

⁷⁹ Cuber Cross-Examination, Q48-Q52, Q77, Q146, and Q390 [Tab 9, pp. 303-305, 311, 331-332, and 394].

⁸⁰ Lukács Affidavit, Exhibit “S”, item 3 [Tab 2S, p. 97].

⁸¹ Reasons of Gleason, J.A. (Jul. 19, 2022), paras. 33, 38, and 46 [Tab 8, pp. 273-276 and 278].

⁸² Reasons of Gleason, J.A. (Jul. 19, 2022), paras. 48-49 [Tab 8, pp. 278-279].

that Ms. Jones was involved in the Statement on Vouchers and had relevant documents. However, on the other hand, Mr. Matte inexplicably omitted Ms. Jones and her team from the April 14, 2020 notification to preserve relevant documents.⁸³

61. Moreover, Ms. Cuber also relied on the Jones-Cuber Email to substantiate what “documents that [Ms. Jones] didn’t have knowledge of.”⁸⁴ Ms. Jones herself had direct knowledge of her own involvement in the Statement on Vouchers, and which emails were “deleted” or encrypted. Ms. Jones representations in (mis)steering the document search efforts would shed light on why numerous documents involving Ms. Jones’s team have not yet been located. It is noteworthy that Ms. Jones and her team were one of the main conduits with Transport Canada on the topic of refunds and vouchers.

62. Secondly, the Jones-Cuber Email is also relevant to two issues that the panel hearing the Application would need to consider: whether there was spoliation of evidence and whether an adverse inference should be drawn.

63. In July 2022, the Court already highlighted the concern that the March 18, 2020 encrypted “FW: From MinO: Air Transat” Transport Canada email, which Ms. Jones received, was deleted.⁸⁵ It appears that there are other pertinent documents that may be missing, deleted, or yet to be located (e.g., the TC-CTA Backchannel Documents).

64. The CTA has already indicated that it is not adverse to a simplified procedure for privilege assertions.⁸⁶ In order to avoid further delays to this Application with further rounds of motions, it would be most expedient for the Court to direct the CTA to submit the Jones-Cuber Email for review of any privilege, and to order the CTA to disclose the

⁸³ Cuber Affidavit, para. 8; and Cuber Cross-Examination, Q65-Q81 and Q118-Q122 [Tab 9, pp. 308-312 and 322-323].

⁸⁴ Cuber Cross-Examination, Q48-Q52, Q77, Q146-Q147, and Q390 [Tab 9, pp. 303-305, 311, 331-332, and 394].

⁸⁵ Reasons of Gleason, J.A. (Jul. 19, 2022), para. 33 [Tab 8, pp. 273-274].

⁸⁶ Reasons of Gleason, J.A. (Jul. 19, 2022), para. 36 [Tab 8, p. 275].

document if the privilege is rejected.⁸⁷

65. There is also a strong argument that any privilege for the Jones-Cuber Email may have been waived when Ms. Cuber had already revealed portions of the content and has repeatedly relied upon it to substantiate her document search efforts.⁸⁸

C. An Order that Transport Canada Preserve Relevant Documents

66. A recurring theme emanating from the CTA is that the CTA claims it may have been dispossessed of relevant documents for this Application *before* this Court issued an Order (i.e., the October 2021 Order). However, the Notice of Application issued on April 9, 2020 already included a written request that the CTA transmit relevant documents to the Registry.

67. The Applicant is seeking this Court's assistance to issue a preservation order in order to avoid any similar confusion, misunderstanding, negligence, or otherwise on Transport Canada's part in the event that the Applicant seeks a Rule 41 subpoena for documents, such as the TC-CTA Backchannel Documents.

68. The complete story for the inception of the Statement on Vouchers remains to be told. If the CTA is unable to produce the TC-CTA Backchannel Documents, for example, these documents may need to be obtained from Transport Canada. There are many missing pieces of the puzzle that Transport Canada would be privy to, including but not limited to:

- (a) What was the encrypted content that Mr. Stacey forwarded to the CTA on March 18, 2020?⁸⁹

⁸⁷ Reasons of Gleason, J.A. (Jul. 19, 2022), paras. 37-38 [Tab 8, pp. 275-276].

⁸⁸ Cuber Cross-Examination, Q48-Q52, Q77, Q146-Q147, and Q390 [Tab 9, pp. 303-305, 311, 331-332, and 394].

⁸⁹ Lukács Affidavit, Exhibit "I" [Tab 2I, p. 65].

