

FEDERAL COURT OF APPEAL

BETWEEN:

AIR PASSENGER RIGHTS

Appellant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

AFFIDAVIT OF ELIZABETH SCHMIDT

I, **ELIZABETH SCHMIDT**, of the City of Ottawa, in the Province of Ontario, legal assistant at the Department of Justice **AFFIRM AS FOLLOWS**:

1. I am a legal assistant working with Lorne Ptack, counsel for the Respondent, the Attorney General of Canada. As such, I have personal knowledge of the matters that I hereinafter depose. Where facts are not from my direct knowledge, I have stated the source of the information and I believe it to be true.

2. I am aware from reviewing the file that the Applicant Air Passenger Rights seeks access to documents in the possession of the Intervener Canadian Transportation Agency (the “CTA”).
3. I am further aware that the Respondent Attorney General of Canada seeks, on the basis of applicable privileges, to withhold from disclosure text contained in two documents.
4. This matter was the subject of a September 2, 2022 Order by the Honourable Justice Gleason. A copy of the Order is attached as Exhibit “A” to this affidavit.
5. A letter was sent by counsel for the Respondent, to the Court of Appeal, on November 14, 2022. A copy of the letter is attached as Exhibit “B” to this affidavit.
6. In respect of the first document at issue, an email exchange dated January 5, 2021, I have been advised by counsel and do believe that the individual Barbara Cuber, named on that document, was at the time, and remains, Senior Counsel with the CTA Legal Services. I have confirmed that information through a search of ‘GEDS’, the Government online directory service. I have further been advised by counsel and do believe that the other individual named on the email was employed by or otherwise part of the CTA at the time of the email. A copy of the first document is attached as Exhibit “C”.
7. In respect of the second document at issue, an email exchange dated March 22, 2020, I have been advised by counsel and do believe that the individual Valérie Lagacé, named on that document, was at the time, and remains, Senior General Counsel with the CTA Legal Services. As well, the individual John Dodsworth, named on that document, was at the time, and remains, Senior Counsel, also with the CTA Legal Services. I have confirmed that information through a search of ‘GEDS’, the Government online directory service. I

have further been advised by counsel and do believe that the other individuals named on the email were employed by or were otherwise part of the CTA at the time of the email. A copy of the second document is attached as Exhibit "D".

Affirmed before me)
at the City of Ottawa in the Province)
of Ontario before me on the 21st of)
November, 2022)



A Commissioner for Taking Affidavits)

ERichards



Elizabeth Schmidt

Federal Court of Appeal



Cour d'appel fédérale

Date: 20220902

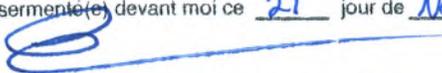
Docket: A-102-20

Ottawa, Ontario, September 2, 2022

This is Exhibit " A " referred to in the affidavit of:
Ceci est la pièce A mentionnée à l'affidavit de:

Elizabeth Schmidt
Sworn before me this _____ day of _____
Assermenté(e) devant moi ce 21 jour de November, 20 22

Present: GLEASON J.A.


A. Commr. & etc. / Commissaire à l'assermentation

BETWEEN:

AIR PASSENGER RIGHTS

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

and

THE CANADIAN TRANSPORTATION AGENCY

Intervener

ORDER

UPON receipt of correspondence from counsel for the applicant, setting out the schedule agreed upon by the parties further to this Court's Order of July 19, 2022;

AND UPON considering that the *Federal Courts Rules*, S.O.R./98-106 (the Rules) do not entitle an applicant to file a reply memorandum of fact and law;

AND UPON considering that the Rules provide that the affidavits need not be filed before they are included in a party's record;

THIS COURT ORDERS THAT:

1. The time periods for completion of the various steps required to perfect this application shall be as follows:
 - a. Cross-examination on Ms. Cuber's affidavit - to be completed by September 16, 2022;
 - b. Any motions regarding objections or refusals - to be brought by the applicant by no later than November 14, 2022. Subsequent materials in respect of any such motions shall be filed within the time limits set out in the Rules;
 - c. Any motions regarding privilege - to be brought by the respondent by no later than November 14, 2022. Subsequent materials in respect of any such motions shall be filed within the time limits set out in the Rules;
 - d. Any subsequent motion under Rule 41, if necessary - to be brought by the applicant within 20 days of the disposition of the motions mentioned in paragraphs 1(b) and (c) of this Order;
 - e. According to Rules 306 and 307, proof of service of the applicant's affidavit(s) - within 30 days of the disposition of the motion mentioned in paragraph 1(d) of this Order or, if no such motion is brought, within 30 days of the disposition of the motion mentioned in paragraphs 1(b) and (c) of this Order;