- (b) What other “side exchange(s)” did Mr. Millette have with Ms. Hurcomb, some of which were encrypted?⁹⁰
- (c) Did Transport Canada communicate further with the CTA on the refund / voucher issue after Transport Canada was told by Ms. Hurcomb on March 20, 2020 that amending Air Transat’s tariffs was likely a “no-go”?⁹¹
- (d) What was the substance of the meeting(s) around the weekend of March 21-22, 2020 between Transport Canada officials and the CTA, specifically Mr. Streiner and Ms. Jones?⁹²
- (e) How did Transport Canada, specifically the ADM Mr. Hanson, learn that the CTA was going to make an announcement on refunds / vouchers, less than six hours after Mr. Streiner first circulated the draft Statement on Vouchers?⁹³

69. There is a strong likelihood that a Rule 41 subpoena would be necessary since the Respondent refused to assist in obtaining any documents from Transport Canada.⁹⁴ The CTA’s affiant also made no inquiries with Transport Canada.⁹⁵

70. There is also a Government of Canada project to migrate department specific emails to the “canada.ca” domain.⁹⁶ A clear Court Order would avoid the risk of emails being dispossessed inadvertently in the event of a migration or other IT initiatives.

71. Furthermore, there is some evidence that Transport Canada may have already dispossessed itself of documents for Mr. Marc Roy, the Minister of Transport’s Chief

⁹⁰ Lukács Affidavit, Exhibit “AJ” [Tab 2AJ, p. 186].

⁹¹ Lukács Affidavit, Exhibit “AJ” [Tab 2AJ, p. 186].

⁹² Lukács Affidavit, Exhibit “J” [Tab 2J, p. 70].

⁹³ Lukács Affidavit, Exhibit “J” [Tab 2J, p. 70].

⁹⁴ Lukács Affidavit, Exhibit “AL” [Tab 2AL, p. 192].

⁹⁵ Cuber Cross-Examination, Q286-Q287 and Q545 [Tab 9, pp. 364-365 and 444].

⁹⁶ Lukács Affidavit, Exhibit “AM” [Tab 2AM, p. 194].

of Staff who attended a March 21-22, 2020 weekend meeting with Mr. Streiner.⁹⁷ Dr. Lukács's A-2022-00047 ATI Request included a request for a printout of Mr. Roy's calendar, but it was not disclosed, and no explanation was provided.⁹⁸ Mr. Roy had already left his government position at the time of the ATI request.⁹⁹

72. This Court has inherent jurisdiction to protect the integrity of its own process by preventing the destruction or suppression of evidence or the thwarting of its process:

There can be no doubt that a court which is endowed with a particular jurisdiction has powers which are necessary to enable it to act effectively within such jurisdiction. I would regard them as powers which are inherent in its jurisdiction. A court must enjoy such powers in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of its process.¹⁰⁰

73. The preservation order should come as no surprise to Transport Canada since they had knowledge about the October 2021 Order, and indirectly participated by filing an affidavit in support of a motion to extend the production deadline.¹⁰¹

⁹⁷ Lukács Affidavit, paras. 16-21 [Tab 2, pp. 13-14].

⁹⁸ Lukács Affidavit, paras. 34-36 [Tab 2, pp. 17-18].

⁹⁹ Lukács Affidavit, Exhibit "K" [Tab 2K, p. 71].

¹⁰⁰ *MD Physician Services Inc. v. Jonathan Financial Inc.*, 2011 ONSC 2715 at para. 11 [Tab 11, p. 498], citing *Connelly v. Director of Public Prosecutions*, [1964] A.C. 1254 (H.L.) [*Connelly*] at p. 1301 with approval. *Connelly* has been cited with approval in numerous Canadian trial and appellate cases.

¹⁰¹ Affidavit of Mr. Vincent Millette (Dec. 14, 2021), paras. 3-4 [Court Document No. 92].