- f. According to Rules 306 and 307, proof of service of the respondent's affidavit(s) and any affidavit the intervener chooses to file in accordance with this Court's Order of October 15, 2021 - within 30 days of the service of the applicant's affidavit(s);
 - g. Conduct of cross-examinations - within the time limits set out in Rule 308;
 - h. Filing of the applicant's record - within the time limits contained in Rule 309;
 - i. Filing of the respondent and intervener's records - within 20 days from service of the applicant's record; and
 - j. Filing of the requisition for hearing - within the time limits contained in Rule 314.
2. If the applicant wishes to file a reply memorandum, it shall seek an order authorizing the filing, which order may be sought by way of informal motion filed by no later than 10 days from receipt of the respondent and intervener's records; and
3. Should an amendment to the schedule be required, the party seeking the amendment may seek an order authorizing the amendment by informal motion.

"Mary J.L. Gleason"

J.A.



Department of Justice
Canada

Ministère de la Justice
Canada

National Litigation Sector
Civil Litigation Section
50 O'Connor Street, Suite 500
Ottawa, Ontario K1A 0H8

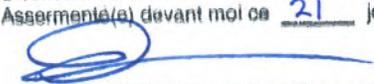
Telephone: (613) 601-4805
Fax: (613) 954-1920
Email: Lorne.Ptack@justice.gc.ca

BY EMAIL WITH COPY TO COUNSEL

November 14, 2022

Our File Number: LEX-500074803

Judicial Administrator
Federal Court of Appeal
90 Sparks Street
Ottawa, Ontario
K1A 0H9

This is Exhibit " B " referred to in the affidavit of:
Ceci est la pièce B mentionnée à l'affidavit de:
Elizabeth Schmidt
Sworn before me this _____ day of _____
Assermenté(e) devant moi ce 21 jour de November, 2022

A Commr. & etc. / Commissaire à l'assermentation

Re: Air Passenger Rights v The Attorney General of Canada
Court File No.: A-102-20
Request for Directions and/or Special Management

Dear Administrator:

I would be grateful if this letter were brought to the attention of the Honourable Justice Gleason at your earliest convenience.

I write further to the Court of Appeal's September 2, 2022 Order, and specifically paragraph 1 subparagraph c.: "Any motions regarding privilege - to be brought by the respondent by no later than November 14, 2022. Subsequent materials in respect of any such motions shall be filed within the time limits set out in the Rules;"

At this time, to the Respondent's counsel's knowledge, the Applicant and Intervener CTA are engaged in an exchange regarding certain documents. Relevance and privilege are among the issues raised.

It is the Respondent's position that the Intervener and Applicant should determine whether a document is relevant, or that its relevance is in issue, before it is appropriate for the Respondent to bring a motion to assert privilege over it.

Canada

At this time, Respondent's counsel is aware that the subject has been raised, but not whether it has been resolved, or will be raised before the Court of Appeal. Accordingly, it appears that a motion regarding privilege – with the attendant engagement of Court and Respondent time and resources - is not yet necessary or appropriate.

In the event that such a motion becomes necessary, the Respondent will proceed in compliance with the Court of Appeal's Order, and seek an extension of time from Court of Appeal to do so.

Should the Court of Appeal require further information or submissions, counsel for the Respondent will be pleased to respond.

Yours truly,

A handwritten signature in blue ink, appearing to read "Lorne Ptack". The signature is fluid and cursive, with a long horizontal stroke at the end.

Lorne Ptack
Counsel for the Respondent

c.c. Simon Lin, Counsel for the Applicant
Kevin Shaar, Counsel for the Intervener

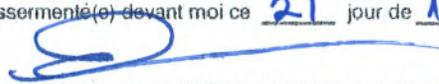
Schmidt, Elizabeth

From: Marcia Jones <Marcia.Jones@otc-cta.gc.ca>
Sent: January 5, 2021 6:34 PM
To: Barbara Cuber
Cc: Simon-Pierre Lessard; Sébastien Bergeron
Subject: RE: incoming litigation

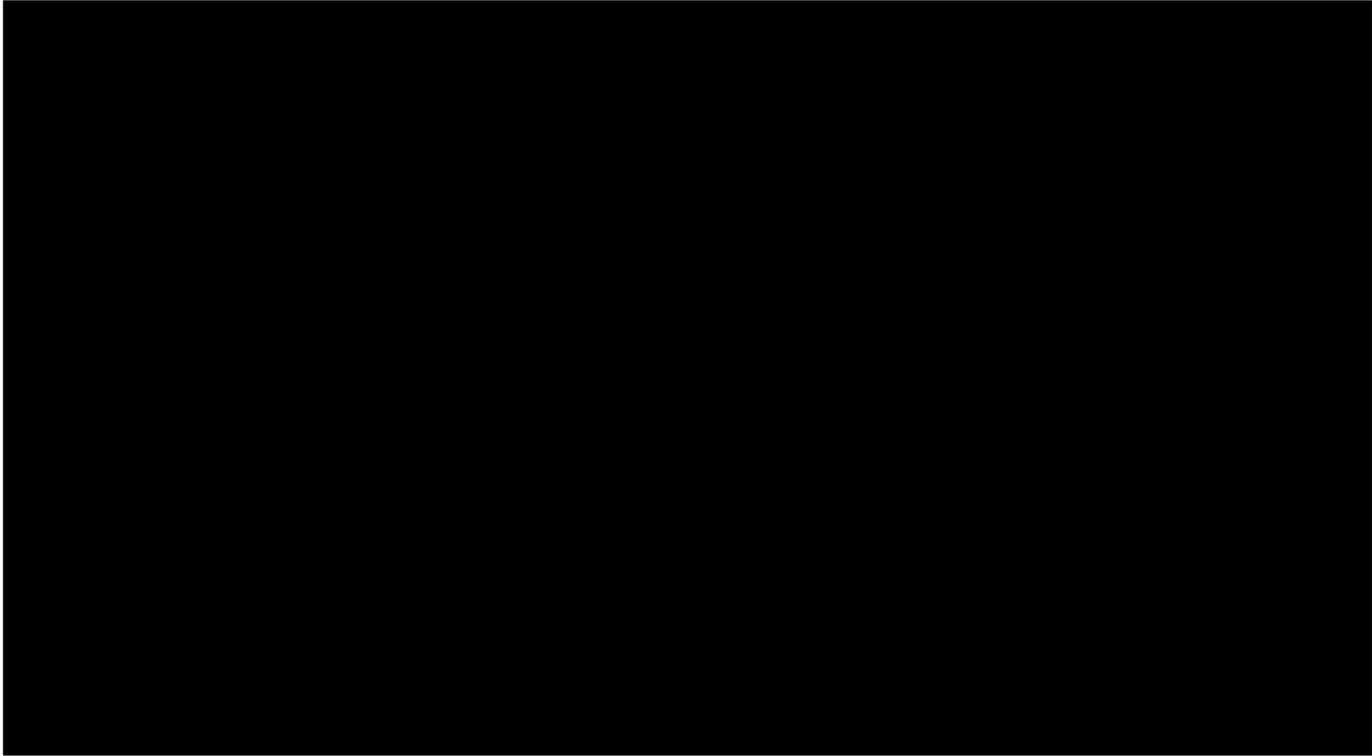


Marcia

From: Barbara Cuber
Sent: Tuesday, January 5, 2021 5:39 PM
To: Marcia Jones
Cc: Simon-Pierre Lessard ; Sébastien Bergeron
Subject: RE: incoming litigation

This is Exhibit " C " referred to in the affidavit of:
Ceci est la pièce C mentionnée à l'affidavit de:
Elizabeth Schmidt
Sworn before me this _____ day of _____
Assermenté(e) devant moi ce 21 jour de November, 20 22