PART IV – ORDER SOUGHT

74. The Moving Party, Air Passenger Rights, is seeking:
- (a) An Order that the CTA conduct a search and/or recovery for all documents, including but not limited to **encrypted emails**, exchanged between the CTA and Transport Canada from March 9, 2020 to March 25, 2020 inclusive (i.e., the same period for the October 15, 2021 Order) concerning the following subject matters [**TC-CTA Backchannel Documents**]:
 - i. recognition of vouchers as a form of refund for air passengers, as set out in the CTA's Statement on Vouchers, including the inception, drafting, motivation(s), purpose(s), and/or preparation surrounding or leading up to the Statement on Vouchers; and
 - ii. Air Transat's request from around March 18, 2020 that was received by Transport Canada regarding recognition of vouchers as a refund and/or amending of Air Transat's tariffs to allow for vouchers as a refund.
 - (b) An Order that, within ten (10) days of the Order in subparagraph (a) above:
 - i. the CTA produce the non-privileged TC-CTA Backchannel Documents;
 - ii. the Respondent bring a motion, if any, for a ruling on any TC-CTA Backchannel Documents where privilege is asserted, in accordance with paragraph 38 of the July 19, 2022 Reasons for Order; and
 - iii. the CTA report back to the Court, with a copy to the parties, detailing all of its search and/or recovery efforts for the TC-CTA Backchannel Documents, including efforts to search the closed Outlook accounts of Mr. Streiner, Ms. Jones, and Ms. Hurcomb, and if the TC-CTA Backchannel Documents are not found, a thorough explanation of why.

- (c) An Order that the CTA forthwith produce:
- i. all documents in respect of the CTA Key Personnel Meeting on March 22, 2020, identified as Category C5 in this Court's April 11, 2022 Reasons for Order [**Withheld C5 Urgent Debrief Call Documents**]; and
 - ii. Ms. Barbara Cuber's email exchange(s) with Ms. Marcia Jones in or around January 5, 2021, for the Court's review of any applicable privilege, and to produce the email exchange(s) to the Applicant if the CTA's privilege assertion is not upheld [**Jones-Cuber Email**].
- (d) An Order that Transport Canada shall forthwith take all necessary steps to preserve documents relevant to this Application, including but not limited to the TC-CTA Backchannel Documents, whether encrypted or not [**Transport Canada Document Preservation Order**].
- (e) An Order that the parties bear their own costs on this motion.
- (f) Such further and other relief or directions as the counsel may request and this Honourable Court deems just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

November 14, 2022

SIMON LIN
Counsel for the Applicant,
Air Passenger Rights

PART V – LIST OF AUTHORITIES**Statutes and Regulations**

Federal Courts Act, R.S.C. 1985, c. F-7,
ss. 3, 18.1, 28, and 44

Federal Courts Rules, S.O.R./98-106,
Rules 97 and 369.2

Case Law

MD Physician Services Inc. v. Jonathan Financial Inc., 2011 ONSC 2715

2011 ONSC 2715
Ontario Superior Court of Justice

MD Physician Services Inc. v. Jonathan Financial Inc.

2011 CarswellOnt 8544, 2011 ONSC 2715, 201 A.C.W.S. (3d) 511

**MD Physician Services Inc., et al., Plaintiffs/Moving Parties and
Jonathan Financial Group Inc., et al., Defendants/Respondents**

G.R. Strathy J.

Heard: April 26, 2011
Judgment: May 2, 2011
Docket: CV-11-423873

Counsel: Ira Nishisato, Angela Vivio, for Plaintiffs / Moving Parties
No one for Defendants / Respondents

G.R. Strathy J.:

1 In my endorsement released April 19, 2011, I dismissed the plaintiffs' motion for an *Anton Piller* order: *MD Physician Services Inc. v. Jonathan Financial Inc.*, 2011 ONSC 2409. When I released the endorsement, in court, I informed counsel that the dismissal was without prejudice to the right of the plaintiffs to apply for the same or other relief, on fresh material, and that I was also prepared to entertain submissions for alternative relief. I heard a supplementary motion for such relief on April 26, 2011.

2 The motion before me was for an order:

(a) requiring the defendants to deliver up to the plaintiffs' lawyers all confidential information of the plaintiffs that is in their possession;

(b) requiring the defendants to take all reasonable steps to preserve confidential information of the plaintiffs, whether in hard copy or electronic form, until the final disposition of this action; and

(c) sealing portions of the original motion record, filed April 13, 2011, that contain confidential information pertaining to clients of the plaintiffs.

3 I granted the order sought, with reasons to follow. These are my reasons.

4 There are several important conclusions in my April 19, 2011 endorsement that have a bearing on the alternative relief sought. First, I found that the plaintiffs had met three of the four requirements for an *Anton Piller* order, set out in *Celanese Canada Inc. v. Murray Demolition Corp.*, 2006 SCC 36, [2006] 2 S.C.R. 189 (S.C.C.). Specifically, I found that the plaintiffs had made out a strong *prima facie* case, that there was convincing evidence that the defendants have improperly taken the plaintiffs' confidential information and, most significantly for present purposes, that there was a real risk that, in light of their past conduct, the defendants would destroy the evidence if they received notice of the motion. I concluded, however, that the intrusive and drastic remedy of a civil search warrant should not be granted in this case because I was not satisfied that the plaintiffs had sustained serious damage as a result of the defendants' conduct.