A. Commr. & etc. / Commissaire à l'assermentation

Hi Marcia,

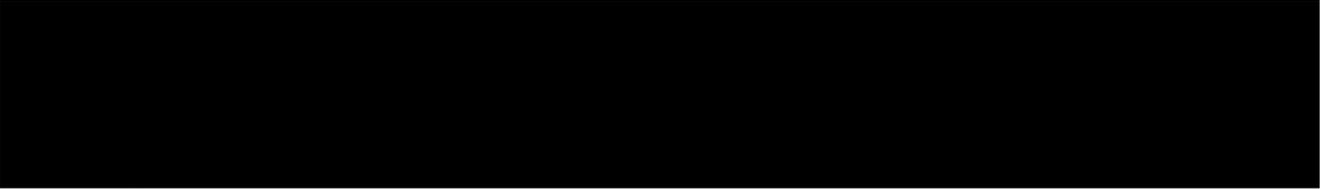


Barbara

From: Marcia Jones <Marcia.Jones@otc-cta.gc.ca>
Sent: Tuesday, January 5, 2021 4:44 PM
To: Barbara Cuber <Barbara.Cuber@otc-cta.gc.ca>
Cc: Simon-Pierre Lessard <Simon-Pierre.Lessard@otc-cta.gc.ca>; Sébastien Bergeron

[<Sebastien.Bergeron@otc-cta.gc.ca>](mailto:Sebastien.Bergeron@otc-cta.gc.ca)

Subject: RE: incoming litigation



Marcia

From: Barbara Cuber [<Barbara.Cuber@otc-cta.gc.ca>](mailto:Barbara.Cuber@otc-cta.gc.ca)

Sent: Tuesday, January 5, 2021 3:35 PM

To: Marcia Jones [<Marcia.Jones@otc-cta.gc.ca>](mailto:Marcia.Jones@otc-cta.gc.ca)

Cc: Simon-Pierre Lessard [<Simon-Pierre.Lessard@otc-cta.gc.ca>](mailto:Simon-Pierre.Lessard@otc-cta.gc.ca); Sébastien Bergeron [<Sebastien.Bergeron@otc-cta.gc.ca>](mailto:Sebastien.Bergeron@otc-cta.gc.ca)

Subject: RE: incoming litigation

Hi Marcia,



Barbara

From: Marcia Jones [<Marcia.Jones@otc-cta.gc.ca>](mailto:Marcia.Jones@otc-cta.gc.ca)

Sent: Tuesday, January 5, 2021 3:22 PM

To: Barbara Cuber [<Barbara.Cuber@otc-cta.gc.ca>](mailto:Barbara.Cuber@otc-cta.gc.ca)

Cc: Simon-Pierre Lessard [<Simon-Pierre.Lessard@otc-cta.gc.ca>](mailto:Simon-Pierre.Lessard@otc-cta.gc.ca); Sébastien Bergeron [<Sebastien.Bergeron@otc-cta.gc.ca>](mailto:Sebastien.Bergeron@otc-cta.gc.ca)

Subject: incoming litigation

Hi Barbara,



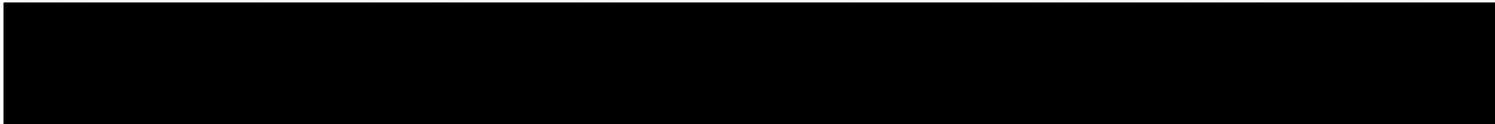
Thank you,
Marcia

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

Schmidt, Elizabeth

From: Tom Oommen <Tom.Oommen@otc-cta.gc.ca>
Sent: March 22, 2020 6:53 PM
To: John Dodsworth; Martin Dalpé; John Touliopoulos
Cc: Valérie Lagacé
Subject: RE: Debrief from Sunday EC



This is EXHIBIT " D " referred to in the affidavit of:
Ceci est la pièce _____ mentionnée à l'affidavit de:

Elizabeth Schmidt

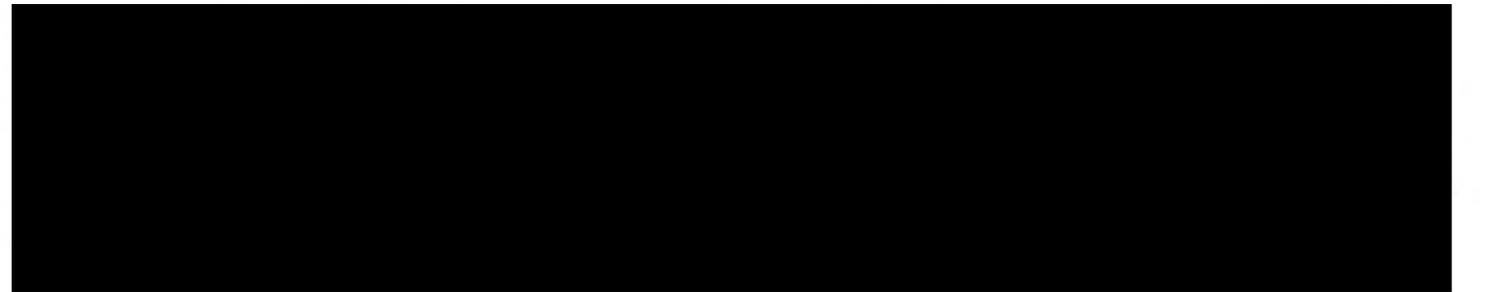
Sworn before me this _____ day of _____
Assermenté(e) devant moi ce 21 jour de November, 20 22

A. Commr. & etc. / Commissaire à l'assermentation

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

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

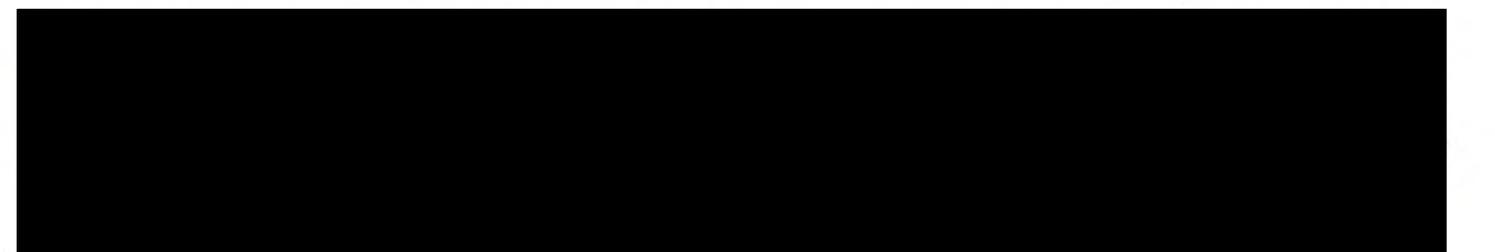
From: John Dodsworth
Date: 2020-03-22 6:48 PM (GMT-05:00)
To: Martin Dalpé , John Touliopoulos , Tom Oommen
Cc: Valérie Lagacé
Subject: RE: Debrief from Sunday EC



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

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

From: Martin Dalpé
Date: 2020-03-22 18:37 (GMT-05:00)
To: John Dodsworth , John Touliopoulos , Tom Oommen
Cc: Valérie Lagacé
Subject: RE: Debrief from Sunday EC



Martin

From: John Dodsworth
Sent: Sunday, March 22, 2020 6:21 PM
To: Martin Dalpé ; John Touliopoulos ; Tom Oommen
Cc: Valérie Lagacé
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](tel:819-953-9788) Cel. [819 635-6311](tel:819-635-6311)

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

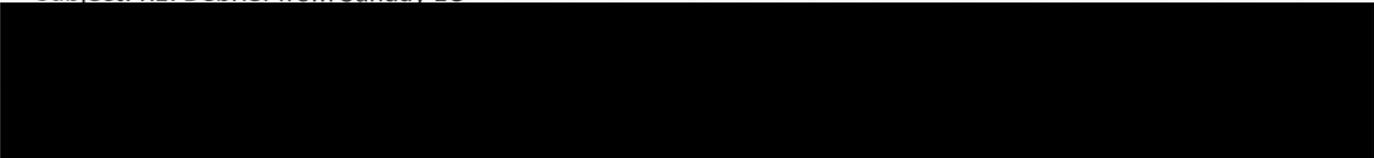
From: John Dodsworth <John.Dodsworth@otc-cta.gc.ca>

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