5 Thus, the plaintiffs were left in a position where they had a very strong case and where there was a real risk that evidence in support of that case would be destroyed. There was therefore a real risk that the course of justice would be thwarted if some action was not taken.

6 In the supplementary affidavit filed in support of this motion, the plaintiffs' witness states that although the value of the confidential information in the possession of the defendants cannot be quantified, it has considerable value. The plaintiffs have given an undertaking as to damages with respect to the order sought.

7 I am satisfied that the court has jurisdiction to grant the relief sought, on several grounds:

(a) under s. 104 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and Rule 44 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 (interim recovery of personal property);

(b) under *Rule 45* (interim order for the custody or preservation of property at issue); and

(c) under the court's inherent jurisdiction to maintain the integrity of its process, including "ensuring that the court process in civil cases is not frustrated by the suppression of evidence": *Ontario Realty Corp. v. P. Gabriele & Sons Ltd.* (2000), 50 O.R. (3d) 539 (Ont. S.C.J. [Commercial List]) at paras. 13-15.

8 The requirements for an order for recovery of personal property under Rule 44 have been met. There are substantial grounds for the plaintiffs' claim that their property has been unlawfully taken from them by the defendants and the balance of convenience favours the plaintiffs: *Clark Door of Canada Ltd. v. Inline Fiberglass Ltd.* (1996), 45 C.P.C. (3d) 244 (Ont. Gen. Div.). An order is necessary to protect the plaintiffs' interest in their property and the defendants can have no lawful interest in that property. This is not a case where security should be ordered — the defendants' interests are adequately protected by the plaintiffs' undertaking as to damages: *Abolins v. Greendale Farm & Garden Ltd.*, [2005] O.J. No. 1616 (Ont. S.C.J.).

9 The relief sought is also available under [Rule 45](#), which gives the court jurisdiction to make an interim order for the custody or preservation of any property relevant to an issue in the proceeding. The test for granting such an order requires that:

- (a) the assets sought to be preserved are the very subject matter of the dispute;
- (b) there is a serious issue to be tried regarding the plaintiff's claim to that asset; and
- (c) the balance of convenience favours the moving party.

See *Progressive Moulded Products Ltd. v. Great American Group*, [2007] O.J. No. 1411 (Ont. S.C.J.).

10 In this case, the plaintiffs' right to the confidential information is at the core of the dispute.

11 Finally, I accept the submission, based on *Ontario Realty Corp. v. P. Gabriele & Sons Ltd.*, above, that the court has inherent jurisdiction to protect the integrity of its process by preventing the destruction or suppression of evidence or the thwarting of its process. *Mareva* and *Anton Piller* orders are examples of the exercise of that jurisdiction. Lord Morris of Borth-y-Gest made a classic statement of the court's jurisdiction in this regard in *Connelly v. Director of Public Prosecutions*, [1964] A.C. 1254 (U.K. H.L.) at p. 1301:

There can be no doubt that a court which is endowed with a particular jurisdiction has powers which are necessary to enable it to act effectively within such jurisdiction. I would regard them as powers which are inherent in its jurisdiction. A court must enjoy such powers in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of its process.

12 In this case, there is a very real risk that the defendants, in particular Khan and Giovinazzo, will attempt to destroy evidence if the court does not intervene. Out of a concern for the defendants' civil rights I have declined to employ the "nuclear weapon" of an *Anton Piller* order. The use of conventional weapons in this case gives a fair balance to the rights of the parties and gives the plaintiff some reasonable protection. Most important, it protects the integrity of the court's process.

13 I am also satisfied that a partial sealing order is necessary to protect the confidential information of clients of the plaintiffs who are referred to by name in the motion record, and in some cases with reference to their financial information. I have ordered that the original motion record containing this information be sealed and that the plaintiffs shall file a new record with the personal information redacted. This affects only a small part of the affidavit and the redacted information is not necessary for the appreciation of the issues on the motion. It is a minimal interference to the public right of access to legal proceedings.

14 I have signed an order giving effect to the foregoing. The parties are to appear before me on May 3, 2011, to speak to the matter.

Motion granted.